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SLIP OPINION NO. 2026-OHIO-4270

ESTATE OF PRICE, BY AND THROUGH ITS ADMR., PRICE, ET AL., APPELLANTS, *v.* KIDNEY CARE SPECIALISTS, L.L.C., ET AL., APPELLEES.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *Estate of Price v. Kidney Care Specialists, L.L.C.*, Slip Opinion No. 2026-Ohio-4270.]

Civil law—Medical malpractice—Jury selection—Because a for-cause challenge of a prospective juror under R.C. 2313.17(B)(9) is a principal challenge under R.C. 2313.17(C), the trial court must try the validity of the challenge, and if the challenge is determined to be valid, the result is absolute disqualification of the person from serving on the jury panel—To the extent Berk v. Matthews *and* Hall v. Banc One Mgt. Corp. *hold otherwise, they are overruled—Court of appeals erred in applying abuse-of discretion standard, but competent, credible evidence in record supports trial court's determinations that appellants' challenges to four prospective*

jurors were not valid—Court of appeals' judgment affirmed on other grounds.

(No. 2024-1373—Submitted September 17, 2025—Decided November 2, 2026.)

APPEAL from the Court of Appeals for Montgomery County,
No. 29951, 2024-Ohio-3122.

DETERS, J., authored the opinion of the court, which KENNEDY, C.J., and FISCHER, DEWINE, HAWKINS, and SHANAHAN, JJ., joined. BRUNNER, J., concurred in judgment only and would hold that on appellate review, this court need not make arbitrary changes to established law that the court of appeals applied correctly.

DETERS, J.

{¶ 1} R.C. 2313.17(B) provides a list of "good causes" for which a prospective juror must be excluded from a jury panel. One of these causes is that the prospective juror "discloses . . . that [he or she] cannot be a fair and impartial juror or will not follow the law as given . . . by the court." R.C. 2313.17(B)(9).

{¶ 2} In this case, counsel for the Estate of Harold Gene Price and for his widow, Cynthia Price (collectively, "Price"), sought to exclude for cause four prospective jurors from the jury panel in Price's medical-malpractice lawsuit on the grounds that the prospective jurors had indicated that they could not be fair and impartial and that they would not follow the law as instructed by the trial court. The trial court refused to exclude the prospective jurors. After a verdict was returned in favor of defendants, Price appealed to the Second District Court of Appeals. That court affirmed the trial court's judgment, concluding that the trial court had not abused its discretion in failing to exclude the four prospective jurors.

{¶ 3} Price argues that the court of appeals got the law wrong. In Price's view, once the prospective jurors indicated either that they could not be fair and impartial or that they would not follow the law as instructed by the court, the trial

court should have excluded them from the jury for cause; she asserts that the trial court had no discretion to do otherwise. We agree that if a challenge based on a prospective juror's partiality or unwillingness to follow the law is shown to be valid, the trial court has no discretion: it must exclude the prospective juror from the jury. But the court must first determine whether the challenge is valid, which is what happened here. The trial court correctly determined that Price's for-cause challenges of the four prospective jurors under R.C. 2313.17(B)(9) were not valid, so it refused to exclude them. The Second District arrived at the correct result in affirming the trial court's judgment, albeit with incorrect reasoning. We therefore affirm the judgment of the court of appeals.

I. BACKGROUND

{¶ 4} In 2021, Price filed a medical-malpractice lawsuit as administrator of her husband Harold's estate and in her individual capacity against the following medical providers and practices: Kidney Care Specialists, L.L.C.; Jabulani Sidile, M.D.; Kettering Physician Network; Latha Venkatesh, M.D.; Tri County Urology; Sharat Kalvakota, M.D.; Nephrology Associates of Dayton; Shachi Lovekar, M.D.; OSU Surgery, L.L.C.; Ashraf M. El-Hinnawi, M.D.; and "John and Jane Doe Physicians and Nursing Staff." The complaint alleged that in 2017, Harold was suffering from stage 4 kidney disease. Dr. Venkatesh was Harold's primary-care physician, and Dr. Sidile was his nephrologist. In August 2017, an MRI showed a lesion on Harold's right kidney, and a radiology report recommended a follow-up study. According to the complaint, Harold followed up on the right-kidney lesion with Dr. Kalvakota, a urologist, and Dr. Lovekar, another nephrologist. No further steps were taken through 2019 regarding Harold's right kidney. In 2020, Harold was diagnosed with kidney cancer originating in the right kidney. He died of that cancer less than five months later.

{¶ 5} Price alleged that defendants violated the standard of care with respect to their treatment of Harold. Eventually, she dismissed her claims against OSU

Surgery, Hinnawi, Tri-County Urology, Sidile, and Kidney Care Specialists. The case against the remaining defendants—Dr. Venkatesh and Kettering Physician Network (collectively, "Venkatesh"); Dr. Kalvakota; and Dr. Lovekar and Nephrology Associates of Dayton (collectively, "Lovekar")—was tried to a jury.

{¶ 6} This appeal concerns jury selection and challenges for cause made by Price's counsel against four prospective jurors, who we will refer to by only their last names—Kerns, Vance, Walters-Sen, and Hicks. At the beginning of jury selection, the trial court informed the prospective jurors that Price must prove her claim by a preponderance of the evidence. After explaining that term's meaning, the court posed two questions to the prospective jurors:

> The Court has touched briefly on the subjects of the pleadings, the burden of proof being the preponderance of the evidence. Do each of you feel you can accept and apply these rules and apply them as I've explained them to you today? If so, please raise your hand.
>
> Does anyone feel they cannot? If so, please raise your hand. All right. Seeing none.

{¶ 7} Price's counsel questioned the prospective jurors first. After one prospective juror, who did not end up on the jury, expressed reservations about the burden of proof in a medical-malpractice case, counsel asked the other prospective jurors whether they felt the preponderance-of-the-evidence burden of proof was too low for holding a doctor liable for malpractice. Walters-Sen replied, "Part of me says yes. Because I would hate to ruin someone's reputation over a—just a series of unfortunate events. But I can see the world in shades of gray. There could have been things that could have been done better."

{¶ 8} Price's counsel then posed the following question to all the prospective jurors:

> Okay. So here's my question for all of you. How many of you feel like [the prospective juror] who says, you know, it's the practice of medicine, you can't really expect people to be perfect, it's difficult to pin on just one person or just one thing when something bad happens.
>
> Or like Ms. Walters-Sen who tells us it really, in her mind, has to be a truly egregious error. You don't like that burden of proof, a preponderance of the evidence. You don't think it's fair. For whatever reason, you don't think it's high enough.
>
> And because of that, regardless of the evidence or the Court's instruction, you would require us to prove our case to you by more than just a preponderance of the evidence.
>
> Can I see a show of hands for people who feel that way, who require us to show more than [a] preponderance of the evidence?

Among others, prospective jurors Kerns and Hicks raised their hands.

{¶ 9} Later during jury selection, Price's counsel again addressed the burden of proof: "How many of you because of your opinions about medical malpractice lawsuits, regardless of the evidence or the Court's instructions, would require us to prove a doctor had committed malpractice by more than just a preponderance of the evidence? Do any of you feel that way?" This time, prospective jurors Kerns, Walters-Sen, and Hicks, along with another prospective juror, raised their hands.

{¶ 10} As voir dire continued, Price's counsel asked the prospective jurors their thoughts about awarding money for mental anguish. Kerns volunteered, "I feel like you'd really have to prove it." And when asked to explain that statement, Kerns stated, "Mental stuff could be faked, it seems like, and I know I struggle with it, but will I be believed if I say that, so. . . ."

{¶ 11} Counsel subsequently posed this question to the prospective jurors: "How many of you, regardless of the evidence or the Court's instructions, would not award millions of dollars for mental anguish?" Among other prospective jurors, Vance and Walters-Sen raised their hands.

{¶ 12} Later, counsel asked: "How many of you feel that, regardless of the evidence and the Court's instructions, if you're going to award millions of dollars and mental anguish damages, we have to prove those damages to you by more than just a preponderance of the evidence?" Kerns and Walters-Sen were among the 12 prospective jurors who raised their hands. The trial court interjected: "And before you go on, I just want to remind everyone that if you are chosen as a juror, you will take an oath and you have to agree to follow the law and put aside any personal feelings that you may have and you have to agree to follow the law. So [the] question is, can you follow the law as to what it is? Okay?"

{¶ 13} Counsel also addressed the claim for loss of consortium, asking the prospective jurors if they had any thoughts or opinions about a spouse seeking money for loss of consortium in a lawsuit. Kerns remarked, "When you marry someone or have a relationship with someone, you need to try and work out your problems instead of just suing someone." And Walters-Sen stated that she believed loss-of-consortium damages were "legitimate."

{¶ 14} After learning that Price would be asking for a damages award of $30 million, Vance volunteered the following:

> [B]ut $30 million, I mean, you know, in a practice, you know, that could decimate their company, you know, and maybe this doctor did do something negligent, you know, but think about all the people in this practice. You know, that could destroy their livelihood. They could lose their job. I don't see any way that I could decide who is in the right and who is in the wrong. There is no way.

{¶ 15} Venkatesh's counsel asked questions of the prospective jurors after Price's counsel. She also asked the prospective jurors their feelings about the burden of proof: "At the end of the case, as the Judge has told you, she will instruct you what the burden of proof is. She will give you those instructions. . . . Is there anyone here who thinks that they won't be able to apply the law that comes from Judge Montgomery? Is there anyone here who thinks that they can't do that?" Later, counsel asked Hicks a more pointed question: "Even—even if you have—you know, there was a lot of talk of does plaintiff have to prove beyond a reasonable doubt that the doctors did something wrong. If the Judge tells you that's not the burden of proof in this case, would you be able to apply the law as the Judge gives you?" Hicks responded: "I assume so."

{¶ 16} Counsel also followed up with Vance about awarding damages in the lawsuit: "Here we are, Mr. Vance. You were one of them that thought it was just really hard to think and fathom about awarding multimillions of dollars in this lawsuit or any lawsuit. Can you set those feelings aside and listen to the law that her Honor will give you and decide damages objectively and impartially?" Vance replied: "I think so, sure."

{¶ 17} After attorneys for Kalvakota and Lovekar also questioned the prospective jurors, the judge and counsel for all parties met outside the presence of the prospective jurors to discuss challenges. Price's counsel challenged several jurors for cause, and defense counsel did not object to some of those challenges.

But defense counsel did object to excluding four of the prospective jurors: Kerns, Vance, Walters-Sen, and Hicks.

{¶ 18} Price's counsel gave a litany of reasons for the challenges, largely revolving around Kerns's indication that regardless of the trial court's instruction, she would require Price to prove malpractice and mental anguish by more than a preponderance of the evidence, she would favor the doctors in the lawsuit, and she would not award millions of dollars in damages for loss of consortium regardless of the evidence presented. Defense counsel objected, with one attorney noting that when Venkatesh's counsel had asked during voir dire, none of the prospective jurors, including Kerns, indicated that he or she could not follow the law as instructed. The trial court denied Price's challenge to exclude Kerns for cause.

{¶ 19} Price's counsel next challenged Walters-Sen for cause. As with Kerns, counsel challenged Walters-Sen's ability to serve as a juror based on her indication that she would require Price to prove malpractice and mental anguish by more than a preponderance of the evidence regardless of the trial court's instructions and that she would not award millions of dollars for mental anguish regardless of the evidence presented or the court's instructions. Defense counsel again objected, arguing that Walters-Sen had indicated that she could follow the law. The trial court refused to exclude Walters-Sen from the jury for cause.

{¶ 20} Price's counsel also challenged Vance for cause. As grounds, counsel argued that Vance had said that he would favor the defendants in a personal-injury lawsuit regardless of the court's instructions and that he would not award millions of dollars for a loss-of-consortium claim regardless of the evidence presented or the court's instructions. Defense counsel objected, contending that, like the other prospective jurors, Vance had not raised his hand when asked whether he would be unable to apply the law as instructed. The trial court denied the challenge to exclude Vance from the jury.

{¶ 21} The trial court also refused to exclude Hicks for cause, despite the argument by Price's counsel that Hicks had said that regardless of the trial court's instructions, he would require Price to prove malpractice by more than a preponderance of the evidence and he would not award millions of dollars for mental anguish. Counsel for Venkatesh objected, saying, "The preponderance of the evidence questions that came out at the beginning of voir dire I found to be a bit confusing, and I'm sure the jurors did too." In denying the challenge to exclude Hicks for cause, the trial court stated:

> [T]here were questions asked of [the prospective jurors] about the preponderance of the evidence. They raised their hand[s]. You asked about it. And then it died on the vine. So I don't think there was enough of the follow-up of that particular question. And when asked if he could apply the law as the judge gives it, he said, "I assume so."

{¶ 22} After the trial court ruled on the parties' for-cause challenges, it entertained peremptory challenges. Relevant here, Price's counsel exercised peremptory challenges against Vance and Walters-Sen. And before jury selection was over, Kerns was removed from the jury panel because she suffered a panic attack. Of the four prospective jurors whose challenges are the subject of this appeal, only Hicks was a member of the eight-person jury. After the presentation of evidence, the jury rendered a verdict in favor of defendants.

{¶ 23} Price appealed to the Second District, asserting that the trial court erred when it failed to excuse Kerns, Vance, Walters-Sen, and Hicks, for cause and when it replaced two of the original eight jurors with alternates without allowing Price to exercise peremptory challenges against them. The Second District affirmed. 2024-Ohio-3122, ¶ 33 (2nd Dist.). The court of appeals concluded that the trial court did not abuse its discretion by not excusing Vance, Walters-Sen, and

Hicks for cause, that any error related to the trial court's not excusing Kerns for cause was not prejudicial, *id.* at ¶ 21, and that Price did not demonstrate plain error regarding the seating of the two alternates, *id.* at ¶ 30-31.

{¶ 24} We accepted jurisdiction over Price's appeal on two propositions of law:

> [1.] When a prospective juror discloses that he or she cannot be a fair and impartial juror or will not follow the law as given by the court, the juror may not be rehabilitated and must be disqualified under R.C. 2313.17(B)(9).
>
> [2.] When a prospective juror discloses that he or she will not follow the law as given by the court, the juror may not be rehabilitated and must be disqualified under R.C. 2313.17(B)(9).

See 2024-Ohio-5529.

II. ANALYSIS

A. Principal challenges

{¶ 25} R.C. 2313.17(B) provides a list of "good causes for challenge to any person called as a juror." Some of the causes listed include that "the person has an interest in the cause," "the person is the employer, the employee, or the spouse, parent, son, or daughter of the employer or employee . . . of either party," "the person is akin by consanguinity or affinity within the fourth degree to either party or to the attorney of either party," and relevant here, "the person discloses by the person's answers that the person cannot be a fair and impartial juror or will not follow the law as given to the person by the court." R.C. 2313.17(B)(2), (5), (7), and (9). A challenge listed in R.C. 2313.17(B) is considered a "principal challenge, and its validity [shall] be tried by the court." R.C. 2313.17(C).

{¶ 26} This court has historically looked to the common law to explain what is meant by a "principal challenge." "[W]here a party establishes the existence of facts supporting a principal challenge, this finding 'result[s] in automatic disqualification,' and no rehabilitation of the potential juror can occur." (Bracketed text in original.) *Hall v. Banc One Mgt. Corp.*, 2007-Ohio-4640, ¶ 28, quoting *Black's Law Dictionary* (8th Ed. 2004). By contrast, a "challenge to the favor" "permit[s] a party to assert a challenge for cause when no principal challenge exists, but when the party 'objects [based on] only some probable circumstances of suspicion, as acquaintance and the like.'" *Id.* at ¶ 29, quoting 3 Blackstone, Commentaries on the Laws of England, 363. The concept of "challenge to the favor" is codified in R.C. 2313.17(D), which provides:

> In addition to the causes listed in [R.C. 2313.17(B)], any petit juror may be challenged on suspicion of prejudice against or partiality for either party, or for want of a competent knowledge of the English language, or other cause that may render the juror at the time an unsuitable juror. The validity of the challenge shall be determined by the court and be sustained if the court has any doubt as to the juror's being entirely unbiased.

{¶ 27} Price maintains that the Second District improperly disregarded that a principal challenge to a prospective juror under R.C. 2313.17(B)(9) must result in the juror's being automatically disqualified from service and that it instead reviewed the trial court's decisions regarding such principal challenges for an abuse of discretion. As explained below, Price is correct that an abuse-of-discretion review is improper under the statutory provision. Nonetheless, contrary to Price's assertion, the Second District correctly affirmed the judgment of the trial court.

B. The Second District's improper abuse-of-discretion review

{¶ 28} Before addressing the merits of Price's argument that the trial court should have excused prospective jurors Kerns, Vance, Walters-Sen, and Hicks for cause, the Second District considered which standard of review was appropriate to apply in this case. *See* 2024-Ohio-3122 at ¶ 9 (2d Dist.). The court of appeals concluded that even though a challenge to a prospective juror under R.C. 2313.17(B)(9) is a principal challenge, the trial court's rulings on the for-cause challenges at issue in this case were subject to review for an abuse of discretion. *Id.* at ¶ 12. To understand how the court arrived at its conclusion, which seemingly conflicts with the common-law understanding of principal challenges, it is helpful to review two earlier cases.

{¶ 29} In *Berk v. Matthews*, 53 Ohio St.3d 161 (1990), this court reviewed the Eighth District Court of Appeals' decision reversing a trial court's judgment in part because the trial court had failed to exclude a prospective juror for cause. The case involved a woman who was hit by a car while jogging. During jury selection at the trial on the jogger's claim of negligence against the driver, one of the prospective jurors indicated that she may be prejudiced against the jogger because she did not believe joggers should be permitted to run in the street. When the jogger's counsel challenged the prospective juror for cause, the trial court spoke further with the prospective juror, who indicated that she would apply the law given to her by the court.

{¶ 30} The for-cause challenge in *Berk* was predicated on former R.C. 2313.42(J), the precursor to R.C. 2313.17(B)(9). *See* 2012 Sub.H.B. No. 268 (effective May 22, 2012). Like R.C. 2313.17(B)(9), a for-cause challenge of a prospective juror under former R.C. 2313.42(J) was categorized as a principal challenge. But without discussing former R.C. 2313.42(J)'s categorization as a principal challenge, this court explained that it "previously observed that the decision to disqualify a juror for bias is a discretionary function of the trial court,"

Berk at 168. This court concluded that the trial court's refusal to exclude the prospective juror for cause did not amount to an abuse of discretion and reversed the judgment of the Eighth District. *Id.* at 169-170.

{¶ 31} Over 17 years later, in *Hall*, 2007-Ohio-4640, this court considered another challenge to a prospective juror under former R.C. 2313.42. This time, the prospective juror—whose two sons worked for one of the parties in the case at the time of trial—was challenged under former R.C. 2313.42(E), which is largely the same as R.C. 2313.17(B)(5). *See* 2012 Sub.H.B. No. 268. Despite the applicability of former R.C. 2313.42(E), the trial judge denied the challenge for cause because it believed that the prospective juror would be fair. *Hall* at ¶ 6. The Tenth District Court of Appeals affirmed the trial court's judgment, and we accepted the appeal to consider whether the trial court had discretion to seat a prospective juror who was disqualified by former R.C. 2313.42(E) from serving on the jury. *Id.* at ¶ 8.

{¶ 32} Unlike in *Berk*, this court squarely addressed the nature of the principal challenge in *Hall*: "Pursuant to [former] R.C. 2313.42(A) through (I), when the trial court tries the validity of a principal challenge and finds facts supporting the challenge to be valid, the result is absolute disqualification. And this disqualification deprives the trial court of any ability to rehabilitate the potential juror." *Hall* at ¶ 33.

{¶ 33} An astute reader will notice that this court excluded former R.C. 2313.42(J) (the precursor to R.C. 2313.17(B)(9)) from its pronouncement in *Hall*. It was not an oversight. The court emphasized, "[W]e are convinced, as we explained in *Berk*, that [former R.C. 2313.42(J)] allows the exercise of discretion by the court, as reflected in the syllabus of *Berk* . . . ." *Id.* at ¶ 38. And we suggested that "[t]he legislature's incorporation of Division (J) into [former] R.C. 2313.42 appear[ed] to be misplaced because that challenge was not part of the common law, nor was it included in an earlier version of [the] statute." *Id.* at ¶ 37.

{¶ 34} It is against the backdrop of *Berk* and *Hall* that the Second District understandably concluded that the trial court's denial of Price's challenges for cause in this case should be reviewed for an abuse of discretion. But that conclusion was incorrect. First, an abuse-of-discretion review is contrary to the language of R.C. 2313.17(B)(9), which provides that a challenge for cause may be made against a prospective juror for the following reason: "the person discloses by the person's answers that the person cannot be a fair and impartial juror or will not follow the law as given to the person by the court." This provision is clearly included in the list of challenges that are considered to be principal challenges. *See* R.C. 2313.17(C). And as this court noted in *Hall*, "[t]he nature of principal challenges and challenges to the favor is well entrenched in Ohio jurisprudence." *Hall*, 2007-Ohio-4640, at ¶ 33. We have long held that the result of a valid principal challenge is "absolute disqualification." *Id.*; *see also Dew v. McDivitt*, 31 Ohio St. 139 (1876), paragraph one of the syllabus ("On the trial of the validity of a challenge alleged against a juror, other than a principal cause of challenge, a sound discretion is allowed to the court."). Thus, under the statutory text, a trial court has no discretion when a valid challenge is made against a prospective juror under R.C. 2313.17(B)(9): the prospective juror must be disqualified.

{¶ 35} This court's decisions in *Berk* and *Hall* do not dissuade us from adhering to the plain language of the statute. The court in *Berk* arrived at its conclusion without discussing the challenge's being a principal challenge. And we are not swayed by the dicta in *Hall*. While this court in *Hall* did address head-on the effect of a challenge's being a principal challenge, we are not convinced by the suggestion in that case that the precursor to R.C. 2313.17(B)(9) was "misplaced" by the General Assembly, *Hall* at ¶ 37. Our role as judges is to consider the statute as it is written, not how we think the General Assembly meant to write it. *See Slingluff v. Weaver*, 66 Ohio St. 621 (1902), paragraph two of the syllabus. To the

extent that this court's holdings in *Berk* and *Hall* conflict with our holding here, we overrule them.

C. Proper review of the trial court's decisions

{¶ 36} Even though the Second District applied an incorrect standard of review, we conclude that it correctly upheld the judgment of the trial court. A trial court must try the validity of a principal challenge before disqualifying a prospective juror, and a court of appeals must review whether the trial court's determination regarding that prospective juror is supported by competent, credible evidence. *See Myers v. Garson*, 1993-Ohio-9, ¶ 18 ("an appellate court must not substitute its judgment for that of the trial court where there exists some competent and credible evidence supporting the findings of fact and conclusions of law rendered by the trial court"). To explain why, we again turn to the language of R.C. 2313.17.

{¶ 37} R.C. 2313.17(C) provides that the validity of principal challenges listed in R.C. 2313.17(B)—including a challenge based on a person's disclosure that he or she will not be fair and impartial or will not follow the law as instructed by the court, R.C. 2313.17(B)(9)—are to be "tried by the court." "Try" in the legal context means "[t]o examine judicially." *Black's Law Dictionary* (12th Ed. 2024). By the terms of the statutory provision, when presented with a principal challenge, the trial court must examine that challenge to determine its validity.

{¶ 38} To illustrate how this works, consider how R.C. 2313.17(C) would apply to a principal challenge like the one made in *Hall*—i.e., when one party challenges a prospective juror's ability to serve because that juror's child worked for one of the parties to the lawsuit at the time of trial, *see Hall*, 2007-Ohio-4640, ¶ 5. It is self-evident that such a challenge would be valid only if it were true that the prospective juror's child did indeed work for one of the parties. And so, a court could not exclude the prospective juror based on that principal challenge absent

proof of its validity. (In *Hall*, the prospective juror acknowledged that his sons worked for the defendant at the time of trial. *Id.*)

{¶ 39} The same principle applies when, like here, a party challenges a prospective juror based on that person's inability to be fair and impartial or to apply the law as instructed by the court. A trial court may find that a principal challenge under R.C. 2313.17(B)(9) is valid only if the prospective juror's answers disclose that the allegation of partiality or inability to follow the law is true. Significantly, R.C. 2313.17(B)(9) instructs the trial court to consider the prospective juror's "*answers*" (emphasis added)—multiple answers, not just one. Therefore, when trying the validity of a principal challenge under R.C. 2313.17(B)(9), the trial court must consider the prospective juror's answers over the course of voir dire. And the context of those answers may shed light on whether the prospective juror cannot be fair and impartial or will not follow the law as instructed by the court. Voir dire questions may be circuitous or leading—perhaps even misleading. A prospective juror's answers that cast doubt on his or her ability to be fair and impartial or willingness to follow the law may spring from those causes, rather than from any bias on the part of the prospective juror. And a prospective juror's answers to questions asked later in the jury-selection process may demonstrate that the prospective juror will be fair and impartial and follow the law as instructed by the court.

{¶ 40} In this case, when Price alleged that prospective jurors Kerns, Vance, Walters-Sen, and Hicks could not be fair and impartial and would not apply the law as instructed by the court, the trial court was obliged to try the validity of the challenges. It did so and determined that the challenges were not valid.

{¶ 41} As discussed above, review of a trial court's decision regarding a principal challenge to a prospective juror is not for an abuse of discretion, because a trial court does not have discretion. Instead, an appellate court must review the trial court's decision about the challenge's validity to determine whether the

challenge was supported by competent, credible evidence. *See Myers*, 1993-Ohio-9, at ¶ 14, 18. Here, the trial court's decisions denying Price's challenges to exclude prospective jurors Kerns, Vance, Walters-Sen, and Hicks for cause under R.C. 2313.17(B)(9) were supported by competent, credible evidence in the record.

{¶ 42} As the trial court noted, after Price's counsel asked the prospective jurors to raise their hands if they thought the preponderance-of-the-evidence burden of proof was too low to determine liability in a medical-malpractice suit and several of them did so, counsel did not pose sufficient follow-up questions to each prospective juror to confirm their unwillingness to follow the law as instructed by the court. Often, questions posed to the group of prospective jurors begin with long introductions framed in terms of feelings or opinions that the prospective jurors may have before the group is asked whether they have those feelings or hold those opinions. Take for instance this question posed by Price's counsel to the group of prospective jurors in this case:

> How many of you feel like [the prospective juror] who says, you know, it's the practice of medicine, you can't really expect people to be perfect, it's difficult to pin on just one person or just one thing when something bad happens.
>
> Or like Ms. Walters-Sen who tells us it really, in her mind, has to be a truly egregious error. You don't like that burden of proof, a preponderance of the evidence. You don't think it's fair. For whatever reason, you don't think it's high enough.
>
> And because of that, regardless of the evidence or the Court's instruction, you would require us to prove our case to you by more than just a preponderance of the evidence.

> Can I see a show of hands for people who feel that way, who require[] us to show . . . more than [a] preponderance of the evidence?

That a prospective juror raised his or her hand at the end of that question, standing alone, does not demonstrate that prospective juror's unwillingness to follow the law as instructed by the court. It is telling that at least eight prospective jurors raised their hands in response to the question and that Price's counsel did not challenge all of them for cause. Moreover, although the prospective jurors raised their hands in response to Price's counsel's question, they did not indicate during subsequent questioning by Venkatesh's counsel that they would not follow the court's instructions.

{¶ 43} To the extent they were questioned individually, the responses given by Kerns, Walters-Sen, Vance, and Hicks did not demonstrate that they were incapable of being fair and impartial or were unwilling to apply the law as instructed by the court. Kerns correctly stated that Price would have to prove mental anguish to recover damages for that type of claim. And contrary to Price's counsel's assertion that Kerns was unwilling to award damages for a loss-of-consortium claim, her answer to the questions regarding loss of consortium—"When you marry someone or have a relationship with someone, you need to try and work out your problems instead of suing someone"—exhibited a misunderstanding about the nature of the claims rather than an unwillingness to follow the law. Walters-Sen, while acknowledging that part of her believes the burden of proof for medical-malpractice claims is too low, stated that she saw things in "shades of gray" and that "[t]here could have been things that could have been done better." These answers indicate Walters-Sen's openness to considering the facts, not an unwillingness to follow the law. Similarly, Vance, who expressed hesitation to award damages in the multimillion-dollar range, agreed that he would

apply the law as instructed by the court, and Hicks agreed to apply the burden of proof as instructed by the court. In short, the competent, credible evidence of record in this case supports the trial court's conclusions that Price's challenges to prospective jurors Kerns, Walters-Sen, Vance, and Hicks on grounds they would not be fair and impartial and would not follow the law as instructed by the court were not valid.

III. CONCLUSION

{¶ 44} Under R.C. 2313.17(B)(9), good cause for a principal challenge exists when a prospective juror's answers disclose his or her inability to be a fair and impartial juror or unwillingness to follow the law as given by the trial court. If the challenger establishes facts supporting the principal challenge under R.C. 2313.17(B)(9), then disqualification of that prospective juror is required: a trial court does not have discretion to deny such a challenge. We overrule our prior decisions in *Berk v. Matthews*, 53 Ohio St.3d 161 (1990), and *Hall v. Banc One Mgt. Corp.*, 2007-Ohio-4640, to the extent they hold otherwise and conclude that the Second District Court of Appeals erred when it applied an abuse-of-discretion standard of review in this case.

{¶ 45} A trial court must try the validity of a principal challenge under R.C. 2313.17(B)(9). Here, the trial court examined Price's challenges to prospective jurors Kerns, Vance, Walters-Sen, and Hicks, and found that they were not valid. Those determinations were supported by competent, credible evidence in the record. We therefore affirm the judgment of the Second District.

Judgment affirmed.

Cooper Elliot, Charles H. Cooper Jr., Rex H. Elliot, and Kaela King; and Law Offices of John C. Camillus, L.L.C., and John C. Camillus, for appellants.

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