

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

BUNNAVUTH CHHUN,	:	APPEAL NO. C-190616
	:	TRIAL NO. A-1706417
Plaintiff-Appellant,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
ABUBAKAR ATIQ DURRANI, M.D.,	:	
and	:	
CENTER FOR ADVANCED SPINE	:	
TECHNOLOGIES, INC.,	:	
Defendants-Appellees,	:	
and	:	
WEST CHESTER HOSPITAL, LLC, et	:	
al.,	:	
Defendants.	:	

The court sua sponte removes this case from the regular calendar and places it on the court's accelerated calendar, 1st Dist. Loc.R. 11.1.1(A), and this judgment entry is not an opinion of the court. See Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

This appeal represents one case among a multitude of cases filed against Dr. Abubakar Atiq Durrani and his medical practice group for claims stemming from the alleged malpractice of Durrani. Plaintiff-appellant Bunnavuth Chhun first met with Durrani in 2011 after experiencing lower back pain. Durrani recommended surgery and performed surgery on Chhun on March 6, 2013. After the surgery, Chhun experienced pain on his right side from his waist down to his toes and loss of

flexibility. Chhun subsequently filed a medical-malpractice complaint against Durrani, The Center for Advanced Spine Technologies, Inc., (“CAST”) and other defendants not relevant to this appeal. Durrani refused to appear at trial because he had fled the country. In a pretrial order, the trial court decided not to give a jury instruction on flight, or the jury’s ability to consider flight, because:

It is just as plausible if not more so to determine that the defendant Dr. Durrani has fled from the criminal charges against him as it is to determine that he has fled the civil claims herein. * * * Giving the jury the opportunity to make this determination would take the trial down a path that is not probative to the determination of the claims asserted by the plaintiff.

Additionally, in the same pretrial order, the trial court precluded any testimony or evidence regarding any activities of Durrani after the last treatment of the plaintiff because the evidence was irrelevant and inadmissible. The case was then tried to a jury and a verdict was ultimately rendered in favor of Durrani and CAST. The trial court subsequently entered judgment in their favor.

Chhun now appeals. Chhun initially raised two assignments of error for our review; however, in his reply brief, Chhun voluntarily withdrew his second assignment of error from further consideration. Therefore, the second assignment of error will not be addressed by this court.

In his remaining assignment of error, Chhun argues that the trial court committed reversible error by entering a final judgment against him following a jury trial and entry of its adverse verdict. In support of his argument, he raises two issues for review: (1) whether the trial court committed reversible error by failing to give a flight instruction or allow the jury to consider Durrani’s flight as probative evidence

of his liability or responsibility to appellant for his injuries and damages, and (2) whether the trial court committed reversible error by failing to allow appellant to cross-examine Durrani's expert witnesses about Durrani's flight when considering the issue of the alleged truthfulness and veracity of Durrani's medical records concerning appellant's medical care, treatment and surgery. Chhun conceded at oral argument that both issues are "basically indistinguishable" from the arguments already presented to this court in *Hayes v. Durrani*, 1st Dist. Hamilton No. C-190617, 2021-Ohio-725.

Jury Instruction

We review the trial court's decision not to provide a jury instruction on Durrani's flight for an abuse of discretion. *Id.* at ¶ 8, citing *O'Loughlin v. Mercy Hosp. Fairfield*, 1st Dist. Hamilton No. C-130484, 2015-Ohio-152, ¶ 26. "An abuse of discretion connotes more than an mere error of judgment; rather, 'it implies that the court's attitude is arbitrary, unreasonable, or unconscionable.'" *Id.*, quoting *Boolchand v. Boolchand*, 1st Dist. Hamilton No. C-200111, 2020-Ohio-6951, ¶ 9.

In *Hayes*, we reviewed substantially the same argument that Chhun now presents here that the jury should have been instructed on Durrani's flight because the flight from justice may have been indicative of a consciousness of responsibility and liability to the plaintiff. *Id.* at ¶ 9. Just like in this case, the trial court in *Hayes* decided not to give the jury instruction because "it was equally, if not more so, plausible that Dr. Durrani had fled to Pakistan to avoid the criminal charges that had been filed against him, rather than [plaintiff's] civil claims, and that such an instruction was 'not probative to the determination of the claims asserted by the plaintiff.'" *Id.* We determined there was nothing arbitrary, unreasonable, or unconscionable about the trial court's decision because the requested instruction

would require speculation as to why Durrani fled and would not be probative towards the resolution of the claims at hand. *Id.* at 10.

Cross-examination

“We will not reverse the trial court’s ruling on an evidentiary issue ‘absent an abuse of discretion and proof of material prejudice.’” *Hayes*, 1st Dist. Hamilton No. C-190617, 2021-Ohio-725, ¶ 13, quoting *State v. Lavender*, 2019-Ohio-5352, 141 N.E.3d 1000, ¶ 9. In *Hayes*, we also addressed substantially the same argument that Chhun now presents here in regard to the second issue presented for review that “because the only way that Dr. Durrani was ‘heard’ at trial was through his medical records, which did not accurately state [plaintiff’s] medical condition, he should have been permitted pursuant to Evid.R. 806 to cross-examine the defendants’ experts about Dr. Durrani’s flight as a means of attacking the credibility of Dr. Durrani and his medical records.” *Id.* at ¶ 14. Just like in this case, the trial court in *Hayes* “prohibited any testimony regarding the activities of Dr. Durrani after his last treatment of [the plaintiff], which would include Dr. Durrani’s flight, because such evidence was not relevant to or probative of the asserted claims.” *Id.* at ¶ 15. We determined that the trial court did not abuse its discretion because “the trial court did not prohibit [plaintiff] from cross-examining the defense experts on Dr. Durrani’s medical records, but rather limited the manner in which such actions could be undertaken by prohibiting questioning on Dr. Durrani’s flight.” *Id.*

We maintain our holdings in *Hayes* on these issues. Therefore, we overrule appellant’s assignment of error and affirm the judgment of the trial court.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

ZAYAS, P.J., CROUSE and BERGERON, JJ.

To the clerk:

Enter upon the journal of the court on June 25, 2021,
per order of the court_____.

Administrative Judge