# CAPTION: POTTS V. DURRANI

**11-22-23**

APPEAL NOS.: C-220024

C-220034

TRIAL NO.: A-1206877

KEY WORDS: MEDICAL MALPRACTICE – EVID.R. 403 – EVID.R. 404 – ABUSE OF DISCRETION – HARMLESS ERROR – CUMULATIVE ERROR – EXPERT TESTIMONY – SETOFF – R.C. 2307.28 – CATASTROPHIC INJURY – R.C. 2323.43(A) – FUTURE DAMAGES – PAST MEDICAL EXPENSES – PREJUDGMENT INTEREST

SUMMARY:

The trial court did not abuse its discretion in denying defendants’ motion for a new trial based on evidentiary errors where references to the revocation of defendant doctor’s medical license were limited, other evidence challenging the doctor’s credibility was admitted, and other substantial competent evidence existed to support the jury’s verdict.

Where the video-deposition testimony offered by plaintiffs’ expert witness concerning plaintiff’s cancer diagnosis was improper and should not have been played for the jury, but where the trial court appropriately handled the issue by stopping the video and providing a curative instruction and where plaintiffs did not attempt to link the cancer diagnosis to defendant doctor’s treatment, any error in the admission of the testimony was harmless.

The trial court did not abuse its discretion in admitting testimony from plaintiffs’ expert witness referring to defendant doctor as a liar where the comments predominately related to the plaintiffs’ claim that defendant doctor had misrepresented plaintiff’s need for surgery.

Where portions of testimony offered by plaintiffs’ expert doctor witness concerning defendant doctor’s performance of the surgery went beyond the scope of a radiologist’s area of expertise, but where testimony from plaintiffs’ other expert witnesses indicated that performance of the surgery was not problematic and where plaintiffs’ counsel, in closing argument, focused on whether the doctor had misrepresented the need for the surgery and not whether he had botched the surgery, any error resulting from the admission of the expert’s testimony was harmless.

The trial court did not err in failing to disclose settlement agreements reached between plaintiffs and settling defendants where the trial court conducted an in camera review of the settlement agreements and determined the appropriate amount of setoff.

The trial court did not abuse its discretion in submitting a jury interrogatory on whether plaintiff suffered a permanent physical functional injury where the record contained sufficient evidence in support of such a finding.

The trial court did not err in admitting evidence concerning plaintiff’s future damages or in awarding future damages where the evidence established that plaintiff would definitely need future treatment and provided specific estimates for the damages that would be incurred for that treatment.

Where there was no real-party-in-interest issue because the record demonstrated that one insurer settled its liens with plaintiff and the other insurer entered into a confidential settlement with plaintiff wherein plaintiff was obligated to reimburse the insurer from funds that he received, the trial court did not err in awarding plaintiff past medical expenses that had been paid by insurers.

The trial court erred in reinstating plaintiffs’ motion for prejudgment interest and court costs after plaintiffs withdrew the motion.

JUDGMENT: AFFIRMED IN PART, REVERSED IN PART, AND CAUSE REMANDED IN C-220024; APPEAL DISMISSED IN C-220034

JUDGES: OPINION by CROUSE, P.J.; BERGERON and KINSLEY, JJ., CONCUR.