NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

MILDRED BERNAVAGE, BY AND THROUGH HER AGENT-IN-FACT, CAROLYN VANSTON	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
GREEN RIDGE HEALTHCARE GROUP, LLC D/B/A GREEN RIDGE CARE CENTER AND SABER HEALTHCARE GROUP, LLC	:	No. 1576 MDA 2023
Appellants	:	

Appeal from the Judgment Entered November 2, 2023
In the Court of Common Pleas of Lackawanna County Civil Division at No(s): 2019-06227

BEFORE: LAZARUS, P.J., PANELLA, P.J.E., STABILE, J., DUBOW, J., KUNSELMAN, J., McLAUGHLIN, J., KING, J., SULLIVAN, J., and LANE, J.

MEMORANDUM BY LAZARUS, P.J.: **FILED OCTOBER 22, 2026**

Appellants, Green Ridge Healthcare Group, LLC, d/b/a Green Ridge Care Center and Saber Healthcare Group, LLC,[1] appeal from the November 2, 2023 judgment in the amount of $3,035,235.00 in favor of Mildred Bernavage,[2] by and through her agent-in-fact, Appellee Carolyn Vanston.[3] After careful review, we affirm.

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[1] Saber Healthcare Group, LLC, owns Green Ridge Care Center.

[2] Bernavage passed away in 2020 from causes unrelated to her fall and the resulting hip injury.

[3] Vanston is Bernavage's daughter.

Appellants are part of a network of entities operating nursing homes across the Commonwealth of Pennsylvania and several other states. At the time of the incident giving rise to this litigation, Bernavage was a resident at Appellants' facility. Vanston sued Appellants for negligence, alleging that her then-90-year-old mother, Mildred Bernavage, suffered a fractured hip on February 5, 2018 after Appellants' staff improperly transferred her on a slippery shower room floor without proper precautions in place.

The initial trial[4] took place from April 3 to April 6, 2023. Virginia Czankner, the certified nursing assistant (CNA) who was transferring Bernavage when she fell, testified that she "gambled" with Bernavage's safety because of the transfer method[5] utilized and the existing conditions in the shower room. N.T. First Jury Trial, 4/4/23, at 94. Czankner also admitted that she had used this specific transfer method with other residents besides

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[4] As the case was ultimately bifurcated, we refer to these two trials, respectively, as the "first trial" and "second trial."

[5] According to Czankner, the safest method she could have used to perform a one-person transfer would have been the "pivot method." The pivot method involves the transferee putting her hands on the transferer's shoulders, the transferer holding onto the transferee's hips, the transferee rising out of the seated position, and the transferer and transferee pivoting until the transferee is in front of and can safely sit back down on her next seat. The method Czankner used when Bernavage fell, which we refer to as the "transfer method," was to "bring her wheelchair in, [] stand her up, put her hands on the lip of the tub, [] hold onto her, [] move the wheelchair out, [] bring the shower chair in, and then [] place her down[.]" N.T. First Jury Trial, 4/4/23, at 82.

Bernavage. In the following exchange, Czankner testified to the conditions of the shower and how she had been assisting Bernvage when she fell:

> [Plaintiff's Counsel]: And do you agree, since you had seen moisture in there before, and water before, that on the transfer, you knew there's a possibility it can be wet?
>
> [Czankner]: Correct.
>
> [Plaintiff's Counsel]: In doing that, you still placed [Bernavage] on the lip of the tub with a hope there would be no slipping; right?
>
> [Czankner]: Absolutely.
>
> [Plaintiff's Counsel]: And if there's slipping, since you know you're caring for a 90[-]year-old woman, you know that a slip and fall can result in fractured hips, brain injuries, fractured shoulders, broken ribs; correct?
>
> [Czankner]: Correct.
>
> [Plaintiff's Counsel]: And that is why, when we have citizens like this in a shower facility, every precaution must be taken to avoid them landing on the floor, or on you on the floor; correct?
>
> [Czankner]: Correct.
>
> [Plaintiff's Counsel]: Do you agree that you did make a conscious choice to transfer [Bernavage] in that way and not to clean the floor?
>
> [Czankner]: I agree.
>
> [Plaintiff's Counsel]: And you know that that conscious choice you made could have placed her at risk for falling?
>
> [Czankner]: I agree.
>
> [Plaintiff's Counsel]: Do you agree that, on the date, that was a reckless decision?
>
> [Czankner]: I do agree.

Id. at 97-98.

Lucille Morris, R.N. (Morris), a nurse manager for Appellants who served as a liaison between the CNAs and Appellants' administrators, testified that she had received complaints regarding the shower rooms' slippery conditions and relayed those concerns to the facility's administrator and the director of nursing. Regarding the method used to transfer Bernavage, Morris admitted that both she and the facility's administration were aware that the method had been used prior to Bernavage's fall and referred to it as "the standard practice." ***Id.*** at 151. Morris' testimony went further, in that she agreed that patients were being put at risk by CNAs using the unsafe transfer method and that Appellants were reckless for having allowed it to continue. Morris additionally testified that, after Bernavage fell, although those present suspected she had suffered a hip fracture, she was not transferred to the hospital for twelve hours, throughout which time she was screaming such that Morris suspected she may have been having a heart attack or stroke.

Vanston then called Kenneth McCawley, R.N. (McCawley), as an expert witness. He testified that Appellants' administration knowingly put patients at risk by allowing employees to use the transfer method in shower rooms with slippery conditions and without statutorily required grab bars. McCawley similarly described the conduct as reckless.

Following McCawley's testimony, Vanston moved for a directed verdict on liability, specifically requesting a finding of recklessness, and also moved to amend her complaint to include recklessness and punitive damages. The trial court denied the motion for a directed verdict but permitted Vanston to

amend her complaint to characterize Appellants' actions as reckless and to seek punitive damages. The trial court also ordered that the proceeding be bifurcated, with a second pleadings and discovery period to occur between the two trials if the first jury found for Vanston. When the trial court announced that it would be permitting amendment, Appellants' counsel did not object to the ruling or make any further requests of the trial court. The first trial then continued, with the jury ultimately reaching a decision only with regard to liability and compensatory damages.

The first jury ultimately found that Appellants' conduct fell below the standard of care, caused Bernavage's harm, and was reckless. The first jury then awarded Vanston $300,000.00 in compensatory damages for Bernavage's non-economic losses. At no point prior to the jury announcing its verdict or thereafter did Appellants' counsel request a directed verdict, compulsory non-suit, or a binding charge to the jury. Because Vanston prevailed, the pleadings were reopened and the parties conducted punitive damages discovery prior to the second trial.

Appellants filed post-trial motions for judgment notwithstanding the verdict (JNOV) on the jury's finding of negligence and compensatory damages, as well as for a new trial based on the trial court permitting Vanston to file an amended complaint. Appellants argued that the amendment was prejudicial to them because of how long Vanston litigated the case without raising a recklessness claim. The trial court stayed Vanston's responsive briefing

deadlines and oral argument on Appellants' post-trial motions until after the second trial.

The second trial began on September 5, 2023. To avoid re-litigation of Appellants' liability and to limit the focus of the trial to whether Vanston was entitled to punitive damages, the trial court prohibited the parties from questioning the witnesses who testified in the first trial; instead, those witnesses would appear before the jury and, using transcripts of their testimony from the first trial, read their prior testimony verbatim into the record. In advance of trial, the parties were able to select which witnesses and which portions of their testimony would be read to the jury. During the second trial, the parties put forward evidence regarding the Appellants' wealth and ability to pay a punitive damages award. The trial court permitted the jury to consider evidence of Appellants' corporate structure and revenue flow to other entities. At the end of the second trial, the second jury awarded Vanston $2,700,000.00 in punitive damages.

Appellants again filed post-trial motions for JNOV on the finding of negligence and the award of punitive damages, and requested a new trial. The trial court held oral argument on all motions and, thereafter, denied all of Appellants' post-trial motions in its October 24, 2023 opinion and order. Appellants timely appealed,[6] and, on appeal, a panel of this Court found that

[6] The trial court did not enter an order requiring Appellants to submit a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). Further, the trial court did not write a separate Rule 1925(a) opinion and, instead, relied on its opinion denying Appellants' post-trial motions.

the trial court abused its discretion in permitting Vanston to amend the complaint during trial. Accordingly, the majority affirmed the judgment insofar as it awarded compensatory damages, vacated the award of punitive damages, and remanded for entry of judgment.

Vanston filed an application for reargument, and, on July 31, 2025, we granted reargument en banc. The parties filed substituted briefs, and Appellants now raise the following issues for our consideration:

> 1. Whether the trial court abused its discretion and/or committed an error of law in permitting [Vanston] to amend [the] Complaint in the middle of the trial to add a punitive damages claim and in refusing to grant [JNOV] on [Vanston's] claim of punitive damages?
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> 2. Whether the trial court abused its discretion in permitting the punitive damages jury to hear numerous references to a non-party entity (Saber Healthcare Holdings) in order to determine the [Appellants'] net worth and ability to pay a punitive damages verdict?
>
> 3. [Whether] the trial court abused its discretion in refusing to permit two crucial witnesses, [] Czankner and [] Morris, to testify live at the punitive damages phase, and in further ruling that their "live" testimony could not deviate from their testimony from the first trial?
>
> 4. Whether the trial court abused its discretion and committed an error of law in refusing to set aside the punitive damages verdict as grossly excessive, in violation of Pennsylvania state law and the Due Process Clause of the United States Constitution?
>
> 5. If remand is necessary, whether the proper remedy is to direct entry of [JNOV], or order a new trial?

Appellants' Brief, at 5-6 (unnecessary capitalization omitted; issues reordered for ease of disposition).

Appellants first argue that the trial court erred in allowing Vanston to amend her complaint to include a punitive damages claim because the amendment resulted in unfair prejudice. ***Id.*** at 33. According to Appellants, because of this alleged error, we must enter JNOV as to the punitive damages claims. ***Id.*** at 33, 39.

Appellants, however, did not preserve their right to request JNOV post-trial. Post-trial relief may not be granted unless the grounds therefore, if available, were raised by an appropriate method at trial. ***See Phillips v. Lock***, 86 A.3d 906, 918 (Pa. Super. 2014) (citing Pa.R.C.P. 227.1(b)(1)). To preserve the right to request JNOV post-trial, a litigant must request a binding charge to the jury or move for a directed compulsory non-suit at trial. ***See Jones v. Foods on First III, Inc.***, 345 A.3d 231, 246–47 (Pa. Super. 2025). Here, Appellants neither requested a binding instruction nor moved for JNOV based on prejudice resulting from the amendment. Accordingly, Appellants did not preserve their right to request JNOV in their post-trial motions and on appeal. ***See Phelps v. Caperoon***, 190 A.3d 1230, 1247 (Pa. Super. 2018) (finding appellant failed to preserve right to request JNOV by failing to move for directed verdict at trial); ***see also Jones***, ***supra***, at 246–47 (finding appellant failed to preserve right to request JNOV by failing to move for either compulsory non-suit or directed verdict during trial).

This Court has, however, "overlooked waiver in instances where the trial court disposed of a post-trial motion on the merits or declined to find waiver." ***Jones***, 345 A.3d at 247. Accordingly, out of an abundance of caution, even

if Appellants had properly preserved their right to request JNOV, it would not warrant relief. Pennsylvania Rule of Civil Procedure 1033 provides:

> **(a) General Rule.** A party, either by filed consent of the adverse party or by leave of court, may at any time change the form of action, add a person as a party, correct the name of a party, or otherwise amend the pleading. The amended pleading may aver transactions or occurrences which have happened before or after the filing of the original pleading, even though they give rise to a new cause of action or defense. An amendment may be made to conform the pleading to the evidence offered or admitted.

Pa.R.C.P. 1033(a).

A trial court enjoys broad discretion to grant or deny a petition to amend, and our standard of review is whether the trial court abused that discretion or committed an error of law. ***See McNeal v. M & J Auto Repair***, 322 A.3d 236, 239 (Pa. Super. 2024); ***see also The Brickman Group, Ltd. V. CGU Ins. Co.***, 865 A.2d 918, 926–27 (Pa. Super. 2004). Leave to amend has traditionally been liberally granted in Pennsylvania. ***See Thom v. CDM Auto Sales***, 221 A.3d 681, 684 (Pa. Super. 2019) (quoting ***Biglan v. Biglan***, 479 A.2d 1021, 1025 (Pa. Super. 1984)).

Although our jurisprudence permits liberal amendment, an amendment is not permitted if "it would result in undue prejudice to the pleader's opponent." ***Bata v. Central-Penn. Nat. Bank of Philadelphia***, 293 A.2d 343, 357 (Pa. 1972). In ***Bata***, our Supreme Court quoted the following description of prejudice in the context of an amended pleading:

> All amendments have this in common: they are offered later in time than the pleading which they seek to amend. If the amendment contains allegations which would have been allowed inclusion in the original pleading (the usual case), then the

> question of prejudice is presented by the time at which it is offered rather than by the substance of what is offered. The possible prejudice, in other words, must stem from the fact that the new allegations are offered late rather than in the original pleading, and not from the fact that the opponent may lose his case on the merits if the pleading is allowed.

Id. (quoting Fleming James Jr., Civil Procedure 158 (1965)) (unnecessary capitalization omitted). This Court has further clarified that "prejudice, in turn, must be more than a mere detriment to the other party because any amendment requested certainly will be designed to strengthen the legal position of the amending party and correspondingly weaken the position of the adverse party." ***MacGregor v. Mediq Inc.***, 576 A.2d 1123, 1126 (Pa. Super. 1990). Further, the "fact that the adverse party has expended time and effort in preparing to try a case against the amending party is not such prejudice as to justify denying the amending party leave to amend[.]" ***Capobianchi v. BIC Corp.***, 666 A.2d 344, 346 (Pa. Super. 1995).

Appellants posit that they suffered undue prejudice when the trial court permitted Vanston to amend her complaint because they had "no time to prepare to defend the punitive damages claim" and they were "unable to present proofs relevant to that claim, including but not limited to expert testimony." Appellants' Brief, at 38. According to Appellants, the amendment was the sort of "eleventh[-]hour surprise" that constitutes prejudice under our case law. ***See id.*** at 34-35 (quoting ***Capobianchi***, 666 A.2d at 347).

The trial court found that the Appellants did not suffer prejudice because: (1) Appellants were able to conduct a direct examination of Czankner and Morris, whose testimony led to the amendment; (2) the ruling

allowing Vanston to seek punitive damages occurred prior to Appellants presenting their case-in-chief; (3) Appellants had the option to recall Czankner and Morris in their case-in-chief and chose not to; (4) Appellants did not request a recess or seek to procure the testimony of other witnesses who would address the matters Czankner and Morris testified to; (5) the first jury did not consider punitive damages, and, instead, the trial court bifurcated for a second trial, held five months later following another period of pleadings and discovery, wherein a new jury considered the issue. ***See*** Trial Court Opinion, 10/24/23, at 31, 33. The trial court reasoned that the five-month period between the first and second trials "allowed the parties to conduct punitive damages discovery" and provided Appellants "ample time [] to defend against [Vanston]'s claim for punitive damages[.]" ***Id.*** at 33-34. Furthermore, the trial court posits that Appellants' prejudice arguments "lack definitiveness[.]" ***Id.*** at 31 (citing ***Somerset Cmty. Hosp. v. Allan B. Mitchell & Associates, Inc.***, 685 A.2d 141, 147 (Pa. Super. 1996)).

We agree with the trial court that Appellants were not unduly prejudiced by Vanston's amendment during the first trial. As noted above, amendments are always "offered later in time than the pleading which they seek to amend" and will often be to the detriment of the non-moving party. ***Bata***, ***supra***; ***MacGregor***, ***supra***. Here, Appellants have not articulated with specificity how they were prejudiced by the amended pleadings, such as by identifying what they would have done differently had recklessness been pled earlier. ***See Somerset Cmty. Hosp.***, 685 A.2d at 147 (rejecting claim of prejudice

where appellant alleged "cross-examination may have been conducted entirely differently as to the principal witnesses and no significant opportunity was available to investigate and address [] new allegations"); ***see also Standard Pipeline Coating Co., Inc. v. Solomon & Teslovich***, 496 A.2d 840 (Pa. Super. 1985) (party opposing amendments must prove it suffered more than mere detriment). Instead, most of Appellants' argument merely points to the lateness with which the amendment was sought and levels conclusory allegations of prejudice. ***See*** Appellants' Brief, at 38 ("[Vanston] sought to amend at the latest time possible to the severe prejudice of [Appellants], after they had spent more than three years preparing the case on a negligence theory[.]"); ***id.*** at 39 ("Ultimately, the added theory of damages surprised and unfairly prejudiced [Appellants] in their defense at trial and it was as an abuse of discretion for the trial court to allow it.").

Moreover, Appellants ignore the additional steps they could have taken and the extra time they were provided to prepare for the second trial. As detailed by the trial court, Appellants had several options available to ameliorate the evidence introduced and defend against the claim for recklessness, as well as several months to prepare to do so before the punitive damages claim went before a new jury. The mere fact that Vanston's motion to amend occurred mid-trial and was to Appellants' detriment, is not, in itself, sufficient to constitute undue prejudice.

Appellants also fail to reckon with the fact that the evidence that supported the amendment came from their own witnesses. It is disingenuous

for Appellants to claim that amendment was an eleventh-hour surprise where it was well within their capabilities to have learned of the information Czankner and Morris provided at trial that supported the recklessness claim. Therefore, based upon the trial court's broad discretion in matters of amendment, the facts of the case, and the steps the trial court took to prevent any potential undue prejudice, we do not find that the trial court committed an abuse of discretion or an error of law by permitting Vanston leave to amend. ***See Somerset***, ***supra***; ***see also Capobianchi***, ***supra***.

Appellants next argue that the trial court also erred in permitting Vanston to amend the complaint because the claim for punitive damages was not substantiated by the evidence. ***See*** Appellants' Brief, at 39. As with their prior argument regarding the amendment, Appellants aver that, because the punitive damages claim was not substantiated, the trial court was required to enter JNOV in their favor. ***Id.***

Vanston argues that Appellants have waived their right to request a JNOV post-trial by failing to request a nonsuit, directed verdict, or binding charge to the jury. ***See*** Appellee's Brief, at 22. As discussed above, although Appellants did argue against the sufficiency of the evidence when opposing amendment at trial, they did not request a nonsuit, directed verdict, or binding charge to the jury on the issue. Therefore, they did not preserve their right to request JNOV through post-trial motions and on appeal. ***See Jones***, ***supra***; ***see also Phelps***, ***supra***.

Yet, again, we will decline to find waiver and address the merits of the issue as the trial court has done. ***See Jones***, ***supra.*** Here, even if Appellants' second request for JNOV were not waived, it would not warrant relief. Our standard of review for the denial of a request for JNOV is well established:

> We will reverse a trial court's grant or denial of a request for [JNOV] only when we find an abuse of discretion or an error of law. An award of [JNOV] is appropriate only if, reading the record in the light most favorable to the appellees as the verdict winners, and affording them the benefit of all reasonable inferences, we would conclude that there is insufficient competent evidence to sustain the verdict. The appellate court must reject all evidence which does not support the verdict.

Rost v. Ford Motor Company, 151 A.3d 1032, 1042 (Pa. 2016).

A panel of this Court has further explained:

> Concerning any questions of law, our scope of review is plenary. Concerning questions of credibility and weight accorded the evidence at trial, we will not substitute our judgment for that of the finder of fact. If any basis exists upon which the [trial] court could have properly made its award, then we must affirm the trial court's denial of the motion for [JNOV].

Garced v. United Cerebral Palsy of Phila. and Vicinity, 307 A.3d 103, 113–14 (Pa. Super. 2023) (quoting ***Karden Constr. Servs., Inc. v. D'Amico***, 219 A.3d 619, 627 (Pa. Super. 2019)).

Appellants claim that JNOV is required because the evidence introduced through Czankner and Morris was not sufficient to put the question of punitive damages before the jury. Specifically, Appellants argue the evidence did not establish that the way Czankner transferred Bernavage was reckless or of an

"unreasonable character in disregard of a known or obvious risk." Appellants' Brief, at 39-42, 44-45.

Under the Medical Care Availability and Reduction of Error Act ("MCARE Act"), punitive damages may be awarded against a health care provider,[7] such as a nursing home, "for conduct that is the result of the health care provider's willful or wanton conduct or reckless indifference to the rights of others." 40 P.S. § 1303.505(a). However,

> [p]unitive damages shall not be awarded against a health care provider who is only vicariously liable for the actions of its agent that caused the injury unless it can be shown by a preponderance of the evidence that the party knew of and allowed the conduct by its agent that resulted in the award of punitive damages.

Id. at § 1303.505(c).

Punitive damages can only be awarded for conduct that is outrageous due to the defendant's evil motive or reckless indifference to the rights of others.[8] ***Hutchison v. Luddy***, 870 A.2d 766, 770 (Pa. 2005). When assessing the propriety of the imposition of punitive damages, the actor's state of mind is vital, and the act or failure to act must be intentional, reckless, or malicious. ***Id.*** The defendant must have had a "subjective appreciation of the risk of harm to which the plaintiff was exposed and acted or failed to act

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[7] The MCARE Act defines a "health care provider" as, *inter alia*, "[a] primary health care center or a person, including a corporation . . . licensed or approved by the Commonwealth to provide health care or professional medical services as a . . . nursing home[.]" 40 P.S. § 1303.103.

[8] We have previously observed that the punitive damages language in the MCARE Act "tracks the test for punitive damages" in our case law. ***Scampone v. Grane Healthcare Co.***, 11 A.3d 967, 992 (Pa. Super. 2010).

in conscious disregard of that risk." ***Livingston v. Greyhound Lines Inc.***, 208 A.3d 1122, 1130 (Pa. Super. 2019).

Instantly, the trial court identified portions of Czankner's testimony that supported its decision to deny Appellants' request for JNOV. ***See*** Trial Court Opinion, 10/24/23, at 10-13. Specifically, it cited Czankner's testimony that moisture in the shower room was discussed during safety meetings and that CNAs were instructed to remedy it. ***Id.*** at 11. However, according to Czankner, the shower rooms were not stocked with mops or squeegees, and CNAs were not provided with mops or squeegees to remedy the moisture. ***Id.*** Czankner acknowledged that she was "taking a gamble" by transferring Bernavage in the manner she did. ***Id.*** Ultimately, Czankner agreed that she was aware of the severe risks present in transferring a 90-year-old into a shower chair on a wet floor, and that the choice she made to transfer Bernavage using an unsafe method without first drying the floor placed Bernavage at risk for falling. ***Id.*** at 12-13.

The trial court also relied on Morris' admissions. ***Id.*** at 14-16. Specifically, Morris admitted that, in her role as nurse manager, she had fielded complaints from CNAs regarding the wet conditions in the shower room and the hazard it posed to both the CNAs and residents, and that she had gone to "the administrator and the director of nursing to let them know we had concerns about the floor." ***Id.*** at 14; ***see also*** N.T. Second Trial, 9/6/23 (Morning Session), at 86-87. Further, Morris testified that she and Appellants' administration were aware that CNAs were transferring patients using the lip

of the tub—the manner in which Czankner transferred Bernavage when she fell—for at least six months prior to the incident but failed to correct this common practice, which was putting patients at risk. ***Id.*** at 14-15.

Here, we agree with the trial court that Vanston produced sufficient evidence to enable the question of punitive damages to go before the jury. Czankner and Morris' testimony makes clear that they had a "subjective appreciation" for the harm that the transfer method and the conditions in the shower room posed to residents. Czankner acknowledged that she knew the method was a "gamble" and that she was aware that the conditions of the facility increased the risk of Bernavage falling. Morris had heard complaints from CNAs about the conditions in the shower room and was aware that CNAs were using an improper method but permitted the conduct to continue. Morris acknowledged that the administration was aware that the CNAs' unsafe method was "standard practice." These admissions, *inter alia*, show Appellants acted with a reckless indifference to Bernavage's well-being because they knew the risk of her falling and made conscious choices to ignore that risk. Given the record before it, the trial court did not commit an abuse of discretion or an error of law in denying Appellants' request for JNOV. ***See Livingston***, 208 A.3d at 1130-31 (evidence sufficient for punitive damages where bus driver disregarded risk of falling asleep while driving); ***see also Dubose v. Quinlan***, 125 A.3d 1231, 1240 (Pa. Super. 2015) (evidence sufficient for punitive damages where nursing home resident suffered from malnourishment, dehydration, and bedsores).

Appellants next argue that we must remand for a new punitive damages trial because the trial court admitted impermissible testimony related to a non-party, Saber Healthcare Holdings, LLC (Saber Holdings). ***See*** Appellants' Brief, at 48. Specifically, Appellants contend that Vanston improperly introduced evidence of Saber Holdings' wealth and its ownership of Saber Healthcare Group to imply that Saber Healthcare Group was attempting to unlawfully hide assets or had greater assets than what was reflected in its balance sheets. ***Id.*** at 53-54.

The admissibility of evidence is left to the trial court's sound discretion, and we will not disturb the trial court's decision absent a clear abuse of discretion. ***Caranci v. Monsanto Co.***, 338 A.3d 151, 162 (Pa. Super. 2025). "An abuse of discretion may not be found merely because an appellate court might have reached a different conclusion, but requires a manifest unreasonableness, or partiality, prejudice, bias, or ill-will, or such lack of support so as to be clearly erroneous." ***Keystone Dedicated Logistics, LLC v. JGB Enterprises, Inc.***, 77 A.3d 1, 11 (Pa. Super. 2013) (quoting ***Grady v. Frito-Lay, Inc.***, 839 A.2d 1038, 1046 (Pa. 2003)). Moreover, "to constitute reversible error, an evidentiary ruling must not only be erroneous, but also harmful or prejudicial to the complaining party." ***Parr v. Ford Motor Co.***, 109 A.3d 682, 690–91 (Pa. Super. 2014) (quoting ***Winschel v. Jain***, 925 A.2d 782, 794 (Pa. Super. 2007)).

Pennsylvania Rule of Evidence 401 provides that "[e]vidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would

be without evidence; and (b) the fact is of consequence in determining the action." Pa.R.E. 401. A trial court may exclude relevant evidence "if its probative value is outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Pa.R.E. 403. The comment to Rule 403 defines "unfair prejudice" as "a tendency to suggest decision on an improper basis or to divert the jury's attention away from its duty of weighing the evidence impartially." ***Id.***, comment.

The MCARE Act provides that "[i]n assessing punitive damages, the trier of fact can properly consider . . . the wealth of the health care provider." 40 P.S. § 1303.505(a). This statutory language directly tracks Section 908 of the Restatement (Second) of Torts, upon which Pennsylvania's case law has historically relied. ***See Bert Company v. Turk***, 298 A.3d 44, 61 (Pa. 2023) (citing ***Chambers v. Montgomery***, 192 A.2d 355 (Pa. 1963)). In fact, "[i]t is well-settled that when punitive damages are at issue in a case, the jury must consider not only the character of the act underlying the claim and the harm suffered by the plaintiff, but also the wealth of the defendant." ***Carlini v. Glenn O. Hawbaker, Inc.***, 219 A.3d 629, 640 (Pa. Super. 2019) (quoting ***Sprague v. Walter***, 656 A.2d 890, 920 (Pa. Super. 1995)).

In admitting the challenged evidence about Saber Holdings' wealth, the trial court reasoned that:

> [a]ny reference to the wealth of Saber Holdings was relevant to historical distributions by [Appellants] Green Ridge Healthcare Group, LLC and Saber Healthcare Group, LLC[,] to "ownership,"

> which could be used to explain [Appellants'] current financial status and resolve factually whether [Appellants] had the ability to pay a punitive damages verdict.

Trial Court Opinion, 10/24/23, at 59. The court also found the evidence relevant because it showed what money Appellants were receiving before it was passed on to Saber Holdings, as this money could be used to pay a punitive damages award. ***Id.*** at 63-64.

Appellants argue that Vanston should not have been permitted to introduce evidence regarding Saber Holdings' "existence and/or net worth." Appellants' Brief, at 51. Appellants correctly identify that "piercing the corporate veil is an extraordinary remedy" with "a strong presumption" against it. Appellants' Brief, at 53 (citing ***Lumax Indus., Inc. v. Aultman***, 669 A.2d 893, 895 (Pa. 1995) and ***Coll. Watercolor Grp., Inc. v. William H. Newbauer, Inc.***, 360 A.2d 200, 207 (Pa. 1976)).[9] However, those cases do not apply to the instant matter because Vanston was not seeking to pierce the corporate veil to hold Saber Holdings accountable for Appellants' wrongdoing; instead, Vanston introduced evidence explaining the corporate and financial relationship between Appellants and Saber Holdings to illustrate Appellants' ability to pay a punitive damages award. ***See, e.g.***, N.T. Second Trial, 9/6/23 (Afternoon Session), at 50-51 (discussing $25,000,000.00 paid

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[9] In support of this claim, Appellants also cite several out-of-state cases. ***See*** Appellants' Brief, at 51-53 (citing, *inter alia*, ***Ramada Hotel Operating Co. v. Shaffer***, 576 N.E.2d 1264 (Ind. Ct. App. 1991) and ***Borrell v. Bloomsburg Univ.***, 207 F.Supp.3d. 454 (M.D. Pa. 2016)). These decisions are not binding precedent on this Court. ***See Commonwealth v. Lang***, 275 A.3d 1072, 1083 (Pa. Super. 2022).

by Appellant Saber Healthcare Group, LLC, to Saber Holdings between 2018 and 2023); ***see also id.*** at 118-22 (Appellants' economic expert explaining how movement of money between Saber Healthcare Group and Saber Holdings demonstrated Appellants' ability to pay punitive damages). Accordingly, because of the latitude afforded to trial courts over the admission of evidence and the relevance of this evidence to Appellants' ability to pay a punitive damages award, we do not find that the trial court abused its discretion here. Thus, Appellants are afforded no relief on this claim.

Appellants next argue that the trial court erred in barring Czankner and Morris from testifying at the second trial because the decision prevented them from being questioned as to the "character" of their conduct. Appellants' Brief, at 58. We review a trial court's evidentiary rulings for an abuse of discretion. ***See Commonwealth v. Purnell***, 259 A.3d 974, 980, 986–97 (Pa. 2021).

Pennsylvania Rule of Evidence 611 provides:

> **(a) Control by the Court; Purposes.** The court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to:
>
> (1) make those procedures effective for determining the truth;
>
> (2) avoid wasting time; and
>
> (3) protect witnesses from harassment or undue embarrassment.

Pa.R.E. 611(a). Pursuant Rule 611, *inter alia*, trial courts indisputably have broad discretion in controlling trial conduct. ***Purnell***, 259 A.3d at 984 (citing ***Behr v. Behr***, 695 A.2d 776, 778 (Pa. 1997)). "Relevant to the instant

matter, Rule 611 clearly and unambiguously confers upon trial courts reasonable control over **the mode of examining witnesses** and the ability to employ procedures aimed at determining the truth." ***Id.*** at 985 (emphasis added). Furthermore, "[t]he law presumes that the jury will follow the instructions of the court." ***Maya v. Johnson and Johnson***, 97 A.3d 1203, 1222 (Pa. Super. 2014) (citation omitted).

Appellants claim that, because a jury determining a punitive damages award is empowered to consider the character of the defendant's act, they were prejudiced by the trial court's decision to restrict Czankner and Morris' testimony at the second trial to only that from the first trial. ***See*** Appellants' Brief, at 56 (citing Pennsylvania Suggested Standard Jury Instructions, Section 8.20 (5th ed. 2020)). Appellants note that the character of a defendant's act is considered after the jury has found that the act was reckless and, further, point out that the trial court's instructions to the punitive damages jury specifically stated that they could consider the "character of the healthcare providers['] act" in determining their punitive damages award. Appellants' Brief, at 56.

Appellants point to ***State Farm Mut. Auto. Ins. Co. v. Campbell***, 538 U.S. 408 (2003), wherein the United States Supreme Court reiterated that the "most important indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant's conduct." ***Id.*** at 419 (quoting ***BMW of North America, Inc. v. Gore***, 517 U.S. 559, 575 (1996)). Relying on ***State Farm***, Appellants argue that they were deprived of the

opportunity to examine the "character" or "reprehensibility" of Czankner and Morris' actions because of the trial court's decision. ***See*** Appellants' Brief, at 57-58.

The trial court maintains that its decision was proper because it prevented the re-litigation of issues decided at the first trial. ***See*** Trial Court Opinion, 10/24/23, at 64-68. The trial court noted that this decision applied to all witnesses who testified in the first trial, not just Czankner and Morris. At trial, prior to Czankner reading her testimony from the first trial to the punitive damages jury, the trial court read the jury the following instruction:

> [T]he witness[es] will be reading back their testimony. Such testimony, as I said, was given under oath in this matter to a prior jury with me presiding. And such testimony is already part of the trial record in this case. However, this testimony is also relevant to your consideration in this phase of the trial. And you will be asked to weigh and consider this testimony in your deliberations.
>
> The testimony you are about to hear is entitled to the same exact consideration as if that witness were testifying to you right here, in this courtroom, for the first time. After all, this is the first time you will be hearing that testimony. So, I ask that you listen carefully and intently to the questions as [they are] asked and listen to the responses of the witness as they are given.

N.T. Second Trial, 9/6/23 (Morning Session), at 17-18. The trial court opines that the manner in which Czankner and Morris' testimony was presented did not hamper the punitive damages jury's ability to assess Appellants' conduct, the harm to Bernavage, or the witnesses' credibility, including Vanston. ***See*** Trial Court Opinion, 10/24/23, at 66. Instead, it prevented the second trial from "becoming a re-litigation of previously determined issues." ***Id.***

We discern no abuse of discretion on the part of the trial court. While the circumstances were somewhat unique, we consider the trial court's decision to have the witnesses re-read their testimony to be within the bounds anticipated and permitted by Rule 611. ***See Purnell***, ***supra***. The trial court's rationale tracks the permissible justifications under, and intent behind, Rule 611, as the trial court's restriction both served as a time-saving measure and protected Czankner and Morris from unnecessary re-examination of their testimony. In the trial court's mind, it was the most effective method of getting relevant evidence in front of the jury. Additionally, despite Appellants' claims to the contrary, because the jury was presented with the same factual recitation as the first trial jury, albeit in an unusual fashion, the jury had a sufficient basis to consider the character of Appellants' conduct and the witnesses' credibility. Therefore, the trial court did not abuse its discretion, and Appellants' position is without merit. ***See Purnell***, ***supra***.

Appellants remaining contention is that the trial court's refusal to set aside the punitive damages verdict as grossly excessive violated due process. ***See*** Appellants' Brief, at 59-62. A challenge to the constitutionality of a punitive damages award triggers *de novo* review. ***Bert Co.***, 298 A.3d at 58 (citing ***Cooper Indus., Inc. v. Leatherman Tool Grp., Inc.***, 532 U.S. 424, 436 (2001)). An appellate court should, however, adhere to the trial court's findings of fact unless they are clearly erroneous. ***Bert Co.***, 298 A.3d at 58. The issue presents a question of law over which our scope of review is plenary. ***Id.***

"The Due Process Clause of the Fourteenth Amendment prohibits the imposition of grossly excessive or arbitrary punishments on a tortfeasor." ***State Farm***, 538 U.S. at 408 (citation omitted). "Under Pennsylvania law[,] the size of a punitive damages award must be reasonably related to the State's interest in punishing and deterring the particular behavior of the defendant and not the product of arbitrariness or unfettered discretion." ***Hollock v. Erie Ins. Exch.***, 842 A.2d 409, 419 (Pa. Super. 2004) (citation and internal quotation marks omitted).

> Punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or his[or her] reckless indifference to the rights of others. In assessing punitive damages, the trier[-]of[-]fact can properly consider the character of the defendant's act, the nature and extent of the harm to the plaintiff that the defendant caused or intended to cause[,] and the wealth of the defendant.

Bert Co., 298 A.3d at 61–62 (quoting Restatement (Second) of Torts § 908(2)). "Punitive damages awards must be tailored to each defendant." ***Id.*** at 71.

There are three guideposts for determining if an award of punitive damages is grossly excessive: (1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. ***Id.*** at 60 (citing ***Gore***, 517 U.S. at 575). When discussing the second guidepost—the relationship

between a punitive damages award and the harm or potential harm suffered by the victim—the United States Supreme Court stated:

> We decline again to impose a bright-line ratio which a punitive damage award cannot exceed. Our jurisprudence and the principles it has now established demonstrate, however, that in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process. In [***Pacific Mutual Life Insurance v.***] ***Haslip***, [499 U.S. 1 (1991),] in upholding a punitive damages award, we concluded that an award of more than four times the amount of compensatory damages might be close to the line of constitutional impropriety. We cited that 4–to–1 ratio again in ***Gore***. The [***Gore***] Court further referenced a long legislative history, dating back over 700 years[10] and going forward to today, providing for sanctions of double, treble, or quadruple damages to deter and punish. While these ratios are not binding, they are instructive. They demonstrate what should be obvious: Single-digit multipliers are more likely to comport with due process, while still achieving the State's goals of deterrence and retribution[.]

State Farm, 538 U.S. at 425. (internal citations omitted). The ***State Farm*** decision identified two exceptions to the suggested preference for a single-digit ratio: "cases in which a particularly egregious act has resulted in only a small amount of economic damages, and cases in which the injury is hard to detect or the monetary value of non-economic harm might have been difficult to determine." ***Bert Co.***, 298 A.3d at 60 (citing ***State Farm***, 538 U.S. at 425) (internal quotations omitted).

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[10] In ***Gore***, the High Court noted that scholars had identified English statutes authorizing double, treble, or quadruple damages as far back as 1275. ***Gore***, 517 U.S. at 580–81.

After reviewing the United States Supreme Court's jurisprudence on challenges to punitive damages verdicts, the Pennsylvania Supreme Court summarized as follows:

> While the High Court has developed various guideposts and factors to consider in challenges to punitive verdicts based on excessiveness, its instructions are clear on two points: there is no bright line ratio that a punitive damages award cannot exceed; and the guideposts and factors do no[t] operate mechanically because the facts and circumstances of each case are determinative in assessing the constitutionality of a punitive damages award.

Bert Co., 298 A.3d at 62.

Appellants assert that the evidence presented did not warrant "a verdict that is almost ten times the amount of compensatory damages awarded." Appellants' Brief, at 62. In support of this assertion, Appellants argue that there was no evidence that the conditions at Appellants' facility on the day of Bernavage's fall were "of a continuing nature to suggest that [Appellants] acted recklessly." ***Id.*** Accordingly, Appellants claim the ratio between the compensatory and punitive damages was so disproportionate as to be violative of their due process rights and Pennsylvania law. ***Id.***

In addressing the issue, the trial court analyzed each of the three ***Gore*** guideposts in turn. ***See*** Trial Court Opinion, 10/24/23, at 36-51. First, the trial court discussed why the reprehensibility of Appellants' conduct supported the punitive damages award by reviewing several factors enunciated in ***State Farm***. ***See id.*** at 36-42. The reprehensibility factors require courts to consider whether:

> the harm caused was physical as opposed to economic; the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others; the target of the conduct had financial vulnerability; the conduct involved repeated actions or was an isolated incident; and the harm was the result of intentional malice, trickery, or deceit, or mere accident.

Id. at 36 (citing ***State Farm***, 538 U.S. at 419). In analyzing the first two factors, the trial court pointed to the first jury's determination that Bernavage suffered physical harm because of Appellants' conduct and that Appellants acted with reckless indifference toward Bernavage. The trial court additionally identified numerous examples in the record that supported a finding of recklessness or indifference on the part of Appellants, including, *inter alia*, that Bernavage was not transferred from the facility to the hospital by Appellants until approximately twelve hours after the fall, despite suspicion of a hip fracture, and that Bernavage was placed back into bed until her transfer almost twelve hours later, despite screaming so much that Morris suspected she might have suffered a heart attack or stroke. ***See*** Trial Court Opinion, 10/24/23, at 37 (citing N.T. First Trial, 4/4/23, at 156-57, 165-66).

Looking to the financial vulnerability factor, the trial court considered Bernavage to have been "particularly vulnerable from an economic standpoint." ***Id.*** at 38. It noted that Bernavage was widowed in 1970 and raised two children as a single parent, that her family had limited income while she raised her children, that she was not employed outside of the family home and did not drive, and that, ultimately, the jury heard evidence that Bernavage "was of limited financial means and relied on her daughter, granddaughter,

and aides from a government-supported agency before she even became a resident of [Appellants'] facility." ***Id.*** at 38-39.

The trial court also determined that Appellants' conduct was ongoing as opposed to an isolated incident. ***Id.*** at 41. It explained that both juries heard testimony that Appellants' staff "regularly transferred residents from wheelchair to shower chair in the shower room using the lip of a tub" and that "concerns about the slipperiness of the floors in the shower room were relayed to administrators of [Appellants'] facility." ***Id.*** In fact, both juries heard "repeated admissions that [Appellants'] staff were transferring other patients again and again in that same manner under the same conditions that led to [] Bernavage's serious injuries." ***Id.***

The second guidepost requires courts to consider the ratio between harm or potential harm and the punitive damages award. ***State Farm***, 438 U.S. at 424. As the trial court correctly identifies,

> [t]here is no bright-line ratio that a punitive damages award cannot exceed. [***State Farm***], 538 U.S. at 425[.] "[A] punitive damages award that exceeds a single-digit ratio to a 'significant degree' may trigger judicial suspicion, not a presumption of unconstitutionality." ***Bert Co.***, 298 A.3d at 82[.] The second guidepost does not operate mechanically, and the calculation of the ratio is not the end of the analysis. ***Id.*** at 77.

Trial Court Opinion, 10/24/23, at 42 (footnotes omitted).

Taking this into account, the trial court determined that the compensatory award in this case was not substantial because Bernavage's estate was only compensated for her past non-economic damages, as her economic damages, such as paid medical expenses, were paid by collateral

sources. ***See id.*** at 43. The trial court also contends that the 9-to-1 damages ratio is not as excessive as it may appear due to the various limitations on the compensatory damages award because that award: was only for non-economic damages; was limited by Bernavage's advanced age; was limited by Bernavage's subsequent passing two years after the fall from other causes; and because "[i]ndividuals like [] Bernavage who sustain injuries in nursing homes are in a particular class of persons whose compensatory damages are limited by their age, other co-morbidities, life expectancy, and government-funded healthcare programs." ***Id.*** at 44. The trial court took these limitations to mean that, "[w]here a jury awards damages to punish and deter defendants in a case like this, the mathematical ratio is likely to be higher." ***Id.***

The third and final guidepost required the trial court to consider the "disparity between the punitive damages award and the 'civil penalties authorized or imposed in comparable cases[,]'" and to consider the relevant criminal penalties. ***State Farm***, 538 U.S. at 426. The trial court identified several state and federal statutes that the Appellants' conduct violated, such as the failure to have grab bars installed on the side of the tubs[11] and the failure to update Bernavage's care plan to indicate that she required a two-person transfer.[12] ***See*** Trial Court Opinion, 10/24/23, at 45-46. Based on the

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[11] ***See*** 28 Pa. Code § 205.37 (regulating installation of grab bars in long-term care nursing facility tubs and showers).

[12] ***See*** 42 CFR § 483.21 (providing requirements for care planning).

period between when Bernavage was assessed as a two-person assist and when she fell, the trial court concluded that "the maximum civil penalty that could be imposed on a per-day basis [was] $170,000.[00]." ***Id.*** at 47.

In a brief discussion of comparable criminal misconduct, the trial court identified Pennsylvania's criminalization of the neglect of a care-dependent person,[13] which is a first-degree misdemeanor if the victim suffers bodily injury or a first-degree felony if the victim suffers serious bodily injury or death, as well as other lesser offenses, such as simple assault[14] and recklessly endangering another person.[15] The trial court posited that, based upon the available civil and criminal penalties, including the authorized periods of incarceration, the punitive damages award in the instant case is not unconstitutionally excessive. ***See id.*** at 51.

In light of the record developed at trial, we do not consider the punitive damages award unconstitutionally excessive. Taking Appellants' two contentions in turn, first, we consider Appellants' position that there was "no evidence that the conditions that existed at [Appellants'] facility on the day of [] Bernavage's fall were of a continuing nature" such that Appellants' actions were reckless, to be demonstrably incorrect. Appellants' Brief, at 62. As recounted above, Morris testified that the use of the unsafe transfer method

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[13] 18 Pa.C.S.A. § 2713.

[14] ***Id.*** at § 2701.

[15] ***Id.*** at § 2705.

was "standard practice" that had been going on for at least six months, that grab bars had not been installed in the shower rooms, and that she and the CNAs had previously told the director of nursing and the facility's administration that they had concerns about the slippery conditions in the shower room. N.T. Second Trial, 9/6/23 (Morning Session), at 85-87, 91. These statements alone demonstrate that the conduct which led to Bernavage's fall was of an ongoing nature and not confined solely to one incident.

Considering the remaining reprehensibility factors, the record provides ample support for the conclusion that Appellants' conduct was particularly reprehensible. ***See State Farm***, 538 U.S. at 419 (describing reprehensibility of defendant's conduct as "most important indicium of [] reasonableness of [] punitive damages award"). Appellants were in the business of and responsible for providing care for a vulnerable population. In that capacity, they neglected to install and maintain required grab bars, ignored complaints and concerns from staff and management regarding the condition of the shower rooms, and permitted, or at the least turned a blind-eye to, the use of an unsafe transfer method becoming an unofficial "standard practice." Accordingly, while stronger words may be appropriate, the record supports a determination, be it by the jury or a court, that Appellants' conduct was reprehensible.

Appellants' other contention, that the ratio itself renders the punitive damages award unconstitutional, is patently meritless. The Pennsylvania Supreme Court has emphasized that the ratio guidepost does not "operate

mechanically." ***Bert Co.***, 298 A.3d at 73. In fact, in ***Gore***, the United States Supreme Court described a ratio of 500 to 1 as "breathtaking" and one that must "raise a suspicious judicial eyebrow[,]" but not as presumptively unconstitutional. ***Gore***, 517 U.S. at 583. Here, Appellants' framing notwithstanding,[16] the single-digit ratio of 9-1 was constitutionally permissible. ***See State Farm***, 538 U.S. at 425 ("few awards exceeding [] single-digit ratio between punitive and compensatory damages, to [] significant degree, will satisfy due process"); ***see also Hollock***, 842 A.2d at 418–22 (affirming punitive damages award for $2,800,000.00 where compensatory damages totaled $278,825.00, resulting in 10:1 ratio).

We do not pass judgment on the applicability of the civil and criminal statutes considered comparable by the trial court; however, Appellants have not provided, nor do we discern, a reason why the potentially relevant civil or criminal penalties would disturb our determination that the punitive damages award here is appropriate. Therefore, Appellants' final claim is without merit.[17]

Having determined that each of Appellants' claims lacks merit, we affirm the judgment in favor of Vanston.

Judgment affirmed.

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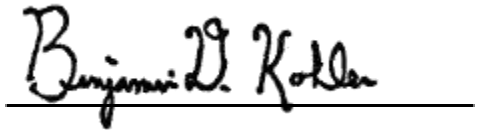
[16] ***See*** Appellants' Brief, at 30, 46, 62 (referring to punitive damages award as "almost ten times" compensatory damages).

[17] Due to our disposition, Appellants' remaining issue—whether the proper remedy on remand would be entry of JNOV or grant of a new trial—is moot.

PJE Panella and Judges Dubow, Kunselman, McLaughlin and Lane join the Memorandum.

Judge Stabile files a Dissenting Memorandum in which Judges King and Sullivan join.

Judgment Entered.



Benjamin D. Kohler, Esq.
Prothonotary

Date: 10/22/2026