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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

Case No. 2016-CP-40-04463
Appellate Case No. 2023-000556

Jean Watkins, as Personal Representative of the Estate of Mildred Watkins, Respondent,

v.

Sterling Healthcare, Inc., Country Wood Nursing Center, LLC, and Guardian Resources, LLC, Appellants.

FINAL BRIEF OF APPELLANTS

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STATEMENT OF ISSUES ON APPEAL

I. Whether the trial court's reliance on hearsay evidence and lay witness opinion testimony in awarding punitive damages constitutes an abuse of discretion?

II. Whether the trial court's punitive damages award was improper and contrary to law?

III. Whether the trial court erred as a matter of law in ruling that the statutory caps set forth in S.C. Code App. § 15-32-530 do not apply in this case?

IV. Whether the trial court's order compelling the disclosure of information related to insurance and assets was improper and contrary to law?

STATEMENT OF THE CASE

This is a medical malpractice case stemming from the residency of the decedent, Mildred Watkins, at the Country Wood Nursing Center. Respondent originally filed wrongful death and survival claims against Appellants in early 2014 following the decedent's death.[1] The case was voluntarily dismissed by a joint consent order under Rule 40(j), SCRCP.[2] The case was then reinstated[3] and, following reinstatement, a hearing was held on Respondent's previously filed Motion to Compel discovery.[4] Following the hearing, and Appellants' subsequent supplemental responses, a Rule to Show Cause hearing was held wherein Judge Alison Lee sanctioned Appellants and struck their Answers and responsive pleadings.[5] An appeal to the South Carolina Court of Appeals followed in Appellate Case No. 2018-000924, which affirmed Judge Lee's ruling.[6] Thereafter, a hearing related to damages was held before the Honorable Frank R. Addy, Jr. on November 10, 2022.[7] At the conclusion of the hearing, counsel for Respondent asked the trial court for a total award of seven million dollars, which included punitive damages.[8]

On January 31, 2023, Judge Addy issued two orders; one awarding damages to Respondent[9], and one compelling Appellants to produce information related to their

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[1] *See* R. p. 79.
[2] *See* R. p. 7.
[3] *See* R. p. 11.
[4] *See* R. p. 42.
[5] *See* R. p. 25; *see also* R. p. 28.
[6] *See* R. p. 806; *see also Watkins v. Sterling Healthcare*, 2021 S.C. App. Unpub. LEXIS 383, at *2 (Ct. App. 2021); R. p. 38–40.
[7] *See* R. p. 44.
[8] R. p. 328, lines 8–14.
[9] R. pp. 41–69.

insurance and assets, as well as the assets of their owners, members and shareholders.[10] Judge Addy ruled that the Respondent had proven by clear and convincing evidence that she was entitled to punitive damages and that the evidence was clear and convincing that Appellants had an intent to harm and did, in fact, harm the Respondent such that the statutory caps on punitive damages in S.C. Code Ann. § 15-32-530 did not apply to this case.[11] Thus, as it related to Respondent's Survival Action, Judge Addy awarded Respondent $398,270.32 in economic damages[12], $2,389,621.92 in non-economic damages[13], and $16,727,353.44 in punitive damages[14]. As it related to Respondent's Wrongful Death action, Judge Addy awarded a total of $7,500,000.00 in compensatory damages[15] and $2,500,000.00 in punitive damages[16]. The total amount of the award to Respondents in economic, non-economic, compensatory, and punitive damages was $29,515,245.68.[17]

Appellants served their timely Notice of Appeal on April 5, 2023.[18]

[10] R. pp. 70–72.
[11] R. p. 67.
[12] R. p. 57.
[13] R. p. 58.
[14] R. p. 61.
[15] R. p. 63.
[16] R. p. 65.
[17] R. p. 69.
[18] R. p. 1197.

FACTS

In late 2010, the decedent, Mildred Watkins, suffered from a GI bleed which required surgery.[19] At the time of this illness, the decedent was living in the family home with her husband, grandson, and daughter, Respondent Jean Watkins.[20] While the decedent could generally care for herself, her overall health was such that Respondent quit her job and moved in with the decedent and her husband to provide round-the-clock care for them.[21] The decedent's significant health issues led to Respondent and the family to place her first in a rehabilitation and nursing facility called Heartland,[22] then later in Country Wood Nursing Home in March of 2011.[23]

When she was admitted to Country Wood, medical records show that the decedent suffered from chronic anemia, COPD, head injury, diverticulosis, dementia, hyperthyroidism, deep vein thrombosis, hypertension, atrial fibula, GERD, dysphagia, and end-stage renal disease.[24] Because of her renal disease, the decedent was a three-treatment-per-week dialysis patient, and had been for approximately nine years prior to her admission to Country Wood.[25] She did not urinate because of her dialysis treatment[26] and her medical records and admissions form to Country Wood indicated that she had a history of "recurrent UTIs."[27] Following her admission to Country Wood, the decedent was hospitalized several

[19] R. p. 213, lines 23–24.
[20] R. pp. 210-11, lines 25–4.
[21] R. p. 210, line 22.
[22] R. p. 213, lines 13–16.
[23] R. p. 213, lines 6–7.
[24] *See* R. p. 807.
[25] R. p. 282, lines 3–5.
[26] R. p. 283, lines 17–20.
[27] *See* R. p. 807.

times between her admission in March 2011 and her death in December 2011 for recurrent urinary tract infections.[28] According to Respondent, these infections would cause the decedent to have an altered mental state outside of her dementia.[29]

In October of 2011, Respondent received a phone call from Country Wood staff informing her that the decedent was having chills and that her right thumb was swollen.[30] The decedent was later taken to the hospital where she was diagnosed with a dislocated thumb, which later required surgery.[31] Staff at Country Wood informed Respondent that the injury occurred due to the decedent's repeatedly hitting her hand on her bed rail[32], however, according to Respondent, she was told by an unnamed doctor at the emergency room that it appeared as though the injury resulted from twisting or pulling.[33] This conclusion is not supported, however, by any of the medical records from the decedent's initial visit to the emergency room, nor her surgery.[34]

Respondent later made a complaint to the South Carolina Department of Health and Environmental Control ("DHEC") Ombudsman regarding the cause of the decedent's hand injury, as she believed it to have occurred, as well as another incident where the decedent's leg was cut by what the DHEC investigation concluded was a metal protrusion on the underside of the decedent's bed.[35] In early December, Respondent went to visit the decedent

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[28] *See generally* R. p. 204, lines 13–17.
[29] R. p. 293, lines 2–10.
[30] R. p. 1022.
[31] *See* R. p. 835.
[32] R. p. 231, lines 9–13.
[33] R. p. 233, lines 5–9.
[34] R. p. 288, lines 19–23.
[35] *See* R. p. 1015.

at Country Wood and found her in a wheelchair in her room.[36] She was unresponsive and drooling into a bib.[37] Respondent called an ambulance and the decedent was taken to the hospital where she was diagnosed with septic shock resulting from a UTI.[38] Hospital staff noted several wounds, bed sores, bruises, and abrasions during their examination of the decedent.[39] The decedent's sepsis caused her to decline over the next several days and she unfortunately succumbed to her illness on December 15, 2011.[40] An autopsy following her death, during which there was some police involvement, listed the decedent's cause of death as urosepsis from a UTI with end-stage renal disease as a contributing factor.[41]

Respondent filed suit against Appellants on behalf of the decedent's estate in early 2014.[42] Approximately six months after initiating the suit, on August 22, 2014, Respondent served written discovery requests on Appellants, and Appellants responded on November 20, 2014.[43] Appellants supplemented their discovery responses on May 5, 2015, and again on September 25, 2015.[44] In total, approximately twenty-one thousand pages of documents were produced.[45] Finding these responses lacking, Respondent filed a Motion to Compel on July 29, 2015, which was heard on February 24, 2016 following Respondent's reinstatement of the action.[46] The Court entered an order compelling discovery responses as a result of the hearing.

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[36] R. p. 250, lines 13–14.
[37] R. p. 250, lines 13-14.
[38] R. pp. 251-52, lines 15–5.
[39] R. p. 251, lines 22–23.
[40] R. p. 252, lines 9–14.
[41] R. p. 254-55, lines 4–23.
[42] *See* R. p. 79.
[43] R. p. 28.
[44] R. p. 29.
[45] R. p 190, lines 18–19.
[46] Respondent voluntarily dismissed the action by joint consent order under Rule 40(j) on July 31, 2015. R. pp. 7–10.

After further supplementation by Appellants, Respondent moved for a Rule to Show Cause in January 2017, the result of which was the Appellants' Answers being struck for failing to comply with the discovery order.[47] Appellants appealed that ruling to this Court, which affirmed the trial court's order on September 8, 2021.[48] Following this, the circuit court conducted a damages hearing on November 10, 2022.

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[47] *See* R. p. 25.; *see also generally* R. pp. 28–37.
[48] This Court found that the issue of the appropriateness of this sanction was not properly preserved for appellate review. *See Watkins v. Sterling Healthcare*, 2021 S.C. App. Unpub. LEXIS 383, at *2 (Ct. App. 2021). R. pp. 38–40.

ARGUMENT

I. The trial court's award of punitive damages was based on inadmissible hearsay and lay opinion testimony not supported by the evidence presented at trial.

A. Standard of Review

"In any civil action where punitive damages are claimed, the plaintiff has the burden of proving such damages by clear and convincing evidence."[49] "The trial judge has considerable discretion regarding the amount of damages both actual or punitive awarded."[50] Because of this discretion, the appellate court's review on appeal "is limited to corrections of errors of law."[51]

B. Argument

The trial court relied on inadmissible hearsay and lay opinion testimony related to the decedent's injuries to establish, at least in part, the requisite intent to prove the appropriateness and amount of punitive damages.[52] While at the outset Appellants acknowledge that "[t]he conduct of the trial, including the admission and rejection of testimony, is largely within the trial judge's sound discretion, […]," the trial court's overwhelming reliance on Respondent's unsupported hearsay and lay opinion testimony constitutes an abuse of that discretion.[53] Specifically, without the benefit of expert testimony, the Order makes numerous conclusions related to the causes of an injury to the decedent's thumb and scratches, and bruises she allegedly sustained at Country Wood. Additionally, the Order makes findings related to the

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[49] S.C. Code Ann. § 15-33-135.
[50] *Kuznik v. Bees Ferry Assocs.*, 342 S.C. 579, 611, 538 S.E.2d 15, 32 (Ct. App. 2000).
[51] *Id.*
[52] *See generally* R. pp. 41–69.
[53] *Roche v. Young Bros.*, 332 S.C. 75, 86, 504 S.E.2d 311, 316 (1998).

appropriateness of Appellants' diagnosis and treatment of the decedent's UTIs and, more generally, the state of the decedent's nutrition, hygiene, and overall health. These conclusions are based almost entirely on Respondent's testimony.[54] By way of example, regarding the decedent's thumb injury, the trial court opined "the [Appellants'] account of [the decedent's] thumb injury is implausible."[55] This finding was based on Respondent's testimony that an unnamed emergency room physician told Respondent that Appellants' supposed explanation of the cause of the decedent's thumb injury "did not seem plausible, particularly given the location of her injury, and the injury was more consistent [*sic*] her thumb being pulled down and/or out with force."[56] According to the trial court, this is evidence that Appellants abused the decedent.[57]

In this case, though, admissible record evidence does not support the findings of the trial court with respect to the decedent's thumb dislocation. Medical records of the decedent's hospital admission do not document any discussion or finding whatsoever regarding the cause of decedent's injury.[58] Nor did Respondent call the doctor, or any medical professional for that matter, as a witness at trial. In other words, this conclusion completely lacks expert support. The only evidence supporting Respondent's speculative theory about the cause of the decedent's injury is her own testimony.[59]

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[54] *See generally* R. pp. 41–79.
[55] R. p. 59.
[56] R. p. 49; *see also* R. p. 232, lines 5–9; R. p. 233, lines 9–13; R. p. 288, lines 1–23.
[57] *See* R. pp. 66–67.
[58] *See* R. pp. 835–45.; *see also* R. p. 288, lines 19–23.
[59] *Starkey v. Bell*, 281 S.C. 308, 315, 315 S.E.2d 153, 157 (Ct. App. 1984) ("Though testimony may constitute inadmissible hearsay evidence, no prejudice is shown when it merely corroborates other evidence admitted in this case.") (citing *Crowder v. Carroll*, 251 S.C. 192, 161 S.E.2d 235 (1968)).

Thus, the trial court abused its discretion when it found as fact Respondent's unsupported lay testimony regarding an emergency room physician's undocumented conclusion about the cause of the decedent's thumb injury. First, Respondent's testimony is hearsay within hearsay not subject to the necessary exceptions or exclusions.[60] Second, this testimony lacks an appropriate foundation; namely, the record contains no information about the facts underlying the unidentified ER physician's specialty, qualifications, or conclusions.[61] Third, Respondent, as a lay witness, cannot properly offer a causation opinion like this one., or any other conclusions she made regarding the thumb injury.[62]

The trial court also made unsupported findings with respect to the standard of care. Specifically, the trial court made findings about the requisite regularity of skin checks[63], the preventability of the decedent's urinary tract infections[64], safety concerns related to the removal of the decedent's bedrail[65], safety concerns related to the presence of the decedent's bedrail[66], the appropriate provision of nutrition and preventative care[67], and the causes of the decedent's bruises, scratches, and wounds.[68] The conclusions that the trial court ultimately

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[60] *See* SCRE 802, 803.
[61] *See* SCRE 702.
[62] *See* SCRE 701; *see also generally* R. pp. 262–65, lines 23–18; R. pp. 270–73, lines 1–22; *see also Fowler v. Nationwide Mut. Fire Ins. Co.*, 410 S.C. 403, 410, 764 S.E.2d 249, 252 (Ct. App. 2014) (citing *State v. Kelly*, 285 S.C. 373, 374, 329 S.E.2d 442, 443 (1985)).
[63] *See* R. p. 54.
[64] *See* R. p. 57.
[65] *See* R. p. 58.
[66] *See* R. p. 59. ("However, even if there is no intentional abuse, and assuming the Defendants' account of the thumb injury is correct, the Defendants were grossly negligent in not preventing Mrs. Watkins's injury when they admittedly had actual knowledge that Mrs. Watkins would regularly hit her hand on the bedrail.").
[67] *See* R. p. 58; R. p. 66.
[68] *See* R. p. 59; R. p. 67.

made were not alleged in Respondent's Complaint (and therefore not even arguably admitted by virtue of Appellants' default), and Respondent offered no expert support for them.[69]

It is noted that "the exercise of [the trial judge's sound discretion] will not be disturbed on appeal absent an abuse of that discretion or the commission of a legal error that results in prejudice for appellant."[70] Here, the trial court did both in concluding that the Appellants' conduct warranted an award of punitive damages. As such, this Court should vacate the trial court's award of punitive damages.

II. The trial court's award of punitive damages violates Appellants' due process rights.

A. Standard of Review

"In any civil action where punitive damages are claimed, the plaintiff has the burden of proving such damages by clear and convincing evidence."[71] "In evaluating the constitutionality of a punitive damages award, [the appellate court] conduct[s] a de novo review."[72]

B. Argument

"In order to recover punitive damages, the plaintiff must present clear and convincing evidence that the defendant's conduct was willful, wanton, or in reckless disregard of the plaintiff's rights."[73] "On the issue of punitive damages, the highest burden of proof known to the civil law is applicable."[74] Further, "[t]he test by which a tort is to be characterized as reckless, willful or wanton is whether it has been committed in such a manner or under such

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[69] *See generally* R. pp. 79–101; *see also generally* R. p. 197.
[70] *Roche*, *supra*, 332 S.C. at 86, 504 S.E.2d at 316 (1998).
[71] S.C. Code Ann. § 15-33-135.
[72] *Jenkins v. Few*, 391 S.C. 209, 221, 705 S.E.2d 457, 463 (Ct. App. 2010).
[73] *Cody P. v. Bank of Am., N.A.*, 395 S.C. 611, 625, 720 S.E.2d 473, 480 (Ct. App. 2011).
[74] *Austin v. Specialty Transp. Servs.*, 358 S.C. 298, 313, 594 S.E.2d 867, 875 (Ct. App. 2004).

circumstances that a person of ordinary reason or prudence would then have been conscious of it as an invasion of the plaintiff's rights."[75]

Where punitive damages have been awarded, that award "is subject to the protections of the Due Process Clause of the Fourteenth Amendment of the United States Constitution."[76] Accordingly, the trial court must review the award "to ensure that the award does not deprive the defendant of due process."[77] That assessment requires the trial court to consider the reprehensibility of the defendant's conduct, the disparity between the plaintiff's injury and the punitive damages award, and the relationship between the award and civil penalties allowed or imposed in similar cases.[78] Here, however, while the trial court stated that *Mitchell* "was instructive," in its consideration, it did not include a proper analysis of the *Mitchell* factors other than to refer to the Court's ruling in *Mitchell* when comparing the ratio in that case to the case at bar.[79] The Court then incorrectly applied the standard espoused in *Gamble v. Stevenson*[80] in holding that the punitive damages award was constitutional. However, "*Gamble* remains relevant to the post-judgment due process analysis, *but only insofar as it adds substance to the Gore guideposts*."[81]

Here, the Court touches on the element of reprehensibility but did not evaluate the factors setting forth what degree, if any, the Appellants' conduct could be deemed reprehensible.[82] The degree of reprehensibility involved in a defendant's conduct is "perhaps

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[75] *Cody P.*, 395 S.C. at 625, 720 S.E.2d at 480 (quotation omitted).
[76] *James v. Horace Mann Ins. Co.*, 371 S.C. 187, 194, 638 S.E.2d 667, 670 (2006).
[77] *S.C. Farm Bureau Mut. Ins. Co. v. Love Chevrolet, Inc.*, 324 S.C. 149, 154, 478 S.E.2d 57, 59 (1996).
[78] *See Mitchell v. Fortis Ins. Co.*, 385 S.C. 570, 585–89, 686 S.E.2d 176, 185–86 (2009).
[79] R. p. 61.
[80] 305 S.C. 104, 111–12, 406 S.E.2d 350, 354 (1991).
[81] *Mitchell, supra,* 385 S.C. at 587, 686 S.Ed.2d at 185 (emphasis added).
[82] *See generally* R. pp. 41–69.

the most important indicium of the reasonableness of a punitive damages award."[83] When analyzing this factor, a trial court should consider whether:

> (i) the harm caused was physical as opposed to economic; (ii) the tortious conduct evidenced an indifference to or a reckless disregard for the health and safety of others; (iii) the target of the conduct had financial vulnerability; (iv) the conduct involved repeated actions or was an isolated incident; and (v) the harm was the result of intentional malice, trickery, or deceit, rather than a mere accident.[84]

Here, the majority of these factors favor Appellants.

First, there is nothing in the evidence which shows "an indifference to or a reckless disregard for the health and safety of others." As stated more fully below, despite the trial court's conclusions to the contrary, the evidence and testimony do not show an indifference to or reckless disregard for the health and safety of others. While it made specific references to circumstances, as detailed below, supposedly suggesting a "callous indifference and intent to harm" the decedent, the trial court merely concluded that "[t]he testimony of the witnesses and the evidence submitted at the hearing clearly reflect that the [Appellants] operated their facility with callous disregard for the health and safety of their patients…"[85] However, the Court made no reference to the care of other patients at the facility, and the Order's only other discussion of the greater goings-on at the facility involved documents related to the DHEC investigation. These documents detailed issues with fifteen other patient beds discovered during the DHEC and Ombudsman's investigations following Respondent's complaint, but they contain no finding the Appellants were negligent, much less intentional, with respect to

[83] *Mitchell*, 385 S.C. at 587 (quoting *BMW of North America v. Gore*, 517 U.S. 559, 565 (1996)).
[84] *Mitchell*, 385 S.C. at 587 (citing *State Farm v. Campbell*, 538 U.S. 408, 419 (2003)).
[85] R. pp. 66–67.

the other patient beds.[86] Thus, no evidence supports a finding that factor (ii) is applicable to Appellants.

Next, Respondent presented no evidence or testimony by which the trial court could have evaluated the decedent's financial vulnerability. The only evidence presented regarding the decedent which would in any way relate to her financial status was that she was a high school graduate who worked as a CNA at CM Tucker Center for approximately twenty-one years.[87] Thus, it cannot be said that there was evidence or testimony sufficient to establish that the decedent was financially vulnerable, so Respondent did not satisfy factor (iii).

Next turning to factor (iv), while Respondent presented testimony and evidence about several instances where the decedent was hospitalized due to severe urinary tract infections, none of this evidence indicated, in any way, that the decedent's hospitalizations were due to the Appellants' actions or inactions.[88] The decedent was a woman in her seventies who had a history of recurrent urinary tract infections and had been on dialysis for over a decade at the time of her death. Additionally, while the trial court repeatedly indicated that Appellants failed to recognize, diagnose, and treat the decedent's urinary tract infections, Respondent offered no expert testimony supporting this allegation, nor did the trial court cite to any

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[86] The trial court relied on Country Wood's "own investigation records" which were offered as part of the Ombudsman Report, however, the alleged author of the "investigation records" was not called as a witness to testify regarding the veracity of the report or its authenticity. *See generally* R. p. 197.; *see also generally* R. pp. 1015–34.

[87] R. p. 212, lines 16–17.

[88] *See generally* R. pp. 196–335.; *see also generally* R. pp. 811–32; R. pp. 835–45; R. pp. 874–86; and R. pp. 889–906.

competent evidence by which the trial court could have inferred that Appellants failed to meet the standard of care with respect to the decedent's UTIs[89].

Finally, as to factor (v) and as explained more fully below, Respondent presented no evidence that the Appellants' conduct was intentional or malicious. One of the pivotal examples highlighted by the trial court in its award of punitive damages was the instance where the decedent's leg was cut on a metal protrusion under her bed. However, no evidence suggests anything about the metal protrusion was intentional or malicious; therefore, this incident would not support the trial court's conclusion. Specifically, the decedent's injury was an accident; a nurse at Country Wood was trying to maneuver the decedent back into her bed.[90] Additionally, while the trial court and the Respondent repeatedly stated that the protrusion was the result of the Appellants' "sawing off" of the bedrails, the only actual evidence of this is Respondent's testimony and the uncorroborated hearsay report supposedly written by Rebecca Deppe, the nurse manager at Country Wood, stating that the bed rail was "sawed off by the facility."[91] In other words, this assertion is not supported by admissible evidence. Significantly, DHEC investigated the event following Respondent's complaint and made absolutely no mention of the bed rails being "sawed off."[92] Instead, DHEC mentioned

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[89] While the Answers of Appellants were stricken by the trial court, as the Court is well aware, the effect of having the Answers stricken is that the well-pled factual allegations of Respondent's Complaint are procedurally deemed admitted; the legal conclusions contained therein are not. *See State ex rel. Medlock v. Love Shop, Ltd.*, 286 S.C. 486, 489, 334 S.E.2d 528, 530 (Ct. App. 1985); *see also generally Ashcroft v. Iqbal*, 556 U.S. 662 (2009). This tenet is important here because the Court appears to have found that Appellants were the legal and factual cause of the decedent's harm, which is a legal conclusion requiring expert support.

[90] R. p. 237, lines 14–17.

[91] R. p. 258, lines 8–24. Importantly, however, Ms. Deppe was not called to testify to authenticate the document or its contents.

[92] *See generally* R. pp. 1015–34.

merely that fifteen beds had metal protrusions.[93] This fact is significant because the trial court specifically relied on the idea that Country Wood sawed off the bedrails in its holding that Appellants were reckless and grossly negligent. Furthermore, while Respondent presented evidence that Country Wood staff falsified records related to the decedent's skin audits, no evidence supported the idea that the harm to the decedent—her death—resulted from these falsified documents, thereby bringing it under the "trickery or deceit" clause of this factor.

Thus, the only factor which favors Respondent, and which is uncontroverted, is the first factor: that "the harm caused was physical as opposed to economic." This factor, however, is simply not enough to make a finding that the Appellants' actions were reprehensible to a degree which would make a punitive damages award constitutional.[94] As such, little to no evidence exists which would support a finding that the actions of Appellants were sufficiently reprehensible to justify an award of punitive damages under the Fourteenth Amendment.

Next, the only *Mitchell* factor that the trial court analyzed was the punitive damages award ratio. Admittedly, the trial court's analysis in applying a single-digit multiplier of six does not on its face appear to violate *Mitchell* or any other aspect of South Carolina jurisprudence. But the *Mitchell* factors work in conjunction with one another to determine the appropriateness of a punitive damages award, and the trial court's analysis of only one factor and its sole reliance on the *Gamble* factors make its overall analysis improper. Notably, had

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[93] R. p. 1026.

[94] *See Duncan v. Ford Motor Co.*, 385 S.C. 119, 143, 682 S.E.2d 887, 889 (Ct. App. 2009) ("The existence of any one of these factors weighing in favor of a plaintiff may not be sufficient to sustain a punitive damages award; and the absence of all of them renders any award suspect.") (citation omitted).

the trial court properly analyzed the reprehensibility factors, the punitive damages award ratio would have been much lower, if punitive damages were even awarded in the first place.

Additionally, the trial court took no effort to analyze its punitive damages award in light of the third *Mitchell* factor, other than to opine that "[Appellants] deserve a much greater punishment than imposed in this court's cool and reasoned civil verdict."[95] While the trial court's order did not so much as mention any civil penalties, it did refer to one case's punitive damages award—the case which espoused the factors the trial court declined to consider.[96] While true that South Carolina jurisprudence has upheld several punitive damages awards which were larger than the award to Respondents in this matter, those awards also underwent a proper *Mitchell* analysis and involved more egregious conduct than that presented here, despite the trial court's assertion that "this is <u>the most egregious case</u> of elder neglect/abuse [the trial court has] <u>ever</u> witnessed."[97] Furthermore, the court's only other reference to "similar cases" was its inexplicable reference to "a homicide by child abuse case wherein a helpless infant was beaten to death over the course of three to fifteen minutes."[98] The court used this example to exemplify its prior statement regarding its view of the severity of this case stating that "[t]he infant's death was more merciful than what transpired here."[99] This is conspicuously hyperbolic for a judge who mere sentences before avers that he is not given to hyperbole.

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[95] R. p. 68.
[96] R. p. 61.
[97] R. p. 68.
[98] R. p. 68.
[99] R. p. 68.

Thus, had the court properly considered well-established South Carolina law rather than hastening to punish the Appellants, it may well have determined that punitive damages were not warranted in this matter or, if it still found that they were, that the factors of *Mitchell* warranted a lower award than what the trial court considered to be "cool and reasoned" in its Order. However, nothing in the record before the court would indicate that the punitive damages award is consistent with due process as required by the Fourteenth Amendment. As such, the Court should vacate the trial court's ruling awarding Respondent punitive damages, or alternatively, remand the issue to the trial court for a proper constitutional analysis under the *Mitchell* factors.

III. The trial court abused its discretion when it awarded punitive damages above the statutory caps set forth in S.C. Code Ann. § 15-32-530(A)–(B) because none of the three scenarios outline in subsection (C) are supported by clear and convincing evidence presented at trial.

A. Standard of Review

"In any civil action where punitive damages are claimed, the plaintiff has the burden of proving such damages by clear and convincing evidence."[100] "The trial judge has considerable discretion regarding the amount of damages both actual or punitive awarded."[101] Because of this discretion, the appellate court's review on appeal "is limited to corrections of errors of law."[102]

B. Argument.

The trial court abused its discretion by failing to limit punitive damages to the statutorily set caps of S.C. Code Ann. § 15-32-530(A) and (B). "[T]he language of subsection (A) unambiguously reveals the legislature's intent to require trial courts to reduce punitive

[100] S.C. Code Ann. § 15-33-135.
[101] *Kuznik v. Bees Ferry Assocs.*, 342 S.C. 579, 611, 538 S.E.2d 15, 32 (Ct. App. 2000).
[102] *Id.*

damage awards in excess of 'the greater of three times the amount of compensatory damages . . . or the sum of five hundred thousand dollars,' unless exempt under subsection (B) or (C)."[103] Subsection (B) provides two circumstances under which the cap in subsection (A) does not apply; it nevertheless provides that punitive damages "must not exceed the greater of four times the amount of compensatory damages awarded to each claimant entitled thereto or the sum of two million dollars."[104] Further, "the only circumstance in which the legislature allows no cap on punitive damages is when the trial court determined that subsection (C) applies."[105] These circumstances are:

> (1) at the time of the injury the defendant had an intent to harm and [the court] determines that the defendant's conduct did in fact harm the claimant; or (2) the defendant has pled guilty to or been convicted of a felony arising out of the same act or course of conduct complained of by the plaintiff and that act or course of conduct is a proximate cause of the plaintiff's damages; or (3) the defendant acted or failed to act while under the influence of alcohol, drugs, other than lawfully prescribed drugs administered in accordance with a prescription, or any intentionally consumed glue, aerosol, or other toxic vapor to the degree that the defendant's judgment is substantially impaired.[106]

As circumstances (2) and (3) are not relevant here, the trial court here could only forego the caps in subsections (A) and (B) if it found by clear and convincing evidence that circumstance (1) applied.

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[103] *Garrison v. Target Corp.*, 435 S.C. 566, 581, 869 S.E.2d 797, 805 (2022) (internal citations omitted).
[104] S.C. Code Ann. § 15-32-530(B) (2016).
[105] *Garrison*, 435 S.C. at 582, 869 S.E.2d at 806 (2022).
[106] S.C. Code Ann. § 15-32-530(C).

Here, in concluding that the relevant statutory caps of subsection (A) and (B) do not apply[107] and awarding a total of $19,227,353.44[108] in punitive damages, the trial court focused its entire analysis on S.C. Code Ann. § 15-32-530(C)(1), concluding that the Appellants intended to and in fact injured the decedent. However, the trial court's analysis is misguided and contravenes well-settled law. "The concept of 'intent to injure' is analogous to the concept of 'malicious intent,'[.]"[109] But nothing in the record indicates that Appellants acted with malicious intent to harm the decedent, potentially giving rise to the application § 15-32-530(C). In ruling that subsection (C) applied to this matter and ignoring statutory damages caps set forth in subsections (A) and (B), the trial court focused on three aspects of the decedent's treatment which, the court concluded, showed an intent to harm.

First, the court opined about the decedent's overall treatment, stating that "the [Appellants] operated their facility with callous disregard for the health and safety of their patients and failed to provide adequate staff and services to meet their basic needs, including nutrition and proper hygiene."[110] This claim, however, is unsupported by the testimony and evidence presented at trial. In fact, Respondent presented little evidence or testimony about the decedent's hygiene[111] and no evidence whatsoever regarding whether "adequate staff and

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[107] R. p. 66. The Court mistakenly stated that "S.C. Code Ann. § 15-32-530(B) *and* (C) detail the requirements for avoiding the punitive damages cap."
[108] This number reflects the total amount of the punitive damages awarded on Respondent's survival action and wrongful death action.
[109] *Eldeco, Inc. v. Charleston County Sch. Dist.*, 372 S.C. 470, 481 n.5, 642 S.E.2d 726, 732 n.5 (2007)
[110] R. p. 66.
[111] Respondent testified that she had asked unnamed staff members at Country Wood to bathe her mother each day and was told that it was facility policy that they were showered three times per day. Respondent testified of only one other instance related to the decedent's hygiene, where the decedent, prior to her last admission to the hospital was sitting slumped over in her wheelchair and drooling into a "saturated bib."

services" were available.[112] The trial court further stated that there was "evidence that the [Appellants] abused [the decedent] by either dislocating her thumb, or allowing it to become dislocated despite actual knowledge that she would hit her hand on the bedrail, lacerating her leg by sawing off the bedrails and leaving jagged exposed metal on her bed, [sic] by giving her bruises and scratches and multiple bruises and wounds."[113] Again, the only evidence supporting this conclusion is speculative and well below the applicable clear-and-convincing-evidence standard. Regarding the dislocation of the decedent's thumb, Respondent testified that an unidentified doctor at the emergency room said he believed that the only way that the injury could have been sustained was through force, but nothing in the medical records supports this hearsay testimony.[114] And the only evidence on which the trial court could have relied to determine that Appellants dislocated the decedent's thumb or allowed it to be dislocated was Respondent's speculative lay witness hearsay testimony.[115] Regarding the alleged "sawing off" of the bedrail, the only evidence on which the trial court relied was Respondent's testimony and a complaint she made to DHEC, which was entered as evidence at trial[116]. Notably, however, DHEC's investigation merely found the offending part to be a "protrusion" and made no mention of Appellants "sawing off" or otherwise creating the protrusion on purpose.[117] And the decedent's bed was similar to fifteen other beds with similar

[112] *See generally* R. pp. 196–335.
[113] R. pp. 66–67.
[114] R. p. 232, lines 5–9; R. p. 233, lines 9–13; R. p. 288, lines 1–23.
[115] The only evidence presented regarding Appellants' apparent knowledge was Respondent's unsupported testimony that an unnamed staff member at the facility told her that the decedent was beating on the bedrail. *See* R. p. 231, lines 13–17; *see also* SCRE 701.
[116] Respondent additionally testified that an unnamed CNA at the facility told Respondent that she was helping the decedent into bed and did not know that the rail had been cut, resulting in the cut to the decedent's leg. *See* R. p. 236, lines 14–17.
[117] *See generally* R. pp. 1015–34.

protrusions.[118] Thus, Respondent did not present clear and convincing evidence that Appellants removed the railing with any intent to harm.

Regarding the decedent's alleged "bruises and scratches and multiple bruises and wounds," Respondent presented no evidence regarding how the decedent received those bruises, scratches, and wounds; she merely mentioned that they were present.[119] The Court's order then used Respondent's testimony to justify a conclusion reminiscent of *res ipsa loquitur*: because the decedent supposedly had wounds, Appellants must have caused them, and caused them on purpose.[120] In other words, the trial court relied on mere speculation to conclude that the decedent's alleged injuries must have been the work of an individual or individuals at Country Wood. Finally, the trial court found that the circumstances under which Respondent found the decedent when she visited on the decedent's last day at Country Wood showed "callous indifference and intent to harm." But "callous indifference" is not enough to award punitive damages with no caps. Even assuming *arguendo* that these circumstances show "callous indifference," they do not rise to the level of intent to harm as required by subsection (C).[121]

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[118] *Id.*

[119] *See generally* R. pp. 196–335. On questioning, neither Respondent nor her sister (the only other witness to testify) could identify when or how the decedent received the injuries.

[120] "The plaintiff has the burden of proving each element of negligence, including the defendant's lack of due care. This burden of proof cannot be met by relying on the theory that the thing speaks for itself or that the very fact of injury indicates a failure to exercise reasonable care. No inference of negligence arise from the mere fact of injury. The defendant is not required to present evidence to refute the plaintiff's allegations; he may elect to put plaintiff to strict proof of all the elements of his cause of action." *Snow v. City of Columbia*, 305 S.C. 544, 409 S.E.2d 797 (Ct. App. 1991) (internal citations omitted).

[121] *See* S.C. Code Ann. § 15-32-530(C).

Second, the trial court opined that "[t]here is evidence that the [Appellants] failed to prevent, monitor, and/or treat [the decedent's] UTIs."[122] While Respondent presented testimony regarding the frequency and severity of the decedent's UTIs, Respondent presented no evidence presented indicating that Appellants failed to prevent, treat, or monitor them, nor was there any evidence before the court as to how Appellants would have done so.[123] Further, Respondent presented no evidence at trial which established that Appellants were even aware of the decedent's UTIs.[124]

Third, the court opined that "the testimony and evidence submitted that the [Appellants] failed to take actions to prevent, identify, and/or treat [the decedent's] skin problems" was "clear, convincing, and graphic evidence that there was an intent to harm, which, in fact, did harm [the decedent.]"[125] However, as with the rest of the supposed instances which evidence an intent to harm, the record is bereft of any competent evidence which supports this conclusion. The only evidence the court references in reaching its conclusion is unspecified "[r]ecords and photographs" to support its finding of intentional conduct. However, the only records and photographs admitted into evidence merely show the presence of the decedent's skin issues, not how they manifested or whether any action was taken to redress these skin issues. Thus, the trial court apparently relied exclusively on the absence of evidence surrounding the actions Appellants may or may not have taken to address the decedent's skin issues to infer that nothing was done. The trial court also made much of

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[122] R. p. 67.
[123] *See generally* R. pp. 196–335.
[124] *See generally* R. pp. 196–335.
[125] R. p. 67.

the supposedly fraudulent skin audits throughout its order, concluding them to be "clear and convincing acts of intentional misconduct which resulted in harm to [the decedent]."[126] Importantly, however, the trial court did not analyze how four days of allegedly falsified skin audit reports harmed the decedent. Ultimately, the trial court relied on impermissible inferences and graphic photographs of the decedent's post-mortem body, which do not show any intentional conduct, to conclude that intentional conduct occurred resulting in harm to the decedent.

Finally, the court opined that "[b]eyond [the above], the [Respondent] and this Court can never fully know other instances of intentional conduct of which the management ordered or knew because the [Appellants] wholly failed to cooperate in discovery and thereby deprived the [Respondent] of her right to fully investigate these critical aspects of her case."[127] However, the assumption and speculation of "other instances of intentional conduct" does not constitute clear and convincing evidence that there was an intent to harm. Nor does Appellants' alleged failure to "cooperate in discovery" show clear and convincing evidence that there was an intent to harm. In stating the above, the trial court seems to infer, without supporting evidence, that Appellants' supposed failure to produce evidence was an effort to hide evidence of intentional wrongs. This is further supported by the next sentence of the trial court's order: "All of these are clear and convincing examples of intent to harm [the decedent.][128] However, as with the other examples on which the trial court relies, the trial

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[126] R. p. 67.
[127] R. p. 68.
[128] R. p. 68.

court's inference and speculation are not the clear and convincing evidence that subsection (C) requires.[129]

Thus, as no clear and convincing evidence supports the trial court's ruling that subsection (C) applied, the only available avenue by which to impose punitive damages above subsection (A)'s cap would be for the trial court to determine subsection (B) applied. In any event, the plain language of subsection (B) requires the trial court to make this determination.[130] Subsection (B) provides two circumstances under which an award can exceed the maximum amount specified in subsection (A): "(1) the wrongful conduct proven under this section was motivated primarily by unreasonable financial gain" and "the unreasonably dangerous nature of the conduct, together with the high likelihood of injury resulting from the conduct, was known or approved by the managing agent, director, officer, or the person responsible for making policy decisions on behalf of the defendant; or (2) the defendant's actions could subject the defendant to conviction of a felony and that act or course of conduct is a proximate cause of the plaintiff's damages."[131]

The trial court failed to properly analyze whether subsection (B) applied, but it did refer to subsection (B) when summarily refusing to apply it, stating "[t]his Court will not reward the Defendants with the protections of S.C. Code Ann. § 15-32-530(B)(1) when they have obstructed Plaintiff's ability to produce further evidence of fraudulent acts, which would further render this section inapplicable, by withholding discovery and violating Court Orders

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[129] *See* S.C. Code Ann. § 15-32-530(C).
[130] S.C. Code Ann. § 15-32-530(B) ("[…] If the jury returns a verdict for punitive damages in excess of the maximum amount specified in subsection (A), the trial court should ***first*** determine whether [(1) or (2) apply]") (emphasis added).
[131] S.C. Code Ann. § 15-35-530(B)(1)–(2).

related thereto."[132] However, as the trial court did not properly analyze the facts under subsection (B), one can only assume that the trial judge concluded that the allegedly fraudulent acts—presumably the four skin check records completed at Country Wood during a time in which the decedent was admitted to the hospital—are clear and convincing evidence of Appellant's intent to harm. As stated above, no evidence would support the conclusion that these records were created with the intent to harm and that their creation did in fact harm the decedent, which is the proof required to bypass the statutorily set caps under subsection (C).[133] Furthermore, Appellants are not aware of, and the trial court did not cite, any statute or case law which holds that the existence of actual fraud renders subsection (A) or (B) inapplicable.[134] Similarly, the Appellants are not aware of, and the trial court did not cite, any statute or case law which holds that failure to participate in discovery renders subsection (A) or (B) inapplicable.

The circumstances in subsection (B)(2) do not apply to Appellants. Even assuming *arguendo* that Respondent offered evidence that Appellants' conduct "was motivated primarily by unreasonable financial gain and […] that the unreasonably dangerous nature of the conduct, together with the high likelihood of injury resulting from the conduct, was known or approved by the managing agent, director, officer, or the person responsible for making

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[132] R. p. 60.
[133] *See* S.C. Code Ann. § 15-32-530(C).
[134] R. p. 60. The trial court's summary statement on subsection (B) states, "[t]he finding of actual fraud in the skin check records during periods of Mildred Watkins' hospitalizations alone is clear and convincing evidence which renders the protections of § 15-32-530(B)(1) and (2) inapplicable."

policy decisions on behalf of the defendant; […],”[135] the trial court would still be confined to the statutorily set cap of not more than two million dollars.[136]

Thus, the evidence and testimony presented at trial do not support the trial court’s holding that S.C. Code Ann. § 15-32-530(C) applies to this case, rendering the statutory caps of subsections (A) and (B) inapplicable. As such, should this Court uphold the trial court’s award of punitive damages, it should vacate the trial court’s punitive damages award and remand the issue to the circuit court to determine the amount of punitive damages within the statutory caps set forth in S.C. Code Ann. § 15-32-530(A) or (B).

IV. The trial court abused its discretion when it issued its order compelling Appellants to produce documents and information related to their insurance policies and finances because Respondent had not sought to enforce the judgment as required by Rule 69 of the South Carolina Rules of Civil Procedure.

A. Standard of Review

“In interpreting the meaning of the South Carolina Rules of Civil Procedure, the Court applies the same rules of construction used to interpret statutes.”[137] If a rule’s language is plain, unambiguous, and conveys a clear meaning, interpretation is unnecessary and the stated meaning should be enforced.[138]

B. Argument

Rule 69 of the South Carolina Rules of Civil Procedure provides the proper process to execute a judgment in this state. In its entirety, Rule 69 states:

> Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. The procedure on execution, in proceeds supplementary to and in aid

[135] S.C. Code Ann. § 15-35-530(B)(1).
[136] S.C. Code Ann. § 15-32-350(B).
[137] *Ex parte Wilson*, 367 S.C. 7, 15, 625 S.E.2d 205, 209 (2005) (citing *Maxwell v. Genez*, 356 S.C. 617, 591 S.E.2d 26 (2003); *Green v. Lewis Truck Lines, Inc.*, 314 S.C. 303, 443 S.E.2d 906 (1994)).
[138] *See id*. (citing *Maxwell*, 356 S.C. at 617, 591 S.E.2d at 26; *Knotts v. S.C. Dep’t of Natural Resources*, 348 S.C. 1, 10, 558 S.E.2d 511, 516 (2002)).

> of a judgment, and in proceedings on and in aid of execution shall be as provided by law. In the aid of the judgment or execution, the judgment creditor or his successor in interest when that interest appears of record, may examine any person, including the judgment debtor, in the manner provided in these ruled for obtaining discovery.[139]

"The phrase ['in the aid of the judgment or execution'] can be harmonized with the subject matter of the rule—Execution—be reading Rule 69 to require the issuance of a writ of execution or initiation of supplemental proceedings before post-judgment discovery is conducted."[140]

Here, this Court should reverse the circuit court's order compelling disclosure of insurance and financial information because it is premature. It is important to note at the outset that while the circuit court's order is phrased in a manner typical when a court grants a motion to compel discovery, no such motion was pending before the court at the time of this order's issuance.[141] Additionally, nothing in the Rules of Civil Procedure states that the Court, on its own motion, may enter an order compelling discovery.[142]

Thus, while the circuit court attempted to cage its Order Compelling Production of Insurance and Financial Information in a light which would separate it from the requirements of Rule 69 by filing it contemporaneously with its Order Awarding Damages to Plaintiff, the

[139] Rule 69, SCRCP.
[140] *Wilson*, *supra*, 367 S.C. at 16, 625 S.E.2d at 209 (citing *Anchor Gas, Inc. v. Border Black Top, Inc.*, 381 N.W.2d 96, 97–98 (Minn. Ct. App. 1986)).
[141] To be sure, Respondent had previously filed a Motion to Compel against Appellants which was granted and upheld on appeal to this Court in Appellate Case No. 2018-000924. R. p. 38-40.
[142] *See generally* Rule 37, SCRCP.

Order nonetheless falls squarely within the heart of Rule 69.[143] The circuit court seems to acknowledge this fact in its Order Awarding Damages to Plaintiff, stating:

> In anticipation of an appeal of this Order and contemporaneously with the issuance of this Order, the Court has issued a separate order concerning discovery of any applicable insurance policies or other assets *which could be applied to satisfy, in whole or in part, this judgment*. The separate order is being issued in the hopes that the appellate court will allow that Order to be remanded so that, while this Order is on appeal, *Plaintiff may continue her efforts to ascertain if there are even assets available to satisfy this judgment*.[144]

Additionally, had the circuit court intended this order to be a continuation of its prior order compelling discovery, there were other avenues down which it could have proceeded.[145]

Essentially, the circuit court has attempted to prematurely expedite post-judgment discovery; apparently, the Order intends to initiate supplemental pleadings on Respondent's behalf before she has even sought to execute the contemporaneously-filed Order. This, however, is not within the purview of the court at this stage. "Judgments are generally enforced by way of writ of execution issued to the sheriff."[146] "If a judgment is unsatisfied, the judgment creditor may institute supplemental proceedings to discover assets."[147] Supplemental proceedings "furnish a means of reaching, in aid of judgment, property beyond the reach of an ordinary execution, such as choses in action."[148]

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[143] *See generally* Rule 69, SCRCP; *see also Wilson, supra*, 367 S.C. at 16, 625 S.E.2d at 209 (citing *Anchor Gas, Inc. v. Border Black Top, Inc.*, 381 N.W.2d 96, 97–98 (Minn. Ct. App. 1986)).
[144] R. p. 69. (emphasis added).
[145] *See generally* Rule 58, SCRCP.
[146] *Johnson v. Service Mgmt.*, 319 S.C. 165, 167, 459 S.E.2d 900, 902 (Ct. App. 1995).
[147] *Id*. (citing S.C. Code Ann. § 15-39-310).
[148] *Lynn v. International Brotherhood of Firemen & Oilers*, 228 S.C. 357, 362, 90 S.E.2d 204, 206 (1955).

Further, the order is decidedly improper in that it attempted not only to reach the insurance policies and assets of Appellants themselves, but also those of non-parties: namely, "all of their owners, members, shareholders, key employees, etc., including but not limited to Robert Hagan."[149] This wide-reaching order is not based on any facts or finding which would allow the court to "pierce the corporate veil," but, rather, further shows the intention of the circuit court to improperly initiate supplemental proceedings on Respondent's behalf.

CONCLUSION

While the trial court has broad discretion in the conduct of trials, this discretion is not absolute. An abuse of discretion occurred in this matter when the trial court relied on unsupported hearsay and lay witness testimony regarding the decedent's injuries and death. The trial court's extensive reliance on this testimony went against well-settled South Carolina law to the extreme prejudice of Appellants. As such, the Court should vacate the trial court's award of punitive damages in this matter.

Additionally, South Carolina law establishes the proper analysis the trial court must conduct when determining the constitutionality of a punitive damages award. Here, despite the trial court's assertion that that the punitive damages award was constitutionally proper, its failure to use the proper framework in analyzing its award was a clear error of law which demands remand from this Court. Furthermore, even if the trial court had utilized the proper framework, the trial court's award of punitive damages violates the Appellants' due process rights and cannot stand. As such, the Court should vacate the trial court's award of punitive damages in this matter.

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[149] R. p. 70.

Further, assuming that the award of punitive damages was proper, the amount of the award was improper as the trial court failed to properly consider whether the applicable statutory caps on punitive damages apply in this matter. Under a proper analysis, it is evident that if punitive damages are warranted in this matter, at a minimum, they should be capped at the statutory limit of S.C. Code Ann. § 15-32-530(B); two million dollars. Thus, as the trial court failed to analyze the applicable statutory caps, or, alternatively, improperly considered evidence either not in the record, or which does not apply to eliminate said caps, the Court should vacate the award, and remand to the trial court with direction that any award of punitive damages cannot exceed the statutorily set caps.

Finally, the trial court abused its discretion by ordering what amounts to third-party post-judgment discovery in contravention of Rule 69 of the South Carolina Rules of Civil Procedure. At no point prior to the trial court's order had Respondent sought to enforce the judgment, nor could she have as the trial court issued its order compelling production simultaneously with its order awarding damages. Thus, while caged as a continuation of prior orders, the effect of the trial court's order compelling production was one of initiating supplemental proceedings on behalf of the Respondent and ignoring the process by which Respondent could attempt to enforce the trial court's judgment. This is not permissible under the Rules of Civil Procedure and well-settled South Carolina law. As such, the trial court abused its discretion and the Court should vacate said order.

Appellants respectfully ask this Court to vacate the punitive damages award and remand the matter to the circuit court for further consideration. Appellants also respectfully

request that this Court vacate the circuit court's order compelling production of insurance and financial information, *in toto*.

Respectfully submitted,

October 12, 2023.

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Rule 211(b) Certification

The undersigned attorneys for the Appellants certify that this Final Brief of Appellants complies with Rule 211(b), SCACR.

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