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

PATRICK STEPHENSON, Plaintiff-Appellee, vs. ABUBAKAR ATIQ DURRANI, M.D., and CENTER FOR ADVANCED SPINE TECHNOLOGIES, INC., Defendants-Appellants.	: : : : : : : :	APPEAL NO. C-250666 TRIAL NO. A-1706544

SIERRA MARIE KAY STRATMAN, Plaintiff-Appellee, vs. ABUBAKAR ATIQ DURRANI, M.D., and CENTER FOR ADVANCED SPINE TECHNOLOGIES, INC., Defendants-Appellants.	: : : : : : : :	APPEAL NO. C-250667 TRIAL NO. A-1305127 *JUDGMENT ENTRY*

This cause was heard upon the 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 vacated in part.

Further, the court holds that there were reasonable grounds for these appeals, allows no penalty, and orders that costs be taxed 75% to appellants and 25% 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 9/25/2026.

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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Civil Appeals From: Hamilton County Court of Common Pleas

Judgments Appealed From Are: Affirmed in Part and Vacated in Part

Date of Judgment Entry on Appeal: September 25, 2026

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

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

CROUSE, Judge.

{¶1} Defendants-appellants Dr. Abubakar Atiq Durrani and the Center for Advanced Spine Technologies, Inc., ("CAST") (collectively, "Appellants") appeal from the trial court's judgments entered in favor of plaintiffs-appellees Patrick Stephenson and Sierra Marie Kay Stratman (collectively, "Appellees") in their medical-malpractice actions against Durrani and CAST.[1]

{¶2} Appellants argue on appeal that (1) the trial court erred in joining Appellees' claims for trial, (2) the trial court erred in allowing both Dr. Stephen Bloomfield and Dr. Ranjiv Saini, expert witnesses for Appellees, to provide improper testimony, (3) the trial court improperly instructed the jury on Durrani's absence, (4) the trial court erred in allowing Appellees to receive damages for future medical expenses, and (5) the trial court erred in failing to allow for a setoff against Appellees' settlements with other tortfeasors.

{¶3} Following our review of the record, we hold that (1) even if the trial court erred in joining Appellees' claims for trial, Appellants have failed to establish resulting prejudice, (2) the trial court did not allow Dr. Bloomfield to offer improper testimony, (3) some of Dr. Saini's testimony exceeded the bounds of his expertise as a radiologist, but such testimony was duplicative of that offered by another witness and its admission was harmless, (4) the trial court did not err in instructing the jury on Durrani's absence, (5) the trial court erred in awarding damages for future medical expenses to Stratman, and (6) the trial court did not err in failing to allow for a setoff because Appellants never asked the trial court for a setoff or asserted their right to a setoff outside of their answer.

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

{¶4} We accordingly vacate the trial court's award of future medical expenses to Stratman, but otherwise affirm the trial court's judgments.

I. Factual and Procedural History

{¶5} Stratman and Stephenson each filed medical-malpractice actions against Durrani and CAST. Their claims were tried to juries in 2019 and 2020, respectively, and both trials resulted in judgments being rendered in favor of the plaintiffs. This court, however, reversed the judgments on appeal and remanded for new trials. *See Stratman v. Durrani*, 2023-Ohio-3035 (1st Dist.) (holding that errors in the admission of the Durrani collage and evidence about Durrani's license revocations, as well as an erroneous jury instruction on Durrani's absence from trial, were not harmless); *Stephenson v. Durrani*, 2023-Ohio-2500 (1st Dist.) (holding that errors in the admission of testimony from one of Stephenson's expert witnesses, admission of evidence about Durrani's license revocations, and admission of the Durrani collage were not harmless).

{¶6} At the time that the cases were returned to the trial court, the court had begun joining pending medical-malpractice actions against Durrani and CAST for trial. In a "joint trial schedule sequence" issued by the trial court on May 31, 2024, Stephenson's and Stratman's cases were scheduled to be tried together.

{¶7} Durrani and CAST filed motions in limine to preclude Dr. Saini from offering surgical-standard-of-care testimony that exceeded the bounds of his expertise as a radiologist. The trial court denied these motions. Prior to trial, the court addressed the joinder of Stephenson's and Stratman's claims. After ascertaining that each plaintiff had undergone lumbar surgery with Durrani and that the plaintiffs were presenting testimony from the same experts, the trial court stated, "Given the fact that the witnesses are the same and the surgeries are very similar, the Court feels that, for

judicial economy and among other reasons, duplicate trials are appropriate."

A. Trial Testimony and Evidence

1. Stratman

{¶8} The evidence presented at trial established that Stratman had suffered from back pain since she was a teenager. When she was approximately 21 years old, her primary care physician referred her to Dr. Skidmore at the Mayfield Clinic. After examining Stratman, Dr. Skidmore recommended that she engage in physical therapy, and he advised against surgery. Stratman initially followed the doctor's suggestion, but she ultimately stopped attending therapy because it caused her pain.

{¶9} Stratman then went to see Durrani for a second opinion in August 2010. Her intake form indicated that she needed assistance with household chores, lifting, and yardwork. It also provided that she received no pain relief from over-the-counter medications, but that she experienced temporary relief from prescription medication. The form further stated that she was a smoker. Durrani recommended on her first visit with him that Stratman undergo surgery. He told her that without surgery, she would be unable to walk by the time that she was 35. He also recommended that she receive a steroid injection to combat her pain pending surgery, but Stratman declined to receive the injection.

{¶10} In October 2010, Durrani performed an L5-S1 fusion on Stratman. Although Stratman did not participate in the recommended post-surgery physical therapy, she temporarily experienced relief from her pain. But in November 2010, Stratman was assaulted by her neighbor. She went to the hospital, where an x-ray was taken that showed that the hardware placed by Durrani in Stratman's back was intact. Then in January 2011, Stratman both fell down a set of stairs and slipped on ice, resulting in pain in her lower back. Another x-ray was taken, and it again showed no

issues with the hardware in Stratman's back.

{¶11} Stratman continued to experience extreme pain in her back for several years. In January 2014, she saw Dr. Rohmiller about her pain. According to Stratman, Dr. Rohmiller told her that she needed a revision surgery because her bones had not fused following the surgery performed by Durrani. Dr. Rohmiller also told her that he would not perform any surgery until she was tobacco free for a 90-day period. According to Stratman, Durrani had never told her that she needed to stop smoking. Stratman quit smoking, and Dr. Rohmiller performed the revision surgery in April 2014. Stratman obtained some relief following this surgery, but still continued to experience pain that she treated with Gabapentin and Robaxin. At the time of trial, she was not seeing any doctor for her pain.

2. Stephenson

{¶12} The evidence presented at trial established that Stephenson was referred to Durrani for his long-standing back and leg pain. On Stephenson's first visit, Durrani told him, "I can fix you." Prior to any surgery, Stephenson received one steroid injection, but it afforded him no relief. Durrani then performed an L4-5 and L5-S1 axial lumbar interbody fusion on Stephenson in August 2010. Although Durrani's records indicated that Stephenson had obtained relief from his back and leg pain after surgery, Stephenson disagreed and testified that he continued to experience pain. According to Stephenson, Durrani told him that he had degenerative disc disease and faced multiple surgeries.

{¶13} Three months post-surgery, Durrani's records indicated that Stephenson suffered thoracic and cervical pain, as well as sensory numbness and tingling in his right arm. Durrani ordered MRIs of Stephenson's cervical and thoracic spine, and he subsequently recommended that Stephenson undergo separate

surgeries on both sections of his spine. In March 2011, Durrani performed a C5-C6 fusion on Stephenson's cervical spine. According to Stephenson, he continued to suffer pain post-surgery and was unable to straighten his head. He testified that his head has been "off plane" since this surgery. In May 2011, Durrani performed a T7-T10 fusion on Stephenson's thoracic spine. Stephenson did not attempt any conservative care prior to undergoing these surgeries.

{¶14} Following the thoracic surgery, Stephenson experienced pain in his upper thoracic spine and a "popping sensation" in his shoulder blades. After ordering additional MRIs of Stephenson's thoracic and cervical spine, Durrani scheduled Stephenson for a fourth surgery. In November 2012, Durrani performed a foraminotomy and decompression on Stephenson at C5-C6 and C6-C7.

{¶15} Stephenson testified that Durrani never explained the risks and benefits or alternate treatments for any of the surgeries. Nor did Durrani advise him to stop smoking. Stephenson stated that he has treated with several pain-management doctors over the years and that he lives in pain every day. He has been approved for disability and continues to incur medical bills.

3. Plaintiffs' Expert Witnesses

{¶16} Dr. Bloomfield, a neurosurgeon, testified that Durrani breached the standard of care by exaggerating and fabricating the results on Stephenson's and Stratman's imaging studies, by failing to obtain informed consent, and by failing to have Stephenson engage in conservative care before undergoing surgery. Dr. Bloomfield stated that because of the surgeries performed by Durrani, both Stephenson and Stratman suffered permanent injuries to their spines and would need either continued pain management or another surgery going forward. He stated that their need for treatment going forward was greater than it would have been if they had

not had surgery with Durrani. With respect to Stephenson, Dr. Bloomfield stated that the costs of his future pain management will exceed what he has previously paid as "a consequence of the exacerbation of his chronic pain syndrome by Dr. Durrani's unnecessary surgeries."

{¶17} Dr. Bloomfield further testified that a psychological evaluation could be beneficial to Stephenson, and that there may be a psychological component to Stephenson's pain. He questioned whether a patient like Stephenson would ever benefit from surgery.

{¶18} Dr. Saini, a radiologist, testified that Durrani's reading of both Stratman's and Stephenson's medical images was outside the standard of care and that Durrani performed unnecessary surgeries on both plaintiffs, resulting in permanent changes and scarring to their spines. Dr. Saini testified that Durrani failed to obtain adequate consent from Stratman. And he was critical of Durrani's failure to timely dictate his post-operative notes and of his failure to treat Stephenson with conservative care.

{¶19} Deposition testimony of spinal surgeon Dr. Keith Wilkey was read to the jury. Dr. Wilkey's testimony only addressed Durrani's treatment of Stephenson. He testified that Durrani exaggerated and fabricated the conditions depicted on Stephenson's medical images and performed unnecessary surgeries on Stephenson, resulting in permanent scarring and changes to Stephenson's spine. Dr. Wilkey also testified that Durrani failed to obtain adequate informed consent from Stephenson.

{¶20} According to Dr. Wilkey, Stephenson will experience pain and suffering for the rest of his life and will need future medical treatment. He stated, "So the average pain management bill will run anywhere from $50,000 a year and upwards for standard yearly—what we call maintenance of medication," and that "[i]f

procedures are performed, it may be up to one hundred thousand per year for the rest of his life."

4. Defendants' Expert Witnesses

{¶21} Dr. Derk Purcell, a neuroradiologist, testified that Durrani met the standard of care in reading and interpreting both Stephenson's and Stratman's medical images. He stated the images of both plaintiffs supported the surgeries performed, and that neither plaintiff's spine had been permanently damaged by any surgeries that Durrani performed.

{¶22} Dr. Paul Kaloostian, a neurosurgeon, testified that Durrani obtained informed consent from Stratman, and that the surgery performed on her was indicated and appropriate given her physical history, complaints of pain, and medical images. He further testified that Durrani executed the surgery correctly and within the standard of care.

{¶23} With respect to Stephenson, Dr. Kaloostian testified that Durrani obtained informed consent for all four surgeries performed and did not fabricate or misrepresent Stephenson's medical images. He further testified that each surgery was executed correctly and within the standard of care.

B. Motion for Directed Verdict

{¶24} Durrani and CAST moved for a directed verdict on the issue of future damages with respect to both Stephenson and Stratman. They argued that there was insufficient evidence presented on future damages, and they noted that the testimony from both plaintiffs established that they were not currently receiving treatment for their spines. Durrani and CAST further argued that Dr. Wilkey's testimony on future damages only pertained to Stephenson and was given in terms of "round ballpark figures" that Dr. Wilkey offered in every case, "regardless of age, condition, prior

procedures, or any prospect of future treatment." The trial court denied the motion.

C. Jury Verdicts

{¶25} The jury found that Durrani was negligent in his care and treatment of Stephenson because (1) he provided insufficient and inconsistent documentation regarding the surgeries performed, (2) he provided insufficient conservative care prior to surgical intervention, (3) one or more of the surgical procedures were not conducted accurately, and (4) he provided insufficient postoperative care. The jury further found in favor of Stephenson on his claims for battery and failure to acquire informed consent. But it found that while Durrani's negligence and battery were proximate causes of harm to Stephenson, the failure to acquire informed consent was not. The jury returned a verdict in favor of Durrani on Stephenson's claim for fraudulent misrepresentation.

{¶26} Stephenson was awarded a total of $3,232,800 in economic and noneconomic damages. This included an award of $400,000 for future medical expenses. The jury found that the noneconomic damages suffered by Stephenson were the result of a permanent and substantial physical deformity and that Durrani had acted with malice. It awarded Stephenson $200,000 in punitive damages, as well as attorney fees.

{¶27} The jury found that Durrani was negligent in his care and treatment of Stratman because he provided insufficient and inconsistent documentation pertaining to her surgery. The jury also found in favor of Stratman on her claims for battery and failure to acquire informed consent, but it found that only the battery was a proximate cause of harm to Stratman. The jury returned a verdict in favor of Durrani on Stratman's claim for fraudulent misrepresentation.

{¶28} The jury awarded Stratman $392,000 in economic and noneconomic

damages, including an award of $118,000 in future medical expenses. The jury further found that Durrani had acted with malice and awarded her $50,000 in punitive damages, as well as her attorney fees.

D. Post-Judgment Motions

{¶29} Durrani and CAST filed motions for judgment notwithstanding the verdict and/or a new trial. As relevant to this appeal, the motions argued that the trial court had improperly allowed Dr. Bloomfield to testify that Durrani's surgeries on Stephenson caused his depression, that the plaintiffs failed to establish their need for future medical treatment, that the trial court erred in allowing Dr. Saini to opine on the standard of care applicable to an orthopedic surgeon, and that the award of noneconomic damages to Stephenson was excessive and had to be molded under the cap set forth in R.C. 2323.43.

{¶30} The trial court agreed that the jury's award of noneconomic to Stephenson had to be reduced, but it otherwise denied the motions.

II. Joinder

{¶31} Appellants argue in their first assignment of error that the trial court erred in failing to order new trials because Appellees' cases were improperly joined for trial.

{¶32} Appellants contend that this assignment of error was preserved for appellate review because it was raised in their motions for judgment notwithstanding the verdict and/or a new trial. But an argument about improper joinder *was not* raised in the post-judgment motions. The trial court noted as much in its entry denying the motions. Because new trials were never requested, the trial court could not have ordered "new trials," as stated in this assignment of error.

{¶33} Nonetheless, Appellants' pretrial objection to the joinder was sufficient

to preserve their challenge on appeal, and they did not waive the challenge by failing to raise it in a post-judgment motion. *See Gonzalez v. Henceroth Ents.*, 135 Ohio App.3d 646, 653 (9th Dist. 1999) ("The Ohio Rules of Civil Procedure and the Ohio Appellate Rules of Procedure do not require a party to move for a new trial in order to preserve an argument. If this Court were to hold as such, it would be tantamount to requiring a motion for a new trial prior to any civil appeal.").

{¶34} Civ.R. 42(A)(1) provides in relevant part that a trial court "may" join two actions for trial if they "involve a common question of law or fact." A trial court's decision to join cases under Civ.R. 42(A) is reviewed for an abuse of discretion. *Jones v. Durrani*, 2024-Ohio-1776, ¶ 20 (1st Dist.). Appellants argue that the trial court erred in joining Stephenson's and Stratman's cases for trial because the two actions did not share a common question of law or fact. They further argue that they suffered prejudice from this improper joinder because joint trials are an "end-run around" Evid.R. 403(A) and 404(B).

{¶35} We need not determine whether the trial court erred in joining the cases for trial under Civ.R. 42, because we hold that even if the cases were improperly joined, Appellants have not demonstrated prejudice and any resulting error was harmless. *See Wheeler v. Durrani*, 2026-Ohio-2475, ¶ 92 (1st Dist.) ("A trial court's erroneous joinder will only serve as grounds for a new trial where the error was not harmless and where the party opposing joinder establishes prejudice.").

{¶36} We find no merit to Appellants' argument that joint trials are an "end-run around" the evidentiary rules. If this were true, two medical-malpractice actions could never be joined, and we have clearly held to the contrary on multiple occasions. *See, e.g., Jones* at ¶ 27; *Wilson v. Durrani*, 2026-Ohio-2279, ¶ 78 (1st Dist.) ("We reiterate that . . . cases can be consolidated within the discretion of the trial court—be

they against Durrani or any other defendant.").

{¶37} Further, the jury was instructed to consider the two cases separately, and the verdicts reflect that it did so. *See, e.g., State v. Rodriguez*, 2026-Ohio-2573, ¶ 40 ("Importantly, the jury acquitted Rodriguez on seven counts while convicting her on four others, thereby showing its ability to differentiate between the counts."). Here, the jury returned verdicts finding that Durrani was negligent, failed to acquire informed consent, and committed battery in each case. But in Stephenson's case, it found that the negligence and battery were the proximate causes of harm. And in Stratman's case, it found that the battery was the only proximate cause of her harm.

{¶38} The jury's award of damages also reflected that it was able to separately consider each plaintiff's case. While it awarded Stephenson substantial noneconomic damages for future pain and suffering and future loss of enjoyment of life, it awarded Stratman zero damages of this type. The damages for future medical expenses awarded to Stephenson also greatly exceeded those awarded to Stratman, which was in accordance with the evidence presented.

{¶39} We accordingly hold that that the trial court did not abuse its discretion in joining Stephenson's and Stratman's claims for trial, and we overrule the first assignment of error.

III. Denial of Post-Judgment Motions

{¶40} In their second assignment of error, Appellants argue that the trial court erred in failing to order new trials or grant judgments notwithstanding the verdicts based on various evidentiary issues.

{¶41} We review de novo a trial court's ruling on a Civ.R. 50 motion for judgment notwithstanding the verdict. *Courtney v. Durrani*, 2025-Ohio-2335, ¶ 61 (1st Dist.). A Civ.R. 50 motion challenges the sufficiency of the evidence, and it should

not be granted unless reasonable minds can reach only one conclusion and that conclusion is in favor of the moving party. When ruling on a motion for judgment notwithstanding the verdict, we must view the evidence presented in the light most favorable to the nonmoving party. *Id.*

{¶42} A motion for a new trial pursuant to Civ.R. 59(A) may be granted for a variety of reasons, and the scope of our review is dependent upon the argument advanced in the motion. *Ravenscraft v. Durrani*, 2025-Ohio-2900, ¶ 95 (1st Dist.). Where the trial court's exercise of its discretionary authority is challenged, we employ a typical abuse-of-discretion standard of review. But where the motion for a new trial raises a legal issue, we conduct a de novo review. *Id.*

A. Dr. Bloomfield's Testimony

{¶43} Appellants first argue that the trial court erred in allowing Dr. Bloomfield to offer testimony about Stephenson's psychological condition in contravention of Evid.R. 403 and 702. They take issue with the following testimony offered by Dr. Bloomfield:

> The other red flag about it is that, when you have a patient with so many locations of discomfort and pains, that there may be a psychological component to it that causes a patient to have difficulty distracting themselves away from minor discomfort. And so you wonder whether or not that type of a patient would be able to benefit from surgery because they may not be able to see the full portion of the half-filled glass, if you understand what I mean.
>
> . . .
>
> [T]his type of a patient should undergo a psychological evaluation by a psychologist who works in a pain management center

> understanding how some patients may have difficulty distracting themselves from the little drip of the faucet.

{¶44} Appellants challenged the trial court's admission of this testimony in their motions for judgment notwithstanding the verdict and/or a new trial, arguing that Dr. Bloomfield was not permitted under Evid.R. 702 to offer this testimony. The trial court found this argument to be without merit. It referenced Dr. Bloomfield's extensive professional background and experience in neurology and neurosurgery, before finding that Dr. Bloomfield's testimony met the requirements of Evid.R. 702 and that he was "qualified to provide expert testimony on whether [Stephenson's] depression was caused by the surgery that Dr. Durrani performed on him." The trial court further found that the probative value of Dr. Bloomfield's testimony was not outweighed by any prejudicial effect.

{¶45} We review the trial court's Evid.R. 702 and 403 determinations for an abuse of discretion. *Wheeler*, 2026-Ohio-2475, at ¶ 98 (1st Dist.) ("Whether a witness is qualified to testify as an expert is within the trial court's discretion."); *State v. Hartman*, 2020-Ohio-4440, ¶ 30 ("Weighing the probative value of the evidence against its prejudicial effect is a highly fact-specific and context-driven analysis" and "the trial court's determination should be reviewed for an abuse of discretion.").

{¶46} Pursuant to Evid.R. 702(B), a witness may be qualified to testify as an expert if, among other requirements, "The witness is qualified as an expert by specialized knowledge, skill, experience, training, or education regarding the subject matter of the testimony." We have held that "[a]n expert testifying in a medical-malpractice action 'need not practice in the exact 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.'" *Wheeler* at ¶ 98, quoting *Ravenscraft*, 2025-Ohio-2900, at ¶ 139 (1st Dist.).

{¶47} Appellants contend that because Dr. Bloomfield is a neurosurgeon, he was not qualified to testify about Stephenson's psychological condition, about the psychological components of pain perception, and about Stephenson's mental ability to benefit from surgery, without identifying any methodologies to show that he was a qualified expert in that field.

{¶48} We disagree with Appellants' characterization of Dr. Bloomfield's testimony. Dr. Bloomfield did not offer a psychological diagnosis of any kind about Stephenson. Rather, his testimony established that patients who suffer an extreme amount of pain may not benefit from surgery. The context in which this testimony was offered must be considered. Dr. Bloomfield's testimony addressed the intake form that Stephenson had filled out upon his first meeting with Durrani, and he noted that Stephenson indicated that he experienced pain in multiple areas of his body. Dr. Bloomfield explained that, when a patient suffers from pain in multiple areas, there is not one surgery that would eliminate all the patient's pain. He testified, "[Y]ou need to make sure that you could have enough benefits to justify the risks of the surgery. And in a person who has so many locations of pain that's bothering them, even if you reduce their pain 75 percent, the 25 percent residual pain may not be something that they could ignore." It was in this context that Dr. Bloomfield offered the challenged testimony.

{¶49} We hold that Dr. Bloomfield's testimony did not exceed the scope of his expertise as a neurosurgeon. In that role, Dr. Bloomfield was required to determine if the benefits of a surgery outweighed any potential risks. His testimony explained how a patient like Stephenson, who suffered from pain in multiple areas, might not benefit

from surgery because pain would remain in other areas. We find no abuse of discretion in the trial court's determination that Dr. Bloomfield was qualified to offer this testimony, *see Wheeler*, 2026-Ohio-2475, at ¶ 98 (1st Dist.), or in its determination that the probative value of this testimony outweighed any prejudicial effect. *See Hartman*, 2020-Ohio-4440, at ¶ 30.

B. Dr. Saini's Testimony

{¶50} Appellants next argue that the trial court erred in allowing Dr. Saini to testify outside the bounds of his expertise as a radiologist. We review the trial court's admission of Dr. Saini's testimony for an abuse of discretion. *See Wheeler* at ¶ 98. Appellants challenge multiple statements offered by Dr. Saini, and we address each in turn.

{¶51} The first challenge is to Dr. Saini's statement that

> [W]hen the surgeon is putting in screws, they're supposed to find the correct size of the screw and correct length. And the correct placement of the screws, the tip needs to be inside the vertebral body. If it goes outside of the cortex of the vertebral body, the thing that you have to worry about is there could be touching up against an artery or a vein or it could be touching against some of the nerve roots that are going out, and that should never happen.
>
> If you are putting these screws in, you have to make sure that it's the correct length. You have to make sure that the width of each screw is you know, not wide enough so that it goes outside of the cortex[.]

Appellants argue that this testimony went beyond Dr. Saini's review of post-surgery imaging. We disagree. After offering this testimony, Dr. Saini stated that he looked for correct screw placement when reviewing an intraoperative fluoroscopy. He also

testified that, as a radiologist, he is familiar with orthopedic spine surgery and neurosurgery so that he can interact in an operating room, and that he often examines intraoperative images that show the placement of hardware. Dr. Saini's testimony established that he was familiar with determining whether screws have been correctly placed. As such, this testimony did not exceed the scope of his expertise.

{¶52} Appellants further challenge Dr. Saini's testimony that the point of doing an "axiaLIF fusion" is to "have complete bone effusion of these two bones," as well as his testimony about the proper technique to perform an axiaLIF. This testimony addressed the purpose of a specific surgical procedure—an axiaLIF—that Durrani had performed. Because Dr. Saini testified that he is familiar with orthopedic spine surgery and neurosurgery so that he can assist in an operating room, and that he needed to know how to perform an axiaLIF to be able to review intraoperative and postoperative imaging studies, we hold that this testimony fell within the bounds of Dr. Saini's expertise.

{¶53} Appellants' next challenge is to Dr. Saini's statement that "the thing that everybody tells me is that orthopedic surgeons as well as neurosurgeons do not have any formal training as far as reading images are concerned." Standing alone, this testimony is suspect. But it was immediately followed by Dr. Saini's testimony that "But if they do readings on MRIs and CAT scans and the things that I've been trained in, they are held to the same standards as me." The point of Dr. Saini's testimony was that radiologists, neurosurgeons, and orthopedic surgeons are all held to the same standards when reading medical images. Given the context in which this testimony was offered, we find no abuse of discretion in the trial court's decision to allow it.

{¶54} But several of Appellants' challenges to Dr. Saini's testimony do have merit. The testimony offered by Dr. Saini that (1) a neurosurgeon should do a flexion-

extension study if it was suspected that a patient suffers from spondylolisthesis, (2) the surgery recommended by Durrani would not address the issues depicted on Stratman's medical images, and (3) the surgery on Stratman should not have been done, exceeded the scope of Dr. Saini's expertise as a radiologist. Dr. Saini offered no testimony that, as a radiologist, he was trained to determine what tests were necessary to diagnose a spinal condition such as spondylolisthesis. And while Dr. Saini's testimony established that he was familiar with various surgical procedures, a determination as to which procedure is necessary to correct a patient's condition falls within the purview of a surgeon, not a radiologist.

{¶55} However, each of these statements were duplicative of testimony offered by Dr. Bloomfield. Not only was Dr. Bloomfield critical of Durrani's failure to perform a flexion-extension study to establish whether a spondylolisthesis was unstable, but he similarly testified that Durrani misread Stratman's medical images, resulting in her undergoing an unnecessary medical procedure.

{¶56} We will not reverse a judgment based on an evidentiary error unless the error affects the complaining party's substantial rights or "'the ruling is inconsistent with substantial justice.'" *Bender v. Durrani*, 2024-Ohio-1258, ¶ 92 (1st Dist.), quoting *Beard v. Meridia Huron Hosp.*, 2005-Ohio-4787, ¶ 35; Civ.R. 61. In reviewing for harmless error, the court weighs the prejudicial effect of the error and asks whether the jury probably would have reached the same result had the error not occurred. *Bender* at ¶ 93. Because Dr. Saini's improper testimony was duplicative of that offered by Dr. Bloomfield, we cannot say that the jury would not have reached the same result had the testimony not been offered. We accordingly hold that any error in the admission of Dr. Saini's testimony was harmless.

C. Jury Instruction on Durrani's Absence

{¶57} Appellants last argue that the trial court improperly instructed the jury on Durrani's absence.

{¶58} This argument is raised under an assignment of error challenging the trial court's denial of Appellants' motions for judgment notwithstanding the verdict and/or a new trial. But Appellants raised no challenge to the jury instructions in their post-judgment motions. We also have found no objection to the absent-defendant jury instruction by Appellants elsewhere in the record, and Appellants have not otherwise directed us to one.

{¶59} Appellants have waived all but plain error by failing to object to the jury instruction below. *State v. Samueal*, 2023-Ohio-3322, ¶ 25 (1st Dist.). They have not advanced a plain-error argument, and this court will not advance one on their behalf. *See Crown Asset Mgmt., LLC v. Gaynor*, 2022-Ohio-1468, ¶ 13 (1st Dist.).

{¶60} We do note, however, that Appellants' challenge is directed at the jury instruction provided in *Jones*, which *was not* the instruction given in the case at bar. *See Jones*, 2024-Ohio-1776, at ¶ 30 and 34 (1st Dist.) (setting forth the instruction and holding that it was given in error because the language in the instruction regarding inferences "was not permissive nor limited to evidence that would naturally be produced"). In this case, the trial court removed from the absent-defendant instruction any language permitting the jury to make an inference about Durrani's absence from trial.

{¶61} The second assignment of error is overruled.

IV. Damages

{¶62} In their third assignment of error, Appellants argue that the trial court should have ordered a new trial or judgment notwithstanding the verdict based on

damages issues.

A. Future Medical Expenses

{¶63} Appellants first argue that the trial court erred in allowing Stephenson and Stratman to receive damages for future medical expenses.

{¶64} "Future damages are limited to losses which the plaintiff is reasonably certain to incur from the injuries," and "[a] plaintiff's claim for future medical expenses must be supported by evidence that reasonably establishes the amount to be incurred in the future." *Setters v. Durrani*, 2020-Ohio-6859, ¶ 40 (1st Dist.); *Haggard v. Durrani*, 2025-Ohio-5327, ¶ 75 (1st Dist.). The jury cannot speculate when awarding future medical expenses, and it must be furnished some data "'upon which to predicate an estimate of future costs.'" *Setters* at ¶ 40, quoting *Waller v. Phipps*, 2001 Ohio App. LEXIS 4119, *4 (1st Dist. Sept. 14, 2001).

{¶65} Appellants contend that Stephenson and Stratman offered no evidence of what their future medical expenses might be and that the jury's award of damages for such expenses was based on speculation.

{¶66} With respect to future medical expenses, Dr. Bloomfield testified that Stephenson was at high risk for needing junctional syndrome surgery in the future and that Stephenson would more likely than not suffer pain and discomfort for the rest of his life. Dr. Bloomfield stated that the cost of Stephenson's future pain management would exceed what Stephenson had previously paid.

{¶67} Dr. Wilkey testified that Stephenson will experience pain and suffering for the rest of his life and will need future medical treatment. He stated, "So the average pain management bill will run anywhere from $50,000 a year and upwards for standard yearly—what we call maintenance of medication," and that "[i]f procedures are performed, it may be up to one hundred thousand per year for the rest

of his life." Dr. Wilkey further testified that two of the surgeries Durrani performed on Stephenson will likely need to be revised, and that a revision surgery would cost approximately $200,000 per surgery.

{¶68} Stephenson testified that he had treated with a pain-management doctor for a year and that he continues to incur medical bills for treatment. He explained that he needs an annual x-ray to check on the hardware placed by Durrani.

{¶69} The testimony offered with respect to Stratman's future medical expenses was much less robust. Dr. Bloomfield testified that Stratman will likely need continued pain management off and on for the rest of her life, but he provided no estimation as to the amount of expenses Stratman would incur for this. Stratman herself testified that she currently does "nothing right now" regarding medical treatment for her pain.

{¶70} We agree with Appellants that Stratman provided no evidence to reasonably establish that she would need future medical treatment, or, if she was to need such treatment, to reasonably establish the amount of future medical expenses that she was likely to incur. *See Setters*, 2020-Ohio-6859, at ¶ 40 (1st Dist.); *Haggard*, 2025-Ohio-5327, at ¶ 75 (1st Dist.). We accordingly hold that the trial court erred in awarding her damages for future medical expenses and we vacate that award.

{¶71} But we reach the opposite determination with respect to Stephenson. The jury was presented with the specific type of surgery that Stephenson would need going forward—junctional syndrome surgery and revisions on several of the surgeries performed by Durrani. It was also provided with estimates of how much future surgeries and future pain management would cost. Collectively, the testimony from Dr. Bloomfield and Dr. Wilkey furnished the jury with adequate data from which to calculate an award of future medical expenses. *Compare Puckett-Morrissette v.*

Durrani, 2026-Ohio-1444, ¶ 36-37 (reversing an award of future medical expenses where the jury was not "provided sufficient evidence as to the cost, type of treatment, and likelihood that the plaintiff will have to undergo such treatment").

B. Setoff

{¶72} The Appellants further argue that the trial court should have allowed a setoff of the Appellees' damages against their settlements with other tortfeasors.

{¶73} While Appellants asserted their right to a setoff as an affirmative defense in their answers, they did not file a motion for a setoff in either Stephenson's or Stratman's case. Where an affirmative defense is raised in an answer, but is not subsequently raised at trial or not raised in a timely manner, it is waived. *See Adams v. Durrani*, 2022-Ohio-60, ¶ 93-98 (1st Dist.), *overruled on other grounds by Fenner v. Durrani*, 2025-Ohio-4477 (1st Dist.) (where appellants raised the statute of repose as an affirmative defense in the answer, but did not raise the issue again until they moved for a directed verdict, it was waived); *Kogan v. Weaver Constr. & Roofing LLC*, 2026-Ohio-2323, ¶ 48 (8th Dist.) (holding that "the answer is not self-executing" and that an affirmative defense "must be timely asserted and maintained" (Cleaned up.)).

{¶74} Because Appellants failed to ask the trial court for a setoff and failed to assert the right to a setoff outside of their answers, they have waived the right to challenge the trial court's failure to award a setoff on appeal.

{¶75} The third assignment of error is accordingly sustained in part with respect to the award of future medical expenses to Stratman, but is otherwise overruled.

V. Conclusion

{¶76} The trial court's award of future medical expenses to Stratman is vacated. The judgments of the trial court are otherwise affirmed.

Judgments affirmed in part and vacated in part.

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