**CAPTION:** **BENDER V. DURRANI**

**04-03-24**

APPEAL NO.: C-220326

TRIAL NO.: A-1506577

KEY WORDS: MEDICAL MALPRACTICE — EXPERT TESTIMONY — NEW TRIAL — CHARACTER EVIDENCE — OTHER-ACTS EVIDENCE —HARMLESS ERROR — CUMULATIVE ERROR — JUDGMENT NOTWITHSTANDING THE VERDICT — STANDING —PREJUDGMENT INTEREST

SUMMARY:

Defendants were not entitled to a new trial following the jury verdict in favor of plaintiffs in a medical-malpractice trial where any evidentiary errors the trial court committed were harmless.

The trial court properly denied defendants’ motion for judgment notwithstanding the verdict because it correctly awarded plaintiffs past and future medical expenses: plaintiffs were the real parties in interest and had standing to seek past medical expenses where plaintiffs’ insurer had not paid all of plaintiffs’ medical expenses and had agreed to collect reimbursement of its lien from plaintiffs’ award; and plaintiffs’ future medical expenses were not speculative.

The trial court properly awarded plaintiffs prejudgment interest where plaintiffs’ attempt to withdraw their prejudgment-interest motion had no effect as the trial court had already denied the motion before it was withdrawn and plaintiffs’ subsequent motion to set aside the denial revived the issue; the trial court’s bad-faith finding was supported by competent credible evidence.

Defendants were not entitled to a credit against the plaintiffs’ judgment where the plaintiffs settled with other defendants for the same injury because the verdict against the defendants included intentional torts, which precluded a setoff.

JUDGMENT: AFFIRMED

JUDGES: OPINION by BOCK, J.; BERGERON, J., CONCURS and ZAYAS, P.J., CONCURS IN JUDGMENT ONLY.