

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

JAMES MCCAIN,	:	APPEAL NO. C-190700
	:	TRIAL NO. A-1706474
Plaintiff-Appellant,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
ABUBAKAR ATIQ DURRANI, M.D.,	:	
and	:	
CENTER FOR ADVANCED SPINE TECHNOLOGIES, INC.,	:	
Defendants-Appellees,	:	
and	:	
WEST CHESTER HOSPITAL, LLC,	:	
and	:	
UC HEALTH,	:	
Defendants.	:	

The court sua sponte removes this case from the regular calendar and places it on the court's accelerated calendar, 1st Dist. Loc.R. 11.1.1(A), and this judgment entry is not an opinion of the court. See Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

This appeal concerns the latest in the long line of cases involving alleged medical malpractice and fraud by defendants-appellees Abubakar Atiq Durrani, M.D., and his medical practice group, Center for Advanced Spine Technologies, Inc.,

(“CAST”). Plaintiff-appellant James McCain suffered on-and-off back pain since the early 1990s. In late 2012, McCain experienced severe sudden-onset back pain and, through a doctor’s referral, sought the assistance of Durrani. In February 2013, Durrani performed surgery on McCain’s spine. The surgery alleviated McCain’s medical issues for six months, after which McCain experienced aggravated pain in his back and shoulders.

McCain subsequently filed a complaint against Durrani and CAST, asserting various forms of negligence and fraud. The claims were tried to a jury. Durrani did not appear at trial because he had fled to Pakistan in late 2013. The trial court declined to provide a jury instruction regarding Durrani’s flight and prohibited any testimony regarding Durrani’s flight. The court determined that evidence of Durrani’s flight “would take the trial down a path that is not probative to the determination of the claims asserted[.]” At the close of trial, the jury returned a verdict for Durrani and CAST. The trial court subsequently entered judgment in their favor.

In a single assignment of error, McCain argues that the trial court erred by entering judgment in favor of Durrani and CAST. First, McCain contends that the trial court erred by refusing to give a jury instruction on Durrani’s flight to Pakistan. Second, McCain contends that the trial court erred by prohibiting cross-examination of the defendant’s expert witnesses on Durrani’s flight to Pakistan.

Unfortunately for McCain, substantially identical arguments were rejected in *Hayes v. Durrani*, 1st Dist. Hamilton No. C-190617, 2021-Ohio-725. In *Hayes*, we held that evidence of Durrani’s flight had no genuine probative value as to the asserted claims. Thus, we found no abuse of discretion in the trial court’s denial of

the requested flight instruction or in its limitation of the plaintiff's cross-examination.

We see no reason to depart from the holding in *Hayes*. Much like the defendant in *Hayes*, McCain failed to provide any connection between Durrani's flight to Pakistan in 2013 and his particular lawsuit in 2016. McCain simply asserts that Durrani fled to avoid federal indictment and the multiple medical-malpractice lawsuits against him. Because McCain presents only an abstract connection, evidence of Durrani's flight required speculation as to why he fled and had no genuine probative value as to the asserted claims. Thus, the trial court did not abuse its discretion in refusing to instruct the jury on Durrani's flight or in prohibiting cross-examination of the defendants' expert witnesses on Durrani's flight.

We accordingly overrule McCain's single assignment of error and affirm the judgment of the trial court.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

ZAYAS, P.J., BERGERON and CROUSE, JJ.

To the clerk:

Enter upon the journal of the court on May 28, 2021,
per order of the court _____.
Administrative Judge