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

THERESA MEADOWS, Administrator of the Estate of Connie Huser, Plaintiff-Appellee, vs. ABUBAKAR ATIQ DURRANI, M.D., and CENTER FOR ADVANCED SPINE TECHNOLOGIES, INC., Defendants-Appellants, and WEST CHESTER HOSPITAL, LLC, and UC HEALTH, Defendants.	:	APPEAL NO. C-250109 TRIAL NO. A-1706432

LYNN HALEY, and MARK HALEY, Plaintiffs-Appellees, vs. ABUBAKAR ATIQ DURRANI, M.D., and	:	APPEAL NO. C-250115 TRIAL NO. A-1706520 *JUDGMENT ENTRY*

CENTER FOR ADVANCED SPINE TECHNOLOGIES, INC., :

Defendants-Appellants, :

and :

WEST CHESTER HOSPITAL, LLC, :

and :

UC HEALTH, :

Defendants. :

This cause was heard upon the appeals, the record, the briefs, and arguments.

For the reasons set forth in the Opinion filed this date, the judgments of the trial court are affirmed in part, reversed in part, and vacated in part, and the cause is remanded.

Further, the court holds that there were reasonable grounds for these appeals, allows no penalty, and orders that costs be taxed 50% to Appellants and 50% to Appellees.

The court further orders that (1) a copy of this Judgment with a copy of the Opinion attached constitutes the mandate, and (2) the mandate be sent to the trial court for execution under App.R. 27.

To the clerk:

Enter upon the journal of the court on 8/26/2026.

Pursuant to App.R. 30, the clerk is directed to send all parties, or their counsel if represented, a copy of the court's judgment and note such action on the docket.

By: Jennifer Hunsley

Administrative Judge

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OHIO FIRST DISTRICT COURT OF APPEALS

CENTER FOR ADVANCED SPINE TECHNOLOGIES, INC.,

Defendants-Appellants,

and

WEST CHESTER HOSPITAL, LLC,

and

UC HEALTH,

Defendants.

Civil Appeals From: Hamilton County Court of Common Pleas

Judgments Appealed From Are: Affirmed in Part, Reversed in Part, Vacated in Part, and Cause Remanded

Date of Judgment Entry on Appeal: August 26, 2026

Statman Harris, LLC, *Alan J. Statman* and *Benjamin M. Maraan, II*, for Plaintiffs-Appellees,

Taft Stettinius & Hollister LLP, *Philip D. Williamson*, *Aaron M. Herzig*, *Russell S. Sayre*, and *Nathan R. Coyne*, for Defendants-Appellants Abubakar Atiq Durrani, M.D., and Center for Advanced Spine Technologies, Inc.

NESTOR, Judge.

{¶1} In these consolidated appeals, defendants-appellants Abubakar Atiq Durrani, M.D., and the Center for Advanced Spine Technologies, Inc., ("CAST") (collectively referred to as "Durrani Defendants") appeal the judgments of the Hamilton County Court of Common Pleas finding the Durrani Defendants liable to plaintiffs-appellees Theresa Meadows, as the administrator of the estate of Connie Huser ("Huser"), Lynn Haley ("Haley"), and Mark Haley.[1] The Durrani Defendants appealed the judgments, raising three assignments of error.

{¶2} The Durrani Defendants first argue the trial court should have granted their post-trial motions. Though we find it was an error to consolidate the trials and it was an error to allow Dr. Saini to testify beyond his expertise, we hold that these errors were harmless and do not require a new trial.

{¶3} Next, the Durrani Defendants argue that the trial court erred in denying their post-trial motion for setoff and that Haley's future medical damages award was against the manifest weight of the evidence. We find merit in the Durrani Defendants' argument regarding setoff and we reverse the trial court's judgment in part. We also find merit in their argument concerning Haley's future medical damages and we vacate her award.

{¶4} Finally, the Durrani Defendants argue the trial court erred in awarding prejudgment interest to the plaintiffs. We overrule this assignment and affirm the trial court's judgments in this respect.

I. Factual and Procedural History

{¶5} Plaintiffs-appellees sued the Durrani Defendants after Dr. Durrani

[1] We sua sponte consolidate these separate appeals into a single opinion and judgment.

performed spinal surgeries on them. Plaintiffs-appellees had their cases consolidated for trial with one other plaintiff, Jessica Hastings.

{¶6} Huser first saw Dr. Durrani when she was 69 years old. She never had back issues until she was attacked by a patient while working as a nurse. Prior to seeing Dr. Durrani, Huser tried a wide range of conservative care options. Nothing helped. Dr. Durrani recommended surgery during her first visit, and she later underwent a fusion and decompression surgery at L2-L3 and L5-S1.

{¶7} During Huser's surgery, Dr. Durrani placed a screw in a compromised pedicle. Dr. Bloomfield, an expert witness for the plaintiffs, testified that Huser's pedicle appeared abnormal and could be cancerous. Dr. Durrani did not take follow-up steps to see if it was cancerous. Dr. Bloomfield testified that drilling into the pedicle can "push cancer cells into the soft tissues outside of [the pedicle]." Huser passed away from cancer two years after her surgery.

{¶8} The trial court gave a limiting instruction concerning the cancer testimony. It said, "Dr. Bloomfield's testimony concerning the potential of cancer in Ms. Huser at the time of Dr. Durrani's treatment must not be considered as evidence to support an allegation or inference that Ms. Huser's later cancer diagnosis had any causal relationship to Dr. Durrani's actions."

{¶9} Dr. Saini, another plaintiffs' expert, also mentioned Huser's cancer in his testimony. When looking at Huser's L3 pedicle, Dr. Saini opined it might be cancerous. Defense counsel did not object.

{¶10} Later in his testimony, Dr. Saini stated that two radiologists had said there was a tumor on the L3 pedicle, but Dr. Durrani noted it was a fracture. Dr. Saini stated it was not a fracture, but even if it was a fracture, Dr. Durrani should not have placed a screw in that pedicle. Placing hardware in a fractured bone "can make

something even more unstable." Defense counsel objected here and when Dr. Saini discussed the purposes behind diagnostic imaging.

{¶11} Haley first saw Dr. Durrani when she was 48 years old. She had a long history of back pain that forced her to retire in her early 40s. She received a fusion and decompression surgery at L2-L3, L4-L5, and L5-S1. Before her surgery, the plan was to only operate on L2-L3 and L5-S1, but Dr. Durrani also operated on L4-L5. She learned during trial that she had the L4-5 area operated on. The plaintiffs' experts suggested that Dr. Durrani accidentally operated on L4-5 and realized his mistake after the fact. There is a consent form that includes operation at L4-5 with a signature of her husband's name, but her husband denied signing it. Additionally, Dr. Durrani misplaced a screw at L2-3 that abutted a nerve. Haley also learned that fact during trial. The misplaced screw required her to undergo a second surgery to augment the first one. However, Dr. Durrani did not move the screw in the second surgery.

{¶12} Haley's husband, Mark, also testified. He testified to the consent form and said he never signed it and that it was not his signature. Mark also testified about Dr. Durrani's reasons for Haley's second surgery. Mark testified that Dr. Durrani said "that the screw that was placed was not strong enough and he was going to put a rod in its place." Dr. Durrani never explained to the Haleys that it was a revision surgery for the first procedure.

{¶13} Dr. Wilkey, an expert witness for the plaintiffs, testified that there is a high likelihood that Haley will develop adjacent segment disease and require additional surgery. He did not provide any information on the cost of future treatment.

{¶14} Jessica Hastings is the last plaintiff. She is not a party to this appeal. Hastings first saw Dr. Durrani when she was 13 years old for potential scoliosis. Dr.

Durrani first prescribed conservative care. She saw him for the second time when she was 16 and then she underwent decompression surgery at the L5-S1 level.

{¶15} Her mother, Laura Batsche, signed an initial consent form 11 days before surgery. On the day of surgery, remarkably, Batsche was also undergoing a different surgical procedure at the same hospital. Batsche did not sign the second consent form for her daughter until after Batsche had received anesthesia. The plaintiffs' experts testified this was highly inappropriate.

{¶16} Hastings testified that now, as an adult, she must be especially careful to strengthen her core for the sake of her back. She testified that she is scared to have children because of the impact pregnancy could have on her back.

{¶17} Dr. Bloomfield, Dr. Saini, and Dr. Wilkey testified on behalf of the plaintiffs. The defendants presented testimony from Dr. Purcell and Dr. Kaloostian in support of their case.

{¶18} In closing, plaintiffs' counsel made a case for Haley's future medical damages. He said, "So now you've had testimony about the future costs of the medical and the medical bills themselves were $286,347 [for Haley's surgeries]." He added, after insurance the cost was $164,000, but included the higher number to show "the extent of the medical treatment that was rendered in this case."

{¶19} At the end of the trial, the jury found the Durrani Defendants liable to each plaintiff. The jury awarded each plaintiff compensatory and punitive damages. Only Haley received future medical damages. The jury awarded her $121,441.56 in future medical damages. Plaintiffs filed a motion for prejudgment interest, which the court granted. Defendants filed motions for judgment notwithstanding the verdict, a new trial, to cap Haley's damages, to vacate Haley's future medical award, and for setoff damages. The trial court denied all motions except the damages cap on Haley's

award. The Durrani Defendants timely appealed, bringing three assignments of error.

II. Analysis

{¶20} In their first assignment of error, the Durrani Defendants argue the trial court should have granted their post-trial motions because consolidation was improper, the plaintiffs' experts suggested Dr. Durrani spread Huser's cancer, Dr. Saini testified beyond his expertise, and the cumulative testimony for the plaintiffs was improper. In their second assignment, the Durrani Defendants argue the trial court should have granted their motion for judgment notwithstanding the verdict for errors with the damage awards. Lastly, the Durrani Defendants argue the trial court erred in awarding prejudgment interest.

A. First Assignment of Error

{¶21} The Durrani Defendants first argue that the trial court erred in denying their post-trial motions. They raise four separate issues and then argue that the alleged errors were not harmless. We take each issue in turn.

{¶22} We review a judgment notwithstanding the verdict de novo and construe the evidence in the light most favorable to the nonmoving party. *Hounchell v. Durrani*, 2023-Ohio-2501, ¶ 30 (1st Dist.). We review a motion for a new trial for an abuse of discretion. *Id.* at ¶ 31.

1. Consolidation

{¶23} First, the Durrani Defendants argue that the cases should not have been consolidated. Civ.R. 42(A)(1) governs consolidation and allows a trial court to join for hearing or trial any matters that "involve a common question of law or fact." This court reviews a trial court's decision to consolidate actions under Civ.R. 42 for an abuse of discretion. *Jones v. Durrani*, 2024-Ohio-1776, ¶ 20 (1st Dist.).

{¶24} Civ.R. 42 "requires two steps." *Wheeler v. Durrani*, 2026-Ohio-2475, ¶

75 (1st Dist.). "First, a court must identify at least one common question—if no such question exists, the rule simply does not apply." *Id.* "Second, the court must make a determination that joinder is warranted." *Id.*, citing *Wilson v. Durrani*, 2026-Ohio-2279, ¶ 51 (1st Dist.).

{¶25} This court laid out in both *Wheeler* and *Wilson* "that a common question of law or fact is one that can be answered uniformly in each action." *Wheeler* at ¶ 86, citing *Wilson* at ¶ 59, 68. "Under this reasoning, a common question of law or fact would not be present merely because two actions brought by different plaintiffs involved the same claims against the same defendants or because two actions involved plaintiffs who had received a similar diagnosis or had surgery on the same or a similar area of the spine." *Id.* "These are *common facts* between two cases, but they do not present a *common question* of fact or law to be answered." (Emphasis in the original.) *Id.*

{¶26} At the trial court, "when determining whether joinder is appropriate under Civ.R. 42(A)(1), a court must first determine whether the cases share a common question of law or fact, i.e., a question that may be answered uniformly without resorting to separate factual proof." *Id.* at ¶ 87, citing *Wilson* at ¶ 51. Then, "the trial court might look at whether the joined actions will involve overlapping witnesses, the same core evidence, or facts arising out of the same interconnected events, and then weigh such efficiencies against the risks of prejudice or administrative complications." *Id.*

{¶27} When determining if joinder was appropriate before Huser's, the Haleys', and Hastings's trial, the court stated its reasoning. The court found that it would consolidate the trials because the court was aware that all the expert witnesses were the same and it was in the interest of judicial economy to try the cases together.

The court went straight to the second step of the analysis without first determining if there was a common question of law or fact. The trial court did not identify what the common question of law or fact was, nor did Huser or Haley on appeal. Upon review of the record, this court has not found a common question either. *See Weisman v. Durrani*, 2026-Ohio-2639, ¶ 83 (1st Dist.) ("Each plaintiff's claims were based on the underlying theory that Durrani exaggerated the findings on their respective medical images to induce them to undergo surgery. But to resolve the claims brought in support of this theory, the jury was not confronted with any questions that were capable of resolution without resorting to separate factual proof.").

{¶28} "Further, even if a common question of law or fact were present, the [three] actions [here] simply lacked 'sufficient commonality of issues and parties to warrant joining the cases.'" *Wheeler*, 2026-Ohio-2475, at ¶ 89 (1st Dist.), citing *Jones*, 2024-Ohio-1776, at ¶ 21 (1st Dist.). Huser's, the Haleys', and Hastings's claims did not share a common question of law or fact. Huser's case focused on Dr. Durrani's choice to screw into a compromised back pedicle during her singular surgery. Haley's case focused on issues of consent and mistakes during surgery, which included evidence that Dr. Durrani performed surgery on the wrong level of her back, misplaced a screw which required a second surgery, and forged a consent form from Mark Haley. Hastings's claims also involved consent. Since Hastings was a minor during her surgery, a parent needed to consent to her surgery. Dr. Durrani did not obtain consent for Hastings's surgery until after Hastings's mother was under anesthesia for her own surgery. The fact issues regarding consent differ dramatically. While some aspects of each case may have been similar, there simply was no common issue of fact or law that applied to each case. The plaintiffs did not allege similar conduct. Their cases relied on separate factual proof.

{¶29} "A trial court's erroneous joinder will only serve as grounds for a new trial where the error was not harmless and where the party opposing joinder establishes prejudice." *Id.* at ¶ 92. We address whether this error was harmless below.

2. Testimony Regarding Huser's Cancer

{¶30} The Durrani Defendants argue on appeal that testimony relating to Huser's cancer was more prejudicial than probative under Evid.R. 403(A). The Durrani Defendants suggest that this testimony led the jury to believe "Dr. Durrani's operation could have spread Ms. Huser's cancer."

{¶31} Evid.R. 403(A) states, "Although relevant, evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues, or of misleading the jury." "'Evid.R. 403 seeks to eliminate the potential for prejudice of certain evidence by prohibiting its use in certain circumstances.'" *Setters v. Durrani*, 2020-Ohio-6859, ¶ 14 (1st Dist.), quoting *Oberlin v. Akron Gen. Med. Ctr.*, 2001-Ohio-248, ¶ 12.

{¶32} "'The trial court has broad discretion in determining whether evidence should be excluded under Evid.R. 403(A).'" *Id.*, quoting *City of Cincinnati v. Triton Servs.*, 2019-Ohio-3108, ¶ 45 (1st Dist.). We will not reverse the trial court's ruling "unless the trial court abused its discretion and a party has been materially prejudiced." *Id.*, citing *Davis v. Killing*, 2007-Ohio-2303, ¶ 11 (11th Dist.). First, we determine if the testimony was relevant. *Id.* at ¶ 15.

a. Dr. Bloomfield's Cancer Testimony

{¶33} On the first day of trial, Dr. Bloomfield discussed Dr. Durrani's decision to screw into Huser's L3 pedicle. The Durrani Defendants objected when plaintiffs' counsel asked Dr. Bloomfield if Dr. Durrani's decision to screw into Huser's pedicle without first following up on the abnormality was dangerous. The trial court overruled

the Durrani Defendants' objection and Dr. Bloomfield said, "The drill has to go through the pedicle [and] then has to be removed and so the head of the drill could push tissue that's abnormal, that could be cancerous into the vertebral body." He also said, "When the drill is removed, it can pull that back up on the line of the drill and push cancer cells into the soft tissues [and] [o]nce the drill is finished, then the pedicle screw is then screwed into place through the opening further potentially causing more spread to the potential cancer cells."

{¶34} This testimony was relevant. It concerned Dr. Durrani's treatment of Huser, which Huser claimed was negligent. Whether or not Dr. Durrani followed up on the abnormality in the L3 pedicle was "a fact of consequence to the determination of this action." *Bryant v. GMC*, 2015-Ohio-4911, ¶ 60 (3d Dist.). This testimony from Dr. Bloomfield explained *why* Dr. Durrani should have followed up with Huser. It is "therefore relevant in tending to establish this fact which was essential to [Huser] proving her claim." *Id.*

{¶35} Next in our inquiry is whether this testimony was unfairly prejudicial. *Oberlin*, 2001-Ohio-248, at ¶ 19. Unfair prejudice occurs when the evidence "might result in an improper basis for a jury decision." *Id.*, quoting *Weissenberger's Ohio Evidence*, § 403.3, at 85-87 (2000). "If unfair prejudice simply meant prejudice, anything adverse to a litigant's case would be excludable under Rule 403." *Id.*, quoting *Weissenberger's Ohio Evidence* at § 403.3.

{¶36} On day two of the trial, the court spoke with counsel before the jurors were brought in. The court offered a limiting instruction, but the defendants did not accept the instruction until day three of trial. Though the Durrani Defendants take issue with the fact that the trial court did not give the limiting instruction immediately, we presume that instruction was effective. *Potts v. Durrani*, 2023-Ohio-4195, ¶ 31 (1st

Dist.); *see Hippely v. Lincoln Elec. Holdings, Inc.*, 2011-Ohio-5274, ¶ 18 (8th Dist.).

{¶37} Additionally, the jury interrogatories and the damages awards do not reflect that the cancer testimony was unfairly prejudicial to the Durrani Defendants. The jury interrogatories show that the jury found Dr. Durrani negligent for failing to follow up on the L3 pedicle. The jury did not appear to conflate the cancer diagnosis with Dr. Durrani's care. Additionally, the jury awarded Huser less than a fifth of what the other plaintiffs received. Arguably that number would be much higher if the jury believed Dr. Durrani spread Huser's cancer, as the Durrani Defendants suggest on appeal. The Durrani Defendants cannot demonstrate "that, but for this comment, the jury would not have reached the same result." *Potts* at ¶ 31.

b. Dr. Saini's Cancer Testimony

{¶38} Defense counsel below objected to two portions of Dr. Saini's testimony that also concerned cancer.

{¶39} First, Dr. Saini stated that two radiologists had said there was a tumor on Huser's L3 pedicle, but Dr. Durrani noted it was a fracture. Dr. Saini stated it was not a fracture, but even if it was a fracture, Dr. Durrani should not have placed a screw in that pedicle. Placing hardware in a fractured bone "can make something even more unstable." This statement is relevant because it helped Huser prove her negligence claim and it is not unfairly prejudicial because it did not encourage the jury to believe Dr. Durrani caused Huser's cancer.

{¶40} Second, plaintiffs' counsel asked Dr. Saini what the purpose of imaging is. Dr. Saini responded, "You want to find out what exactly is causing the problem. Is it cancer? Is it stenosis? Is it disc herniation? What is causing it? That's the reason why you order these $2,000 exams." This statement was relevant because it helped the jurors understand an issue in the case and it was not unfairly prejudicial because

it did not encourage the jury to believe Dr. Durrani caused Huser's cancer.

{¶41} The Durrani Defendants take issue with two more points in Dr. Saini's testimony, but defense counsel did not object. By failing to object, they have waived all but plain error. *See Scott v. Durrani*, 2026-Ohio-2433, ¶ 74 (1st Dist.). They did not raise a plain error argument in their brief, and we decline to sua sponte fashion a plain error argument on the Durrani Defendants' behalf and then address it.

{¶42} Both Dr. Saini and Dr. Bloomfield discuss how it was negligent for Dr. Durrani to screw into the L3 pedicle without following up on the abnormality. Neither discussed Huser's subsequent cancer diagnosis specifically. We cannot conclude that the testimony about cancer was unfairly prejudicial to the Durrani Defendants.

3. Dr. Saini's Expert Testimony

{¶43} The Durrani Defendants next argue that Dr. Saini testified beyond his area of expertise. "Expert testimony is governed by Evid.R. 702. A witness may testify as an expert when he is 'qualified as an expert by specialized knowledge, skill, experience, training, or education regarding the subject matter of the testimony.'" *Ravenscraft v. Durrani*, 2025-Ohio-2900, ¶ 139 (1st Dist.), quoting Evid.R. 702(B). This court has reiterated that a testifying expert does not have to practice in the exact same specialty as the defending physician. *Id.* What is relevant is the scope of the witness's knowledge rather than the witness's qualifications. *Id.* "So long as the expert witness demonstrates knowledge of the standards of the specialty, and that knowledge enables the witness to provide expert testimony involving whether the defendant's conduct conformed with that specialty's particular standards, the witness is competent to testify as an expert." *Id.*, citing *Alexander v. Mt. Carmel Med. Ctr.*, 56 Ohio St.2d 155, 160 (1978).

{¶44} We have held that it is proper for Dr. Saini to opine on a surgeon's

standard of care in reviewing diagnostic images and the decision to order surgery. *Id.* at ¶ 140. It is also appropriate for Dr. Saini to discuss informed consent. *Id.* In *Ravenscraft*, this court held it was appropriate for Dr. Saini to discuss specific surgeries, recovery time, and Dr. Durrani's technique during surgery. *Id.* at ¶ 143. This was permissible because his testimony concerned interpretation of the plaintiffs' "imaging, which [fell] within his area of expertise as a neuroradiologist." *Id.*

{¶45} In this case, the Durrani Defendants claim Dr. Saini "opined to the purposes of a spinal fusion and how surgeons perform a specific type of spinal fusion." Dr. Saini testified how a neuroradiologist and a neurosurgeon work together to ensure that a type of surgery is appropriate. He testified, "Well, I have to understand what is happening to this patient to help the surgeon inside the operating room looking at x-rays, is this - when you are doing an AxiaLIF, is this orthopedic hardware going in the right place? Is it doing the right function?" This testimony is permissible under *Ravenscraft* because he is discussing his responsibilities as a neuroradiologist and a specific surgery. *Id.*; *see Wheeler*, 2026-Ohio-2475, at ¶ 100 (1st Dist.).

{¶46} The remaining challenges are meritorious. Dr. Saini impermissibly criticized Dr. Durrani's choice to perform spinal fusion. Dr. Saini also explained what the long-term consequences of spinal fusion are. The Durrani Defendants also argue it was impermissible for Dr. Saini to suggest that Dr. Durrani caused Haley to develop arthritis. Plaintiffs' counsel asked, "If you operate on those or cut on those or stick screws through those joints, can you disrupt the synovial fluid that cushions those joints?" Dr. Saini answered that question affirmatively. Plaintiffs' counsel then asked, "And can that cause arthritis?" Dr. Saini also answered in the affirmative. This line of questioning was impermissible and exceeded the scope of Dr. Saini's expertise as a radiologist. *See Wheeler* at ¶ 104-105.

{¶47} Dr. Saini's testimony in part expanded beyond what is permissible for a neuroradiologist. "We accordingly find that the trial court abused its discretion in allowing Dr. Saini to offer testimony outside the bounds of his expertise as a radiologist." *Id.* at ¶ 106. We address whether this error was harmless below.

4. Cumulative Expert Testimony

{¶48} The Durrani Defendants argue Dr. Bloomfield and Dr. Wilkey gave duplicative testimony that was unnecessary. The Durrani Defendants did not challenge this below but argue "trial courts generally have discretion over whether to allow expert testimony [so] Dr. Durrani calculated that an earlier objection may have been fruitless." Regardless, the Durrani Defendants did not raise this issue below, so it is waived on appeal. *See Crutcher v. Oncology/Hematology Care, Inc.*, 2022-Ohio-4105, ¶ 23 (1st Dist.); *see also HSBC Bank USA, Natl. Assn. v. Banks*, 2022-Ohio-3044, ¶ 22 (8th Dist.).

{¶49} The Durrani Defendants did object below to Dr. Saini's testimony specifically regarding the standard of care and argue his testimony was cumulative. Evid.R. 403(B) states, "Although relevant, evidence may be excluded if its probative value is substantially outweighed by considerations of undue delay, or needless presentation of cumulative evidence." "Cumulative evidence is additional evidence of the same kind to the same point." *R.T. v. Knobeloch*, 2018-Ohio-1596, ¶ 69 (10th Dist.), quoting *Kroger v. Ryan*, 83 Ohio St. 299 (1911), paragraph one of the syllabus.

{¶50} Dr. Saini's testimony to the standard of care was cumulative; two doctors had already discussed the standard of care. "But the standard-of-care testimony related directly to the [plaintiffs'] theory of medical malpractice." *Werden v. Children's Hosp. Med. Ctr.*, 2006-Ohio-4600, ¶ 90. "We conclude that, despite its cumulative nature, the testimony's probative value outweighed any potential harm."

Id.

{¶51} The trial court did not err in allowing the cumulative testimony.

5. Cumulative Error

{¶52} We found error in part of Dr. Saini's expert testimony and in the joinder of the trials. The Durrani Defendants argue that the cumulative effect of these errors warrants a new trial.

{¶53} "'An improper evidentiary ruling constitutes reversible error only when the error affects the substantial rights of the adverse party or the ruling is inconsistent with substantial justice.'" *Weisman*, 2026-Ohio-2639, at ¶ 128 (1st Dist.), quoting *Beard v. Meridia Huron Hosp.*, 2005-Ohio-4787, ¶ 35. "To determine whether an error affected a party's substantial rights, we must weigh the prejudicial effect of the error and ask whether the jury probably would have reached the same result had the error not occurred." *Id.*, citing *Bender v. Durrani*, 2024-Ohio-1258, ¶ 93 (1st Dist.).

{¶54} Here, the jury would have reached the same outcome regardless of these errors. Both errors were harmless. The jury interrogatories show that the jurors kept the cases separate and they did not rely on the other case in their decision. In finding the Durrani Defendants liable to Huser, the jury listed four reasons. In finding the Durrani Defendants liable to Haley, the jury listed five reasons. None of the reasons overlapped or related to the errors committed by the trial court. The jurors differentiated between the unique facts for each plaintiff. Additionally, the jurors would have reached the same outcome even if the trial court did not err in allowing parts of Dr. Saini's expert testimony. The other expert witnesses made the same critique of Dr. Durrani's choice to perform surgery. There is no mention of arthritis on the jury interrogatory for Haley, and the jury relied on many other reasons in finding the Durrani Defendants liable.

{¶55} The jury would have reached the same results had these errors not occurred. Accordingly, we overrule appellant's first assignment of error.

B. Second Assignment of Error

{¶56} In their second assignment of error, the Durrani Defendants argue the trial court should have entered a judgment notwithstanding the verdict in their favor based on both setoff damages and Haley's future medical damages.

1. Setoff

{¶57} In accordance with *Fenner*, the trial court's judgment was in error regarding setoff. We sustain this issue and remand the cause for the trial court to determine the amount of setoff to which the Durrani Defendants are entitled based on other tortfeasors' settlements. *Fenner v. Durrani*, 2025-Ohio-4477, ¶ 128 (1st Dist.).

2. Future Medical Damages

{¶58} The jury awarded Haley $129,241.56 in future medical expenses. "'Future damages are limited to losses which the plaintiff is reasonably certain to incur from the injuries.'" *Potts*, 2023-Ohio-4195, at ¶ 58 (1st Dist.), quoting *Setters*, 2020-Ohio-6859, at ¶ 40 (1st Dist.). "A plaintiff's claim for future medical expenses must be supported by evidence that reasonably establishes the amount to be incurred in the future." *Id.*, quoting *Setters* at ¶ 40. "[T]he jury cannot be allowed to speculate or guess in making allowance for future medical expenses . . . there must be some data furnished to the jury upon which to predicate an estimate." *Id.*, quoting *Waller v. Phipps*, 2001 Ohio App. LEXIS 4119, *10-11 (1st Dist. Sept. 14, 2001). An award "must be supported by expert testimony regarding the duration, frequency, kind of care, and costs that plaintiffs could expect in the future." *Puckett-Morrissette v. Durrani*, 2026-Ohio-1444, ¶ 31 (1st Dist.), citing *Waller* at *12-13.

{¶59} Here, Dr. Wilkey testified to the potential for Haley to need future

surgery. He said that Dr. Durrani "has tied up the lower two motion segments. So any motion that this patient now has is through this segment here and that segment there and the stress that those two levels are seeing are astronomically higher than what they were prior to this surgery and therefore you would expect, and studies do show, that there are – it's a higher incidence, in fact, 30 percent at ten years that these two levels will need to have something done surgically." Dr. Wilkey stated the cost would be the same as the first two surgeries, but he did not provide a specific number or say what the specific surgery would be. Nor did plaintiffs' counsel put on any evidence for medical costs Haley had already incurred. There was no cost estimate given as evidence to allow the jury to calculate its award. Additionally, Dr. Wilkey testified to the possibility of surgery, not probability. Haley has seen two doctors since her second surgery but did not want to try the remedies they offered. She has not been to the doctor since, nor has she offered receipts for her past visits.

{¶60} In *Potts*, Dr. Wilkey testified the plaintiff would need surgery with a specific estimate of how much it would cost. *Potts* at ¶ 61. That coupled with admitted past medical expenses "provided a reasonable basis for the jury to estimate future medical expenses." *Id.*

{¶61} In closing, plaintiff's counsel gave a number for future medical damages. He told the jurors that Haley's surgeries cost $286,347, but after insurance Haley paid $164,000. The jury awarded Haley $121,441.56 in future medical expenses. However, as the trial court reminded the jurors, closing statements are not evidence. *See State v. Whorton*, 1975 Ohio App. LEXIS 7508, *3 (1st Dist. Mar. 24, 1975) ("jury was properly instructed that the closing argument was not to be considered as evidence in arriving at its decision"). In Haley's case, plaintiffs' counsel did not present any evidence about the cost of future medical expenses. Accordingly,

we vacate the future medical damages award. *See Puckett-Morrissette*, 2026-Ohio-1444, ¶ 31 (1st Dist.), citing *Waller*, 2001 Ohio App. LEXIS 4119, at *14.

{¶62} We sustain appellants' second assignment of error in full and remand the cause to the trial court to determine the amount of setoff the Durrani Defendants are entitled to.

C. Third Assignment of Error

{¶63} In their last assignment of error, the Durrani Defendants argue the court erred in awarding prejudgment interest. R.C. 1343.03(C) requires the trial court to award prejudgment interest when the following have been met: "(1) the party seeking prejudgment interest must petition the court and the trial court (2) held a hearing on the motion, (3) found that the nonmoving party failed to make a good-faith effort to settle, and (4) found that the moving party made a good-faith effort to settle the case." *Boggs v. Durrani*, 2026-Ohio-210, ¶ 103 (1st Dist.), citing *Bender*, 2024-Ohio-1258, at ¶ 150 (1st Dist.).

{¶64} The Durrani Defendants take issue with the court's award of prejudgment interest to Huser and Haley. The trial court awarded Huser $83,539.95 and Haley $103,143.32. The first two factors of R.C. 1343.03(C) were met, and we review the last two for an abuse of discretion. *Id.* at ¶ 104.

{¶65} The facts of this case, as they concern this assignment of error, are identical to *Boggs*. Plaintiffs made the same settlement demands, and the Durrani Defendants made the same global settlement offer. *Id.* at ¶ 106-111. The parties discussed all of this at the hearing for prejudgment interest. In *Boggs*, we held that plaintiffs' offer of $1,000,000 each before trial and $500,000 each on the second day of trial was in good faith. *Id.* at ¶ 108. We also held that the global offer of $4 million the Durrani Defendants made for all plaintiffs was not in good faith. *Id.* at ¶ 112. In

Boggs, the award of prejudgment interest was appropriate.

{¶66} Following *Boggs*, we hold the same here. The plaintiffs' counsel made identical settlement offers, as did the Durrani Defendants. The trial court did not abuse its discretion in awarding prejudgment interest. We overrule the last assignment of error.

III. Conclusion

{¶67} After a careful review of the record and caselaw, we conclude that Huser's and Haley's cases were improperly joined. We also agree that Dr. Saini testified beyond his expertise. While these were errors, they were harmless. We overrule the Durrani Defendants' first assignment of error.

{¶68} The trial court did not err in awarding the plaintiffs' prejudgment interest. We overrule the third assignment of error.

{¶69} The trial court erred in denying the Durrani Defendants' motion for judgment notwithstanding the verdict for setoff and Haley's future medical damages. We sustain the second assignment of error. We vacate Haley's future medical damages award. We reverse the trial court's judgments as to setoff and remand the matter to the trial court to determine the amount of setoff in which the Durrani Defendants are entitled.

Judgment accordingly.

CROUSE, P.J., concurs.
MOORE, J., concurs separately.

MOORE, J., concurring separately.

{¶70} While acknowledging my dissent in *Wilson*, 2026-Ohio-2279, (1st Dist.), the majority did not adopt my reasoning. *Wilson* is now the law of this court and is therefore followed for purposes of determining the instant appeal, my

disagreement with that opinion notwithstanding. *See Wilson* at ¶ 95-125 (Moore, J., dissenting). As explained in that dissent, I do not agree with the majority's application of Civ.R. 23's meaning of commonality when interpreting joinder under Civ.R. 42. While I disagree with the majority's reliance on the lead opinion in *Wilson*, I concur with the majority's holding that any error in consolidation was harmless. I concur in all other aspects of the majority's opinion.