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IN THE
COURT OF APPEALS OF INDIANA

Jacqueline Mastellone,
Appellant/Cross-Appellee-Plaintiff,

v.

Young Men's Christian Association of Greater Indianapolis d/b/a Arthur Jordan Branch, YMCA,
Appellee/Cross-Appellant-Defendant.

June 23, 2022

Court of Appeals Case No. 21A-CT-1720

Appeal from the Marion Superior Court

The Honorable Gary L. Miller, Judge

Trial Court Cause No. 49D03-2006-CT-19092

Molter, Judge.

[1] Jacqueline Mastellone slipped and fell at the YMCA[1] when she was returning to the locker room from a swim class, and she sued the YMCA to recover damages for her personal injuries. During a jury trial, the YMCA twice moved for mistrial—first based on an overruled objection to testimony that the floor was replaced after Mastellone's fall, and then when defense counsel learned after the jury reached its verdict that an exhibit inadvertently was not sent to the jury room during deliberations. The trial court denied both motions. But three days after the jury returned a verdict for Mastellone, the trial court ordered a new trial through a short order stating the court had *sua sponte* reconsidered a mistrial motion without specifying which of the two mistrial motions it was reconsidering and without explaining why a mistrial was warranted. Because that was an abuse of the trial court's discretion to set aside a verdict and order a new trial, we reverse and direct the trial court to reinstate the jury's verdict.

[2] The YMCA cross-appeals the trial court's rulings denying its mistrial motions, and it challenges the jury's verdict as excessive. We conclude the mistrial rulings do not reflect an abuse of discretion, and the jury's award is not excessive, so we affirm as to those issues.

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[1] This was the Arthur Jordan Branch of the Young Men's Christian Association of Greater Indianapolis ("YMCA").

Facts and Procedural History

[3] Mastellone was returning to the YMCA locker room after finishing an adult swim class in May 2019 when she slipped and fell opening the door over a portion of the floor that did not have a slip-resistant mat. The fall dislocated and fractured her left shoulder, requiring a shoulder replacement. Months later, as part of a facilities upgrade, the YMCA replaced the flooring where she fell. Then, roughly a year after her fall, Mastellone sued the YMCA seeking damages for her injuries.

[4] Before trial, the YMCA filed a motion in limine seeking to exclude evidence and any references "regarding [ ] new flooring being installed" because the "fact that the flooring was changed almost a year after Plaintiff's fall is not relevant to the issues to be tried in this matter and the introduction of such evidence would greatly prejudice the Defendant." Appellee's App. Vol. 2 at 7. The trial court granted the motion in part and denied it in part—the court would allow evidence regarding "the installation of a new floor," but not "evidence that the flooring was *changed*." *Id.* at 13 (emphasis added).

[5] A jury trial was held in August 2021. Plaintiff's counsel asked Ellie Schmink, a YMCA district vice president, whether the floor on which Mastellone slipped had "been replaced since this incident." Tr. Vol. 3 at 49. Defense counsel objected, and, in a sidebar, reiterated the argument that the floor replacement was irrelevant and prejudicial. After the trial court responded it would let the witness answer the question, defense counsel moved for a mistrial, and the trial court denied the motion. Plaintiff's counsel repeated the question.

> Q: Has the flooring, since this incident, been replaced?
>
> A: It has, yes.

Id. at 50.

[6] That exchange concluded the direct examination by plaintiff's counsel, and defense counsel established through cross-examination that the floor replacement was part of a general facilities upgrade and not in response to Mastellone's fall.

> Q: Am I correct the flooring was changed before the lawsuit was filed in this case; is that correct?
>
> A: That is correct.
>
> Q: And was the flooring changed in any way due to any falls?
>
> A: No, it was an upgrade of the facility, like to do [sic] often throughout the facility.

Id. Notably, it was only defense counsel rather than plaintiff's counsel who used the word "changed," which was the word the trial court said it would not allow based on defense counsel's objection.

[7] After the jury reached a verdict, but prior to the jurors reentering the courtroom, the YMCA learned that an exhibit—a piece of flooring from the area where Mastellone fell—was not sent back to the jury room, so the YMCA moved for a mistrial a second time. The trial court denied the motion because

the exhibit was passed to the jury when it was admitted and they had the opportunity to examine the exhibit then.

[8] The jury returned a plaintiff's verdict for $850,000 in total damages with sixty percent of the fault allocated to the YMCA and forty percent to Mastellone. After reducing the recoverable damages based on Mastellone's fault, the YMCA's liability was $510,000. Immediately after reading the verdict and polling the jurors, the trial court stated it would "enter judgment on that verdict." *Id.* at 128. Later that day, the court noted the entry of judgment on the CCS:

> Jury Trial [D]ay 3 held. Plaintiff present with Ann Marie Waldron and Brandon Tate. Defendant's representative, Ellie Schmink, present with Thomas Schultz. Closing arguments heard. Jury deliberated and reached a verdict. Jury found in favor of Plaintiff. Jury discharged. Judgment entered.

Appellant's App. Vol. 2 at 11.

[9] However, three days after the jury returned its verdict, the trial court *sua sponte* issued an Order Reconsidering Motion for Mistrial. The order did not identify which mistrial motion the court was reconsidering, and it did not provide any reasoning. Instead, it summarily stated: "Upon reconsideration, the Court GRANTS the Motion for Mistrial and ORDERS that the jury verdict and judgment are hereby set aside." *Id.* at 13.

[10] Mastellone now appeals that order, and the YMCA cross-appeals (1) the trial court's rulings denying both of the YMCA's mistrial motions and (2) the jury's verdict as excessive.

Discussion and Decision

I. Appeal

[11] Mastellone argues the trial court erred in declaring a mistrial because it no longer had the authority to reconsider its rulings on the two mistrial motions, and it failed to comply with Trial Rule 59's requirements for a motion to correct error. We agree.

[12] The trial court titled the order Mastellone appeals as an Order Reconsidering Motion for Mistrial, but we determine the nature of the order from its substance rather than its title. *See, e.g.*, *Barclays Inv. Funding LLC v. Jamalee Invs., LLC*, 186 N.E.3d 659, 660–61 (Ind. Ct. App. Apr. 4, 2022) (holding that a motion titled as a motion to reconsider must be treated as a motion to correct error because the motion requested that the trial court revisit a final judgment). While a trial court retains inherent authority to reconsider its rulings until a final judgment is entered, *In re Estate of Lewis*, 123 N.E.3d 670, 673 (Ind. 2019), once the court enters a final judgment, it may only reconsider prior rulings through a Trial Rule 59 motion to correct error. *See Citizens Indus. Grp. v. Heartland Gas Pipeline, LLC*, 856 N.E.2d 734, 737 (Ind. Ct. App. 2006) (explaining that "a party can only file a motion to reconsider with the court if the action remains *in fieri*" and "[i]f the trial court has issued a final judgment, the party must file a motion to

correct error[ ] rather than a motion to reconsider"), *trans. denied*. Here, the appealed order came three days after the trial court entered a final judgment, so the trial court no longer had the inherent authority to reconsider its pre-judgment rulings.

[13] In particular, when the jury returned its verdict, the trial court stated it would "enter judgment on that verdict," Tr. Vol. 3 at 128, and then it reflected that judgment through its CCS notation:

> Jury Trial [D]ay 3 held. Plaintiff present with Ann Marie Waldron and Brandon Tate. Defendant's representative, Ellie Schmink, present with Thomas Schultz. Closing arguments heard. Jury deliberated and reached a verdict. Jury found in favor of Plaintiff. Jury discharged. **Judgment entered.**

Appellant's App. Vol. 2 at 11 (emphasis added). "[I]t is well settled that the trial court speaks through its CCS or docket," *City of Indianapolis v. Hicks*, 932 N.E.2d 227, 233 (Ind. Ct. App. 2010), *trans. denied*, and that the CCS is the official record of the trial court. Ind. Trial Rule 77(B). Thus, "[a]s expressly stated in both Trial Rule 59(C) and Appellate Rule 9(A)(1), a judgment is 'final' when it is noted in the CCS." *Waldrip v. Waldrip*, 976 N.E.2d 102, 109 (Ind. Ct. App. 2012).

[14] Treating the trial court's CCS entry here as the final judgment for purposes of Trial Rule 59 is consistent with the trial court's understanding of its orders. In its Order Reconsidering Motion for Mistrial, it stated that it was setting aside the "jury verdict and *judgment*." Appellant's App. Vol. 2 at 13 (emphasis

added). This treatment is also consistent with the deadline to file a motion to correct error, which is triggered by the notation of a final judgment on the CCS. *See* Ind. Trial Rule 59(C) (providing that a motion to correct error is due within thirty days "after the entry of a final judgment is noted in the Chronological Case Summary"). It would be incongruous for the CCS entry to trigger the deadline to file a motion to correct error under Trial Rule 59, but not trigger the trial court's obligation to adhere to Trial Rule 59 when setting aside the jury verdict and ordering a new trial.

[15] So, because the trial court had entered judgment, it was required to adhere to Trial Rule 59 before setting the judgment aside. Under Trial Rule 59(B), a "motion to correct error, if any, may be made by the trial court, or by any party." But any error "*shall* be stated in specific rather than general terms and *shall* be accompanied by a statement of facts and grounds upon which the error is based." Ind. Trial Rule 59(D) (emphases added). "Like parties who file a motion to correct error, the trial court, too, is required to comply with the rule when it *sua sponte* finds error." *Haggard v. Hayden*, 494 N.E.2d 338, 339 (Ind. Ct. App. 1986); *see also Lake Mortgage Co. v. Federal National Mortgage Ass'n*, 321 N.E.2d 556 (Ind. 1975) (concluding the trial court erred in granting a new trial on its own motion because it failed to provide a statement of facts supporting its conclusion of error as required by then-numbered Trial Rule 59(B)). This requirement is important for procedural fairness because failing to provide the reasons for setting aside the judgment impedes the aggrieved party's ability to formulate an appeal and this court's ability to review the trial court's decision.

See Lake Mortgage Co., 321 N.E.2d at 560 (explaining "the party aggrieved by the court's granting of the motion to correct errors would not be able to properly formulate his appeal[ ] nor would the Court of Appeals or this Court be able to pass upon the propriety of the trial court's actions").

[16] Here, the trial court's Order Reconsidering Motion for Mistrial is, in substance, an order on a *sua sponte* Trial Rule 59 motion to correct error, but it does not provide any specificity as to why the court was setting aside the verdict. The order does not even specify which mistrial motion it was reconsidering and granting, and it does not provide any reasoning. Instead, the order merely states:

> During the trial and prior to the verdict, the [YMCA] made a Motion for Mistrial which the Court denied. Upon reconsideration, the Court GRANTS the Motion for Mistrial and ORDERS that the jury verdict and judgment are hereby set aside.

Appellant's App. Vol. 2 at 13.

[17] Further, Trial Rule 59(J) provides that the trial court, "if it determines that prejudicial or harmful error has been committed, shall take such action as will cure the error, including" granting a new trial or altering, amending, modifying, or correcting the judgment. However, if it grants corrective relief, the trial court "shall [then] specify the *general reasons* therefor." Ind. Trial Rule 59(J) (emphasis added). The trial court failed to comply with this portion of Trial Rule 59 too by not identifying which mistrial motion it was reconsidering and

not providing any reasons for granting the unspecified motion and ordering a new trial.

[18] Having concluded the trial court did not comply with Trial Rule 59 when setting aside the judgment, we must determine the appropriate remedy. Our Supreme Court has directed that when a trial court sets aside a jury verdict as against the weight of the evidence but fails to make the special findings required by Trial Rule 59, our court must reverse and direct the trial court to reinstate the verdict. *Weida v. Kegarise*, 849 N.E.2d 1147, 1152–53 (Ind. 2006). This is because, among other reasons, compliance with Trial Rule 59's specificity requirements "is necessary to assure the public that the justice system is safe not only from capricious or malicious juries, but also from usurpation by unrestrained judges." *Id.* at 1153. Remanding to the trial court for further "[e]xplanations crafted after appellate remand [ ] six months or a year after the trial court heard the evidence" is inadequate to fulfill the rule's requirements. *Id.*

[19] Moreover, remanding for the entry of a more specific order rather than reinstating the verdict "makes the party who won the jury's verdict pay for the cost of appealing to enforce the requirement of findings (findings whose function is to vitiate the very verdict that party already won)." *Id.* While the burden to provide sufficient specificity rests with the trial court, the party benefiting from the court's decision "could legitimately take any number of steps to protect [their] interest in securing an adequate order for a new trial should the trial judge be persuaded to set aside the jury's verdict." *Id.* Those

steps include that "counsel might file a post-order request of the sort not mentioned in the Trial Rules, but regularly recognized in actual practice (denominating it, say, as a request for clarification or a request for a more particular order)." *Id.*

[20] While the Supreme Court discussed these considerations in the context of a new trial order based on a verdict against the weight of the evidence, the logic is equally compelling in the context of an order like the one at issue here directing a new trial based on an unspecified mistrial motion. At bottom, if a "court overrides the jury in its special domain and substitutes its verdict for theirs without a clear showing that the ends of justice require it, it is likely that they did not." *Id.* (quotations omitted).

[21] Accordingly, we reverse the trial court's Order Reconsidering Motion for Mistrial and remand to the trial court with instructions to reinstate the jury's verdict.

II. Cross-Appeal

A. Motions for Mistrial

[22] The YMCA argues that even if the trial court's Order Reconsidering Motion for Mistrial reflected error, the judgment must still be vacated because it was reversible error for the trial court to deny both of the YMCA's mistrial motions. We show great deference to a trial court's decision whether to grant a mistrial because the judge is in the best position to gauge the surrounding circumstances of an event and its impact on the jury. *McManus v. State*, 814 N.E.2d 253, 260

(Ind. 2004). We therefore review the trial court's decision solely for an abuse of discretion. *Id.* The appellant must demonstrate that the conduct complained of was both erroneous and had a probable persuasive effect on the jury's decision. *Hale v. State*, 875 N.E.2d 438, 443 (Ind. Ct. App. 2007), *trans. denied*.

1. First Motion for Mistrial

[23] The YMCA contends the trial court erred in allowing testimony that the flooring had been replaced after Mastellone's fall and then denying the mistrial motion based on that testimony because the evidence was irrelevant and, alternatively, any probative value was substantially outweighed by unfair prejudice. Both arguments fail.

[24] Under Indiana Evidence Rule 401, evidence is relevant if it (1) has any tendency to make a fact more or less probable than it would be without the evidence; and (2) the fact is of consequence in determining the action. Mastellone argues the testimony that the floor was replaced after her fall was relevant because it explains why she "could not have had an expert inspect the flooring as it existed at the time of the fall." Appellant's Reply Br. at 15. But as the YMCA correctly points out, that was not an issue at trial, and Mastellone does not point to any part of the transcript suggesting otherwise. The testimony's relevance was therefore marginal at best.

[25] Regardless, even if the evidence was irrelevant, we conclude we cannot reverse because any error in admitting the evidence was harmless and did not require a mistrial. *See* Ind. Trial Rule 61 ("No error in . . . the admission . . . of evidence

. . . is ground for . . . reversal on appeal[ ] unless refusal to take such action appears to the court inconsistent with substantial justice."); Ind. Appellate Rule 66(A) ("No error or defect in any ruling or order or in anything done or omitted by the trial court or by any of the parties is ground for granting relief or reversal on appeal where its probable impact, in light of all the evidence in the case, is sufficiently minor so as not to affect the substantial rights of the parties."). Consistent with the trial court's in limine ruling, Mastellone's counsel only asked Schmink a single question about the floor replacement, and the YMCA made it clear through cross-examination that the replacement was part of a facilities upgrade and not in response to any fall.

[26] The YMCA instead believes the testimony was harmful because the jury "returned an excessive verdict." Appellee's Reply Br. at 7. As discussed below, the verdict is not excessive, and, regardless, there is no good reason to connect the jury's damages amount—as opposed to its liability determination—to the evidence that the floor was later replaced. The YMCA also argues the trial court's later decision to reconsider its rulings and grant a mistrial reflects that the testimony was harmful to the YMCA. That argument must fail because it is not even clear this testimony was the basis for the trial court's decision to declare a mistrial. It is just as plausible that the trial court based the order granting a mistrial on the second mistrial motion during jury deliberations.

[27] The YMCA's alternative argument is that testimony that the floor was replaced was inadmissible under Evidence Rule 403 because any probative value was substantially outweighed by unfair prejudice. This argument fails because the

YMCA does not explain what the unfair prejudice was and therefore cannot demonstrate the prejudice *substantially* outweighed the probative value. Ind. Evid. Rule 403 ("The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of . . . unfair prejudice . . . ."). Perhaps the YMCA was concerned the jury would mistakenly believe the floor replacement was a subsequent remedial measure, which would be inadmissible under Evidence Rule 407. Ind. Evid. Rule 407 ("When measures are taken that would have made an earlier injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove: negligence; culpable conduct; a defect in a product or its design; or a need for a warning or instruction."). But it did not state that concern when objecting at trial or in its brief on appeal, and it has never argued that the testimony is inadmissible under Evidence Rule 407.

[28] We therefore cannot say the trial court abused its discretion when denying the YMCA's first mistrial motion.

2. Second Motion for Mistrial

[29] The YMCA also argues the trial court erred in denying its second motion for mistrial after it learned that an exhibit—a piece of flooring from where Mastellone fell—was not sent back to the jury room during their deliberations. The trial court explained it was denying the motion because "the jury did have the opportunity to look at it and it was passed to the jury." Tr. Vol. 3 at 126–27.

[30] The YMCA acknowledges it cannot cite any authority holding that failing to send an exhibit back to the jury room requires a mistrial. Appellee's Br. at 16. This case will not be the first because we cannot say the trial court abused its discretion, and we have no reason to think the jury failed to take the evidence into account when deliberating. The YMCA also contends that this was an especially important piece of evidence given Mastellone's references to it in closing. But the trial court had the superior vantage point for that assessment, which is why our standard of review requires deference to the trial court's judgment in this regard.

[31] Accordingly, the YMCA's second mistrial motion does not require setting aside the judgment.

B. Jury Verdict

[32] Lastly, the YMCA asserts that the jury's verdict was excessive and not supported by the evidence. Generally, under Trial Rule 59(A)(2), "a motion to correct error is a prerequisite to [an] appeal when a party seeks to raise a claim that the damage award was either excessive or inadequate." *Howard v. Trevino*, 613 N.E.2d 847, 848 (Ind. Ct. App. 1993). Thus, "the failure to file a mandatory motion to correct error prevents this court from considering the issue on appeal." *Id.* at 848–49. But here, the trial court deprived the YMCA of a sufficient opportunity to file a motion to correct error because the trial court ordered a new trial and lost jurisdiction over the case before the YMCA's deadline to file its own motion to correct error had passed. *See Town of Ellettsville v. Despirito*, 87 N.E.3d 9, 11 (Ind. 2017) (per curiam) (explaining that

the trial court loses jurisdiction after the notice of completion of the clerk's record is reflected on the CCS). In these unusual circumstances, the failure to file a motion to correct error cannot preclude appellate review. *See* Ind. Trial Rule 1 (providing that the Trial Rules should be interpreted to "secure the just, speedy and inexpensive determination of every action"); *DeWees v. State*, 180 N.E.3d 261, 271 (Ind. 2022) (explaining that the trial rules were adopted "to reduce technical burdens [in the trial courts and courts of appeal], not increase them").

[33] Turning to the merits of the YMCA's argument, a "jury determination of damages is entitled to great deference when challenged on appeal." *TRW Vehicle Safety Sys., Inc. v. Moore*, 936 N.E.2d 201, 221 (Ind. 2010) (quotations omitted). The jury's award "will be considered excessive only if it is so outrageous as to indicate passion, prejudice, or partiality rather than reasoned assessment." *Id.* (quotations omitted). "[I]f there is any evidence in the record which supports the amount of the award, even if it is variable or conflicting, the award will not be disturbed." *Id.* (quotations omitted).

[34] Here, the jury awarded Mastellone damages of $850,000 and assessed sixty percent fault to the YMCA for a judgment against the YMCA of $510,000. Mastellone presented evidence that, after her fall, her left shoulder began to bruise, and she experienced severe pain. Her doctors found that she had dislocated and fractured her left shoulder, and she required a reverse total shoulder replacement. Mastellone's surgeon described her surgery as "fairly complex" and explained how Mastellone's "native shoulder" could not be

salvaged. Tr. Vol. 2 at 198–201. Mastellone's hospitalization was extended an additional day because of her pain.

[35] As a result of the injuries to her left shoulder, Mastellone required physical therapy and was placed on a 10-pound permanent lifting limitation due to weakness. Moreover, while Mastellone eventually stopped experiencing pain in her left shoulder, she began experiencing pain in her right shoulder due to its overuse. She described how she must now rely on her right arm because she does not have strength or the ability to use her left arm as much. Mastellone's surgeon also testified that Mastellone's right shoulder was getting worse and that she began receiving steroid and anesthetic injections in that shoulder due to the pain. The surgeon further explained that, because "things break down with time," Mastellone will have to have her left shoulder checked annually to make sure that her prosthesis is working correctly. Tr. Vol. 2 at 210. If the prosthetic components loosen or go unchecked, Mastellone may require additional surgery.

[36] Due to her injury, Mastellone has had to adjust to a new normal. She now struggles in the kitchen, getting dressed, and riding her bike. She also could not drive for a few months after her fall. This is sufficient evidence to support the jury's award, and we cannot say it "is so outrageous as to indicate passion, prejudice, or partiality rather than reasoned assessment." *TRW Vehicle Safety Sys., Inc.*, 936 N.E.2d at 221. We therefore affirm the jury's award.

[37] In sum, we reverse the trial court's Order Reconsidering Motion for Mistrial and remand to the trial court to reinstate the jury's verdict. We also conclude the trial court did not abuse its discretion in denying both the YMCA's mistrial motions, and the jury's award is not excessive.

[38] Reversed and remanded.

Riley, J., and Robb, J., concur.