

: IN THE SUPERIOR COURT OF
: PENNSYLVANIA

-
-
-
-

.....

-
-

- ■
- ■
- ■
- ■
- ■
- ■

Appeal from the Judgment Entered December 21, 2023
In the Court of Common Pleas of Philadelphia County
Civil Division at No(s): 180801939

BEFORE: LAZARUS, P.J., McLAUGHLIN, J., and SULLIVAN, J.

MEMORANDUM BY SULLIVAN, J.:

FILED SEPTEMBER 11, 2026

Dr. Gyi P. Mo ("Mo") and Clinical Care Associates of the University of Pennsylvania Health System ("Clinical Care" or collectively, "Appellants") appeal from the judgment entered against them and in favor of Diana Melendez ("Melendez"), in this medical malpractice action. Because Appellants either failed to preserve their issues for appeal and/or the issues lack merit, we affirm.

We take the underlying facts and procedural history in this matter from the trial court's opinion. **See** Trial Court Opinion, 10/2/23, at 2-15.

Mo is employed by Clinical Care, a part of the University of Pennsylvania Health System. Beginning in October 2011 and continuing for several years, Mo served as Melendez's primary care physician. As early as February 2012, Melendez complained to Mo about unexplained back pain that would cease briefly and then return with increased intensity. Melendez's clinical findings were unremarkable except for her reflex scores, which were bilateral 4+ on both her patella and Achilles reflexes. 4+ is indicative of a serious medical condition. At trial, Mo claimed the recorded 4+ findings were typos or "click errors" on his part and Melendez's reflexes were 2+, a normal finding. Mo did not recommend any additional testing but suggested Melendez take NSAIDs,

stretch, and rest. Mo never tested Melendez's reflexes again, even though Melendez complained about increasing back pain, weakness, and leg problems over the next three years. In March 2014, Mo examined Melendez and found neurological weakness. At trial, Mo claimed the notation of neurological weakness was a computer "glitch" (weakness glitch) resulting from a flaw in a computer program, and he did not find neurological weakness but rather constitutional weakness. Mo did not refer Melendez to a neurologist.

Melendez's condition continued to deteriorate, and she began having serious foot problems. In early 2016, Mo referred Melendez to a podiatrist, Dr. Albert D'Angelantonio ("D'Angelantonio").¹ Melendez saw D'Angelantonio in 2016, and he ultimately referred her for a neurology consultation. In January 2017, Melendez began treatment with neurologist Dr. Sami Khella ("Khella"). Khella ultimately diagnosed Melendez with spinal dural arteriovenous ("AV"). This condition is curable if caught early. Here, it was not caught early and following surgery, Melendez became an incomplete paraplegic; she is both bowel-dysfunctional and incontinent, cannot walk without a walker, falls regularly, and cannot do most activities of daily living without assistance.

¹ Melendez filed the instant action against fourteen medical providers including D'Angelantonio. The case went to trial solely against Mo and D'Angelantonio. However, the jury found in favor of D'Angelantonio and he is not a party to this appeal.

At trial, of import to the instant appeal, along with her own testimony, Melendez presented the expert testimony of Dr. Paul Genecin ("Genecin"), a board-certified internal medicine specialist. In sum, Genecin testified that, beginning in 2012, Mo breached the standard of care by not referring Melendez to a neurologist, not referring her for an MRI, and not repeating the reflex testing after Melendez showed abnormal results. Notably, Melendez's counsel did not ask him whether his opinions were given with "a reasonable degree of medical certainty."

Melendez also presented testimony from Dr. Carolyn Brockington ("Brockington"), a vascular neurologist, and Dr. Ross Noble ("Noble"), who is board certified in physical medicine, rehabilitation, and electrodiagnostic medicine. Both testified to Melendez's current medical condition and the difference early diagnosis would have made and excluded other possible causes than AV for the symptoms Melendez displayed. Noble explained how Melendez's current physical problems impact her daily life and about the ongoing care she will need in the future; he also testified Melendez is permanently disabled.

Whitney Jackson, a records manager at Penn Medicine, testified Melendez had been employed by the Hospital of the University of Pennsylvania ("HUP"), which terminated her employment because her medical problems rendered her permanently disabled.

Melendez also presented two expert witnesses regarding damages, Nadine Taniguchi ("Taniguchi"), a nurse life-care planner and David Hopkins ("Hopkins"), an expert in economic forecasting.

In his defense case, Mo presented expert medical testimony from Dr. Charles Christopher Smith ("Smith"), an internal medicine specialist, and Dr. Phillip Dickey ("Dickey"), a neurosurgeon. Both experts disputed Melendez's experts' testimony that there was a breach of the standard of care, and disputed whether the symptoms Melendez complained to Mo were indicative of AV, and when Melendez developed AV. Mo's counsel elected not to call any previously identified expert witnesses regarding damages, instead relying on their cross-examination of Melendez's experts.

The jury found in favor of Melendez but determined she was 6% contributorily negligent. Its award to Melendez, taking into account the 6% reduction, was \$799,000 for past and future non-economic loss, \$9,321,666.98 for future economic loss, \$1,156,811 for past and future lost earnings, and \$7,207,915.30 for future medical expenses. Subsequently, Mo filed two motions for judgment notwithstanding the verdict ("JNOV"), three motions for JNOV and/or a new trial, thirteen motions for a new trial, a motion for remittitur, and a motion for a hearing on reduction of future medical

expenses to present value.² **See** Trial Court Opinion, 10/2/23, at 16. Melendez also filed post-trial motions which are not the subject to the instant appeal. The trial court issued a seventy-five-page opinion finding the majority of Mo's claims waived. The instant appeal followed. Mo filed a timely Pa.R.A.P. 1925(b) statement, and the trial court issued a statement adopting its decision on post-trial motions as its Pa.R.A.P. 1925(a) decision.

On appeal, Appellants raise five issues for our review.

1. Whether the trial court erred in denying [Appellants'] request for JNOV after [Melendez] failed to present sufficient evidence to establish that [Appellants] breached an objective standard of care that caused [Melendez's] harm?

2. Whether the trial court abused its discretion in failing to grant a new trial after [Melendez's trial] counsel engaged in what the trial court described as "deplorable" conduct, when [trial counsel] injected irrelevant employment claims into this medical malpractice case, repeatedly violated court rulings, and continually disregarded Pennsylvania's procedural and evidentiary rules, such that [trial] counsel was admonished by the trial court forty-eight times?

3. Whether the trial court abused its discretion in denying [Appellants'] new trial request after the trial court, at [Melendez's] insistence, gave a highly prejudicial[,] mid-trial jury instruction that erroneously told the jury that [Appellants] withheld documents in discovery when, in fact, as [trial] counsel conceded, no such documents were withheld?

4. Whether the trial court abused its discretion in denying

² Appellants filed a single motion but within the motion labeled each section as a separate and distinct motion. In the interests of clarity, we adopt the trial court's citation method and refer to the motions as they were labeled. The trial court ordered briefing and, two months later, Appellants filed a single brief that does not align with their post-trial motions either in terms of the order of issues nor with respect to content.

[Appellants'] request for a new trial, where the overwhelming weight of the evidence established that [Appellants] did not breach a standard of care by failing to diagnose [Melendez's] condition earlier, [Melendez] did not have the complained-of medical condition during the time she was being treated by [Appellants] (such that earlier testing or intervention would have made no difference in Melendez's outcome), and the staggering damages award is both excessive and unsupported?

5. Whether the trial court abused its discretion in failing to remit an almost-\$20-million verdict where the award was returned without sufficient evidentiary basis and improperly influenced by [trial] counsel's inflammatory insinuations that the jury should punish [Appellants] for alleged employment decisions over which they had no control?

Appellants' Brief at 6-7.

Initially, this Court wishes to address its displeasure with Appellants' brief and reproduced record in this matter. As discussed, the trial court found Appellants waived most of their issues on appeal for a variety of reasons, most having to do with deficiencies in their post-trial motions and/or brief in support of their post-trial motions. **See** Trial Court Opinion, 10/2/23, at 16-75. Despite the trial court's clear indication of the deficiencies of their prior filings, and in violation of Pennsylvania Rules of Appellate Procedure 2117(c) and 2119(e), Appellants do not state or even cite where they preserved most of their issues. Moreover, Appellants generally fail to address waiver, and when they do, they do so in the form of a bald denial of waiver without citing to the record where the issue is preserved. Further, in violation of Pa.R.A.P. 2152(a)(2), Appellants' reproduced record does not include **any** of their post-trial motions, attached exhibits, or the brief in support of the post-trial motions

in violation of Pa.R.A.P. 2152(a)(2). Appellants' myriad failures place an unreasonable burden on this Court: the certified record in this case includes ***thirty-two volumes of transcripts and over thirty-thousand documents***. As has been colorfully stated, "[j]udges are not like pigs, hunting for truffles buried in briefs'-or, for that matter, in the thousands of pages of record that accompany them." ***Langman v. Keystone Nat'l Bank & Trust Co.***, 672 F.Supp.2d 691, 694 (E.D. Pa. 2009) (citation omitted). Moreover, Appellants generally present the facts in the light most favorable to themselves, do not sufficiently cite to either pertinent authority or the record, continuously misstate the record beyond acceptable limits of zealous advocacy, and engage in inflammatory argument in their brief.

An appellate court will address only those issues properly presented and developed in an Appellants' brief as required by our Rules of Appellate Procedure, Pa.R.A.P. 2101. "Where defects in a brief impede our ability to conduct meaningful appellate review, we may dismiss the appeal entirely or find certain issues to be waived." ***Sephakis v. Pennsylvania State Police Bureau of Records and Identification***, 214 A.3d 680, 686 (Pa. Super. 2019) (internal quotation marks and citation omitted).

Given the significant deficiencies noted above, it would be within our discretion to dismiss this entire appeal based upon Appellants' failure to meaningfully discuss the trial court's finding of waiver, include in the reproduced record the post-trial motions, exhibits, and accompanying brief

that served as a basis for many of its waiver findings, and indicate in the record where it preserved its issues. However, we endeavor to address Appellants' issues.

In their first issue, Appellants argue the trial court erred in not granting their motion for JNOV because the evidence was insufficient to show Appellants: (1) breached an objective standard of care and (2) the alleged breach caused Melendez harm. **See** Appellants' Brief at 25-35.

We begin with our standards of review. We have explained:

Our standard[s] of review when considering the motions for a directed verdict and [JNOV] are identical. We will reverse a trial court's grant or denial of a [directed verdict or JNOV]. only when we find an abuse of discretion or an error of law that controlled the outcome of the case. Further, the standard of review for an appellate court is the same as that for a trial court.

There are two bases upon which [JNOV] can be entered; one, the movant is entitled to judgment as a matter of law and/or two, the evidence is such that no two reasonable minds could disagree that the outcome should have been rendered in favor of the movant. With the first, the court reviews the record and concludes that, even with all factual inferences decided adverse to the movant, the law nonetheless requires a verdict in [its] favor. Whereas with the second, the court reviews the evidentiary record and concludes that the evidence was such that a verdict for the movant was beyond peradventure.

Hall v. Episcopal Long Term Care, 54 A.3d 381, 395 (Pa. Super. 2012) (citations omitted).

With respect to the sufficiency of the evidence in medical malpractice actions, this Court has stated:

[t]o establish a *prima facie* cause of action for medical negligence, a plaintiff must demonstrate:

(1) a duty owed by the physician to the patient; (2) a breach of that duty; (3) that the breach of duty was the proximate cause of the harm suffered by the patient; and (4) that the damages suffered were a direct result of that harm.

Determining whether there was a breach of duty involves a two-step process: first, a determination of the standard of care, and second, a determination of whether the defendant physician met that standard. To show causation, the plaintiff must show that the [defendant physician's] failure to exercise the proper standard of care caused the plaintiff's injury.

A plaintiff in a medical negligence case must present an expert witness who will testify, to a reasonable degree of medical certainty, regarding the standard of care (duty); that the . . . physician deviated from the standard of care (breach); and that such deviation was the proximate cause of the harm suffered. Further, "[the expert's] medical opinion need only demonstrate, with a reasonable degree of medical certainty, that [the defendant physician's] conduct increased the risk of the harm actually sustained, and the jury then must decide whether that conduct was a substantial factor in bringing about the harm.

In determining whether the expert's opinion is rendered to the requisite degree of certainty, we examine the expert's testimony in its entirety. ***That an expert may have used less definite language does not render his entire opinion speculative if at some time during his testimony he expressed his opinion with reasonable certainty. Accordingly, an expert's opinion will not be deemed deficient merely because he or she failed to expressly use the specific words, "reasonable degree of medical certainty."*** Nevertheless, an expert fails this standard of certainty if he testifies that the alleged cause possibly, or could have[,] led to the result, that it could very properly account for the result, or even that it was very highly probable that it caused the result.

Mazzie v. Lehigh Valley Hospital – Muhlenberg, 257 A.3d 80, 87-88 (Pa. Super. 2021) (internal citations and most quotation marks omitted, some paragraph formatting altered, emphasis added).

Appellants specifically contend Genecin: (1) failed to identify any objective standard of care, (2) did not testify to any breach of an objective standard of care, and (3) did not present his opinion to any degree of reasonable medical certainty. **See** Appellants' Brief at 25-31. They further claim Brockington's testimony did not prove causation. **See** Appellants' Brief at 31-34.

The trial court concluded Appellants waived all the above sub-issues, except for the claim Genecin did not present his opinion to any degree of reasonable certainty. **See** Trial Court Opinion, 10/2/23, at 21-22, 24-28. It also concluded that Genecin's testimony was sufficient to show his opinions were made to a reasonable degree of medical certainty. **See id.** at 23. We agree.

Regarding post-trial motions, Pennsylvania Rule of Civil Procedure 227.1 provides,

(b) Except as otherwise provided by Pa.R.E. 103(a), post-trial relief may not be granted unless the grounds therefor,

(1) if then available, were raised in pre-trial proceedings or by motion, objection, point for charge, request for findings of fact or conclusions of law, offer of proof or other appropriate method at trial; and

(2) are specified in the motion. The motion shall state how the grounds were asserted in pre-trial proceedings or at trial. Grounds not specified are deemed waived unless leave is granted upon cause shown to specify additional grounds.

Pa.R.Civ.P. 227.1(b)(1)-(2). “The purpose for Rule 227.1 is to provide the trial court with an opportunity to correct errors in its ruling and avert the need for appellate review.” ***Chalkey v. Roush***, 805 A.2d 491, 494 n.9 (Pa. 2002) (citation omitted).

“[T]o preserve the right to request [JNOV], a party must first request a binding charge to the jury or move for a directed verdict or compulsory nonsuit. A motion for a directed verdict is appropriate even in the non-jury trial context.” ***Bank of America, N.A. v. Scott***, 271 A.3d 897, 902 n.4 (Pa. Super. 2022) (citation omitted); ***see also Corvin v. Tihansky***, 184 A.3d 986, 990 (Pa. Super. 2018) (“This Court requires a motion for directed verdict during trial as a prerequisite to a post-trial motion for JNOV based on the state of the evidence.”) (citation omitted).

Both Genecin and Brockington submitted pre-trial expert reports. ***See*** Letter/Report of Paul Genecin, M.D., 5/5/20, at 1-14; Letter/Report of Carolyn D. Brockington, M.D., 5/6/20, at 1-6 (unnumbered). Appellants did not seek summary judgment on the basis the reports were not rendered to a sufficient degree of medical certainty, did not demonstrate causation, and/or did not discuss the standard of care or show a breach thereof. When Appellants did file motions *in limine* to preclude certain testimony, the motions sought to preclude testimony outside the experts’ fields of expertise and sought to exclude testimony by Genecin regarding Mo’s failures to document and/or correct Melendez’s medical records, any testimony regarding the (weakness

glitch), and certain testimony regarding treatment by defendant D'Angelantonio, who was represented by separate counsel. **See** Appellants' Motion *in limine* to Limit the Report Testimony of [Genecin], 8/18/22, at 1-12; Appellants' Motion *in limine* to Limit the Report Testimony of [Brockington], 8/18/22, at 1-4. These grounds are **unrelated** to those at issue in this appeal. Thus, Appellants did not preserve their claims in pre-trial motions.

Additionally, Appellants did not move to strike either Genecin's or Brockington's testimony at the close of their trial testimony. **See** N.T., 9/12/22 pm session, at 70, 129. At the close of Melendez's case, Appellants did move to strike **Genecin's** testimony and for a compulsory nonsuit but did so **solely** on the ground that he did not testify to a reasonable degree of medical certainty. **See** N.T., 9/16/22 pm session, at 36. The trial court denied the motion. **See id.** at 37.

Appellants maintain, without citation to the record, that they requested a binding jury charge and a directed verdict because of the inadequacies of Genecin and Brockington's testimony. Appellants' assertion is not borne out by the record. **See** Appellants' Brief at 25 n.7, 34. Our review shows that while Appellants requested a general jury charge that Melendez had not proven negligence, they never requested a specific jury charge that either Genecin or Brockington's testimony was insufficient. **See** Appellants' Points for Charge, 9/1/22 at 2; N.T., 9/19/22 pm session, at 93-140; N.T., 9/20/22,

at 2-32. Moreover, while Appellants did move for a directed verdict during the charge conference, the motion was identical to the one they had already made asserting Genecin's failure to testify to a reasonable degree of medical certainty. **See** N.T., 9/19/22 pm session, at 134. Thus, the record demonstrates that Appellants were not entitled to seek JNOV based on any alleged deficiencies in Brockington's testimony and were only entitled to seek JNOV with respect to Genecin's testimony on the limited ground he did not state his opinions were based to a reasonable degree of medical certainty. **See** Pa.R.Civ.P. 227.1(b)(1); **Scott**, 271 A.3d at 903 n.4. Accordingly, the only issue preserved for our review is whether Genecin stated his opinions to a reasonable degree of medical certainty.

Appellants' claim that Genecin did not render his opinion based on a reasonable degree of medical certainty has no merit.³ **See** Appellants' Brief at 29-31.

In determining whether the expert's opinion is rendered to the requisite degree of certainty, we examine **the expert's testimony in its entirety**. That an expert may have used less definite language does not render his entire opinion speculative **if at some time during his testimony he expressed his opinion with reasonable certainty**. Accordingly, an expert's opinion will not be deemed deficient merely because he or she failed to

³ This Court would also be within our right to find Appellants waived the claim with respect to Genecin's testimony regarding reasonable degree of medical certainty because Appellants' motion for JNOV does not comply with Pa.R.Civ.P. 227.1(b)(2). Appellants baldly state they preserved this claim before, during, and after trial but fail to cite to the record to state where and how they preserved that claim. **See** Appellants' Motion for JNOV, 12/22/22, at 5-6; Appellants' Fifth Motion for JNOV, 12/22/22, at 16.

expressly use the specific words, “reasonable degree of medical certainty.” Nevertheless, an expert fails this standard of certainty if he testifies that the alleged cause possibly, or could have led to the result, that it could very properly account for the result, or even that it was very highly probable that it caused the result.

Vicari v. Spiegel, 936 A.2d 503, 510-11 (Pa. Super. 2007) (citations omitted formatting altered, emphases added).

The trial court reviewed Genecin’s testimony in its entirety and concluded it “was based on a reasonable degree of medical certainty and not mere speculation.” Trial Court Opinion, 10/2/23, at 23. The court further stated, “Genecin clearly and unequivocally established the standard of care and its breach by [] Mo by failing to order imaging such as an MRI and a referral to a neurologist.” ***Id.*** The trial court then referenced its earlier summary of Genecin’s testimony where it stated Genecin testified Mo “did not adhere to the appropriate standard of care because [Melendez] presented with [neurological] symptoms” and Mo did not prescribe “[a] work[] up . . . specifically . . . an MRI . . . and a referral to a neurologist.” ***Id.*** at 6 (internal quotation marks and citation omitted). The trial court pointed out that Genecin repeatedly testified regarding Mo’s breach of the standard of care, failure to ensure Melendez’s medical records were correct, and failure to recheck Melendez’s reflexes to ensure that the abnormal findings noted on her chart were the result of a computer error rather than an accurate diagnosis. ***See id.*** at 6-7.

Appellants concede Genecin was not required to use “magic words.” Appellants’ Brief at 30. However, they claim, without citation, Genecin’s “overall testimony was vague, generic, equivocal, and fails [sic] to state the standard of care in objective terms.” **Id.** Genecin testified for almost an entire day; his testimony covers approximately one hundred and fifty pages. **See** N.T., 9/12/22 am session, at 13-105; N.T., 9/12/22 pm session, at 6-70. It is not this Court’s duty to scour the record searching for examples to substantiate Appellants’ vague allegations that Genecin did not testify to a reasonable degree of medical certainty. **See 9795 Perry Highway Management, LLC v. Bernard**, 273 A.3d 1098, 1108 n.7 (Pa. Super. 2022) (reiterating it is not the Court’s responsibility to comb the record to locate the factual underpinnings of an Appellants’ claim); **Krauss v. Trane U.S. Inc.**, 104 A.3d 556, 584 (Pa. Super. 2014) (“We shall not assume the burden of searching through the lengthy briefs and voluminous record in an attempt to guess at the [facts] to which Appellant is referring”); **Irwin Union Nat. Bank and Trust Co. v. Famous**, 4 A.3d 1099, 1103 (Pa. Super. 2010) (noting this Court will not develop arguments on an Appellants’ behalf).

Our review of Genecin’s testimony finds support for the trial court’s determination. While Genecin did not use the phrase “to a reasonable degree of medical certainty,” he unequivocally testified in conformance with his expert report, which was rendered with a reasonable degree of medical certainty, how Mo breached the standard of care, why Mo’s actions and inactions

constituted such a breach, and that Mo's actions and inactions caused Melendez's delayed diagnosis and resulting harm. **See e.g.** N.T., 9/12/22 am session, at 30, 32-36, 44-46, 56-58, 61-62, 66, 78-79, 89-91, 94-95; N.T., 9/12/22 pm session, at 14-19; **see also** Letter/Report of Paul Genecin, M.D., 3/5/20, at 1, 14. Because Appellants have not demonstrated that the facts were not such that no reasonable minds could dispute the impropriety of the verdict, their JNOV claim does not merit relief. **See Tillery v. Children's Hospital of Philadelphia**, 156 A.3d 1233, 1241-42 (Pa. Super. 2017) (holding appellants were not entitled to JNOV where the record failed to support their claim appellee's expert testimony was based entirely on opinion and conjecture and not supported by empirical evidence); **Maya v. Johnson and Johnson**, 97 A.3d 1203, 1213 (Pa. Super. 2014) (stating "Pennsylvania law makes clear that a judgment notwithstanding the verdict is proper only in clear cases where the facts are such that no two reasonable minds could disagree that the verdict was improper"). Appellants' JNOV claim is thus waived and meritless.

In their second issue, Appellants maintain the trial court erred in failing to grant a new trial because trial counsel engaged in "deplorable conduct." **See** Appellants' Brief at 6; **see also id.** at 35-48.

Our standard of review regarding a trial court's denial of a motion for a new trial is limited: "The power to grant a new trial lies inherently with the trial court and we will not reverse its decision absent a clear abuse of discretion

or an error of law which controls the outcome of the case.” **Maya**, 97 A.3d at 1224 (Pa. Super. 2014) (citation omitted). We employ a two-part analysis to assess the denial of a mistrial: First, we determine if an error occurred. If so, we ascertain “whether the error resulted in prejudice necessitating a new trial.” **Czimmer v. Janssen Pharmaceuticals, Inc.**, 122 A.3d 1043, 1051 (Pa. Super. 2015) (citation omitted). **See Knowles v. Levan**, 15 A.3d 504, 507 (Pa. Super. 2011) (citation omitted) (recognizing the consideration of all new trial claims “is grounded firmly in the harmless error doctrine which underlies every decision to grant or deny a new trial” and that a new trial is not warranted merely because an irregularity occurred or another trial judge would have ruled differently).

When the request for a new trial is based on a claim of attorney misconduct:

Among the recognized reasons for granting a new trial is misconduct by counsel. The power to grant a new trial is inherent in the court, and the decision to grant or deny a motion for new trial rests within its sound discretion. The court’s decision will not be disturbed on appellate review absent an abuse of that discretion.

Garced v. United Cerebral Palsy of Philadelphia and Vicinity, 307 A.3d 103, 123 (Pa. Super. 2023) (citation omitted). Moreover,

[a] mistrial may be required where counsel makes **irrelevant remarks** . . . which are reasonably likely to have a direct and prejudicial effect on the award of damages. Whether a trial court has abused its discretion in refusing to grant a mistrial must be determined by assessing the circumstances concerning the improper question or statement and the precautions taken to prevent it from having a prejudicial effect on the jury. In

determining whether misconduct by counsel is grounds for granting a new trial where a mistrial was not granted, the court should consider whether the trial court gave a curative instruction, the frequency and nature of the improper questions or statements, and whether the verdict shows any prejudicial effect from the improper conduct.

Livingstone v. Greyhound Lines Inc., 208 A.3d 1122, 1133 (Pa. Super. 2019) (internal quotation marks and citations omitted, emphasis added).

Lastly, we review a trial court's denial of a request for mistrial for an abuse of discretion. ***See Steltz v. Meyers***, 265 A.3d 335, 345 (Pa. 2021).

Appellants' contention regarding trial counsel's behavior can be broadly divided into two categories: (1) claims regarding trial counsel's behavior throughout trial (the "pervasive misconduct" claims); and (2) claims regarding trial counsel's alleged misuse of the fact HUP terminated Melendez (the "termination" claims). ***See*** Appellants' Brief at 35-48. We analyze them in that order.

The trial court concluded Appellants waived their claim with respect to counsel's general conduct throughout the trial because although Appellants raised the issue in a post-trial motion, they did not discuss it in their brief in support of the motion. ***See*** Trial Court Opinion, 10/2/23, at 47. Moreover, the court also found waiver because Appellants failed to cite the record in their brief and it could not discern the specifics of what they were objecting to and where it could be found in the enormous record in this case. ***See id.*** at 48.

We have thoroughly reviewed the post-trial motion brief, which Appellants failed to include in their reproduced record. Having done so, the

trial court's confusion is understandable because, as the court pointedly but accurately stated, Appellants'

post-trial motion[s] and brief are excellent examples of how **not** to present issues. The [post-trial motions] read[] as a scattershot, stream of consciousness list with request for JNOVs and new trials intermingled[,] and similar issues widely separated with no discernable order or plan. The [Appellants' post-trial motion brief] never refers to the [post-trial motions themselves]. . . . The argument in the brief does not track the order of the issues in the [post-trial motions] making it difficult to determine whether the issues set forth in the brief[s] were preserved for review by also appearing in the [post-trial motions themselves].

Trial Court Opinion, 10/2/23, at 16 (emphasis in original).

Appellants' presentation of both the pervasive misconduct and termination misconduct claims exemplify the confusion their lack of organization causes a reviewing court. Appellants raised their claims regarding counsel's alleged misconduct with respect to termination claims in their first through fourth post-trial motions.⁴ **See** Appellants' First through Fourth Post-Trial Motions, 10/3/22, at 6-15. By contrast, Appellants did not raise their pervasive misconduct claims until their ninth post-trial motion. **See** Appellants' Ninth Post-Trial Motion, 10/3/22, at 21-22. However, in their brief

⁴ As noted in our procedural history, Appellants confusingly divide their single post-trial motion into thirteen separate motions, seeking overlapping relief and grounds. Again, to maintain consistency and avoid confusion (to the extent we can), we follow the trial court's citation method. Their brief, filed two months after the twelve-part post-trial motion, exacerbates the confusion by not following the format of their post-trial motions and by raising new and different arguments in support of relief, while abandoning arguments raised in the post-trial motions.

in support of their post-trial motions, as the trial court notes, Appellants do not follow the order of issues raised in the post-trial motions. On pages 21-34 of the brief, Appellants discuss the termination claims, they discuss the “pervasive misconduct” claims on pages 35-37 of the brief, then return to the termination issues on page 38-48 of the brief. **See** Brief, 12/22/22, at 21-40. Moreover, while Appellants claim forty-eight instances of other improper conduct by trial counsel as pervasive misconduct, they neither identify all those instances nor cite any law to support their proposition that this conduct merits a new trial. **See id.** at 35-37.

We agree with the trial court that Appellants waived their claim that counsel engaged in pervasive misconduct based upon their failure to clearly identify the specifics of their claim and where in the record they preserved the claim, as well as their failure to support with citation to relevant legal authority. **See** Trial Court Opinion, 10/2/23, at 45-46; **see also Krauss, supra.**

Even if not waived, the pervasive misconduct claim would not merit relief. Upon review of the record, we agree trial counsel consistently acted in an aggressive, abrasive, and disrespectful manner to the trial court, witnesses, and opposing counsel. However, such behavior does not automatically entitle Appellants to a new trial, particularly where, as here, Appellants’ counsel does not have clean hands. The record also shows Appellants’ trial counsel also engaged in misconduct: making specious

arguments, inaccurately claiming trial counsel was misstating events, speaking over counsel, and basically also engaging in disrespectful conduct to the court and opposing counsel. Moreover, as discussed ***supra*** and ***infra***, Appellants' counsel continues to exaggerate, misstate the record, and misinterpret the law both at oral argument and in their briefs.

The pervasive misconduct claim suffers two distinct deficiencies: lack of organization and lack of merit. First, in their brief on appeal, as they did in their post-trial motions, Appellants intertwine the deplorable conduct argument with their distinct arguments on the termination misconduct issues and only point to limited examples of counsel's perceived misconduct. ***See*** Appellants' Brief at 35-44. However, through diligent examination of this record, we have determined that Appellants attached to their post-trial motions (which, again, are not included in their reproduced record), an exhibit specifying each incident of counsel's alleged misconduct. ***See*** Appellants' Ninth Post-Trial Motion, 10/3/22, at Exhibit I.

Additionally, we have thoroughly scrutinized Appellants' post-trial motion, and despite Appellants' vehement claims at oral argument, most of the "pervasive misconduct" appears to be aggressive litigation tactics. For example, the court admonished trial counsel for interrupting and/or talking over witnesses, asking leading questions, making speaking objections, and commenting on the evidence. ***See id.*** None of these behaviors rise to the level of misconduct sufficient to compel the grant of a new trial, particularly

where, as here, Appellants have made nothing more than an unsupported allegation of prejudice. **See** Appellants' Brief at 35; **see also** *Eichman v. McKeon*, 824 A.2d 305, 319 (Pa. Super. 2003) (stating bald assertions of prejudice will not be considered and do not provide a basis for relief). Thus, even if not waived, this claim would not succeed.

Although intertwined and at moments indecipherable, we attempt to disentangle the general "deplorable conduct" allegations from the "termination" misconduct claims for clearer analysis. Appellants argue trial counsel also committed misconduct by making inflammatory and inappropriate references to HUP's termination of Melendez's employment and taking "advantage of the similarity in names between the various corporate entities to paint [Appellants] as [Melendez's] employer and inject wrongfully, wholly irrelevant termination issues into" this case. Appellants' Brief at 36; **see id.** at 35-44. Regarding the "termination" misconduct allegations, Appellants contend counsel made inappropriate remarks during both his opening and closing arguments which implied Melendez was employed and terminated by Appellants, inappropriately questioned witnesses about her termination, and used the word "fired" after the court had ordered him not to use it. **See id.** at 36-37; 38-41; 44-48.

The trial court found Appellants' claims relating to the termination misconduct issue to be both waived and meritless. It explained Appellants chose to contest the issue of whether Melendez was disabled, thus making the

issue of her termination due to her disability relevant, and did not file any pre-trial or written motions *in limine* seeking to preclude the use of the word “fired” or to preclude evidence regarding Melendez’s employer and why it terminated her. **See** Trial Court Opinion, 10/2/23, at 28-29. The court further notes Appellants misstated the record. Despite Appellants’ contrary assertions the trial record reflects: (1) there was no stipulation between the parties that Melendez was unable to work; (2) Appellant did not contemporaneously object to trial counsel’s opening statement and did not timely move for a mistrial; (3) Appellants did not seek a mistrial or a curative instruction after the trial court sustained an objection to a question regarding Melendez’s termination; (4) the court never ordered trial counsel to cease using the word “fired” or issued any other order which prohibited trial counsel from using a specific word concerning Melendez’s termination;⁵ and (5) counsel for all parties and

⁵ Our review of the record indicates trial counsel used the word “fired” twice, once during opening statements and once during Dr. Quinn’s testimony. **See** N.T., 9/6/22 am session, at 101; N.T., 9/9/22, at 68. As the trial court stated, the record reflects there was no pre-trial or written motion *in limine* to preclude the use of the word “fired,” and no objection to the word “fired” following opening statements. **See** Trial Court Opinion, 10/2/23, at 28-29. Following Dr. Quinn’s testimony, during a conference outside the presence of the jury, trial counsel said that if the court wished, he would not use the word “fired” but instead say “terminated.” **See** N.T., 9/9/22, at 96. The court responded saying, “That’s fine. That’s all fair game.” **Id.** Trial counsel again reiterated he would not use the word “fired” going forward. **Id.** At the conclusion of the conference, the trial court summarized what had just occurred, including trial counsel’s agreement to not use the word “fired,” stating “Plaintiff is going to refrain from using the word ‘fired.’” **Id.** at 102. (Footnote Continued Next Page)

various defense witnesses consistently referred to Melendez's employer as "Penn," or "they." **Id.** at 28-37, and n.12.

Our review of Appellants' argument demonstrates Appellants' use of the "misconduct" language is, in essence, a veiled attempt to attack the admissibility of the information regarding Melendez's termination, which Appellants continually claim was both irrelevant and prejudicial. **See** Appellants' Brief at 34-42, 44-48. However, Appellants failed to preserve any such challenge below or in their Rule 1925(b) statement. **See** Trial Court Opinion, 10/2/23, at 28-29; Appellants' Rule 1925(b) Statement, 2/6/24, at 2.

Moreover, we agree with the trial court's assessment that Appellants **chose** to contest the issue of the degree of Melendez's disability. **See** Trial Court Opinion, 10/2/23, at 28-30; Expert Report of Dr. Phillip S. Dickey, 2/26/21, at 12-13; N.T., 9/9/22, at 101.

Appellants contend the trial court erred in denying their requests for a mistrial because trial counsel made inappropriate references to Melendez's

Based on its statement in its 1925(a) opinion, the trial court did not consider this an order, and we agree with its interpretation, as it appears to be a stipulation, rather than a formal order. **See** Trial Court Opinion, 10/2/23, at 33. As we discuss **infra**, Appellants do not point to, and we have been unable to find any violations of this stipulation.

termination both during opening⁶ statements and closing arguments.⁷ **See** Appellants' Brief at 37, 40-41. The trial court concluded Appellants waived these claims because they did not make a timely request for a mistrial after opening statements and never requested a mistrial at all after closing arguments. **See** Trial Court Opinion, 10/2/23, at 30-31; 41-42.

Our review of the record supports the trial court's findings concerning Appellants' failure to assert a timely objection to Melendez's counsel's opening argument. Appellants did not object to the use of the word "fired" during or

⁶ In their argument, Appellants fail to specify the objectionable statements made during opening argument, and do not cite to the record or the reproduced record regarding these statements, despite claiming the trial court's waiver argument is incorrect. The trial court noted trial counsel stated that "Penn" fired Melendez because she was no longer able to do her job due to her disability. **See** Trial Court Opinion, 10/2/23, at 29; N.T., 9/6/22 am session, at 101. Trial counsel also made statements regarding Appellants' lack of acceptance of responsibility. However, read in context, trial counsel was referring to Appellants not accepting responsibility for their medical errors, not for Melendez's termination. **See** Trial Court Opinion, 10/2/23, at 30; N.T., 9/6/22 am session, at 90-91, 102.

⁷ During closing arguments, trial counsel made the following statements:

She was terminated by them because she can't do any job. Did they march in one person to refute that, one witness to say that's not true, we offered her this other desk job. She can do this or that. No. Why? Because she can't. How big is Penn? If there is a job, they got it at Penn. Whether you're sitting at the desk or you're walking around, it's there. They didn't offer her anything.

N.T., 9/20/22, at 63-64. In rebuttal closing argument, trial counsel concluded by arguing Appellants' protestations of sympathy for Melendez were not genuine because, "[t]hey kicked her to the curb and now they dragged her through the mud. Don't let them do this anymore." **Id.** at 123.

after trial counsel's opening argument. **See id.** at 103. Thereafter, counsel for both remaining defendants made their opening statements. **See id.** at 104-22. The trial court then excused the jury and asked counsel if there were any issues. **See id.** at 122. Appellants still did not object or request a mistrial based on the reference to Melendez's firing. **See id.** at 123. The court then recessed for lunch. **See id.** It was only after lunch that Appellants sought a mistrial and even then, the basis of the motion was not an alleged improper reference to Melendez's firing, but to entirely separate remarks concerning Appellants' unwillingness to accept responsibility for their actions harming Melendez. **See** N.T., 9/6/22 pm session, 4.

Additionally, Appellants did not object or move for a mistrial regarding trial counsel's remarks in his initial closing statement about HUP terminating Melendez without offering her another position. **See** N.T., 9/20/22, at 64, 70-71. Mo's counsel then made a closing statement. **See id.** at 71-92. The court recessed and discussed the verdict sheet with counsel, and counsel again did not seek a mistrial. **See id.** at 92-96. Trial counsel for the other defendant then gave a closing statement, and trial counsel delivered a rebuttal statement to which Appellants again did not object. **See id.** at 96-123. The court excused the jury for lunch. Again, upon return from lunch, Appellants objected, but not to the specific term "fired" (because the word "fired" was not used) or the use of that word versus "termination" in the closing. **See id.**

at 124.⁸ The trial court asked if Appellants were moving for a mistrial and **they did not respond**. **See id.** at 125-26. Following the lunch break, the trial court informed the parties it was “going to give a curative instruction when [the court gives] the jury charge.” **Id.** at 126-27. The court then instructed the jury, as part of its jury charge, as follows:

[d]uring the course of the trial, you heard statements or comments regarding the plaintiff’s termination from her employment with the University of Pennsylvania. You heard it in the closing arguments[,] and I think you may have heard it in the opening arguments. I don’t want the jury to be confused. This is not a case against Penn as a corporate entity. This is not a case for wrongful termination. So that those comments or any evidence regarding that has nothing to do with those issues. This is a case about negligence for the two doctors that are part of this trial.

Id. at 140. Appellants did not object to the charge, request an additional charge, or move for a mistrial. **See id.** at 143, 169.

It is settled law that a party “waive[s] its ability to ask for a new trial ‘where the remedy sought was not timely pursued’.” **Temple Estate of Temple v. Providence Care Center, LLC**, 233 A.3d 750, 760-61 (Pa. 2020) (citation omitted) (discussing the history of the waiver rule regarding mistrials and agreeing with trial court that appellant waived its ability to seek a new trial in post-trial motions by failing to make a contemporaneous objection, failing to make a request for a mistrial in response to a trial court’s question regarding any additional matters, and failing to object to a trial court’s curative

⁸ In that statement, counsel argued Melendez had been “kicked to the curb.”

instruction). Nor is a party entitled to a new trial if it fails to make a contemporaneous objection, fails to object to a trial court's curative instruction, and/or fails to move for a mistrial at all. **Harman v. Borah**, 756 A.2d 1116, 1126 (Pa. 2000) (affirming trial court's denial of a request for a mistrial as untimely, where appellants failed to contemporaneously object to trial court's action and waited for approximately one hour before requesting a mistrial); **Kaplan v. O'Kane**, 835 A.2d 735, 739-40 (Pa. Super. 2003) (holding trial court properly denied post-trial motion seeking a new trial where appellee's counsel made inappropriate remarks during closing statements, but opposing counsel did not object until the following day and did not ask for a mistrial at that time); **Allied Elec. Supply Co. v. Roberts**, 797 A.2d 362, 365 (Pa. Super. 2002) (**reversing** trial court's grant of a mistrial on timeliness grounds where appellant did not make a contemporaneous objection to a witness's testimony and did not move for a mistrial until after completion of the witness's direct, cross, re-direct, and re-cross testimony and waited until the conclusion of a recess to ask for a mistrial). Thus, we agree with the trial court that Appellants waived their claim that the trial court erred in not granting a mistrial based on trial counsel's opening and closing statements.

In the same vein, Appellants also contend they are entitled to a new trial because trial counsel inappropriately questioned witnesses about Melendez's termination. **See** Appellants' Brief at 40. This claim does not merit relief.

Initially, the only examples Appellants cite are a question asked to Dr. Peter Quinn (“Quinn”), who testified as Chair of the Board of Clinical Care; and questions to Melendez about whether her former employer had offered her alternative employment. **See id.**

Quinn’s testimony largely concerned the corporate structure of the University of Pennsylvania and Appellants’ claim of glitches in the computer system. **See** N.T., 9/9/22, at 12-40, 59-66. Trial counsel asked Quinn if he was aware Melendez had been “fired because she couldn’t do her job[.]” **See id.** at 66. Appellants’ counsel objected and the trial court **sustained** the objection; Appellants did not request a curative instruction or a mistrial. **See id.** Trial counsel’s continued examination of Quinn occupies another five transcript pages. Appellants did not ask for a curative instruction or a mistrial at the close of trial counsel’s direct examination. **See id.** at 71. Appellants then cross-examined Quinn. **See id.** at 71-80. Trial counsel then re-examined Quinn. **See id.** at 80-86. The trial court dismissed the jury for lunch and engaged in a discussion with counsel about various issues relating to forthcoming witnesses. **See id.** at 86-91. At no point during this discussion did Appellants request either a curative instruction or a mistrial. **See id.** It was only after the luncheon recess that Appellants moved for a mistrial. **See id.** at 91. After listening to argument, the trial court offered to give a curative instruction, a request Appellants affirmatively rejected. The trial court denied their request for a mistrial. **See id.** at 103.

As noted previously, untimely requests for a mistrial waives the issue on appeal. **See Harman**, 756 A.2d at 1126; **Allied Elec.**, 797 A.2d at 365. Further, concerning Melendez's statement about her termination, Appellants fail to specify the objectionable questions, do not cite to either the reproduced or certified record as to where the testimony may be found, do not specify if they objected to these questions, or asked for a curative instruction, or requested a mistrial. They do not explain or clarify why these questions were prejudicial and/or irrelevant to the issue of disability and damages, and do not cite to any pertinent legal authority. Accordingly, Appellants waived this claim. **See Commonwealth v. Mulholland**, 702 A.2d 1027, 1034 n.5 (Pa. Super. 1997) ("In a record containing thousands of pages, this court will not search every page to substantiate a party's incomplete argument").

Appellants' final arguments that fall under the "termination" misconduct category can be separated into two distinct claims: (1) trial counsel took advantage of the similarity in names between Appellants' employer and Melendez's employer to confuse the jury; and (2) referred to Melendez's being "fired" by Penn in contravention of the trial court's order. **See** Appellants' Brief at 37, 40, 44-47. We discuss these contentions separately.

We agree with the trial court's assessment that all the parties referred to various corporate entities making up the University of Pennsylvania as "they," "them," or "Penn" without specifying to whom they were referring. **See** Trial Court Opinion, 10/2/23, at 35-37 (citing the notes of testimony).

But Appellants fail to assert anything more than a bald allegation that this confused the jury or prejudiced them. **See id.** In his testimony, Quinn himself described Penn as a corporate umbrella with different people working for different entities. **See** N.T., 9/9/22, at 12-14.

As discussed **supra**, the trial court specifically instructed the jury that Penn was not a defendant. It also gave clear instruction that this was not a wrongful termination case, and the issue of Melendez's termination was not relevant with respect to the issue of negligence on the part of the doctors. **See** N.T., 9/20/22, at 140. It is axiomatic that juries are presumed to follow a trial court's cautionary instruction. **See Lewis v. Reading Hospital**, 345 A.3d 257, 271 (Pa. Super. 2025). Here, Appellants have not demonstrated the jury did not follow the court's instruction.

Turning to trial counsel's use of the word "fired," as we note **supra** the trial court stated that, at no point either prior to or during trial, did it order trial counsel not to use the word "fired." **See** Trial Court Opinion, 10/2/23, at 33-35. Instead, the record clearly shows, trial counsel, of his own volition, agreed to use the word "terminated" after Appellants second objection to the use of the word "fired". **See id.** **See also** N.T., 9/9/22, at 96, 102. For all intents and purposes, this amounts to a stipulation, not an order. Appellants, while arguing otherwise, fail to point to any place in the record where trial counsel used the word "fired" **after** verbally agreeing not to do so. **See** Appellants' Brief at 44-48. Instead, Appellant inaccurately suggests the trial

court precluded not only the use of the word “fired” but any questions or references to Melendez’s termination, that counsel repeatedly violated this ruling, and “later apologized to the trial court for a similar violation.” **Id.** at 46, citing N.T., 9/20/22, at 129.

The record does not support Appellants’ representations. The discussion Appellants cite occurred **after** the close of evidence, following closing arguments, and outside the presence of the jury. During this post-trial conference, the trial court admonished trial counsel for testing the limits of its previous ruling on the general termination issue and counsel apologized. This post-trial discussion was not related to the specific use of the word “fired” and Appellants fail to cite where in the record trial counsel said the word “fired” after agreeing to use the word terminated instead. **See** Appellants’ Brief at 44-48.

For the reasons discussed above, Appellants’ second issue concerning pervasive misconduct by trial counsel and the termination issue are both partially waived and/or do not warrant relief.

In their third issue, Appellants argue that the trial court gave a “jury instruction” that was “akin to a spoliation charge.” **See** Appellants’ Brief at 49. This language is inaccurate and potentially misleading. Thus, to conduct the appropriate legal analysis, we clarify some misapplications of concepts in meaning, content, and timing to avoid any confusion.

First, Appellants refer to the Court's mid-trial instruction as a "jury instruction" but given the context of the record this was clearly a cautionary or curative instruction based on a previous evidentiary ruling the trial court made regarding a discovery issue, not a "jury instruction" given by the trial court after closing arguments but prior to jury deliberation.⁹ Second, the record clearly shows there was no spoliation jury charge, **see infra**, so Appellant is not arguing that a spoliation jury instruction was improperly given during the jury charge; rather, they argue the cautionary instruction given mid-trial was like a spoliation jury instruction. Based on these clarifications, we review the trial court's cautionary instruction to the jury after witnesses discussed evidence previously excluded by the trial court. Appellants' challenge the denial of their motion for a new trial, claiming the trial court "in the middle of trial and without basis — instructed the jury that [Appellants] had improperly withheld documents from discovery." Appellants' Brief at 48; **see also** Appellants' Brief at 48-53. Appellants claim because "no document was impermissibly withheld[,] there was no fault, "rendering the instruction improper." **Id.**

⁹ Our Supreme Court has stated the purpose of a jury charge "is to explain to the jury how it should approach its task and the factors it should consider in reaching its verdict." **Tincher v. Omega Flex, Inc.**, 104 A.3d 328, 335 (Pa. 2014) (citation omitted). By contrast, a cautionary instruction is a specific directive that alerts the jury to consider certain evidence only for a limited purpose, or to disregard particular information entirely. **See** 1 West's Pa. Prac., Evidence § 123.

Our ability to review this issue is hampered by the fact that neither the trial court nor the parties give a clear chronology of the events surrounding the discovery violation, the specific parameters of the trial court's ruling with respect to the issue, or the events leading up to the giving of the cautionary instruction. **See id.**; **see also** Melendez's Brief at 1-52; Trial Court Opinion, 10/2/23, at 49-55.

To the extent that we can determine from our review of the certified record, the following occurred:

Following a March 2014 examination of Melendez by Mo, there was a notation in Melendez's chart stating she had neurological weakness. A critical issue concerning that notation was whether Mo found a weakness or if the notation resulted from a systemic, long-term software glitch, ("the weakness glitch"), where the computer would arbitrarily move a notation of weakness in one section of the chart to the neurology section.

On September 6, 2022, following jury selection and immediately prior to the start of trial, trial counsel informed the court that, late the previous afternoon, Appellants' counsel provided him with a new defense exhibit: some screenshots ("screenshots") regarding the weakness glitch. **See** N.T., 9/6/22 am session, at 3-5. Trial counsel noted he had conducted extensive discovery with respect to the weakness glitch, had never been given the screenshots, and:

[n]ever had an opportunity to see [the screenshots] before. I don't know who authored it. I obviously didn't have an

opportunity to question [at his deposition, Paul Maurer, an information systems specialist at Penn ("Maurer")] about it. I obviously didn't have an opportunity to question any witness about it. I have zero clue who created it. I don't know when it was created.

Id. at 5. Appellants' counsel conceded that they had not turned over the screenshots until the previous day, claiming they had found them while doing a Google search of Epic, the software vendor, ("Epic"), and wanted to cross-examine Maurer with the screenshots. **See id.** at 6-7. Counsel further claimed the screenshots were not generated by Penn but were just a sample of an Epic medical record. **See id.** The trial court initially tabled the issue but later returned to it. It noted it did not believe Appellants would be able to authenticate the document. **See id.** at 67. The court ruled that it would not permit admission of the screenshots because they were turned over at such a late date and it had similarly barred trial counsel from introducing evidence that was not turned over in a timely fashion. **See id.** at 67-68. Appellants' counsel did not object to the ruling, and declared it was, "[f]air enough." **Id.** at 68.

Maurer, the Penn information systems specialist, was Melendez's first witness.¹⁰ **See** N.T., 9/6/22 pm session, at 11. During trial counsel's direct

¹⁰ It appears Maurer, although testifying in support of the defense case, testified during Melendez's case-in-chief. While trial counsel did not specifically state it was calling Maurer as-of-cross or as a hostile witness, upon review of the record that accords with the tone of his testimony.

examination, trial counsel elicited testimony Maurer was not hired by Penn until two years after the chart note was created by Mo. **See id.** at 58. Trial counsel then asked Maurer if he had any knowledge of how the Epic software was configured in 2014. **See id.**¹¹ Maurer began to discuss “screen prints” from 2009 and 2015 which “showed how the Review of Systems was configured.” **See id.** at 58-59. Trial counsel asked him to clarify if he had screenshots relevant to the weakness glitch and where he had obtained them. **See id.** Maurer said they were part of an e-mail chain he received.¹² **See id.** at 59. Maurer testified he was unaware the screenshots had not been provided to Melendez and equivocated about whether the screenshots corroborated his testimony regarding the weakness glitch. **See id.** at 59-61, 85. Maurer also admitted he had been in possession of the screenshots prior to his deposition in January 2021.¹³ **Id.** at 63.

Following Maurer’s testimony, trial counsel stated he would be filing a written motion for a spoliation instruction with respect to the screenshots.

¹¹ Appellants did not object to this question. **See id.**

¹² Maurer later partially contradicted his initial testimony that the screenshots were part of an e-mail chain, saying they might have been provided to him by Appellants’ counsel. **See id.** at 61.

¹³ Appellants’ counsel did not object to any of these questions. **See id.** at 59-64.

See id. at 96. The trial court asked the parties to brief the issue and stated the court would decide the issue at the charging conference. **See id.**

The screenshot issue next arose during trial counsel's direct examination of Quinn.¹⁴ Immediately prior to Quinn's testimony, trial counsel asked the trial court to reiterate that the screenshots could not be mentioned or used during Quinn's testimony. **See** N.T., 9/9/22, at 4-5. The trial court again stated the documents had not been produced during discovery and, therefore, could not be used at trial. **See id.** at 5. Appellants' counsel agreed they would not use them. **See id.** at 5.

During direct examination, trial counsel asked Quinn a series of questions regarding documentary proof of the weakness glitch, where Quinn obtained the documents he relied upon both at his deposition and at trial, and whether Quinn was aware of what documents had been provided to Melendez in discovery, because Quinn signed multiple verifications of discovery responses, including verifying answers in which Penn claimed they were not in possession of requested information. **See id.** at 35-39.¹⁵ In response, Quinn testified he met with Appellants' counsel the day before his testimony and immediately prior to his testimony, and **they showed him unspecified**

¹⁴ Like Maurer, although testifying in support of Mo, trial counsel called him during Melendez's case-in-chief.

¹⁵ Appellants' counsel did not object to any of the questions. **See id.**

documents regarding the weakness glitch. See id. at 37-38.¹⁶ Counsel again asked Quinn what documents supported his testimony regarding the weakness glitch and Quinn mentioned the screenshots. **See id.** at 40.

A lengthy sidebar conference ensued. **See id.** at 40-57. During the conference, one of Appellants' attorneys admitted he had shown the screenshots to Quinn that morning because counsel believed Quinn might be shown the documents during his testimony. **See id.** at 43. Trial counsel asserted Appellants' counsel should not have done this because of the trial court's clear ruling that the screenshots were inadmissible. **See id.** at 43-44. The attorney in question then claimed he had not been in court the previous day and suggested he was unaware of the previous court ruling regarding the exclusion of the documents. **See id.** at 44-45. The trial court stated this issue had been discussed on two occasions and it had ruled the screenshots were not to be referred to; the court indicated it was inclined to give a cautionary instruction. **See id.** at 45-47. The trial court disagreed with Appellants' assertion Maurer's and Quinn's testimony regarding the screenshots was not prejudicial. **See id.** at 50-57. Over Appellants' objection, the trial court gave the following cautionary instruction immediately following the second violation of the trial court's previous ruling:

[b]efore we left off, there was an objection. [The trial court is] sustaining that objection. Any testimony in regard to any screenshots are [sic] going to be stricken from the record and

¹⁶ Again, Appellants' counsel did not object to the line of questioning. **See id.**

stricken from evidence in this case. The jury is to disregard this testimony or any testimony regarding screenshots. ***These documents were -- any documents in regards to this issue were supposed to be turned over by the defense to the plaintiff. They were not turned over.*** They're not properly part of this case and not properly part of the evidence you need to consider.

As [the court] told you before we started this trial, the only evidence that you can consider is evidence that was admitted into evidence during the course of this trial, whether it's testimony or it's documents. These documents have not been admitted. They will not be admitted and are not part of this trial. So[,] you need not consider and you should not consider these documents.

[The trial court] may during the course of the trial or at the end of trial in my final charging instructions[,] address this issue further. So[,] for now, these documents should be out of your mind.

Id. at 57-58 (emphasis added).

This issue next arose at the charging conference where trial counsel again requested a spoliation charge, and the trial court stated it would rule on the request the following day. ***See*** N.T., 9/19/22 pm session, at 107-11. The discussion resumed the following morning, and the parties stated they had agreed to a stipulation being read to the jury regarding the screenshots, in lieu of a spoliation jury charge. ***See*** N.T., 9/20/22, at 2-6, 30-31. During the discussion, all parties agreed that screenshots were not turned over during discovery and were the same screenshots testified to by both Maurer and Quinn. ***See id.*** at 6, 30-31. Appellants' counsel then read the following stipulation to the jury:

The plaintiff and the defendants stipulate that the screenshots that Paul Maurer and Peter Quinn mentioned in their testimony do not

corroborate Dr. Mo's testimony that Dr. Mo entered "weakness" into the constitutional section and "weakness" repopulated into neurologic review of systems in the progress note.

Id. at 33. As a result of this stipulation, the trial court did not give a spoliation instruction during its jury charge. ***See id.*** at 131-69. Moreover, Appellants raised no objection. ***See id.*** at 169.

Appellants contend they are entitled to a new trial because the curative instruction prejudiced them. ***See*** Appellants' Brief at 48. Specifically, Appellants fault trial counsel, claiming he elicited the testimony regarding the screenshots, never identified any specific discovery requests he made for the screenshots, and "***conceded*** that the [screenshots] were not responsive to any of [Melendez's] discovery requests." ***Id.*** Appellants maintain there "was no substantive basis" for the cautionary instruction; "the timing of the instruction" was not supported because Quinn's testimony was not prejudicial; and they were wrongly punished because trial counsel "orchestrated the testimony with his questioning." ***Id.*** at 49-50 (*italics removed*).

The trial court disagreed. It correctly noted, despite Appellants' contentions, the cautionary instruction was not a spoliation charge because it neither used the word "spoliation", nor did it instruct the jury to draw an adverse inference from Appellants' actions. ***See*** Trial Court Opinion, 10/2/23, at 49-50. The court further noted, in response to Appellants' disputable claim that trial counsel ultimately concluded the screenshots were not corroborative of the weakness glitch, that Appellants based their claim on hindsight and not

what was happening during trial. **See id.** at 54. The court concluded Appellants failed to show they suffered any prejudice from the curative instruction. **See id.** at 55.

We review a trial court's denial of a motion for a new trial for a "clear abuse of discretion" or "an error of law which controls the outcome of the case." **Maya**, 97 A.3d at 1224. Moreover,

[o]ur standard of review regarding jury instructions is limited to determining whether the trial court committed a clear abuse of discretion or error of law which controlled the outcome of the case. Error in a charge occurs when the charge as a whole is inadequate or not clear or has a tendency to mislead or confuse rather than clarify a material issue. Conversely, a jury instruction will be upheld if it accurately reflects the law and is sufficient to guide the jury in its deliberations.

James v. Albert Einstein Medical Center, 170 A.3d 1156, 1163–64 (Pa. Super. 2017) (citation omitted). "Abuse of discretion may take one of three forms. An abuse of discretion occurs only where the trial court renders a judgment that is (1) manifestly unreasonable, arbitrary, or capricious; or (2) fails to apply the law; or (3) was motivated by partiality, prejudice, bias, or ill will." **Getting v. Mark Sales & Leasing, Inc.**, 274 A.3d 1251, 1259 (Pa. Super. 2022) (citation and brackets omitted). Moreover, to obtain a new trial a party must show "concrete, actual prejudice with regard to its ability to defend the action." **Lockley v. CSX Transportation, Inc.**, 5 A.3d 383, 390 (Pa. Super. 2010). "Broad standards and bald assertions do not demonstrate prejudice." **Moore v. Ericsson, Inc.**, 7 A.3d 820, 827 (Pa. Super. 2010).

We begin the analysis by concluding that several of the arguments raised by Appellants are not properly before us as they are irrelevant to the issue of the propriety of the “jury instruction” (**see** clarification *supra*), and are either not supported by the record or do not factor in Appellants’ concession that they failed to turn over documents in discovery, an issue they conceded. **See** N.T., 9/6/22, at 3-7; N.T., 9/9/22, at 1-5; N.T., 9/20/22, at 1-6. Thus, we will not further discuss Appellants’ arguments that: (1) Appellants turned over all documents in discovery, **see** Appellants’ Brief at 48; (2) trial counsel “never identified any discovery request to which the alleged documents were responsive[,]” *id.*; and (3) trial counsel conceded “the documents were not responsive to any of [Melendez’s] discovery requests[,]” *id.*

As we turn to the issue of the trial court’s cautionary instruction, it is not clear Appellants preserved the challenge to the cautionary instruction for our review. In their Rule 1925(b) statement, Appellants contended, in part, the trial court erred by giving a “spoliation or failure to produce evidence charge.” Appellants’ Rule 1925(b) Statement, 2/6/24, at 2. However, in their appellate brief, Appellants substantively modified this claim and assert the mid-trial cautionary instruction was “akin” to a spoliation charge. Appellants’ Brief at 49. While it would be well within our remit to find Appellants waived this claim, since the trial court was able to discern the issue and address it on the merits, we will not find waiver in this instance.

“‘Spoliation of evidence’ is the failure to preserve or the significant alteration of evidence for pending or future litigation. When a party to a suit has been charged with spoliating evidence in that suit . . . we have allowed trial courts to exercise their discretion to impose a range of sanctions against the spoliator.” ***Parr v. Ford Motor Co.***, 109 A.3d 682, 701 (Pa. Super. 2014) (internal citations and some quotation marks omitted).

The doctrine applies where relevant evidence has been lost or destroyed. Where a party destroys or loses proof that is pertinent to a lawsuit, a court may impose a variety of sanctions, among them entry of judgment against the offending party, exclusion of evidence, monetary penalties such as fines and attorney fees, and adverse inference instructions to the jury. . . . [P]enalties for spoliation have been imposed since the early 17th century. The doctrine attempts to compensate those whose legal rights are impaired by the destruction of evidence by creating an adverse inference against the party responsible for the destruction.

Marshall v. Brown’s IA, LLC, 213 A.3d 263, 267 (Pa. Super. 2019) (internal quotation marks and citations omitted).

Here, the trial court did not make a finding of spoliation and did not give a spoliation charge. **See** N.T., 9/20/22, at 131-69. It gave a mid-trial cautionary instruction after it excluded evidence as a sanction for a discovery violation, and a second witness discussed the evidence despite the trial court’s instruction that the information was excluded. The charge, quoted above, never mentioned the word “spoliation” and did not direct the jury to make any adverse inference against Appellant. **See** N.T., 9/9/22, at 57. It was a routine cautionary instruction given to protect the record after two witnesses discussed the excluded evidence. The trial court’s decision to give a

cautionary instruction after a second witness discussed the screenshots the trial court had excluded was not manifestly unreasonable, arbitrary, or capricious. **See *Getting***, 274 A.3d at 1259.

Further, the record demonstrates that, at the time of trial, Appellants did not consider the charge to be a spoliation charge or “akin” to one. This is demonstrated, as discussed above, by the discussion of whether Melendez was entitled to a spoliation charge during the charge conference. **See** N.T., 9/19/22 pm session, at 107-11. This is further confirmed by the fact that to prevent the trial court from ruling on including a spoliation jury instruction, the parties agreed to a stipulation regarding the screenshots, designed to cure any lingering jury concerns regarding them. **Appellants’ counsel** read the stipulation into the record immediately prior to the jury charge. **See** N.T., 9/20/22, at 2-6, 30-33. The judge then charged the jury and clearly did not give a spoliation charge or mention anything with respect to the screenshots. **See *id.*** at 131-69. Appellants did not object to the charge. **See *id.*** at 169.

Lastly, Appellants did not provide any legal support for their argument regarding the curative instruction. **See** Appellants’ Brief at 48-53. A party must show “concrete, actual prejudice with regard to its ability to defend the action.” **See *Moore***, 7 A.3d at 827; ***Lockley***, 5 A.3d at 390. Appellants make nothing more than a bald allegation of prejudice. **See** Appellants’ Brief at 53. Our review of the cautionary instructions shows no “clear abuse of discretion

or error of law which controlled the outcome of the case.” **James**, 170 A.3d at 1163–64. Appellants’ third issue lacks merit.

In their fourth issue, Appellants argue the verdict as to both liability and damages was against the weight of the evidence.

We recognize:

The decision to grant or deny a motion for a new trial based upon a claim that the verdict is against the weight of the evidence is within the sound discretion of the trial court. Thus, the function of an appellate court on appeal is to review the trial court’s exercise of discretion based upon a review of the record, rather than to consider *de novo* the underlying question of the weight of the evidence. An appellate court may not overturn the trial court’s decision unless the trial court palpably abused its discretion in ruling on the weight claim. Further, in reviewing a challenge to the weight of the evidence, a verdict will be overturned only if it is so contrary to the evidence as to shock one’s sense of justice.

* * * * *

A trial court’s determination that a verdict was not against the interest of justice is [o]ne of the least assailable reasons for denying a new trial. A verdict is against the weight of the evidence where certain facts are so clearly of greater weight that to ignore them or to give them equal weight with all the facts is to deny justice.

Tong-Summerford v. Abington Memorial Hospital, 190 A.3d 631, 659 (Pa. Super. 2018) (citations omitted).

When an appellant challenges the weight of the evidence with respect to damages our Supreme Court has explained:

While a jury’s verdict and damages award are generally insulated from challenge, the grant of a new trial may be required to achieve justice in those instances where the original trial, because of taint, unfairness, or error, produces something other than a just and fair result, which is the principle goal of judicial proceedings. . . . [A]

jury verdict may be set aside as inadequate when it appears to have been the product of passion, prejudice, partiality, or corruption, or where it clearly appears from uncontradicted evidence that the amount of the verdict bears no reasonable relation to the loss suffered by the plaintiff. Where the jury's verdict is so contrary to the evidence as to shock one's sense of justice a new trial should be awarded. [The Court] cautioned that it was within the province of the jury to assess the worth of the testimony and to accept or reject the estimates given by the witnesses, and if the verdict bears a reasonable resemblance to the proven damages, it is not the function of the court to substitute its judgement for the jury's. . . .

Mader v. Duquesne Light Company, 241 A.3d 600, 612-13 (Pa. 2020)

(citations omitted).

Appellants maintain the verdict is against the weight of the evidence because the jury relied on Melendez's "inadequate expert testimony and unsupported speculations." Appellants' Brief at 54. Appellants argue the jury should instead have credited their expert witnesses and discuss their witnesses' testimony in detail in their brief. ***See id.*** at 54-57.

The trial court found Appellants waived this claim because "the issue stated in [the post-trial motion] is wholly different from the issue argued in [the brief supporting it]." Trial Court Opinion, 10/2/23, at 65.¹⁷ Our review of the record supports this determination. In their eleventh post-trial motion, Appellants argued the verdict was against the weight of the evidence because

¹⁷ Again, we note the time lag between the filing of the original post-trial motions and the briefing, as well as the numerous discrepancies between the motions and the briefs.

there was no evidence showing Melendez had abnormal reflexes prior to late 2016. **See** Appellants' Eleventh Post-Trial Motion, 10/3/22, at 24. However, in their supporting brief, they claimed the jury should have credited their experts' testimony. **See** Brief, 12/22/22, at 49-52. It is settled that issues raised in a post-trial motion must be briefed, and the failure to do so constitutes waiver of the argument. **See Jackson v. Kassab**, 812 A.2d 1233, 1235 (Pa. Super. 2002) (*en banc*); **see also Griffin v. Berdaoui**, 260 A.3d 131 (Pa. Super. 2021) (unpublished memorandum at *5) (same).¹⁸

Even if not waived, Appellants' claim as to the verdict lacks merit. The trial court explained it was neither surprised nor shocked by the verdict. **See** Trial Court Opinion 10/2/23, at 67. As noted, it was for the jury as finder of fact to weigh the credibility of experts, and the jury chose to credit Melendez's experts rather than Appellants'. **See id.** at 67-68.

Our review demonstrates the record supports the trial court's analysis. The court did not "palpably abuse its discretion" in denying Appellants' weight of the evidence claim with respect to the verdict. **See Tong-Summerford**, 190 A.3d at 659.

In their second argument in support of their weight claim, Appellants contend the award of damages was excessive and against the weight of the

¹⁸ **See** Pa.R.A.P. 126(b) (unpublished non-precedential memoranda decision of Superior Court filed after May 1, 2019, may be cited for persuasive value).

evidence. However, as noted above, an issue that is not specifically raised in a post-trial motion is waived. **See *National Brokers of America, Inc. v. Jordan***, 307 A.3d 1206, 1218 (Pa. Super. 2023). Here, Appellants did not raise this issue in their post-trial motion, and the trial court did not address it in its opinion. **See** Appellants' Eleventh Post-Trial Motion, 10/3/22, at 24-25.¹⁹ While Appellants did raise the issue in their brief in support of post-trial motions, **see** Brief, 12/22/22, at 52, that is insufficient to preserve the issue. **See *Fletcher-Harlee Corp. v. Szymanski***, 936 A.2d 87, 102 (Pa. Super. 2007) (holding issues raised only in the brief supporting a post-trial motion cannot be considered on appeal). Thus, Appellants waived this claim.

Moreover, even if not waived below, Appellants' argument on this issue, consisting of five conclusory sentences asserting excessiveness, is undeveloped. **See** Appellants' Brief at 57-58. Appellants neither cite to the record nor to any legal authority in support of their argument. **See *id.*** Thus, the issue is waived for this reason as well. **See *In re R.D.***, 44 A.3d 657, 674 (Pa. Super. 2012) ("[I]t is an Appellants' duty to present arguments that are sufficiently developed for our review. The brief must support the claims with pertinent discussion, with references to the record and with citations to legal

¹⁹ Appellants do not cite to any place in the record where they preserved this issue, and it is not this Court's responsibility to attempt to locate it amid Appellants' numerous and discursive post-trial motions.

authorities.”) (citation omitted). Appellants’ fourth issue is both waived and meritless.

In their fifth and final issue, Appellants contend the trial court erred in denying their request for remittitur and/or granting a new trial on that basis.

See Appellants’ Brief at 59-61.

We begin with our well-settled standard of review:

Our standard of review in considering the reversal of a trial court’s order denying a remittitur is to determine whether the trial court abused its discretion or committed an error of law in reaching such decision. . . .

The grant or refusal of a new trial because of the excessiveness of the verdict is within the discretion of the trial court. This court will not find a verdict excessive unless it is so grossly excessive as to shock our sense of justice. We begin with the premise that large verdicts are not necessarily excessive verdicts. Each case is unique and dependent on its own special circumstances and a court should apply only those factors which it finds to be relevant in determining whether or not the verdict is excessive. A court may consider the following factors, *inter alia*:

(1) the severity of the injury; (2) whether the Plaintiff’s injury is manifested by objective physical evidence or whether it is only revealed by the subjective testimony of the Plaintiff (and, herein, the court pointed out that where the injury is manifested by broken bones, disfigurement, loss of consciousness, or other objective evidence, the courts have counted this in favor of sustaining a verdict); (3) whether the injury will affect the Plaintiff permanently; (4) whether the Plaintiff can continue with his or her employment; (5) the size of the Plaintiff’s out-of-pocket expenses; and (6) the amount Plaintiff demanded in the original complaint.

Spencer v. Johnson, 249 A.3d 529, 572 (Pa. Super. 2021) (internal citation omitted).

Initially, the only request for remittitur preserved for appeal is a claim regarding future noneconomic loss. **See** Motion for Remittitur, 10/3/22, at 29-30; Brief, 12/22/22, at 49-50. To the extent Appellants challenge the remainder of the damages award, they waived the claim because it was not raised in their post-trial motion. **See *National Brokers of America, Inc.*, 307 A.3d at 1218.**

Moreover, concerning Appellants' challenge to the award of non-economic damages, their argument consists of boilerplate language on excessive damages, and multiple citations to unpublished memoranda issued prior to May 2, 2019. **See** Appellants' Brief at 59-61. As such reliance violates Superior Court O.P. 65.37(B) (providing that, with exceptions inapplicable here, unpublished memorandum decisions filed prior to May 2, 2019 "shall not be relied upon or cited by a Court or a party"), we shall not consider them. Appellants fail to discuss the evidence adduced at trial, fail to apply the cited six-part test quoted above, and instead rely on unsupported assumptions about the jury's reasoning, use conclusory language, and do not cite to any appropriate supporting authority. **See *id.*** When an appellant cites no authority supporting an argument, this Court is inclined to believe there is none. **See** Pa.R.A.P. 2119(a) and (b) (requiring an appellant to discuss and cite pertinent authorities); ***Commonwealth v. Antidormi*, 84 A.3d 736, 754 (Pa. Super. 2014)** (finding issue waived because the appellant "cited no legal authorities nor developed any meaningful analysis").

Even if not waived, Appellants' claim would not merit relief. The trial court delineated the extent of the injuries suffered by Melendez, which included chronic pain, urinary and fecal incontinence, inability to walk without assistance, frequent falls, and pain and pressure on other joints because of her unnatural gait. **See** Trial Court Opinion, 10/2/23, at 72. The court noted Melendez went from being independent in all aspects of her life to needing assistance with all activities of daily living, suffered a diminished social and family life, and is mostly confined to her home. **See id.** Under these circumstances, the court found the adjusted \$9,321,666.98 award for noneconomic damage was not excessive and did not shock its conscience. **See id.**

We have thoroughly reviewed the record and the law and discern no abuse of discretion on the part of the trial court. As this Court stated in **Spencer**:

[I]t merits emphasis that large verdicts are not necessarily excessive verdicts, and each case is unique and dependent on its own special circumstances. . . . [The plaintiff] suffered catastrophic injuries as a result of the accident at issue and is wheelchair bound with additional loss of function of his right arm, unable to attend to his basic daily needs, and now suffers from recurring seizures and incontinence. Furthermore, according to [a medical expert], [the plaintiff] will require admission at an acute care facility for the rest of his life, he will need one-on-one supervision for the rest of his life, and he will require ongoing consultations with doctors over a variety of specialties during the course of his life. [The plaintiff] will also need ongoing medication, physical and cognitive therapies, a security system, a brain injury support day program, and testing. Lastly, it is obvious [he] can no longer maintain employment at the bank in which he previously worked

* * * * *

[Defendants] opted to not call their own medical expert [to testify on life care planning, [while plaintiff] did present the testimony of life care planning expert[.] . . . The jury was free to believe or reject this expert testimony. Here, it obviously credited [plaintiff's] expert testimony.

* * * * *

Accordingly, in light of the testimony offered by [plaintiff's experts] the jury's award is supported by the record and not excessive, arbitrary or unreasonable in relation to the evidence adduced at trial. Therefore, we conclude the trial court did not erred in denying the request for a remittitur.

Spencer, 249 A.3d at 574-75 (record citations and citations omitted).

Here, as in **Spencer**, Melendez suffered permanent, catastrophic injury. She is unable to walk without a walker, falls frequently, has both urinary and fecal incontinence, is in constant pain, and needs assistance with all activities of daily living. She is unable to return to her former job. Melendez testified at trial that she uses Meals on Wheels for food and needs a home health care aide daily. **See** N.T., 9/16/22 pm session, at 14-15. She has problems walking and cannot navigate stairs. **See id.** at 15-16.

At trial, Nadine Taniguchi, a nurse life care planner, testified Melendez's life expectancy was approximately twenty-eight years. For the remainder of her life, Melendez will require medical supervision, various types of therapy, medication, medical supplies and equipment, in-home care providers, and will need to modify her housing. **See** Trial Exhibit 30b p. 6. Appellants elected not to call their life care planner or any other expert with respect to damages.

Given the above, the jury's award for non-economic damages "is supported by the record and not excessive, arbitrary or unreasonable in relation to the evidence adduced at trial." **Spencer**, 249 A.3d at 575. Thus, even if not waived, Appellants' fifth and final claim would not merit relief.

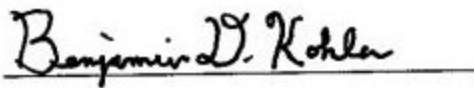
For the reasons discussed above, we affirm the judgment in this matter.

Judgment affirmed.

President Judge Lazarus files a concurring memorandum, in which Judge McLaughlin joins.

Judge McLaughlin concurs in the result of this memorandum.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 9/11/2026