

**RECEIVED**

**Aug 15 2023**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM ORANGEBURG COUNTY COURT OF COMMON PLEAS

Honorable Edgar W. Dickson, Circuit Court Judge

---

Appellate Case No. 2019-001921

---

Tekayah Hamilton, individually and as parent and guardian ad litem for Robert Lee Middleton,  
Jr., a minor child under the age of eighteen,.. Respondent

v.

The Regional Medical Center, .....Appellant

---

PETITION FOR REHEARING

---

Michael C. Tanner  
Morgan R. Long  
Post Office Box 1061  
Bamberg, South Carolina 29003  
(803) 245-9153  
Attorney for Appellant

The Appellant, The Regional Medical Center, by and way through its attorney of record, petitions this Court for a rehearing pursuant to South Carolina Rules of Appellate Court Procedure 221. Counsel received the Opinion on August 2, 2023.

## ARGUMENT

### **I. The Court's Opinion overlooked and/or misapprehended the issue as to the qualification of Respondent's expert Monica Stobbs.**

Appellant respectfully asserts the Court of Appeals misapprehended the issue surrounding Respondent's expert. Appellant had three issues with the qualification of Respondent's expert Monica Stobbs: First, this case was about pediatrics, not general nursing or adult IV management, and therefore it was an abuse of discretion to allow expert testimony from a general nurse. Second, Monica Stobbs failed to meet the requirements of the South Carolina Rules of Evidence 702 and *Gooding*. Therefore, she should not have been allowed to testify to pediatric nursing and pediatric IV administration and care, and allowing her to do so amounted to an abuse of discretion. And third, it was abuse of discretion to allow Monica Stobbs to testify to pediatric nursing, as that exceeded her scope of expert qualification, which was for general nursing, not pediatric nursing.

"An abuse of discretion occurs when there is an error of law or a factual conclusion which is without evidentiary support." *Gooding*, 326 S.C. at 252 (citing *Lee v. Suess*, 318 S.C. 283, 457 S.E.2d 344 (1995)); *Fields*, 363 S.C. at 26. "A trial court's ruling on the admissibility of an expert's testimony constitutes an abuse of discretion when the ruling is manifestly arbitrary, unreasonable, or unfair." *Fields*, 363 S.C. at 26 (citing *Means v. Gates*, 348 S.C. 161, 166, 558 S.E.2d 921, 924 (2001)). "To warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice, i.e., that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or the lack thereof." *Fields*, 363 S.C. at 26 (citations omitted).

The error of the ruling, again, was that this case is about pediatric nursing, not general nursing or “Nursing 101,” and there is a clear distinction between the two. In its Opinion, the Appellate Court notes that Ms. Stobbs testified there were no differences between IV management for pediatric and adults. Yet, Ms. Stobbs was not qualified to testify to that as she has no experience in pediatric nursing or pediatric IV management. Furthermore, medical literature indicates to the contrary, that there *is* a clear distinction between IV administration and management for pediatrics and adults.<sup>1</sup> Veins in infants are “obviously smaller” and can be “threadlike.”<sup>2</sup> Trial Tr. 105:3-13, Mar. 17 2019. “Vein fragility and the high acuity levels of young patients can increase the likelihood of infiltration and extravasation, resulting in significant morbidity.” *Id.* at 129:19-130:1. In addition, testimony from Appellant's expert and Nurse Downing, both of whom have *extensive* experience in pediatric nursing and IV administration (Trial Tr. 298:8-299:1, 323:10-324:21, 350:15-19, Mar. 17, 2019), revealed distinct differences between pediatrics and adult IV management (Trial Tr. 266:11-25, 331:11-332:24, Mar. 17, 2019). Pediatrics are smaller, more fragile, and more mobile and therefore need to be more frequently assessed, whereas adults are more stable, have bigger veins, and thus, nurses are able to use larger catheters. *Id.* Because there is a *clear* distinction in pediatrics and adult IV care and the issue here was pediatrics, it was manifestly arbitrary, unfair, and

---

<sup>1</sup>The Infusion Nurses Society: Infusion Therapy in Clinical Practice, 2nd. eds Hankins J, Lonsway RA, Hendrick C and Perdue MB. Saunders, St. Louis, MO 2001, 561 “Children present a wide variety of physical characteristics different from those in adults. In addition, premature infants and newborns vary greatly from older children in their anatomy and physiology. These characteristics affect the ability of neonates and infants to cope with environmental stress and to manage the metabolism, absorption, distribution, and excretion of medications and solutions. Although body systems in infants and children are different from those in adults, for the purpose of this text, only those related to infusion therapy are addressed in detail.”

<sup>2</sup> *Id.* at 562 “The size of venous and arterial vessels in the infant and child are obviously smaller than those in the adult. Although the vessels are anatomically positioned in the same locations throughout life, their sometimes-threadlike characteristics and tendency to hide make them difficult to locate in the young patient.”

unreasonable, and thus, an abuse of discretion, to qualify and allow the testimony of Ms.

Stobbs, a general nurse with no experience or background in pediatric nursing or pediatric IV administration or management. This clear distinction is why we have children's hospitals in this state and why we have the speciality of pediatrics.

Moreover, qualifying and allowing the testimony from Ms. Stobbs was in contradiction to South Carolina Rule of Evidence 702 and *Gooding*. In order to be qualified as an expert witness, a person must have the "knowledge, skill, experience, training or education" in order to testify. Rule 702, SCRE. "To be competent to testify as an expert, 'a witness must have acquired by reason of study or experience or both such knowledge and skill in a profession or science that he is better qualified than the jury to form an opinion on the particular subject matter.'" *Gooding*, 326 S.C. at 253, 487 S.E.2d at 598 (quoting *O'Tuel v. Villani*, 318 S.C. 24, 28, 455 S.E.2d 698, 701 (Ct. App. 1995); see, e.g., *State v. Douglas*, 367 S.C. 498, 508-509, 626 S.E.2d 59 (Ct. App. 2006); *Botehlo v. Bycura*, 282 S.C. 578, 586, 320 S.E.2d 59, 65 (Ct. App. 1984).

Ms. Stobbs only has experience in general, adult IV administration. Trial Tr. 77:11, 77:19-20, 78:25-79:20, Mar. 17, 2019; see also Trial Tr. 8:13-17, 8:20-25, 9:1-9, 9:13-19, Dec. 22, 2020; Def's Mot. *in lim.* to Exclude Monica Stobbs Testimony. The issue is not whether Ms. Stobbs is a specialist in pediatric nursing or may have a defect in quality or amount of education or experience with regards to pediatric nursing. Rather, much like *Botehlo*, the issue is whether Nurse Stobbs possessed *any* of the required knowledge or experience. Similar to the orthopedic surgeon in *Botehlo*, Ms. Stobbs has had no personal experience or training at all in pediatric nursing or IV administration. Trial Tr. 103:14-104:8, 108:22-110:21, Mar. 17, 2019. Ms. Stobbs has never cared for a pediatric patient and has never started or managed a pediatric IV. *Id.* at 79:24-25, 108:22-110:21; Stobbs Dep. 13:9-24. Additionally, Ms. Stobbs does not have any education or knowledge as to pediatric nursing or IV administration. Ms. Stobbs testified that she did not perform any research, independent study, or review any medical literature in

preparation of formulating her opinions. Trial Tr. 111:14-23, Mar. 17, 2019; Stobbs Dep. 26:15-24.

Ms. Stobbs proved her lack of knowledge and expertise by making baseless and inaccurate claims and testifying directly contradictory to the literature. Ms. Stobbs' opinion is premised on her belief that the standard of care for IV management is the same for pediatric patients as it is for adults. Trial Tr. 80:1-6, 111:22-112:1. Mar. 17, 2019; Stobbs Dep. 13:13-18. Her opinions are based on the speculative belief that pediatric patients are simply little adults. In her deposition, Ms. Stobbs stated, "[t]aking care of an IV is an IV whether it's a baby or an adult." Stobbs Dep.13:15-16. During trial she testified, "Management of an IV is the same whether it's in a baby or an adult in terms of the safety practices." Trial Tr. 111:22-23, Mar. 17, 2019. She believes the standard of care for both pediatrics and adults is "simple nursing 101." *Id.* at 96:20-97:4; Stobbs Dep. 26:17. Although she acknowledged that the literature indicates children have a wide variety of physical characteristics that differ from adults, including smaller, "obviously threadlike" veins, it is her opinion that a "vein is a vein." Trial Tr. 104:20-105:23, 126:1-127:13, 128:1-5, Mar. 17, 2019. She also testified that she disagreed with literature provided by Respondent that stated "[l]arger amounts of subcutaneous fat in children can make the identification of an early infiltration difficult;"<sup>3</sup> however, she admitted she had no literature with her to support her opinion. *Id.* at 130:10-131:25.

Ms. Stobbs further proved her lack of knowledge concerning pediatric IV administration when she testified that she "should get blood return from a vein whether it's a baby or whether it's an adult." Stobbs Dep. 32:24-33:7. Trial Tr. 80:12-81:24, 82:25-84:23, 96:20-97:4, Mar. 17, 2019. This is directly contrary to the literature.<sup>4</sup> Trial Tr. 104:16-106:2, 351:7-14, Mar. 17, 2019.

---

<sup>3</sup> The Infusion Nurses Society, *supra*

<sup>4</sup> *Id.* at 422 "Checking for a blood return, or backflow of blood, is not a reliable method for determining the absence of an infiltration. A blood return may not be

Although Ms. Stobbs has obtained blood returns in adult patients, she has never attempted to obtain one in a pediatric, and therefore, she does not know what it could do to a pediatric vein. Trial Tr., 134:20-135:8, Mar. 17, 2019. On the contrary, Appellant's expert and Nurse Downing both testified that trying to obtain a blood return in a pediatric is inappropriate because it could cause the vein to collapse or result in a false reading. Trial Tr. 271:8-21, 347:20-25-349:14, Mar. 17, 2019.

Again, the qualification of Ms. Stobbs and allowance of her expert testimony is not a matter of “weight of the evidence” but rather a complete failure to meet the requirements of SCRE 702 and *Gooding*. The sole purpose of an expert is to educate a jury on the subject matter of his or her expertise, and that is impossible to do without prior experience or study. Without proper education, training, or experience regarding pediatric administration and management, Ms. Stobbs was not more qualified than the jury to form an opinion as to the same. Therefore, Appellant asserts it was arbitrary, unfair, and unreasonable, thus an abuse of discretion, to permit Ms. Stobbs to testify as to the standard of care for pediatric IV administration and administration.

## **II. The Court’s Opinion overlooked and/or misapprehended the issue as to Respondent Tekayah Hamilton's verdict.**

The jury awarded Respondent Tekayah Hamilton, mother of the minor Respondent, \$135,477.00. Appellant argued that Respondent Tekayah Hamilton's verdict was grossly or, at the very least, merely excessive as she was only entitled to past and future medical costs, which totaled \$20,854.00. Trial Tr. 412:24-413:12; Def.'s Post Trial Mot. for Reduction to Statutory Cap. *See, Patton v. Miller*, 420 S.C. 471, 804 S.E.2d 252 (2017) (a parent is the proper party in

---

present when small veins are used because they may not permit blood flow around the cannula; one may think the infusion has infiltrated when it has not.”

interest with respect to past and future medical expenses while the child is a minor); *Wright v. Colleton Cnty. Sch. Dist.*, 301 S.C. 282, 289-90, 391 S.E.2d 564 (1990) (finding that a parent may recover medical expenses separately from the child's claim). Respondent Tekayah Hamilton testified she has no plans for surgery (*Id.* at 170:3-4) or steroid injections (157:2-22), and the only evidence of actual damages, past and future medical expenses, were in the amount of \$20,854 (412:24-413:12). She was not entitled to any damages for pain and suffering. Therefore, the verdict rendered by the jury for Respondent Tekayah Hamilton in the amount of \$135,477.00, which was \$114,623 more than the actual damages, was grossly excessive or, at the very least, merely excessive as compared to the evidence presented at trial. Thus, Appellant argued that a new trial absolute, or in the alternative, a new trial nisi, should be granted.

Although the Court's Opinion makes note of Appellant's argument as to the excessive verdict for Respondent Tekayah Hamilton (Opinion pp. 19-20), the Court's ruling does not address the specific issues Appellant raised with regards to the verdict awarded for Respondent Hamilton. Specifically, the Court does not address the issue that 1) Respondent Hamilton's actual damages, both past and future, were only in the amount \$20,854; 2) Hamilton testified she has no plans for surgery or steroid injections; 3) Hamilton was not entitled to pain and suffering; and yet, 4) Hamilton was awarded \$135,477.00.

"An abuse of discretion occurs if the trial court's findings are wholly unsupported by the evidence or the conclusions reached are controlled by an error of law." *Welch*, 342 S.C. at 302 (citing *Krepps v. Ausen*, 324 S.C. 597, 479 S.E.2d 290 (Ct.App.1996)); *see, e.g., Stevens v. Allen*, 336 S.C. 439, 446, 520 S.E.2d 625 (Ct. App. 1999). "The trial court must set aside a verdict only when it is shockingly disproportionate to the injuries suffered and thus indicates that passion, caprice, prejudice, or other considerations not reflected by the evidence affected the amount awarded. In other words, to warrant a new trial absolute, the verdict reached must be so 'grossly excessive' as to clearly indicate the influence of an improper motive on the jury." *Welch*,

342 S.C. at 302 (citations omitted). *see, e.g., Stevens*, 336 S.C. at 447; *Duncan v. Hampton Cnt. Sch. Dist. No. 2*, 235 S.C. 535, 517 S.E.2d 449, 455 (Ct. App. 1990); *Sullivan v. Davis*, 317 S.C. 462, 467, 454 S.E.2d 907, 912 (Ct. App. 1995); *Zorn v. Crawford*, 252 S.C. 127, 138, 165 S.E.2d 640, 646 (1969). "If the amount of the verdict is grossly excessive so as to be the result of passion, caprice, prejudice or some other influence outside the evidence, the trial judge must grant a new trial absolute, not a new trial *nisi remittitur*." *Welch*, 342 S.C. at 303 (citing *O'Neal v. Bowles*, 314 S.C. 525, 431 S.E.2d 555 (1993)).

Again, Respondent Hamilton, if entitled to any verdict, was *only* entitled to actual damages, not pain and suffering, and the only evidence of actual damages, both past and future, presented to the jury were in the amount of \$20,854. However, the jury awarded Ms. Hamilton \$135,477.00, which is \$114,623 more than her actual damages. The verdict, therefore, is *clearly* grossly excessive, shockingly disproportionate, and wholly unsupported by and contradictory to the evidence presented at trial. The jury *must* have been moved by passion or prejudice. *See, Beasley v. Ford Motor Co.*, 237 S.C. 506, 513, 117 S.E.2d 863, 867 (1961) (The term "passion and prejudice" does not "necessarily imply bad faith, wrongful purpose, or moral delinquency," but rather, results when the award is "against the overwhelming weight of the evidence."); *Nelson v. Charleston W.C. Ry. Co.*, 231 S.C. 351, 362, 98 S.E.2d 798, 802 (S.C. 1957) (the existence of passion and prejudice could be established either by the size of the verdict alone or by comparing the amount of the verdict with the evidence before the trial court); *Smalls v. Springs Indus., Inc.* 292 S.C. 481, 486, 357 S.E.2d 452, 455 (1987) (size of verdict alone to establish passion or prejudice); *see*, 15 Am. Jur., *Damages* § 205, p. 623. There is no authority for her being awarded more than her actual damages.

Moreover, the verdict for Respondent Hamilton is "without any rational support whatever in the evidence and is so grossly excessive as to show that the jury was actuated by considerations not founded on the evidence and/or the instructions of the court." *Joyner v. St.*

*Matthews Builders*, 263 S.C. 136, 140-41, 208 S.E.2d 48, 50 (1974) (granting a new trial due to the "actual damages" being so manifestly and grossly excessive"). Given the complete lack of any cognizable basis to support the damages award, it is clear that in awarding these amounts, the jury did not pay attention to the jury instructions. "[I]t is fundamental that a jury must abide by the judge's charge, be it right or wrong. Where the jury renders a verdict in disregard of his charge, it is error for the judge not to grant a new trial upon motion." *Southeastern Mobile Homes Inc., v. Walicki*, 282 S.C. 298, 302, 317 S.E.2d 773 (Ct. App. 1984). Appellant is left to conclude that, in light of the excessive verdict as compared to the evidence of actual damages, the jury arrived at its award as a result of passion, caprice, or other improper motives. Therefore, it was an abuse of discretion for the Trial Court not to grant Appellant's motion for a new trial absolute based on the grossly excessive verdict.

In the alternative, at the very least, the verdict, which again was \$114,623.00 more than Ms. Hamilton's actual damages, should be considered excessive. The verdict for Ms. Hamilton was, at minimum, "unduly liberal," and "when the verdict indicates the jury was unduly liberal in determining damages, the trial court alone has the power to reduce the verdict by the granting of a new trial *nisi remittitur*." *Welch*, 342 S.C. at 303; *see, e.g., RRR, Inc v. Toggas*, 378 S.C. 174, 183, 662 S.E.2d 438 (Ct. App. 2008); *Howard v. Roberson*, 376 S.C. 143, 154, 654 S.E.2d 877 (Ct. App. 2007); *Becker v. Walmart Stores, Inc.*, 339 S.C. 629, 636, 529 S.E.2d 758 (Ct. App. 2000). All that could be awarded to Respondent Hamilton was actual damages, and when evaluating the adequacy of the verdict (\$135,477.00) in light of the evidence presented (\$20,854.00 actual damages), the verdict, at a bare minimum, was merely excessive and unduly liberal, and thus a new trial *nisi*, should have been granted in absence of a new trial absolute. *See, Welch*, 342 S.C. at 303 (citing *Waring v. Johnson*, 341 S.C. 248, 533 S.E.2d 906 (Ct.App.2000) ("In considering a motion for new trial *nisi*, the trial court must evaluate the adequacy of the verdict in light of the evidence presented.")).

Thus, given that the verdict for Respondent Hamilton was wholly unsupported by the facts and she is limited by law to actual damages, a new trial absolute or in the alternative a new trial nisi should have been granted. The Court failed to address this issue and make a specific ruling as to this specific issue on appeal.

CONCLUSION

For the reasons stated, the Appellant respectfully requests the Appellate Court grant its Petition for Rehearing as to these issues.

Respectfully submitted,

August 15, 2023

/s/ Michael C. Tanner

Michael C. Tanner  
Morgan R. Long  
Post Office Box 1061  
Bamberg, South Carolina 29003  
(803) 245-9153  
Attorney for Appellant

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY COURT OF COMMON PLEAS

Honorable Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2019-001921

Tekayah Hamilton, individually and as parent and guardian ad litem for Robert Lee Middleton, Jr., a minor child under the age of eighteen,.. Respondent

v.

The Regional Medical Center, .....Appellant

CERTIFICATE OF SERVICE

I certify that I have served the Petition for Rehearing, by depositing a copy of it in the United States Mail, with postage prepaid, and via email on August 15, 2023, addressed to the attorneys of record, Jonathan F. Krell, Esquire, Post Office Box 299, Charleston, S.C., 29402, and David R. Williams, Esquire, and Virginia W. Williams, Esquire, Post Office Box 1084, Orangeburg, S.C. 29116, and Kathleen Chewing Barnes, Esquire, Post Office Box 897, Hampton, S.C. 29924.

August 15 ,2023

S/ Michael C. Tanner

Michael C. Tanner  
Morgan R. Long  
Post Office Box 1061  
Bamberg, South Carolina 29003  
(803) 245-9153  
Attorneys for Appellant

MICHAEL C. TANNER, L. L. C.  
ATTORNEYS AT LAW  
Post Office Box 1061  
392 Second Street  
Bamberg, South Carolina  
29003  
803-245-9153  
Fax: 844-269-8808

Michael C. Tanner

Morgan R. Long\*  
Emre Ersoy

Of Counsel\*

**RECEIVED**  
**Aug 15 2023**  
**SC Court of Appeals**

August 15, 2023

(Via U. S. Mail and e-mail [ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org))

Jenny Abbott Kitchings  
Clerk of Court - Court of Appeals  
1220 Senate St.  
Columbia, S.C. 29201

RE: Tekayah Hamilton, individually and as parent and guardian ad litem for Robert Lee Middleton, Jr., a minor child under the age of eighteen v. The Regional Medical Center  
Case No.: 2015-CP-38-01234  
Appellate Case No.: 2019-001921

Dear Ms. Kitchings:

Enclosed, please find one original Petition for Rehearing in the above-referenced matter. Kindly return a clocked and filed copy to me via e-mail.

Please note I will separately mail an additional hard copy along with the filing fee of \$50.00 for the Petition. I am serving all counsel of record via U.S. mail and electronic mail as set forth herein.

Yours Truly,



Michael C. Tanner

MCT/

cc:

Jonathan F. Krell, Esquire (via e-mail [jonathan@uricchio.com](mailto:jonathan@uricchio.com))  
David Williams, Esquire (via e-mail [david@williamsattys.com](mailto:david@williamsattys.com)  
and [williamsdr@williamsattys.com](mailto:williamsdr@williamsattys.com))  
Kathleen Chewning Barnes, Esquire (via e-mail [kbarnes@barneslawfirmssc.com](mailto:kbarnes@barneslawfirmssc.com))  
Virginia W. Williams, Esquire (via email [ginny@williamsattys.com](mailto:ginny@williamsattys.com))  
Morgan R. Long, Esquire (via email [morgan.tannerlaw@gmail.com](mailto:morgan.tannerlaw@gmail.com))