

**THIRD DIVISION
BARNES, P. J.,
GOBEIL and PIPKIN, JJ.**

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October 26, 2026

In the Court of Appeals of Georgia

A26A1026. LAMBA et al. v. ROSWELL OB/GYN, LLC.

BARNES, Presiding Judge.

Arti Lamba (“Arti”) underwent an emergency Caesarean section in 2018, and her child tragically died approximately nine days later. Arti and her husband sued Roswell OB/GYN, LLC for medical malpractice, alleging that its employee, Alexandre Eaccarino, D. O., was negligent by failing to monitor the baby’s heart rate. Following a six-day trial, the jury found for Roswell OB/GYN. On appeal, the Lambas argue that the trial court erred by denying their motion for new trial to the extent it was premised on Roswell OB/GYN’s failure to produce relevant evidence prior to trial and in allowing the jury to hear evidence pertaining to a party who had been sued

but dropped from the action prior to trial. The Lambas also argue that the trial court erroneously instructed the jury. For the reasons explained more fully below, we affirm.

“[T]his Court reviews the judgment entered by the trial court after approval of a jury verdict upon the any evidence test, absent any material error of law. Additionally, when a question of law is at issue, we owe no deference to the trial court’s ruling and apply a de novo standard of review.” *Howland v. Wadsworth*, 324 Ga. App. 175, 176-177 (749 SE2d 762) (2013) (citation modified).

So viewed, the record shows that on the morning of March 29, 2018, Arti Lamba went into labor and was admitted to Northside Hospital Atlanta at approximately 9:15 a.m. Dr. Eaccarino was the on-call obstetrician for Roswell OB/GYN at that time. Nurses noted that Arti’s blood pressure was low at 11:46 a.m., and she had an epidural at 11:58 a.m. Arti received several doses of Pitocin between 2:22 p.m. and 6:15 p.m. Because of the Pitocin and epidural, Dr. Eaccarino ordered continuous electronic fetal monitoring, which included fetal heart rate tracing. Between 6:07 and 6:15 p.m., when Dr. Eaccarino was not at Arti’s bedside, medical personnel observed “signal ambiguity,” which denotes that the monitoring equipment is unable to distinguish the maternal and fetal heart rates. After medical staff could not

find the baby's pulse, Arti underwent an emergency c-section at 7:28 p.m., and the baby was born at 7:38 p.m. During the procedure, Dr. Eaccarino discovered that Arti had suffered a uterine rupture. The rupture deprived the baby of oxygen and caused severe brain damage; he died nine days later.

In March 2020, the Lambas filed a wrongful death suit against Dr. Eaccarino; Roswell OB/GYN (Dr. Eaccarino's employer); nurses Lori Carruthers and Stephanie Cofer; and Northside Hospital, Inc. (the nurses' employer). During the course of the litigation, most of the parties were dropped, and the case proceeded to trial only against Roswell OB/GYN. Prior to trial, the Lambas filed a motion in limine seeking to preclude any questioning or testimony regarding whether any defendant had been previously sued; and, at a pretrial conference, the trial court instructed the attorneys not to bring up the fact that Northside was originally a defendant in the case.

At trial, the parties disputed whether Dr. Eacarrino's actions on March 28, 2018, adhered to the applicable standard of care. Specifically, the experts had differing views on the actions he should have taken during the approximately hour and a half between when the baby's pulse could no longer be detected and his birth. According to the Lambas' expert, Craig Sherman, M. D., the signal ambiguity began at 6:07 p.m.

Dr. Sherman testified that, upon observing a monitoring strip that did not show the baby's heartbeat, if alternative methods such as a bedside ultrasound or fetal scalp electrode could not detect the pulse, the standard of care required the treating physician to stay in the room until the ambiguity was resolved. According to Dr. Sherman, Dr. Eaccarino violated the standard of care by leaving Arti's room for an hour and failing to check the fetal monitoring strips.

Roswell OB/GYN's expert, Dr. Leslie Lindler, testified that Dr. Eaccarino complied with the standard of care in evaluating Arti during the progression of her labor. Dr. Lindler noted that on-call physicians cannot personally check the fetal heart rate every five minutes due to other responsibilities, and they rely on labor and delivery nurses to be their "eyes and ears." Because the timing and duration of Arti's contractions did not indicate a uterine rupture had occurred, Dr. Lindler opined that the physicians' quick actions saved her life.

At the conclusion of the trial, the jury returned a verdict in favor of Roswell OB/GYN. After the trial court entered judgment on the jury's verdict, the Lambas filed a motion for new trial, as amended. The trial court denied the motion for new trial after a hearing, and this appeal followed.

1. The Lambas argue that the trial court erred by denying their motion for new trial to the extent it was premised on Roswell OB/GYN's failure to produce highly relevant evidence prior to trial.

In 2022, Dr. Eaccarino testified at his deposition that, on the date Arti gave birth, he could recall only that he had a "busy service day," but he stated that he did not have access to records that would provide more specific details about his precise activities that day. Then, on the second day of the jury trial in 2024, Dr. Eaccarino testified on cross-examination that Arti was his only laboring patient between 6:00 p.m. and 7:30 p.m. on the day in question. However, during the last day of testimony at trial, Dr. Eaccarino testified on direct examination that he had reviewed his billing records to determine how many high risk patients he had during his shift, which began at 7 a.m. on March 29, and ended at 7 a.m. on March 30, 2018. Although Dr. Eaccarino had previously maintained only that he had been "busy" on the day in question, he now testified, based on his review of the records, that he had six high risk patients that day. He also performed a scheduled c-section and polyp removal.

The billing records, which were not admitted as an exhibit, consisted of approximately five pages of billing codes and did not include time stamps for Dr.

Eaccarino's activities. The defense admitted that they had obtained these five pages "last week [or] the week before," but explained their failure to produce them during discovery on the ground that "there was no reason to go and do a bunch of investigation as to where [Dr. Eaccarino] was or what he was doing because no one criticized him" – until that penultimate trial day, in response to the Lambas' assertions that "[i]t wasn't a busy day at the hospital" and that Dr. Eaccarino was, as defense counsel put it, "just sitting around."

As a preliminary matter, we find it impossible to believe that experienced defense counsel would think there was "no reason" to investigate what Dr. Eaccarino was doing on the day in question, let alone proffer this as an explanation for a failure to produce indisputably relevant records. The record shows, moreover, that in the consolidated pretrial order, the Lambas "expressly object[ed] to the admissibility of any documents not previously produced." "[U]nless the pretrial order is modified at or before trial, a party may not advance theories *or offer evidence* that violate the terms of the pretrial order." *Williams v. Martin*, 273 Ga. App. 562, 564 (1) (615 SE2d 774) (2005) (citations and punctuation omitted; emphasis added). And "the rules of discovery, under our Civil Practice Act, are designed to narrow and clarify the issues

and to remove the potential for secrecy and hiding of material[,]” with “our law allow[ing] for sanctions of varying degrees when inaccurate, incomplete, or intentionally misleading discovery responses create surprise at trial.” *Anderson v. Kaye*, 371 Ga. App. 626, 630 (1) (901 SE2d 765) (2024) (citation modified).

Because they were not given this highly relevant record before trial, an omission to which they had lodged a continuing objection in writing, the Lambas developed a theory fundamentally at odds with it: that Dr. Eaccarino was not particularly busy at the time in question. When faced with his new testimony, which both violated the pretrial order and shattered this trial strategy, the Lambas did not react immediately, but objected during the next break in testimony. The trial court understood the import of what had happened: the Lambas had “chosen the strategy of proceeding in a case in such a manner as to make those factors [concerning the doctor’s activities that day] relevant. And now *you’re faced, I guess, with late discovery*” – an understatement, given that the Lambas had already rested their case. The Lambas protested that they had asked for documents in this category two years before, and they now asked for a curative instruction that Dr. Eaccarino had “no other laboring patients and was doing no other procedures from 6:00 to 7:30.” But the trial court declined to give the

requested instruction, saying only that “an objection [earlier] would have been more appropriate.”

In short, the Lambas always proceeded under the premise, arguably inaccurate through no fault of their own, that Dr. Eaccarino was not busy at the relevant time, and the records that were improperly withheld would authorize a jury to conclude that he was indeed occupied. Unfortunately, however, the law is clear that even when a party has improperly failed to produce relevant evidence during discovery, “such failures may not be remedied by the exclusion of probative trial evidence,” and that “[t]he only appropriate remedy for [a party’s] alleged failure to update [its] discovery responses [is] postponement of trial or a mistrial.” *Hart v. Northside Hosp.*, 291 Ga. App. 208, 209-210 (661 SE2d 576) (2008) (citation modified). But plaintiffs did not request either of these remedies. Instead, they requested a curative instruction asking the trial court to draw a conclusion about the evidence (that Dr. Eaccarino was not occupied at the relevant time). Again, however, the trial court was not authorized to grant this relief. See OCGA § 9-10-7 (“It is error for any judge, during the progress of any case, or in his charge to the jury, to express or intimate his opinion as to what has or has not been proved”); *Franklin Life Ins. Co. v. Hill*, 136 Ga. App. 128, 131 (2)

(220 SE2d 707) (1975). It follows that despite defendants' violation of discovery rules, which we deplore, no reversible error has been shown.

2. Next, the Lambas assert that the trial court erred by allowing the jury to hear evidence pertaining to Nurse Stephanie Cofer, who had been sued but dropped from the action prior to trial.

Evidence of a settlement with another tortfeasor is generally inadmissible before a jury. OCGA § 24-4-408; *Altine v. Eastside Med. Ctr.*, 372 Ga. App. 475, 479 (904 SE2d 396) (2024). However, when a party opens the door to a subject, it "allows the other party to introduce evidence that would otherwise not be allowed." *Smith v. State*, 299 Ga. 424, 430(2)(c) n. 5 (788 SE2d 433) (2016).

At trial, the Lambas' counsel asked Nurse Cofer if she was aware that Dr. Eaccarino blamed her for what happened to the Lambas' child, to which she responded, "I haven't heard that." The Lambas continued to question Cofer about her knowledge of what the defense experts had testified to in the case, and Roswell OB/GYN objected on mischaracterization and sequestration grounds. During discussions outside the presence of the jury, the Lambas argued that because Cofer was originally a party to the case, she would know based on depositions conducted

before trial that the nurses were being blamed for what happened. The trial court sustained Roswell OB/GYN's objection as to questioning Cofer about her knowledge of previous testimony during the trial. When direct examination resumed, the Lambas asked Cofer if she had been deposed in the case, to which she replied: "Correct."

During Roswell OB/GYN's cross-examination of Cofer, the following exchange took place:

[Defense Counsel]: You are aware that someone in this courtroom has accused you of doing something wrong from the beginning of this case, right?

[Cofer]: I'm learning that.

[Defense Counsel]: Well, isn't it true that you and Northside Hospital were defendants in this case?

[Cofer]: Correct.

The Lambas objected, arguing that Roswell OB/GYN had violated the court's instructions on the topic. They explained that they had deliberately limited their questioning to the fact that Cofer had been deposed in the case and avoided any questions revealing that she was a prior defendant. Roswell OB/GYN countered that the Lambas had opened the door to this rebuttal testimony by questioning Cofer about a prior deposition she had given. Although the trial court surmised, "I'm not so sure you didn't open the door for that," the court nevertheless barred Roswell OB/GYN

from continuing this line of questioning. The trial court then gave the following curative instruction to the jury (to which the Lambas did not object):

Ladies and gentlemen, you're being asked by the plaintiffs in this action to award damages. And you're also going to be asked to determine ... whether or not these damages may have been caused by persons or entities who are not parties to this case. And in your determinations, you will have to decide and consider whether that is the case. And if so, you would consider the fault of those persons or entities whose negligence may have or may not have contributed to the injury or damages that are being requested by the plaintiffs. And those entities or parties may include Lori Carruthers, Stephanie Cofer, and Northside Hospital.

The court reiterated this instruction in its final charge to the jury.

Pretermitted whether the Lambas' counsel opened the door to evidence related to Cofer having been a prior party to the action, they cannot show harm. The jury's knowledge of a collateral source "relates only to the question of damages, which the jury did not reach" in this case because it found Roswell OB/GYN not liable. *Bean v. Landers*, 215 Ga. App. 366, 368(2) (450 SE2d 699) (1994) (holding in medical malpractice case that admission of collateral source evidence was harmless because such information related only to damages, which the jury did not reach because it found the defendant not liable); see also *Endsley v. Geotechnical & Env't Consultants*,

339 Ga. App. 663, 676(2) (794 SE2d 174) (2016) (“it is well established that, generally, when the error in admission or exclusion of evidence ... relates only to the issues of damages, and the jury finds that the defendant is not liable, the error is harmless because it does not affect the verdict”). Additionally, the trial court issued a curative instruction to “eradicate the adverse effect of placing the issue of collateral sources before the jury.” *Lawhorne v. Douglas*, 371 Ga. App. 849, 852(2) (903 SE2d 316) (2024); *Altine*, 372 Ga. App. at 480 (holding no harmful error to be “especially true” because there was a special verdict form and the trial judge gave “detailed instructions to the jury that it could not consider the settlement in evaluating the nurses’ standard of care”). Under these circumstances, no error has been shown.

3. The Lambas also argue that the trial court erroneously instructed the jury.

This Court “review[s] de novo an allegedly erroneous jury instruction ... [and] the instruction must be evaluated in the context of the trial court’s jury instructions as a whole.” *Smith v. Gadegbeku*, 377 Ga. App. 39, 46(2) (921 SE2d 524) (2025) (citations omitted). This Court conducts a “harmless error of review of a trial court’s refusal to give a requested charge.” *Ga. Bone & Joint Surgeons, P. C. v. Keel*, 376 Ga. App. 79, 82(2) (918 SE2d 127) (2025). In determining whether the denial of a

requested jury charge was error, this Court “examine[s] the given jury charges as a whole.” *Id.* at 83(2)(a). For the refusal to charge to constitute error, the requested charge must be “entirely correct and accurate; adjusted to the pleadings, law, and evidence; and not otherwise covered in the general charge.” *Lee v. Swain*, 291 Ga. 799, 800(2)(b) (733 SE2d 726) (2012). With these guiding principles in mind, we turn to the specific charges at issue.

(a) *Admissions.*

At trial, Dr. Eaccarino testified as follows:

[Plaintiff’s Counsel]: All right. You take absolutely no responsibility for the outcome in this case; is that correct?

[Eaccarino]: It’s not that simple. I don’t have an answer for that —

[Plaintiff’s Counsel]: You do or you don’t?

[Eaccarino]: It’s not that simple. I can’t answer that. I’m the physician on, so do I take some responsibility? I do. But as both parties have said today, it’s a team effort. You cannot be a physician that’s in charge of everybody. That’s GYN, that’s OB, that’s laboring, that’s high risk patients, that’s circumcisions, that’s patients that come to the ER. It’s impossible to be everyone in the hospital all at the same time. So am I sorry this happened to [Arti] and her husband? I am. Was I the physician on and take some responsibility? I do.

[Plaintiff’s Counsel]: So you do take some responsibility?

[Eaccarino]: I’m the physician on. But you can’t globally say I’m the physician, so just blanket statement. You can’t do that.

[Plaintiff's Counsel]: That's all I wanted to know. And I thank you. You take responsibility for what happened, fair?

[Eaccarino]: I don't take full responsibility for what happened. I don't do that. I do not.

[Plaintiff's Counsel]: But you take some responsibility?

[Eaccarino]: Sure.

During the charge conference, the Lambas requested a jury charge on admissions, arguing Dr. Eaccarino made a factual admission. Roswell OB/GYN argued the charge was unwarranted because to the extent Dr. Eaccarino's testimony was akin to an admission of liability, it was a legal conclusion. The trial court denied the Lambas' request to charge the jury on admissions.

“An admission in open court is an admission in *judicio*; a judicial admission is conclusive.” *Rhone v. Bolden*, 270 Ga. App. 712, 715(2) (608 SE2d 22) (2004). Alleged admissions made in *judicio* may be read in context to determine their meaning. *Andrews v. Blue Ridge NH Assocs.*, 353 Ga. App. 75, 83(2)(b) (836 SE2d 197) (2019) (citation modified). Such admissions apply “only to statements of fact, not to opinions or legal conclusions.” *9766, LLC v. Dwarf House, Inc.*, 331 Ga. App. 287, 291(4)(a) (771 SE2d 1) (2015). Importantly, expressions of benevolence or sympathy do not fall

into the category of admissions of liability. *Steverson v. Eason*, 194 Ga. App. 273, 273-74(3) (390 SE2d 424) (1990).

When read in context, Dr. Eaccarino's testimony did not amount to an admission in judicio. Dr. Eaccarino testified in the same line of questioning, "it's not that simple. I can't answer that," and, "am I sorry this happened to ... [Arti] and her husband? I am." With this additional context, the trial court was authorized to conclude that his testimony was an expression of benevolence or sympathy rather than an admission of liability. See *Steverson*, 194 Ga. App. at 273-74(3) (finding no error in failing to give a jury charge on admissions after evidence was admitted that the defendant told the plaintiff he felt responsible for the death of plaintiff's husband). We therefore find no error in the trial court's refusal to give the requested charge.

(b) *Habit or Custom*. Over the Lambas' objection, the trial court instructed the jury as follows:

Where witnesses, including a physician or nurse, have no distinct and independent recollection of the care and treatment rendered to a particular patient, they may testify as to their own usual customs, habits, or course of practice in such situations that the treatment rendered in a given situation was in accordance with that custom.

The Lambas argue that it was error for the trial court to give this jury instruction as it is not a correct statement of the law because it was not based on Georgia's current evidence code.

The charge on habit or custom no longer appears in Georgia's suggested pattern jury instructions. Nevertheless, OCGA § 24-4-406, which governs the admissibility of habit or routine, provides: "Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with such habit or routine practice."

As noted by the Lambas, this rule governs the admissibility of such evidence, and they did not object at trial to Dr. Eaccarrino's testimony concerning his habit or routine practices. Further, the six-day trial consisted of very little evidence of Dr. Eaccarino's "habits" or "customs" that was unconnected to trial testimony or exhibits. Specifically, Dr. Eaccarino testified that after he left Arti's room around 6 p.m., he went to the high risk unit. Phone records showed that he then made a call to the unit where Arti was laboring at 6:10 p.m.; and, although he did not remember

details of the phone call, he opined that he probably would have called to check if he had been aware of an issue. He testified that he was not told about any concerns with the fetal heart rate at that time. Dr. Eaccarino provided additional testimony that attempted to explain any discrepancies between his notes and the nurses' notes and why certain actions would or would not have "made sense" given the context.

In contrast to these few instances of evidence of habit or routine, the jury heard extensive testimony from Dr. Eaccarino, defense experts, the Lambas' expert, and several medical personnel concerning the standard of care and whether the professionals involved in Arti's care adhered to that standard. Further, the trial court's instructions set forth a proper recitation of the law on the standard of care that applied to the professional healthcare providers in this case. When viewed in their entirety, the trial court's jury instructions gave a full and correct statement of the law regarding the standard of care and were not confusing given the record in this case. The Lambas have therefore failed to demonstrate that the trial court abused its discretion in giving the instruction or that they were harmed by it. See *West v. Breast Care Specialists*, 290 Ga. App. 521, 522(1) (659 SE2d 895) (2008).

(c) *Presumption of Due Care.*

Again, over objection, the trial court instructed the jury on the presumption of due care for medical providers:

The presumption in [medical malpractice] cases is that the services were performed in an ordinarily skillful manner, the person claiming an injury may overcome this legal presumption by introducing evidence that the physician, or other medical professionals, did not treat the patient in an ordinarily skillful manner. Expert testimony is required to overcome a presumption, and the burden is on the one claiming injury to show a lack of due care and skill by a preponderance of the evidence.

The Lambas argue that because the 2013 evidence code is silent on this presumption, the charge should not have been given. However, in 2018, the Supreme Court of Georgia reiterated that “[i]n order to prove medical malpractice, a plaintiff generally must present testimony from an expert witness to overcome the presumption that the provider acted with due care and establish the provider’s negligence.” *SE Pain Specialists, P.C. v. Brown*, 303 Ga. 265, 271(2)(a) (811 SE2d 360) (2018) (holding a jury charge on ordinary negligence was harmful because it “invited jurors to decide the liability of the defendants without consideration of the strictures on claims for professional malpractice, such as the need for expert testimony to overcome the presumption of due care,” citing *Beach v. Lipham*, 276 Ga. 302, 304(1)

(578 SE2d 402) (2003)). It follows that there was no error in the given charge, which was required by and in compliance with the law.

For the reasons set forth above, we affirm the trial court's denial of the Lambas' motion for new trial.

Judgment affirmed. Pipkin, J., concurs. Gobeil, J., concurs in Divisions 2 and 3 and in judgment only as to Division 1.