
No. 124318

In the
Supreme Court of Illinois

**COLLIN CRIM, a minor,
by his parents and next friends,
KRISTOPHER CRIM and TERI CRIM, Individually**

Plaintiff-Appellee,

v.

GINA DIETRICH, D.O.,

Defendant-Appellant.

Appeal from the Appellate Court of Illinois,
Fourth Judicial District, No. 4-17-0864.
There Heard on Appeal from Circuit Court of the Eight Judicial Circuit,
Adams County, Illinois, No. 06 L 89.
The Honorable **Mark Drummond**, Judge Presiding.

**BRIEF OF *AMICUS CURIAE*
ILLINOIS ASSOCIATION OF DEFENSE TRIAL COUNSEL
IN SUPPORT OF DEFENDANT-APPELLANT**

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Points and Authorities

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Statement of Interest

The Illinois Association of Defense Trial Counsel (IDC) is made up of Illinois attorneys who devote a substantial portion of their practice to the representation of business, corporate, insurance, professional, governmental, and other individual defendants in civil litigation. For more than 50 years, it has been the mission of the IDC to ensure civil justice with integrity, civility, and professional competence.

The IDC has a substantial interest in maintaining the continuity, uniformity and predictability of Illinois law. The IDC respectfully submits that this Court recognize and affirm the strict interpretation and jurisdictional import of 735 ILCS 5/2-1202, thus promoting both uniformity and predictability in the law. Moreover, the decision in this case will directly affect the interests of IDC members who are called upon to defend their clients in virtually any case where a jury demand has been made.

The IDC's role as a representative of the defense bar in Illinois makes it uniquely situated to address the importance of preserving orderly, efficient, and predictable trial and post-trial rules of civil procedure.

Argument

The issue before this Court, in the first instance, is a matter of jurisdiction.

As this Court has repeatedly held, the trial court loses jurisdiction after 30 days have elapsed from a jury verdict, and there is no post-trial motion under section 2-1202. *Kingbrook, Inc. v. Pupurs*, 202 Ill. 2d 24, 32 (2002); *Beck v. Stepp*, 144 Ill. 2d 232, 238 (1991). Here, the Crims failed to file a post-trial motion and after thirty (30) days from the jury's verdict, the trial court lost jurisdiction to modify the verdict. The issue of jurisdiction is not waivable, and reviewing courts have an independent duty to assess jurisdiction at every step of the litigation.

Although this Court in *Keen v. Davis*, held that a party need not file a post-trial motion to preserve errors in directing verdicts (38 Ill.2d 280, 281-82 (1967), that rule does not and cannot subsume alleged errors with jury verdicts in the same case. See *Doe v. Dilling*, 371 Ill.App.3d 151, 166 (1st Dist. 2006)(applying exception in *Keen* only to those alleged errors in directing verdict). Indeed, to vest the appellate court with the authority and jurisdiction to overturn a jury verdict absent a properly and timely filed post-trial motion frustrates the very purpose of our Code.

Section 2-1202(b) of the Illinois Code of Civil Procedure (Code) (735 ILCS5/2-1202(b) expressly provides that “[r]elief desired after trial in jury cases, heretofore sought by reserved motions for directed verdict or motions for judgment notwithstanding the verdict, in arrest of judgment or for new trial, must be brought in a single post-trial motion.” The motion “must state the relief desired, as for example, the entry of a

judgment, the granting of a new trial or other appropriate relief.” 735
ILCS 5/2-1202(b).

This Court has held that the purpose for this rule is threefold:

“First, it allows the decision maker who is most familiar with the events of the trial, the trial judge, to review his decisions without the pressure of an ongoing trial and to grant a new trial if, on reconsideration, he concludes that his earlier decision was incorrect. [Citations.] Second, by requiring the statement of the specific grounds urged as support for the claim of error, the rule allows a reviewing court to ascertain from the record whether the trial court has been afforded an adequate opportunity to reassess the allegedly erroneous rulings. Third, by requiring the litigants to state the specific ground in support of their contentions, it prevents them from stating mere general objections and subsequently raising on appeal argument which the trial judge was never given an opportunity to consider. [Citations.] .)”

Brown v. Decatur Memorial Hospital, 83 Ill. 2d 344, 349-50 (1980).

“The rule, which is not limited to questions concerning jury instructions, has the salutary effect of promoting both the accuracy of decision making and the elimination of unnecessary appeals.” *Brown*, 83 Ill. 2d at 350.

This bright-line rule is easy to understand and follow. It is axiomatic that under this rule, in order to challenge a jury verdict, a party must file a post-trial motion. The requirement is not muddled or onerous. Rather, it is clear, simple, direct and straightforward.

The exception impliedly adopted by the appellate court in this case not only muddies the waters of this crystal-clear rule but also completely frustrates its purpose. A rule that does not require a post-trial motion where there has been a directed verdict and a jury verdict necessarily will deprive trial courts from the ability to reassess the correctness of their original and allegedly erroneous rulings during trial. Moreover, and arguably more important in light of this Court's reasoning in *Keen*, is that the appellate court's decision is not guaranteed to address *all* of the trial court's alleged errors.

A perfect example of that adverse appellate effect is readily apparent in this case. There is no question that the Crims failed to properly preserve their issues with the jury verdict via a post-trial motion, and it is equally apparent that the Crims failed to articulate a specific challenge to the jury verdict on appeal. In fact, they affirmatively asserted that the appeal was "not based on the jury's verdict." Therefore, the appellate court admittedly did not make any specific findings in *Crim I* on the jury's verdict, and thus, the parties are now litigating a second (unnecessary) appeal addressing the scope of the first appeal.

In *Keiser-Long v. Owens*, a panel of the very same appellate court decided an appeal from a directed verdict, and the court reversed and remanded for a new trial solely on the issue decided by the directed verdict. 2015 IL App (4th) 140612. There, unlike in this case, the plaintiff filed a motion to reconsider the directed verdict *and* raised the issue of the jury's verdict on appeal. This procedure allowed the parties and the appellate court to properly examine whether the directed verdict affected the jury's verdict, thereby ensuring that the appellate court's decision was comprehensive and specific and not fractured or "general"—as here.

The Crims' failure to file a post-trial motion in this case not only stripped the trial court of its ability to correct an alleged error but also caused the appellate court to issue a decision without "any specific instructions on how the proceedings should continue in the trial court on remand." Order at ¶ 43. The appellate court claims that it "easily could have," but this begs the question: how? With the Crims affirmatively stating that their appeal was not based on an erroneous jury verdict, how could the appellate court have "easily" instructed the trial court on remand? The court would have had to address an issue that the Crims specifically asked it not to. The fact that the issue was not properly preserved or raised in the appellate court is precisely why it was not so easy for the court, as evidenced by its admitted failure to specify directions on remand.

To avoid this outcome, this Court should announce that the rule set forth in *Keen* applies only to cases where there is no jury verdict. In cases involving both a directed verdict and a jury verdict, the Court should announce that parties must file a post-trial motion identifying the specific errors with the jury's verdict. To hold otherwise would be to facilitate and invite unnecessary and duplicative litigation—such as in this case.

Conclusion

Section 2-1202(b) is clear and unequivocal. This Court has recognized that the rule is based on principles of fairness and judicial economy. It is not too much to ask of litigants to continue to adhere strictly to the plain language of section 2-1202(b), which requires a post-trial motion in order to obtain relief of a jury verdict. The contrary rule—adopted by the appellate court here—that allows a party to simply file a notice of appeal and then say nothing of the verdict on appeal certainly will lead to non-specific, incomplete appellate decisions and unnecessary litigation in the trial and appellate courts, all of which are not in the best interests of the members of the IDC—or any other person or entity for that matter.

For all of these reasons and those stated in Dietrich's Brief of Appellant, the judgment of the appellate court should be reversed.

Respectfully submitted:

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Supreme Court Rule 341(c) Certificate of Compliance

I certify that this reply brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the notice of filing and proof of service, and those matters to be appended to the brief under Rule 342(a), is 7 pages.

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)	
<i>Defendant-Appellant.</i>)	

NOTICE OF FILING

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PLEASE TAKE NOTICE that on **April 11, 2019**, we have electronically filed with the Clerk of the Supreme Court of Illinois, the attached **ILLINOIS ASSOCIATION OF DEFENSE TRAIL COUNSEL BRIEF AMICUS CURIAE IN SUPPORT OF DEFENDANT-APPELLANT.**

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PROOF OF SERVICE

The undersigned hereby certifies that under penalties of perjury as provided by law pursuant to 735 ILCS § 5/1-109, that this notice and its attached brief were filed electronically with the Clerk of the Supreme Court of Illinois, on **April 11, 2019**. That this notice and its attached brief were served upon all counsel and/or parties of record by sending it attached via e-mail message to all of the aforementioned e-mail addresses on **April 11, 2019**. Thirteen (13) hard-copies of the file-stamped brief will be delivered to the Clerk of the Supreme Court of Illinois within 1 business day of leave to file the Amicus Curiae Brief being granted and the brief being accepted and filed.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Richard M. Burgland

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