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

TONYA NEAL,	:	APPEAL NO. C-250174 TRIAL NO. A-1706394
Plaintiff-Appellee,	:	
vs.	:	
ABUBAKAR ATIQ DURRANI, M.D.,	:	*JUDGMENT ENTRY*
and	:	
CENTER FOR ADVANCED SPINE TECHNOLOGIES, INC.,	:	
Defendants-Appellants,	:	
and	:	
CINCINNATI CHILDREN'S HOSPITAL MEDICAL CENTER, et al.,	:	
Defendants.	:	

ZAYAS, 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.

This appeal arises from a jury verdict, rendered after a joint trial, in favor of plaintiff-appellee Tonya Neal on her claims against defendants-appellants Abubakar Atiq Durrani, M.D., and the Center for Advanced Spine Technologies, Inc., ("CAST") for negligence, lack of informed consent, and fraudulent misrepresentation. Durrani and CAST appeal, challenging the denial of their motion for judgment on the pleadings, the joint trial, the denial of their for-cause challenges to certain jurors, and the denial of their motion for a set-off.

In the first assignment of error, Durrani and CAST argue that the trial court erred in denying their motion for judgment on the pleadings because Neal's claims are barred by R.C. 2305.113(C), the medical-claim statute of repose. The core of their argument is that the Ohio Supreme Court's decision in *Elliot v. Durrani*, 2022-Ohio-4190, is not applicable to the instant cause where the General Assembly expressed a clear intent to overrule *Elliot* when it recently amended R.C. 2305.15, meaning that the law in Ohio has always been that R.C. 2305.15 does not toll the medical-claim statute of repose.

Initially, we note that this argument was not raised in Durrani and CAST's motion for judgment on the pleadings as the motion was filed well before the recent amendment of R.C. 2305.15, and there is no indication in the record that Durrani and/or CAST renewed and/or supplemented their motion on this basis.

Nevertheless, we reject this argument for two reasons. First, we find no authority for the premise that the General Assembly has the authority to resolutely nullify a standing opinion of the Ohio Supreme Court. *See Elliot* at ¶ 40 (Kennedy, J., dissenting) ("If the majority today has misinterpreted R.C. 2305.113 and R.C. 2305.15, . . . the general assembly has the prerogative to correct the court's mistake *by amending those statutes* to preclude the tolling of the medical-claim statute of repose while the defendant is absconded." (Emphasis added.)); *see also generally State v. Bodyke*, 2010-Ohio-2424, ¶ 55 ("We have held for over a century that 'the legislature cannot annul, reverse, or modify a judgment of a court already rendered.'"); *State ex rel. Johnson v. Ohio State Senate*, 2022-Ohio-1912, ¶ 7, 10 (stating that "the General Assembly has the power to enact, amend, and repeal statutes," while "'"[i]t is emphatically the province and duty of the judicial department to say what the law

is.""""); *State ex rel. Jones v. Ohio State House of Representatives*, 2022-Ohio-1909, ¶ 7, 10 (same).

Second, in amending R.C. 2305.15, the General Assembly did not express a clear intent for the amendment of R.C. 2305.15 to apply retroactively. *See Burge v. Bethesda Hosp., Inc.*, 2025-Ohio-4827, ¶ 12, fn. 1 (1st Dist.), citing *Pulley v. Voytko*, 2025-Ohio-1587, ¶ 18 (5th Dist.) (stating that R.C. 2305.15 only applies prospectively); *see also generally, e.g., Bill Swad Chevrolet, Inc. v. Dunson*, 2019-Ohio-680, ¶ 10 (10th Dist.), quoting *Kiser v. Coleman*, 28 Ohio St.3d 259, 262 (1986) ("If 'there is no clear indication of retroactive application, then the statute may only apply to cases which arise subsequent to its enactment.'"). Therefore, we overrule the first assignment of error.

In the second assignment of error, Durrani and CAST argue that the trial court should have granted their motion for a new trial because the plaintiff's case was "improperly consolidated for trial and to the unfair prejudice of Dr. Durrani."

Even assuming that the actions were improperly joined for trial, we hold that any such error was harmless. *See* Civ.R. 61. Ultimately, the trial court instructed the jury to consider each case on its own merit, and the jury found in favor of Durrani and CAST on the plaintiff's claims for battery and returned different compensatory-damages awards in each joined action. Further, the jury verdicts were not unanimous. This shows that the jury was able to successfully parse through the evidence and reach independent conclusions as to each action joined. *See, e.g., Jones v. Durrani*, 2024-Ohio-1776, ¶ 26 (1st Dist.); *Ravenscraft v. Durrani*, 2025-Ohio-2900, ¶ 90 (1st Dist.). Thus, the record does not disclose any evidence of prejudice sufficient to warrant a new trial. Consequently, we overrule the second assignment of error as any error in the joining of trials was harmless.

In the third assignment of error, Durrani and CAST argue that the trial court erred by denying their for-cause challenges under R.C. 2313.17(B)(9) because jurors who infer liability based on the existence of multiple plaintiffs must be removed for cause.

"R.C. 2313.17 governs challenges of jurors for cause." *Garry v. Borger*, 2023-Ohio-905, ¶ 15 (1st Dist.). "As applicable here, R.C. 2313.17(B)(9) provides that a prospective juror may be excused for cause when that person 'discloses by the person's answers that the person cannot be a fair and impartial juror or will not follow the law as given to the person by the court.'" *Id.*, quoting R.C. 2313.17(B)(9). This provision, "'requires the court to make a subjective determination about a potential juror's fairness and impartiality and therefore requires the exercise of judicial discretion.'" *Id.*, quoting *Hall v. Banc One Mgt. Corp.*, 2007-Ohio-4640, ¶ 1. "'The determination of whether a juror is impartial or biased involves a judgment of credibility, which may not be apparent from the record on appeal.'" *Id.*, quoting *Hunt v. City of E. Cleveland*, 2019-Ohio-1115, ¶ 37 (8th Dist.). "'Therefore, a reviewing court will defer to the trial judge who see and hears the juror.'" *Id.*, citing *Hunt* at ¶ 37.

Durrani and CAST claim that seven potential jurors "expressed the opinion that Dr. Durrani was behind out the gate because 'where there's smoke, there's fire with three plaintiffs.'" It appears that this assertion arises based on the number of jurors who raised their hands in response to counsel's question to the potential jurors about their agreement with a smoke-and-fire comment that was made by one of the jurors. It should be noted that the record is inconsistent as to the number of jurors that actually raised their hands in response to counsel's question. The court indicated for the record in that moment that only "four or five" jurors raised their hands. Regardless, Durrani and CAST only raise specific challenges here regarding two jurors,

one of which sat on the jury and one of which the defense removed with a peremptory challenge.

Durrani and CAST claim that the potential jurors were "admitting that they were considering propensity evidence." They assert, "By considering propensity evidence those prospective jurors were not following the law. They were also expressing bias in favor of Plaintiffs before the trial even started." They argue that, under these circumstances, it was "entirely unreasonable for the trial court to deny" their for-cause challenges.

A close review of defense counsel's interactions with the potential jurors regarding the presence of three plaintiffs does not reveal that any juror actually said that they could not remain fair and impartial or that they would not follow the law. Rather, the specific question asked to the jury was, "Anybody else share that there's three, that means there's smoke, there *might* be fire?" (Emphasis added.) Inclusion of the word "might" is significant as a juror simply raising their hand to a potential does not show that any of them would not remain fair and impartial if instructed to do so. Defense counsel did not ask any follow-up questions or make any attempt to determine whether those jurors would remain fair and impartial, so the raising of a hand to a potential is all that is reflected in the record. Further, none of the interactions with the potential jurors prior to this question showed any resolute statement that the jurors could not remain fair and impartial and follow the law. More specifically, the interactions with the two specific jurors challenged by Durrani and CAST do not reveal any statement indicating they would not be fair and impartial or would not follow the law.

Consequently, we overrule the third assignment of error and defer to the trial court's assessments of the jurors' ability to be fair and impartial and follow the law. *See generally Miles v. Cleveland Clinic Health Sys.*, 2025-Ohio-5628, ¶ 37 (8th Dist.).

In the fourth assignment of error, Durrani and CAST assert that the trial court erred in denying their motions for a set-off in each case as the trial court's decisions were based on this court's precedent in *Eysoldt v. Proscan Imaging*, 2011-Ohio-6740 (1st Dist.), and *Adams v. Durrani*, 2022-Ohio-60 (1st Dist.).

This court recently overruled *Eysoldt* and *Adams* in *Fenner v. Durrani*, 2025-Ohio-4477, ¶ 108-128 (1st Dist.), for the reasons explained therein. Accordingly, we sustain this assignment of error and remand the cause for the trial court to consider whether a set-off is warranted based on this court's recent opinion in *Fenner*.

Based on the foregoing, we overrule the first, second, and third assignments of error and sustain the fourth assignment of error. The judgment of the trial court is affirmed in part and reversed in part, and the cause is remanded for the trial court to determine whether a set-off is warranted, and if so the amount of the set-off, based on this court's recent opinion in *Fenner*.

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 75% to Appellant and 25% to Appellee.

KINSLEY, P.J., and **BOCK, J.,** concur.

To the clerk:
Enter upon the journal of the court on 5/20/2026 per order of the court.

By: _____
Administrative Judge