COURT OF APPEALS
DECISION
DATED AND FILED

November 10, 2005

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2002AP3396 **Cir. Ct. No. 1998CV17**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

MARILYN DALY, THOMAS DALY AND JONATHAN DALY,

PLAINTIFFS-APPELLANTS,

V.

WISCONSIN PATIENTS COMPENSATION FUND, WENDELL D. BELL, M.D., ROBERT C. BECK, PH.D., RACHEL A. LONG, M.D., THE MONROE CLINIC, INC. F/K/A ST. CLARE HOSPITAL OF MONROE, WISCONSIN, INC., MONROE MEDICAL ASSOCIATES, LTD. F/K/A THE MONROE CLINIC, S.C., TRANSPORTATION INSURANCE COMPANY AND PHYSICIANS INSURANCE COMPANY OF WISCONSIN,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Green County: THOMAS H. BARLAND, Judge. *Affirmed.*

Before Lundsten, P.J., Vergeront and Higginbotham, JJ.

¶1 VERGERONT, J. This is an action claiming negligence and failure to obtain informed consent that arises out of the psychological and psychiatric treatment provided Marilyn Daly.[1] The claims center on Daly's assertion that she was misdiagnosed as having multiple personality disorder (MPD) and that her treatment, including hypnosis, created false memories and the symptoms that were diagnosed as MPD. The jury found that the two psychiatrists and the psychologist who treated Daly were not negligent in their treatment and did not fail to disclose information about the treatment and procedure necessary for Daly to make an informed decision.

¶2 On appeal, Daly argues: (1) she is entitled to a new trial on the negligence claims because the circuit court erroneously excluded testimony from three of her experts on the causes of false memories and erroneously excluded expert testimony on the epidemiological causes of MPD clusters; (2) the evidence was insufficient to support the verdict that there was informed consent and she is therefore entitled to judgment as a matter of law on these claims; and (3) in the alternative to judgment as a matter of law on the informed consent claims, she is entitled to a new trial because of circuit court errors regarding evidence and closing argument.

[1] Daly's husband and son are also plaintiffs and appellants. Her husband and son both claim damages resulting from loss of Daly's society and companionship. Because these claims are derivative, we do not separately address them. Daly's son, who received treatment from Dr. Robert Beck, claims that Dr. Beck was negligent and failed to obtain informed consent. The jury found against Daly's son on both these claims. The excluded expert testimony that is the basis for the appellants' claim that they are entitled to a new trial on negligence does not appear to relate to Daly's son. Although there is a brief mention of her son's treatment in the fact section of the informed consent section, there is no developed argument on why he is entitled to either judgment as a matter of law or a new trial on his informed consent claim. Therefore, for ease of reference on this appeal we do not refer to Daly's husband and son as parties.

¶3 We conclude: (1) the circuit court properly exercised its discretion in excluding the experts' testimony and Daly is therefore not entitled to a new trial on the negligence claims; (2) there is sufficient evidence to support the jury finding that there was informed consent; and (3) Daly is not entitled to a new trial on informed consent. Accordingly, we affirm.

I. GENERAL BACKGROUND

¶4 In February 1991, Daly sought treatment for the anxiety she felt about the possibility of regaining the weight she had lost after enrolling in a weight-loss program. She received treatment from Dr. Robert Beck, a psychologist at the Monroe Clinic. After approximately three months, Dr. Beck felt Daly had improved and he terminated treatment. Daly returned to Dr. Beck for additional treatment about ten months later. According to Dr. Beck, Daly was reporting disturbing images and memories. Dr. Wendell Bell, a psychiatrist who also practiced at the Monroe Clinic, became involved with Daly's care and diagnosed her with MPD in September 1992.[2] Daly was hospitalized at St. Clare Hospital in October 1992 because she had become suicidal; there were subsequent hospitalizations, generally because she had become suicidal.

¶5 Dr. Rachel Long, a psychiatrist, replaced Dr. Bell in June 1993 and focused on Daly's medications, as had Dr. Bell, with Dr. Beck continuing as her psychotherapist. In June 1994, Dr. Long replaced Dr. Beck as Daly's psychotherapist.

[2] The Monroe Clinic, S.C., is now known as the Monroe Medical Associates, Ltd., and St. Clare Hospital of Monroe, Wisconsin, Inc. is now known as The Monroe Clinic, Inc. We will refer to these entities as "the clinic" and "the hospital" respectively.

¶6 In the view of Drs. Beck, Bell, and Long (the doctors), MPD is caused when a trauma in childhood is so overwhelming that the child is unable to process the emotions associated with it and walls off those emotions and, sometimes, the memories of the trauma. According to the doctors, at times of stress in adulthood, fragments of what has been walled off can re-emerge into consciousness. The psychotherapy they provided during the relevant time period focused in part on trying to help Daly integrate the disassociated personality fragments (alternate personalities) that, in their view, she was experiencing. Part of this process, according to their testimony, involved helping Daly to get better understanding and control of the emotions that were associated with the traumatic events she described and which they believed had occurred to some extent. Drs. Beck and Bell used hypnosis in their treatment of Daly. During Daly's treatment, she reported a number of memories she had of physical and sexual childhood abuse and other disturbing memories. Some were extremely bizarre—such as a memory of having seen a baby killed, its heart extracted, and herself being made to eat it.

¶7 Daly terminated her treatment with Dr. Long in March 1997. She subsequently filed this action against the doctors, the clinic, the hospital, their insurers, and the Wisconsin Patients Compensation Fund. The claims that are the focus of this appeal are: (1) Drs. Beck, Bell, and Long negligently diagnosed Daly with and treated her for MPD; (2) Drs. Beck and Bell implanted false memories of physical and sexual abuse in Daly's mind; (3) Dr. Long negligently failed to

inform Daly that certain of her memories were false; and (4) Drs. Beck, Bell, and Long failed to obtain informed consent before treating Daly.[3]

¶8 At trial, Daly testified that she had not experienced physical or sexual abuse as a child and her childhood was normal. According to Daly, the memories she reported of abuse and other disturbing events were suggested to her in the hypnosis conducted by Drs. Beck and Bell. She testified she did not really have alternate personalities: they were the same as the disturbing memories and they were false. Daly presented expert testimony that the doctors breached the standard of care by not adequately evaluating her before assigning a diagnosis of MPD; that Drs. Beck and Bell breached the standard of care by causing Daly to create more alternate personalities; and that Dr. Long breached the standard of care by failing to diagnose Daly's sleep apnea. Daly's evidence also showed that hypnosis could produce inaccurate memories, hypnosis and suggestive therapy could produce MPD, and the doctors did not obtain informed consent.

¶9 The doctors presented evidence that Daly's mental condition deteriorated in the ten months between the termination of her first round of treatment with Dr. Beck and her return to him, and that disturbing memories and alternate personalities were already present when she returned. They presented experts who opined that the diagnosis of MPD and Daly's treatment met the standard of care. They also presented evidence that the doctors' treatment, including the hypnosis, did not cause false memories or Daly's alternate personalities, and that her psychological and psychiatric problems had improved

[3] The claims against the clinic and the hospital that went to the jury were that each violated Daly's right to adequate treatment under WIS. STAT. § 51.61(1)(f). The jury found they had not, and on appeal Daly does not make separate arguments on these claims.

by the time she terminated treatment with Dr. Long. As for sleep apnea, the defense evidence was that Dr. Long had referred Daly to her general practitioner for her sleep problems and that this was within the standard of care. The defense evidence on informed consent will be discussed later in this opinion.

¶10 The jury returned a special verdict finding that Drs. Beck, Bell, and Long were not negligent in Daly's care and treatment and none failed to disclose information about the treatment and procedure necessary for her to make an informed decision. The court denied Daly's postverdict motions and entered a judgment dismissing the complaint.

II. EXCLUSION OF EXPERT TESTIMONY ON MEMORIES

A. Procedural Background

¶11 Prior to trial, Daly identified twelve expert witnesses. At least four were to testify on the standard of care, with some of those testifying on cause. Three others were to testify on the causes of false memories: Dr. Steven Lynn, Dr. Richard Ofshe, and Dr. Elizabeth Loftus (collectively, memory experts). The doctors filed a motion asking the court to shorten the trial to one month, arguing that Daly's list of experts was unnecessarily long. The circuit court denied the motion, stating that it could revisit the issue at a later date.

¶12 In a subsequent motion, the doctors argued that the court should bar the testimony of the memory experts because Daly's standard-of-care witnesses did not rely on their testimony and their testimony would waste time and unnecessarily confuse the jury. By the time this motion was heard, the judge who had denied the doctors' first motion was replaced by another judge. At the hearing on this motion, Daly's counsel informed the court that the memory experts would

not testify that the care provided Daly breached the standard of care and that the breach caused her damage. Instead, they would provide background information to educate the jury about the possible causes of false memories and how people can be damaged by their belief in false memories. Counsel explained that each of the three had different areas of expertise: Dr. Lynn would testify on how hypnosis can influence a belief about memory; Dr. Ofshe would testify on how suggestive therapeutic techniques can do that; and Dr. Loftus would testify on how people without any process of suggestion can come to have a false memory.

¶13 The circuit court granted the motion, reasoning that Daly's standard-of-care witnesses would necessarily have to testify about the possibility of creating false memories through suggestion and hypnosis in order to conclude that the standard of care had been breached. The court also reasoned that none of the memory experts had examined Daly and that her standard-of-care experts did not rely on the testimony of the memory experts. In addition, the court decided, the memory experts' testimony: (1) would take additional time; (2) could raise collateral issues; (3) might unnecessarily confuse the jury because they would not be addressing the standard of care, and the court would have to distinguish their role in the case from the role of the standard-of-care witnesses; and (4) allowing the memory experts to present general, "noncausal breach-of-care" testimony presented a danger of unfair prejudice to the doctors.

¶14 Daly moved the court to reconsider this ruling, arguing that the memory experts would explain how memories are created and the standard-of-care experts would explain how the negligent care Daly received from the doctors created the false memories. Daly also pointed out that the memory experts had gone over Daly's medical records.

¶15 The court declined to change its ruling that the memory experts could not testify on Daly's case-in-chief, but stated that they could testify as rebuttal witnesses, depending on the defense evidence. The court acknowledged that the memory experts' testimony might be relevant, but decided that Daly had not shown that the standard-of-care witnesses would be unable to educate the jury about the interplay of hypnosis and false memory. The court reaffirmed its earlier rationale that, if used in Daly's case-in-chief, the experts' testimony could raise collateral issues, would lengthen the trial, and, most importantly, might unfairly advantage Daly because of the danger that the witnesses would engage in speculation and might be converted through the "back door" into standard-of-care witnesses. The court explained that, because these witnesses would testify as to possibilities, their testimony was properly rebuttal testimony attacking the defense evidence on probability.

¶16 After this ruling, Daly moved to allow Dr. Lynn to testify on the standard of care regarding hypnosis. Daly argued that their other standard-of-care witnesses had disqualified themselves as experts on the process of hypnosis and so would be unable to testify on the standard of care with respect to hypnosis. Daly asserted that Dr. Lynn should be allowed to testify during her case-in-chief because: (1) he was an expert on hypnosis; (2) he had reviewed Daly's relevant medical records; and (3) allowing him to testify would not unfairly disadvantage the doctors, as Dr. Lynn had answered standard-of-care questions during his deposition. The doctors objected because Daly had already represented that Dr. Lynn would not be testifying on the standard of care. In addition, they asserted, Dr. Lynn had denied that he was a liability expert in his deposition.

¶17 The circuit court denied this motion because it was a change in Dr. Lynn's testimony that occurred too close to trial, which was scheduled to begin in

six and one-half weeks and was expected to last six weeks. The court considered this to be an unreasonable burden on the defense, particularly because the court had just ruled that another of Daly's experts, Dr. James Hudson, could testify as a standard-of-care witness on her case-in-chief over the doctors' objection that they had inadequate notice. As will be discussed in more detail in the next section, the court had ruled that Dr. Hudson could testify in Daly's case-in-chief on the standard of care, including the topics of hypnosis, memory, and suggestion.

¶18 Shortly after trial began, Daly again moved to allow the memory experts to testify in her case-in-chief. This time the court granted the motion in part, holding that Dr. Lynn would be allowed to testify about the relationship between hypnosis and MPD and the dangers of hypnosis if misused. The court explained that, having heard the opening statements and the beginning of Daly's case, it believed the jury would benefit from being educated on these topics. However, the court ruled, Dr. Lynn would not be allowed to testify specifically about Daly because allowing him to do so would permit a "back door standard-of-care approach."

¶19 In response to the defense expert testimony at trial, Daly moved the court to allow Dr. Ofshe to testify on rebuttal. Daly wanted him to testify on "screen memories," which one of the defense experts had testified was a possible explanation for Daly's false memories. The court initially rejected this request but then reconsidered and allowed it. Dr. Ofhse testified in rebuttal on screen memories, explaining that they are false memories of insignificant events that a person who has experienced trauma unintentionally creates to cover up the traumatic memory. Daly also wanted Dr. Ofshe to present an analytical method for evaluating what is true when someone first says something happened and then

retracts it. The court did not allow this, reasoning that this was "fraught with the peril of invading the province of the jury."

B. Discussion

¶20 On appeal, Daly contends that the circuit court erred in excluding the testimony of the memory experts because their testimony satisfied the standard for expert testimony in WIS. STAT. § 907.02[4] and was necessary in order to educate the jury and present her case as she thought best. According to Daly, the court impermissibly compelled her to obtain from her standard-of-care experts the testimony she wanted her memory experts to present.

¶21 The circuit court has broad discretion in making evidentiary rulings. ***Martindale v. Ripp***, 2001 WI 113, ¶28, 246 Wis. 2d 67, 629 N.W.2d 698. We will uphold a circuit court's decision to admit or exclude evidence provided the court examined the relevant facts, applied a proper legal standard, and, using a demonstrated rational process, reached a reasonable conclusion. ***Id.*** Our inquiry is highly deferential: the issue is not what we would do, but instead whether the circuit court exercised its discretion consistent with accepted legal standards and the facts on record. *See* ***id***., ¶29.

[4] WISCONSIN STAT. § 907.02 provides:

> **Testimony by experts**. If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

¶22 In spite of this well-established standard for reviewing evidentiary rulings, Daly argues that we should review this circuit court's evidentiary ruling using a de novo standard of review because the court excluded an "entire category of [her] expert witnesses." However, she does not provide any legal authority for this proposition. We therefore will employ the deferential standard set forth in the preceding paragraph.

¶23 We also observe that Daly appears to consider it significant to an analysis of the court's rulings excluding the memory experts' testimony that the first presiding judge denied the doctors' motion to shorten the trial to one month. We disagree for several reasons. First, that first motion did not present specific objections to the testimony of the memory experts, as did the doctors' later motion. Second, the first presiding judge stated he could revisit the issue at a later date. Third, a court has inherent authority to reconsider and modify nonfinal rulings. ***Teff v. Unity Health Plans Ins. Corp.***, 2003 WI App 115, ¶57, 265 Wis. 2d 703, 666 N.W.2d 38, citing ***Fritsche v. Ford Motor Credit Co.***, 171 Wis. 2d 280, 293-94, 491 N.W.2d 119 (Ct. App. 1992) Thus, with certain exceptions not applicable here, a successor judge may reconsider and modify rulings made by the judge who had initially been presiding on the case. *See* ***Starke v. Village of Pewaukee***, 85 Wis. 2d 272, 283, 270 N.W.2d 219 (1978). We therefore confine our analysis to the rulings challenged by Daly to determine whether the presiding judge who made those rulings properly exercised discretion.

¶24 It is true, as Daly contends, that WIS. STAT. § 907.02 establishes the authority of the circuit court to admit expert testimony that "will assist the trier of fact to understand the evidence or to determine a fact in issue." However, courts also have the discretion to exclude any testimony, including expert testimony, "if its probative value is substantially outweighed by the danger of unfair prejudice,

confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." WIS. STAT. § 904.03. In this case, the court considered the nature of the educational testimony Daly sought to have admitted and viewed it as not highly relevant because it was not specific to the central issues of whether the treatment provided Daly met the standard of care. The court then considered the impact of admitting this testimony in light of the factors identified in § 904.03 and explained how the testimony presented the dangers of unfair prejudice, confusion of the issues, misleading the jury, and cumulativeness. These dangers, in the court's view, substantially outweighed whatever relevance the testimony had.

¶25 We reject Daly's argument that she was entitled to present all the expert testimony she considered necessary because her counsel had developed "a proven methodology in false memory cases" to educate the jury. Regardless of what decisions other judges in other cases had made about the same or similar witnesses, this court had the authority to exercise its own discretion based on the record in this case and on the applicable law.

¶26 Similarly, the circuit court was not compelled to accept Daly's view of what testimony was necessary. Rather, its proper role was to consider Daly's arguments that the testimony was necessary and then make its own judgment about whether to allow it, applying the applicable law to the facts of record. This the court did. At the hearing on Daly's motion to reconsider, the court questioned Daly's counsel extensively on what necessary information on false memories the memory experts could present that Daly's standard-of-care and cause experts could not. Daly acknowledged that her standard-of-care and cause witnesses could explain enough about hypnosis, suggestion, and memory to present their opinions, but she contended that they would be more subject to attack on those

topics and her memory experts would do a better job at educating the jury. At a subsequent hearing, Daly specifically confirmed with the court that one of the standard-of-care witnesses, Dr. Hudson, would be allowed to testify about hypnosis, memory, and suggestion. Based on the record, the court could reasonably decide that the probative and educational value of the memory experts' testimony on Daly's case-in-chief was substantially outweighed by the dangers the court had identified, and that the use Daly wanted to make of these witnesses was more appropriate for rebuttal.

¶27 The circuit court was willing to reconsider its ruling each time Daly raised the issue, making modifications based on further argument and information. Thus, when the opening statements and initial testimony showed the need for education in the particular area of the dangers of hypnosis in creating false memories and MPD, the court allowed Dr. Lynn to testify. He testified for a significant portion of two days, offering background information on hypnosis intended to educate the jury. The court also allowed Dr. Oshe to testify in rebuttal on screen memories. The court's explanation for not allowing Dr. Oshe to also testify on an analytical process for deciding if the disputed memories were true or false was a reasonable one.

¶28 Daly relies on ***State v. Walters***, 2004 WI 18, 269 Wis. 2d 142, 675 N.W.2d 778, and ***State v. Davis***, 2002 WI 75, 254 Wis. 2d 1, 645 N.W.2d 913, in support of her argument that the circuit court erred in excluding the testimony of the memory experts. Read together, ***Walters*** and ***Davis*** establish that a particular type of expert testimony—that a defendant lacked the psychological characteristics of a sex offender and therefore was unlikely to have committed the charged crime—may be admissible under the statutes governing character evidence and expert testimony; however, admissibility is not compelled but is

subject to the court's discretion. ***Walters***, 269 Wis. 2d 142, ¶¶2, 24-28; ***Davis***, 254 Wis. 2d 1, ¶¶1, 2, 15, 20-21. Neither case provides support for an argument that the court here was obligated to admit the testimony of the memory experts or erroneously exercised its discretion in not doing so.

¶29 Daly also argues that the circuit court exceeded its gatekeeper role in excluding the testimony. It is true that in Wisconsin courts are not to exclude expert testimony on the ground that the court views it as unreliable, if the testimony meets the criteria of WIS. STAT. § 907.02; the determination of reliability is for the fact finder. *See, e.g.*, ***Green v. Smith & Nephew AHP, Inc.***, 2000 WI App 192, ¶21, 238 Wis. 2d 477, 617 N.W.2d 881, *affirmed* 2001 WI 109, 245 Wis. 2d 772, 629 N.W.2d 727. However, the court here did not exclude the memory experts' testimony as unreliable, but because of its analysis under WIS. STAT. § 904.03. The very cases Daly cites on the limited gatekeeper function of Wisconsin courts with respect to the reliability of expert testimony recognize the discretion the circuit court has to exclude expert testimony under § 904.03, even though it meets the criteria of § 907.02. *See, e.g.*, ***State v. Peters***, 192 Wis. 2d 674, 688-90, 534 N.W.2d 867 (Ct. App. 1995); ***Green***, 238 Wis. 2d 477, ¶30.

¶30 We conclude the circuit court properly exercised its discretion in excluding testimony of the memory experts. It did not exclude all of their testimony, and, in deciding to exclude what it did, it used a demonstrated rational process to arrive at reasonable conclusions, in accordance with the facts of record and applicable legal standards.

III. EXCLUSION OF MPD EPIDEMIOLOGICAL CLUSTER EVIDENCE

A. Procedural Background

¶31 Daly sought to call Dr. Hudson, a psychiatrist and epidemiologist, to present epidemiological testimony and also to testify on the standard of care.[5] When the issue of his testimony first came before the court, Daly's counsel explained that the epidemiological testimony would be that the number of patients diagnosed with MPD, a very rare disease, in the Monroe area formed a "cluster from an epidemiological standpoint"; Dr. Hudson would testify to the possible causes of the cluster; and he would eliminate all causes except an over-diagnosis by one or more doctors. The court questioned the probative value of this testimony but reserved a decision.

¶32 After Dr. Hudson had been deposed, the court again took up the issue of his testifying on Daly's case-in-chief. Daly's counsel explained the proposed epidemiological testimony as before. In answer to the court's questions, counsel stated that Dr. Hudson would opine that the likely cause of the MPD cluster was that "some of those doctors there [at the Monroe Clinic] subscribe to beliefs and did the things that cause MPD." In addition, Daly wanted Dr. Hudson to testify on the standard of care, which would include some testimony on memory that the memory experts would have testified to had the court not excluded them. As we have mentioned above, the court ruled that Dr. Hudson could testify in

[5] In the circuit court there was an issue on the timeliness of Daly's designation of Dr. Hudson as a case-in-chief witness. He was named initially, his name was removed, and after the deadline for naming case-in-chief witnesses, Daly sought permission to have him testify on her case-in-chief. However, the circuit court did not exclude Dr. Hudson's testimony because he was not named in a timely manner. We therefore do not discuss in more detail the background relevant to the timeliness issue.

Daly's case-in-chief on the standard of care, including the topics of hypnosis, memory, and suggestion.[6] However, the court excluded Dr. Hudson's epidemiological testimony. First, the court explained, it would raise collateral issues. Because the cluster contained MPD diagnoses made by a doctor who was not a party, as well as by Dr. Bell, and did not differentiate between the two, the defense would want to "point the finger" at the other doctor. The defense would also want to challenge the underlying assumptions about the MPD diagnoses. Second, Dr. Hudson's epidemiological testimony would be unfairly prejudicial to the defense because it would take the jury's focus away from the issues of the standard of care and whether it was breached as to Daly, and could cause the jury to conclude the doctors misused their therapeutic techniques solely because of the number of MPD cases in the county. Given that the number of cases in the cluster was not large and that cases diagnosed by a non-party doctor were considered as part of the cluster, the court concluded the probative value was outweighed by unfair prejudice.

¶33 During trial, Daly moved to call Dr. Hudson after one of the doctors' experts, Dr. Clagnaz, testified: "If some of the allegations are true about Dr. Beck … it would be highly unlikely for this to be an isolated incident. You would see many people coming out of the woodwork confirming the monstrous nature of Dr. Beck …. You don't see that." Daly objected and moved to strike the testimony and the court sustained the objection. At Daly's request, the court excused the jury and Daly asked for a curative instruction. The court agreed that one was warranted because the court had precluded Dr. Hudson from testifying that there

[6] Daly did not call Dr. Hudson as a witness.

were high numbers of MPD diagnoses. Daly then asked for a mistrial, arguing that a curative instruction was not sufficient; in the alternative she asked for the opportunity to call Dr. Hudson on rebuttal to present epidemiological evidence. The court denied those requests, concluding that a curative instruction was sufficient to cure the prejudice of Dr. Clagnaz's comment. The court reasoned that, putting his comment in the context of all the evidence that had come in during the four and one-half weeks of trial, Daly had not been so prejudiced by Dr. Clagnaz's testimony that she would not get a fair trial with the curative instruction.

B. Discussion

¶34 On appeal, Daly contends that the circuit court's pretrial rulings excluding Dr. Hudson's epidemiological testimony were an erroneous exercise of discretion. In addition, she argues, after Dr. Clagnaz's testimony the court erroneously exercised its discretion in both refusing to grant a mistrial and refusing to allow Dr. Hudson to present epidemiological testimony in rebuttal.

¶35 Applying the deferential standard of review set forth in paragraph 21, we conclude the court's pretrial rulings were a proper exercise of discretion. The court was careful not to make a final ruling until it understood what Dr. Hudson's epidemiological testimony would be, and it applied the correct law to the facts of record in a rational manner. The court could reasonably conclude that the existence of a cluster of MPD diagnoses in Monroe is only minimally relevant to the issue of whether the doctors breached the standard of care in their diagnosis and treatment of Daly. The court could also reasonably conclude that the inclusion in the cluster of the cases of a doctor who was not a party to this action would be misleading to the jury and unfairly prejudicial, and that the evidence would raise collateral issues that the defense would want to litigate, such as the

correctness of the diagnoses in the cluster. A reasonable judge could decide that these dangers outweighed any probative value.

¶36 We again reject Daly's argument that the court exceeded its function as gatekeeper. The court did not exclude the epidemiological evidence because it was unreliable but because of the court's conclusion after employing the balancing test of WIS. STAT. § 904.03.

¶37 We next consider the court's denial of the request for a mistrial after Dr. Clagnaz's comment. A circuit court has the discretion to grant a mistrial if it determines, in light of the whole proceeding, that the claimed error was sufficiently prejudicial to warrant a new trial. ***State v. Sigarroa***, 2004 WI App 16, ¶24, 269 Wis. 2d 234, 674 N.W.2d 894. We review the circuit court's decision with great deference and reverse only if there is a clear showing of erroneous use of discretion. ***Id.***

¶38 We conclude the circuit court properly exercised its discretion in denying the request for a mistrial. The court sustained Daly's objection to Dr. Clagnaz's testimony and immediately agreed to Daly's request for a curative instruction. Generally, we assume a curative instruction erases all possible prejudice, unless the record indicates otherwise. ***Id.*** The record here does not indicate otherwise. In considering the later mistrial request, the court evaluated the prejudice to Daly, placing Dr. Clagnaz's comment in the context of the entire proceeding, to determine whether Daly could receive a fair trial if this trial continued. Thus, it correctly applied the law to the relevant facts of record. The court's conclusion—that, in the context of the vast amount of evidence that had been introduced during the course of the four and one-half weeks of trial, any

prejudice from Dr. Clagnaz's testimony could be adequately addressed with a curative instruction—was a reasonable one.

¶39 Although the court did not expressly articulate its reason for denying Daly's alternative request to allow Dr. Hudson to testify on rebuttal, it is evident that the court did not consider this necessary to correct the prejudice to Daly from Dr. Clagnaz's testimony, given that the court was going to give an instruction to the jury to disregard that testimony. It was reasonable for the court to decide to remove from the jury's consideration testimony of the numbers of other MPD diagnoses rather than go further into that topic—a topic that the court had already reasonably decided would raise collateral issues such as the correctness of MPD diagnoses other than Daly's.

¶40 In short, we conclude the circuit court properly exercised its discretion in excluding Dr. Hudson's epidemiological testimony on Daly's case-in-chief, in declining to grant a mistrial, and in declining to allow Dr. Hudson to testify in rebuttal to Dr. Clagnaz's testimony.

IV. INFORMED CONSENT—SUFFICIENCY OF THE EVIDENCE

¶41 Daly argues that the evidence was insufficient to support the jury's finding that the doctors did not "fail to disclose information about the treatment and procedure necessary for [her] to make an informed decision." She contends that, based on the evidence, she was entitled to a directed verdict in her favor on this question because Drs. Beck, Bell, and Long did not advise Daly that: (1) her disturbing memories were false; (2) the therapy itself could be a cause of the false memories; (3) the therapy itself could be the cause of the symptoms diagnosed as

MPD;[7] and (4) hypnosis carries the risk of false memories. In addition, Daly argues, (5) Drs. Beck and Bell failed to obtain informed consent because they failed to inform her that reading THE COURAGE TO HEAL could lead to the creation of false memories; and (6) Dr. Beck failed to obtain informed consent because he did not advise her that physicians in the area had more experience than he did in treating MPD.[8]

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[7] Daly's arguments on these first three points appear at times to be directed to whether the doctors were negligent in their diagnosis and treatment of Daly rather than to what is required for informed consent. We address Daly's arguments only insofar as they go to informed consent.

[8] Daly invites us to read briefs she filed in the circuit court to explain certain arguments more fully. We decline to do so. Parties to an appeal have an obligation to present arguments meeting the requirements of WIS. STAT. § 809.19(1)(e) in appellate briefs that meet the length requirements of § 809.19(8)(c). If a party feels those page limits are insufficient to fully present all the parties' arguments, the parties may move for permission from this court for a longer brief. *See* WIS. STAT. § 809.14. Referring this court to briefs in the circuit court is not an acceptable alternative.

In her fact section on informed consent, Daly lists a number of things that, she asserts, "the defendants" failed to tell Daly; and she also asserts that each defendant failed to tell Daly certain things. However, her argument section addresses only certain of these omissions. Thus, for many asserted omissions there is no explanation why a particular doctor was required to provide that information in order to obtain informed consent. We consider these arguments to be inadequately developed and we decline to address them. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (court of appeals may decline to address issues that are inadequately briefed). We identify as arguments and address only the asserted omissions for which Daly provides an adequate explanation why that information should have been provided and by whom.

For similar reasons, we do not separately respond to Daly's argument that the doctors were required to have new informed consent discussions with her at various times during her therapy in accordance with ***Schreiber v. Physicians Insurance Co. of Wisconsin***, 223 Wis. 2d 417, 432, 588 N.W.2d 26 (1999), which holds that a substantial change in circumstances, whether medical or legal, requires a new informed consent discussion. Daly provides a list of seven points in time that, in her view, required a new informed consent discussion: "1) [when she] began having memories not previously recalled, 2) became suicidal, 3) actively sought to verify the 'memories', 4) refused treatment, 5) had memories related to murder and cannibalism, 6) was diagnosed with MPD, [and] 7) required hospitalization, etc." Daly does not identify when these events occurred and what new information should have been provided her at those times, with reference to the record. To the extent this argument raises issues not identified in ¶41, it is inadequately briefed and we decline to address it.

¶42 WISCONSIN STAT. § 448.30 requires that "any physician who treats a patient shall inform the patient about the availability of all alternate, viable medical modes of treatment and about the benefits and risks of these treatments." The information that must be disclosed under this statute must be sufficient to allow a reasonable person in the patient's position to "exercise the patient's right to consent to or to refuse the proposed procedure or to request an alternative treatment or method of diagnosis." ***Martin v. Richards***, 192 Wis. 2d 156, 176, 531 N.W.2d 70 (1995). There is no bright-line rule dictating what must be disclosed. ***Johnson v. Kokemoor***, 199 Wis. 2d 615, 639, 545 N.W.2d 495 (1996). What is necessary will vary from case to case, and the informed consent question of what a reasonable person in the patient's position would want to know is one for the jury to decide. ***Martin***, 192 Wis. 2d at 172-73.

¶43 The jury in this case was instructed in accordance with the main part of WIS JI—CIVIL 1023.2, Professional Negligence: Medical: Informed Consent.[9] The jury was also instructed based on one of the options in the form instruction:

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[9] The jury was instructed:

> A doctor, including a psychiatrist and a psychologist, has the duty to provide his or her patient with information necessary to enable the patient … to make an informed decision about a treatment, therapy or procedure and alternative choices. If the doctor fails to perform this duty, he or she is negligent.
>
> To meet this duty to inform his or her patient, … the doctor must provide his or her patient … with the information a reasonable person in the patient's position … would regard as significant when deciding to accept or reject the treatment, therapy or procedure. In answering this question, you should determine what a reasonable person in the patient's position … would want to know in consenting to or rejecting a treatment, therapy or procedure.

(continued)

> However, the psychiatrist's or psychologist's duty to inform does not require disclosure of extremely remote possibilities that might falsely or detrimentally alarm the patient …. If the doctor named in the question offers to you an explanation as to why he or she did not provide information to Marilyn Daly … and if the explanation satisfies you that a reasonable person in Marilyn Daly's position … would not have wanted to know that information, then the doctor named in the question under consideration was not negligent as to informed consent ….

¶44 An appellate court may not reverse a jury's verdict if there is any credible evidence to support it. ***Morden v. Cont'l AG***, 2000 WI 51, ¶38, 235 Wis. 2d 325, 611 N.W.2d 659**.** In making this determination, we view the evidence in the light most favorable to the jury's verdict, drawing all reasonable inferences in favor of the verdict. ***Id.***, ¶39. We also bear in mind that the jury, not this court, is the judge of the credibility of the witnesses and the weight to give to the testimony of those witnesses. ***Id.*** As long as the record contains credible evidence to support the jury's verdict, we will uphold it, even if the record also contains contradictory evidence. ***Id.*** Although our review of the circuit court's determination on this issue is de novo, where, as here, the circuit court has analyzed the evidence and concluded it is sufficient to support the verdict, an appellate court is particularly reluctant to overturn the verdict. ***Id.***, ¶40.

> The doctor must inform the patient … whether the treatment, therapy or procedure is ordinarily performed in the circumstances confronting the patient, whether alternate treatments, therapies or procedures approved by the psychiatric/psychological profession are available, what the outlook is for success or failure of each alternate treatment, therapy or procedure, and the benefits and risks inherent in each alternate treatment, therapy or procedure.

¶45 Because we are to view the evidence in the light most favorable to the verdict, we first summarize the testimony of the three doctors and their experts in the light most favorable to the doctors. We then discuss Daly's arguments.

A. Evidence at trial and circuit court ruling

Dr. Beck[10]

¶46 On Daly's first visit to Dr. Beck for psychotherapy in February 1991, he made a tentative diagnosis of depressive neurosis. He developed and discussed with her a treatment plan and the role psychotherapy could play in helping her correct some of the beliefs she had about herself that were creating problems. Dr. Beck discussed the treatment option of using anxiety-reduction techniques he had developed and the alternative of doing nothing and seeing if her problems resolved themselves; at a later time he discussed the alternative of using meditation. In a subsequent visit, he discussed with Daly the risks and benefits of using a relaxation tape he had developed, and she told him she would like to try it.

¶47 Dr. Beck used hypnosis once during Daly's first round of therapy.[11] The purpose was to increase Daly's self-esteem: he induced a relaxed state in Daly so that she would be able to accept the positive things he said about her, making a tape so that she could take this home and use it herself. He did not recall

[10] The circuit court decided that Dr. Beck's duty to obtain informed consent was based on the common law, rather than WIS. STAT. § 448.30, because he is a psychologist and not a physician. However, the jury instructions were the same for Dr. Beck as for the psychiatrists.

[11] In contrast, Daly testified that Dr. Beck used hypnosis in every session after he gave her the tape. The number of times hypnosis was used after she returned to Dr. Beck is also disputed. This is one of the many points on which Daly's testimony contradicted that of the doctors about the treatment they provided.

the exact words he used to explain hypnosis to Daly, but he has a standard explanation he gives to patients before using hypnosis, he has done so hundreds of times, and he has no reason to believe he did not give the explanation to Daly before using it with her. Dr. Beck's standard explanation includes telling the patient that hypnosis is a form of concentration and is not mystical or supernatural, that the patient would naturally come out of hypnosis without his assistance if anything were to happen to him, and that the aftereffects might include drowsiness or a headache. Daly seemed interested in hypnosis and agreed to try it after he described it to her. Dr. Beck was comfortable with the termination of Daly's therapy with him in May 1991 because he felt she had improved.

¶48 Daly returned to Dr. Beck for treatment in March 1992, in part because she had regained weight, but primarily because she was disturbed by intense flashbacks or images of things she had not previously remembered, one involving a nude woman that might be dead. In the early sessions with him during this round of therapy she provided more detail about these images or memories, some of which evolved into memories of sexual abuse as a child, and she reported other memories of physical and sexual abuse as a child. Dr. Beck's treatment at this time, besides the continuation of the relaxation techniques, consisted of talking with Daly to help her explore the intense emotional reactions she was having and her misperceptions about herself in order to help her change her negative views of herself. He was also helping her to maintain her safety in view of the suicidal thoughts she was having.

¶49 From Dr. Beck's testimony on his customary practice, a reasonable jury could infer that he explained the benefits of this treatment to Daly, the risks that it could be unsettling and would be hard work, and that she could choose what to talk about. A reasonable jury could also infer from his testimony on his

customary practice that if a topic seemed particularly intense, he asked if she wanted to continue.

¶50 As Daly began reporting that she felt there were different parts of herself, each with different feelings and experiences, Dr. Beck consulted with Dr. Bell because of his experience with disassociative disorders. Dr. Beck began using hypnosis with Daly in September 1992 and used it occasionally until he terminated treatment. One purpose of using hypnosis was to assist Daly with communication among her alternate personalities to aid in the integration of the personalities—a treatment goal for persons with MPD. Another purpose was to flesh out the details of the memories she had described so that she could better understand what happened and better control the intense emotions connected with her memories. Dr. Beck did not use hypnosis in an attempt to recover new memories. From the evidence on his customary practice, a reasonable jury could infer that Dr. Beck explained the nature of hypnosis to Daly and that he did not perform it until she agreed to proceed. Dr. Beck also discussed with Daly the fallibility of memories that are dealt with in hypnosis and his view that memory is not more reliable through hypnosis than otherwise.

¶51 After Daly was diagnosed by Dr. Bell with MPD, Dr. Beck used another therapeutic technique—abreaction—with Daly. This involved encouraging her to remember a painful incident in order to better control the intense emotions associated with it that were interfering with her life. Dr. Beck discussed the nature and purpose of this technique with her, that it would be emotionally painful and there was the risk of disassociating, in which case it would not be as helpful as expected, and that she did not have to undergo this technique. Daly agreed to it.

¶52 During therapy with Daly, Dr. Beck was continually evaluating how the therapy was going, what the results were and whether alternative approaches would help, and Daly was involved in this process. A reasonable inference from his testimony on his customary practice is that every time he made an intervention with Daly, he told her what he wanted to do and how he wanted to do it and gave her the choice of deciding whether she wanted to do it.

¶53 Expert testimony supported a determination that Dr. Beck obtained informed consent for the treatment he provided Daly.

Dr. Bell

¶54 Dr. Bell first saw Daly in August 1992 and initially diagnosed her with post-traumatic stress disorder, which was suggestive of MPD to him; on the third visit, in September 1992, he diagnosed her with MPD. Dr. Bell's initial role in Daly's therapy was to prescribe medication.[12] His role in Daly's psychotherapy increased when she was hospitalized in October 1992, although Dr. Beck remained Daly's primary psychotherapist during the time that Dr. Bell treated Daly.

¶55 When Daly was hospitalized in October 1992, she had a treatment plan that was put together by a treatment team. The treatment plan stated the goals of the treatment and the approaches to be used in achieving the goals. Dr. Bell was a member of the treatment team, as was Daly herself. Daly's signature appears on her treatment plan, and this indicated that she either attended the

[12] On appeal Daly does not argue that there was a lack of informed consent with respect to the medications Dr. Bell prescribed.

treatment team meeting, or reviewed the plan with another treatment team member.

¶56 Dr. Bell used hypnosis with Daly once, for the purpose of "putting away" disturbing memories. He described hypnosis as an ability the patient has, not something the therapist is doing to the patient, and described the therapist's role as helping the patient to use hypnosis in a way that provides safety and stability for them. A reasonable inference from his testimony on his standard practice is that, before performing hypnosis with Daly, he explained the process, told her that she was in control and could stop at any time, and asked if she had any questions.

¶57 Expert testimony supported a determination that Dr. Bell obtained informed consent from Daly for the treatment he provided her.

Dr. Long[13]

¶58 From June 1993 to June 1994, Dr. Long was the psychiatrist in charge of Daly's medications, which were primarily for the treatment of depression and anxiety. During this time period Dr. Long discussed with Daly the

[13] During trial, Daly and Dr. Long stipulated through counsel on the record that the only claims Daly was asserting against Dr. Long after she took over from Dr. Beck as Daly's psychotherapist in June 1994 were, in Daly's counsel's words, for "failure to give attribution to the memories" and failure to diagnose sleep apnea. However, it later developed that Dr. Long's counsel understood this to mean that there was no informed consent claim against Dr. Long after June 1994 because both claims identified by Daly's counsel related to negligent diagnosis and treatment, whereas Daly's counsel viewed the claim for "failure to give attribution to the memories" as a claim for lack of informed consent. This dispute was not resolved during the trial and underlies some of the parties' arguments on appeal. We will assume without deciding that Daly's construction of the stipulation is correct and she is thus not precluded from arguing that both before and after June 1994 Dr. Long failed to obtain informed consent because she failed to tell Daly the disturbing memories were false.

medications and other treatment options on an ongoing basis, focusing more on medication than on psychotherapy because the latter was primarily Dr. Beck's role.[14] With respect to psychotherapy, Dr. Long had informed consent discussions with Daly both before and after June 1994 and they were similar. Informed consent discussions are different in the areas of psychiatry and psychology than in other areas of medical treatment because potential diagnoses are continually susceptible to change based on knowledge of the patient and how therapy goes. There is an ongoing discussion occurring at every session of what issues to focus on, how therapy is affecting those issues and whether there is a more beneficial approach for the patient. Daly participated with understanding in this process. Dr. Long's approach is that the patient always decides what issues to focus on, sometimes after discussing that with her, and she took this approach with Daly. The only difference in Dr. Long's informed consent discussions with Daly before June 1994, as compared to afterward, is that before that date part of the discussion of alternatives included whether Daly was working on the issues with Dr. Beck that she raised with her (Dr. Long): if Daly was, Dr. Long would sometimes redirect Daly back to Dr. Beck and sometimes she and Daly would agree that they would meet together with Dr. Beck.

¶59 Expert testimony supported a determination that Dr. Long obtained informed consent from Daly for the treatment she provided her.

[14] Because Daly does not argue on appeal that Dr. Long did not obtain informed consent with respect to the medication she prescribed, we do not describe any other evidence relating to that topic.

Circuit Court's Ruling

¶60 In its decision denying Daly's postverdict motion, the circuit court observed that Daly's memory sharply conflicted with that of Drs. Bell, Beck, and Long on what they told her, and these credibility issues were for the jury to decide. The court explained the testimony from Daly that might have led a reasonable person to discount a substantial part of Daly's testimony on what she was told by the doctors. The court also explained the beliefs Daly's husband expressed that could have led a reasonable person to doubt his credibility and the behavior of Daly's expert witness on informed consent that could have led a reasonable person to discount much of his testimony. The court then analyzed the evidence with respect to each of the three doctors, in the light most favorable to that doctor, and concluded it was sufficient to establish that each had secured informed consent.

B. Discussion

¶61 We now take up the specific information that, Daly contends, the doctors did not tell Daly but should have told her in order to obtain informed consent. We observe at the outset that much of Daly's argument relies on evidence that is disputed by the doctors and their experts.

¶62 First, Daly argues the doctors did not tell Daly the disturbing memories were false. The doctors, however, testified they did not believe the memories were all false. They believed some of the childhood physical and sexual abuse had actually happened; some memories had a core of truth with added distortions or embellishments; some clearly were memories or dreams of events that did not occur; and, as to some, they were not sure whether or how much was true or false. Drs. Beck and Long explained that they attempted to determine what was and was not true about Daly's memories, but they did not want to make Daly

feel threatened by challenging her belief that the memories were true. Dr. Beck testified that he did tell Daly that the death of the baby did not really occur, and Dr. Long told her that the bizarre events in certain dreams did not really happen. However, they testified, what memories were and were not true did not affect their view of the treatment options appropriate for Daly. This is also a reasonable inference from Dr. Bell's testimony. In addition, an expert testifying for the doctors opined that a psychotherapist does not need to be clear about the cause of a patient's symptoms in order to develop a treatment plan. There was thus sufficient evidence for a reasonable jury to believe that some of the memories were true and, further, that which memories or parts of memories were false would not to be viewed by a reasonable person in Daly's position as significant in deciding whether to accept or reject the treatment options offered.

¶63 Daly's next two arguments are that the doctors should have told her that the therapy itself could be a cause of the false memories and a cause of the symptoms diagnosed as MPD. The threshold question is whether this information is relevant to what a reasonable person in Daly's position would regard as significant in deciding whether to accept or reject the treatment offered and alternative choices of treatment. WIS JI—CIVIL 1023.2; ***Martin***, 192 Wis. 2d at 176. Daly appears to suggest that alternative causes of the symptoms being treated must *always* be disclosed to obtain informed consent. However, the jury was not so instructed and Daly did not request such an instruction. In addition, the case law on which Daly relies does not support such a requirement as a matter of law. Neither ***Johnson***, 199 Wis. 2d 615, nor ***Schreiber v. Physicians Insurance Co. of Wisconsin***, 223 Wis. 2d 417, 588 N.W.2d 26 (1999), address whether a doctor needs to explain the cause of a patient's symptoms to the patient in order to comply with informed consent law. In ***Martin***, 192 Wis. 2d at 181, the court

decided that there was sufficient evidence for the jury to find that the patient, whom the physician had diagnosed as having a concussion, should have been informed about treatment related to intracranial bleeding because there was a distinct possibility that could occur. This discussion is not phrased in terms of "cause" of the symptoms but, in any event, the crux of the analysis is what the evidence showed regarding the possibility of intracranial bleeding. ***Id.*** ***Martin*** does not suggest that causes, or alternative causes, or symptoms must be disclosed regardless of the evidence viewed most favorably to the verdict.

¶64 Turning to the cause of the memories (and bearing in mind that the doctors' testimony was that many or parts of many memories were or might be true), here again there was a conflict in testimony. Dr. Long testified that she did not tell Daly that her memories were the product of therapy because she discarded that possibility. Dr. Long considered the following factors in deciding that Daly's memories were not caused by the treatment Daly received: (1) she was familiar with Dr. Beck's approach to therapy and believed that it was not the kind of therapy that would, through suggestion, create false memories; (2) Dr. Beck's records and Daly's own statements indicated that the memories surfaced during the winter of 1991-92, at which point Dr. Beck had used hypnosis with Daly only once, during her first round of treatment with him, for the purpose of relaxation; and (3) many of the memories were credible and in keeping with Daly's personal history. Dr. Bell testified that Daly's memories were not being created by suggestive techniques in therapy. Dr. Beck testified that the memories that were obviously false were an expression, in a distorted manner, of feelings from traumatic events Daly had experienced. There was also testimony from one of the doctors' experts that the treatment did not cause Daly's memories and that under these circumstances there is no duty to inform the patient of that. Thus, we

conclude, there was sufficient evidence from which a jury could believe that the therapy did not cause false memories and, thus, that a reasonable person in Daly's situation would not view it as significant to be informed of that.

¶65 Turning next to the cause of the symptoms diagnosed as MPD, Drs. Beck, Bell, and Long all testified that they were aware there was a view within the psychiatric and psychological community that the symptoms could be caused by therapy. Drs. Bell and Long did not agree that authentic MPD could be caused by treatment, although they did believe it could be misdiagnosed. Dr. Beck considered and discarded the possibility that the treatment was causing Daly's symptoms. All three doctors expressed their professional opinions that MPD was the correct diagnosis for Daly and that the cause was childhood trauma, not the therapy she was receiving. Expert testimony supported their opinions. If the jury believed this testimony, as it evidently did because of its verdict on negligence, it follows that the doctors did not need to tell Daly that her MPD symptoms were caused by the therapy she was receiving in order to obtain her informed consent for treatment.

¶66 Daly's fourth argument is that the doctors did not obtain informed consent for hypnosis because they did not tell her that false memories were a risk of hypnosis. Dr. Beck testified that he was not using hypnosis to recover new memories but, as stated above, initially, as a relaxation technique and then later to get in touch with the memories she was reporting. Dr. Bell testified that he did not describe the risk of possibly creating false memories through hypnosis to Daly because he was attempting to get her to "put away" a disturbing memory, and was not attempting to recover any new memories; thus, he was not exposing her to the risk of creating false memories. Dr. Long testified that, given the purposes for which Dr. Beck was using hypnosis and the manner in which he was conducting it,

there was not a risk for Daly that the hypnosis would create false memories. Because she considered and excluded this risk, she did not inform Daly of it. In addition, there was evidence in the form of a hypnosis handbook for professionals authored by one of Daly's experts that informed consent for hypnosis does not include advising of a risk of false memories. Based on this evidence, the jury could conclude that a reasonable person in Daly's situation would not view it as significant, in deciding whether to undergo hypnosis with Drs. Beck and Bell, that there was a risk the hypnosis could create false memories.

¶67 Fifth, Daly argues that Drs. Bell and Beck failed to obtain informed consent because they failed to advise her that the book, THE COURAGE TO HEAL, could produce false memories. This book was part of her treatment plan while she was in the hospital. Dr. Bell, who approved the treatment plan as a member of the treatment team, testified he did not inform Daly that there were risks in her reading the book because it was to be read under the nurses' supervision and he instructed them to work on certain parts and avoid the parts that might be suggestible. A reasonable inference from this testimony is that there was not a risk that reading the book as instructed would create false memories for Daly.

¶68 Dr. Beck testified that he never read or used THE COURAGE TO HEAL with Daly or recommended it to her. He first became aware of the book when he learned it was part of her treatment plan in the hospital, which he did not participate in developing. When he saw the book, he looked it over and thought parts of it could be useful in an inpatient setting where staff were working with Daly and could help her understand it. Based on this evidence, a reasonable jury could decide that Dr. Beck did not need to obtain informed consent from Daly with respect to this book because he was not using it in his treatment. In the alternative, his testimony and Dr. Bell's are sufficient to permit a reasonable jury

to decide that there was no risk to Daly that reading the book in the manner prescribed would create false memories; thus, a reasonable person would not regard information about that risk as significant in deciding whether to read the book.

¶69 Finally, Daly argues that Dr. Beck failed to obtain informed consent because he did not advise her that other psychologists or psychiatrists in the area had more experience than he did in treating MPD. Dr. Beck testified that, after Dr. Bell diagnosed her with MPD, he (Dr. Beck) told Daly he had not worked with someone with MPD, although he had experience working with other disassociative types of disorders. He told Daly he would be seeking consultation and supervision in some aspects of the therapy process with Dr. Bell, who had experience with MPD, and he would be doing additional reading as they went along to learn as much as he could. He told Daly that it was up to her whether she wanted to continue with him. Daly told him she wanted to. Based on this evidence, a jury could decide that Dr. Beck had disclosed to Daly what a reasonable person in her situation would view as significant to know about his experience before deciding to continue therapy with him. More specifically, a reasonable inference from his testimony—if not the only reasonable inference—is that there were other psychologists and psychiatrists in the area who had more experience than he did in treating MPD.

¶70 We conclude that the evidence, viewed most favorably to the doctors, supports the jury's verdict that they did not fail to obtain informed consent from Daly. There is also conflicting evidence that supports Daly's arguments. However, our task in reviewing Daly's challenge to the jury verdict is not to determine whether the evidence would support a verdict in her favor, but

whether it supports the verdict the jury returned. ***Morden***, 235 Wis. 2d 325, ¶¶38-40. The circuit court correctly decided that it did.

V. INFORMED CONSENT—EVIDENTIARY CHALLENGES

¶71 Daly contends that "[t]hroughout the trial" the circuit court erroneously refused to give limiting instructions that she requested because certain defense evidence was arguably relevant to other issues in the case, but not to informed consent. Thus, she asserts, the jury did not have a correct understanding of the standard for informed consent. Daly does not inform us in her brief of exactly what these requested instructions were, but instead in a footnote lists record cites where "[e]xamples of such requests can be found …." The footnote does not reveal what, specifically, the limiting instructions were. This argument is inadequately developed and we decline to address it. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992). We observe that the circuit court in its decision on the postverdict motions also concluded it could not respond to this argument because Daly did not specify the nature or context of the errors, cite to the transcript, or provide the circuit court the requested limiting instructions for review in the postverdict motion. The citations to the record in a footnote in her appellate brief do not cure the deficiencies in the development of this argument.

¶72 Daly also argues that the circuit court erroneously allowed Dr. Long and Dr. Kluft, one of the doctors' expert witnesses, to present an incorrect legal standard for informed consent. Although Daly points to places in the record where Drs. Long and Kluft make the statements she considers incorrect, the record does not show, and Daly does not assert, that she objected. Because she failed to

object, Daly has waived the right to raise this issue on appeal. ***State v. Davis***, 199 Wis. 2d 513, 517-18, 545 N.W.2d 244 (Ct. App. 1996). We decline to consider it.

IV. INFORMED CONSENT—CLOSING ARUGMENT

¶73 Daly argues that the court erroneously allowed the doctors' attorneys to argue an incorrect legal standard at three points during their closing arguments. In its postverdict ruling, the court stated that it could not respond to Daly's argument on this issue because Daly did not specifically describe what was incorrect about the legal standard or what was erroneous about the court's rulings.

¶74 Attorneys have reasonable latitude in making their closing arguments, and the decision what is reasonable is committed to the circuit court's discretion. ***Gainer v. Koewler***, 200 Wis. 2d 113, 126, 546 N.W.2d 474 (Ct. App. 1996). We will not reverse a circuit court's decision unless there has been a misuse of discretion that is likely to have affected the jury's verdict. *See* ***id.***

¶75 The first challenge is to Dr. Long's counsel's statement: "Dr. Long did not tell Marilyn that her memories were caused by the treatment of Dr. Beck or Dr. Bell because she did not believe this was the case." Daly objected on the ground that this was a misstatement of the law. The circuit court overruled the objection, concluding that Dr. Long's counsel was stating a factual basis and was not making a legal argument. This ruling is reasonable. The statement on its face is a factual statement. Moreover, it was made during an argument about negligence, not during a discussion of informed consent.

¶76 Later in his argument Dr. Long's counsel argued "Marilyn Daly was on the stand for … three days, and she never testified that had Dr. Long proposed some sort of … unnamed in this suit alternative procedure, that she would have

refused to do that treatment." Daly objected on the ground that the informed consent standard was a reasonable person standard. The circuit court overruled the objection, concluding that counsel was arguing facts, not a legal standard. Shortly before making this statement, counsel had argued that the jury should find in favor of Dr. Long if her explanation of why she did not provide certain information to Marilyn Daly "satisfies you that *a reasonable person* in Marilyn's position … would not have wanted to know …." (Emphasis added.) This statement is consistent with the reasonable person standard for informed consent articulated in ***Martin***. ***Martin***, 192 Wis. 2d at 176. Given this context, the court could reasonably decide that counsel was not arguing an incorrect legal standard.

¶77 Finally, Daly objected when Dr. Bell's counsel argued "Dr. Long testified she looked at [whether therapy had caused Mrs. Daly's condition]…. Now, does it make sense that a treater is supposed to go and tell you about something they don't think is there?" Daly objected on the ground that it was not a correct statement of the informed consent law, and was contrary to ***Martin***, 192 Wis. 2d 156. The circuit court overruled the objection, finding that the jury could determine whether the statement of law was correct or not based on the jury instructions in their possession. (The jury had been given the instructions before closing argument.) The challenged statement was made during argument about informed consent, specifically, an argument that Daly had been told everything that a reasonable person would have wanted to know. In context, therefore, it is reasonable to view the challenged statement as not establishing a different and incorrect legal standard. We understand the court's comments in overruling the objection to mean that the jury would not be misled by counsel's statement into thinking that a legal standard applied other than that set forth in the jury

instructions. We do not agree with Daly that the court meant it was up to the jury to decide the correct legal standard.

¶78 We conclude the circuit court did not erroneously exercise its discretion in overruling Daly's objections to the challenged statements in closing argument.

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports.