[Cite as *Protich v. Cleveland Clinic Found.*, 2026-Ohio-4278.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

RYAN S. PROTICH, INDIVIDUALLY AND AS ADMINISTRATOR OF THE ESTATE OF MICHELLE PROTICH (DECEASED),

Plaintiff-Appellant,

v.

THE CLEVELAND CLINIC FOUNDATION,

Defendant-Appellee.

No. 115874

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: October 29, 2026

Civil Appeal from the Cuyahoga County Court of Common Pleas
Case No. CV-24-994971

Appearances:

Casey Law Co. LPA and James S. Casey, *for appellant*.

Roetzel & Andress, LPA, Emily K. Anglewicz, Stephen W. Funk, Tammi J. Lees, and Anna Moore Carulas, *for appellee*.

EILEEN T. GALLAGHER, P.J.:

{¶ 1} Plaintiff-appellant Ryan Protich ("Ryan" or "the Estate"), individually and as administrator of the estate of Michelle Protich ("Michelle"), appeals a judgment, rendered following a jury trial, in favor of defendant-appellee Cleveland Clinic Foundation ("Cleveland Clinic" or "the Clinic"). He claims the following errors:

> 1. The trial court abused its discretion in allowing the Cleveland Clinic to utilize evidence of comparative fault under the guise of foreseeability and then erred in denying Estate's motion for partial directed verdict on the issue of foreseeability.
>
> 2. The trial court abused its discretion in admitting the discovery deposition transcripts containing expert medical testimony where the transcripts did not establish the witnesses' qualifications as required by Evidence Rules 601 and 702.
>
> 3. The trial court abused its discretion by refusing to dismiss Juror 7 after the Estate challenged her for cause on grounds she failed to disclose information during voir dire that, if disclosed, would have resulted in the Estate exercising a peremptory challenge.

{¶ 2} We affirm the trial court's judgment.

I. Facts and Procedural History

{¶ 3} On April 18, 2023, Michelle was admitted to the Cleveland Clinic for a kidney transplant. Michelle had previously suffered an aortic dissection that required placement of a mechanical aortic valve. To prevent clotting at the valve, which posed a risk of stroke, Michelle had been taking the blood thinner Coumadin. She was taken off Coumadin prior to the transplant surgery, and it was restarted after the surgery. To prevent clotting after the kidney transplant, Michelle was given

a second anticoagulant, Lovenox, as a "bridge" to protect the valve until the Coumadin levels reached the therapeutic range.

{¶ 4} Prior to discharge, Michelle's INR number, a test that measures how long blood takes to clot, was rising. Her hemoglobin levels had rebounded, and her kidney function was stable. As a result, Michelle was discharged from the hospital on April 27, 2023.

{¶ 5} At approximately 1:30 a.m. the next day, April 28, 2023, Ryan called the Clinic to report that Michelle was having abdominal pain and bloating. Dr. Michael Gross ("Dr. Gross"), a third-year urology resident, took the call. Dr. Gross reviewed Michelle's chart, including a note indicating that Michelle was doing well with controlled pain and bowel function. Dr. Gross advised Michelle to take MiraLax and possibly an enema. (Tr. 452-453.)[1] Dr. Gross testified that he informed Ryan that Michelle should return to the emergency room if she had any nausea or vomiting, worsening uncontrolled pain, or if she could not tolerate oral intake. (Tr. 397; Dr. Gross trial depo. at 31.) Dr. Gross also instructed the Protiches to call the hospital during the day if the pain was not relieved by then. (Tr. 855.) Ryan disputes this testimony. (Tr. 804.)

{¶ 6} Approximately three hours later, at 4:44 a.m., Ryan called 911 because Michelle was experiencing flank pain and cramps. (Tr. 853; def. exhibit C.) The Tallmadge Emergency Medical Service ("EMS") arrived at 4:51 a.m. Michelle

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[1] Citations to the transcript refer to the trial transcript unless otherwise noted.

reported to EMS workers that she had not been having bowel movements or passing gas for the past day and that it was causing cramping and pain. (Tr. 854; def. exhibit C.) Michelle refused to be transported to the hospital, and she signed a "patient refusal" form acknowledging that she "may have a serious injury or illness which could get worse without medical attention even though . . . [she] may feel fine at the present time." (Tr. 284; def. exhibit C.)

{¶ 7} At approximately 11:00 a.m., after taking her medication, Michelle began vomiting. (Tr. 808.) She vomited 12 to 15 times between 11:15 a.m. and 7:00 p.m., and her condition "became progressively worse." (Tr. 860.) At 6:56 p.m., Ryan called the Cleveland Clinic and spoke with Dr. Ao Zhang ("Dr. Zhang") about Michelle's condition. Dr. Zhang told Ryan to take Michelle to the emergency department. (Tr. 411, 809, and 812.) Michelle's condition deteriorated rapidly during the ride to the hospital. Shortly after she arrived, Michelle died from a retroperitoneal bleed. (Tr. 791.)

{¶ 8} Ryan, individually and as administrator of the estate of Michelle Protich, filed a complaint against the Cleveland Clinic alleging claims of medical malpractice, loss of consortium, and wrongful death. Both sides presented expert testimony regarding standard of care and causation at trial. Ryan argued that the Cleveland Clinic breached the standard of care regarding the blood thinners prescribed after the kidney transplant, the decision to discharge her home, and the care and medical advice provided during Ryan's call to Dr. Gross. The Clinic argued that the delay in returning to the hospital after Michelle's symptoms worsened was

not foreseeable and that, therefore, her death was not caused by medical negligence. The jury returned a verdict in favor of the Cleveland Clinic. Ryan now appeals the trial court's judgment.

II. Law and Analysis

A. Foreseeability

{¶ 9} In the first assignment of error, Ryan argues the trial court erred by allowing the Cleveland Clinic to introduce evidence of comparative fault "under the guise of foreseeability." (Appellant's brief p.7.) He also argues the trial court erred in denying his motion for a partial directed verdict on the issue of foreseeability.

{¶ 10} We review a trial court's decision to admit or exclude evidence for abuse of discretion. *Schleich v. Penn Cent. Corp.*, 2024-Ohio-5005 ¶ 9 (8th Dist.). We, therefore, will not disturb a trial court's evidentiary ruling absent an abuse of discretion. *In re A.M.*, 2022-Ohio-612, ¶ 22 (8th Dist.).

{¶ 11} An abuse of discretion occurs when a court exercises its judgment in an unwarranted way regarding a matter over which it has discretionary authority. *Johnson v. Abdullah*, 2021-Ohio-3304, ¶ 35. However, "a trial 'court does not have discretion to misapply the law.'" *Morgan v. Greater Cleveland Regional Transit Auth.*, 2025-Ohio-1655, ¶ 64 (8th Dist.), quoting *Johnson* at ¶ 38. "Thus, an abuse of discretion also occurs when a court '"applies the wrong legal standard, misapplies the correct legal standard, or relies on clearly erroneous findings of fact."'" *Id.*, quoting *Thomas v. Cleveland*, 2008-Ohio-1720, ¶ 15 (8th Dist.), quoting *Berger v. Mayfield*, 265 F.3d 399 (6th Cir. 2001).

{¶ 12} The Clinic raised comparative negligence as a defense in its answer. Prior to trial, Ryan filed a motion in limine to exclude evidence of what transpired with Michelle between the time Ryan called the Clinic and spoke to Dr. Gross at approximately 1:30 a.m. and the time they returned to the Cleveland Clinic at approximately 7:00 p.m. Ryan argued the Clinic should not be permitted to introduce evidence of comparative negligence because none of the Clinic's experts testified that Michelle and Ryan's negligence was the proximate cause of her death. The trial court denied the motion.

{¶ 13} Ryan now argues on appeal that he could not anticipate that the Clinic would abandon its comparative negligence defense and pursue instead a claim that Michelle's death was not foreseeable. (Appellant's brief p. 9.) Ryan asserts that because the Clinic's experts did not testify that the Protiches' comparative negligence was the proximate cause of Michelle's death, they should not have been permitted to testify regarding the foreseeability of Michelle's death.

{¶ 14} To prevail on a medical-malpractice claim, a plaintiff must establish (1) the standard of care, as shown through expert testimony; (2) the failure of the defendant to meet the standard of care; and (3) a direct causal connection between the medically negligent act and the injury sustained. *Bruni v. Tatsumi*, 46 Ohio St.2d 127 (1976); *Porach v. Cleveland Clinic Found.*, 2025-Ohio-2522, ¶ 44 (8th Dist.).

{¶ 15} In ordinary negligence cases, the existence of a duty, or standard of care, generally depends on the foreseeability of the injury. *Menifee v. Ohio Welding*

Prods., Inc., 15 Ohio St.3d 75, 77 (1984). In the medical-malpractice context, "foreseeability of harm is relevant to a physician's standard of care, and a correct, general statement of the law regarding the standard of care or the breach of that standard includes the element of foreseeability." *Cromer v. Children's Hosp. Med. Ctr. of Akron*, 2015-Ohio-229, ¶ 28. Therefore, the foreseeability of Michelle's injury was relevant to the standard of care in this medical-malpractice case.

{¶ 16} The test for foreseeability is "whether a reasonably prudent person would have anticipated that an injury was *likely* to result from the performance or nonperformance of an act." (Emphasis in original.) *Cox v. MetroHealth Med. Ctr. Bd. of Trustees*, 2012-Ohio-2383, ¶ 63 (8th Dist.), citing *Menifee* at 77.

{¶ 17} As a general rule, "[a]ll relevant evidence is admissible." Evid.R. 402. Evid.R. 401 defines "relevant evidence" as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Evidence concerning the foreseeability of Michelle's injury from her doctors' perspective at the time she left the hospital was relevant to the doctors' standard of care.

{¶ 18} Evidence regarding the events that occurred between the time of Ryan's phone call with Dr. Gross and Michelle's subsequent readmission to the hospital was relevant to the Estate's claims of negligence against the Clinic, the foreseeability of injury, and the proximate cause of Michelle's injury. Dr. Gross testified that he informed Ryan that Michelle should return to the emergency room if her pain worsened or was uncontrolled, if she had any vomiting, or if she could

not tolerate oral intake. (Tr. 397; Dr. Gross trial depo. at 31.) As previously stated, Ryan disputes this testimony. (Tr. 804.) Nevertheless, it is undisputed that the Protiches delayed returning to the hospital after Michelle started vomiting even though she vomited on and off for a period of eight hours and her condition got "progressively worse." (Tr. 859-860.)

{¶ 19} The evidence showed that Michelle's vital signs were normal when EMS evaluated her and that she refused to be transported to the hospital at that time. (Tr. 398.) And yet, Michelle died of hemorrhagic shock later that day. Defense expert Raymond Pastore, M.D. (a hematologist) testified that Michelle's internal bleeding did not start until after she started vomiting and that vomiting was the proximate cause of her bleeding. (Tr. 1037.) Dr. Pastore testified:

> Q. You stated that your opinion was that the bleeding started with the vomiting. What is the basis of that opinion?
>
> A. By reviewing the medical records, that takes us to the point of the EMS visit. I do not believe that there was adequate evidence of bleeding. And then there are historical reports of vomiting and my recollection is that there was hours of vomiting. And with that increased pressure, that could provide a physiologic basis for a rupture of either a vessel or a viscus, certainly a vessel, which would then contribute to bleeding particularly in an individual on blood thinners.

(Tr. 1037.) Excluding this evidence would have been unfairly prejudicial to the defense because Michelle's prolonged vomiting and her delay in returning to the hospital was arguably not foreseeable to her doctors at the time they discharged her.

{¶ 20} Moreover, excluding this evidence would have caused the jury to speculate as to what occurred during this period of time, and juries are not allowed to speculate on facts that are not in evidence. *Kata v. Second Natl. Bank*, 26 Ohio

St.2d 210, 216 (1971), *overruled in part on other grounds by Krischbaum v. Dillon*, 58 Ohio St.3d 58, 64, fn. 9 (1991) ("To engage in conjecture is beyond the perimeter of the jury's prerogatives."); *Westinghouse Elec. Corp. v. Dolly Madison Leasing & Furniture Corp.*, 42 Ohio St.2d 122, 126 (1975) ("[A] jury verdict may not be based upon mere speculation or conjecture.").

{¶ 21} In short, evidence of the Protiches' actions between the time of Ryan's call to Dr. Gross and Michelle's return to the hospital was relevant to the Estate's claims of negligence against Michelle's doctors, the foreseeability of her injury, and proximate cause. Therefore, the trial court properly allowed the evidence to be presented to the jury.

{¶ 22} Ryan nevertheless argues that the trial court erred in denying his "motion for directed verdict on foreseeability." However, Ryan never moved for a directed verdict on this issue. Rather he moved "to preclude defense from arguing that plaintiff's injury was not foreseeable to the defendant, that it was not a foreseeable injury under the law." (Tr. 1220.) He argued there was no expert testimony that the intervening delay in returning to the hospital was not foreseeable to the Clinic and that, therefore, evidence regarding foreseeability should be excluded.

{¶ 23} However, Ryan agreed to a jury instruction on the issue of foreseeability. (Tr. 1222.) And, as previously explained, evidence of foreseeability was properly admitted into evidence because it was relevant to the Estate's claims of

negligence against Michelle's doctors, the foreseeability of her injury, and proximate cause.

{¶ 24} Furthermore, "a verdict cannot be directed in favor of a party chargeable with the burden of proof unless the issue is admitted by the opposing party in such a way as to dispense with proof, or unless the law attaches to such evidence as is produced the quality of being conclusive proof." *Hardy v. Ferguson Moving & Storage Co.*, 104 Ohio App. 98, 104 (1st Dist. 1956); *Natl. Exchange Bank v. Savin*, 58 Ohio App. 207 (1st Dist. 1937).

{¶ 25} The Cleveland Clinic made no concessions on the issue of foreseeability nor was the issue conclusively established as a matter of law. Therefore, the trial court did not err in not granting a directed verdict in favor of the Estate.

{¶ 26} The first assignment of error is overruled.

B. Discovery Depositions

{¶ 27} In the second assignment of error, Ryan argues the trial court abused its discretion by admitting video discovery depositions of Michelle's attending physicians into evidence. He argues the discovery depositions were inadmissible because they contained expert medical testimony without the required foundation needed to qualify the doctors as expert witnesses. Ryan also argues the trial court erred by accepting affidavits to qualify the doctors as experts.

{¶ 28} As previously stated, we will not disturb a trial court's evidentiary ruling absent an abuse of discretion. *In re A.M.*, 2022-Ohio-612, at ¶ 22 (8th Dist.).

{¶ 29} Ryan objects to the testimony of Drs. Ziad Zaky ("Dr. Zaky"), Alvin Wee ("Dr. Wee"), and Joshua Augustine ("Dr. Augustine"). However, it is undisputed that all three of these witnesses were Michelle's treating physicians at the Cleveland Clinic, the sole named defendant in this case. Dr. Wee is the program director for kidney transplants at the Clinic. (Tr. 733.) He testified that the doctors and medical professionals who attended to Michelle were members of his "team." (Tr. 733.) Dr. Zaky is the transplant nephrologist who discharged Michelle from the hospital on April 27, 2023. (Tr. 592.) And Dr. Augustine was the transplant nephrologist who cared for Michelle on the first two days following the transplant surgery while she was in the hospital. (Tr. 1102, Augustine depo. p. 5.) These doctors were not hired experts. As Michelle's treating physicians, they were party witnesses with personal knowledge of the medical care provided to Michelle.

{¶ 30} The testimony of a treating physician, when restricted to the fact of treatment rendered, is not subject to the rules governing expert witnesses. *Djukic v. Turner*, 2007-Ohio-4433, ¶ 17 (8th Dist.), citing *Zinsmeister v. Leamon*, 1985 Ohio App. LEXIS 7562, * 7 (8th Dist. May 2, 1985). *See also Gannett v. Booher*, 12 Ohio App.3d 49, 52 (6th Dist. 1983) (whether testifying as an expert or lay witness, treating physician was properly permitted to give opinion testimony based on his personal observations and perceptions); *Fischer v. Dairy Mart Convenience Stores, Inc.*, 77 Ohio App.3d 543, 555-556 (8th Dist. 1991) (doctors' opinions were rationally based on their own perceptions and were helpful to the determination of causation and therefore were admissible pursuant to Evid.R. 701). Therefore, Michelle's

treating physicians could testify concerning matters they personally observed as well as the treatment they themselves rendered without being qualified as expert witnesses.

{¶ 31} However, the rules governing expert testimony are implicated when the physician goes beyond his or her personal observations and knowledge regarding treatment by providing specialized opinions regarding diagnosis, prognosis, and damages. *Djukic* at ¶ 17-18. For example, in *Smith v. Stark Cty. Neurologists, Inc.*, 1991 Ohio App. LEXIS 285 (5th Dist. Jan. 7, 1991), the defendants characterized three physicians as "occurrence" witnesses rather than "experts" in an attempt to argue that their testimony was admissible as nonexpert testimony. The Fifth District Court of Appeals rejected that argument even though all three witnesses were the decedent's treating physicians because they offered medical opinions that went beyond their own involvement in the case, involved the care given by other doctors, and addressed the ultimate issues of negligence and proximate cause. *Id.* at *4.

{¶ 32} Ryan argues that Drs. Wee, Zaky, and Augustine offered expert opinions regarding certain treatment decisions that they were not personally involved in. He cites Dr. Augustine's opinions that it was appropriate to add Lovenox as a second blood thinner as a bridge, that it was appropriate to discharge Michelle, and it was proper for a nephrologist to opine on the discharge and not necessarily chart that advice. He cites Dr. Zaky's testimony that it was not the standard of care to monitor Lovenox with a blood test, that it was appropriate to add

Lovenox as a second blood thinner as a bridge, and that it was appropriate to discharge Michelle. And he cites Dr. Wee's testimony that Dr. Gross complied with the standard of care when the Protiches called him the night after Michelle's discharge.

{¶ 33} Ryan contends the testimony of these treating physicians constituted expert opinions requiring them to be qualified as experts before they could offer them. He does not claim that the witnesses were not qualified; he argues the trial court erred by accepting affidavits listing each doctor's qualifications in order to establish them as expert witnesses. He contends the affidavits were not the appropriate means for qualifying an expert witness because affidavits are hearsay and the affiants are not subject to cross-examination.

{¶ 34} Under Evid.R. 104(A), the trial court determines whether a witness qualifies as an expert, and the trial court's determination will not be disturbed absent an abuse of discretion. *State v. Hartman*, 93 Ohio St.3d 274, 285 (2001). "In making its determination [the court] is not bound by the rules of evidence except those with respect to privileges." Evid.R. 104(A). In *Green v. Toledo Hosp.*, 2002-Ohio-1482, ¶ 27, the Ohio Supreme Court held that "[n]o formal testimony is necessary and, in resolving these preliminary questions of admissibility, the trial court is not bound by the Rules of Evidence." Therefore, the trial court was allowed to qualify the doctors as experts based on affidavits even though they were not subject to cross-examination.

{¶ 35} Ryan does not challenge the content of the sworn statements in each of the doctor's affidavits. In addition to the doctors' testimony during the Estate's case-in-chief wherein the doctors described some of their medical practices, the doctors each averred in the affidavits that they are licensed to practice medicine and that they each devote more than 50 percent of their work to the clinical practice of medicine in their respective fields of licensure. We, therefore, find no abuse of discretion in the court's decision to qualify them as experts.

{¶ 36} Moreover, Ryan opened the door to the opinions he now objects to when his counsel elicited testimony from Drs. Augustine, Zaky, and Wee on these issues. The testimony Ryan objects to relates to the standard of care with respect to the use of blood thinners, including Lovenox, and the applicable standard of care for discharging a patient in Michelle's condition.

{¶ 37} Counsel called Drs. Wee and Zaky as on cross-examination during the Estate's case-in-chief. (Tr. 592 and 732.) During the cross-examination of Dr. Zaky, counsel asked Dr. Zaky if the Cleveland Clinic gave Michelle Lovenox, and Dr. Zaky replied, "Yes." (Tr. 592.) Thereafter, the following exchange took place:

> Q. Okay. I want to talk about the risks of giving the Lovenox and the Coumadin. As the transplant nephrologist, are you managing the risk on one side of her throwing a clot and on the other side of her risk of bleeding? Are those the two balancing acts that you have to make?
>
> A. Yes.
>
> Q. All right. So when you are making the decisions on what medications to give and what dosages to give, does anticoagulation — do we know that anticoagulation increases the risk of bleeding?
>
> A. Yes.

> Q. Do doctors know that a patient can bleed when they send them home on a blood thinner?
>
> A. Yes.

(Tr. 593.)

{¶ 38} During the cross-examination of Dr. Wee, Ryan's attorney asked questions regarding the applicable standard of care for discharging Michelle:

> Q. Would it be an egregious breach of the standard of care to discharge Michelle without an attending physician having seen her?
>
> A. She was seen in the morning by the team.
>
> Q. I didn't ask that. I said if an attending physician was not on that team, would that be an egregious violation of the standard of care?
>
> A. They wouldn't be rounding the patient without the doctor, right?
>
> Q. I know they are not supposed to do that. That is not my question. It would be an egregious violation of the standard of care for the resident and the fellow to go ahead and round without an attending; that would be bad, wouldn't it?
>
> A. Yeah.

(Tr. 779.) Earlier in the cross-examination, counsel asked Dr. Wee about the opinions of other experts. Counsel asked Dr. Wee if he agreed with the opinion of Dr. John Roberts, who testified that "the risk of not putting Michelle on Lovenox carried a less than 1 percent chance of her throwing a fatal clot." (Tr. 736-737.) Later, counsel asked Dr. Wee if the blood thinners Michelle was taking contributed to her death. (Tr. 783.) Thus, counsel opened the door to testimony regarding whether it was appropriate to use Lovenox as a second blood thinner and whether it was appropriate to discharge Michelle at the time she was discharged.

{¶ 39} A plaintiff may not elicit testimony from a party physician about a particular medical issue and then prevent the physician from presenting expert testimony necessary to explain, rebut, or respond to that testimony. *See Camara v. Ohio State Univ. Med. Ctr. E.*, 2015-Ohio-5618, ¶ 14 (Ct. of Cl.). In *Camara*, the plaintiff objected to the testimony of a defense medical expert on grounds that the expert was not competent to testify about the standard of care and causation. The court rejected the plaintiff's argument because counsel "opened the door to the line of questioning about cause of death[.]" *Id.* The court explained that "[b]y introducing cause of death in his questioning, plaintiff waived any objection to the answers he received as well as any follow-up questions by defendant regarding the issue." *Id.*

{¶ 40} Similarly, in *Waechter v. Laser Spine Inst., L.L.C.*, 2023-Ohio-3715, (8th Dist.), we held that the plaintiff forfeited any claim of error in the presentation of expert testimony even though the testimony was outside the scope of the expert's expertise because plaintiff's counsel "opened the door" to the standard-of-care testimony and invited the error. *Id.* at ¶ 43.

{¶ 41} Under the invited-error doctrine, a party may not take advantage of an error that the party invited or induced. *State v. Bey*, 85 Ohio St.3d 487, 492-493 (1999). Thus, a party may not claim error in the admission of testimony that the party, itself, elicited. *Ctr. Ridge Ganley, Inc. v. Stinn*, 31 Ohio St.3d 310, 313 (1987) (Appellants "invited" the alleged error in the admission of parole evidence by calling

a witness on cross-examination and eliciting testimony from him as to the intent of the parties when entering the contract.).

{¶ 42} Ryan, through counsel, elicited the expert testimony he now claims was admitted in error. Pursuant to the invited-error doctrine, he cannot take advantage of the alleged error that he himself induced. *Id.* And, in any case, the court did not abuse its discretion in determining that the treating physicians were competent to testify as experts in this case based on their affidavits. Therefore, the testimony was properly admitted into evidence.

{¶ 43} Finally, Ryan argues that in Dr. Wee's deposition, he offered an expert opinion regarding Dr. Gross's conduct during the after-midnight phone call. Counsel did not explicitly open the door to this testimony at trial. The issue here was whether Dr. Gross was negligent in failing to tell Ryan that Michelle should return to the hospital.

{¶ 44} Dr. Wee testified that Dr. Gross's conduct was appropriate under the circumstances. As previously stated, the court determined that Dr. Wee could testify as an expert based on his affidavit with his qualifications. Therefore, his testimony was admissible.

{¶ 45} But even if Dr. Wee's testimony were admitted in error, the error would have been harmless. "An improper evidentiary ruling constitutes reversible error only when the error affects the substantial rights of the adverse party or the ruling is inconsistent with substantial justice." *Beard v. Meridia Huron Hosp.*, 2005-Ohio-4787, ¶ 35, citing *O'Brien v. Angley*, 63 Ohio St.2d 159, 164-165 (1980).

To affect the adverse party's substantial rights, the error must have been prejudicial, meaning it must have affected the outcome of the trial court proceedings. *Angley* at 164-165, quoting *Hallworth v. Republic Steel Corp.*, 153 Ohio St. 349 (1950) ("Generally, in order to find that substantial justice has been done to an appellant so as to prevent reversal of a judgment for errors occurring at the trial, the reviewing court must not only weigh the prejudicial effect of those errors but also determine that, if those errors had not occurred, the jury or other trier of the facts would probably have made the same decision.").

{¶ 46} Dr. Gross testified that he told Ryan to return to the hospital if Michelle's symptoms got worse or if she started vomiting. (Gross trial depo. at 25 and 31.) Ryan disputes this testimony. (Tr. 804.) This is the heart of the issue, and the jury heard both Ryan and Dr. Gross and assessed their credibility. They did not need Dr. Wee's opinion; they merely had to judge each witness's credibility.

{¶ 47} Furthermore, Dr. Pastore, an expert whose credentials are not in dispute, testified that at the time the EMS evaluated Michelle, there was no evidence of bleeding and her condition was stable. (Tr. 1037.) It was not until Michelle vomited for several hours that her condition changed. (Tr. 1037.) Dr. Gross was not privy to this critical change in Michelle's condition. Furthermore, Michelle and Ryan refused EMS transport to the hospital. These intervening events rendered Dr. Gross's alleged misconduct virtually irrelevant. Therefore, even if Dr. Wee had not opined that Dr. Gross complied with the standard of care during the after-midnight

phone call, the outcome of the trial would not have been different, and any error in the admission of that testimony was harmless.

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

C. Juror No. 7

{¶ 49} In the third assignment of error, Ryan argues the trial court abused its discretion by refusing to dismiss Juror No. 7 for cause on grounds that she failed to disclose information about her career in the medical industry.[2] He contends that although Juror No. 7 disclosed that she had previously worked as a technician in the field of nuclear medicine and that she had taken nursing classes, her responses during voir dire were incomplete. He contends that if Juror No. 7 had disclosed the depth of her involvement in the medical profession, he would have used a peremptory challenge to excuse her.

{¶ 50} We review the trial court's decision on whether to remove a juror for cause of an abuse of discretion. *Porach v. Cleveland Clinic Found.*, 2025-Ohio-2522, ¶ 64 (8th Dist.). As previously stated, an abuse of discretion occurs when a court exercises "its judgment, in an unwarranted way, in regard to a matter over which it has discretionary authority." *Johnson*, 2021-Ohio-3304, at ¶ 35.

{¶ 51} R.C. 2313.17 governs challenges of jurors for cause, and R.C. 2313.17(B) lists nine instances when counsel may challenge a juror for cause. As relevant here, R.C. 2313.17(B)(9) provides a "good cause" challenge when a

[2] Juror No. 7 was identified as Juror No. 12 during the initial voir dire before she was seated on the jury.

juror's answers during voir dire disclose 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). A juror may also be removed pursuant to R.C. 2313.17(D), which states:

> In addition to the causes listed in division (B) of this section, 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.

{¶ 52} During the initial voir dire, the trial court asked each of the jurors several questions aimed at identifying those individuals who worked in the medical profession or had any medical training. The court asked:

> Where do you work? . . . Do you have any medical training? . . . Have you ever had a negative experience with a healthcare provider? Have you ever worked for a doctor or hospital in any capacity? Do you hold any strong feelings about medical malpractice litigation? . . . Would you give greater weight to a doctor's testimony compared to all other witnesses?

(Tr. 16-17.)

{¶ 53} In answering the trial court's questions, Juror No. 7 stated:

> I am currently an independent contractor as a dog walker and pet sitter for a pet sitting company. . . .
>
> . . .
>
> I do have medical training. I have a degree in nuclear medicine and technology. I served in that field, and then also nursing classes. I have never testified as a witness in a trial. I have never had a negative experience with a healthcare provider. I have worked for a hospital. So I have worked in nuclear cardiology for a total of 14 years in Pennsylvania and Minnesota. I do not hold any strong feelings about medical malpractice litigation. I would not give greater weight to a

> doctor's testimony compared to other witnesses, except perhaps if they were testifying as an expert witness.

(Tr. 35.) After each of the prospective jurors answered these questions, counsel was afforded the opportunity to ask follow-up questions. (Tr. 16, 69-154.) Ryan's counsel asked the jurors whether anyone had experiences with the drug Coumadin, and Juror No. 7 responded, "Working in cardiology many of the patients were on Coumadin. Yeah." (Tr. 105.) Counsel asked Juror No. 7 when she worked in cardiology, and Juror No. 7 replied that she stopped working in cardiology in 2010.

{¶ 54} Defense counsel asked Juror No. 7 how far she went in nursing, and she replied that she completed one semester of an accelerated program before leaving the medical profession to pursue employment in technology. (Tr. 121.) Later, defense counsel asked whether anyone had experience working with residents and fellows, and Juror No. 7 replied:

> When I worked in nuclear cardiology, we had fellows — cardiology fellows that performed a lot of the tests that help the physician read, and also they got called "COCATS" level certified basically to work with nuclear medicine material. So they had to do a certain number of each of the individual scans to kind of learn what the patient goes through and how to do the tests to give them better insight, and then they get certified as a fellow in nuclear cardiology.

(Tr. 127-128.) Defense counsel also asked Juror No. 7 regarding her experience with anticoagulation based on patients that she saw when she was in practice. (Tr. 143.)

> JUROR No. 12: Yes, they would come in for — if they already had existing heart disease and they were having a test, most of them were on them, just as part of their medication, if they had existing heart disease when they came for our test. So we weren't administering it or anything like that. It was part of the med check and level checks of their blood prior to exercising them.

> [DEFENSE COUNSEL]: There will be talk about — discussion of bridging, so adding a second anticoagulant. Is that something that you have experience with or knowing whether any of the patients that you have seen had experience with that?
>
> JUROR NO. 12: No, I don't have any experience with that.

(Tr. 143-144.)

{¶ 55} Ryan's counsel never inquired about Juror No. 7's job titles or responsibilities during her 14-year career in the medical field even though he could have. (Tr. 105.) And yet, halfway through the trial, he informed the court that "we were not told the truth about her qualifications and her background in voir dire." (Tr. 864.) He told the court that he learned Juror No. 7 was a medical director for many years. (Tr. 865.) He further stated, in relevant part:

> I do not wish to anger this juror in case she stays on the jury. But clearly what we were told in voir dire is not what the picture is or what the whole circumstance is of her employment. She was actually the medical director of this radiology coronary unit for many years. So she is involved in upper management of a very large organization that is very comparable to The Cleveland Clinic. I believe that taints her in that way. But, more importantly, it was withheld from us in voir dire, painting the picture that she was just a med tech in a radiology department and that is not the case. What I'm asking is to confirm that she was in fact this director, and then I will ask that she be stricken for cause.

(Tr. 865-866.)

{¶ 56} As a result of this revelation, the court agreed to conduct a second voir dire of Juror No. 7. During the second voir dire, the court asked more detailed questions about Juror No. 7's medical background and she confirmed that she previously worked as a staff director of nuclear technology where she managed a department of five technologists and nurses. (Tr. 868.) She also confirmed that she

never worked with any of the doctors who would be testifying in the trial. (Tr. 868.) Thereafter, the court again afforded both sides the opportunity to question Juror No. 7 further, and both sides declined. (Tr. 868.)

{¶ 57} After reviewing the transcript of the initial voir dire, the trial court denied counsel's request to excuse Juror No. 7 for cause. The court explained:

> I did have the court reporter print up for me the questioning of Juror Number 12, who is currently Juror Number 7. Based on that questioning and the amount of detail that she brought forth, the motion to exclude her for cause is denied.

(Tr. 969.)

{¶ 58} After reviewing the transcript of the initial voir dire and the second voir dire, we find nothing to suggest that Juror No. 7 could not be fair and impartial or that she would not follow the law. Nor do we find anything to indicate that she was prejudiced against or partial to either party. Juror No. 7 was forthcoming in response to questions about her background. There is nothing to suggest that she intentionally concealed the fact that she was the medical director of this radiology coronary unit. To the contrary, she disclosed that she previously worked in a hospital and that she worked in nuclear cardiology for a total of 14 years in Pennsylvania and Minnesota. (Tr. 35.) It is not the fault of the juror that counsel did not inquire into the positions Juror No. 7 held when she worked in the medical profession or that counsel did not ask what her job responsibilities were. Those were questions counsel could have asked, but he did not. Therefore, the trial court acted

within its discretion when it denied counsel's first motion to remove Juror No. 7 for cause.

{¶ 59} Counsel made a second motion to remove Juror No. 7 for cause after Juror No. 7 posed the following question to the court during deliberations:

> I want to confirm I should only be using information directly from evidence and testimony rather than my background, knowledge, and assume that I'm not to be considered an expert in the jury deliberation, i.e., share my additional knowledge.

(Tr. 1362.) Ryan argues this question "raised additional red flags" that warranted the juror's removal. However, nothing in the question suggests the juror was unable to be fair and impartial. Indeed, the fact that Juror No. 7 asked the question in the first place indicates an intention to follow the law and to be fair.

{¶ 60} Nevertheless, the court conducted a third round of voir dire. (Tr. 1370-1381.) Upon questioning, Juror No. 7 confirmed that she would not have any issue "relying on the expert testimony and the testimony of others." (Tr. 1379-1380.) She explained that she asked the question because she understands the importance of jury deliberations. (Tr. 1380-1381.) She obviously took her responsibility as a juror very seriously.

{¶ 61} Although Juror No. 7 was forthcoming with her answers and took her responsibility as a juror seriously, the trial court conducted the two additional rounds of voir dire to ensure that Ryan received a fair trial. Each voir dire was thorough, and counsel for both sides were afforded the opportunity to ask additional questions. Under these circumstances, we find no abuse of discretion.

{¶ 62} The third assignment of error is overruled.

{¶ 63} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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EILEEN T. GALLAGHER, PRESIDING JUDGE

MARY J. BOYLE, J., and
ANITA LASTER MAYS, J., CONCUR