

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

<p>Michael Davis and Kimberly Davis,</p> <p style="text-align: center;">Plaintiffs,</p> <p>v.</p> <p>Mercy Medical Center d/b/a CHI St. Alexius Health Williston; and Cherise Norby, N.P., and David Keene, M.D.,</p> <p style="text-align: center;">Defendants,</p>	<p>Supreme Court No. _____</p> <p>Civil No. 53-2019-CV-00589</p> <p style="text-align: center;">Notice of Appeal</p>
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[1] PLEASE TAKE NOTICE that Defendants Mercy Medical Center d/b/a CHI St. Alexius Health Willison and David Keene, M.D., in the above-entitled matter, appeal to the North Dakota Supreme Court from the following judgment and orders:

- (1) The order entered by Judge Benjamin J. Johnson on August 30, 2022, denying Defendants Mercy Medical Center d/b/a CHI St. Alexius Health Williston and David Keene, M.D.'s motion for judgment as a matter of law under North Dakota Rule of Civil Procedure 50(b), (Index #458), with notice of entry of the order served on September 6, 2022, (Index #459-460);
- (2) The order entered by Judge Benjamin J. Johnson on June 9, 2022, denying Defendants Mercy Medical Center d/b/a CHI St. Alexius Health Williston and David Keene, M.D.'s objection to the jury verdict and to Plaintiffs' costs, (Index #391);
- (3) The amended final judgment entered by Judge Benjamin J. Johnson on May 23, 2022, resolving all outstanding issues raised by the parties in this matter, (Index #386), with notice of entry of the amended judgment served on May 24, 2022, (Index #387);
- (4) The order for judgment and judgment on a jury verdict entered by Judge Benjamin J. Johnson on May 18, 2022, (Index #376, 378), with notice of entry of the judgment served on May 19, 2022, (Index #381).

Preliminary Statement of Issues

[2] This appeal arises out of a medical negligence action brought in district court in Williams County, North Dakota. After a preliminary review of the record, Defendants Mercy Medical Center d/b/a CHI St. Alexius Health Williston and David Keene, M.D., intend to raise the following issues on appeal:

1. Did the district court err when it denied Defendants' motion that they were entitled to judgment as a matter of law because Plaintiffs failed to present sufficient expert testimony on the issue of causation?

2. Did the district court err when it denied Defendants' motion for judgment as a matter of law on the issue of future economic damages because Plaintiffs' experts' opinions lacked factual foundation and failed to differentiate future expenses required as a result of Plaintiff Michael Davis's incurable disease versus the care he would need as a result of Defendant David Keene, M.D.'s alleged negligence?

3. Did the district court err when it denied Defendants' motion to reduce the verdict amount because the evidence did not support the jury's past-economic-damages award and proper foundation was not established?

4. Did the district court err when it included a separate line item on the verdict for Plaintiff Kim Davis's alleged loss-of-consortium damages when it is not a separate and independent claim but an element of Plaintiff Michael Davis's alleged damages arising out of his primary medical negligence claim?

5. Did the district court err when it granted Plaintiffs' costs in their entirety with no reductions pursuant to Defendants' objections and disregarded that there was no single prevailing party?

[3] Dated this 4th day of November, 2022.

/s/ Tracy Vigness Kolb

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Supreme Court No. _____

Civil No. 53-2019-CV-00589

Certificate of Service

STATE OF NORTH DAKOTA

COUNTY OF WILLIAMS

I hereby certify that on November 4, 2022 the following documents:

**Notice of Appeal
Order for Transcript**

were filed electronically by email with the Clerk of Court - supclerkofcourt@ndcourts.gov and
filed electronically by email on the following:

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I further certify that a copy of these documents will be served under N.D.R.Civ.P.5(b)(3) on the
following persons who are exempt from electronic service by email:

None

Dated this 4th day of November, 2022.

/s/ Tracy Vigness Kolb

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