SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1241-22

JOSEPH GOODE,

Plaintiff-Respondent,

v.

GREGORY VANEK and
SUSAN VANEK,

Defendants-Appellants.

Argued February 5, 2024 – Decided June 27, 2024

Before Judges Sabatino, Mawla, and Marczyk.

On appeal from the Superior Court of New Jersey, Law Division, Middlesex County, Docket No. L-6006-15.

John C. Simons argued the cause for appellants (Hoagland, Longo, Moran, Dunst & Doukas, LLP, attorneys; Richard J. Mirra, of counsel and on the briefs; Joshua A. Filzer, on the briefs).

George J. Shamy, Jr. argued the cause for respondent (Shamy and Shamy, LLC, attorneys; George J. Shamy Jr., of counsel; Randi S. Greenberg, on the brief).

PER CURIAM

This appeal stems from a personal injury case that was tried in person during the COVID-19 pandemic before a jury in 2022. The pertinent background is as follows.

In the early morning hours of October 23, 2013, plaintiff Joseph Goode was badly injured after losing his balance on interior stairs in an apartment leased by defendants Gregory and Susan Vanek to his then-girlfriend Catherine Rummel. Plaintiff, a self-described "functioning alcoholic," was inebriated at the time. While going quickly down the stairs, he grabbed onto a handrail that was allegedly poorly attached to the stair wall. The handrail pulled away from the wall, and plaintiff toppled down the stairs. Defendants had installed the handrail themselves many years prior in the early 1980s.

Plaintiff claimed that defendants were negligent in the manner they had fastened the handrail to the wall. To establish liability, plaintiff presented expert testimony at trial from an engineer, who opined defendants had inadequately and unsafely screwed the handrail to the studs beneath the sheetrock. Plaintiff's medical proofs showed that he sustained brain damage and other severe injuries in the accident and became permanently disabled.

In their defense, the Vaneks argued that plaintiff had used an unreasonable degree of force in pulling on the handrail. They noted his blood alcohol concentration ("BAC") level was measured at .08 at the hospital several hours

after the accident, and presented expert testimony from a toxicologist who extrapolated the BAC level at approximately .13 at the time of the accident.

The jury found defendants 60% at fault and plaintiff 40% at comparative fault. The jury awarded gross damages of $5 million for pain and suffering, a figure the trial court molded in the final judgment to conform to the liability percentages.[1] The trial judge denied defendants' post-verdict motion for a new trial.

Defendants now appeal, claiming several trial errors. Plaintiff has not provisionally cross appealed on any issues.

In particular, defendants argue the trial court erred in (1) imposing limits on the testimony of their toxicology expert; (2) allowing the plaintiff to argue to the jury in summation that the defense had not presented evidence of the extent of plaintiff's actual impairment; (3) omitting an unrequested model jury charge on intoxication; (4) admitting photographs and testimony showing that defendants had not repaired two other conditions on the premises; (5) admitting the allegedly flawed testimony of plaintiff's engineering expert; and (6) depriving them of a fair trial because of cumulative error.

[1] Defendants do not appeal the damages award as excessive.

Applying the relevant legal principles to the record and the parties' arguments, we affirm.

I.

We preface our discussion of the issues with a recognition of basic principles of evidence law, trial practice, and appellate review. In general, a trial court is afforded substantial discretion in its rulings on the admissibility of evidence. See Summit Plaza Assocs. v. Kolta, 462 N.J. Super. 401, 409 (App. Div. 2020). Litigants are "entitled to a fair trial, but not a perfect one." State v. Allen, 254 N.J. 530, 550 (2023) (quoting State v. R.B., 183 N.J. 308, 333-34 (2005)). Even if a litigant shows on appeal the trial court made one or more errors, the jury's verdict generally will not be overturned unless the errors are proven to be so harmful that they are "clearly capable of producing an unjust result." R. 2:10-2.

A.

We first address defendants' related arguments concerning plaintiff's intoxication, a main theme of their defense at trial. As we noted in the introduction, defendants retained an expert witness in the field of toxicology, Dr. Robert J. Pandina. In his evaluation of the case, Dr. Pandina extrapolated that plaintiff's BAC level at the time of the accident, which his girlfriend delayed reporting for several hours, was approximately .13, well above the .08 legal limit

for operating a motor vehicle. In addition to that extrapolation, defendants proffered Dr. Pandina was prepared to opine that plaintiff's degree of intoxication at the time of the accident "was such that he would have had serious debilitating impairments in multiple domains of functioning."

Before trial, plaintiff moved in limine to bar Dr. Pandina from presenting his opinions about plaintiff's actual degree of impairment. Plaintiff argued those opinions lacked appropriate foundation because they failed to take into account the capabilities of a "functioning alcoholic" and were therefore "pure speculation." Defendants urged the court to allow the expert's opinions in this regard, maintaining they were well-supported and relevant.

The trial court partially granted the in limine motion, ruling that Dr. Pandina could only testify regarding plaintiff's BAC based on the extrapolations from the testing of plaintiff's blood at the hospital after his fall. The court disallowed the expert from opining to the jury as to the level of impairment such a BAC would create, because his expert report failed to provide any baseline for plaintiff individually or any specific analysis of how a functioning alcoholic would act with such an extrapolated BAC.

Defendants objected to these limitations, and unsuccessfully repeated their arguments for admissibility in a motion for directed verdict and a new trial. Post-trial, the court reiterated its prior ruling about Dr. Pandina's testimony,

finding that his expert reports lacked specificity concerning plaintiff's level of impairment based on the extrapolated BAC. The court further noted that, regardless of the limitation, Dr. Pandina "clearly was able to [tell the] jury that [plaintiff] was very intoxicated, highly drunk" based on his direct testimony indicating that a .13 or higher BAC signifies "an acute or high level of intoxication." The trial court further noted that "[a] lay person is familiar with . . . tolerance to intoxicants" and "it is common knowledge that heavy drinkers develop a tolerance."

On appeal, defendants argue the trial court unduly restricted their expert toxicologist's opinions. They maintain the court "fail[ed] to appreciate the significance of undisputed facts and [applied] a gross misinterpretation of controlling law." Defendants argue that plaintiff's "consumption of alcohol and resulting impairment was critical to the issues of proximate cause and negligence" and the trial court's ruling prejudiced their case when it precluded Dr. Pandina's opinions. They assert "[t]he 'supplementary evidence' that [p]laintiff was significantly impaired when he fell down the stairs [was] overwhelming" and the "inference that [p]laintiff's consumption of alcoholic beverages and consequent impairment is what caused him to fall . . . [was] clear." In the alternative, defendants argue that plaintiff's challenges to Dr. Pandina's opinions should have gone to the weight, not the admissibility, of his proposed

testimony.

In evaluating these arguments on appeal contesting the court's rulings about the admissibility of Dr. Pandina's opinions, we adhere to several well-settled principles. Generally, "[t]he admission or exclusion of expert testimony is committed to the sound discretion of the trial court." Townsend v. Pierre, 221 N.J. 36, 52 (2015) (citing State v. Berry, 140 N.J. 280 (1995)). Its "grant or denial of a motion to strike expert testimony is entitled to deference on appellate review." Ibid. (citing e.g., Bender v. Adelson, 187 N.J. 411, 428 (2006)). An appellate court should not disturb the trial court's decision unless the ruling demonstrably comprises an abuse of discretion. See Hisenaj v. Kuehner, 194 N.J. 6, 16 (2008); see also Carey v. Lovett, 132 N.J. 44, 64 (1993). We discern no such abuse of discretion here, nor, for that matter, a reversible error of law.

As plaintiff's counsel rightly emphasized to the trial court, an elevated BAC level's impact on impairment can vary among people. Hence, an admitted alcoholic such as this plaintiff could be more functional with a .13 BAC than other persons with that level. The court did not err in disallowing Dr. Pandina's opinions that failed to take into account these individual differences.

Defendants rely upon Black v. Seabrook Associates, 298 N.J. Super. 630, 635-36 (App. Div. 1997), for the proposition "that the level of intoxication can be utilized" as evidence in a negligence case "and it creates a heightened risk of

injury." However, the context of Black materially differs from the present case. In Black, the plaintiff had successfully moved to bar all evidence of his alcohol or drug use preceding an accident, and we held that complete disallowance was improper. Id. at 635.

Here, the trial court denied plaintiff's pretrial motion to preclude all evidence of his intoxication, because defendants had presented the requisite "supplementary evidence" substantiating his intoxicated condition. The extrapolated BAC evidence of intoxication was admitted, unlike the total ban the trial court imposed in Black. We recognized that, where such supplemental evidence of intoxication is adduced, juries are permitted to infer how the person's judgment or coordination may have been impaired. Id. at 636. However, we did not declare in Black a per se right to present an expert's non-individualized opinion about the degree to which that intoxicated person's judgment or coordination was actually impaired. In Riley v. Keenan, 406 N.J. Super. 281, 290 (App. Div. 2009), an expert forensic scientist opined that a "frequent drinker" would not exhibit signs of intoxication until reaching a BAC level of .15. We reversed the verdict in that case because, in part, the "expert testimony was not specific to [the bar patron] and did not consider either his personal condition or individual circumstances." Id. at 300. Here, the expert

report tendered by Dr. Pandina before this trial did not analyze plaintiff's own tolerance level and was within the court's authority to exclude.

The trial court did not misapply its discretion in imposing the limits it adopted. The post-trial certification defendants submitted from Dr. Pandina amplifying his opinions did not retroactively invalidate the trial court's ruling.

Nor are defendants entitled to a new trial because plaintiff's counsel asserted in summation that defendants presented "no testimony about how [the BAC level] affects a functioning alcoholic." The trial court rightly noted this assertion was correct. No such testimony was presented by plaintiff, consistent with the court's earlier determination about the shortcomings of Dr. Pandina's reports. It was a valid point to make. Counsel did not overstep the "broad latitude" our system affords to lawyers in their closing arguments. Bender, 187 N.J. at 431. Moreover, defendants did not object to the remark when it was made, and we detect no plain error. Risko v. Thompson Muller Auto. Grp., Inc., 206 N.J. 506, 523 (2011) (citing Jackowitz v. Lang, 408 N.J. Super. 495, 505 (App. Div. 2009)).

In another point about intoxication not raised below, defendants contend the court prejudicially failed to instruct the jury with Model Jury Charge 7.13(A), entitled Negligence-Intoxication. That model charge reads as follows:

> A person who voluntarily has become intoxicated is required to act with the same care as a person who is sober. So long as such a person who is voluntarily intoxicated acts with the same degree of care for [their] own safety which an ordinary careful and sober person would exercise under the same or similar circumstances, then the intoxicated person is not comparatively negligent. But if you find that, by reason of [their] own voluntary abuse of intoxicating liquor, the plaintiff exposed [themself] to a dangerous situation and sustained bodily injuries which a sober person in the exercise of ordinary foresight and care would have avoided, then you find that the voluntary intoxicated person has acted negligently.
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> [Model Jury Charges 7.13(A), "Negligence — Intoxication" (approved May 1991).]

Defendants contend it was plain error for the trial court to omit this unrequested jury charge, or some modified version of it. We are unpersuaded the charge was essential to this case. To be sure, plaintiff and his counsel did not concede at trial that his intoxication caused him to fall down the stairs and reach for the handrail. Even so, it is unclear that sober persons who lost their balance on the stairs would have reason to suspect the handrail was insecure and would not brace their fall if they grabbed it.

Furthermore, the court did appropriately instruct the jury on general concepts of comparative fault, as delineated in Model Charge 7.31. Model Jury Charges (Civil), 7.31, "Comparative Negligence: Ultimate Outcome" (rev. 2023). The jury was told to assess the reasonableness of plaintiff's conduct and

whether it was a contributing cause to his accident and injuries. The jury plainly understood those concepts in assigning a hefty 40% comparative degree of fault to plaintiff in the verdict. In sum, the omission of Model Charge 7.13(A) did not manifestly produce an unjust result nor prejudice defendants' substantial rights. Prioleau v. Ky. Fried Chicken, Inc., 223 N.J. 245, 256-67 (2015).

B.

Defendants contend the trial court erred in allowing plaintiff, on cross-examination of Gregory Vanek, to present photographs of the premises taken by plaintiff's engineering expert in 2015 about two years after the October 2013 accident. The photos depict two separate conditions of the property in apparent need of repair: a rusted and detached railing of the rear exterior steps, and a hole in a bathroom floor.

In addressing defendants' objections concerning the admission and use of the photos, the trial judge described them as follows. Regarding the "rear porch wrought iron railing," the trial court observed:

> This [photo] is from far away. . . . Then you get closer and then get closer [with more photos marked as exhibits] and what it shows is a rotten railing. . . . [I]t's a steel wrought iron railing and it's rusted pretty bad. It's rusted through in a couple of places. . . . But more significantly, it's rusted through coming out of the concrete. So, it's just hanging in the air from the mount on the house, which also appears to be rusted.

> It's in bad shape and, obviously, it took a significant amount of time for this to get to that state. . . . [T]hat's common sense. It's not like something is pristine and it just happened to snap . . . this corroded over a significant period of time.

Regarding the photograph of the bathroom, the trial judge observed "there's a hole in the bathroom floor . . . it comes out from the tub, at least wide enough that you can put your foot through if you would turn the water on. It's kind of hard to say it's not a safety issue."

Before trial, defendants moved in limine to bar plaintiff from presenting these photos of the rear railing and the bathroom floor to the jury. Among other things, they argued the photos were irrelevant under N.J.R.E. 401 and therefore inadmissible because they concern conditions unrelated to the condition of the hallway handrail. Defendants stressed there was no evidence their tenant Rummel, ever complained to them about these two conditions, or requested that they be repaired, before plaintiff's handrail accident. They argued the photos were unduly prejudicial under N.J.R.E. 403, having the pejorative capacity to portray them as "slumlords." They also asserted the photos were "prior bad acts" evidence inadmissible as character proof under N.J.R.E. 404(b), in suggesting they had a general propensity to ignore unsafe conditions at the house. Plaintiff, on the other hand, argued the photos were probative and, in particular, bore on defendants' credibility about their upkeep of the premises.

The trial court partially granted defendants' objection to the photos, ruling that plaintiff could not use them in his case in chief. However, the court set forth an exception to that ban, allowing the photos to be used by plaintiff on cross-examination to impeach defendants' credibility if they "opened the door" by testifying about their general practices in making repairs at the house.

In crafting that boundary, the court reasoned as follows. The court agreed the photographs were "not relevant" under N.J.R.E. 401 and would violate N.J.R.E. 404(b). It noted "the inference [of plaintiff] is because there are other instances of disrepair . . . the railing must have been in disrepair and that's not appropriate."

Even so, the court did "not altogether bar" the photos. It cautioned that "[d]epending on what happens during the [d]efense case, it may become admissible on rebuttal." The court directed plaintiff to steer clear of the photos during his case in chief, but "if any doors g[o]t opened on the [d]efense case, . . . [the photos] could very well come [in] on a rebuttal case."

At the ensuing trial, defense counsel asked Gregory Vanek a series of questions on direct examination about the repairs and maintenance he would do at the house. Gregory Vanek recounted that he installed a water heater, repaired a sink drain and a leaky faucet, and took care of other "[s]mall stuff." He described how Rummel normally would call him or his wife to request such

repairs and would arrange to meet him at the house. Gregory Vanek further noted that he mowed the lawn weekly in the summer, but that did not require him to go into the house.

On cross-examination, plaintiff's counsel first established from Gregory Vanek that if any major repair or safety issues at the house were made known to him, he would address them "immediately." Plaintiff's counsel then questioned Gregory Vanek, over objection, about the photos of the rusty rear stair railing and the hole in bathroom floor. Plaintiff submitted the defense had opened the door to such evidence about property maintenance on direct examination, and that using the photos on cross examination was permissible to impeach Gregory Vanek's credibility.

Defendants argued in response that the line of questioning with the photos exceeded the court's in limine ruling and was also unduly prejudicial. Defendants stressed the photos were taken years after the subject accident, and there was no proof that the conditions had been reported to them or that any repairs had been requested.

The court overruled the objection and allowed plaintiff's counsel to display the photos to the jury and to question Gregory Vanek about them. In its oral ruling, the court observed that "[d]uring questioning[,] . . . [Gregory] Vanek emphatically, . . . multiple times, talked about safety and gave the impression

that he was on top of safety issues and would fix things immediately." The court added that "[Gregory] Vanek was emphatic about keeping up with issues pertaining to upkeep pertaining to safety and these images seem to contradict that."

Given the context, the court found the photographs and testimony "highly relevant" from a "credibility standpoint." It found the evidence did not concern a collateral issue but instead went to the "very narrow [and] specific" aspect of credibility. The court offered to give a limiting instruction to the jury, which defense counsel declined.

Following that ruling, plaintiff's counsel then explored with Gregory Vanek the conditions of the rusty exterior railing and the bathroom hole, displaying the photos of them to the witness and the jury. Gregory Vanek denied being informed of the need for those repairs before plaintiff's incident, but he agreed that they both were safety conditions. He also acknowledged that he would typically go up and down the rear steps to collect the rent check taped to the back door.

On redirect examination, defense counsel established that Gregory Vanek did not know about the hole in the bathroom until 2019, when he learned of it from Rummel's son, and that he repaired it "in two days." Gregory Vanek also

explained on redirect that he hired a mason to repair the rear steps and that he personally mounted a new railing to the cement.

Hardly anything was said about this evidence in closing argument. Defense counsel did not mention it at all. Plaintiff's counsel only referred to the bathroom hole and rear railing in arguing that Rummel had been afraid to report the need for repairs to the Vaneks, because she was allegedly afraid of being evicted if she complained.

In their post-verdict motion for a new trial, defendants reiterated their argument that the court erred, and they were unfairly prejudiced by the photos and the associated testimony. The court rejected that argument, essentially for the same reasons it had stated before.

On appeal, we must determine whether the court abused its discretion in admitting this evidence. Summit Plaza Assocs., 462 N.J. Super. at 409. If so, we also must consider whether the evidentiary ruling was a harmful error "clearly capable of producing an unjust result." R. 2:10-2. Defendants have not shown either predicate for a new trial.

Although reasonable minds might differ about how widely the direct examination of Gregory Vanek opened the door to his general practices in maintaining and repairing the premises, it is clear the defense probed into this subject matter in questioning him. That direct examination conveyed a strong

impression that Gregory Vanek was a responsible and responsive landlord. His direct testimony informed the jury that he was at the site on a weekly basis to mow the lawn during the summer, and that he would come over personally to do repairs.

Once that testimony was elicited on direct, the court reasonably allowed plaintiff's counsel to paint a different narrative through the photos of the railing and the bathroom hole. We discern no abuse of discretion in this regard. Also, the trial court made a fair offer to provide the jury with a limiting instruction, which (perhaps for likely tactical reasons) defense counsel declined.

We also do not regard the fleeting reference to the outdoor railing and bathroom hole during plaintiff's closing argument to comprise harmful error. Plaintiff's counsel did not call defendants "slumlords" or use other inflammatory language. Most of the summations focused on the core of the case: the manner in which the interior handrail was attached to the wall and the behavior of the inebriated plaintiff in grabbing onto it. The interests of justice do not warrant a new trial because of these alleged errors.

C.

As another claim of evidentiary error, defendants contend the trial court should have excluded the opinions of plaintiff's engineering expert Wassim Nader criticizing the way the stairway handrail had been attached to the wall.

Relatedly, they argue the trial court should have granted them an involuntary dismissal of plaintiff's case under Rule 4:37-2(b).

For context, we note that plaintiff's expert first tested the wall, post-accident, by placing a paper clip into the holes left in the wall by the detached handrail and peering inside with a flashlight. Based on that first inspection, the expert surmised that the handrail had been screwed into sheetrock rather than the wooden studs.

The expert then modified his opinions after a second inspection. This time, he concluded the methods of fastening the handrail were deficient because only two of the three screws had been fastened to studs, and the third one was not attached to solid wood. According to the expert, this lack of a third attachment "compromised the integrity" of the fasteners. He noted the brackets had pulled away from the wall when plaintiff pulled on the handrail.

In his oral opinion rejecting defendants' motion for involuntary dismissal, the trial court summarized Nader's testimony in the following manner:

> [Nader] explained a few things that perhaps a common-knowledge person wouldn't know. This bracket, right? It's a typical bracket that was on the handrail. Looks like it's made out of brass.
>
> Two screws on top, one screw on the bottom. Obviously, all three are meant to catch a stud. That's pretty obvious.

Well, in order to do that, and . . . Nader explained this, it's got to be parallel to the stud. It's got to run with the stud. It's got to be straight up and down. In other words, it shouldn't be perpendicular to the handrail because if it is, you're not going to catch all three—it's too wide. You're not going to catch all three screws. By definition, it would be impossible. It's wider than a two-by-four.

But that's what happened here. Rather than install this bracket straight up and down against the stud—and this is what Nader was explaining—and why, when he explained in the second report, some of the screws missed.

. . . .

The one thing you can discern from [exhibit P-3] is that the top right screw was in the stud. That's clear, obvious. The one next to it, it's unclear what happens with the bottom one. It looks like the bottom one may have missed the stud to the right, like it would have if you hold it on a forty-five-degree angle or a thirty-degree angle to be perpendicular to the railing, which is not correct, according to . . . Nader, and that makes sense because . . . it's got to go in line with the stud.

So Nader . . . testified to this—that the left screw, not only is it pulled out and missing, but the bracket cracked there. The bracket cracked. So the right screw is holding it fast to the stud. But the left screw is nothing but plaster, sheet rock and old lath. Really nothing holding it. That lath may be thick enough to give you the sensation that it's tight, but structurally, it's not holding anything. It's not into a stud.

So when a degree of force, powered force is put on the railing, what happens? Those screws that [are] holding the bracket into the stud is, that's good. And if

the other one was in the stud, it wouldn't have cracked. But the other one was hanging—flapping in mid-air inside the wall. So what happened? It snaps and down comes the railing. So, obviously, it took a tremendous amount of force—enough force to crack this brass hardware. And that's what Nader was saying, . . . why it has to be straight up and down. And, . . . these holes are about an inch apart. So you got to make sure you're right on the money because it can't be on the edge of the stud, either. Structurally, it won't be strong enough. It's got to be in the meat of the wood, which is why [Nader] suggested abutting another two-by-four up next to it to make it a little bit wider.

So common sense? [Exhibit] P-3 is common sense. But it becomes abundantly clear after [Nader] testified and explained . . . these things were on an angle, they shouldn't have been on an angle. That's because by definition, when you cock them on an angle, you're not going to get all three screws into the stud. It's impossible. So they got one top right, that held. The rest didn't. The thing cracked. Down comes the railing.

So there is clarification between the first and the second report because, obviously, . . . this top right screw is in a stud because that's held fast. Strong enough that the brass is going to crack before the screw pulls out. But the other screws are grabbing nothing. And because they're grabbing nothing, there's too much torque on the bracket and the bracket cracks. So Nader's testimony is very compelling and the inference that can be drawn from that, which I guess is why you need an expert in a case like this.

[(Emphasis added).]

On appeal, defendants urge that Nader's expert testimony about the deficiencies in the handrail's attachment to the wall should have been excluded under the "net opinion" doctrine. The doctrine barring the admission at trial of net opinions is a "corollary of [N.J.R.E. 703] . . . which forbids the admission into evidence of an expert's conclusions that are not supported by factual evidence or other data." Townsend, 221 N.J. at 53-54 (alteration in original) (quoting Polzo v. Cnty. of Essex, 196 N.J. 569, 583 (2008)). Fundamentally, the net opinion principle mandates that experts "give the why and wherefore" supporting their opinions, "rather than . . . mere conclusion[s]." Id. at 54 (quoting Borough of Saddle River v. 66 E. Allendale, LLC, 216 N.J. 115, 144 (2013)).

The Supreme Court recognizes that "[t]he net opinion rule is not a standard of perfection." Ibid. It does not require that experts organize or support their opinions in a specific manner "that opposing counsel deems preferable." Ibid. Consequently, "[a]n expert's proposed testimony should not be excluded merely 'because it fails to account for some particular condition or fact which the adversary considers relevant.'" Ibid. (quoting Creanga v. Jardal, 185 N.J. 345, 360 (2005)). An "expert's failure 'to give weight to a factor thought important by an adverse party does not reduce his testimony to an inadmissible net opinion if he otherwise offers sufficient reasons which logically support his

opinion.'" Ibid. (quoting Rosenberg v. Tavorath, 352 N.J. Super. 385, 402 (App. Div. 2002)). "Such omissions may be 'a proper "subject of exploration and cross-examination at a trial."'" Id. at 54-55 (quoting Rosenberg, 352 N.J. Super. at 402).

Applying these principles to the record here, we conclude the trial court did not misapply its role as the gatekeeper of expert proof by admitting Nader's opinions and thereafter denying the motion for voluntary dismissal. As summarized by the trial court in the detailed passage we have quoted above, the expert sufficiently articulated the "why and wherefore" upon which his opinions were based.

Defendants criticize Nader's opinions because he did not identify a measure of force that would have been required to cause the railing to detach from the wall. But that overlooks the realistic constraint that it was impossible after the accident had already occurred for Nader to know precisely how tightly and deeply the two ripped-out screws had been fastened to the studs. What he could tell was that one of the three screws essential for stability had not been attached to a stud, contrary to what he opined were appropriate construction techniques. That was sufficient under N.J.R.E. 702 to be helpful to the trier of fact and weighed against the contrary opinions of defendants' own engineering expert.

II.

Lastly, we reject defendants' argument that the verdict must be set aside under principles of cumulative error. Pellicer ex rel. Pellicer v. St. Barnabas Hosp., 200 N.J. 22, 53 (citing Biruk v. Wilson, 50 N.J. 253, 261-62 (1967)). Despite the individual errors asserted by defendants, the trial in the aggregate has not been shown to be unfair.

To the extent we have not discussed them, all other points raised on appeal lack sufficient merit to warrant discussion. R. 2:11-3(e)(1)(E).

Affirmed.