NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

GARTH F. LANSAW, SURVIVING SPOUSE, AND KEISEY R. LANSAW, SURVIVING DAUGHTER OF DEBORAH LYNN LANSAW, DECEASED Appellants	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	No. 122 WDA 2026
UPMC HEALTH SYSTEMS, UPMC PRESBYTERIAN SHADYSIDE, DEREK RAY SERINO-GALLEGOS M.D., ADVANCED HOME HEALTH, KAREN MARKS R.N., JESSIE ABBOTT R.N., AND ERIN MARKETICH R.N.	:	

Appeal from the Order Entered January 2, 2026
In the Court of Common Pleas of Allegheny County Civil Division at
No(s): GD-24-000044

BEFORE: OLSON, J., NICHOLS, J., and FORD ELLIOTT, P.J.E.*

MEMORANDUM BY OLSON, J.: **FILED: NOVEMBER 23, 2026**

Appellants, Garth Lansaw and his daughter Kelsey Lansaw (collectively, the Appellants), appeal *pro se* from the January 2, 2026 order denying their motion to reopen a judgment of *non pros*. We affirm.

Appellants' third amended complaint alleges the following facts. On December 21, 2021, at approximately 12:30 a.m., Deborah Lansaw, Mr. Lansaw's wife, collapsed in her home. Mr. Lansaw called for an ambulance and Mrs. Lansaw was transported to the University of Pittsburgh Medical

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* Retired Senior Judge assigned to the Superior Court.

Center (UPMC) at Passavant. At approximately 6:00 a.m., a nurse informed Mr. Lansaw that his wife required emergency surgery and would be flown to UPMC Shadyside. At 10:42 a.m., Mrs. Lansaw underwent surgery to repair an aortic dissection. Dr. Derek Ray Serna-Gallegos, MD performed the surgery. At approximately 3:00 p.m. on December 21, the hospital informed Mr. Lansaw that surgery was complete and Mrs. Lansaw was in recovery.

On the first day of recovery, Mrs. Lansaw was informed she had a clotting issue, as well as a minor tear in the lower aorta. The tear was expected to heal with medication. While in recovery, medical records indicate that Mrs. Lansaw underwent two further procedures, each to clear a buildup of fluid around the lungs (known as a pleural effusion). On December 29, 2021, a third pleural effusion was discovered, but expected to clear without further surgical intervention. Mrs. Lansaw was discharged that day.

UPMC Shadyside contracted Advanced Home Health to provide Mrs. Lansaw with post-operative home care. On the morning of December 30, 2021, Karen Marks, RN, arrived on behalf of Advanced Home Health. While providing care, she remarked that she could barely hear Mrs. Lansaw's lungs and Mrs. Lansaw should start using the spirometer that had been provided.

Nurse Marks returned on January 3, 2022. She noted that Mrs. Lansaw had an elevated temperature, a pulse of 102 b.p.m., and a lower than normal blood pressure. She also demonstrated shortness of breath, fatigue, and weakness. On January 6, 2022, Nurses Jessie Abbott and Erin Marketich visited and recorded Mrs. Lansaw's pulse as 116 b.p.m. Appellants allege

that, by the end of that visit, Mrs. Lansaw's caregivers at Advanced Home Health and UMPC Shadyside would have known that Mrs. Lansaw suffered from a urinary tract infection, abnormal breathing, dry cough, edema, fatigue, bruising, pallor, tachycardia, dehydration, and a third pleural effusion, alongside a history of excessive bleeding, anemia, and a low oxygen saturation level. They state the medical records suggested the use of an oximeter and a flutter valve to clear Mrs. Lansaw's lungs, but neither device was ever recommended or provided to them.

Appellants also allege that the nursing records from January 6, 2022 contain the following note:

> Patient with unstable respiratory status: prescribed changes to current plan of care due to need for oxygen management requiring skilled assessment, instruction and evaluation; assessment of efficacy or complications of prescribed changes to the plan of care. Patient with new diagnosis of bilateral pleural effusion requiring prescribed treatment regimen changes and need for plan of care for instruction and evaluation of efficacy/complications of changes to treatment regimen.

Appellants' Brief at 12.

Additionally, on the afternoon of January 6, Mrs. Lansaw received a text message stating that her white blood cell count was "way down."

On January 7, 2022, Mrs. Lansaw became cyanotic and collapsed. She was pronounced dead at 8:42 a.m. Mrs. Lansaw's death certificate listed her cause of death as 'presumed aortic dissection.' Appellants allege that Mrs. Lansaw either bled to death or suffocated due to fluid accumulation around the lungs.

On January 3, 2024, Appellants filed a *pro se* complaint alleging wrongful death against Advanced Home Health, Karen Marks, RN, Jessie Abott, RN, and Erin Marketich, RN (the AHH defendants), as well as against Dr. Derek Ray Serno-Gallegos, MD and UPMC Shadyside (the UPMC defendants). Appellants attached certificates of merit, one proffered for each category of defendant, stating that expert testimony of an appropriate licensed professional was unnecessary for their claims. ***See*** Pa.R.C.P. 1042.3(a)(3).

The AHH defendants filed preliminary objections on March 21, 2024 challenging the certificates of merit. On April 30, 2024, the trial court stayed the matter for 60 days to permit Appellants to retain counsel and gave them an additional 30 days to file amended certificates of merit that complied with Pa.R.C.P. 1042.3(a)(1).[1] After approximately 60 days, Appellants, still unrepresented, filed a first amended complaint on June 28, 2024 and attached the same certificates of merit that had been submitted with their initial complaint. Both the AHH defendants and UPMC defendants filed preliminary objections to the first amended complaint along with motions to strike the

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[1] Rule 1042.3(a)(1) requires a certificate of merit signed by counsel, or the plaintiff if unrepresented, which verifies that a "licensed professional has supplied a written statement that there exists a reasonable probability that the care, skill or knowledge exercised or exhibited in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm[.]" Pa.R.C.P. 1042.3(a)(1).

certificates of merit. The defendants' objections were filed on September 26, 2024 and October 1, 2024, respectively.

On October 15, 2024, Appellants filed a second amended complaint with identical certificates of merit. A hearing was held before a different trial judge on March 4, 2025, wherein Appellants argued that expert testimony was unnecessary because of the obvious nature of the defendants' alleged negligence. On March 7, 2025, the trial court entered an order granting Appellants 60 days to file another amended complaint with certificates of merit supported by an expert.

On May 2, 2025, Appellants filed a third amended complaint with the same certificates of merit. The UPMC defendants filed preliminary objections on June 6, 2025. The AHH defendants filed motions to strike the certificates of merit on June 27, 2025. On July 18, 2025, a new trial judge struck the certificates of merit and ordered Appellants to file amended certificates, supported by expert testimony, within 30 days. On July 29, 2025, Appellants filed a motion to reconsider the trial court's July 18, 2025 order. That motion was denied on October 29, 2025.

Also on October 29, the AHH defendants filed a praecipe for entry of judgment of *non pros* based upon Appellants' failure to file certificates of merit in compliance with Pa.R.C.P. 1042.3(1). The judgment was entered accordingly. On November 14, 2025, Appellants filed a petition to open that judgment. That petition was denied on December 8, 2025, after a new trial

judge concluded he lacked authority to overrule earlier determinations entered on July 18, 2025 and October 29, 2025. Appellants did not appeal from the order entered on December 8, 2025.

On December 16, 2025, the UPMC defendants filed a praecipe for entry of judgment of *non pros* based upon Appellants' failure to file certificates of merit signed by a licensed professional. Judgment was entered in favor of the UPMC defendants on the same day. On December 19, 2025, Appellants filed a petition to reopen the judgment entered in favor of the UPMC defendants. That petition was denied on January 2, 2026. This appeal followed.[2]

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[2] The January 2, 2026 order that denied Appellants' petition to open the judgment of *non pros* entered in favor of the UPMC defendants was filed by the fifth trial court judge to entertain the parties' disputes surrounding Appellants' noncompliance with Rule 1042.3(a). That order resolved all remaining claims against all remaining parties and a timely notice of appeal challenging that order was filed on January 8, 2026. ***See*** Trial Court Docket, Entry 44; ***see also*** Pa.R.A.P. 903(a) (notice of appeal shall be filed within 30 days). Thereafter, the trial court filed an opinion pursuant to Pa.R.A.P. 1925(a) on February 13, 2026. A Rule 1925(b) concise statement was neither ordered by the trial court nor filed by Appellants.

Because a timely appeal was filed from the final order entered on January 2, 2025, we may exercise jurisdiction over Appellants' claims challenging the denial of their petition to open the judgment of *non pros* entered in favor of the UPMC defendants. ***See Commonwealth v. Prater***, 256 A.3d 1274, 1282 (Pa. Super. 2021) (Superior Court possesses jurisdiction where a timely notice of appeal has been taken from a final order). For the following reasons, however, we lack jurisdiction over Appellants' claims attacking the judgment entered in favor of the AHH defendants.

An interlocutory appeal may be taken as of right from the denial of a petition to open a judgment of *non pros*, and such an appeal can be taken immediately and **without** reference to Pa.R.A.P. 341(c), the appellate rule requiring a

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determination of finality before a final order can be entered on fewer than all claims presented in an action. ***See*** Pa.R.A.P. 311(a)(1). "The [30]-day appeal period for an interlocutory order that is immediately appealable under Pa.R.A.P. 311(a) begins to run from the date of entry of that order, unless the trial court expressly and timely grants reconsideration of that order." ***Delaware Valley Landscape Stone, Inc. v. RRQ, LLC***, 319 A.3d 551, 557 (Pa. Super. 2024); ***see also Leonard v. Andersen Corp.***, 445 A.2d 1279, 1281 (Pa. Super. 1982). Thus, if Appellants (who never requested reconsideration of the December 8th order which denied Appellants' petition to open the judgment of *non pros* entered in favor of the AHH defendants) sought to pursue an interlocutory appeal as of right against the AHH defendants, they needed to file a notice of appeal on or before January 7, 2026, the date which fell 30 days after entry of the December 8, 2025 order. Since Appellants did not file a notice of appeal within 30 days of the December 8, 2025 order, we lack jurisdiction over claims challenging the judgment entered in favor of the AHH defendants under Pa.R.A.P. 311(a)(1).

An assessment of the proper scope of our jurisdiction in this case does not end here, however. If a party forgoes an immediate interlocutory appeal under Pa.R.A.P. 311(a)(1), it still retains the option to file a notice of appeal that encompasses prior, non-final orders within 30 days of the entry of a final order or judgment on the same trial court docket. ***See, e.g., K.H. v. J.R.***, 826 A.2d 863, 871 (Pa. 2003) (explaining that "in the context of a single action, a notice of appeal filed from the entry of judgment will be viewed as drawing into question any prior [interlocutory] orders that produced the judgment") (citation omitted). As we stated above, Rule 311(a)(1) provides that an interlocutory appeal may be taken as of right from an order denying a petition to open a judgment. ***See*** Pa.R.A.P. 311(a)(1). This appellate right and others set forth under Rules 311 and 341 are cumulative, ***see*** Pa.R.A.P. 311, cmt., and except for the orders specifically enumerated in Pa.R.A.P. 311(g)(1)(ii)-(iv), a party who chooses not to file an immediate interlocutory appeal as of right does **not** waive its issues relating to that interlocutory order in a subsequent appeal in the same action. ***See*** Pa.R.A.P. 311(g)(1); ***Khalil v. Mary Jane Home Enrichment Center, Inc.***, 362 A.3d 48, 59 (Pa. 2026) (acknowledging that Rule 311(g)(1) "provides that a party does not waive an objection to an appealable interlocutory order if the party fails to appeal from the order within [30] days"). Since the December 8, 2025 order refused to open the judgment entered in favor of the AHH defendants, it was not one of the orders included in Pa.R.A.P. 311(g)(1)(ii)-(iv) that are subject to waiver. Therefore, Appellants had the option to wait until the entry of a final judgment

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on the trial court docket before seeking appellate review of the December 8th order.

If Appellants elected to pursue this option, however, our appellate rules can be read as requiring a separate notice of appeal because all claims challenging the December 8, 2025 order targeted a distinct judgment entered in favor of the AHH defendants. ***See*** Pa.R.A.P. 341, cmt. (stating that "[a] party needs to file only a single notice of appeal to secure review of prior non-final orders that are made final by the entry of a final order[. **W]here, however, one or more orders resolves issues arising on more than one docket or relating to more than one judgment, separate notices of appeal must be filed**.") (citations omitted) (emphasis added). If we read the comments to Rule 341 as requiring separate notices of appeal whenever more than one order corresponds to more than one judgment entered at the same docket, then we would not possess jurisdiction over Appellants' claims challenging the judgment of *non pros* entered in favor of the AHH defendants. On January 8, 2026, Appellants filed a notice of appeal purporting to challenge **only** the trial court order entered on January 2, 2026, the order rejecting the petition to open the judgment entered in favor of the UPMC defendants. Since Appellants never filed a separate notice of appeal challenging the order entered on December 8, 2025, we would be precluded from exercising jurisdiction over any claims calling into question the propriety of the December 8, 2025 order. Hence, our analysis in this appeal would focus exclusively on Appellants' challenge to the order declining their request to open the judgment entered in favor of the UPMC defendants.

If, however, we follow the approach discussed in ***K.H.***, ***supra*.**, which explains that within the context of a single action or docket, a notice of appeal filed from the entry of a final judgment draws into question all prior interlocutory orders that produce the judgment, then we can exercise jurisdiction over the claims challenging the order entered on December 8, 2025. ***See Commonwealth v. Watson***, 835 A.2d 786, 792 n.3 (Pa. Super. 2003) (as an intermediate appellate court, we are compelled to follow the decisional law of the Supreme Court); ***see also Estate of Paterno v. National Collegiate Athletic Assoc. (NCAA)***, 168 A.3d 187, 207 n.11 (Pa. Super. 2017) (acknowledging that explanatory comments express only the opinion of the rules drafting committee and therefore are not binding). Assuming that we assert jurisdiction over the order entered on December 8, 2025, we would conclude that Appellants are not entitled to relief on the merits since they assert identical claims in challenging both orders rejecting their requests to open the judgments entered in the trial court.

Appellants raise three issues on appeal:

1. Did the trial court abuse its discretion and violate Appellants' due process rights by entering a judgment of *non pros* where Appellees' act of producing incorrect and incomplete medical records, including a radiology disk belonging to another patient, directly prevented Appellants from retaining counsel and procuring a traditional expert-based certificate of merit?

2. Did the trial court err by dismissing this action for failure to secure an expert opinion when it was undisputed that expert services systemically refuse to contract with *pro se* litigants, thereby denying a forced *pro se* litigant a meaningful opportunity to be heard in violation of due process?

3. Did the trial court err as a matter of law by refusing to apply the doctrine of *res ipsa loquitur* and common knowledge in a wrongful death action where the Appellee-physician personally documented his patient's life-threatening post-surgical, post discharge, deterioration, noted the need for "changes" to her plan of care, yet took no action whatsoever and failed to informed the patient or her family of the grave danger?

Appellant's Brief at 10.[3]

We begin with our standard of review. "[W]hen reviewing a petition to open and/or strike a judgment of *non pros* pursuant to Pa.R.C.P. 1042.6, our Court may reverse the decision of the trial court only if we find that the trial court abused its discretion in reaching its determination." ***Mumma v. Boswell, Tintner, Piccola & Wickersham***, 937 A.2d 459, 463 (Pa. Super. 2007) (internal citations and quotation marks omitted). "A request to open a judgment of *non pros* . . . is in the nature of an appeal to the equitable powers of the court[.]" ***Barillo v. Association of Property Owners of the***

[3] We have reordered Appellants' claims for ease of analysis.

Hideout, 348 A.3d 693, *2 (Pa. Super. 2025) (non-precedential decision), *citing* ***Bartolomeo v. Marshall***, 69 A.3d 610, 613 (Pa. Super. 2013). Therefore,

> A request to open a judgment of *non pros* is by way of grace and not of right and its grant or refusal is peculiarly a matter for the [trial] court's discretion. We are loathe to reverse the exercise of the court's equitable powers unless an abuse of discretion is clearly evident.

Kruis v. McKenna, 790 A.2d 322, 324-325 (Pa. Super. 2001), *citing* ***MacKintosh—Hemphill International v. Gulf & Western***, 679 A.2d 1275, 1278-1279 (Pa. Super. 1996), *appeal denied* 694 A.2d 622 (Pa. 1997). "An abuse of discretion is not merely an error of judgment, but if in reaching a conclusion the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias or ill-will, as shown by the evidence or the record, discretion is abused." ***Braun v. Target Corp.***, 983 A.2d 752, 760 (Pa. Super. 2009).

Appellants' first and second issues allege violations of due process. Appellants claim that they were given incomplete and inaccurate medical records and, as a result, they were unable to retain counsel, forced to proceed *pro se*, and therefore categorically unable to obtain expert testimony. Appellant's Brief at 17-18. Appellants argue that a civil lawsuit is a property interest and the entry of a judgment of *non pros* in their wrongful death action deprived them of that property interest without due process. ***Id.*** at 19. According to Appellants, because expert witnesses are unavailable to *pro se*

litigants, due process requires they be permitted to proceed under Pa.R.C.P. 1042.3(a)(3), which allows a claim for professional negligence to proceed without certification from a licensed professional if an attorney certifies that expert testimony is unnecessary. Appellants are not attorneys and, therefore, ask us to apply the principles of *res ipsa loquitur* and common knowledge to alter our procedural rules and permit them to proceed without the certification of a licensed professional.

A petition for relief from a judgment of *non pros* must allege facts showing that 1) the petition has been timely filed; 2) there is a reasonable explanation for the conduct that gave rise to the judgment of *non pros*; and 3) the underlying cause of action has merit. Pa.R.C.P. 3051(b). Appellants satisfied the timeliness component of this test by filing their petition three days after entry of the judgment of *non pros* on the docket. ***See*** Pa.R.C.P. 237.3 (setting 10-day deadline, starting from entry of judgment of *non pros*). We read Appellants' due process claims as an attempt to explain the conduct that gave rise to the entry of a judgment of *non pros* in favor of the UPMC defendants. In addition, we shall consider whether Appellants' claims regarding common knowledge and *res ipsa loquitur* alter the application of Pa.R.C.P. 1042.3(a)(1) and (a)(3). ***See Smithson v. Columbia Gas of PA/NiSource***, 264 A.3d 755, 760 (Pa. Super. 2021) ("this Court is willing to construe liberally materials filed by a pro se litigant").

The following legal principles govern Appellants' due process claims:

> A question regarding whether a due process violation occurred is a question of law for which the standard of review is *de novo* and the scope of review is plenary. Due process requires that the litigants receive notice of the issues before the court and an opportunity to present their case in relation to those issues. It is well settled that procedural due process requires, at its core, adequate notice, opportunity to be heard, and the chance to defend oneself before a fair and impartial tribunal having jurisdiction over the case.

Interest of S.L., 202 A.3d 723, 729 (Pa. Super. 2019) (internal citations and quotations omitted). "Due process requires only that a party be provided an opportunity to be heard; it does not confer an absolute right to be heard." ***Captline v. County of Allegheny***, 718 A.2d 273, 275 (Pa. 1998) (citations omitted).

Relying on the United States Supreme Court's decision in ***Boddie v. Connecticut***, 401 U.S. 271, 278 (1971) and our Supreme Court's decision in ***Womer v. Hilliker***, 908 A.2d 269, 275 (Pa. 2006), this Court has concluded that:

> [F]ulfilling the requirements of Rule 1042.3 [requiring certificates of merit] "signals to the parties and the trial court that the plaintiff … is in a position to support the allegations he has made in his professional liability action" and weeds out meritless claims. … [A]n action by a state to permit default judgments for the violation of certain procedural rules is permitted under the due process clause.

Lloyd v. Veterinary Orthopedic Services, 344 A.3d 1075, *5 (Pa. Super. 2025) (internal citations omitted). Thus, requiring certificates of merit from an expert does not violate due process.

Appellants, however, challenge Rule 1042.3 as applied to them because: 1) they were *pro se* and could not obtain an expert; and 2) their *pro se* status was allegedly a direct result of the defendants' conduct. At the outset, we note that Appellants had notice of all trial court proceedings and received ample opportunity to be heard. Argument was held on March 4, 2025 before Judge Klein, wherein Appellants argued that their claims did not require certificates of merit. A second argument was held before Judge McGinley on Appellants' motion to reopen the judgment of *non pros*. Appellants therefore argued their *res ipsa loquitur* theory before two judges, in addition to the three judges who reviewed Appellants' contentions without oral argument. Appellants' theory has been rejected by five judges over the course of a year. Each of the three judges that ruled on the certificates of merit gave Appellants between 30 to 90 days to file compliant certificates. Appellants have therefore received due process; they had notice of all proceedings and objections to their certificates of merit, they were provided with opportunities to be heard, and they received several chances to correct their erroneous submissions.

Appellants attempt to invalidate the extensive process from which they benefited by arguing that the defendants' production errors deprived them of a meaningful opportunity to be heard. They posit that they were forced to proceed *pro se* because of these errors and therefore no expert would work with them. Appellants do not provide evidence to back up the accusations they levy. They rely on bare allegations that medical documents were missing and inaccurate. They do not state what documents were missing or what those

documents, or the correct radiology information, would have contributed to an attorney's evaluation of their claims. Nor do they list the attorneys and law firms whose opinions or representation they sought. They also do not disclose the experts whom they attempted to retain. Appellants have not produced sufficient facts for us to fully and fairly evaluate their due process claims, nor does the record provide any meaningful support or insight. We therefore have no grounds on which to consider the alleged production errors and any potential consequences therefrom. Furthermore, Appellants identify no authority suggesting that due process requires a *pro se* litigant to be allowed to circumvent rules of civil procedure. On the contrary, this Court has repeatedly stated that "[a] *pro se* litigant is not absolved from complying with procedural rules." ***Hoover v. Davila***, 862 A.2d 591, 595 (Pa. Super. 2004), *citing* ***Jones v. Rudenstein***, 585 A.2d 520, 522 (Pa. Super. 1991), *appeal denied*, 600 A.2d 954 (Pa. 1991); ***see also Bisher v. Lehigh Valley Health Network***, No. 2582 EDA 2025, 2026 WL 2225457, at *13 (Pa. Super. Aug. 3, 2026) (deciding no relief was due where appellants claimed they were forced to proceed *pro se* in medical malpractice action in violation of due process). This Court often warns that "any person choosing to represent himself in a legal proceeding must, to a reasonable extent, assume that his lack of expertise and legal training will be his undoing." ***Norman for Estate of Shearlds v. Temple University Health System***, 208 A.3d 1115, 1118–19 (Pa. Super. 2019) (citation omitted), *appeal denied*, 223 A.3d 668 (Pa. 2020).

In light of the foregoing analysis, Appellants' due process claims fail. Consequently, Appellants are unable to establish element two of the test to reopen a judgment of *non pros*. No violation of due process reasonably excused the conduct that gave rise to the judgment of *non pros*, namely Appellants' failure to file compliant certificates of merit.

Appellants next claim that the trial court erred in finding that neither *res ipsa loquitur* nor common knowledge applied to the allegations in their complaint and, by extension, their obligation to supply certificates of merit that complied with Pa.R.C.P. 1042.3(a)(1). Appellant's Brief at 19. As mentioned above, we interpret Appellants' contention as alleging that Appellants have a meritorious claim for relief from the order that rejected their request to reopen the judgment of *non pros* entered in favor of the defendants. More specifically, Appellants argue that their claims against the defendants are so straightforward that *res ipsa loquitur* and/or the common knowledge doctrine auger in support of permitting them to rely on Pa.R.C.P 1042.3(a)(3)[4] and proceed without expert testimony.

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[4] Rule 1042.3(a)(3) states that:

> (a) In any action based upon an allegation that a licensed professional deviated from an acceptable professional standard, the attorney for the plaintiff, or the plaintiff if not represented, shall file with the complaint or within sixty days after the filing of the complaint, a certificate of merit signed by the attorney or party that . . . (3) expert testimony of an appropriate licensed professional is unnecessary for prosecution of the claim.

Pa.R.C.P. 1042.3(a)(3).

Res ipsa loquitur is "a discrete category of 'circumstantial evidence,' which may suffice to establish negligence where more specific evidence of the events surrounding the injury eludes even diligent investigation." ***Lageman v. Zepp***, 266 A.3d 572, 575 (Pa. 2021). To benefit from this doctrine, a litigant must allege the following elements: 1) that the event is of a kind that would not occur in the absence of negligence; 2) other responsible causes, including the conduct of the plaintiff and third persons, have been eliminated by the evidence; and 3) the indicated negligence is within the scope of the defendant's duty to the plaintiff. ***Id.*** at 581, *citing* Restatement (Second) of Torts § 328D (Am. L. Inst. 1965). Pennsylvania courts have applied *res ipsa loquitur* to claims of medical malpractice for decades. ***Lageman***, 266 A.3d at 575; ***Jones v. Harrisburg Polyclinic Hospital***, 437 A.2d 1134, 1138 (Pa. 1981). As such, where a litigant in a medical malpractice case alleges a *prima facie* case for *res ipsa loquitur*, they may proceed to trial without adducing specific evidence of breach of duty and causation. ***Lageman***, 266 A.3d at 589 n.51.

Res ipsa loquitur, however, is an evidentiary shortcut not a procedural one. As such, we do not believe that a plaintiff with a *prima facie* case for *res ipsa loquitur* may avoid the requirements of Pa.R.C.P. 1042.3. Rules 1042.3(a)(1)-(3) require an attorney or *pro se* plaintiff to submit a signed certificate of merit, certifying that either 1) an appropriate licensed professional has supplied a written statement supporting the claim, or; 2) the claim is based solely on allegations that other professionals for whom the

defendant is responsible deviated from the standard of care, or; 3) expert testimony is unnecessary. Pa.R.C.P. 1042.3(a)(1)-(3). Appellants have attempted to rely on Rule 1042.3(a)(3), thus certifying that expert testimony is unnecessary in their case. But Rule 1042.3(e) states that:

> If a certificate of merit is not signed by an attorney, the party signing the certificate of merit shall . . . attach to the certificate of merit the written statement from an appropriate licensed professional as required by subdivisions (a)(1) and (2). If the written statement is not attached to the certificate of merit, a defendant seeking to enter a judgment of *non pros* shall file a written notice of intent to enter a judgment of *non pros* for failure to file a written statement under Rule 1042.11.

Pa.R.C.P. 1042.3(e). This Court has previously concluded:

> [R]eading [Pa.R.C.P. 1042.3] (a)[] and (e) together, the certificate of merit must include a statement from a licensed professional unless **an attorney** certifies that expert testimony is unnecessary; the Rule does not allow a *pro se* party to certify that expert testimony is unnecessary. … [Appellant's] arguments that he could prosecute his claim without expert testimony [*via res ipsa loquitur*] are beside the point.

Pilchesky v. Rainone, No. 57 MDA 2019, 2020 WL 787609, at *3 (Pa. Super. Feb. 18, 2020) (emphasis in original). If a plaintiff fails to file compliant certificates of merit, the prothonotary may properly enter a judgment of *non pros* against him upon praecipe of the defendant. Pa.R.C.P. 1042.7(a). As Appellants proceeded *pro se* before the trial court, they were required to provide either a statement from a licensed professional or an attorney certification that expert testimony was unnecessary. Since Appellants failed

to do so, we cannot discern an abuse of discretion or legal error by the trial court in refusing to grant their petition to open.

Furthermore, even if *res ipsa loquitur* could obviate the need to offer specific evidence of duty, breach, and causation, Appellants would still need to produce expert testimony at trial. Appellants rely on ***Lageman***, which surveys Pennsylvania jurisprudence on *res ipsa loquitur* and expert testimony in medical malpractice cases. Notably, all of the cases that ***Lageman*** discusses, as well as ***Lageman*** itself, relied on or required expert testimony to establish the applicability of *res ipsa loquitur*. ***Lageman***, 266 A.3d at 577; ***Jones***, 437 A.2d at 1140-1141, 1142; ***Toogood v. Owen J. Rogal, D.D.C., P.C.***, 824 A.2d 1140, 1150 (Pa. 2003); ***Hightower-Warren v. Silk***, 698 A.2d 52, 55 (Pa. 1997); ***Quimby v. Plumsteadville Family Practice***, 907 A.2d 1061, 1067 (Pa. 2006). Here, the facts alleged by Appellants cannot, without expert testimony, establish that Mrs. Lansaw's death would not have occurred absent negligence. Nor can they establish that the lack of care was so obvious as to allow application of the common knowledge doctrine. Appellants rely primarily on the note in Mrs. Lansaw's medical records mandating "changes" in her treatment protocol. But a layperson would not know the severity of the concerns raised in those records, would not know the typical response timeline for changes in treatment methods, and would not be able to reliably determine whether other factors could have contributed to Mrs. Lansaw's death. In short, without expert testimony a layperson would have no reliable means of determining whether Mrs. Lansaw's death is one that would have only

occurred because of the defendants' negligence or if there were other possible causes. Thus, Appellants were required to submit certificates of merit supported by an expert. Appellants cite no cases that are binding on this Court that suggest otherwise.[5]

The second doctrine on which Appellants rely, the common knowledge doctrine, applies when "the matter under investigation is so simple, and the lack of skill or want of care so obvious, as to be within the range of the ordinary experience and comprehension of even nonprofessional persons." ***Jones***, 437 A.2d at 1137. This doctrine provides Appellants with no assistance for the same reason that *res ipsa loquitur* fails. It is not sufficiently obvious on these facts that Mrs. Lansaw's death resulted from a lack of care by a licensed professional. The connection between the various health issues detailed in the complaint, the conduct of medical professionals involved, and Mrs.

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[5] Appellants cite cases from the Third Circuit Court of Appeals and from other states' courts that support their position. This Court is not bound by the decisions of federal courts, except the United States Supreme Court. ***Schiavone v. Aveta***, 41 A.3d 861, 870 n.4 (Pa. Super. 2012). Nor is it bound by decisions of courts in other states. ***Eckman v. Erie Insurance Exchange***, 21 A.3d 1203, 1207 (Pa. Super. 2011). These cases also contain distinguishable facts. In ***Beverly Enterprises v. Nichols***, a patient with Alzheimers and noted trouble swallowing was left alone with a tray of food. ***See Beverly Enterprises v. Nichols***, 441 S.E.2d 1, 2-3 (Va. 1994). In ***Bush v. United States***, the plaintiff was not properly instructed on use of a heart device. ***See Bush v. United States***, 802 F.3d 680, 682-683 (5th Cir. 2015). In ***Natale v. Camden County Correctional Facility***, the prison healthcare workers responsible for the noted insulin-dependent plaintiff did not ascertain how often he required insulin. ***See Natale v. Camden County Correctional Facility***, 318 F.3d 575, 578 (3d Cir. 2003). The facts of these cases are far more straightforward; here, the cause of, and contributing factors to, Mrs. Lansaw's death are less clear.

Lansaw's death is a complex one that requires expert knowledge to properly understand and assess.

Having evaluated Appellants' contentions regarding *res ipsa loquitur* and common knowledge, we conclude that Appellants have not proven that their claim is meritorious. They therefore have not satisfied the third element of the test required to open a judgment of *non pros*. As a result, we cannot discern any abuse of discretion or error of law in the trial court's denial of Appellants' motion to open the judgment of *non pros*.

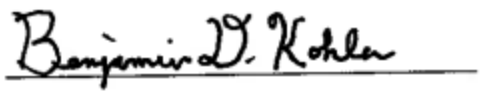
In summary, Appellants have failed to allege facts sufficient to open the judgments of *non pros*. They were afforded due process and therefore their delay has no reasonable excuse. Additionally, they may not rely on *res ipsa loquitur* or the doctrine of common knowledge to proceed without a certificate of merit supported by expert testimony. In short, Appellants have not fulfilled the requirements of PA.R.C.P. 3051 and we discern no abuse of discretion or error of law in the trial court's denial of the petitions to open the judgments of *non pros*.

Order affirmed.

President Judge Emeritus Ford Elliott joins.

Judge Nichols concurs in the result.

Judgment Entered.



Benjamin D. Kohler, Esq.
Prothonotary

DATE: 11/23/2026