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

KELLY WILLIAMS,	:	APPEAL NO. C-250103 TRIAL NO. A-1706504
Plaintiff-Appellee,	:	
vs.	:	
ABUBAKAR ATIQ DURRANI, M.D.,	:	
and	:	
CENTER FOR ADVANCED SPINE TECHNOLOGIES, INC.,	:	
	:	
Defendants-Appellants.	:	

TIMOTHY WHALEN,	:	APPEAL NO. C-250104 TRIAL NO. A-1706585
Plaintiff-Appellee,	:	
vs.	:	
ABUBAKAR ATIQ DURRANI, M.D.,	:	
and	:	
CENTER FOR ADVANCED SPINE TECHNOLOGIES, INC.,	:	
	:	
Defendants-Appellants.	:	

STACEY FLETCHER, Executor of the Estate of	:	APPEAL NO. C-250481 TRIAL NO. A-1706478
Jeffrey McClure,	:	
Plaintiff-Appellee,	:	

vs.	:	*JUDGMENT ENTRY*
ABUBAKAR ATIQ DURRANI, M.D.,	:	
and	:	
CENTER FOR ADVANCED SPINE TECHNOLOGIES, INC.,	:	
	:	
Defendants-Appellants.	:	

KINSLEY, Presiding Judge.

This court sua sponte removes this cause from the regular calendar and places it on the court's accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); Loc.R. 11.1.

In these consolidated appeals, defendants-appellants Abubakar Atiq Durrani, M.D., and the Center for Advanced Spine Technologies, Inc. (together "Durrani") appeal the judgments of the Hamilton County Court of Common Pleas finding Durrani liable to plaintiffs-appellees Kelly Williams, Timothy Whalen, and Stacey Fletcher, Executor of the Estate of Jeffrey McClure (together "plaintiffs") for damages awarded following a joined jury trial. Plaintiffs sued Durrani after he performed what they alleged were unnecessary back surgeries.

Durrani raises four assignments of error on appeal. In his first, he argues that the trial court should have granted his motion for judgment not withstanding the verdict ("JNOV") or, in the alternative, a new trial on the basis that plaintiffs' cases were improperly joined for trial. We review a trial court's ruling on a JNOV motion de novo and its ruling on a motion for a new trial for an abuse of discretion. *Courtney v. Durrani*, 2025-Ohio-2335, ¶ 61 (1st Dist.). We also review a trial court's decision to

join cases under Civ.R. 42 for an abuse of discretion. *Jones v. Durrani*, 2024-Ohio-1776, ¶ 20 (1st Dist.).

Civ.R. 42 permits the joining of cases for trial where the actions "involve a common question of law or fact." This court has previously upheld joining cases against Durrani for trial where the plaintiffs underwent similar allegedly unnecessary surgeries after Durrani represented that each plaintiff suffered from similar conditions warranting the surgeries, requiring the jury to understand specific facts about the spine and these conditions as a "pertinent and predominate[]" issue. *Id.* at ¶ 25. So too have we upheld joining cases where two plaintiffs had identical surgeries, received essentially the same diagnoses, and presented identical expert witness testimony. *See, e.g., Courtney* at ¶ 49 (1st Dist.); *Ravenscraft v. Durrani*, 2025-Ohio-2900, ¶ 88 (1st Dist.). Even in the absence of identical surgeries, we have determined that factors like Durrani's common diagnostic impressions about two plaintiffs after reviewing their medical images and Durrani's common representations to the plaintiffs that he would "fix" them supported joining trials. *See, e.g., Fenner v. Durrani*, 2025-Ohio-4477, ¶ 49 (1st Dist.); *Boggs v. Durrani*, 2026-Ohio-210, ¶ 67 (1st Dist.).

This precedent supports the joining of the three plaintiffs' cases here for trial. All three plaintiffs shared common medical diagnoses—including disc herniation—involving their lower lumbar spines, and all three plaintiffs underwent at least one identical surgery: a foraminotomy and decompression. Plaintiffs relied on the same experts, Dr. Bloomfield and Dr. Saini, to explain the common facts related to these surgeries to the jury. Following our precedent, and given the common facts between the three cases, the trial court did not abuse its discretion in joining plaintiffs' causes of action for trial. We accordingly overrule Durrani's first assignment of error.

Durrani's second assignment of error argues that the trial court erred in denying his JNOV and new trial motion on the basis of two evidentiary issues. The first issue Durrani raises is with the testimony of Dr. Saini, a neuroradiologist. Durrani argues that Dr. Saini testified beyond the scope of his expertise by opining as to the surgical standard of care. But Durrani did not move for JNOV or a new trial on this basis, so he waived the matter for our review. *See State v. Gray*, 2025-Ohio-4607, ¶ 35 (1st Dist.) ("A first principle of appellate jurisdiction is that a party ordinarily may not present an argument on appeal that it failed to raise below."). The trial court could not have erred in denying the JNOV or new trial motion for a reason it was never presented.

Next, Durrani takes issue with the trial court's absent-defendant instruction. Here, the trial court provided the same jury instruction on Durrani's absence from trial that it provided in *Jones*, 2024-Ohio-1776, at ¶ 34, 37-40 (1st Dist.), and *Courtney*, 2025-Ohio-2335, at ¶ 85-87 (1st Dist.). We held the instruction to constitute harmless error in both of those cases. We do so again here. Reading the jury instructions as a whole, any error in the absent-defendant instruction was harmless. *See Jones* at ¶ 37-40. Durrani's second assignment of error is accordingly overruled.

Durrani's third assignment of error argues that the trial court erred in denying his JNOV and new trial motion for three separate reasons related to damages. First, he contends that the trial court should not have permitted plaintiffs to recover the higher cap of $500,000 on noneconomic damages because plaintiffs did not present sufficient evidence under R.C. 2323.43(A)(2) that they suffered catastrophic injuries. Durrani, however, waived this argument by seeking the very relief he now claims was error. In his JNOV and new trial motion, Durrani argued as follows:

> R.C. 2323.43 limits the recovery of non-economic loss in certain instances. In this case, the jury found [plaintiffs] suffered a catastrophic loss. Therefore, [their] non-economic losses should be remitted to that statutory cap - $500,000.

A party may not challenge on appeal a position he requested the trial court to take. *See Dunham v. Dunham*, 2007-Ohio-1167, ¶ 21 (10th Dist.). Because Durrani requested the relief he now challenges, he waived his ability to challenge it on appeal.

Second, Durrani contends that the trial court erred in failing to join Whalen's and Williams's health insurers as necessary parties.[1] But he similarly waived this issue for our review. In its January 22, 2025 final judgments on post-trial motions in both Whalen's and Williams's cases, the trial court held as follows:

> The parties informed the Court at the January 8th hearing that they have reached an agreement on the issue of past medical expenses. Accordingly, it is no longer necessary for this Court to retain any amount of Plaintiff's award for past medical damages.

Because Durrani consented to a resolution of the issue below, he can no longer challenge whether the trial court failed to join Whalen's and Williams's health insurers as necessary parties. *See In re H.G.*, 2024-Ohio-2122, ¶ 17 (4th Dist.) (holding that a party cannot affirmatively consent to an issue then raise it on appeal).

Third, Durrani argues that he is entitled to setoff plaintiffs' compensatory damages awards with damages awards plaintiffs collected from other defendants, i.e., the hospital systems they originally sued. The record reflects that plaintiffs in fact settled with the hospitals, but those amounts were not deducted from the damages

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[1] Durrani does not raise this issue in Fletcher's case.

awards against Durrani. This was in error. *See Fenner*, 2025-Ohio-4477, at ¶ 128 (1st Dist.). We accordingly sustain Durrani's third assignment of error solely as to setoff and remand the matter to the trial court to calculate the appropriate amount of setoff in each plaintiffs' case. The third assignment of error is overruled in all other respects.

In his fourth and final assignment of error, Durrani argues that the trial court should not have awarded prejudgment interest. We review a trial court's determination of prejudgment interest for an abuse of discretion. *Moskovitz v. Mt. Sinai Med. Ctr.*, 69 Ohio St.3d 638, 658 (1994). "An abuse of discretion involves far more than a difference in * * * opinion * * *. The term discretion itself involves the idea of choice, of an exercise of the will, of a determination made between competing considerations." *State v. Jenkins*, 15 Ohio St.3d 164, 222 (1984). If the record contains competent, credible evidence supporting the trial court's decision, there is no abuse of discretion. *Boggs*, 2026-Ohio-210, at ¶ 104 (1st Dist.).

The court has previously upheld prejudgment interest awards following evidentiary hearings to establish the parties' history of settlement negotiations. In *Bender*, for example, we concluded there was no abuse of discretion where Durrani made no settlement offers before the jury rendered its verdict and where the plaintiffs made individual settlement offers of $1 million on the first day of trial. *Bender v. Durrani*, 2024-Ohio-1258, ¶ 156, 159 (1st Dist.). And in *Boggs*, we upheld the trial court's award of prejudgment interest where the plaintiffs offered to settle for $1 million on the first day of trial and $500,000 on the second day of trial, Durrani did not offer to settle at all, and the jury's verdicts exceeded plaintiffs' settlement demands. *Boggs* at ¶ 106, 111.

Conversely, in *Jones*, 2024-Ohio-1776 (1st Dist.), we reversed the trial court's award of prejudgment interest where the trial court had not conducted an evidentiary hearing and therefore had no facts in the record upon which to base its findings as to the parties' settlement conduct. *Jones* at ¶ 43.

Expressly relying on *Jones* and *Bender*, the trial court conducted an evidentiary hearing in these cases. It heard evidence that the Durrani plaintiffs had made individual settlement offers in each case, albeit on the first day of trial, but that those offers were reduced to $500,000 from previous offers in Durrani cases of $1 million per case. It also heard evidence as to the settlement communications by Durrani's insurer, MedPro. According to plaintiffs' counsel, MedPro refused to make individual offers in cases that plaintiffs' counsel could communicate to their clients. Instead, MedPro said it "didn't care if [it] spent $42 million defending these cases." Then, when plaintiffs made the individual $500,000 settlement offers, MedPro refused to make counteroffers because it claimed it had made a larger global settlement offer to resolve all of the Durrani cases, which it had not in fact done. Instead, according to plaintiffs' counsel, MedPro sent a list of preconditions that all Durrani plaintiffs needed to fulfill before MedPro would make a global settlement offer in writing. Based on oral discussions, plaintiffs believed that offer would be $4 million to be divided between the more than 400 Durrani plaintiffs, which equated to less than $10,000 per plaintiff.

Based on this evidence, and applying the *Jones* and *Bender* standards, the trial court concluded that (1) Durrani did not make a good-faith offer to settle, and (2) plaintiffs did not fail to make good-faith offers to settle. These findings were not an abuse of discretion. Rather, they were based on the competent, credible evidence

presented at the evidentiary hearing. Durrani's fourth assignment of error is accordingly overruled.

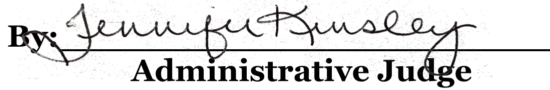
We therefore affirm the trial court's judgments in part and reverse them in part only as to the trial court's failure to calculate setoff, and we remand the cause to the trial court specifically to determine the amount of setoff in each case.

The court further orders that (1) a copy of this Judgment constitutes the mandate, (2) the mandate be sent to the trial court for execution under App.R. 27, and (3) costs shall be taxed to appellants.

ZAYAS and **BOCK, JJ.,** concur.

To the clerk:

Enter upon the journal of the court on 3/25/2026 per order of the court.

By: 
Administrative Judge