STATE OF SOUTH CAROLINA COUNTY OF YORK	IN THE COURT OF COMMON PLEAS FOR THE SIXTEENTH JUDICIAL CIRCUIT
Angela Patton, as Next Friend of Alexia, Lumpkin, a minor, Plaintiff, vs. Gregory A. Miller, MD, Rock Hill Gynecological & Obstetrical Associates, P.A., Defendants.	Case No. 2009-CP-46-05195 POST TRIAL ORDER AND JUDGMENT

This matter comes before the Court by the way of the Defendant's Motion for a New Trial, and in the alternative, Motion to Reduce the Non-economic Damages awarded by the jury along with the Plaintiff's Motion to Recover Interest, Administrative, Filing, and Other Court Costs pursuant to Rule 68, SCRCP. The Defendant's Motions for a New Trial and a Reduction of Non-economic Damages are DENIED. Plaintiff's request for interest pursuant to her Offer of Judgment is GRANTED, and judgment is entered accordingly.

In the Court's view no prejudicial errors were committed during trial as a matter of fundamental fairness to justify granting a new trial. *See Ex parte Kent*, 379 S.C. 633, 640-41, 666 S.E.2d 921, 925 (Ct. App. 2008) (citing *Howard v. State Farm Mut. Auto. Ins. Co*., 316 S.C. 445, 449, 450 S.E.2d 582, 584-85 (1994)).

First, the Court ruled that the Emergency Medical and Obstetrical Care Exception in S.C. Code § 15-32-230 was an affirmative defense in which the Defendant should have amended the pleadings prior to trial. Under S.C. Rule of Civil Procedure 15 (b), "the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the

merits." Here, the Court did not allow the pleading to be amended during trial after the Plaintiff rested because the Court ruled that the Plaintiff would be prejudiced by this amendment which would have changed the Plaintiff's necessary proof to prevail from simple negligence to gross negligence. The Court ruled that altering what the Plaintiff would need to prove to recover, after she had rested her case, would have been unfairly prejudicial. This is especially so when the request was made during the second week of trial in a case which has been pending for more than twelve years.

The Defendant cites *Lee v. Bunch*, 373 S.C. 654 (2007) for the proposition that the motion to amend should have been granted. That case actually favors Plaintiff. In *Lee*, our Supreme Court wrote: "The prejudice that would warrant denial of a motion to amend the pleadings is a lack of notice that a new issue is to be tried and a lack of opportunity to refute it. . . Prejudice occurs when the amendment states a new defense which would require the opposing party to introduce additional or different evidence to prevail in the amended action" (internal citation omitted). In this case there is a both a "lack of opportunity to refute" the defense, because the motion was made after the close of Plaintiff's case, and the motion to amend also would also require "additional or different evidence" because the Plaintiff would have to have expert testimony of gross negligence. Prejudice is clear under the *Lee* analysis.

Second, the denial of Defendants' motion to exclude the expert causation opinion of Dr. Armenta was not a legal error. Even though Dr. Armenta was first formally disclosed as a causation expert less than 30 days prior to trial, the Defense was aware of this witness as a possible damages expert and was aware of other causation experts which they were prepared to cross-examine. In the Court's view allowing Dr. Armenta to testify on causation did not

prejudice the Defendants. Further, even if it was error to allow Dr. Armenta to testify on causation, this testimony was cumulative to other testimony and does not warrant a new trial.

Third, the Court did not commit reversible legal error by permitting Dr. Resnik to physically examine the minor plaintiff in the jury's presence. The Court ruled that probative value of the examination was not substantially outweighed by the danger of unfair prejudice. *See* Rule 403. Consequently, the testimony and examination were allowed at trial.

Lastly, the Court's failure to recuse his Honor over this trial because the Court previously represented plaintiffs in medical malpractice cases at McGowan, Hood and Felder in Rock Hill[1], SC, the use of "safety rules" as references to the standard of care, the cumulative error doctrine, and the thirteenth juror doctrine are not grounds for a new trial.

The Defendant's Motions for a Reduction of Non-economic Damages based on the statutory caps is DENIED. SC Code 15-32-210(5) defines "health care provider" and "health care institution." Both defendants fall within the definition of "health care provider," which makes no distinction between providers who are directly liable and those whose liability is vicarious.

The non-economic damages cap of SC Code 15-32-220(C) provides:

> In an action on a medical malpractice claim when final judgment is rendered against more than one health care institution, or more than one health care provider, or any combination thereof, the limit of civil liability for noneconomic damages for each health care institution and each health care provider is limited to an amount not to exceed three hundred fifty thousand dollars for each claimant, and the limit of civil liability for noneconomic damages for all health care institutions and health care providers is limited to an amount not to exceed one million fifty thousand dollars for each claimant…

[1] The Court notes its last day as an attorney with McGowan, Hood & Felder was in October of 2016, more than five years ago, and in any case, that firm had no involvement at all in the matter before the Court.

(emphasis added). Pursuant to SC Code 15-32-210(5), both Dr. Miller and his practice are "health care providers," and therefore the cap is doubled. The fact that liability for the practice is vicarious is not mentioned in the statute as a factor to be considered and is immaterial. Pursuant to SC Code 15-32-220(F), the published inflation-adjusted cap in effect when the verdict was rendered in this case was $479,064 per "health care provider", or $958,128 for two defendants. As the non-economic damage award after setoff was $950,000, the cap has no bearing on the judgment in this matter.

Plaintiff sent a Rule 68 Offer of Judgment for $1,000,000 which was filed on October 4, 2011. Giving the defendant the maximum possible five days for service, interest began accruing on October 11, 2010. Interest has therefore accrued on the verdict for eleven years and 143 days at 8% per annum. Interest on the verdict is $196,000 per year and $536.99 per day, for a total interest sum of $2,232,789.57. The Court finds no support in South Carolina law for Defendant's argument that the filing of an amended complaint nullified the offer of judgment.

Judgment is therefore entered for the Plaintiff, and against Defendants Gregory A. Miller, MD, Rock Hill Gynecological & Obstetrical Associates, P.A. in the amount of: $4,682,789.57.

IT IS SO ORDERED.

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The Honorable William A. McKinnon
Resident Circuit Judge

York, South Carolina
March ___, 2022

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF York
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2009 **CP**-46-05195

Angela Patton, as next friend of Alexia Lumpkin, a minor	Gregory A. Miller, MD and Rock Hill Gynecological & Obstetrical Associates, P.A.
PLAINTIFF(S)	DEFENDANT(S)

Submitted by: The Court	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☒ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : Judgment is joint and several against both Defendants

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	**Judgment Against (List name(s) below)**	**Judgment Amount To be Enrolled (List amount(s) below)**
Angela Patton, as next friend of Alexia Lumpkin, a minor	Gregory A. Miller, MD and Rock Hill Gynecological & Obstetrical Associates, P.A.	$4,682,789.57
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

/s William A. McKinnon	2761	March 3, 2022
Circuit Court Judge	**Judge Code**	**Date**

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)	**ATTORNEY(S) FOR THE DEFENDANT(S)**

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE

(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.

2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

   The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).

4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.

5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.

6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.

7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.

8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.

10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.

11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.

12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.

13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.

14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

York Common Pleas

Case Caption: Angela Patton VS Gregory A Miller , defendant, et al

Case Number: 2009CP4605195

Type: Order/Other

So Ordered

/s William A. McKinnon, #2761, Circuit Judge