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IN THE COURT OF APPEALS OF INDIANA

Atta Belle Helman and Larry Dwayne Helman,

Appellants-Plaintiffs,

v.

Barnett's Bail Bonds, Inc., Tadd S. Martin, Daniel S. Foster, Michael C. Thomas, and Lexington National Insurance Corporation,

Appellees-Defendants.

August 9, 2021

Court of Appeals Case No. 20A-CT-1526

Appeal from the Kosciusko Circuit Court

The Honorable Michael W. Reed, Judge

Trial Court Cause No. 43C01-1606-CT-30

Najam, Judge.

Statement of the Case

[1] Atta Belle Helman and Larry Dwayne Helman (collectively "the Helmans") filed a complaint against Barnett's Bail Bonds, Inc. ("Barnett's"), Tadd S. Martin, Daniel S. Foster, Michael C. Thomas, and Lexington National Insurance Corporation ("Lexington") (collectively "the Defendants") after Atta's son Gary Helman was shot and killed during an attempt by bail bondsmen to apprehend him on outstanding warrants. The Helmans' complaint included multiple allegations of negligence and intentional torts against the bail bondsmen and vicarious liability against Barnett's and Lexington. Following a four-day trial, a jury found for the Defendants. The Helmans appeal and raise three issues for our review:

1. Whether the trial court abused its discretion when it admitted certain evidence.

2. Whether the trial court abused its discretion when it instructed the jury.

3. Whether the trial court abused its discretion when it submitted verdict forms to the jury.

[2] We affirm.

Facts and Procedural History

[3] The parties have stipulated to the following relevant facts:

8. On November 25, 2013, Gary Helman was arrested in two, unrelated cases—one for three felonies and the other for a misdemeanor.
9. Gary Helman's bond was set at $25,000 total, for both cases.

10. On November 27, 2013, Atta Helman engaged Barnett's Bail Bonds, Inc. to obtain a bail bond and secure Gary Helman's release from jail.

11. Atta Helman executed a Confidential Application for Bail Bond, Bail Bond Contract, Contingent Promissory Note, and an Indemnity Agreement to secure Gary Helman's release from jail.

12. Gary Helman also executed the Bail Bond Contract, the Contingent Promissory Note, and the Indemnity Agreement.

13. Atta Helman paid Barnett's Bail Bonds, Inc. a $2,500 premium, and Gary Helman was released from jail.

14. Gary Helman later failed to appear in court for his outstanding charges.

15. On May 19, 2014, the Kosciusko County Superior Court issued a warrant for Gary Helman's arrest in the felony case.

16. On July 21, 2014, the Kosciusko County Superior Court issued a warrant for Gary Helman's arrest in the misdemeanor case.

17. The Kosciusko County Superior Court ordered Barnett's Bail Bonds, Inc. to apprehend and surrender Gary Helman to the Court.

18. In the Spring of 2014, representatives from Barnett's Bail Bonds, Inc., including Myra Barnett, retained the service of Tadd Martin to apprehend Gary Helman on his outstanding warrants.

19. Tadd Martin and Daniel Foster began their efforts to locate and recover Gary Helman in the Spring of 2014.
20. In the Spring of 2014, local law enforcement in Kosciusko County explained to Tadd Martin that they wanted to have nothing to do with any attempt to recover or apprehend Gary Helman at the home located at 9174 Doswell Blvd due to Gary Helman's propensity for filing lawsuits.

21. Tadd Martin and Daniel Foster spent multiple nights over the course of a period of months conducting surveillance on the home at 9174 Doswell Blvd.

22. In June of 2014, Tadd Martin and Daniel Foster approached the home at 9174 Doswell Blvd., and they pretended to be interested in purchasing the home from Atta Helman.

23. In June of 2014, when Tadd Martin and Daniel Foster approached the home at 9174 Doswell Blvd. while pretending to be interested in purchasing the home, Atta Helman denied their entry into the residence at that time.

24. Tadd Martin contacted local reporter Stacey Staley to solicit her assistance in apprehending Gary Helman. . . .

25. On July 25, 2014, Stacey Staley contacted Gary Helman to set up an interview.

26. On July 27, 2014, Myra Barnett said to Stacey Staley in a social media post:

I know that my recovery agent has contacted you about Gary Helman. I know it would be a feather in your cap to get him out so we can put him back into custody. The ISP had to shoot him and [Kosiusko County Sheriff's Department] tazed him and he has sued them. He is a bit of a nut and we have been working on this for some time. I saw on his [Facebook] page that he wants the media to expose all injustice that has happened. Anything

> you could do would be appreciated by not only me but I know the officers involved. Thanks, Myra.
> a. Stacey Staley responded: I made contact with him. Waiting to hear back. Will try again Monday. I have a great way to drag him out :-)

Appellants' App. Vol. 2 at 38-40.

[4] On August 25, 2014, Staley went to the Helman residence at 9174 Doswell Boulevard in Cromwell. During Staley's interview with Gary and Atta, Foster, Martin, and Thomas conducted surveillance of the house while they were parked on a neighbor's property nearby, and, at some point, they saw Gary come outside and go back inside. Atta told Staley that she knew that some bail bondsmen had come by the house in June pretending to be interested in buying it. Atta told Staley that she had a gun and would use it to blow up a propane tank on the property if they returned. After the interview, Staley shared what she had learned with Martin in a telephone call.

[5] A short time after Staley left, Foster, Martin, and Thomas approached the house. The plan was for Foster to knock on the front door, and Martin and Thomas would be outside the back door to intercept Gary if he came out that way. However, when Martin got to the back of the house, he saw Atta outside the back door. Martin grabbed Atta, and then he and Thomas attempted to subdue her. At that point, Larry shot Martin twice. Larry then "charg[ed]" at Martin, and Martin shot Larry. Tr. Vol. 5 at 168. Gary came outside and shot Martin three times. Martin then shot and killed Gary.

[6] In June 2016, the Helmans filed a complaint for damages, and they twice amended their complaint, the second time in February 2018. In that complaint, the Helmans alleged multiple intentional torts, including assault and trespass, against Martin, Thomas, and Foster; negligence per se by Martin, Thomas, and Foster; and vicarious liability against Martin, Thomas, Foster, Barnett's, and Lexington. Prior to trial, the trial court entered judgment on the pleadings for the Defendants "as to all [of] Plaintiffs' negligence per se claims." Lexington's App. Vol. 2 at 37. Also prior to trial, the Helmans filed a motion in limine seeking in relevant part to prohibit evidence "[r]egarding any criminal proceedings, criminal charges, convictions, or the lack of said charges and convictions in relation to any of the Defendants for their conduct at issue in this case." Appellant's App. Vol. 2 at 61. The trial court granted that motion. The trial court also granted Lexington's motion to bifurcate the trial in order to try the liability and damages issues separately.

[7] On the second day of the liability phase of the trial, before the jury was brought in for the day's session, Lexington brought up the fact that the Helmans intended to introduce into evidence a videorecording of the "jailhouse interview" with Thomas, who was wearing handcuffs during the interview. Tr. Vol. 4 at 5. Lexington argued to the trial court that the admission of the jailhouse interview would "give a perception that [Thomas had been] potentially charged with a crime," and the court agreed and stated that the parties should stipulate to the fact that Thomas had not been charged with a crime. *Id.* at 6. The Helmans responded that they would not stipulate to that

fact as it violated the court's order on their motion in limine and was inconsistent with case law. This exchange followed:

> THE COURT: All right. So if you want to play the video, I'm going to instruct, we're going to make it clear the[y're] going to be instructed that no charges were filed and that there's two different standards of proof.
>
> [Helmans' counsel]: Okay, I'll note my objection to that based on [case law] and the fact that the case [law] I believe makes clear that providing that information to the jury is prejudicial and takes away an opportunity for them to make a decision.

Id. at 8.

[8] After the Helmans introduced into evidence Thomas' jailhouse interview and it was played for the jury, the trial court instructed the jury as follows:

> Michael Thomas was not charged with any criminal offenses arising from this incident. However, the burden of proof, this has been discussed is different in criminal cases. The burden of proof on the [S]tate there is beyond a reasonable doubt. You'll be instructed later on this. We've already talked about it. The burden of proof in this case for the Plaintiffs is to show by a preponderance of the evidence that Michael Thomas was responsible for criminal conduct as alleged.

Id. at 24.

[9] At the conclusion of the liability phase of the jury trial, the parties worked together to come up with verdict forms to submit to the jury. In the end, the parties submitted forms with defense verdicts for each defendant, as well as

thirty-one pages of forms for plaintiffs' verdicts, with each page asking the jury to find each defendant liable or not on each allegation. Before the verdict forms were submitted to the jury, the Helmans addressed the trial court as follows:

> [Helmans' counsel]: . . . Lastly, your honor, is that we with [sic] recognition that I think all counsel have worked together pretty hard on the verdict forms. This has been a difficult case to address with the verdict forms and it's we [sic] would object solely that it's our belief that the jury still has to apply percentages of fault under Indiana Code [Section] 34-51-2-8. Even though[,] as we've discussed[,] how the application of the percentages of fault may not necessarily mean a great deal in the result. It's a confusing issue which we recognize and there certainly are no form or model jury instructions that address the issue but it is our basic belief that the jury still has to apply percentages.
>
> THE COURT: Well on that one I mean we haven't finished the trial yet. If that becomes appropriate I said I was inclined and would give that instruction in phase 2, right. So I just think that objection is premature and especially in light of the fact that you argued . . . why in an intentional tort case the allocation of fault doesn't really matter because if you're at fault at all[-- even] one percent[—]I guess you have to find liability. So at this point we were only in [the] liability phase of the trial. So I'm not opposed to doing it later[,] I just think it's premature.

Tr. Vol. 6 at 78-79. The jury found in favor of the Defendants. This appeal ensued.

Discussion and Decision

Issue One: Admission of Evidence

[10] The Helmans first contend that the trial court abused its discretion when it admitted evidence that criminal charges had not been filed against Martin, Foster, or Thomas. The decision to admit or exclude evidence lies within the sound discretion of the trial court, and we will not disturb the trial court's decision absent a showing of an abuse of that discretion. *Oaks v. Chamberlain*, 76 N.E.3d 941, 946 (Ind. Ct. App. 2017), *trans. denied*. An abuse of discretion occurs when the trial court's decision is against the logic and effect of the facts and circumstances before the court or if the court has misinterpreted the law. *Id.*

[11] Initially, we note that the Helmans have not included in the Argument section of their brief any citations "to the pages of the Transcript where the evidence was identified, offered, and received or rejected," which omissions contravene Indiana Appellate Rule 46(A)(8)(d). The Helmans simply refer to "[t]he facts noted within the Statement of Facts section of this brief on the issue of the motion in limine[.]" Appellants' Br. at 36. We remind counsel to comply with this important appellate rule in the future.

[12] In any event, as Lexington points out, the Helmans did not make contemporaneous objections to any of the evidence admitted at trial regarding the lack of criminal charges against Martin, Foster, and Thomas. It is well settled that "[o]nly trial objections, not motions in limine, are effective to

preserve claims of error for appellate review." *Raess v. Doescher*, 883 N.E.2d 790, 796-97 (Ind. 2008). "A trial court's ruling on a motion in limine does not determine the ultimate admissibility of the evidence; that determination is made by the trial court in the context of the trial itself." *Walnut Creek Nursery, Inc. v. Banske*, 26 N.E.3d 648, 653 (Ind. Ct. App. 2015). "'Absent either a ruling admitting evidence accompanied by a timely objection or a ruling excluding evidence accompanied by a proper offer of proof, there is no basis for a claim of error.'" *Id.* (quoting *Hollowell v. State*, 753 N.E.2d 612, 615-16 (Ind. 2001)). "The failure to make a contemporaneous objection to the admission of evidence at trial, so as to provide the trial court an opportunity to make a final ruling on the matter in the context in which the evidence is introduced, results in waiver of the error on appeal." *In re Guardianship of Hickman*, 805 N.E.2d 808, 822 (Ind. Ct. App. 2004), *trans. denied*.

[13] In their Reply Brief, the Helmans respond that, because the trial court "noted" their objection on the second day of trial, they have preserved this issue for review. Reply Br. at 12. In support of that contention, the Helmans cite to *Vehorn v. State*, 717 N.E.2d 869 (Ind. 1999). In *Vehorn*, "[d]uring [a] pretrial hearing, the judge provided explicit assurance that an objection as to [a witness'] hearsay testimony was preserved for appeal" when it told defense counsel that "'even if you don't object, the Court will find . . . that your objections to this type of evidence have been timely made.'" *Id.* at 873. Thus, our Supreme Court held that that specific ruling by the trial court fell under a limited exception to the contemporaneous objection rule. *Id.*

[14] Here, in contrast, the trial court made no assurance of any kind to the Helmans that they would not need to make contemporaneous objections to the challenged evidence. The trial court "noted" an objection the Helmans made in the context of a discussion regarding impeachment evidence, not in the context of the evidence regarding the lack of criminal charges. Tr. Vol. 4 at 10. And, in any event, noting an objection is a far cry from the explicit statement in *Vehorn* that counsel need not make contemporaneous objections for the duration of the trial in order to preserve an issue for appeal. The Helmans have waived this issue for our review. *See In re Hickman*, 805 N.E.2d at 822.

Issue Two: Jury Instruction

[15] The Helmans next contend that the trial court abused its discretion when it declined to give their proffered jury instruction regarding the scope of a bail agent's authority under Indiana law. When we review a trial court's decision to give or refuse a tendered instruction, we consider whether: "1) the instruction correctly states the law; 2) the evidence in the record supports giving the instruction, and 3) the substance of the instruction is covered by other instructions." *Simmons v. Erie Ins. Exchange*, 891 N.E.2d 1059, 1064 (Ind. Ct. App. 2008) (quoting *Hoosier Ins. Co. v. N.S. Trucking Supplies, Inc.*, 684 N.E.2d 1164, 1173 (Ind. Ct. App. 1997)). In determining whether sufficient evidence exists to support an instruction, we will look only to that evidence most favorable to the appellee and any reasonable inferences to be drawn therefrom. *Id.* We review a trial court's decision to give or refuse to give an instruction for an abuse of discretion. *Id.*

[16] The Helmans tendered their instruction No. 62, which provided as follows:

> A bail agent has the legal power and authority to arrest and surrender a criminal defendant for which he has a bond issued. This includes the power to arrest and exercise control over an individual for whom he has a bond issued, including the power to break into and enter that individual's house at any time of day or night in order to forcibly take that individual back into custody.
>
> However, the authority of a bail agent does not provide justification to infringe on third party rights. None of the sources from which a bail agent derives his authority over an individual for whom he has a bond issued authorizes a bail agent to forcibly enter the private dwelling of a third party to arrest the principal.
>
> Where a bail agent forcibly enters the private dwelling of a third party, the bail agent is liable under the criminal laws of the State of Indiana. Where a bail agent detains or harms third parties, no matter how briefly, it infringes upon their rights.
>
> *Mishler v. State*, 660 N.E.2d 343, 345-46 (Ind. App. 1996); *Dewald v. State*, 898 N.E.2d 488, 492-93 (Ind. App. 2008).

Appellants' App. Vol. 2 at 240. However, included in the final instructions the court gave to the jury was instruction No. 38, which stated:

> A bail recovery agent has the right and the authority to break and enter the house where the fugitive resides and take him back into custody, even if the house is not owned by the fugitive. A bail recovery agent has no right or authority to break and enter the house of a third party.

Lexington's App. Vol. 2 at 108.

[17] In a side bar on the Helmans' instruction No. 62, the trial court explained its reasons for declining that proffered instruction as follows:

> So the reason that I refused instruction 62 is [that instruction] 38[,] I believe[, is] the accurate statement of the law. I believe it puts the points in that are essential for this jury to hear to rule on the actual questions before the Court[,] and I agree that it would get confusing because obviously the jury was not instructed that a bail agent has any rights to infringe on a third party just like no one has the rights to infringe on a third party[.] [A]nd I don't think those points were necessary to instruct the jury on and to adequately cover the points that are going to be before them based on the facts before them[.] [A]nd I don't like giving superfluous legal instructions which can only serve to confuse the jury further. So I just don't think the points raised by Plaintiff were material to the issues before the jury. So we gave [instruction] 38 for those reasons.

Tr. Vol. 6 at 73.

[18] Again, on appeal, the Helmans have the burden to show that: (1) their proffered instruction correctly states the law; 2) the evidence in the record supports giving the instruction, and 3) the substance of the instruction is covered by other instructions. *See Simmons*, 891 N.E.2d at 1064. While the Helmans assert that final instruction No. 38 "does not correctly state the law," they do not address whether their proffered instruction correctly states the law. Appellants' Br. at 31. Accordingly, the Helmans have not met their burden on

appeal to show that the trial court abused its discretion when it refused their proffered instruction No. 62.[1]

[19] In any event, we note that the Helmans' "primary concern" on appeal is that the jury was not instructed that bail bondsmen do not have any authority to harm third parties to a bond contract. Appellants' Br. at 29. As the trial court stated, "obviously the jury was not instructed that a bail agent has any rights to infringe on a third party just like no one has the rights to infringe on a third party." Tr. Vol. 6 at 73. And as Lexington points out,

> for each "third party right" at stake in this case, the jury received a very specific instruction. They were instructed on the elements of common law assault, on the elements of criminal assault, on the elements of common law battery, on the elements of criminal battery, on the elements of criminal aggravated battery, on the elements of common law trespass, on the elements of criminal trespass, on the elements of criminal confinement, on the elements of burglary, on the elements of residential entry, on the elements of criminal organized activity, and, if that all weren't enough, on the elements of civil conspiracy.

Lexington's Br. at 30-31. We hold that the trial court did not abuse its discretion when it declined to give the Helmans' proffered instruction No. 62.

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[1] For the first time in their Reply Brief, the Helmans state, without further explanation, that their proffered "instruction's reference to the third party limitations of *Mishler* correctly states the law[.]" Reply Br. at 6. It is well settled that new arguments made in a reply brief are inappropriate and will not be considered on appeal. *Osmulski v. Becze*, 638 N.E.2d 828, 836 n.9 (Ind. Ct. App. 1994).

Issue Three: Verdict Forms

[20] Finally, the Helmans contend that the trial court abused its discretion when it did not include in the verdict forms a way for the jury to assign percentages of fault to the parties under the Comparative Fault Act ("the Act"). Verdict forms are essentially instructions to the jury and those forms are reviewed under the same abuse of discretion standard that applies to jury instructions. *Fox v. State*, 497 N.E.2d 221, 224-25 (Ind. 1986). Thus, verdict forms are reviewed in conjunction with the jury instructions as a whole. *Knapp v. State*, 9 N.E.3d 1274, 1284-85 (Ind. 2014), *cert. denied*, 574 U.S. 1091 (2015).

[21] Indiana Code Section 34-51-2-8 provides as follows:

> (a) This section applies to an action based on fault that:
>
> (1) is brought against two (2) or more defendants; and
>
> (2) is tried to a jury.
>
> (b) The court, unless all the parties agree otherwise, shall instruct the jury to determine its verdict in the following manner:
>
> (1) The jury shall determine the percentage of fault of the claimant, of the defendants, and of any person who is a nonparty. The jury may not be informed of any immunity defense that might be available to a nonparty. In assessing percentage of fault, the jury shall consider the fault of all persons who caused or contributed to cause the alleged injury, death, or damage to property, tangible or intangible, regardless of whether the person was or could have been named as a party. The percentage of fault of parties to the

> action may total less than one hundred percent (100%) if the jury finds that fault contributing to cause the claimant's loss has also come from a nonparty or nonparties.
>
> (2) If the percentage of fault of the claimant is greater than fifty percent (50%) of the total fault involved in the incident which caused the claimant's death, injury, or property damage, the jury shall return a verdict for the defendants and no further deliberation of the jury is required.
>
> (3) If the percentage of fault of the claimant is not greater than fifty percent (50%) of the total fault, the jury shall then determine the total amount of damages the claimant would be entitled to recover if contributory fault were disregarded.
>
> (4) The jury next shall multiply the percentage of fault of each defendant by the amount of damages determined under subdivision (3) and shall enter a verdict against each defendant (and such other defendants as are liable with the defendant by reason of their relationship to a defendant) in the amount of the product of the multiplication of each defendant's percentage of fault times the amount of damages as determined under subdivision (3).

And Indiana Code Section 34-51-2-11 provides in relevant part that "[t]he court shall furnish to the jury forms of verdicts that require only the disclosure of: (1) the percentage of fault charged against each party and nonparty; and (2) the amount of the verdict against each defendant."

[22] At the conclusion of the liability phase of the trial, the Helmans asked the trial court to include in the verdict forms a way for the jury to assess percentages of fault pursuant to the Act. The court declined to do so, but it said it would include instructions for the jury to assess percentages of fault if the trial proceeded to the damages phase. On appeal, the Helmans "express ignorance as to any case law or authority that would directly address the present situation." Appellants' Br. at 39.

[23] We have found two cases directly on point, *Utley v. Healy*, 663 N.E.2d 229 (Ind. Ct. App. 1996), *trans. denied*, and *Evans v. Schenk Cattle Co.*, 558 N.E.2d 892, 896 (Ind. Ct. App. 1990), *trans. denied*.[2] In *Utley*, plaintiffs in a negligence action appealed a jury verdict for the defendant. At the conclusion of the trial,

> the jury was instructed in part that "[i]f you find the Defendant is not at fault or that the Plaintiffs have failed to meet their burden of proof, then your verdict should be for the Defendant, you should sign Verdict Form C, and no further deliberation of the Jury is necessary." The jury was given three verdict forms, including Verdict Form C, which simply stated that "We, the Jury, find for the defendant." This form only required the signature of the jury foreperson and the date.

Utley, 663 N.E.2d at 233 (citations omitted). On appeal, the Utleys stated that "the jury was instructed that it was not required to calculate the percentage of fault if it found either that Healy was not at fault or if the Utleys failed to meet

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[2] These cases address former versions of the relevant statutes under the Act, but the differences are not substantive.

their burden of proof." *Id.* at 234. The Utleys argued that the Act required that the jury be instructed "to first allocate the percentages of fault." *Id.*

[24] In rejecting the Utleys' contention, we held as follows:

> We have already addressed essentially this same argument. *See Evans*, 558 N.E.2d at 896. In *Evans*, we upheld the trial court's action in giving a verdict form to the jury which required the jury to first determine whether the defendant was negligent before allocating fault. *Id.* The verdict form instructed the jury that if it found that the defendant was not negligent, it was to stop at that stage and not proceed to allocate the percentages of fault. *Id.* . . . In upholding the use of the verdict form, we stated:
>
> > "The instruction serves to aid the jury by requiring it to determine only the issues necessary to a disposition of the case. If the jury finds no fault on the defendant's part, there is no need to address allocation of fault. On the other hand, if the jury was required to first allocate fault, it would be required to engage in a meaningless exercise of first allocating 0% fault to the defendant and then finding the defendant not negligent. Such time wasting efforts are not to be required of juries. . . ."
>
> *Id.*
>
> * * *
>
> It is a "time wasting effort" for the jury to first determine that Healy was 0% at fault, apportion the remainder of the percentages between the city and the Utleys and then conclude that Healy was not negligent. *See Evans*, 558 N.E.2d at 896. This action is merely an exercise in futility since ultimately the jury found Healy not negligent. In this case, the jury was charged with determining whether Healy was negligent when he collided with Utley. Once the jury concluded that Healy was not

> negligent, there was no reasonable purpose for the jury to engage in a further allocation of fault.

Id.

[25] Likewise, here, because the jury found that none of the Defendants were liable to the Helmans, there was no need to provide for the allocation of fault on the verdict forms. Nothing in the Act requires that a jury allocate fault in the liability phase of a trial.[3] *See id.* And the Helmans' sole contention on appeal is that the verdict forms were defective. They make no contention that the trial court should have, but failed to, *instruct* the jury on the Act.[4] The trial court did not abuse its discretion when it submitted verdict forms to the jury.

[26] Affirmed.

Pyle, J., and Tavitas, J., concur.

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[3] To the extent the Helmans assert that the verdict forms, generally, were confusing and prejudiced them because they were "massively complicated," they do not support that contention with cogent argument, and it is waived. Appellants' Br. at 40. In any event, the Helmans invited any error on this issue because they proffered the plaintiffs' verdict forms to the trial court.

[4] The Helmans' briefs on appeal are silent as to whether the trial court instructed the jury on comparative fault.