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

MICHELLE BEAVAN, and CHARLIE BEAVAN, Plaintiffs-Appellees, vs. ABUBAKAR ATIQ DURRANI, M.D., and CENTER FOR ADVANCED SPINE TECHNOLOGIES, INC., Defendants-Appellants.	:	APPEAL NO. C-250207 TRIAL NO. A-1505423

RYAN TANNER, Plaintiff-Appellee, vs. ABUBAKAR ATIQ DURRANI, M.D., and CENTER FOR ADVANCED SPINE TECHNOLOGIES, INC., Defendants-Appellants.	:	APPEAL NO. C-250208 TRIAL NO. A-1506304 *JUDGMENT ENTRY*

These causes were heard upon these appeals, the records, 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 9/30/2026.

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 A. Hensley

Administrative Judge

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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 30, 2026

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

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

BOCK, Judge.

{¶1} In these appeals,[1] defendants-appellants Dr. Abukar Atiq Durrani and the Center for Advanced Spine Technologies, Inc., ("CAST") (collectively "Durrani parties") challenge the trial court's decision to join plaintiffs-appellees Michelle[2] and Charlie Beavan's and plaintiff-appellee Ryan Tanner's actions for trial. While we agree the actions lack a common question of law or fact and were erroneously joined for trial, we hold that a new trial is not warranted because the erroneous joinder was harmless error. The jury's verdicts and interrogatories reveal no jury confusion and, instead, demonstrate that the jury separated the evidence in each case and determined the Durrani parties' liability in each action independent of the other. We overrule the first assignment of error in both appeals.

{¶2} But we sustain the Durrani parties' second and third assignments of error in the appeal numbered C-250207, which involves Beavan's damages awards. Beavan concedes that the trial court improperly reduced the setoff of the damages award by Beavan's settlement with the Durrani parties' codefendant tortfeasors. She also concedes that she was not entitled to half of Tanner's award of attorney fees. So, we vacate the trial court's setoff decision and attorney-fee award and remand the matter to the trial court to recalculate the setoff amount and to grant Tanner the entire attorney-fee award.

I. Factual and Procedural History

{¶3} In 2015, Beavan and her husband sued the Durrani parties for negligence, battery, a lack of informed consent, intentional infliction of emotional

[1] We sua sponte consolidate these separate appeals into a single opinion and judgment.
[2] The facts relevant to this appeal involve Michelle Beavan, so "Beavan" refers individually to Michelle Beavan.

distress, fraud, spoliation of evidence, and a loss of consortium. Beavan alleged that Dr. Durrani promised to fix the pain and numbness radiating from Beavan's neck through her arm and performed a cervical spinal fusion on her in March 2013.

{¶4} That same year, Tanner and his wife sued the Durrani parties for negligence, battery, a lack of informed consent, intentional infliction of emotional distress, fraud, spoliation of evidence, and a loss of consortium. Tanner alleged Dr. Durrani performed a decompression surgery on Tanner's "C5, C6, and C7" in March 2013 to address neck pain and "burning in his right shoulder and arm."

{¶5} In 2020, counsel for hundreds of former patients of Dr. Durrani filed a so-called "global" motion for group trials in another malpractice case against Dr. Durrani. Counsel proposed grouping plaintiffs "by location of surgery and/or type of surgery and/or time frame of surgery." Following a hearing[3] in 2020, the court issued a "decision" ordering plaintiff's counsel to propose groups of two or three plaintiffs that complied with Civ.R. 42.[4] Then, in 2022, the trial court issued three "revised joint trial schedule" orders and eventually scheduled Beavan and Tanner's joint trial for February 2023.

{¶6} Even though a joint trial was scheduled, counsel for Tanner and Beavan filed a motion to join Tanner's and Beavan's actions for trial. Counsel maintained that both cases involved "allegations of negligence and fraud" based on Dr. Durrani's use of exaggeration to induce Beavan and Tanner to agree to unnecessary spinal surgery, and Dr. Durrani's negligent performance of surgery "on the same areas of the spine as well (DLIF T10-L4)." The Durrani parties responded in opposition.

[3] The transcript is not in the record.
[4] The proposed groups are in the record.

{¶7} On the morning of jury selection, the trial court announced its decision to "consolidate these cases for trial" because of the defendant's global settlement offer, because "the experts in all of these cases have been the same," and because jurors in other Durrani cases have been able "to keep the cases separate and render verdicts separately for each one of the cases."

A. Beavan and Tanner's consolidated trial

{¶8} During Beavan and Tanner's four-day trial, the jury heard testimony from Beavan, Tanner, and both sides' expert medical witnesses. Dr. Saini, a neuroradiologist, testified for Beavan and Tanner. In addition, the jury watched deposition testimony from Dr. Bloomfield, a neurosurgeon with decades of experience, as part of Beavan's and Tanner's cases. In their defense, the Durrani parties relied on testimony from Dr. Kaloostian, a neurosurgeon with more than ten years of experience, and Dr. Younis, a radiologist with decades of experience.

1. Dr. Durrani performed a discectomy and fusion on Beavan's spine

{¶9} Beavan testified that, even though she had smoked cigarettes for four decades, she worked in the food industry for 20 years and led an active lifestyle. But during a gastroenterology appointment, Beavan discussed with her doctor a "tingling . . . sharp pain" on "both sides of [her] neck" that radiated down her arms. Beavan's gastroenterologist referred her to Dr. Durrani.

{¶10} Beavan met Dr. Durrani in February 2013. Dr. Durrani ordered an x-ray of Beavan's cervical spine, which showed him "narrowing," degenerative disc disease (deteriorating disc material), and spondylosis (arthritis) in her C5-C6 and C6-C7 joints. Beavan testified that Dr. Durrani assured her that he would "fix" her and "make [her] much better." Yet, he gave her little explanation of "what could happen." That day, he scheduled an MRI and selected a late March 2013 surgery date.

{¶11} Beavan's MRI revealed multilevel degenerative disc osteophyte (arthritis) and stenosis (narrowing) in Beavan's nerve canal on the right side of her C5-C6 and C6-C7 joints and on the left side of her C6-C7 joint. Beavan testified that, at her next appointment, Dr. Durrani reviewed his impressions with clinical jargon and "medical terms," which made his explanation difficult to follow and went "over [her] head." Beavan recalled that Dr. Durrani made no mention of her cigarette use or nonsurgical interventions during their conversation. Instead, he repeated his promise to "fix" her and told her she "was going to be good to go."

{¶12} The operative report reveals that Dr. Durrani diagnosed Beavan with a herniated disc as the cause of the severe stenosis of her nerve canal and radiculopathy (pinched nerves) at the C5-C6 and C6-C7 joints. Beavan and her husband described reading and signing the consent form on the day of surgery, though Dr. Durrani did not review it with them. According to the operative report, Dr. Durrani fused and removed damaged disc material from Beavan's C5-C6 and C6-C7 joints as part of an anterior cervical discectomy and fusion ("ACDF"). Dr. Durrani fused the joints by implanting graft material, an interbody cage, and an anterior cervical instrument.

{¶13} The pain was "tolerable" for the first few days after surgery. But her relief was momentary. The pain returned and "kept getting worse." She returned to Dr. Durrani for a follow-up appointment in July 2013 and reported "severe pain." Dr. Durrani ordered an x-ray, which, according to the reading radiologist, revealed issues with hardware implanted by Dr. Durrani at the C7 vertebra. In his notes, Dr. Durrani reported issues at the C4-C5 joint. Dr. Durrani ordered foraminal injections, which provided relief after the first injection. But the second injection was excruciating and "horrible." Beavan tried to schedule another appointment only to discover that Dr. Durrani's office had closed.

{¶14} Dr. Durrani's surgery left Beavan unable to "function." The following year, she saw Dr. Curt at the Mayfield Clinic due to numbness and "intense" pain in her arms. An MRI revealed spinal stenosis and carpal tunnel syndrome. After two injections provided no relief, Dr. Curt performed surgery on Beavan to address her carpel tunnel syndrome. Beavan testified that Dr. Curt's operation finally addressed the pain and numbness that brought her to Dr. Durrani in the first place.

{¶15} Dr. Curt ordered a CT scan, which revealed that Dr. Durrani's "fusion didn't take." Dr. Curt attributed that failure to Beavan's smoking habit. But Dr. Curt had a "thorough" discussion with Beavan about her cigarette use and its connection to her neck pain. Beavan complied with Dr. Curt's order to stop smoking for six months before Dr. Curt's operation to "fix what was in [her neck]." Beavan initially felt better, but her pain returned and is currently managed with over-the-counter medication and medical marijuana.

a. Beavan's medical experts

{¶16} Dr. Bloomfield testified that Dr. Durrani's treatment of Beavan violated the standard of care for an orthopedic surgeon in multiple ways. First, an orthopedic surgeon has a duty to explore nonsurgical interventions, and Dr. Durrani did not. Second, Dr. Durrani recommended and scheduled the surgery before seeing the MRI imaging. Third, Dr. Durrani operated on two levels in Beavan's spine when "only one level" was potentially causing her pain. Fourth, he operated on her without "having her quit smoking for three to six months beforehand." Dr. Bloomfield explained that smoking cigarettes impedes a potential bone fusion and reduces the success rate of a fusion surgery by "10 to 20 percent of what a nonsmoker would be." Dr. Bloomfield attributed Beavan's pseudoarthrosis to her use of cigarettes.

{¶17} Fifth, an orthopedic surgeon has a duty to interpret imaging within the standard of care and must rectify any variability when interpreting a patient's imaging. Specifically, Dr. Durrani's reading of Beavan's MRI found narrowing at both her C5-C6 and C6-C7 joints, in contrast to the reading radiologist who found narrowing on the right side of the C5-C6 joint and on the left side of the C6-C7 joint.

{¶18} Dr. Saini discussed Beavan's imaging and disagreed with Dr. Durrani's reading. He saw no evidence of spondylosis, or arthritis, at the C5-C6 or C6-C7 joints. In his view, the x-ray did not warrant the immediate scheduling of Beavan's surgery. As for her MRI, Dr. Saini saw stenosis, or narrowing, in Beavan's C3-C4 and C4-C5 joints, which "look[ed] worse" than the stenosis in the joint on which Dr. Durrani operated. Dr. Saini testified that Dr. Durrani exaggerated his findings "to justify doing the operation, at least with the insurance company" and, to make matters worse, "the surgery wasn't done correctly."

b. The Durrani parties' medical experts

{¶19} Dr. Younis, the Durrani parties' expert in diagnostic radiology, reviewed Beavan's imaging and testified that Beavan's medical records and deposition revealed a failure of conservative therapy, and he later agreed that Dr. Durrani's records demonstrated a lack of any attempt at conservative care. Dr. Younis also agreed that Beavan smoked cigarettes, which can affect the success of a fusion. And he agreed that there is nothing to suggest that Dr. Durrani discussed Beavan's cigarette use before surgery.

{¶20} Turning to the surgery, Dr. Younis testified that Dr. Durrani did not exaggerate his impressions of Beavan's imaging. Dr. Younis agreed with Dr. Durrani's conclusion that Beavan's imaging showed bilateral stenosis at her C5-C6 and C6-C7 joints. Dr. Younis testified that Dr. Durrani's operation at Beavan's C6-C7 joint

correlated with the cervical stenosis and herniated disc shown in Beavan's imaging. He disagreed with the reading radiologist's conclusion that Beavan's MRI showed stenosis only on one side of Beavan's C5-C6 and C6-C7 joints. And he saw no evidence that Dr. Durrani's surgery injured Beavan.

{¶21} Dr. Younis recognized that Dr. Durrani scheduled Beavan's surgery before reading her MRI, but testified that some providers will "order X-rays, and they will presumptively schedule patients pending MRI." In those cases, a "normal" MRI will result in cancellation of the surgery.

{¶22} Dr. Kaloostian, the Durrani parties' expert neurosurgeon, agreed with Dr. Durrani's recommendation for surgery and testified that Dr. Durrani's surgery met the standard of care. First, Dr. Kaloostian believed that Beavan, based on her x-ray, was a good candidate for spinal fusion surgery at the C5-C6 and C6-C7 joints. He testified that conservative care was impractical and surgery was the only option to address Beavan's "severe cord compression." He testified that an orthopedic surgeon may schedule surgery before reviewing the MRI if he feels that, "clinically[,] the patient may need a surgery, then you can book a room or book a surgery in advance." Dr. Kaloostian also wondered if the insurance request for Beavan's surgery was faxed after Dr. Durrani viewed her MRI. Ultimately, Dr. Kaloostian found that the surgery was medically indicated.

{¶23} Turning to Beavan's cigarette use, Dr. Kaloostian testified that there are no bright-line rules that require a patient to stop smoking before surgery, especially when the patient is suffering from severe spinal cord compression. Delaying surgery to wean a person off cigarettes would be "unsafe." An orthopedic surgeon can advise a patient that smoking can elevate the risk of a failed fusion, but that advisement is not

required. He also testified that Dr. Durrani's surgery created room in her spine but agreed that her fusion failed.

2. Dr. Durrani performed a cervical foraminotomy, hemilaminectomy, and decompression on Ryan Tanner's spine

{¶24} Tanner injured his neck in the military in 1995 and then reinjured it playing football. The pain progressed and caused weakness and pain that radiated from his right shoulder through his arm. Tanner testified that he received epidural steroid injections to treat the symptoms before he had surgery to fuse his C3-to-C5 joints in 2008. Dr. Kahn, Tanner's surgeon, predicted that Tanner would need another fusion surgery at some point. To help facilitate his recovery, Tanner stopped using smokeless tobacco products before surgery. Tanner testified that, after the surgery, he "felt really good" and life started to return to "normal." But four years later, Tanner's right arm and hand had weakened to the point where he struggled with everyday tasks. Tanner, a police officer, could not bear the weight of the 20-pounds of "gear" he had to wear on the job.

{¶25} Tanner learned about Dr. Durrani from a coworker and met Dr. Durrani during an appointment in December 2012. Tanner's intake form identified neck pain, "primarily on right side," that he rated a nine out of ten. According to Tanner, Dr. Durrani discussed surgical and nonsurgical options. But because injections offered no relief to Tanner in the past, Tanner wanted an "innovative" procedure while avoiding another fusion surgery.

{¶26} Dr. Durrani reviewed Tanner's x-ray at his first appointment, ordered an MRI, and planned to "do diagnostic foraminal blocks to identify the exact source of his pain" before developing a treatment plan. At the next appointment, Dr. Durrani reviewed the MRI with Tanner. In the MRI, Dr. Durrani saw evidence of stenosis

(narrowing) at the C5-C6 joint and a herniated disc at the C6-C7 joint causing a foraminal impingement. Dr. Durrani reviewed the imaging with Tanner and assured Tanner that he would be able to finish his career in law enforcement. Yet, Dr. Durrani failed to do a diagnostic nerve block.

{¶27} Dr. Durrani gave Tanner three options. First, Dr. Durrani could fuse his C5-C6 and C6-C7 joints, but that risked ending Tanner's career in law enforcement. Second, Dr. Durrani could "go in through the back and . . . open up some space in the canal to relieve some pressure" in a cervical disc arthroplasty. Third, Dr. Durrani could perform a cervical foraminotomy, hemilaminectomy, and decompression. Fearing another fusion surgery would end his career, Tanner chose the third option. Tanner believed that Dr. Durrani pressured him into selecting the cervical foraminotomy, hemilaminectomy, and decompression. That day, Dr. Durrani scheduled Tanner's surgery for March 2013.

{¶28} During surgery, Dr. Durrani removed portions of bone known as the lamina in Tanner's C5-C6 and C6-C7 joints as part of the cervical hemilaminectomy and enlarged the hole where nerve roots exit the C5-C6 and C6-C7 joints as part of the cervical foraminotomy.

{¶29} Tanner slightly improved after surgery, but the relief was temporary. Tanner testified that he started to feel heat radiating throughout "the back of [his] neck." Tanner suspected that Dr. Durrani's procedure "didn't do what [he] had thought it was going to do" and he would need to pursue other options. At Tanner's post-surgery follow-up appointment, Dr. Durrani was "annoyed" that Tanner's symptoms returned and seemed "baffled." While Tanner's pain was isolated to his right side, Dr. Durrani recommended medial branch blocks on Tanner's left side. Dr.

Durrani also discussed radiofrequency ablations. However, Tanner learned that his office had closed when he tried to schedule another appointment.

{¶30} In the years following Dr. Durrani's surgery, relief has been evasive for Tanner. He saw Dr. Rodway, who diagnosed Tanner with pseudo arthritis and performed another fusion of Tanner's C5-C6 and C6-C7 joints, a procedure that Dr. Durrani described as "career suicide." That operation left Tanner with pressure on the back of Tanner's neck and both pain and immobility in his right arm. Tanner eventually filed for medical retirement.

a. Tanner's medical experts

{¶31} Dr. Bloomfield assessed Dr. Durrani's reading of Tanner's imaging and testified that Dr. Durrani exaggerated his impression of "cervical radiculopathy on the right side [at] C4, C5, and C6" from Tanner's x-ray, because the radiculopathy was "clearly C5." Dr. Bloomfield believed that Dr. Durrani's impressions were an attempt to justify surgery. Turning to Tanner's MRI, Dr. Bloomfield agreed with the radiology report and Dr. Durrani's impression of right-sided foraminal stenosis at the C5-C6 and C6-C7 joints. And he agreed with Dr. Durrani's plan to use a diagnostic block to identify "the pain generator." But Dr. Bloomfield testified that there is no evidence that Dr. Durrani performed the diagnostic block. And Dr. Bloomfield disagreed with the options that Dr. Durrani presented to Tanner, none of which addressed the C5 nerve root, which Dr. Bloomfield suspected was the cause of Tanner's issues.

{¶32} Dr. Bloomfield testified that Dr. Durrani planned to operate on the right side of Tanner's C6-C7 joint but, in fact, operated on the left side of the joint. Dr. Bloomfield drew this conclusion from Dr. Durrani's operative note and Tanner's post-operation imaging, which revealed scar tissue on Tanner's left side. Dr. Bloomfield explained operating on the wrong side of the spine breached the standard of care for

an orthopedic surgeon. According to Dr. Bloomfield, operating on the right side of the joint would have addressed Tanner's symptoms, and the post-operative pain that Tanner experienced on his left side was likely caused by Dr. Durani's operation.

{¶33} Dr. Saini echoed Dr. Bloomfield's testimony that Dr. Durrani deviated from the surgical plan discussed with Tanner. Dr. Saini also testified that Dr. Durrani's operative note described a hemilaminectomy, but Tanner's MRI showed no evidence of that procedure. And Dr. Saini testified that Dr. Durrani exaggerated his reading of Tanner's imaging. Like Dr. Bloomfield, Dr. Saini testified that Tanner's imaging showed that Tanner's issues were isolated to the right side of his spine, but Tanner's post-surgical imaging showed that Dr. Durrani operated on the left side of the joint.

b. The Durrani parties' medical experts

{¶34} Dr. Younis testified that imaging of Tanner's spine revealed stenosis on the right of Tanner's C5-C6 and C6-C7 joints, and a herniated disc at his C6-C7 joint. Dr. Younis agreed that imaging revealed stenosis and herniation on both sides of Tanner's spine. In his view, the narrowed joints on the left side of Tanner's spine would affect Tanner's right arm, and Dr. Durrani's operation is a common approach to addressing the issues revealed by Tanner's imaging.

{¶35} Turning to Tanner's post-surgery imaging, Dr. Younis reviewed the imaging for the jury and testified that he saw "evidence that there was a right-sided laminectomy done and a right-sided foraminotomy done." He pointed out the "scar formation" on his right side as proof of the laminectomy. Moreover, he saw no evidence of misrepresentation or fraudulent statement about the imaging by Dr. Durrani. While Dr. Durrani wrote in his postoperative note that he operated on the left side of the C6-C7 joint, MRI imaging did not suggest that Dr. Durrani did, in fact, operate on the left side of Tanner's spine.

{¶36} Dr. Kaloostian testified that Tanner had tried "extensive conservative care" before seeing Dr. Durrani. In these cases, an orthopedic surgeon is not required to repeat the same failed conservative therapies before recommending surgery.

{¶37} Turning to Dr. Durrani's diagnoses, Dr. Kaloostian disagreed that the standard of care required a diagnostic foraminal block. Dr. Kaloostian explained that diagnostic foraminal blocks are not required, that he "doesn't think those are very accurate," and that he does not recommend them in his practice. Dr. Kaloostian saw evidence of stenosis on both sides of Tanner's C5-C6 and C6-C7 joints and agreed with Dr. Durrani's impressions. Based on Tanner's pathology, Dr. Kaloostian agreed with Dr. Durrani's proposals for treatment and that a fusion surgery would have jeopardized Tanner's career.

{¶38} Dr. Kaloostian testified that the CAST consent forms were appropriate and that he did not see evidence that Dr. Durrani had operated on the left side of Tanner's C6-C7 joint. And even if he had, operating on the left side of the joint would have met the standard of care if Dr. Durrani "felt intraoperatively that that segment was narrowed or tight."

B. Verdict and damages

{¶39} The jury found Dr. Durrani negligent in his care and treatment of both Beavan and Tanner. In Tanner's case, the jury also found Dr. Durrani liable for battery and a lack of informed consent. But the jury found for Dr. Durrani on both Tanner's and Beavan's negligent-misrepresentation claims and Beavan's claims for battery and a lack of informed consent.

{¶40} For Tanner, the jury interrogatory explained that Dr. Durrani was negligent because the:

> Evidence shows, in the form of MRI, Evokes, and postsurgery write up by Dr. Durrani, Surgical procedure on left side of Ryan Tanner with no evidence of prior communication of this procedure with the patient. In addition, pre-surgery conservative care in the form of foraminal nerve blockers were communicated as a next step of care before surgery and were never performed or further addressed.

{¶41} For Beavan, the jury interrogatory states that Dr. Durrani's treatment of Beavan was negligent because Dr. Durrani "failed to inform Michelle Beavan of the potential risk of fusion failure due to smoking despite clear evidence and admission that she smokes regularly. In addition, evidence shows that Dr. Durrani scheduled surgery after one visit prior to MRI reviews and sufficient exploration of conservative care options."

{¶42} The jury awarded Tanner $303,029.07 in compensatory damages and $150,000 in punitive damages. For Beavan, the jury awarded $142,784.10 in compensatory damages.

{¶43} The jury also awarded both Beavan's husband and Tanner's wife identical awards of $30,000 in damages for their respective lack-of-consortium claims. Finally, the jury found that Tanner was entitled to attorney fees.

C. Postjudgment motions

{¶44} In both cases, the Durrani parties moved for a judgment not withstanding the verdict ("JNOV") and for a new trial. Relevant here, the Durrani parties argued that the trial court's decision to join the actions was prejudicial error. In Beavan's case, Dr. Durrani moved for "a setoff of all monies Plaintiffs may have received for the same injury or loss" under R.C. 2307.28(A).

{¶45} Around this time, the trial court scheduled a final hearing to address prejudgment interest and attorney fees. At the hearing, counsel for the Durrani parties pointed out that no motion for attorney fees or fee statements were filed and the Durrani parties "ha[d] nothing to go on, this is just insane." After a short break, the parties returned and stipulated to "$75,000 per trial" in attorney fees.

{¶46} The trial court denied the Durrani parties' motions. First, it found that joinder was proper due to the existence of common issues of law or fact and nonprejudicial because the jury returned contrasting verdicts and damages awards for Tanner and Beavan. As for the issue of a setoff, the trial court ordered the parties to produce documentation of any settlement amounts received. In its "final decision[] on post-trial motions," the trial court awarded Beavan and Tanner "a combined total of $75,000 in attorney fees" citing the stipulation filed by the parties. The trial court also ordered a $14,400 setoff of Beavan's damages award.

II. Analysis

{¶47} The Durrani parties raise three assignments of error in Beavan's appeal, with the first applicable to Tanner's appeal. In both appeals, they challenge the trial court's decision to join the Beavan and Tanner cases. In Beavan's appeal, they also argue that the trial court's setoff determination was improper. Then they dispute the award of attorney fees in her case.

A. The erroneous joinder of Beavan's and Tanner's actions was harmless

{¶48} Under Civ.R. 59(A)(1), a trial court may grant a new trial based on an irregularity in the proceedings that prevents a fair trial. An irregularity is "'a departure from the due, orderly and established mode of proceeding.'" *Cullimore v. Cullimore*, 2022-Ohio-3208, ¶ 46 (4th Dist.), quoting *Simon v. Simon*, 2014-Ohio-1390, ¶ 22 (9th Dist.). A motion for a new trial under Civ.R. 59(A)(1) must demonstrate "'"serious

irregularities in a proceeding [that] could have a material adverse effect on the character of and public confidence in judicial proceedings."'" *Johnson v. U.S. Title Agency*, 2020-Ohio-4056, ¶ 73 (8th Dist.), quoting *Taylor-Stephens v. Rite Aid of Ohio,* 2018-Ohio-4714, ¶ 24 (8th Dist.), quoting *Wright v. Suzuki Motor Corp*., 2005-Ohio-3494, ¶ 114 (4th Dist.). The court's decision to grant or deny the motion turns on "the evidence establishing grounds for a new trial." *Harris v. Mt. Sinai Med. Ctr*., 2007-Ohio-5587, ¶ 36.

{¶49} Our review of a trial court's decision denying a motion for a new trial depends on the grounds argued in the motion. *See Ravenscraft v. Durrani*, 2025-Ohio-2900, ¶ 95 (1st Dist.). A trial court's decision to join or consolidate two actions under Civ.R. 42 is an exercise of its discretionary authority that we review for an abuse of discretion. *Wheeler v. Durrani,* 2026-Ohio-2475, ¶ 76 (1st Dist.). A trial court abuses its discretion when it exercises its discretion in an unwarranted way. *Johnson v. Abdullah*, 2021-Ohio-3304, ¶ 35.

{¶50} Under Civ.R. 42(A), civil actions may be consolidated or joined for a trial "on any or all matters at issue" so long as they "involve a common question of law or fact." Joinder and consolidation under Civ.R. 42(A) is a "two-step inquiry." *Wilson v. Durrani*, 2026-Ohio-2279, ¶ 51 (1st Dist.).

{¶51} First, courts must identify a common question of law or fact that is material to the parties' claims or defenses. *See id* at ¶ 51, 69. A common question of law or fact "'is one that must be answered identically in each case in which it is presented.'" *Id.* at ¶ 58, quoting *Habitat Edn. Ctr., Inc. v. Kimball*, 250 F.R.D. 390, 394 (E.D.Wisc. 2008). In other words, the question must be capable of being "answered uniformly without resorting to separate factual proof." *Wheeler* at ¶ 87. The common question of law or fact must be material to the actions. *Wilson* at ¶ 78. But

"not all questions of law and fact must be identical to be consolidated pursuant to Civ.R. 42." *Clemente v. Gardner*, 2004-Ohio-2254, ¶ 18 (5th Dist.).

{¶52} If the actions lack a sufficient common question of law or fact, joinder is improper. *Id.* If a sufficient common question exists, the court may join the actions after "the trial court consider[s] whether, in its discretion, it deems joinder to be warranted." *Wheeler,* 2026-Ohio-2475, at ¶ 87 (1st Dist.). Joinder is warranted if the questions are sufficiently common and the interest of efficiency outweigh "the risk of undue prejudice from trying multiple cases to a single fact-finder." *Wilson* at ¶ 51.

{¶53} The trial court abused its discretion when it joined Tanner's and Beavan's actions. Tanner's and Beavan's cases lack a common question of fact capable of resolution without separate factual proof. Their claims were based on Dr. Durrani's individualized treatment of Beavan's and Tanner's unique pathologies. *See Wilson,* 2026-Ohio-2279, at ¶ 51 (1st Dist.). In *Wilson,* our "element-by-element analysis reveal[ed]" that claims of negligence, battery, informed consent, and fraud against the Durrani parties, that are identical to the claims in this case, are patient-specific and "not in common across the actions within the meaning of Civ.R. 42(A)." *Id.* at ¶ 72-73. So too here. Beavan's and Tanner's claims turned on the patient-specific symptoms, medical histories, imaging, diagnoses, treatments, and injuries. And Beavan's and Tanner's claims "were actually resolved differently" based on evidence unique to each plaintiff. *Id.* at ¶ 74.

{¶54} The trial court cited the Durrani parties' identical settlement offers and witnesses when it denied the Durrani parties' motion. But identical diagnoses and surgeries performed by the same defendants are simply "*common facts*." (Emphasis in original.) *Wheeler* at ¶ 86. Civ.R. 42(A), in contrast, demands "a *common question* of fact or law to be answered." (Emphasis in original.) *Id.* Indeed, common expert

witnesses "should not be confused for the separate inquiry into whether the actions present a common factual question." *Wilson* at ¶ 64.

{¶55} While the trial court abused its discretion when it joined Beavan's and Tanner's actions for trial, the error was harmless.

{¶56} Under Civ.R. 61, "no error or defect in any ruling or order by the trial court is grounds for a new trial or for setting aside a jury's verdict unless refusing such relief is 'inconsistent with substantial justice.'" *Wilson,* 2026-Ohio-2279, at ¶ 85 (1st Dist.). To decide if substantial justice requires reversal, we "'weigh the prejudicial effect of the error[] and determine whether the trier of fact would have reached the same conclusion had the errors not occurred.'" *Id.*, quoting *Setters v. Durrani*, 2020-Ohio-6859, ¶ 22 (1st Dist.).

{¶57} The Durrani parties argue that the misjoinder allowed the jury to hear evidence of another malpractice case and other-acts evidence. In their view, the spillover effect of the evidence from one case was prejudicial to the other. But "we have rejected this generic prejudice argument in the past, noting that 'any consolidation of trials will certainly result in some prejudice.'" *Wilson* at ¶ 87, quoting *Courtney v. Durrani*, 2025-Ohio-2335, ¶ 57 (1st Dist.).

{¶58} And we cannot divine prejudice from a silent record. *See Hayward v. Summa Health Sys.*, 2014-Ohio-1913, ¶ 25, quoting *Wager v. Roche Laboratories*, 1999-Ohio-309, ¶ 21. Instead, the Durrani parties must point to something in the record that reveals the effect of the erroneous joinder on the jury's verdicts. *Krabacher v. Durrani*, 2026-Ohio-3368, ¶ 20 (1st Dist.), quoting *Hayward* at ¶ 25; *see Suida v. Howard,* 2002-Ohio-2292, ¶ 12 (1st Dist.) ("there was no evident confusion by the jury.").

{¶59} The jury's special interrogatories are the best gauge for measuring the prejudicial effect of the erroneous joinder. *See, e.g., Meadows v. Durrani,* 2026-Ohio-3324, ¶ 54 (1st Dist.) ("The jury interrogatories show that the jurors kept the cases separate and they did not rely on the other case in their decision."); *see also Zurieck v. Durrani*, 2026-Ohio-3369, ¶ 40 (1st Dist.); *Krabacher v. Durrani*, 2026-Ohio-3368, ¶ 38 (1st Dist.); *Braucher v. Durrani*, 2026-Ohio-3467, ¶ 58 (1st Dist.). In erroneous-joinder cases, we have also looked for conflicting verdicts and damages awards for signs that evidence in one case contaminated the other. *See Wilson,* 2026-Ohio-2279, at ¶ 89-93 (1st Dist.).

{¶60} Here, the jury's responses to the special interrogatories dispel any notion that the erroneous joinder resulted in evidentiary contamination that infected the jury's verdicts. In Beavan's case, the jury found Dr. Durrani liable for negligence based on his failure to discuss the risks associated with Beavan's smoking history and scheduling her surgery before seeing her MRI. And in her case, it found the Durrani parties not liable for a lack of informed consent, battery, or fraud. In contrast, the jury found the Durrani parties liable in Tanner's case for negligence because Dr. Durrani failed to use conservative treatment and operated on the left side of Tanner's spine despite evidence pointing to the right side of his spine as the source of his pain.

{¶61} The interrogatories confirm that the jury segregated the cases and based its verdicts on the evidence presented in the relevant plaintiff's case. In other words, we see nothing to suggest that the jury would have returned different verdicts if the cases had not been joined. So, the error was harmless.

{¶62} Therefore, we overrule the first assignment of error.

B. Beavan concedes the attorney-fee and setoff errors

{¶63} In Beavan's case, the Durrani parties raise two additional assignments of error challenging the trial court's setoff amount and attorney-fee award. Beavan concedes both errors.

1. The trial court improperly calculated the setoff amount

{¶64} First, they challenge the trial court's calculation of the amount of setoff of damages based on Beavan's settlement with other tortfeasors.

{¶65} Beavan settled with the Durrani parties' tortfeasor codefendants. Under R.C. 2307.28(A), a codefendant's settlement with a plaintiff "reduces the claim against the other tortfeasors to the extent of the greater of any amount stipulated by the release or the covenant or the amount of the consideration paid for it." Beavan produced documentation of the settlement to facilitate an in-camera review for calculating the setoff amount. The trial court reviewed documents and found that the Durrani parties "are entitled to a $14,400 setoff under R.C. 2307.28(A)."

{¶66} The Durrani parties argue that the trial court improperly factored Beavan's counsel's contingency fees and litigation expenses to reduce the settlement amount for setoff purposes. On appeal, Beavan concedes that the setoff amount was improperly reduced by counsel's contingency fees and litigation expenses. They are correct. R.C. 2307.28(A) plainly states that a damages award must be reduced by "the amount of the consideration *paid*" for the release of liability rather than the amount *received* as consideration. (Emphasis added.) R.C. 2307.28(A). As a result, we sustain the second assignment of error and reverse the trial court's setoff.

2. The trial court improperly awarded Beavan attorney fees

{¶67} In their third assignment of error in the appeal numbered C-250207, the Durrani parties argue that the trial court improperly awarded $37,500 in attorney fees to Beavan based on the parties' attorney-fee stipulation.

{¶68} The "American Rule" dictates that "each party in litigation is responsible for its litigation expenses." *Kitchens v. Ruff*, 2022-Ohio-1378, ¶ 12 (1st Dist.). Absent an exception, a prevailing party ""may not recover attorney fees as part of the costs of litigation."" *Id.*, quoting *Weckel v. Cole + Russell Architects*, 2019-Ohio-3069, ¶ 7 (1st Dist.), quoting *Wilborn v. Bank One Corp.*, 2009-Ohio-306, ¶ 7. Relevant here, the common law allows attorney fees when punitive damages are awarded. *See Cruz v. English Nanny & Governess School*, 2022-Ohio-3586, ¶ 46.

{¶69} The confusion appears to stem from the stipulated agreement reached in several Durrani cases regarding attorney fees. Specifically, counsel for both parties agreed that, if attorney fees were justified, plaintiffs' counsel would be "entitled to $75,000 in attorneys' fees, for each trial conducted." And if plaintiffs' cases are consolidated or joined for trial, "the total amount of attorneys' fees recoverable for the multiple Plaintiffs' trials still remains at $75,000." At oral argument, Beavan conceded that the stipulation did not justify awarding her attorney fees.

{¶70} The jury awarded Tanner both punitive damages and attorney fees. But the jury did not award Beavan punitive damages or attorney fees. Yet, the trial court awarded Tanner and Beavan $37,500 each in attorney fees. The trial court erred when it divided the attorney-fee award and should have awarded the entire $75,000 in attorney fees to Tanner. We sustain the third assignment of error.

III. Conclusion

{¶71} We overrule the Durrani parties' first assignment of error. In the appeal numbered C-250207, we sustain the second and third assignments of error, reverse the trial court's setoff and attorney-fee orders in Beavan's case, and remand the cause for further proceedings consistent with this opinion.

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

NESTOR J., concurs.
MOORE, J., concurs separately.

MOORE, J., concurring separately.

{¶72} As explained in my dissent in *Wilson*, 2026-Ohio-2279 (1st Dist.), I do not agree with the majority's application of Civ.R. 23's meaning of commonality when interpreting joinder under Civ.R. 42. However, the majority in *Wilson* did not adopt my reasoning and *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). So, in this case, while I disagree with the majority's reliance on the lead opinion in *Wilson* regarding consolidation, I concur with the majority's holding that any error in consolidation was harmless. I also concur in all other aspects of the majority's opinion.