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

MELISSA BRAUCHER, Plaintiff-Appellee, and SCOTT BRAUCHER, Plaintiff, vs. ABUBAKAR ATIQ DURRANI, M.D., and CENTER FOR ADVANCED SPINE TECHNOLOGIES, INC., Defendants-Appellants, and WEST CHESTER HOSPITAL, LLC, UC HEALTH, and JOURNEY LITE OF CINCINNATI, Defendants.	:	APPEAL NO. C-250100 TRIAL NO. A-1506956

GWEN EARLS, Administrator of the Estate of Darrell Earls, Plaintiff-Appellee,	:	APPEAL NO. C-250357 TRIAL NO. A-1706431 *JUDGMENT ENTRY*

vs. :

ABUBAKAR ATIQ DURRANI, M.D., :

and :

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 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 9/4/2026.

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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MELISSA BRAUCHER, Plaintiff-Appellee, and SCOTT BRAUCHER, Plaintiff, vs. ABUBAKAR ATIQ DURRANI, M.D., and CENTER FOR ADVANCED SPINE TECHNOLOGIES, INC., Defendants-Appellants, and WEST CHESTER HOSPITAL, LLC, UC HEALTH, and JOURNEY LITE OF CINCINNATI, Defendants.	:	APPEAL NO. C-250100 TRIAL NO. A-1506956
GWENS EARLS, Administrator of the Estate of Darrell Earls, Plaintiff-Appellee, vs.	:	APPEAL NO. C-250357 TRIAL NO. A-1706431 *O P I N I O N*

OHIO FIRST DISTRICT COURT OF APPEALS

ABUBAKAR ATIQ DURRANI, M.D., :

and :

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, and Cause Remanded

Date of Judgment Entry on Appeal: September 4, 2026

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

Taft Stettinius & Hollister LLP, *Aaron M. Herzig, Philip D. Williamson, Russell S. Sayre*, and *Jared T. Snow*, 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 Melissa Braucher and Gwen Earls, Administrator of the Estate of Darrell Earls (collectively, "plaintiffs"). Following a one-week trial, the jury found in favor of plaintiffs on their claims of negligence, lack of informed consent, battery, and fraudulent misrepresentation. This court has consolidated the appeals for purposes of argument and opinion.[1]

{¶2} Durrani now raises three assignments of error. First, Durrani contends that the court erred when it denied Durrani's 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 also alleges that the court erred by consolidating plaintiffs' cases for trial. Second, Durrani argues that the court erred by denying their JNOV motion challenging the jury's damages awards, asserting that they were entitled to a setoff based on plaintiffs' settlements with other defendants. Third, Durrani argues that the trial court erred by awarding Braucher past medical damages absent independent evidence of the amount of her past medical expenses.

{¶3} For the reasons set forth below, we hold that Durrani's arguments concerning their JNOV motion as it relates to their entitlement to a setoff and to the joinder of the trials are meritorious. However, the record does not establish that the improper joinder prejudiced Durrani. Therefore, the judgments of the trial court are affirmed in part and reversed in part, and the cause is remanded for the limited

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

purpose of determining the proper amount of the setoff on plaintiffs' damages awards based on plaintiffs' settlements with other tortfeasors.

I. Factual and Procedural History

A. Plaintiffs File Their Actions

{¶4} Both plaintiffs initially brought their actions in Butler County, Ohio. They each voluntarily dismissed their actions and filed their claims in the Hamilton County Common Pleas Court against Dr. Durrani, CAST, West Chester Hospital, LLC, and UC Health. Braucher also named Journey Lite of Cincinnati in her complaint. Plaintiffs voluntarily dismissed their claims against all parties except for Durrani.

{¶5} Plaintiffs alleged negligence, battery, lack of informed consent, and fraud, regarding the surgeries that Dr. Durrani performed on them, which plaintiffs asserted were unnecessary. Plaintiffs also asserted that Dr. Durrani's use of the BMP-2/Infuse procedure was negligent and fraudulent.

B. Braucher Joins the Durrani Plaintiffs' Motion to Consolidate the Cases

{¶6} In November 2016, Braucher,[2] along with numerous other Durrani plaintiffs, moved to consolidate the cases on Judge Ruehlman's docket in the Hamilton County Court of Common Pleas. They argued that consolidation would provide judicial economy, reduce litigation costs, expedite trial proceedings, and foster consistency in the rulings.

{¶7} In December 2016, Braucher filed another motion to consolidate the trials and transfer them to Judge Ruehlman's docket. During the hearing on this motion, Braucher emphasized reasons why Judge Ruehlman should hear the

[2] The record is not clear as to whether Earls joined this motion, only that the trial court issued its seventh joint trial schedule, which consolidated Earls's and Braucher's cases.

consolidated cases, including consistent rulings, group trials, expedited trials, settlement efforts, case management, costs and the burden of costs, and the fact that the cases were consolidated in Butler County. Braucher added that other judges' dockets would not allow trials for two years while Judge Ruehlman had cleared his docket for 2017.

{¶8} Durrani opposed the motion, arguing that the plaintiffs' cases were each unique, having different issues, facts, and circumstances. Durrani further argued that the court had previously failed to explain its basis for consolidating the Durrani trials. During this hearing, Durrani also moved to limit the testimony of Earls's family members, evidence regarding past medical expenses and medical expenses not paid by insurance, Dr. Saini's opinion on the surgical standard of care, and the cumulative testimony of plaintiffs' experts, Drs. Wilkey, Bloomfield, Tayeb, and Saini.

C. The Trial

{¶9} On the first day of trial, counsel for plaintiffs informed the court that he had made a settlement demand of $500,000 on each plaintiff's behalf.

{¶10} Before conducting voir dire, the trial court ruled on Durrani's motion in limine and plaintiffs' motions to consolidate. Durrani had withdrawn their request to exclude evidence of past and other unpaid medical expenses and presented arguments on the remaining issues in their motion in limine. The trial court denied their remaining requests, except as they related to plaintiffs' experts, and cautioned plaintiffs' counsel to adhere to the Ohio Rules of Civil Procedure.

{¶11} As to plaintiffs' motion to consolidate the cases, the trial court asked the parties whether their witnesses were the same, to which each party answered in the affirmative. The court stated that, as judicial economy is not necessarily a basis to consolidate the cases, it is "certainly a consideration," and that the court had "taken

steps to ensure that the jurors are able to keep the cases in their separate compartments."

1. Plaintiffs' Testimony

a. Gwendolyn Earls

{¶12} Gwendolyn "Gwen" Joyce Earls testified as the sister and eventual caregiver of Darrell Earls. Gwen operates a developmental disabilities center in Idaho and is a trained intensive behavioral interventionist working with adults and children with disabilities. Gwen explained that she and Earls were close and that she visited him in Cincinnati two to three times a year. Gwen added that she and Earls discussed his health issues "very candidly."

{¶13} Gwen testified that, before seeing Dr. Durrani in 2012, Earls was active and functional. He worked as a pastor, rode motorcycles and motor scooters, hunted, attended concerts around the country, and engaged in family activities like horseshoes and swimming. He also lost 50 pounds in 2011 and had been exercising at the YMCA. When he saw Dr. Durrani, Earls was working at the church and helping to homeschool his daughter. When asked about the list of health problems that Earls had before seeing Dr. Durrani, Gwen testified that, before Dr. Durrani's procedures, Earls did not have the "long list of problems" that Durrani's counsel named in their opening statement; he only had diabetes and high blood pressure.

{¶14} Gwen testified that Earls's June 12, 2012 CAST intake form showed that Earls needed no assistance with daily activities and had only tried pain medication for his back problems. He had no prior chiropractic care, physical therapy, or injections. Gwen did not attend Earls's first surgery, but she saw him a couple of months afterward. She testified that she communicated with Earls "nearly every day" between Earls's first and second surgeries.

{¶15} Dr. Durrani performed the first surgery on Earls in July 2012, which included a lumbar laminectomy, foraminotomy, and decompression. Contrary to Dr. Durrani's notes stating Earls was "doing absolutely awesome" after the first surgery, Gwen testified that Earls was "absolutely miserable" when she visited him in late August 2012. She witnessed Earls make several calls to Dr. Durrani's office regarding the pain, but the staff accused Earls of seeking drugs. Gwen refuted Dr. Durrani's indication in the December 2012 postsurgical note again, stating that Earls was "doing absolutely awesome at this point," particularly because he needed a cane, which he had not needed before Dr. Durrani operated on him. The second surgery was performed in December 2012, which was a lumbar fusion.

{¶16} Gwen recalled next seeing Earls in May 2013. By then, he was also using a walker, which he had never needed before the surgeries. At age 46-47, he needed assistance walking downhill and was unable to participate in family activities. Gwen testified that Earls had not been feeling well, had not been sleeping well, and his pain had increased. Gwen testified that, by October 2013, Earls was "in a tremendous amount of pain" by the time he went to see another spine surgeon, who had ceased operations in mid-2013. His condition continued to deteriorate, and he required help with dressing, putting on socks, toileting, and all activities of daily living. During this period, Earls developed a serious infection requiring multiple hospitalizations.

{¶17} In 2015, Gwen arrived in Cincinnati to find that Earls was in the ICU and had just been resuscitated from becoming septic. Gwen stayed with Earls during his hospital stay, during which Earls was intubated, hallucinating, and in tremendous pain such that he was moved to different beds to manage his discomfort. After several weeks in the hospital, Earls was discharged to his own home and required a peripherally inserted central catheter, also known as a "PICC line," in a vein in his

upper arm to receive his medications. Gwen explained that Earls was still sick. He was pale for a few days after being discharged, had slurred speech, and struggled to get his pain under control. Gwen began to say that the infection was "flat out infection that was caused by" the surgery, though the court sustained objections to this testimony.

{¶18} Earls's condition progressively worsened. He transitioned from a cane to a walker to a standard wheelchair to a fully mechanical electric reclining wheelchair. He could no longer sleep in a bed and slept in a wheelchair in the living room. His wife called Gwen on Christmas Day in 2016 to inform her that she no longer wanted to help care for Earls. The wife permitted Earls to stay in the home until Gwen took him with her to Idaho in June 2017. Gwen became his primary caregiver at that point.

{¶19} As Earls's caregiver in Idaho, Gwen testified that she provided extensive daily care, including toileting, help with dressing and medications, meal preparation, bathing assistance, and transportation to medical appointments. She would leave work to assist him with his bathroom needs and had to bathe him by hand while he sat on the toilet, as he could not get into the tub due to mobility limitations. Gwen testified that she eventually placed Earls in a skilled-nursing facility when Earls developed another infection and his care needs exceeded her capabilities.

{¶20} In Idaho, Earls was treated by Dr. Toomey as his primary care physician and consulted neurosurgeon Dr. Little regarding his continued pain. Gwen explained that Dr. Little determined that the screws Dr. Durrani placed had come out because the hardware was not secured. However, Dr. Little refused to perform revision surgery, expressing concern about Earls's ongoing infections and determining that the risks outweighed the benefits.

{¶21} Gwen explained that, in Earls trying to "do the best he could," he engaged in online gaming, took online Bible courses, and communicated with people

from his congregation after the surgeries. Earls passed away on July 2, 2020, never having improved from his postsurgical condition. Gwen was appointed administrator of his estate. Gwen testified that Earls's medical bills and costs for his care were paid out of his estate. However, she provided no specific details about the amounts or types of medical expenses incurred.

b. Melissa Braucher

{¶22} Braucher was 57 years old at the time of trial. She explained that she had scoliosis as a teenager, which led to the placement of a Harrington rod at age 17 at Shriners Hospital in Lexington, Kentucky. After that surgery, she did well and returned to normal activities, including cheerleading and bowling. Braucher testified that she experienced no significant limitations from the rod.

{¶23} Braucher testified that she began experiencing lower back pain between 2007 and 2008, which gradually worsened. She initially managed the pain with hot baths, heating pads, and ice, as advised by her primary care physician, Dr. Shoba. When conservative measures failed, Dr. Shoba referred her to Dr. Khan, a pain-management specialist. Braucher saw Dr. Khan approximately every other month, primarily for medication management (Relafen, Neurontin, Ultram, Vicodin), and did not receive injections or physical therapy before seeing Dr. Durrani.

{¶24} Dr. Khan referred Braucher to Dr. Durrani once pain developed in her lower back and hips. Despite her pain, Braucher continued working full-time, performed household chores and yard work, and participated in a bowling league. She described her ability to enjoy life as "fair to good."

{¶25} Braucher testified that Dr. Durrani told her the Harrington rod was "antique" and the screws were coming loose, threatening paralysis if not fixed. The first surgery was an L5-S1 facet fusion using screws and bone graft, performed at West

Chester Hospital. She understood the surgery would reconnect the rod, not involve facet fusion.

{¶26} Braucher testified that Dr. Durrani did not show her imaging studies or explain findings in detail. Her visit lasted 15-20 minutes. On intake forms for Dr. Durrani, she described pain in her lower back and hip, as indicated on her intake form, but denied leg pain or radicular symptoms before surgery. Braucher testified that no discussion occurred regarding conservative treatment options, physical therapy, or injection alternatives. Braucher also stated that Dr. Durrani did not review her imaging with her, explain the details of the planned procedures, or discuss risks, benefits, or alternatives. Braucher testified that she agreed to surgery based on Dr. Durrani's assurance that he would "fix her like new."

{¶27} Braucher eventually underwent a second surgery by Dr. Durrani, which was initially planned as a decompression at both L4-L5 and L5-S1. Braucher testified that Dr. Durrani only performed the L4-L5 decompression while claiming to have done both levels in postoperative notes. Braucher did not recall being informed that the second surgery, a hemilaminectomy, would address only L4-L5 and not L5-S1, or any discussion of the use of the Baxano saw or any changes to the surgical plan.

{¶28} Braucher's condition did not improve following Dr. Durrani's surgeries. She testified that she was worse after the surgeries, with daily pain, and unable to perform previous activities (such as bowling, gardening, and housework). She had an ongoing need for pain management. She developed new symptoms, including bilateral leg pain that began approximately six months after the first surgery, which she had never experienced before. Braucher's postoperative records showed continued significant pain requiring ongoing pain management with Percocet. Braucher testified that she incurred medical bills for the surgeries and for ongoing care with other

doctors, but she was not specific about dollar amounts.

{¶29} Braucher recalled being in a 2013 motor vehicle accident that caused neck and upper back pain. She testified this did not significantly affect her lower back condition. She continues to be treated by pain management physician Dr. Atluri every other month and takes regular pain medications.

c. Scott Braucher

{¶30} Braucher's husband, Scott Braucher ("Scott"), testified that Braucher experienced mild back and hip pain that gradually worsened, leading her regular doctor to refer her to a pain management doctor, Dr. Khan. Scott acknowledged that Braucher had a prior scoliosis surgery and believed it might be related to her pain, though he was not certain. He stated that, before seeing Dr. Durrani, Braucher's pain was primarily in her lower back and hip, with no significant issues going down her legs to her feet. Scott explained that the treatment with Dr. Khan consisted mostly of medications, which initially helped but became less effective as Braucher's condition worsened. He testified that Braucher had not undergone injections, physical therapy, or chiropractic therapy before seeing Dr. Durrani, that her treatment was limited to medications. Scott recalled that, despite her pain, Braucher was working full time and rated her ability to enjoy life as between fair and good before Dr. Durrani's surgery. Although activities such as bowling and boating became harder for her, she was still attempting them before surgery.

{¶31} Scott testified that Dr. Durrani initially told them that Braucher had an "antique Harrington rod" in her back that needed to be reconnected to her spine, and that without surgery, she risked paralysis or being in a wheelchair. Scott understood that the first step was to perform facet blocks to confirm the source of pain, followed by surgery to "reattach the rod." He explained that he and Braucher decided to proceed

with surgery based on Dr. Durrani's recommendations and warnings.

{¶32} Scott described the preoperative visit for the first surgery as "odd" because Dr. Durrani would not allow Scott to review the imaging, stating that he would not understand it. Scott stated that Braucher's recovery was slow after the first surgery, with little improvement and continued pain. Braucher underwent a second surgery at Journey Lite, which involved further procedures described to Scott by an anesthesiologist as "shaving off" parts of the discs. Scott did not recall any discussion with Dr. Durrani before or after the second surgery about changes to the surgical plan or specific risks, nor did Dr. Durrani go over the imaging studies with them.

{¶33} Scott also testified that use of the Baxano saw during Braucher's second procedure was not discussed with them. Scott recalled that Braucher was in significant pain and did not experience substantial improvement after the second surgery. Braucher had briefly tried physical therapy but discontinued it after not seeing improvements, and it interfered with her part-time work schedule. Over time, Braucher's condition worsened and limited her from doing housework and activities she previously enjoyed, such as bowling, boating, and walking short distances. Scott testified that Braucher's condition also negatively affected their sexual relations.

2. Expert Testimony

{¶34} Both parties offered expert testimony regarding whether Dr. Durrani deviated from the standard of care in treating the plaintiffs.

D. Motion for a Directed Verdict

{¶35} Durrani moved for a directed verdict, arguing that the evidence in Braucher's case did not establish the elements needed to request that the jury determine whether she suffered catastrophic loss pursuant to R.C. 2315.18(B)(2). Counsel for plaintiffs responded that the evidence clearly established that Braucher

has a permanent injury to her spine that is a physical-functional injury that prevents her from doing daily activities, which is supported by Braucher's intake form and the testimony of Braucher and her husband. The trial court denied Durrani's motion.

E. Past Medical Expenses

{¶36} Durrani also raised the issue of each plaintiff's past medical expenses during trial, asserting there may have been insurance liens paid by "others" who have not formally entered appearances, and uncertainties as to whether liens have been satisfied in full. Counsel for the plaintiffs responded that the trial court ensured that Durrani would be protected against double payment by ordering that the funds be held by the court until the status of all liens had been determined. The court denied this motion.

F. The Jury's Verdict

{¶37} The jury found Dr. Durrani liable for all claims—negligence, lack of informed consent, battery, and fraudulent misrepresentation—in both cases. The jury awarded economic and noneconomic damages as follows:

Plaintiff	Compensatory Damages	Past Medical Expenses	Future Medical Expenses	Past and Future Pain and Suffering	Past Loss of Enjoyment of Life	Loss of Enjoyment of Life
Braucher	$4,929,733.73	$36,933.73	$250,000	$2,321,400	$613,200	$1,708,200
Earls	$1,010,871.25	$116,284.51		$447,293.37[3]		$447,293.37

{¶38} Following jury instructions on punitive damages requiring clear and convincing evidence of actual malice or aggravated/egregious fraud, the jury awarded Earls $10 million, finding Dr. Durrani acted with conscious disregard for the rights and safety of others. Braucher was awarded $15 million in punitive damages for the

[3] There was no future pain and suffering award in Earls's case.

same conduct. As the jury found in favor of plaintiffs regarding punitive damages, the jury awarded each plaintiff attorney's fees. The parties stipulated that plaintiffs should receive a combined total of $75,000.

G. Posttrial Motions and Court Decisions

{¶39} Durrani filed a motion for judgment notwithstanding the verdict, a new trial, and/or remittitur, and an application for setoff. The trial court applied the statutory damage caps to reduce each plaintiff's noneconomic damage award to $500,000 and punitive damage award to $350,000 but denied Durrani's motion in all other respects.

{¶40} In its decision granting plaintiffs' requests for prejudgment interest, the trial court recounted plaintiffs' counsel's testimony during the evidentiary hearing on plaintiffs' motion for prejudgment interest regarding the global $4,000,000 offer to settle the cases that Durrani made to the remaining Durrani plaintiffs—including Braucher and Earls—plaintiffs' initial $1,000,000 demands, and plaintiffs' $500,000 demands. The court found plaintiffs' counsel's testimony credible, including his assertion that Durrani never responded to his demand that he put the verbal global settlement offer in writing. Counsel testified that Dr. Durrani's insurance carrier, Medical Protection ("MedPro"), would only put the settlement in writing if certain preconditions were met.

{¶41} In January 2025, the trial court entered a final appealable order in both cases. The court noted in its decision that it reduced each plaintiff's damages due to statutory caps, and otherwise denied Durrani's motion for JNOV, new trial, and/or remittitur, and application for setoff.

{¶42} This appeal followed.

II. Analysis

A. Motion for a New Trial

{¶43} In their first assignment of error, Durrani asserts that they are entitled to a new trial based on an improper absent-defendant instruction, improperly admitted expert testimony, and improper consolidation of the trials. Citing *Frazier v. Swierkos*, 2009-Ohio-3353, ¶ 8 (7th Dist.), Durrani asserts that we review a trial court's decision on a Civ.R. 59(A) motion under the manifest-weight-of-the-evidence standard because "the purpose of Civ.R. 59(A) is to empower the trial court to prevent a miscarriage of justice." This and other courts have concluded otherwise.

{¶44} A trial court may grant a motion for a new trial under Civ.R. 59(A) for a variety of reasons. Civ.R. 59(A)(1)-(9). The standard of review of a trial court's ruling on a Civ.R. 59 motion depends upon the grounds for the motion. *See Berardo v. Felderman-Swearingen*, 2020-Ohio-4271, ¶ 7 (1st Dist.); *Yenni v. Yenni*, 2022-Ohio-2867, ¶ 60 (8th Dist.); *Harrison v. Horizon Women's Healthcare, LLC*, 2019-Ohio-3528, ¶ 11 (2d Dist.).

{¶45} Here, Durrani's motion raised Civ.R. 59(A)(1), (3), (4), (6), (7), and (9). The trial court's decision on the motion for a new trial raised under Civ.R. 59(A)(1)-(6) and (8) is reviewed for an abuse of discretion. *Harrison* at ¶ 11; *Berardo* at ¶ 7. When reviewing the grant or denial of a motion for a new trial based upon Civ.R. 59(A)(7) or (9), we must decide whether the trial court erred as a matter of law. *Id.* In that regard, a trial court's ruling is reviewed de novo. *Id.* As with previous appeals, Durrani does not specify which subsections of Civ.R. 54(A) apply to each argument, so we apply the applicable standard of review based on the nature of the issue under review. *See Clark v. Durrani*, 2025-Ohio-3096, ¶ 29 (1st Dist.).

1. *The Absent-Defendant Instruction and* Jones

{¶46} Durrani continues to maintain that the trial court's absent-defendant instruction was not a harmless error. Durrani again asks this court to overturn *Jones v. Durrani*, 2024-Ohio-1776 (1st Dist.), regarding its adverse-inference holding. They continue to assert that, contrary to the holding in *Jones*, the general instruction regarding inferences does not cure the erroneous absent-defendant instruction. *See Ravenscraft v. Durrani*, 2025-Ohio-2335, ¶ 85-87 (1st Dist.).

{¶47} Durrani further requests that this court answer two questions that they raised in previous *Durrani* appeals: (1) whether *Hounchell* and *Jones* conflict on their reasoning related to the improper adverse-inference instruction, and (2) if not, how should litigants read *Hounchell* and *Jones* in harmony when drafting future jury instructions?

{¶48} This court has previously addressed these claims, and we again decline to overturn our holding in *Jones*. Here, as in *Jones*, 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." *Jones* at ¶ 38; *see Boggs v. Durrani*, 2026-Ohio-210, ¶ 87-88 (1st Dist.); *Clark*, 2025-Ohio-3096, at ¶ 20 (1st Dist.); *Ravenscraft* at ¶ 135-136. We have also rejected Durrani's argument that *Hounchell* conflicts with *Jones* and do so here. *See Weisman v. Durrani*, 2026-Ohio-2639, ¶ 125-126 (1st Dist.).

2. Dr. Saini's Testimony

{¶49} 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 the defendant-physician; rather, the scope of the witness's knowledge, not the artificial classification by title, should govern the threshold question of his qualifications. *Adams v. Durrani*, 2022-Ohio-60, ¶ 50 (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.*

{¶50} Durrani continues to maintain that, based on *Stephens v. Durrani*, 2023-Ohio-2500, ¶ 71–73 (1st Dist.), Dr. Saini cannot testify regarding how surgeons dictate notes, the differences between surgeries, and what certain surgeons do that others do not. *Id.* at ¶ 73. Durrani also challenges Dr. Saini's "repeated[] state[ments] that Dr. Durrani stretched and exaggerated findings in this case in his recommendation for surgery." We continue to hold that this testimony was permissible. *See Haggard v. Durrani*, 2025-Ohio-5327, ¶ 52-56 (1st Dist.) (holding that Dr. Saini was permitted to testify as to whether surgery was medically indicated and to interpret a surgeon's operative reports); *Wheeler v. Durrani*, 2026-Ohio-2475, ¶ 99-102 (1st Dist.) (holding that Dr. Saini's testimony describing how a procedure was performed, the purpose of the procedure, and issues with the placement of screws and rods was permissible so long as it is based on the medical imaging and the opinion of the original reading radiologist).

{¶51} Durrani asserts that Dr. Saini should not have been permitted to testify as to whether Dr. Durrani performed plaintiffs' surgeries correctly or well. However, Dr. Saini's testimony that the surgeries were not performed correctly was echoed by other experts. The admission of this testimony, therefore, was harmless.

{¶52} Durrani also asserts that Dr. Saini's remarks regarding the infection that

Earls developed were improperly admitted, arguing that the opinion is untrue based on Dr. McCormick's testimony that Earls's infection was caused by the bacteria that cause acne. The jury, however, was free to believe plaintiffs' experts over Dr. McCormick. Dr. Saini explained that Earls's postsurgical imaging showed inflammation and infection, and that Earls would never have been exposed to the infection had he not undergone what Dr. Saini concluded was an unnecessary medical procedure. These sentiments were echoed by Dr. Wilkey, whom the jury heard first. In fact, Durrani's own expert, Dr. Purcell, agreed that the infection stemmed from hardware placed in Durrani's second surgery on Earls. Therefore, although permitting Dr. Saini's testimony regarding Earls's infection was an abuse of discretion, it was harmless error.

3. Consolidation

{¶53} Durrani challenges the trial court's consolidation 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.[4]

{¶54} In *Wilson*, the majority examined the language within 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 that a single common answer can answer. *Id.* at ¶ 58, 77. The majority explained that a common question of law concerns the defendant's liability and is 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 can be

[4] 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 adopted for purposes of determining the instant appeal, my disagreement with that decision notwithstanding. *See Wilson* at ¶ 95-125 (Moore, J., dissenting).

resolved uniformly 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, individualized proof are uncommon in nature. *Id.* at ¶ 76.

{¶55} Where common questions do not link the cases, then joinder is 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.*

{¶56} In this case, the court's consolidation was improper under the majority's analysis in *Wilson*. While the plaintiffs put forth common legal claims for negligence, battery, lack of informed consent, fraud, and loss of consortium, these claims relied on individualized facts and could not be resolved uniformly. 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 the patient's imaging to determine whether surgery was required, as well as each plaintiff's individualized injury history to determine whether Durrani breached the standard of care and whether each plaintiff sustained damages. Similarly, plaintiffs' claims for lack of informed consent, battery, and fraud cannot be resolved uniformly 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. *See id.*

at ¶ 76.

{¶57} In holding that the court erred in consolidating these cases, we next consider whether the court's decision to do so 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 id.* at ¶ 86 ("As the appellant, Durrani bears the burden of demonstrating the improper joinder of the plaintiffs' cases for trial was not harmless. *See Osborne v. Osborne*, 2015-Ohio-2510, ¶ 35 (4th Dist.). 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 resulting from the improper joinder.

{¶58} From our independent review of the record, we cannot say that any error exceeded the harmless-error 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 to treat each case separately, reaching an independent resolution for each. *See Boggs*, 2026-Ohio-210, at ¶ 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.); *Jones*, 2024-Ohio-1776, at ¶ 26 (1st Dist.)."); Civ.R. 61.

{¶59} 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.

{¶60} Durrani argues that the improperly admitted testimony and improper jury instruction were unduly prejudicial. They further argue that the evidentiary errors in conjunction with the improper consolidation are cumulative, were not harmless, and warrant a new trial.

{¶61} Under the cumulative-error doctrine, a judgment may be reversed if the cumulative effect of otherwise harmless errors deprives a party of a fair trial. *Courtney*, 2025-Ohio-2335, at ¶ 88 (1st Dist.), citing *Woods v. Douglas*, 2024-Ohio-338, ¶ 51 (8th Dist.). However, nothing in the record indicates that the admission of Dr. Saini's testimony about Earls's infection and the consolidation of the trials were prejudicial, and the absent-defendant instruction does not constitute a reversible error. *See Jones*, 2024-Ohio-1776, at ¶ 38-39 (1st Dist.). As the record shows no other evidentiary errors, Durrani's cumulative-error argument fails.

{¶62} Based on the foregoing, Durrani's first assignment of error is overruled.

B. JNOV Motion

{¶63} In their second assignment of error, Durrani asserts that Braucher did not establish that Dr. Durrani caused her catastrophic injury, justifying a higher cap on noneconomic damages, and that the trial court should have allowed a setoff against plaintiffs' settlements with other tortfeasors.

{¶64} Under Civ.R. 50(B)(1), a party may move for a JNOV after the trial court enters judgment on the jury's verdict. Indeed, "[a] motion for [JNOV] is used to determine only one issue: whether the evidence is totally insufficient to support the

verdict." (Citations omitted.) *Grieser v. Janis*, 2017-Ohio-8896, ¶ 15 (10th Dist.). We review a court's JNOV ruling de novo. *Bender v. Durrani*, 2024-Ohio-1258, ¶ 123 (1st Dist.). We must assess the legal sufficiency of the evidence, while construing the evidence in a light most favorable to the nonmoving party, and we may "only reverse if reasonable minds could only find in favor of the moving party." *Id.*

1. Motion for a Directed Verdict—Cap on Noneconomic Damages

{¶65} A motion for a directed verdict should be granted when, after construing the evidence most strongly in favor of the nonmoving party, the trial court finds that upon any determinative issue, reasonable minds can come to only one conclusion based on the evidence submitted and that conclusion is adverse to the nonmoving party. *Walls v. Durrani*, 2020-Ohio-4329, ¶ 8 (1st Dist.). In ruling upon a motion for judgment notwithstanding the verdict or alternative motion for a new trial, the trial court applies the same standard as required to rule upon a motion for a directed verdict. *Pelletier v. Rumpke Container Serv.*, 142 Ohio App.3d 54, 60 (1st Dist. 2001). We review a trial court's decision on a motion for a directed verdict de novo. *Williams v. Sharon Woods Collision Ctr., Inc.*, 2018-Ohio-2733, ¶ 14 (1st Dist.).

{¶66} Durrani generally asserts that the record did not show that Dr. Durrani caused Braucher to suffer a catastrophic injury that justified a higher cap on her award of noneconomic damages under R.C. 2323.43.

{¶67} R.C. 2323.43 limits the amount of compensatory damages that can be awarded to a prevailing party. The amount of compensatory damages for noneconomic loss is limited to the greater of $250,000 or three times the plaintiff's economic loss, up to a maximum of $350,000 per plaintiff or $500,000 per occurrence. R.C. 2323.43(A)(2).

{¶68} In the case of a catastrophic injury, the amount recoverable for

noneconomic loss in a civil action shall not exceed the maximum amount provided under R.C. 2323.43(A)(2). An exception applies if the noneconomic losses are either a "[p]ermanent and substantial physical deformity, loss of use of a limb, or loss of a bodily organ system" or a "[p]ermanent physical functional injury that permanently prevents the injured person from being able to independently care for self and perform life sustaining activities." R.C. 2323.43(A)(3). However, the damage award cannot exceed $500,000 per plaintiff or $1,000,000 per occurrence. *Id.*

{¶69} Durrani argues that the trial court should not have permitted Braucher to recover the higher cap of $500,000 on noneconomic damages because she did not present sufficient evidence under R.C. 2323.43(A)(2) to support the trial court's award. We agree.

{¶70} Braucher only testified that she was getting worse after the surgeries, her pain never subsided, she developed new pain, was taking Percocet for pain management, and was unable to perform recreational activities that she had previously engaged in. This does not rise to the level of catastrophic injury under the statute such that she is not able to independently care for herself and perform life-sustaining activities. We, therefore, sustain this portion of the second assignment of error and remand the cause to the trial court to apply the statutory cap of $350,000.

2. Setoff

{¶71} Durrani argues that they were entitled to a setoff and that the court erred by denying their motion. Our recent opinion in *Boggs*, 2026-Ohio-210, at ¶ 100-101 (1st Dist.), recognized that this court has held that Durrani is entitled to a setoff based on plaintiffs' settlements with other defendants. Therefore, this portion of the second assignment of error is sustained. Accordingly, the cause must be remanded to the trial court to determine the amount of the setoff to which Durrani is entitled.

C. Past Medical Damages

{¶72} In his third assignment of error, Durrani argues that the trial court erred by awarding past medical damages without independent evidence that the medical insurers were paid.

{¶73} The parties stipulated to the amount of each plaintiff's past medical expenses during the January 8, 2025 hearing on the plaintiffs' motions for prejudgment interest. The court's entry noted that Durrani's stipulation on the amount of the prejudgment-interest awards did not limit Durrani's rights to appeal "with regard to the propriety of the prejudgment interest, fees, or costs award of any damages."

{¶74} Durrani provides no authority to support their argument that the trial court's judgment needed to be based on independent evidence that the medical insurers were paid. Moreover, this issue was waived for two reasons. First, while Durrani raised past medical damages in their JNOV motion, they did not specifically argue that Braucher provided no evidence of the amount of her past medical expenses. Second, this court has held that Durrani has waived this issue on appeal where they stipulated to the amount of medical expenses before the trial court. *Puckett-Morrissette v. Durrani*, 2026-Ohio-1444, ¶ 26-28 (1st Dist.); *see Daugherty v. Daugherty*, 2013-Ohio-1934, ¶ 10 (9th Dist.) ("Courts have recognized that a party has not preserved an issue for appeal when she has entered into a stipulation or agreement regarding the issue before the trial court.").

{¶75} Durrani's third assignment of error is overruled.

III. Conclusion

{¶76} We hold that the trial court erred by denying Durrani's request for a setoff and by failing to cap Braucher's damages under the statute. In those respects,

we reverse the trial court's judgments and remand the cause for further proceedings consistent with this opinion. We affirm the trial court's judgments in all other aspects.

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

CROUSE, J., concurs.
ZAYAS, P.J., concurs in judgment only.

ZAYAS, P.J., concurring in judgment only.

{¶77} I concur in the majority's ultimate judgment reversing the trial court's judgment regarding the request for a setoff and the cap on Bracher's damages, and remanding the cause for further proceedings on these issues, but affirming the trial court's judgment in all other respects. I write separately to note that the majority opinion relies on a recently decided case from this court, *Wilson v. Durrani*, 2026-Ohio-2279 (1st Dist.), to resolve the issue of whether there was error in the joining of the trials in this case under Civ.R. 42. *Wilson* drastically departed from this court's past precedent and is still within the time frame for appeal to the Ohio Supreme Court. *See generally* S.Ct.Prac.R. 7.01(A)(5)(a). I disagree with the rationale of *Wilson* for the reasons set forth in my concurrence in *Wheeler v. Durrani*, 2026-Ohio-2475 (1st Dist.). *See Wheeler* at ¶ 136-169 (Zayas, J., concurring in part and concurring in judgment only in part). Therefore, among other things, I disagree with the majority opinion's reliance on *Wilson* here.