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

KAREN JOHNSON,	:	APPEAL NO. C-250064 TRIAL NO. A-1505624
Plaintiff-Appellee,	:	
vs.	:	*JUDGMENT ENTRY*
ABUBAKAR ATIQ DURRANI, M.D.,	:	
and	:	
CENTER FOR ADVANCED SPINE TECHNOLOGIES, INC.,	:	
Defendants-Appellants.	:	

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

For the reasons set forth in the Opinion filed this date, the judgment of the trial court is affirmed in part and reversed in part.

Further, the court holds that there were reasonable grounds for this appeal, allows no penalty, and orders that costs be taxed 50% to appellee and 50% to appellant.

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 10/14/2026.

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

By: Jennifer Hunsley
Administrative Judge

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

KAREN JOHNSON, Plaintiff-Appellee, vs. ABUBAKAR ATIQ DURRANI, M.D., and CENTER FOR ADVANCED SPINE TECHNOLOGIES, INC., Defendants-Appellants.	: : : : : : : : :	APPEAL NO. C-250064 TRIAL NO. A-1505624 *O P I N I O N*

Civil Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed in Part and Reversed in Part

Date of Judgment Entry on Appeal: October 14, 2026

Statman Harris, LLC, Alan J. Statman, and *Benjamin M. Maraan, II*, for Plaintiff-Appellee,

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

BOCK, Judge.

{¶1} In this appeal, defendants-appellants Abubakar Atiq Durrani, M.D., and Center for Advanced Spine Technologies, Inc., ("CAST") (collectively, the "Durrani parties") challenge the trial court's denial of their motion for a new trial and awards of prejudgment interest and attorney fees to plaintiff-appellee Karen Johnson.

{¶2} We overrule the first assignment of error and hold that the Durrani parties are not entitled to a new trial because the trial court's errors were harmless.

{¶3} We overrule the second assignment of error, in part, because the trial court's prejudgment-interest award does not rise to an abuse of discretion. But we sustain that assignment of error, in part, and reverse the trial court's attorney-fees award because Johnson prevailed solely on her negligence claim and therefore was not entitled to fees. We affirm the trial court's judgment in all other respects.

I. Factual and Procedural History

{¶4} In 2015, Johnson sued the Durrani parties,[1] alleging that Dr. Durrani caused her injuries by performing two spinal-fusion surgeries. Johnson's complaint asserted negligence, battery, lack of informed consent, intentional infliction of emotional distress, fraud, negligent hiring and supervision, and violations of Ohio's Consumer Sales Practices Act.

{¶5} The record is unclear, but it appears that sometime before February 2019, counsel for Johnson and hundreds of Dr. Durrani's other former patients moved for "group trials." Then, in February 2019, a case-management order discussed a forthcoming "decision regarding Plaintiffs['] motion for group trials." That order made clear that trials would consist of "one case per trial date."

[1] Johnson also named West Chester Hospital, LLC, and U.C. Health as defendants, but dismissed her claims against those defendants before trial.

{¶6} After the cases were transferred to a new visiting judge in 2020, counsel filed a "global motion" for "group trials" in Robert Densler's case against the Durrani parties.[2] The global motion discusses counsel's relentless pursuit[3] of group trials throughout the years and its lawsuit against the former presiding judge,[4] and includes highly inflammatory attacks on the former presiding judge's character and intelligence. It suggested the following "rational[]" groups:

> "C1/C2" – 11 plaintiffs;
> "AXIALIF" – 15 plaintiffs;
> "EDS" – six plaintiffs;
> "DECEASED" – eight plaintiffs
> "FILED PRIOR TO 22/MINOR AT THE TIME OF SURGERY" – six plaintiffs;
> "ELDERLY" – three plaintiffs;
> "CERVICAL" – ten plaintiffs;
> "LUMBAR" – 34 plaintiffs;
> "THORACIC" – three plaintiffs;
> "LUMBAR/CERVICAL" – M.B. and 22 other plaintiffs;
> "LUMBAR/CERVICAL/THORACIC-MULTIPLE SURGERIES" – eight plaintiffs;
> "LUMBAR /THORACIC" – Johnson and seven other plaintiffs;
> "THORACIC/CERVICAL" – five plaintiffs; and
> "LEFT SACRAL ILLIAC JOINT FUSION" – two plaintiffs.

{¶7} The Durrani parties opposed the global motion, arguing that it failed to identify a common question of law or fact as required by Civ.R. 42. Plaintiffs' counsel responded and insisted that "Civ.R. 42(A) has nothing to do with group trials" and that "consolidation does not apply to group trials." The trial court issued a "decision" on the global motion and found, based on "the number of pending cases and the ability of the Court to accommodate trials," that "a modification of the trial procedure appears

[2] There was no motion in the record in either Johnson's or M.B.'s cases. The Durrani parties supplemented the record with portions of the record of Robert Densler's case.
[3] The motions for group trials filed in 2017 and 2018 mentioned in the global motion are not in the record.
[4] The lawsuit mentioned in the motion is not in the record.

to be appropriate." So, it ordered plaintiffs' counsel to propose[5] groups for trial that "comply with Ohio Civil Rule 42."

{¶8} Two years later, over the Durrani parties' objections, the trial court journalized a "fifth revised joint trial sequence"—this was the first joinder order entered in this case—joining Johnson's case with M.B.'s[6] case for a "joint trial." Based on the filings in Johnson's case, we can surmise that M.B. raised claims identical to Johnson's claims.

{¶9} The Durrani parties filed a motion in limine to prevent plaintiffs' counsel from introducing various pieces of evidence. Relevant here, the Durrani parties challenged the admissibility of Dr. Saini's testimony and references to Dr. Durrani's absence. Before trial, the parties argued the motions before the trial court. The trial court ruled that the First District had "stated that testimony by Dr. Saini, with respect to the standard of care for surgeons, neurosurgeons, or orthopedic surgeons, could be allowed."

A. Johnson and M.B.'s joint trial

{¶10} The joint trial consisted of testimony by Johnson, M.B., the plaintiffs' experts, and defense experts. The record includes Johnson's and M.B.'s medical records. The plaintiffs called Dr. Stephen Bloomfield, a neurosurgeon, and Dr. Ranjiv Saini, a neuroradiologist and diagnostic radiologist, as expert witnesses in support of their claims. The Durrani parties called Dr. Derk Purcell, a neuroradiologist, and Dr. Paul Kaloostian, a neurosurgeon, to testify in their defense.

[5] The proposed groups are not in the record.
[6] Because this opinion contains a nonparty's medical information, we use M.B.'s initials. While the cases were joined, the record in M.B.'s case is not part of this appeal.

1. Johnson's spinal surgeries

{¶11} Johnson, a long-time smoker, was diagnosed with scoliosis as a child. Johnson once led an active lifestyle, but a skydiving injury and two car crashes left Johnson with worsening back pain. Medication, epidurals, and trigger-point injections provided Johnson short-lived relief. Later, Johnson was diagnosed with fibromyalgia and mental-health disorders. Then in 2006, an MRI of Johnson's spine revealed "significant scoliosis," degenerative disc disease, spondylolysis (bone spurs), and central stenosis (narrowing) of her L1-L2, L2-L3, and L3-L4 joints. It also revealed spondylolysis, moderate stenosis, and a herniated disc at her L5-S1 joint.

{¶12} In 2008, Johnson was admitted to a hospital for "severe right-sided leg pain." An MRI of her spine showed that her scoliosis and disc herniation in her "second and third thoracic levels," and her spine in general, was worsening. Her L5-S1 joint was particularly degenerated and mildly misaligned. But her physician recommended pain management rather than surgery because of Johnson's smoking, fibromyalgia, and history of narcotics use.

{¶13} For a while, pain management helped alleviate Johnson's symptoms. But a 2012 MRI of Johnson's spine revealed her conditions were deteriorating.

{¶14} Johnson saw Dr. Durrani for her pain. She reported severe and unmanageable pain radiating from her back to her extremities. In her paperwork for Dr. Durrani, Johnson disclosed her history of smoking, her fibromyalgia, and her mental-health diagnoses. After 15 minutes with Johnson, Dr. Durrani told her that she needed three surgeries or she would "be in a wheelchair." The surgeries would "straighten" her back and resolve her pain.

{¶15} In a letter to another physician, Dr. Durrani diagnosed Johnson with severe narrowing of her L3-L4, L4-L5, and L5-L6 joints, severe lumbar scoliosis, and

bulging discs at her C4-C5 and C5-C6 joints. Dr. Durrani recommended two surgeries on Johnson's mid-to-lower spine. In the first, he planned to decompress and fuse the joints in her mid-to-lower back by performing "lateral interbody fusion from T10 to L4." In the second, he planned to reconstruct her mid-to-lower back and to fuse her L5-S1 joints by performing "a posterior spinal instrumentation from T4 to sacrum with axial lumbar interbody fusion at L5-S1."

{¶16} After a pre-operation appointment in October, Dr. Durrani wrote to another physician, reporting that he had reviewed the surgeries' risks and benefits with Johnson, and that Johnson had signed a consent form for decompression and fusion surgeries on her "T10-L4" joints in her lower back. Dr. Durrani performed surgery on Johnson in October 2012, but there is no operative report in the record. A postoperative report suggests that Dr. Durrani performed the surgery on a different section of Johnson's back.

{¶17} Johnson attended a follow up visit with Dr. Durrani in November 2012 and signed a consent form for a "T4-S1 PSF, L5-S1 AxiaLif, B L4-S1 hemilami F+O." Again, the record contains no operative report. When Johnson attended a follow-up appointment two weeks after her second surgery with Dr. Durrani, he noted that she was "doing well" and was participating in rehabilitation therapy. Dr. Durrani recommended pain management.

{¶18} But Johnson testified that her pain was "so much worse" after Dr. Durrani's surgeries. She saw other physicians, who concluded that her scoliosis persisted and the hardware implanted by Dr. Durrani was "grossly intact," and two pieces had "ejected out of the spine" and were compressing part of Johnson's kidney. Eventually, Johnson's kidneys were surgically removed. In 2019, Johnson had surgery

to replace the hardware placed by Dr. Durrani. The operative note identified "multiple misplaced screws" in Johnson's spine.

a. Johnson's expert witnesses

{¶19} Dr. Bloomfield reviewed Johnson's medical records and testified that Johnson was not a suitable candidate for surgery because of her smoking, obesity, fibromyalgia, and narcotic addiction. According to Dr. Bloomfield, Dr. Durrani's recommendation for surgery violated the standard of care because the risks associated with Johnson's health and medical history outweighed the potential benefits of surgery. Plus, Dr. Durrani's failure to educate Johnson on those risks and benefits meant that she never gave informed consent to Dr. Durrani to operate on her spine. Dr. Bloomfield also testified that Dr. Bohinski, years after Dr. Durrani had operated on Johnson, saw evidence in Johnson's imaging that Dr. Durrani's screws were misplaced. Dr. Bloomfield explained that misplaced pedicle screws could lead to complications. And he testified that Dr. Durrani's placement of spacers to address Johnson's scoliosis was "not successful" and caused Johnson's kidney loss.

{¶20} Dr. Saini reviewed Johnson's medical records. He testified that the consent form, lack of an operative report, and Dr. Durrani's decision to deviate from the surgical plan as described in the consent form all breached the standard of care. Relevant here, Dr. Saini testified that Dr. Durrani's placement of pedicle screws in Johnson's spine fell below the standard of care. Dr. Saini agreed with the operative note from Johnson's 2019 surgery, which described the pedicle screws implanted into Johnson's spine by Dr. Durrani as misplaced. And Dr. Saini opined that Dr. Durrani's hardware implanted to decompress Johnson's spine had caused Johnson's injuries and the loss of her kidneys.

b. The Durrani parties' expert witnesses

{¶21} Dr. Kaloostian, a neurosurgeon with a decade of experience, testified that Dr. Durrani's reading of Johnson's imaging and recommending surgery met the standard of care for a neurosurgeon. In his view, surgery was the only "option," and was needed to stabilize Johnson's scoliosis and resolve her pain.

{¶22} Dr. Kaloostian testified that the two informed-consent forms signed by Johnson before each surgery satisfied the standard of care for obtaining informed consent. As for the surgery, Dr. Kaloostian explained that the screws implanted during Johnson's surgeries "looked great" in imaging. But the spacer implanted by Dr. Durrani "popped out unfortunately because of the severity of [Johnson's] scoliosis." Dr. Kaloostian read the "misplaced screws" remark in the 2019 operative note to mean that the misplacement occurred after, not during, Johnson's surgery.

{¶23} Dr. Purcell, a neuroradiologist with almost 20 years of experience, agreed with Dr. Durrani's impressions of Johnson's imaging and recommendation of surgery. Dr. Purcell testified that Dr. Durrani did not misplace the decompression cage during Johnson's first surgery.

2. M.B.'s spinal surgeries

{¶24} M.B. described her medical history, which included smoking, mental-health issues, scoliosis, and spinal surgery before she met Dr. Durrani. Imaging had revealed stenosis (narrowing) in her L4-L5 joint. M.B. saw Dr. Durrani in June 2012, where he diagnosed her with degenerative disc disease, degenerative stenosis, and misalignment at her L4-L5 joint, and a bulging disc with a pinched nerve at her C5-C6 joint. Dr. Durrani proposed and performed a decompression-and-fusion surgery on her spine in August 2012. Five months later, Dr. Durrani performed a decompression and removed part of M.B.'s lamina. M.B. could not recall discussing the surgery but

remembered that Dr. Durrani discussed implanting a "cage thing . . . to fix something" before M.B. signed the consent form.

{¶25} Dr. Bloomfield testified that Dr. Durrani violated the standard of care by recommending surgery to M.B. because her history of smoking risked a failed fusion and the inadequate consent form violated the standard of care. Dr. Saini opined that M.B.'s imaging did not support Dr. Durrani's impressions or diagnoses and violated the standard of care. Like Dr. Bloomfield, Dr. Saini testified that the consent form signed by M.B. violated the standard of care.

{¶26} In contrast, Dr. Purcell agreed with Dr. Durrani's reading of M.B.'s imaging and his diagnoses. Dr. Kaloostian testified that Dr. Durrani's reading of M.B.'s imaging, consent form, and treatment of M.B. met the standard of care.

B. Verdicts and postjudgment motions

{¶27} The jury found the Durrani parties liable for negligence in Johnson's case and awarded her $1,195,000 in damages. The jury interrogatory specifies that Dr. Durrani was negligent due to "misplaced screws, screw in the nerve, and risk/benefit evaluation did not warrant surgery." But the jury found for the Durrani parties on each of Johnson's remaining claims and on all of M.B.'s claims.

{¶28} The Durrani parties moved for a judgment notwithstanding the verdict ("JNOV") under Civ.R. 50(B) and for a new trial under Civ.R. 59. The trial court denied the motion but reduced Johnson's compensatory-damages award to $520,000. It also awarded Johnson $61,388.52 in prejudgment interest and $75,000 in attorney fees.

II. Analysis

{¶29} On appeal, the Durrani parties raise two assignments of error. First, they identify several errors that they believe warrant a new trial. Second, they challenge the trial court's prejudgment-interest and attorney-fees awards.

A. First Assignment of Error: The trial errors were harmless

{¶30} The Durrani parties argue that the "trial court should have ordered a new trial"[7] because of improprieties surrounding Dr. Saini's testimony, references to Dr. Durrani's absence, and the trial court's decision to hold a joint trial. We address each issue in turn.

1. Dr. Saini

{¶31} The Durrani parties assert that Dr. Saini, Johnson's expert neuroradiologist, testified outside of his area of expertise on several occasions. Johnson responds[8] and claims that Dr. Saini's testimony was permissible and consistent with our precedent.

a. Experts must testify within their expertise

{¶32} The scope of expert testimony falls within the trial court's discretionary authority. *See Haggard v. Durrani,* 2025-Ohio-5327, ¶ 53 (1st Dist.). We review the

[7] The Durrani parties' motion for a new trial did not raise arguments about Dr. Saini's testimony or the decision to hold a joint trial. But they did argue these issues below. Because considering these issues under this assignment of error does not prejudice Johnson, the interest of justice warrants resolving these issues on their merits. *See State v. Justice*, 2024-Ohio-2574, ¶ 26 (1st Dist.).

[8] Johnson's appellee brief is hardly a response. It lacks citations to the record as required by App.R. 16(B), appears to be an exercise in analytical minimalism, and misrepresents First District precedent. The brief is inconsistent with the thoroughness necessary for competent representation. The failure to submit proper briefs may lead to sanctions. Ohio courts may exercise their inherent power to sanction a party "where that party's conduct thwarts the administration of justice, disobeys court orders, abuses the judicial process, or when it is otherwise necessary for the administration of justice and protection of judicial powers and processes." *DiCuccio v. Lindsmith*, 2018-Ohio-2320, ¶ 30 (10th Dist.). Sanctions are most ""appropriate when the offending parties have practiced a fraud upon the court."" *State v. Coleman*, 2026-Ohio-965, ¶ 39 (11th Dist.), quoting *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991), quoting *NASCO, Inc. v. Calcasieu Television & Radio, Inc.*, 124 F.R.D. 120, 139 (W.D.La. 1989). A court's inherent authority "include[s] the 'power to impose silence, respect, and decorum, in their presence.'" *Whiting v. City of Athens,* 170 F.4th 455, 463 (6th Cir. 2026), quoting *Anderson v. Dunn*, 19 U.S. 204, 227 (1821). Future deficient briefing like the one in this case risks sanctions, such as the Court prohibiting participation in oral argument or striking the offending party's brief.

trial court's admission of expert testimony for an abuse of discretion. *See Wheeler v. Durrani*, 2026-Ohio-2475, ¶ 98 (1st Dist.).

{¶33} Relevant here, Evid.R. 702(B) provides that a witness may testify as an expert if the proponent shows "that it is more likely than not that . . . [t]he witness is qualified as an expert by specialized knowledge, skill, experience, training, or education regarding the subject matter of the testimony." In medical-malpractice cases, medical experts """"need not practice in the exact same specialty as that of the defendant-physician."""" *Ravenscraft v. Durrani*, 2025-Ohio-2900, ¶ 139 (1st Dist.), quoting *Adams v. Durrani*, 2022-Ohio-60, ¶ 50 (1st Dist.), quoting *Guiliani v. Shehata*, 2014-Ohio-4240, ¶ 42 (1st Dist.), quoting *Alexander v. Mt. Carmel Med. Ctr.*, 56 Ohio St.2d 155, 160 (1978). Questions involving a witness's qualifications turn on "the scope of the witness's knowledge and not the artificial classification by title." *Wheeler* at ¶ 98, quoting *Ravenscraft* at ¶ 139. The qualifications of experts, and the admissibility of their "testimony[,] must be evaluated on a case-by-case basis to determine whether [the testimony] exceeds the scope of [the witnesses'] expertise." *Wheeler* at ¶ 99.

b. Johnson laid a foundation for some of Dr. Saini's testimony

{¶34} The Durrani parties challenge the admissibility of Dr. Saini's testimony that Dr. Durrani breached the standard of care for an orthopedic surgeon. First, they point out that Dr. Saini testified that Dr. Durrani breached the standard of care when he failed to write an operative note for Johnson's surgery. Second, they challenge his testimony that Dr. Durrani breached the standard of care when he departed from the surgical plan outlined in Johnson's consent form. Third, they take issue with Dr. Saini's testimony that a surgeon should "know where you're placing things" and that Dr. Durrani's "placement of [the] cages [led] to later problems."

{¶35} The Durrani parties initially challenged Dr. Saini's expertise in their motion in limine, arguing that he should not be permitted to testify about the standard of care for a surgeon. The trial court denied that motion, which was "'a tentative, interlocutory, [and] precautionary ruling.'" *Setters v. Durrani,* 2020-Ohio-6859, ¶ 12 (1st Dist.), quoting *State v. Grubb*, 28 Ohio St.3d 199, 201-202 (1986). It "reflect[s] [the trial court's] anticipatory treatment of [an] evidentiary issue." *Grubb* at 201-202.

{¶36} When Dr. Saini testified to these breaches, the Durrani parties raised a general "objection" without identifying any particular ground that would render this testimony inadmissible. A party complaining of the admission of evidence must have raised an objection "stating the specific ground of objection if the specific ground was not apparent from the context." Evid.R. 103(A)(1). But Evid.R. 103 also provides that a definite ruling on a motion in limine preserves the issue on appeal.

{¶37} The trial court did not abuse its discretion when it allowed Dr. Saini to testify that Dr. Durrani breached the standard of care when he deviated from the surgical plan outlined in the informed consent form signed by Johnson. Dr. Saini explained that while Johnson consented to surgery on her T-10 to L4 levels, Dr. Durrani operated on her L4-L5 joint. This, Dr. Saini testified, breached the standard of care. While an expert's qualifications and competence to testify on a particular issue must be decided on a case-by-case basis, we have held that informed consent is an issue that "cut[s] across all specialty areas." *Potts v. Durrani*, 2023-Ohio-4195, ¶ 35 (1st Dist.). And here, Dr. Saini described his training and experience with obtaining consent from patients for the radiologic procedures that he has performed. The record supports the trial court's admission of this testimony.

{¶38} Turning to the operative note, the trial court abused its discretion when it allowed Dr. Saini to testify that Dr. Durrani breached the standard of care when he

failed to write an operative note. We have affirmed the trial court's admission of Dr. Saini's testimony about the standard of care for drafting operative notes where the plaintiffs elicited testimony establishing his specialized experience with and knowledge of operative notes. *See Haggard*, 2025-Ohio-5327, at ¶ 56 (1st Dist.); *see also Ravenscraft*, 2025-Ohio-2900, at ¶ 142-143 (1st Dist.). But our cases have never "establish[ed] a blanket rule on the permissibility of Dr. Saini's testimony." *Wheeler*, 2026-Ohio-2475, at ¶ 99 (1st Dist.). The record in this case stands in contrast to the records in *Haggard* and *Ravenscraft* as it fails to reveal any knowledge or experience that would qualify Dr. Saini as an expert on this issue. While Dr. Saini testified that other hospital employees rely on operative notes, he did not describe his experience or training with operative notes. His use of "clinical" information when reviewing postoperative imaging is too broad to establish his knowledge of the standard of care for writing operative notes. So, the trial court abused its discretion when it admitted Dr. Saini's testimony that Dr. Durrani breached the surgical standard of care when he failed to write an operative note.

{¶39} Finally, Dr. Saini testified that Dr. Durrani breached the standard of care when he implanted cages with screws that "were not placed in the correct position" and those screws led to complications for Johnson. The Durrani parties raised general objections but clarified, during a colloquy, that they were objecting because Dr. Saini "is not a surgeon." But one's title or classification does not govern the admissibility of a medical expert's testimony. *See Alexander*, 56 Ohio St.2d at 160. Rather, a medical expert's testimony is admissible if the expert can "demonstrate . . . that he is familiar with the standard of care applicable to the defendant's school or specialty and that his familiarity is 'sufficient to enable him to give an expert opinion as to the conformity of the defendant's conduct to those particular standards.'" *Schutte*

v. Mooney, 2006-Ohio-44, ¶ 24 (1st Dist.), quoting *Alexander* at 160; *see Weisman v. Durrani*, 2026-Ohio-2639, ¶ 100 (1st Dist.).

{¶40} Earlier, when testifying about M.B.'s surgeries, Dr. Saini described the anatomy of a spine and the purpose of hemilaminectomies. Dr. Saini testified that he is trained and familiar with procedures like hemilaminectomies and spinal fusions because he "ha[s] to be." He explained that surgeons rely on his reading of intra- and post-operative imaging to determine whether instruments were correctly implanted into the patient. Dr. Saini confirmed that he is asked to advise spinal surgeons on "whether they got it right" based on his review of intra-and post-operative imaging. So, he must, necessarily, understand where "stuff goes" during surgery. Importantly, the Durrani parties did not attempt to test Dr. Saini's familiarity with these procedures. *See State v. Batson*, 1999-Ohio-280, ¶ 27 ("during . . . questioning to qualify her as an expert, defense counsel never objected or challenged her qualifications to testify."). At trial and on appeal, the Durrani parties make no effort to explain why this foundation is inadequate to admit Dr. Saini's testimony. On this record, we hold that the trial court did not abuse its discretion.

{¶41} In sum, we hold that the trial court abused its discretion when it admitted Dr. Saini's testimony that Dr. Durrani breached the standard of care when he failed to write an operative note. But that error is harmless. Under Civ.R. 61, the admission of Dr. Saini's testimony is not reversible error unless the Durrani parties show that the error affected their substantial rights or was inconsistent with substantial justice.

{¶42} Here, the record reveals that Dr. Saini's testimony about the operative note had no effect on the jury's verdict. Six jurors found Dr. Durrani negligent in his treatment and care of Johnson, and the jury interrogatories identify two negligent acts

by Dr. Durrani that proximately caused Johnson's injuries. The first was Dr. Durrani's placement of the pedicle screws. The second was Dr. Durrani's "risk/benefit evaluation," which the jury found did "not warrant surgery." In other words, the jury did not find that Dr. Durrani's failure to author an operative note was negligent. Therefore, we hold that the admission of Dr. Saini's testimony involving the operative notes was harmless.

2. Counsel's references to Dr. Durrani's absence

{¶43} Dr. Durrani did not attend trial. The Durrani parties argue that the trial court erroneously allowed Johnson to reference Dr. Durrani's presence in Pakistan and absence from trial. The trial court prohibited derogatory comments about Dr. Durrani's heritage and flight to Pakistan, but it allowed limited references to Dr. Durrani's absence to explain "where he's at."

{¶44} We review a trial court's exercise of its control over the proceedings for an abuse of discretion. *See Pierce v. Durrani,* 2015-Ohio-2835, ¶ 20 (1st Dist.).

{¶45} During voir dire, the first mention of Dr. Durrani's absence came from counsel for the Durrani parties. Later, Johnson made straight-forward references to Dr. Durrani's absence from trial. Counsel is given wide latitude during voir dire examination. *Lloyd v. Willis,* 2004-Ohio-427, ¶ 9 (4th Dist.). We have held that, while irrelevant, counsel's matter-of-fact references to Dr. Durani's residence in Pakistan and absence from trial is noninflammatory and is "general information." *See Bender v. Durrani,* 2024-Ohio-1258, ¶ 72 (1st Dist.). So too here.

{¶46} During opening arguments, counsel for Johnson mentioned Dr. Durrani's upbringing, residence in Pakistan, and absence from trial. Counsel is afforded latitude during opening arguments. *See Viox v. Weinberg,* 2006-Ohio-5705,

¶ 35 (1st Dist.). And counsel's matter-of-fact references to Dr. Durrani's absence and residence in Pakistan were noninflammatory.

{¶47} Next, counsel asked Drs. Bloomfield, Kaloostian, and Purcell about Dr. Durrani's absence while discussing Johnson's and M.B.'s consent for the operations and the missing operative report. Dr. Durrani's absence was relevant and proper to explain why Johnson's experts and treating physicians had to piece together Johnson's medical history. As we have explained, "comments limited to the fact of Durrani's absence and its impact on the legal proceedings" do not inject passion or prejudice in the proceedings. *Hounchell v. Durrani*, 2023-Ohio-2501, ¶ 64 (1st Dist.), citing *Pierce,* 2015-Ohio-2835, at ¶ 19 (1st Dist.).

{¶48} Finally, the Durrani parties point to Johnson's discussion of Dr. Durrani's absence, and the adverse inference drawn from his absence, during closing argument. We have held that "the jury may draw an inference that would be unfavorable to that party" as a sanction for wrongfully withheld[9] evidence under a parties' control. *Roetenberger v. Christ Hosp.*, 2005-Ohio-5205, ¶ 21 (1st Dist.), quoting *Brokamp v. Mercy Hosp. Anderson*, 132 Ohio App.3d 850, 870 (1st Dist. 1999). Johnson's counsel phrased the adverse inference in compulsory terms: the jury had to infer that Dr. Durrani's testimony would have been unfavorable to him, and his credibility was "suspect," because Dr. Durrani did not attend trial or testify.

{¶49} To the extent the Durrani parties argue that the trial court erred by permitting Johnson to misstate the law in her closing argument, the Durrani parties failed to object. So, we must decide if the trial court plainly erred by allowing Johnson to make those statements. *Zurieck v. Durrani*, 2026-Ohio-3369, ¶ 48 (1st Dist.). We

[9] The evidence—Dr. Durrani's testimony—can be considered "withheld" if Johnson had subpoenaed Dr. Durrani and he refused to testify at trial. The record is unclear if Dr. Durrani was subpoenaed.

apply the plain-error doctrine "'with utmost caution'" in civil cases. *Risner v. Ohio Dept. of Natl. Res.*, 2015-Ohio-3731, ¶ 27, quoting *Goldfuss v. Davidson*, 1997-Ohio-401, ¶ 24. To reverse, we must hold that the error "rises to the level of challenging the legitimacy of the underlying judicial process itself." (Cleaned up.) *Risner* at ¶ 27.

{¶50} While counsel misstated the adverse-inference law during closing argument, the Durrani parties do not suggest that the trial court should have intervened. And later, the trial court instructed the jury that counsel's statements during trial and closing arguments, as well as counsel's assumptions of fact, "cannot be considered as evidence." It continued and instructed the jury that it was prohibited from "speculat[ing] on why [Dr. Durrani]'s not present, or consider his absence for any purpose, except as instructed." Assuming that the trial court erred, this is not an exceptional case of an error undermining the legitimacy of the judicial process.

3. Absent-defendant jury instruction

{¶51} Over the Durrani parties' objection, the trial court gave Johnson's requested instruction on permissible inferences raised from Dr. Durrani's absence from trial. The Durrani parties argue that the trial court's adverse-inference instruction was improper.

{¶52} A jury instruction must "correctly and completely state the law." *Groob v. KeyBank,* 2006-Ohio-1189, ¶ 32. A jury instruction "ought not only be correct, but it should also be adapted to the case and so explicit as not to be misunderstood or misconstrued by the jury." *Marshall v. Gibson*, 19 Ohio St.3d 10, 12 (1985). An "instruction that mislead[s] the jury constitutes reversible error." *Groob* at ¶ 32.

{¶53} The trial court instructed the jury that "when a party such as Dr. Durrani has relevant evidence of testimony within his or her control, and the party failed to produce that relevant evidence or testimony, that failure gives rise to an inference the

evidence or testimony is unfavorable to that party." We have held this adverse-inference instruction misstates the law by suggesting that the jury must draw the adverse inference from Dr. Durrani's absence. *See Jones v. Durrani,* 2024-Ohio-1776, ¶ 34 (1st Dist.). And the instruction misstates the law by failing to limit the adverse inference to "evidence which Dr. Durrani would 'naturally' produce, i.e., evidence that was not cumulative or inferior to other evidence already produced." *Id.*

{¶54} When a party challenges a jury instruction on appeal, we consider the instruction as a whole and in the context of the trial to "determine[] whether the charge misled the jury in a manner that affected the complaining party's substantial rights." *Ball v. Stark*, 2013-Ohio-106, ¶ 24 (10th Dist.). We have held that the adverse-inference instruction is harmless if other parts of the jury instructions ameliorate the risk of prejudice and the record does not reveal that the jury was "actually misled." *Courtney v. Durrani*, 2025-Ohio-2335, ¶ 85-86 (1st Dist.). So too here. The trial court instructed the jury that an inference is "a reasonable conclusion of facts which you may, but are not required, to make." We presume that the jury followed these instructions. So, any error was cured and therefore is harmless.

4. Joinder and consolidation under Civ.R. 42

{¶55} Finally, the Durrani parties argue that the trial court abused its discretion when it joined Johnson's and M.B.'s actions for trial. However, the unique procedural posture and record on appeal, which is unlike any other appeal involving the Durrani parties, prevents our review of the trial court's decision.

{¶56} The trial court's decision to join or consolidate cases under Civ.R. 42 is an exercise of the trial court's discretionary authority, and we review that decision for an abuse of discretion. *See Jones*, 2024-Ohio-1776, at ¶ 20 (1st Dist.).

{¶57} A trial court may consolidate or join two civil actions only if the actions "involve a common question of law or fact." Civ.R. 42(A)(1). We have held that joinder and consolidation under Civ.R. 42 is a two-part test. *See Wheeler*, 2026-Ohio-2475, at ¶ 75 (1st Dist.). First, a court must determine if a common question of law or fact exists. *Id.* And second, if a common question of law or fact does exist, the court must determine whether joinder was proper "consider[ing] the potential for prejudice resulting from joinder." *Id.*

{¶58} We are unable to review the trial court's decisions because of two issues with the Durrani parties' arguments. The first is that the Durrani parties did not raise misjoinder as one of the grounds in their motion for a new trial. To be sure, the Durrani parties preserved the issue on appeal—the trial court acknowledged their continuing objection to the joinder in its pretrial order. *See Stephenson v. Durrani*, 2026-Ohio-3765, ¶ 33 (1st Dist.) ("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."). The Durrani parties rely on facts adduced at trial in support of their joinder argument. But because the joinder issue was not raised in their postjudgment motion, we must analyze the trial court's pretrial-joinder decision.

{¶59} To review the trial court's pretrial finding that a common question of law or fact warranted joinder of the actions, the commonality analysis is forward-looking. When deciding to join actions before trial, the court must anticipate the material questions of law and fact for each case, based on the claims and factual allegations in the complaint. *See, e.g., Wilson v. Durrani,* 2026-Ohio-2279, ¶ 58 (1st Dist.) (courts must look to the "elements of the relevant causes of action and evaluate which elements, if any, submit to common answers."). Then, the court must decide whether a question exists that is sufficiently common. *Id.* And on appeal, our review

is limited to "'the record as it existed at the time the trial court rendered judgment.'" *Salpietro v. Salpietro*, 2023-Ohio-169, ¶ 9 (6th Dist.), quoting *Leiby v. Univ. of Akron*, 2006-Ohio-2831, ¶ 7 (10th Dist.). In sum, we may not consider the record developed at the joined trial to review the trial court's finding of a common question of law or fact as part of its pretrial decision to join actions.[10] Rather, determining whether the trial court properly found that a common question of law or fact exists, as part of our review of a pretrial-joinder decision, necessarily involves a comparative analysis of both of M.B.'s and Johnson's allegations and claims.

{¶60} The second issue with the Durrani parties' argument is that the record in this appeal prevents a meaningful review of the trial court's pretrial decision to join Johnson's and M.B.'s actions. We have scoured the pretrial record, and M.B.'s claims and allegations are nowhere to be found. *See Lasalle Natl. Bank v. Cline*, 2006-Ohio-5152, ¶ 23 (3d Dist.) ("Without the record in Case No. 02 CV 0440, we have no way of knowing upon what basis Appellant alleged claims against Guernsey Bank and Marketable Title.").

{¶61} As the appellants, the Durrani parties had the burden of transmitting a complete record on appeal. *See* App.R. 9(B)(1). Even though Johnson's and M.B.'s actions were joined for trial, the two actions—journals and filings included—did not merge since actions joined under Civ.R. 42 continue to "retain their individual identity." Staff Notes to Civ.R. 42(A). That is why Loc.R. 3.1(A)(1)(c) instructs a party appealing a decision entered in a consolidated action to "list all consolidated case numbers." But both the notice of appeal and the docket statement filed by the Durrani

[10] Of course, the trial record would inform our harmless-error analysis.

parties omitted M.B.'s case number. And they did not appeal the judgment in M.B.'s case, likely because the jury found for the Durrani parties on all of M.B.'s claims.

{¶62} And M.B.'s claims and allegations cannot be found at any other point in the pretrial record. In other Durrani appeals, the Durrani parties have argued a lack of common question of law or fact in pretrial motions. *See Favaron v. Durrani*, 2026-Ohio-3761, ¶ 4, 131 (1st Dist.) (motion in limine and motion for separate trials); *see also Braucher v. Durrani,* 2026-Ohio-3467, ¶ 10 (1st Dist.) (motion in limine). The pretrial records in those cases were further developed when the parties and the trial court discussed the joinder issue at hearings on the morning of voir dire. *See Favaron* at ¶ 131 (Bock, J., concurring in part and dissenting in part). But misjoinder was not raised in a pretrial motion in Johnson's case.

{¶63} To be sure, the Durrani parties supplemented the record with the global motion and a hearing transcript from the Densler case. And the global motion suggests that Dr. Durrani operated on different regions of Johnson's and M.B.'s spine. This fact, while concerning, is insufficient to facilitate a review of the trial court's pretrial decision because M.B.'s other allegations and claims are absent from the record.

{¶64} Without M.B.'s allegations and claims, we have no way of reviewing the trial court's pretrial decision joining Johnson's and M.B.'s actions for trial. When we lack "an adequate record, [we] must presume the regularity of the trial court's actions and affirm its judgment." *Shaw v. Shaw*, 72 Ohio App.3d 546, 548 (8th Dist. 1991). Because the record on appeal compels a presumption of regularity regarding the trial court's decision to join Johnson's and M.B.'s actions, we cannot say that the trial court abused its discretion.

5. Cumulative error

{¶65} The Durrani parties argue that the cumulative effect of the trial court's errors requires a new trial. We have identified harmless errors in the admission of Dr. Saini's testimony about the standard of care for surgeons drafting operative notes and the trial court's adverse-inference instruction.

{¶66} When multiple harmless errors occur at trial, we may reverse the trial court's judgment if the multiple harmless errors contaminated the jury's deliberation and the cumulative effect of those errors deprived a party of a fair trial. *See Courtney*, 2025-Ohio-2335, at ¶ 89 (1st Dist.). The errors deprived the Durrani parties of a fair trial if, after weighing the prejudicial effect of the errors, we find that "but for the errors identified by [the Durrani parties], the jury probably would have reached a different conclusion." *Krabacher v. Durrani*, 2026-Ohio-3368, ¶ 40 (1st Dist.).

{¶67} The jury's interrogatories reveal that Dr. Saini's operative-report testimony, and the adverse-inference instruction, did not affect the jury's verdicts and carried little prejudicial weight. We cannot say that there is a probability that the outcome would have been different if the errors had not occurred. We overrule the first assignment of error.

***B*. Second assignment of error: Prejudgment interest and attorney fees**

{¶68} The Durrani parties challenge the trial court's awarding Johnson prejudgment interest and attorney fees. First, they argue that Johnson was not entitled to prejudgment interest because she did not make a pretrial settlement offer. Second, the Durrani parties argue that Johnson was not entitled to attorney fees because the sole claim for which the jury found in Johnson's favor—negligence—does not provide a basis for an attorney-fee award.

1. Prejudgment interest

{¶69} We review a trial court's decision to award prejudgment interest for an abuse of discretion. *Fenner v. Durrani*, 2025-Ohio-4477, ¶ 91 (1st Dist.).

{¶70} Under R.C. 1343.03(C), a trial court may award prejudgment interest to a prevailing party in a tort action if it determines that the losing party "failed to make a good faith effort to settle the case and that the party to whom the money is to be paid did not fail to make a good faith effort to settle the case." This "encourage[s] good faith efforts to settle a case outside the trial setting." *Moskovitz v. Mt. Sinai Med. Ctr.*, 69 Ohio St.3d 638, 661 (1994). At a prejudgment-interest hearing, the focus is "the pretrial settlement efforts made between the plaintiffs and defendants." *Id.*; *see Bender*, 2024-Ohio-1258, at ¶ 152 (1st Dist.).

{¶71} The Durrani parties argue that Johnson failed to make a pretrial settlement offer and therefore is not entitled to prejudgment interest. But in their memorandum in opposition to Johnson's motion for prejudgment interest, the Durrani parties explained that settlement negotiations had occurred and that Johnson did, in fact, make a settlement offer. Indeed, trial counsel for the Durrani parties signed an affidavit explaining that "[p]rior to the trial of this case, the settlement demand given to Defendants was $11,600,000" and that on "the first day of trial, counsel for Plaintiff made an oral settlement demand of $500,000." The Durrani parties cannot argue the opposite now. *See Gallery Realty Co. v. Belgrave Square Dev. Square Co.*, 1994 Ohio App. LEXIS 842, *7 (11th Dist. Mar. 4, 1994). The trial court was within its discretion to award Johnson prejudgment interest.

2. Attorney fees

{¶72} Finally, the Durrani parties argue[11] that the trial court erred in awarding Johnson attorney fees when she prevailed only on her negligence claim. We agree.

{¶73} Ohio follows the "American Rule," which provides that parties normally pay their own attorney fees. *Weckel v. Cole + Russell Architects, Inc.*, 2024-Ohio-5111, ¶ 96 (1st Dist.). An exception to the rule allows attorney fees where a statute or contract between the parties authorizes an award of fees or "the prevailing party demonstrates that the unsuccessful party acted in 'bad faith, vexatiously, wantonly, obdurately, or for oppressive reasons.'" *Id.*, quoting *Sorin v. Bd. of Edn.*, 46 Ohio St.2d 177, 181 (1976). Additionally, "'attorney fees may be awarded as an element of compensatory damages where the jury finds that punitive damages are warranted.'" *Galmish v. Cicchini*, 90 Ohio St.3d 22, 35 (2000), quoting *Zoppo v. Homestead Ins. Co.*, 71 Ohio St.3d 552, 558 (1994).

{¶74} No contract or statute authorized attorney fees. The jury did not award punitive damages. And the trial court did not make a finding that the Durrani parties acted in bad faith. There was no basis for the trial court's attorney-fees award, and the trial court lacked authority to make that award.

{¶75} We sustain in part and overrule in part the Durrani parties' second assignment of error. We sustain the Durrani parties' challenge to Johnson's attorney-fees award and reverse that portion of the trial court's judgment.

III. Conclusion

{¶76} We overrule the Durrani parties' first assignment of error. We sustain

[11] Johnson's "argument" in response claims that "[t]his issue has already been ruled upon by the Court to the benefit of the Appellees," a common refrain, without citing a single First District case in support of that assertion. Our research has uncovered no such case.

the portion of the Durrani parties' second assignment of error challenging the trial court's awarding Johnson attorney fees, and we overrule the remaining portions of the second assignment of error. We reverse the trial court's attorney-fees award. We affirm the remainder of the trial court's judgment.

Judgment affirmed in part and reversed in part.

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