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

MARY ZURIECK, Plaintiff-Appellee, vs. ABUBAKAR ATIQ DURRANI, M.D., and CENTER FOR ADVANCED SPINE TECHNOLOGIES, INC., Defendants-Appellants, and JOURNEY LITE OF CINCINNATI, LLC, Defendant.	:	APPEAL NO. C-250170 TRIAL NO. A-1400581

SAMANTHA HAMILTON, Plaintiff-Appellee, vs. ABUBAKAR ATIQ DURRANI, M.D., and CENTER FOR ADVANCED SPINE TECHNOLOGIES, INC., Defendants-Appellants, and CINCINNATI CHILDREN'S HOSPITAL MEDICAL CENTER,	:	APPEAL NO. C-250173 TRIAL NO. A-1706393 *JUDGMENT ENTRY*

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 and reversed 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 8/28/2026.

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 Hensley

Administrative Judge

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WEST CHESTER HOSPITAL, LLC,

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and

:

UC HEALTH,

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Defendants.

:

Civil Appeals From: Hamilton County Court of Common Pleas

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

Date of Judgment Entry on Appeal: August 28, 2026

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

Taft Stettinius & Hollister LLP, *Philip D. Williamson, Aaron M. Herzig, Russell S. Sayre,* and *Annie M. McClellan*, for Defendants-Appellants.

MOORE, Judge.

{¶1} Defendants-appellants Dr. Abubakar Atiq Durrani and the Center for Advanced Spine Technologies, Inc., ("CAST") (collectively, "Durrani"), appeal the judgments of the Hamilton County Court of Common Pleas in favor of plaintiffs-appellees Mary Zurieck and Samantha Hamilton ("plaintiffs"). At the conclusion of the trial, the jury found in favor of plaintiffs on their claims for negligence, lack of informed consent, and fraudulent misrepresentation. The jury returned verdicts in Durrani's favor on the battery claims.[1]

{¶2} Durrani now raises five assignments of error. First, as to Hamilton only, Durrani alleges that the trial court should have granted their motion for judgment on the pleadings because the statute of repose barred Hamilton's claims. Second, Durrani argues that the trial court erred when it denied their combined motion for a judgment notwithstanding the verdict ("JNOV") or, in the alternative, a new trial, and asserts that the trial court committed several evidentiary errors. Durrani asserts that (1) the trial court erred when it joined plaintiffs' cases for trial; (2) the court improperly instructed the jury on Dr. Durrani's absence; and (3) these errors were not harmless. Third, Durrani argues that Dr. Saini's testimony was improper under Evid.R. 702 and this court's precedent in *Stephenson v. Durrani*, 2023-Ohio-2500, ¶ 71-73 (1st Dist.). Fourth, Durrani contends that they were entitled to a set-off based on plaintiffs' settlements with other tortfeasors. Fifth, Durrani argues that the court erred in awarding prejudgment interest to plaintiffs.

{¶3} We hold that only Durrani's argument regarding set-off is meritorious. We, therefore, sustain Durrani's fourth assignment of error and remand the cause to

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

the trial court to determine the amount of set-off that Durrani is entitled to. We overrule the remaining assignments of error and affirm the trial court's judgments in all other respects.

I. Facts and Procedure

A. The Complaints

{¶4} Zurieck filed her complaint on January 31, 2014, alleging negligence, battery, lack of informed consent, intentional infliction of emotional distress, fraud, and spoliation of evidence against Durrani.

{¶5} Hamilton initially filed her complaint in July 2014 in the Butler County Court of Common Pleas. Hamilton voluntarily dismissed this complaint in November 2015 and refiled it in the Hamilton County Court of Common Pleas as a part of a multi-plaintiff case on August 15, 2016. The court severed those cases and ordered each plaintiff to file an amended complaint, which Hamilton filed on December 7, 2017. Plaintiffs alleged the same claims in their respective complaints.

B. Durrani's Motion for Judgment on the Pleadings

{¶6} Durrani moved for judgment on the pleadings in Hamilton's case, arguing that the statute of repose barred Hamilton's claims. Durrani based their argument on the General Assembly's October 2024 amendment to R.C. 2305.15, the absent-defendant tolling statute. Durrani argued that Hamilton's claims were barred because she brought them more than four years after she reached the age of majority. Durrani asserted that the amendment expressly states that the absent-defendant tolling statute does not toll the medical-claim statute of repose, and because Hamilton did not timely file her claim, it was barred.

{¶7} Hamilton responded that R.C. 2305.15 tolled the statute of repose when Dr. Durrani absconded, and that the one-year savings statute in R.C. 2305.19 allowed

her claim to survive beyond the expiration of the statute of repose. The matter proceeded to trial.

C. The Trial

1. Plaintiffs' Testimony

{¶8} At trial, both plaintiffs asserted that Dr. Durrani failed to provide adequate informed consent, to perform proper examinations, and to offer conservative treatment alternatives before recommending surgical interventions.

a. Mary Zurieck's Testimony

{¶9} Zurieck had initially undergone surgery in 2007 by an orthopedic surgeon and in 2009 by a spine surgeon. Zurieck stated that, although she had low back pain, she sought treatment from both surgeons to address the pain in her left leg. Zurieck explained that the spine surgeon, to whom her orthopedic surgeon referred her, resolved her leg pain. When Zurieck's back pain returned, and she was unable to be treated by that surgeon again, she scheduled a visit with Dr. Durrani.

{¶10} Zurieck testified that her initial visit with Dr. Durrani lasted ten minutes, during which he told her that he could "fix" her with two surgeries. By Zurieck's second appointment with Dr. Durrani at CAST—the presurgical appointment—Zurieck complained of pain in her right knee and in her right groin. She was using a cane on her own volition due to concern that her knee would give out and cause her to fall while walking. Zurieck refuted documentation by Dr. Durrani stating that she had pain "shooting down [her] right and left leg," and reiterated that the pain was in her right knee rather than down her leg. She also denied telling Dr. Durrani that she felt numbness on her left side or that her pain limited her ability to do yardwork.

{¶11} Zurieck testified that, although she had undergone presurgical conservative treatment under the care of her previous surgeons, Dr. Durrani

recommended surgery during the initial ten-minute visit but presented no nonsurgical alternatives. Zurieck's consent for surgery showed that she was to undergo a laminectomy and an extension of spinal fusion from L1-L2, and she testified that she did not know that a laparoscopic procedure would also be done.

{¶12} Zurieck recalled feeling such "excruciating" back pain when she woke up from surgery that she could not gauge the level of pain in her groin and knee. She could tell after a few weeks that her back, groin, and knee pain were the same as before Dr. Durrani's surgery. Zurieck reported her concerns to Dr. Durrani, but she never went back for the second surgery due to CAST ceasing operations.

{¶13} After Dr. Durrani's surgery, Zurieck saw another orthopedic surgeon, who recommended that she see a spine surgeon. That spine surgeon, in turn, recommended that she return to the orthopedic surgeon. The orthopedic surgeon identified the source of Zurieck's hip pain and performed a total hip replacement. The hip surgery relieved her knee pain, but the groin pain persisted. The orthopedic surgeon then referred Zurieck to a general surgeon, who identified a herniated groin as the source of her groin pain, which was rectified after she underwent hernia surgery.

{¶14} Zurieck's back pain, however, had gotten worse. At the time of trial, she had been treating her pain with Tramadol as prescribed by her family doctor for "some number of years."

b. Regina and Samantha Hamilton's Testimony

{¶15} Hamilton's mother, Regina Hamilton, testified that Hamilton's pediatrician referred her to Cincinnati Children's Hospital Medical Center ("CCHMC"), where Dr. Charles Mehlman diagnosed her with S-shaped scoliosis with curves in both lumbar and thoracic spines. Hamilton was about 13 years old at that time. Dr. Durrani, who was then employed with CCHMC, performed surgical bracing

on Hamilton's spine. Regina testified that the procedure was successful.

{¶16} Regina was notified that Dr. Durrani was starting his own practice, CAST. During Hamilton's first visit with Dr. Durrani at CAST, Dr. Durrani told her that her upper curve had progressed significantly, and this would affect her heart and lungs without immediate surgery. Dr. Durrani recommended a fusion, which entailed inserting rods on both sides of her spine. She was 16 years old at that time.

{¶17} Regina recalled that the fusion took longer than expected, and Hamilton was taken to the ICU after the fusion to address breathing issues and to get her pain under control. Hamilton was discharged three or four days later, but she was still in "a lot of pain." One of the rods that Dr. Durrani placed could be felt and seen through Hamilton's skin at the top of her spine. The protruding rod kept Hamilton from continuing postsurgical physical therapy. Hamilton developed a severe rash covering her chest and back, and an oozing, green pus infection at her incision persisted for months. Regina testified she applied the silver nitrate that Dr. Durrani prescribed for the infection as directed.

{¶18} These complications required three more procedures to address Hamilton's infection. During the fourth surgery, Dr. Durrani removed the protruding rod. In the fifth surgery, Dr. Durrani replaced some screws and again addressed the pus oozing from the surgical site. Regina testified that Hamilton has had pain since the rods were inserted and continues to experience postsurgical problems.

{¶19} Hamilton testified that, before her first surgery at CAST, Dr. Durrani told her that her heart and lungs would be affected by her scoliosis if she did not have surgery, and that he assured her that the surgery would be "easy." She recalled having "terrible pain" and other postoperative symptoms. These complications caused issues with her later pregnancy and delivery, including a difficult epidural placement and an

emergency C-section. She added that her left arm goes numb while feeding her baby. Hamilton stated that she had seen several other doctors after Dr. Durrani's procedure but eventually stopped seeing additional providers.

{¶20} Hamilton testified that she had to change her career path from nursing to business management due to her ongoing back issues. She currently works as a training manager in vertical farming, where she can avoid roles with physical demands. She testified that she takes hydrocodone and over-the-counter medications as needed for pain. She explained that, since the surgeries, she (1) cannot lift laundry baskets or perform household chores, (2) avoids activities like canoeing, kayaking, and riding roller coasters, and (3) has difficulty caring for her six-month-old daughter, including bathing and playing on the floor with her. Her husband assists her with household tasks and childcare.

{¶21} Both plaintiffs offered expert testimony as to whether Dr. Durrani deviated from the standard of care in treating them.

2. The Absent-Defendant Instruction

{¶22} The trial court instructed the jury as to Dr. Durrani's absence from trial:

> The Defendant Dr. Durrani has not attended these proceedings in person. He is represented here by counsel. You shall not speculate on why he is not present or consider his absence for any purpose, except as instructed below. Dr. Durrani has voluntarily left the jurisdiction, removing himself from Plaintiffs' ability to subpoena him to trial. When a party such as Dr. Durrani has relevant evidence or testimony within his or her control and the party fail[s] to produce that relevant evidence or testimony, that failure gives rise to an inference that the evidence or testimony is unfavorable to that party.

D. The Jury's Verdict

{¶23} The jury found for both plaintiffs on their claims for negligence, lack of informed consent, and fraudulent misrepresentation. The jury found in favor of Durrani on the battery claims. The jury awarded damages as follows:

Plaintiff	Compensatory Damages	Past Medical Expenses	Past Pain and Suffering	Future Pain and Suffering	Past Loss of Enjoyment of Life	Future Loss of Enjoyment of Life	Punitive Damages and Attorney Fees
Hamilton	$1,601,500	$1,500	$400,000	$400,000	$400,000	$400,000	$337,500
Zurieck	$289,000	$1,000	$72,000	$72,000	$72,000	$72,000	$337,500

E. Posttrial Motions

1. Motion for a Judgment Notwithstanding the Verdict, a New Trial, and/or Remittitur

{¶24} Durrani moved for a judgment notwithstanding the verdict ("JNOV"), a new trial, and/or remittitur. Pertinent to this appeal, Durrani asserted the absent-defendant instruction gave rise to a negative inference, and that joinder was improper, and they requested a set-off against plaintiffs' settlements with other tortfeasors and remittitur to "mold" the noneconomic damages to the statutory limits.

{¶25} The trial court granted remittitur but otherwise denied Durrani's motions. The trial court applied the statutory-damage caps, reducing Hamilton's noneconomic damages award to $500,000, making the total compensatory award $501,500. The trial court reduced Zurieck's noneconomic damages award to $250,000, making the total compensatory award $251,000. As the jury found that both plaintiffs were entitled to attorney's fees, the parties stipulated that each plaintiff should receive $37,500.

2. Plaintiffs' Motions for Prejudgment Interest

{¶26} Plaintiffs moved for prejudgment interest. The conclusion of the hearing on plaintiffs' motions brought out the same facts as in other *Durrani* cases:

plaintiffs made a $500,000 settlement demand and counsel for Durrani informed the court Durrani offered $4,000,000 to all remaining Durrani plaintiffs, and they were not interested in making individual offers. The trial court made similar findings in this matter to those in other *Durrani* cases, noting that the global offer would leave plaintiffs with less in damages than was awarded by the jury. The court, finding that plaintiffs made good-faith settlement demands while Duranni failed to make good-faith efforts to settle the cases, granted plaintiffs' motions for prejudgment interest.

{¶27} This appeal followed.

II. Analysis

A. Durrani's Motion for Judgment on the Pleadings Was Properly Denied

{¶28} In their first assignment of error, Durrani argues that the trial court erred by denying their motion for judgment on the pleadings. Dismissal on a Civ.R. 12(C) motion for judgment on the pleadings is proper when a court construes as true the material allegations in the complaint, along with drawing all reasonable inferences in favor of the nonmoving party and finds beyond doubt that the plaintiff can prove no set of facts that would entitle the plaintiff to relief. *Georgantonis v. City of Reading*, 2020-Ohio-3961, ¶ 8 (1st Dist.); *Planned Parenthood S.W. Ohio Region v. Ohio Dept. of Health*, 2026-Ohio-639, ¶ 25-26 (1st Dist.). We review a trial court's ruling on a Civ.R. 12(C) motion for a judgment on the pleadings de novo. *Id.*

1. Statute of Repose

{¶29} R.C. 2305.113(C), Ohio's statute of repose for medical claims, provides, with specified exceptions, that "No action upon a medical . . . claim shall be commenced more than four years after the occurrence of the act or omission constituting the alleged basis of the medical . . . claim." *Wilson v. Durrani*, 2020-Ohio-

6827, ¶ 15. R.C. 2305.113(C) "exists to give medical providers certainty with respect to the time within which a claim can be brought and a time after which they may be free from the fear of litigation." *Id.* at ¶ 16, quoting *Ruther v. Kaiser*, 2012-Ohio-5686, ¶ 19. It is a "true statute of repose that applies to both vested and nonvested claims." *Id.*, quoting *Antoon v. Cleveland Clinic Found.*, 2016-Ohio-7432, ¶ 1. "Therefore, any medical-malpractice action must be filed within four years of the occurrence of the act or omission alleged to have caused a plaintiff's injury." *Id.* R.C. 2305.113(C) provides an exception for those who are minors at the time of the act or omission, giving them four years after they reach the age of majority to file their claim.[2]

{¶30} Durrani argues Hamilton commenced her action in August 2016, which was more than four years after her 18th birthday. Based on the Ohio Supreme Court's holding in *Wilson*, Durrani asserts that Hamilton's claims are barred under the terms of the statute of repose.

2. The Absent-Defendant Saving Provision Tolled Hamilton's Claims

{¶31} Hamilton argues that her claims are not barred by the statue of repose—R.C. 2305.113(C)—because they were tolled under the absent-defendant statute. This argument has merit. In *Elliot v. Durrani*, 2022-Ohio-4190, ¶ 24-25, the Ohio Supreme Court held that the absent-defendant saving provision under R.C. 2305.15(A) tolled the medical statute of repose. Thereafter, the 135th General Assembly enacted House Bill 179, which added R.C. 2305.15(A)(2)(b)[3] "to explicitly overrule the decision of the Ohio Supreme Court in the case of *Elliot v. Durrani*, 2022-Ohio-4190." 2023 Am. Sub.H.B. No. 179. R.C. 2305.15(A)(2)(b) explicitly provides that the section does not

[2] The other exceptions set forth in R.C. 2305.113(D) include exceptions for those of "unsound mind" and for persons who did not discover their injury within three years of the act or omission and filed their claim within the following year.

[3] Durrani erroneously cites the amendment as R.C. 2305.15(B), which pertains to the absence of a defendant due to imprisonment.

apply to R.C. 2305.113(C). However, because the General Assembly did not explicitly make the amendment retroactive, and Hamilton's 2016 complaint filed in Hamilton County Court of Common Pleas was filed prior to the amendment, that complaint was not barred.

{¶32} Hamilton's fifth and final surgery was performed on March 10, 2011, when she was 17 years old. The record shows that Hamilton reached the age of majority on September 28, 2011. Therefore, under the statute of repose, Hamilton had four years from September 28, 2011, or until September 29, 2015,[4] to file her claim. Accordingly, her August 2016 complaint was filed beyond the statute of repose. Pursuant to *Wilson*, the complaint that she filed in Hamilton County does not relate back to the date when she initially filed her Butler County claims for purposes of the statute of repose. *See Wilson*, 2020-Ohio-6827, at ¶ 25.

{¶33} We must next turn to the 2024 amendment to R.C. 2305.15—the absent-defendant tolling statute—to determine whether the amended version applies to Hamilton's claims.

{¶34} We disagree with Durrani's proposition that the amended R.C. 2305.15 was meant to be applied retroactively, and therefore, Hamilton's claims remain barred. First, under Section 1c, Article II, of the Ohio Constitution, no law or section of any law "passed by the general assembly shall go into effect until ninety days after it shall have been filed by the governor in the office of the secretary of state, except as herein provided." *See Pelletier v. Mercy Health Youngstown, LLC*, 2024-Ohio-3397, ¶ 12 (7th Dist.). The amended statute was enacted on July 24, 2024. 2023 Am.Sub.H.B. No. 179. Second, "[a] statute is presumed to be prospective in its operation unless expressly made retrospective." *See id.*; R.C. 1.48. There is no language in H.B. 179 that

[4] We take judicial notice that September 28, 2015, the actual four-year mark, fell on a Sunday.

expressly made its application retroactive. Accordingly, former R.C. 2305.15 saved Hamilton's claims from being barred by the statute of repose as her complaint was filed before the 2024 amendment was enacted. The first assignment of error is overruled.

B. Consolidation of Trials

{¶35} In their second assignment of error, Durrani challenges the trial court's joining of plaintiffs' trials, arguing that the court erred in joining these cases for trial. Based on our holding in *Wilson v. Durrani*, 2026-Ohio-2279, ¶ 51-52, 84 (1st Dist.), Durrani is correct.[5]

{¶36} In *Wilson*, the majority examined the language in Civ.R. 42(A). It concluded that the rule's reference to "common question of law or fact" requires that a party seeking to join cases must demonstrate that the cases present common questions capable of being resolved with a single, common answer. *Id.* at ¶ 58, 77. The majority explained that a common question of law concerns questions about the defendant's liability that are capable of uniform resolution across the consolidated cases. *Id.* at ¶ 57. This is distinct from common questions of fact, which concern overlapping material facts that are capable of uniform resolution at once. *Id.* at ¶ 68. It is not enough that the cases contain common allegations, nor is it enough that there are overlapping insignificant facts that do not bear on the disposition of the cases. *Id.* at ¶ 68. Questions that require unique and individualized proof are not common in nature. *Id.* at ¶ 76.

{¶37} Where the cases are not linked by common questions, then joinder is

[5] While acknowledging my dissent in *Wilson*, the majority obviously did not adopt my reasoning. *Wilson* is now the law of this court and therefore is followed for purposes of determining the instant appeal, my disagreement with that opinion notwithstanding. *See Wilson* at ¶ 95-125 (Moore, J., dissenting).

improper, and we must then assess whether the court's improper joinder constituted harmless error. *Id.* at ¶ 84. Pursuant to Civ.R. 61 and R.C. 2309.59, courts must disregard errors that do not affect a party's substantial rights. "To find that substantial justice has not been done, a court must find (1) errors and (2) that without those errors, the jury probably would not have arrived at the same verdict." *Hayward v. Summa Health Sys.*, 2014-Ohio-1913, ¶ 25. To determine the existence of prejudicial error, we are "bound by the disclosures of the record." *Id.*

{¶38} In this case, the court's consolidation was improper under the analysis adopted by the majority in *Wilson*. While the plaintiffs put forth common legal claims for negligence, lack of informed consent, fraud, and battery, these claims were reliant upon individualized facts and were incapable of uniform resolution. In *Wilson,* we considered the same claims and held that those were incapable of uniform resolution. *Wilson*, 2026-Ohio-2279, at ¶ 72 (1st Dist.). As to the negligence claims, whether Durrani was liable hinged on individualized reviews of each plaintiff's imaging to determine whether they required surgery, as well as each plaintiff's individualized injury history to determine whether Durrani breached the standard of care and whether plaintiffs sustained damages. Similarly, plaintiffs' lack of informed consent, battery, and fraud claims are not capable of uniform resolution and therefore should not have been consolidated. *Id.* at ¶ 73. Because "no one piece of evidence could answer" whether plaintiffs needed surgery, plaintiffs' claims should not have been consolidated. *Id.* at ¶ 76.

{¶39} In holding that the court erred in consolidating these cases, we next consider whether the court's decision constituted a harmless error. *Id.* at ¶ 84. Durrani asserts that they had no burden to show that they were prejudiced by consolidation because "plaintiffs never met their burden to justify consolidation in the first place."

Based on *Wilson*, we disagree. *See Wilson* at ¶ 86 ("As the appellant, Durrani bears the burden of demonstrating the improper joinder of the plaintiffs' cases for trial was not harmless . . . In analyzing harmless error, we accordingly confine our review to matters that Durrani has brought to our attention on appeal."). Unlike in *Wilson*, here, Durrani failed to point to any specific evidence in the record to demonstrate prejudice as the result of the improper joinder.

{¶40} Based on our independent review of the record, we cannot say that any error rose beyond the harmless threshold. The verdicts, jury interrogatories, and damage awards all support the conclusion that the jury was able to and did follow the court's instruction and treated each of these cases separately, reaching an independent resolution for each case. *See Boggs v. Durrani*, 2026-Ohio-210, ¶ 121 (1st Dist.) ("Where a thorough review of the record shows that the jury properly considered each case separately and on its own merit, as instructed, the record does not indicate prejudice from the joinder of trials under Civ.R. 42 that is inconsistent with substantial justice. *See, e.g., Courtney v. Durrani*, 2025-Ohio-2335, ¶ 58 (1st Dist.); *see also* Jones *v. Durrani*, 2024-Ohio-1776, ¶ 26 (1st Dist.)."); 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 plaintiffs' 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. Accordingly, we hold that no prejudice occurred in the trial court's joining of plaintiffs' cases for trial.

C. The Absent-Defendant Instruction

{¶41} Under their second assignment of error, Durrani also argues that the trial court improperly instructed the jury on Dr. Durrani's absence. A trial court's

decision to grant or deny a proposed jury instruction is reviewed for an abuse of discretion. *Niehaus v. Durrani*, 2023-Ohio-4818, ¶ 35 (1st Dist.). The absent-defendant instruction here mirrors the instruction submitted to the jury in *Boggs* at ¶ 87-88, *Clark v. Durrani*, 2025-Ohio-3096, ¶ 20 (1st Dist.), and *Ravenscraft v. Durrani*, 2025-Ohio-2900, ¶ 135-136 (1st Dist.). In those cases, this court held that the instruction, as a whole, did not prejudice Durrani because it was apparent that the inference was permissive, not required, and that it also "clearly set forth what evidence should be considered by the jury in rendering its decision." *Id.* at ¶ 38. We further held that a thorough review of the entire proceeding revealed that the jury was not misled. *Id.* at 39. As in the instant matter, we noted the jury found for Durrani on some claims. *Id.* That, combined with jury interrogatories showing the jury relied on the actual evidence in the record, demonstrated that the trial court's instruction did not affect the jury's verdict. *Id.* We likewise hold the same here and decline Durrani's invitation to overturn the established precedent of this court. The second assignment of error is overruled.

D. Dr. Saini's Testimony

{¶42} Both plaintiffs and Durrani presented expert medical testimony from multiple experts to support their positions. However, the only such testimony at issue on appeal is with respect to the testimony of plaintiffs' expert, Dr. Ranjiv Saini.

{¶43} 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." Evid.R. 702(B). In Ohio, a witness testifying in a medical-malpractice case need not practice in the same specialty as that of the defendant-physician; rather, it is the scope of the witness's knowledge and not the artificial classification by title that should

govern the threshold question of his qualifications. *Adams v. Durrani*, 2022-Ohio-60, ¶ 50 (1st Dist.), *appeal not accepted*, 2022-Ohio-1485, *overruled on other grounds by Fenner v. Durrani*, 2025-Ohio-4477 (1st Dist.). 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.*

{¶44} Dr. Saini is a teleradiologist, neuroradiologist, and board-certified diagnostic radiologist and neuroradiologist who is licensed in 29 states. He reads images for approximately 200 cases daily, has been practicing for 30 years, and has served as chief of radiology at six hospitals.

{¶45} Dr. Saini explained that, as a radiologist, he interprets images of the body, including X-rays, CT scans, MRIs, nuclear medicine scans, ultrasound, fluoroscopy, and pre- and post-surgical imaging. Dr. Saini testified that his interpretations guide surgeons on whether they performed a procedure correctly, whether they performed the procedure on the correct body part, or which procedure should have been done. He further explained the fluoroscopy process and how it helps to ensure that hardware is correctly placed.

{¶46} In their third assignment of error, Durrani claims that Dr. Saini's testimony was improper because his testimony went beyond his expertise. During trial, Durrani objected to Dr. Saini's testimony regarding a surgical note and notes from a physical. Durrani also objected when Dr. Saini began to explain what a microdiscectomy entailed. Both objections were overruled. We conclude that those objections were properly overruled because the testimony was within the scope of Dr. Saini's expertise. However, as discussed below, as to the portions of Dr. Saini's

testimony to which Durrani failed to object, we hold that admission of this testimony did not constitute plain error.

{¶47} In appeals of civil cases, the plain-error doctrine is not favored; it may be applied only in the extremely rare case involving exceptional circumstances where error, to which no objection was made at the trial court, seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself. *State ex rel. Suburban Driving School, L.L.C. v. Ohio Bur. of Workers' Comp.*, 2026-Ohio-597, ¶ 34. The doctrine implicates errors that are "obvious and prejudicial although neither objected to nor affirmatively waived which, if permitted, would have a material adverse [e]ffect on the character and public confidence in judicial proceedings." *Missionaries of the Sacred Heart, Inc. v. Ohio Dept. of Youth Servs.*, 2021-Ohio-1559, ¶ 18, fn. 3.

{¶48} Of the unobjected-to portions of Dr. Saini's testimony, only Dr. Saini's opinion of the placement of an anterior cage during Zurieck's procedure and that he would have thought that Dr. Durrani would have first addressed the loosening screws during Zurieck's surgery instead of the diseased disc at L1-L2 were questionable. As Durrani failed to object to these statements, we must determine whether the admission of those statements constituted plain error. They do not.

{¶49} Even if Dr. Saini's opinions went beyond his area of expertise, his testimony regarding Hamilton was echoed by another of plaintiffs' experts, Dr. Charles Mehlman, who also opined that Dr. Durrani's treatment of Hamilton deviated from the standard of care, and that he directly caused permanent injuries to both patients. Durrani raises no objection to the admission of Dr. Mehlman's opinion testimony. Therefore, even if the trial court erred in permitting Dr. Saini to testify on these issues, any such error was harmless because there was other testimony on these same issues

that the jury was able to rely on. Because the admission of Dr. Sani's testimony was not prejudicial, Durrani's third assignment of error is overruled.

E. Set-off

{¶50} In their fourth assignment of error, Durrani argues that they were entitled to a set-off. Our opinion in *Boggs,* 2026-Ohio-210, at ¶ 100-101 (1st Dist.), recognized that this court has held that Durrani is entitled to a set-off based on plaintiffs' settlements with other defendants. The same holds true here and the cause must be remanded to the trial court to determine the set-off amounts to which Durrani are entitled. The fourth assignment of error is sustained.

F. Prejudgment Interest

{¶51} In their fifth and final assignment of error, Durrani argues the court erred when it granted plaintiffs prejudgment interest. Durrani's argument that the plaintiffs' $500,000 settlement demands on the date of trial were not made in good faith has most recently been considered by this court in *Boggs*. The facts are the same as in *Boggs* and other *Durrani* cases in which we overruled Durrani's identical assignment of error. *Id*. at ¶ 102-112. Our holding in *Boggs* controls, and therefore, Durrani's fifth assignment of error is overruled.

G. Plaintiffs' Posttrial Motion to Dismiss the Fraud Claim

{¶52} Regarding plaintiffs' efforts to dismiss their fraud claims, the Ohio Supreme Court has reconsidered the issue in *Clark v. Durrani*, 2026-Ohio-846, and has denied the plaintiffs' motion. This court follows that holding.

III. Conclusion

{¶53} The judgments of the trial court are affirmed in part and reversed in part, and the cause is remanded.

Judgments affirmed in part, reversed in part, and cause remanded.

CROUSE, P.J., and **NESTOR, J.,** concur.