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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 RESPONDENT

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STATEMENT OF THE CASE

The Respondent filed this case on August 22, 2014 in the Richland County Court of Common Pleas. (R. p. 79) The Complaint sets forth claims for wrongful death and survival and alleges that the Appellants were grossly negligent in their treatment and care of Mildred Watkins in a nursing home located in Richland County. The Appellants are corporate entities: one corporation and two limited liability companies. The Appellants answered the Complaint on September 19, 2014 and denied the allegations of negligence. (R. pp. 102, 128, 154)

The Respondent filed a motion to compel discovery on July 29, 2015 and prior to the hearing, supplemented her motion with a Memorandum in Support of her Motion to Compel with exhibits. (R. pp. 336 - 562). While this motion was pending, the parties consented to striking the Complaint from the docket pursuant to Rule 40(j), SCRCP with the stipulation that discovery would continue. (R. p. 7) On February 24, 2016, Respondent's Motion to Compel was heard by the Honorable Edgar Dickson. Following the submission of proposed Orders by both parties, Judge Dickson signed Respondent's version of the Order on November 30, 2016 and the Order was filed on December 8, 2016. (R. p. 13) Contained in Judge Dickson's Order were direct orders for Appellants to produce a variety of documents, including insurance and other financial documents. (R. pp. 14, 17, 20)

On July 27, 2016, as the litigation over the July 2015 motion to compel was pending, the parties consented to restoring the case to the active docket. (R. p. 11) On January 23, 2017, Respondent filed a motion for sanctions against the Appellants for failure to comply with the Judge Dickson's December 8, 2016 Order. (R. p. 563) The Respondent supplemented this motion with a memorandum of law on July 31, 2017. (R. p. 685 - 805) A hearing on Respondent's Motion for Rule to Show Cause and Sanctions was held by the Honorable Alison Renee Lee on July 27, 2017. Following the hearing, Judge Lee took the matter under advisement.

On April 19, 2018, Judge Lee granted Respondent's Motion for Sanctions and issued an Order striking the Answers of all Defendants due to failure of the Appellants to comply with Judge Dickson's Order and their failure to cooperate in discovery. (R. p. 28) The Order directed the Clerk of Court to schedule the matter for a damages hearing. (R. p. 36) Appellants filed a Notice of Appeal on May 11, 2018. (R. p. 806)

The Court of Appeals affirmed the trial court's order striking Appellants' answers via unpublished opinion on September 8, 2021. (R. p. 38) The case was remitted to the trial court on October 7, 2021. (R. p. 78)

The Honorable Frank R. Addy, Jr. conducted a damages hearing on November 10, 2022. Following the hearing and at the direction of Judge Addy, the Respondent submitted a memorandum in support of her request for damages on November 28, 2022. (R. p. 1114) Appellants submitted a memorandum in opposition to damages on December 6, 2022. (R. p. 1140)

On January 31, 2023, the trial court issued an order awarding damages and entering judgment on behalf of the Respondent in the following amounts:

Claim	Actual Damages	Punitive Damages	Subtotal
Wrongful Death	$7,500,000.00	$2,500,000.00	$10,000,000.00
Survival	$2,787,892.24	$16,727,353.44	$19,515,245.68
TOTAL:	$10,287,892.24	$19,227,353.44	$29,515,245.68

(R. p. 41) On the same day, and by separate Order, the trial court ordered the production of financial information and documentation that had been previously ordered by Judge Dickson's December 8, 2016 order—but was still unproduced. (R. p. 70; R. p. 13, 14, 17, 20)

On February 10, 2023, Appellants filed a Motion for a New Trial (R. p. 1154) and a Motion to Reconsider the trial court's order on financial discovery. (R. p. 1161) Respondent filed

memoranda opposing both motions on February 28, 2023. (R. p. 1166; R p. 1190) The trial court denied both motions on March 10, 2023. (R. p. 73; R. p. 76)

On April 5, 2023, Appellants noticed their intent to appeal both the damages order and the order compelling the production of financial discovery. (R. p. 1197)

FACTS

The Appellants administered a nursing home known as "Country Wood" located in Hopkins, South Carolina. The Respondent's decedent, Mildred Watkins, was placed in the care of the Appellants in March of 2011. (R. p. 213) On December 15, 2011, Mildred Watkins, age 73, died at Palmetto Richland Hospital primarily due to complications of urosepsis. (R. p. 1014) The coroner's examination of Mrs. Watkins's body on the date of her death revealed:

> An opening on the right thigh that is accompanied by a very large hematoma. The right hand/thumb are in a cast. There are decubitus sores on the victim's right shoulder and buttocks. She has healing marks on her upper back. They look like scratches. The right lower leg has a large, open sore on it. Healing, scabbed sores on the left foot.

(R. p. 916) Mildred Watkins had been admitted to the hospital for the last time on December 7, 2011. On that date, she weighed just 79 pounds (36 kilograms). (R. p. 899) After the coroner viewed Mrs. Watkins's body on the date of her death, the coroner "called and requested [Richland County Sheriff's Department] to attend the autopsy … due to the vulnerable adult allegations." (R. p. 916)

Mildred Watkins was first admitted to the Appellants' facility on March 8, 2011, just nine months prior to her death. (R. p. 213, line 7; R. p. 807; R. p. 1014) At that time, Mrs. Watkins weighed between 100 and 115 pounds. (R. p. 218, line 10; R. p. 287, line 10) Jean Watkins, the Respondent, testified that her mother "was doing well. She could feed herself. She could talk, wash herself." (R. p. 215, lines 6-7) The Respondent placed Mrs. Watkins at Country Wood because

Mrs. Watkins was recovering from a stroke and "we want[ed] to build her strength up, that's why we put her at Country Wood for rehabilitation." (R. p. 215, lines 9-11) Appellants informed the Watkins family that their mother was "a good candidate for short-term rehab." (R. p. 216, line 12)

> Q. What was your expectation with regard to your mother you expected to have her back home with you?
>
> A. Yeah, I expected to have her back home in a couple months, you know, walking with a walker if need be, yeah.
>
> Q. Did that happen?
>
> A. No, it didn't.

(R. p. 217, line 25 – R. p. 218, line 5)

Instead of a quick rehabilitation, Mildred Watkins's health and bodily condition rapidly deteriorated while in the care of the Appellants. Within one week of being admitted to Appellants' facility, a series of hospitalizations for urinary tract infections began. (R. p. 224, line 24 – R. p. 225, line 10; R. p. 811) Mrs. Watkins would be hospitalized with a second urinary tract infection on August 22, 2011. (R. p. 225, lines 22-23 – R. p. 226, lines 1-25; R. p. 815) On October 8, 2011, Mrs. Watkins was transported to the hospital via ambulance due to a painfully swollen thumb. (R. pp. 835 - 843) Scans revealed that the thumb had been dislocated. (R. p. 844) Other testing revealed that Mrs. Watkins had developed yet another urinary tract infection. (R. p. 837) Treatment of these injuries required Mrs. Watkins to be hospitalized from October 8, 2011 to October 20, 2011. (R. p. 232, lines 13-23; R. pp. 835-845) While hospitalized, medical professionals examined Mrs. Watkins's weight and found it to be 99 pounds. (R. p. 846)

Mrs. Watkins was scheduled for orthopedic surgery to repair her thumb, but prior to this surgery she became injured again.

> Q. Did something happen to her before she could have that surgery though?

> A. Yeah, back in October, they said by her thumb being dislocated broken, break or whatever by her beating on the rail that they remove[d] the rail, the bedrail off her bed and just cut it off. Okay. And one of the CNA's was trying to put her in the bed that evening, and her leg got caught on the rail that they had cut off the jagged part and that's what ripped her leg open.
>
> Q. So Country Wood had actively sawed off the bed rail?
>
> A. Yes, they did.
>
> Q. With a saw of some sort?
>
> A. Yes.
>
> Q. And left the exposed metal piece sticking out the bottom of the bed?
>
> A. Yes.

(R. p. 236, lines 9-24) The resulting gash in Mildred Watkins's leg required ten staples to close. (R. p. 847; R. p. 237, lines 3-8) Despite the deep wound, Appellants did not seek medical treatment for Mrs. Watkins. (R. p. 238, lines 17-25 – R. p. 239, line 1) Emergency medical services were not contacted until Respondent found her mother "bleeding bad." (R. p. 238, line 22) The thumb surgery eventually was completed on November 17, 2011 and required a fusion of the joint with wire. (R. pp. 852 - 874)

Three days after being discharged from her thumb surgery, Mildred Watkins was transported to the hospital once again after the Respondent requested the transfer. (R. p. 241, lines 19-25 – R. p. 242, lines 7-10) The Respondent testified to the nature of this transfer as follows:

> Q. …[W]hat was her condition when you saw her?
>
> A. She was drooling and soiled. I mean, she was dirty really. And I was asking what's going on, and they couldn't tell me what was going on with her.
>
> Q. All right, had she been eating?
>
> A. No, she hadn't been.
>
> Q. Had she been vomiting?

A. Yes.

Q. Had she had diarrhea?

A. Yes.

(R. p. 241, line 20 – R. p. 242, line 5) Medical professionals once again diagnosed Mildred Watkins with a urinary tract infection. (R. pp. 874-876)

By November 30, 2011, the Appellants' medical records began noting significant lesions on Mrs. Watkins skin. On that date, at least 18 skin defects were noted on Mrs. Watkins's body. (R. p. 907) This stood in contrast to the skin audits Appellants performed on Mildred Watkins in the weeks following her March 8, 2011 admission which found no defects whatsoever. (R. p. 809)

On December 7, 2011, Jean Watkins arrived at the Country Wood facility to find her mother wearing a bib that was saturated with drool. (R. p. 250, line 9 – R. p. 251, line 5) Mildred Watkins was staring into space and her daughter immediately requested an ambulance be called. (R. p. 251, lines 6-15) The Appellants' nurse responded, "for what … [s]he's not going to get any better." (R. p. 251, lines 10-12) Jean Watkins then contacted emergency medical services herself, which then transported Mildred Watkins to what would be her final hospital admission. (R. p. 251, lines 13-15) The records from Mildred Watkins's final hospital stay reveal her previously noted weight of 79 pounds (or 36 kilograms). (R. p. 899) This represented an approximately 20% loss of body weight since her October 8, 2011 hospital admission. (R. p. 846) Skin defects were noted on her body, including a sacral wound described as "unstageable." (R. p. 888) Eight days later, after Mrs. Watkins passed away, photographs taken by the coroner and the subsequent autopsy revealed numerous open wounds, bruises, scratches, and sores on Mrs. Watkins' body. (R. pp. 942-1013)

This litigation followed.

ARGUMENT

First, it must be noted that none of the four issues on appeal request review of the trial court's awards of $7,500,000.00 of compensatory damages in the wrongful death action and $2,787,892.24 of compensatory damages in the survival action. Therefore, this Court should, at a minimum, affirm the award of $10,287,892.24, as the Defendants have not appealed this ruling. See Atl. Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012)("[A]n unappealed ruling, right or wrong, is the law of the case.")

Each of the Appellants' four issues on appeal should be rejected and the awards to the Respondent should be affirmed. As discussed in the Statement of the Case, the Appellants' Answers were stricken due to Appellants' failure to cooperate with discovery and their subsequent failure to comply with the Orders of The Honorable Edgar Dickson and the Honorable Alison Lee. (R. p. 28) The Order Striking Appellants' Answer was appealed and Judge Lee's ruling was upheld. (R. p. 38) As such, the Appellants were deemed to be in default and all of the allegations of the Respondent's Complaint were admitted. See Karppi v. Greenville Terrazzo Co., 327 S.C. 538, 544, 489 S.E.2d 679, 682 (Ct. App. 1997)("If the answer is struck then liability is presumed as to [the Defendant].")

With issues of duty, breach, and causation resolved by the stricken Answer, the determination of the amount of damages owed to the Respondent was the only consideration for Judge Addy. The damages hearing was non-jury and Judge Addy was the sole trier of fact. The trial court conducted a thorough review of the evidence in awarding punitive damages and its analysis satisfied the Due Process rights of the Appellants. The trial court appropriately disregarded the punitive damages caps set forth in S.C. Code Ann. § 15-32-530 pursuant to that statutory scheme. And the trial court appropriately ordered the production of insurance and

financial information pertaining to the Appellants. As a result, the rulings of the trial court should be affirmed.

I. The evidence supports the trial court's punitive damages award

Appellants contend the trial court's punitive damages award should be reversed because "the trial court relied on inadmissible hearsay and lay opinion testimony related to the decedent's injuries…". (Appellants' Brief at 13) Our courts apply an "any evidence" standard when reviewing the evidentiary support for a trial court's award of punitive damages.

> The trial judge has considerable discretion regarding the amount of damages, both actual or punitive. Because of this discretion, our review on appeal is limited to the correction of errors of law. Our task in reviewing a damages award is not to weigh the evidence, but to determine if there is any evidence to support the damages award.

Mellen v. Lane, 377 S.C. 261, 275–76, 659 S.E.2d 236, 244 (Ct. App. 2008), quoting Austin v. Specialty Transp. Servs., Inc., 358 S.C. 298, 310–311, 594 S.E.2d 867, 873 (Ct. App. 2004). Appellate courts "must affirm the trial court's punitive damages finding for the Respondents if any evidence reasonably supports the judge's factual findings." Austin at 314, 594 S.E.2d at 875, citing Carjow, LLC v. Simmons, 349 S.C. 514, 563 S.E.2d 359 (Ct. App. 2002).

As will be shown below, substantial evidence supports the trial court's finding of clear and convincing evidence of reckless, willful, and wanton negligence sufficient to give rise to an award of punitive damages. Furthermore, the points of law of which the Appellants complain—such as proving standards of care and causation—were established through the striking of the Appellants' answer. Next, most (if not all) of the "inadmissible evidence" Appellants point to was not objected to below and is thus not preserved for review. Finally, any inadmissible evidence that was objected to is merely cumulative to the greater body of evidence and thus its consideration did not prejudice the Appellants.

a. Appellants' objections to the court's evidence are misplaced

Appellants' argue that the trial court erred in rulings on standards of care and causation. (Appellants' Brief at 14 - 15) This argument overlooks the procedural posture of the case: default. "In essence, the defaulting defendant has conceded liability." Solley v. Navy Fed. Credit Union, Inc., 397 S.C. 192, 203, 723 S.E.2d 597, 603 (Ct. App. 2012), quoting Howard v. Holiday Inns, Inc., 271 S.C. 238, 242, 246 S.E.2d 880, 882 (1978). Thus, proof of pertinent standards of care and causation was not required. By virtue of the stricken answer, the allegations in the Complaint are deemed admitted and liability conceded.

b. Strong evidence supports the trial court's award of punitive damages

The trial court appropriately awards punitive damages "where the plaintiff proves by clear and convincing evidence the defendant's misconduct was willful, wanton, or in reckless disregard of the plaintiff's rights." Austin at 313, 594 S.E.2d at 875, citing Taylor v. Medenica, 324 S.C. 200, 479 S.E.2d 35 (1996); Lister v. NationsBank of Delaware, 329 S.C. 133, 494 S.E.2d 449 (Ct. App. 1997). The trial court's order awarding punitive damages rests on six evidentiary grounds. (R. pp. 58-61) Each will be reviewed in turn.

i. Failure to prevent, diagnose, and treat urinary tract infections

The allegations of the Complaint, which are deemed admitted by the stricken Answer, specify the failures and wanton and willful conduct of the defendants: "[t]hese infections, and more specifically, the urinary tract infections were not diagnosed and/or were improperly diagnosed, were not addressed and/or were improperly addressed, and were not remediated and/or were improperly and incompletely remediated by the Defendant." (R. p. 81, ¶ 14; R. p. 84, ¶ 22; R. p. 90, ¶ 32(h); R. pp. 91, ¶¶(p-t)). The Appellants' duty to Mildred Watkins and their breach of that

duty are established early in the Complaint and are admitted by the stricken Answer. (R. p. 82, ¶ 8). Likewise, causation and damages are clearly articulated:

> As a direct and proximate result of the grossly negligent, negligent, careless, **reckless, willful and wanton** departures from the professional standards of care by the Defendants, jointly and severally, Mildred Watkins, suffered a rapid, significant and debilitating decline in health, complicated by, but not limited to, a severe urinary tract infection . . . an untreated urinary tract infection from which she developed urosepsis and ultimately died, by virtue of which, the decedent's statutory beneficiaries have lost the aid, comfort, companionship and society of the decedent. . . .

(R. p. 89, ¶ 29; R. p. 93, ¶ 34; R. p. 98, ¶ 39)(emphasis added) Each defendant has conceded liability to these same accusations in their respective sections of the Complaint. Again, as the answer was stricken, these statements are now deemed conceded and constructively admitted; therefore, support the trial court's appropriate award of punitive damages.

Beyond the admissions obtained by the stricken Answer, through the testimony and evidence at trial, the trial court found that the defendants "repeatedly failed to prevent, diagnose, and treat UTIs, allowing them to become so severe as to require hospitalization, and ultimately her death." (R. p. 58) Respondent offered numerous pieces of evidence supporting this assertion. Exhibit 4, for example, contains Mildred Watkins's August 22, 2011 medical records. (R. p. 815) These records depict "a 72-year-old female with altered mental status. Looking through her old records, she has had this multiple times secondary to urinary tract infections." (R. p. 816) The trial court admitted this exhibit into evidence without objection.[1] (R. p. 32, lines 1-7)

[1] As will be shown, Appellants objected to very little testimony or evidence offered during the default damages hearing. "A contemporaneous objection is required to properly preserve an error for appellate review. The failure to make an objection at the time evidence is offered constitutes a waiver of the right to object." Doe v. S.B.M., 327 S.C. 352, 356, 488 S.E.2d 878, 880 (Ct. App. 1997)(internal citations omitted). Thus, to the extent that Appellants now complain of

Plaintiff's Exhibit 6, Mildred Watkins's October 8, 2011 medical records, describes "a 73-year-old female who presents to the emergency department today with altered mental status and fever. The differential for this is most likely urinary tract infection versus pneumonia." (R. p. 836) "She has had multiple medical admissions in the past for urinary tract infections and she is currently getting admitted by Nephrology." (R. p. 841) The trial court admitted Exhibit 6 into evidence without objection. (R. p. 234, lines 4-9)

Plaintiff's Exhibit 12, Mildred Watkins's November 20, 2011 medical records, demonstrate yet another urinary tract infection diagnosis. (R. p. 874) According to the records,

> [t]he daughter just reports that she is acting strangely and is not behaving like herself. This has happened numerous times in the past and it turns out to be a urinary tract infection. The daughter does report there have been some problems with the nursing home.

(R. p. 874) The trial court admitted Exhibit 12 into evidence without objection. (R. p. 245, lines 1-5)

Finally, Mildred Watkins's December 7, 2011 medical records, offered as Exhibit 14, diagnose Mrs. Watkins with "septic shock likely secondary to urosepsis." (R. p. 890) The records describe Mrs. Watkins as "unresponsive" and state that "she does not respond to painful stimuli." (R. p. 889) Sadly, this would prove to be Mrs. Watkins' fatal diagnosis. Her death certificate, offered as Exhibit 17, reflects the cause of her death as "complications of urosepsis." (R. p. 1014). The trial court admitted both Exhibits 14 and 17 into evidence without objection. (R. p. 252, line 22 – p. 253, line 2; R. p. 256, lines 1-7)

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the trial court's consideration of testimony or evidence that faced no objection, the Appellants have waived those issues.

As shown above, substantial evidence exists supporting the trial court's finding of a failure "to prevent, diagnose, and treat UTIs." (R. p.58) The exhibits admitted at trial without objection revealed that in the ten (10) months that Mildred Watkins was a resident of the Appellants' facility, she was hospitalized eight (8) times, most of which were for urinary tract infections so severe, she remained in the hospital for ten (10) days to two (2) weeks. (R. p. 811; R. p. 815; R. p. 835; R. p. 852; R. p. 874) Ultimately, an untreated urinary tract infection is what caused her death. (R. p. 1014).

In summary, the Appellants failed to prevent and treat Mildred Watkins's urinary tract infections over the course of ten (10) months. In fact, the discovery of Mrs. Watkins' urinary tract infections was made only when she had been transferred to the hospital at the request of her daughter or for other injuries. The Appellants' failure to prevent and treat urinary tract infections caused Mildred Watkins tremendous pain and suffering and, ultimately, caused Mrs. Watkins' death. (R. p. 1014) This is clear and convincing evidence worthy of an award of punitive damages. The Appellants did not object to the admissibility of any of this evidence. The trial court's award of punitive damages should be upheld.

ii. Exposure of Mildred Watkins to sawed-off bedframes

The Appellants constructively admitted to exposing Mildred Watkins to the hazardous bedrails in a willful, wanton, and reckless manner, through their stricken Answer. Likewise, the Complaint establishes causation in paragraph 32 (z-aa):

> In removing bed rails from resident's beds, including Mildred Watkins' bed, thereby leaving exposed metal ***which the Defendant knew*** or should have known would result injuries to its residents, including Mildred Watkins. **In causing** and/or allowing Mildred Watkins skin to be lacerated by her bed frame, resulting in a severe and painful laceration which required emergency medical care and multiple staples.

(R. p. 92, ¶32(z-aa); R. p. 89, ¶ 29; R. p. 93, ¶ 34; R. p. 98, ¶ 39) (emphasis added) As the Answer was stricken, these statements are now deemed conceded and constructively admitted, therefore, support the trial court's appropriate award of punitive damages.

Likewise, the trial testimony and evidence supported an award of punitive damages. The trial court found that the Appellants "cut the bedrails off the beds of elderly and sick patients, leaving jagged exposed metal to cut [the elderly] and require staples." (R. p. 58) The court further found that the Appellants "recklessly created an unreasonably dangerous condition on the beds of their residents, including Mildred Watkins." (R. pp. 58-59) The Respondent introduced numerous pieces of evidence to support the trial court's findings.

First, Exhibit 8 features pictures of sawed-off, jagged metal edges attached to Mrs. Watkins's bed, as well as pictures of the wound suffered by Mrs. Watkins after having been surgically-repaired with 10 staples. (R. p. 847) The Respondent testified that she personally took these photographs while visiting her mother. (R. p. 237, line 19 – R. p. 238, line 8) The trial court admitted these photographs as Exhibit 8 into evidence without objection. (R. p. 238, lines 9-15)

Second, Exhibit 9—Mrs. Watkins's November 7, 2011 medical records, report the following:

> This is a 73-year-old female with a history of advanced dementia, who presents to the emergency department today with a laceration and skin tear on her right lower extremity. Per her daughter, the nursing staff was moving her when her leg got caught against a metal bed rail. She sustained a laceration.

(R. p. 848) Doctors described the laceration as "an L-shaped skin tear over the right lower extremity" that "measures 5 cm in the longitudinal position and 5 cm in the transverse position." (R. p. 849) The trial court admitted Exhibit 9 into evidence without objection. (R. p. 239, line 17; R. p. 240, line 17 – R. p. 241, line 2)

Third, a DHEC investigator responding to complaints regarding the laceration found the following.

> Nursing staff inspected the area where the incident took place. The CNA did not witness what Mrs. Watkins had scratched her leg on but found a metal projection on the lower bed frame that could have caused the skin tear. No other objects were nearby that could have caused the injury.
> …
> An audit was performed on all the beds located on the unit by the Unit Manager. Fifteen beds were identified to have the same projection to the bed frame that could possibly cause injury to an employee or resident.

(R. p. 1026) The trial court admitted this DHEC investigation report into evidence as Exhibit 18 and without objection. (R. p. 259, line 23 – R. p. 260, line 7)

Finally, on December 7, 2011, doctors recorded that "[t]he patient also has a gash in her right leg from being lacerated on a piece of furniture at the nursing home…". (R. p. 892) The trial court admitted these medical records into evidence without objection. (R. p. 252, line 22 – R. p. 253, line 2)

The testimony and evidence admitted at trial revealed that the Appellants knowingly and recklessly sawed the bedrails off the beds of their elderly patients, leaving jagged metal exposed. As shown above, substantial clear and convincing evidence exists supporting the trial court's finding that the Appellants "recklessly created an unreasonably dangerous condition on the beds of their residents, including Mildred Watkins." (R. pp. 59-60) Furthermore, because the Appellants did not object to the admissibility of any of this evidence, the issue was not properly preserved for appeal. As a result, the trial court's award of punitive damages should be upheld.

iii. Harm to Mildred Watkins's right thumb

Appellants contest the admissibility of the evidence presented during the damages hearing concerning the injury to Mildred Watkins' thumb (discussed below), however, this too was alleged

and conceded in the Complaint via the stricken Answer. The Complaint alleges that the Appellants were negligent, grossly negligent, willful, wanton and reckless:

> **In causing** and/or allowing Mildred Watkins to sustain a severe dislocation/fracture to her thumb which required surgery. . . . [and] **in causing** and/or allowing Mildred Watkins to be assaulted, battered, bruised, scratched and harmed by Defendant's employees and/or other residents.

(R. p. 92, ¶¶32(y), (dd))(emphasis added) As the Answer was stricken, these allegations are now deemed conceded and constructively admitted; therefore, supporting the trial courts appropriate award of punitive damages and corroborating any hearsay that is consistent with the constructive admissions.

Following the trial testimony and exhibits, the trial court found "the Defendants were grossly negligent in not preventing Mrs. Watkins' [thumb] injury...". (R. p. 59) The Respondent produced witnesses and introduced numerous exhibits, including physician records, which support the trial court's finding.

The Respondent testified as to the Appellants' explanation of the cause of her mother's thumb injury.

> Q. Did you ask the staff anything about what happened to her thumb?
>
> A. I asked the staff. I asked the head nurse what happened to her thumb, and they stated that she was beating on the rail and that's how her thumb got swollen.
>
> Q. Beating her bed rail?
>
> A. Her bed rail, yes.

(R. p. 231, lines 13-19) The Respondent further testified as to what other evidence she discovered as to the cause of Mildred Watkins's thumb dislocation had been.

> Q. Did you ask your mother what happened [to] her thumb?
>
> A. Yes, I did.

> Q. Was she able to tell you?
>
> A. She stated she didn't want to tell me because I would get in trouble.
>
> Q. What [did] she mean by that do you think?
>
> A. Because I would go questioning to find out who and why they did that.
>
> Q. Did you think—did you interpret that to mean that someone had done that to her?
>
> A. Yes, because from what the x-ray showed and what the doctor in the emergency room said it's no way her thumb could have been beaten up like that by her beating on the rail. She said it had to be twisted or turned or pulled back for it to look like that.

(R. p. 232, line 24 – R. p. 233, line 13) The Appellants did not object to any of this or other testimony relevant to Mildred Watkins's thumb injury.

Evidence related to the extent and mechanism of the thumb injury was submitted for consideration by Judge Addy. It was the Respondent's position that Mildred Watkins would not have had the physical strength, nor have been able to achieve the positioning, to inflict the type of damage sustained to her thumb by hitting it on a bedrail. (R. p. 232, lines 4-11, 24-25 - R. p.233, lines 1-13) At the time of the October 8, 2011 hospital admission, Mildred Watkins weighed eighty seven (87) pounds. (R. p. 846; R. p. 234, line 18) The Prisma Health Richland hospital record, which was admitted without objection, details Mildred Watkins' right thumb injury:

- "swelling of the right thumb and concern about fracture"; (R. p. 836)
- "X-ray reveals a dislocation of the proximal interphalangeal joint of thumb"; (R. p. 836)
- [t]humb dislocation – per Ortho"; (R. p. 840)

- "the ulnar collateral ligament is disrupted with approximately 50 degrees with stress. . . diffuse swelling over the thumb and she is tender to palpate over the metacarphophalangeal head"; (R. p. 842)

- "The proximal phalanx is dislocated in an ulnar-volar direction"; (R. p. 842);

- "The thumb was noted to be grossly unstable and opened ulnarly approximately 45 degrees as well as radially to approximately 30 degrees compared to the left hand." (R. p.842)

This record further states that a closed reduction was attempted but was unsuccessful because, if performed, her thumb, "would fall off as well as in an ulnar direction." (R. p. 842) This report provides detailed medical documentation of the severity of the injury sustained by Mildred Watkins.

Jean Watkins testified that her mother required surgery on her thumb due to the severity of the injury. (R. p. 239, line 19 – R. p. 240, line 16) The operative report, which not only reflects the extent of the injury, and the nature of the repair, also provides medical documentation from an orthopaedic surgeon, John J. Walsh, M.D., as to causation. (R. p. 232, line 13 – R. p. 233, line 13; R. p. 852) The operative report notes a volar dislocation, an uncommon hyperflexion or force injury to the thumb: "[r]adiographs demonstrate ***a nearly fully dislocated thumb MCP joint volarly***." (R. p. 852)(emphasis added) This report was admitted without objection. (R. p. 240, line 17 – R. p. 241, line 2)

The Appellants have anchored a portion of their appeal on the argument that Judge Addy relied on inadmissible hearsay and lay witness testimony. However, the Appellant allowed medical records into evidence, without objection, which provided the medical opinions of an orthopaedic surgeon and other medical doctors. Judge Addy appropriately relied on evidence which was admitted without objection in reaching a decision on punitive damages.

Also admitted into evidence without objection were Respondent's complaints to the Ombudsman and DHEC related to her mother's injuries. (R. p. 257, lines 11-25 – R. p. 260, line 5); R. p. 1015-1025) Exhibit 18) Included within this exhibit are the same statements made by Jean Watkins at trial regarding the mechanism of injury to her mother's thumb. In Jean Watkins' written complaint to the Ombudsman and DHEC, she reported:

> Dr. Whiteside who order [sic] xrays. He stated from the way her finger looks someone had to bend it back or twist it. Nurses, CNA's stated that she was hitting her hand on the bed rail. Dr. Whiteside stated that her pinky should have been bruise [sic] or broken not her thumb.

(R. p. 1023) No objections were made to the admissibility of the Complaints which contained these written statements. (R. p. 257, line 19 – R. p. 260, line 7) Appellants cannot allow the written statements to be admitted into evidence without objection and thereafter assert that the same statements are inadmissible hearsay and worthy grounds for appeal when spoken by Jean Watkins at the hearing.

Finally, Judge Addy has vast experience in identifying and ruling on matters of hearsay. Even if Jean Watkins' statements were hearsay, which they were not for the reasons stated above, Judge Addy has the experience, skill, and deference to disregard any improper statements in review of this matter. In Okatie River v. Southeastern Site Prep., 353 S.C. 327, 577 S.E.2d 468 (Ct. App. 2003), the Court held that "[c]redibility determinations regarding testimony are a matter for the finder of fact, who has the opportunity to observe the witnesses, and those determinations are entitled to great deference…". (string citation omitted)

iv. Failure to prevent and treat Mildred Watkins's skin breakdown

Failure to prevent skin breakdown is also alleged and admitted in the Complaint as it relates to all Appellants.

> In allowing Mildred Watkins to develop decubitus ulcers, in failing to address and have adequate plans of care in place to prevent the development of decubitus ulcers, in failing to properly treat and diminish the size and severity of the decubitus ulcers, and in and failing to eliminate the ulcers.

(R. p. 92, ¶ 32(u)). Each of the accusations related to the skin breakdown is a "result of the grossly negligent, negligent, careless, ***reckless, willful and wanton*** departures from the professional standards of care by the Defendant." (R. p. 90, ¶ 34)(emphasis added) As the Answer was stricken, these allegations are now deemed conceded and constructively admitted, therefore, supporting the trial courts appropriate award of punitive damages.

Additionally, following the testimony and evidence submitted at trial, the trial court found the Appellants "acted with reckless disregard of Mildred Watkins' health and failed to prevent, and thereafter treat, her skin breakdowns to the point that there was almost no place on her entire five-foot frame which did not have a wound at the time of her death." (R. p. 59) The Respondent introduced numerous pieces of evidence to support the trial court's findings.

First, Respondent testified as to the visible condition of her mother's body when Mildred Watkins was admitted to the hospital on November 20, 2011.

> Q. When she arrived at Richland for that visit in November, November 20th, did the nursing staff at Richland note numerous areas on her body where she had skin problems?
>
> A. Yes.
>
> A. Open wounds and skin tears.
>
> A. Yes.
>
> Q. Did those areas include her sacrum, her buttocks, hip, chest, back, arm, thighs, shoulders, legs, ankles and feet.
>
> A. Yes.

(R. p. 243, lines 4-14) Appellants did not object to this testimony. Respondent also offered into evidence a photograph of bruising on her mother's shoulder. (R. p. 873) The trial court admitted this exhibit without objection. (R. p. 244, lines 2-7)

Second, the Respondent offered into evidence medical records dated November 30, 2011 noting eighteen individual skin malformations. (R. p. 907) The trial court accepted into evidence these records as Exhibit 15 without objection from the Appellants. (R. p. 51, line 23 – R. p. 52, line 3)

Third, the Respondent offered into evidence medical records dated December 7, 2011 that recorded Mildred Watkins as having a sacral ulcer and hip wound. (R. p. 889) The trial court entered these records into evidence as Exhibit 14 without objection from the Respondents. (R. p. 252, line 22 – R. p. 253, line 2)

Even the Appellant's own records reflected a drastic change in Mrs. Watkins' skin condition while under their care from the time of her admission in March until November, documenting problems on nearly every area of her body. (R. p. 907; R. p. 246, line 23 – R. p. 247, line 3)

Finally, the Respondent offered into evidence a disk of approximately 80 photographs of Mildred Watkins's body taken by the coroner following Mrs. Watkins's death. (R. pp. 909-1013) The trial court admitted these photographs into evidence as Exhibit 16 upon stipulation by the parties. (R. p. 254, line 21 – R. p. 256, line 7)

In sum, there is substantial clear and convincing evidence supporting the trial court's finding that Appellants acted recklessly regarding prevention and treatment related to Mildred Watkins's skin care. As a result, the trial court's award of punitive damages should be upheld.

v. Failure to provide basic nutrition and preventative care

The failure to provide basic nutrition was a recurrent problem, as numerous allegations can be seen throughout the Complaint. All such allegations were conceded by the Appellants by virtue of their stricken Answer. Specially, paragraph 32, sections (a) through (g) of the Complaint pertain to the Appellants' reckless, willful and wanton acts pertaining to Mildred Watkins's nutrition and preventative care. (R. p. 90, ¶¶ 32(a-g); R. p. 93, ¶ 34) These conceded allegations on liability and reckless, willful and wanton conduct support the trial courts appropriate award of punitive damages.

In addition to these admissions from the stricken Answer, following the hearing, the trial court found that "[n]ot only did the Defendants fail to rehabilitate Mildred Watkins, they failed to provide even basic nutrition and preventative care and accelerated her demise." (R. p. 59) This finding is supported by the evidence.

The Respondent testified that Mildred Watkins was not malnourished or otherwise physically frail when she was first admitted to the care of the Appellants.

> Q. Had anyone told you before her admission to Country Wood that she had been diagnosed with a failure to thrive?
>
> A. No
>
> Q. What about malnutrition?
>
> A. No.
>
> Q. Did you describe your mother as frail before she came to Country Wood?
>
> A. No.

(R. p. 287, lines 11-18)

Prior to entering the Appellants' facility, Mildred Watkins weighed between 100 and 115 pounds. (R. p. 218, line 10; R. p. 287, line 10). While a resident of Appellants' facility, during an October visit to the hospital, she was noted to weigh 99 pounds and to be underweight. (R. p. 846) By December 8, 2011, just days before her passing, Ms. Watkins' weight had plummeted to 79 pounds while under the Appellants' care, according to the hospital records. (R. p. 899) The trial court admitted these records into evidence without objection. (R. p. 252, line 22 – R. p. 253, line 2) Also admitted into evidence without objection were the photos of Mrs. Watkins's emaciated body at the time of her death. (R. pp. 909-1013; R. p. 254, line 21 – R. p. 256, line 7)

Substantial clear and convincing evidence supported the trial court's finding that Appellants acted recklessly regarding Mildred Watkins's skin care. As a result, the trial court's award of punitive damages should be upheld.

vi. Falsification of documents

The trial court's final basis for awarding punitive damages was its finding that "the Defendants knowingly and willfully falsified medical records, pretending to provide treatment and services that they could not have provided." (R. p. 60) The evidence supports this finding. Specifically, weekly skin audits produced by the Appellants—admitted into evidence without objection as Exhibit 19 (R. p. 1035)—suggest that Appellants conducted examinations of Mildred Watkins's skin on August 23, 2011, October 11, 2011, and October 18, 2011. However, the Respondent testified that Mrs. Watkins was hospitalized on those three dates. (R. p. 262, line 7 – R. p. 263, line 6) Additionally, hospital records were admitted into evidence without objection which confirmed that Mildred Watkins was at the hospital and not at Appellants' facility on the dates that Appellants' records reflect that skin examinations were made of Mildred Watkins. (R. p. 815; R. p. 835) In view of this uncontroverted evidence and testimony, the trial court found

"clear and convincing evidence of fraud, misrepresentation, and the alteration of medical records to avoid liability." (R. p. 60)

This clear and convincing evidence supported the trial court's finding that Appellants acted recklessly regarding Mildred Watkins's skin care and attempted to alter her medical history to conceal this fact. As a result, the trial court's award of punitive damages should be upheld.

c. Any inappropriately considered evidence was merely cumulative of other admissible evidence

Finally, to the extent that the trial court may have considered any inadmissible testimony or evidence in reaching its findings, such evidence was merely cumulative to other evidence appropriately received into the record. "Though testimony may constitute inadmissible hearsay evidence, no prejudice is shown when it merely corroborates other evidence admitted in the case." Starkey v. Bell, 281 S.C. 308, 315, 315 S.E.2d 153, 157 (Ct. App. 1984), citing Crowder v. Carroll, 251 S.C. 192, 161 S.E.2d 235 (1968). See also Taylor at 214, 479 S.E.2d at 42 ("Improperly admitted hearsay which is merely cumulative to other properly admitted evidence may be harmless error."). All evidence and testimony referenced in Section I.b. of this brief was offered without objection and is sufficient to support the trial court's award of punitive damages. Thus, Appellant has not been prejudiced by the consideration of any otherwise objectionable evidence.

II. The trial court's award of punitive damages is not grossly excessive

Appellants contend that the trial court's award of punitive damages violated Due Process. "Because punitive damages are quasi-criminal in nature, the process of assessing punitive damages is subject to the protections of the Due Process Clause of the Fourteenth Amendment of the United States Constitution." Austin v. Stokes-Craven Holding Corp., 387 S.C. 22, 52, 691 S.E.2d 135, 150 (2010), quoting James v. Horace Mann Ins. Co., 371 S.C. 187, 194, 638 S.E.2d 667, 670 (2006). According to the United States Supreme Court, "[o]nly when an award can fairly be

categorized as 'grossly excessive' … does it enter the zone of arbitrariness that violates the Due Process Clause of the Fourteenth Amendment." BMW of N. Am., Inc. v. Gore, 517 U.S. 559, 568, 116 S. Ct. 1589, 1595, 134 L. Ed. 2d 809 (1996).

> In determining the constitutionality of a punitive damages award, Gore directed that courts consider: (1) the degree of reprehensibility of the defendant's conduct; (2) the disparity between the actual and potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases.

Mitchell, Jr. v. Fortis Ins. Co., 385 S.C. 570, 585, 686 S.E.2d 176, 184 (2009), citing Gore at 575, 116 S. Ct. 1589.[2] The evidence of this case, considered de novo by the reviewing court, as to each of these factors reveals the punitive damages awards are not "grossly excessive." See Mitchell, Jr. at 583, 686 S.E.2d at 182 ("[C]hanges in the federal case law have persuaded us to adopt a de novo standard for the review of trial court determinations of the constitutionality of punitive damages awards.") As a result, the trial court's awards of due process do not offend Due Process and should be affirmed.

a. The degree of reprehensibility of the Appellants' misconduct

Five considerations analyze the reprehensibility of a defendant's conduct.

> In terms of reprehensibility, we should consider whether: (1) the harm caused was physical as opposed to economic; (2) the tortious conduct evinced an indifference to or a reckless disregard for the health or safety of others; (3) the target of the conduct had financial vulnerability; (4) the conduct involved repeated actions or was an isolated incident; and (5) the harm was the result of intentional

[2] Appellants criticize the trial court's citation of Gamble v. Stevenson, 305 S.C. 104, 406 S.E.2d 350 (1991). As Mitchell noted, however, "Gamble remains relevant to the post-judgment due process analysis, but only insofar as it adds substance to the Gore guideposts." Mitchell at 587, 686 S.E.2d at 185. As will be shown below, the trial court's Due Process analysis appropriately considered all guideposts set forth within Gamble, Gore, and Mitchell.

malice, trickery, or deceit, rather than mere accident.

Austin v. Stokes-Craven Holding Corp., 387 S.C. 22, 53, 691 S.E.2d 135, 151 (2010), citing State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408, 123 S.Ct. 1513, 155 L.Ed.2d 585 (2003). The trial court's analysis of each of these considerations will be reviewed in turn.

As to the first consideration of the reprehensibility analysis, the trial court considered numerous examples of physical harm (as opposed to economic harm) inflicted upon Mildred Watkins. The evidence of physical harm submitted by the Respondent at trial caused by the reprehensible conduct of the Appellants was voluminous. As discussed in Section I.b.i. of this brief, Mildred Watkins had repeated urinary tract infections which should have been prevented, and certainly if not prevented, then discovered in a timely manner and appropriately treated. They were not. Instead, her infections were unnoticed due to gross neglect, to the extent that she had to be hospitalized on six (6) occasions for extended periods of time to treat them. Ultimately, the repeated indifference to determining the cause of repeated urinary tract infections or providing any treatment for them whatsoever, resulted in her death from urosepsis. (R. p. 1014) This is clear and convincing evidence of reprehensible conduct.

Also discussed in detail in Section I.b.ii. of this brief was the reprehensible decision of the Appellants to saw off the bedrails of Mildred Watkins' bed, as well as fifteen (15) other residents. (R. p. 1028) This decision was the direct and proximate cause of the serious laceration to the leg of Mildred Watkins that required ten staples to close. (R. p. 847, Exhibit 8)

Additionally, the very serious injury to Mildred Watkins' thumb—which was a result of gross negligence, and/or willful wanton conduct—was so severe that it required surgery. (R. p. 852)

However, the most obvious of the physical harms suffered by Mrs. Watkins was the emaciated, bruised, and ulcerated condition of her body at the time of her death. Mrs. Watkins's lethally frail condition is best supported by her medical records in the days leading up to her death as well as the photographs of her body shortly after her passing. (R. p. 899; R. pp. 909-1013) This evidence led the trial court to conclude "this is the most egregious case of elder neglect/abuse I have ever witnessed…". (R. p. 68) While cases involving purely economic harm may justify an award of punitive damages, Gore distinguishes between such cases and those which evince "indifference to or reckless disregard for the health and safety of others." Gore at 576, 116 S.Ct. at 1599. In this case, the evidence presented to the trial court directly implicates the Appellants' indifference to and disregard for the health of Mildred Watkins.

As to the "duration of the conduct" consideration of the reprehensibility analysis, the trial court noted that Mildred Watkins endured eight emergency room visits between March and December of 2011, including six visits for repeated urinary tract infections. "Mrs. Watkins's [infections] were so severe, and went on for so long, that her mental status became altered, and she developed fever, nausea, and diarrhea." (R. p. 57) These findings were supported by the medical records entered into evidence without objection. (R. p. 811; R. p. 815; R. p. 835; R. p. 848; R. p. 874; R. p. 887) The trial court also noted that Mrs. Watkins's "skin condition at death revealed a pain-filled existence from the date of her admission to her death." (R. p. 58) The photographs admitted to evidence supported the trial court's findings, revealing "almost no place on her entire five-foot frame which did not have a wound at the time of her death." (R. p. 59)(R. pp. 909-1013) These maladies constitute evidence of on-going neglect over an extended period of time that supports the imposition of the punitive damages awards in question.

The trial court did not analyze whether Mrs. Watkins "had financial vulnerability." This third of the Gore reprehensibility factors, however, is most relevant when the plaintiff is a victim of economic wrongdoing. See Gore at 576, 116 S. Ct. at 1599 ("To be sure, infliction of economic injury, especially when done intentionally through affirmative acts of misconduct, or when the target is financially vulnerable, can warrant a substantial penalty.")(internal citation omitted). Thus Mildred Watkins's financial vulnerability is not directly relevant to the trial court's analysis in this case. However, Mrs. Watkins's age and physical infirmities do underscore her vulnerable status.

The trial court found that the Appellants "repeatedly acted in a grossly negligent, reckless, willful, wanton, and reckless manner toward Mildred Watkins." (R. p. 58) "Our holdings that a recidivist may be punished more severely than a first offender recognize that repeated misconduct is more reprehensible than an individual instance of malfeasance." Gore at 577, 116 S. Ct. at 1599–600, citing Gryger v. Burke, 334 U.S. 728, 732, 68 S.Ct. 1256, 1258–1259, 92 L.Ed. 1683 (1948). Perhaps the most disturbing example of Appellants' recidivist conduct was the finding that Appellants' "cut the bedrails off the beds of elderly and sick patients, leaving jagged exposed metal to cut them and require staples." (R. p. 58) This factual finding was supported by DHEC's investigatory results that revealed similar dangerous defects to fifteen different beds within Appellants' facility. (R. p. 1026) Likewise, the repeated examples of reprehensible conduct with regard to nutrition, urinary tract infections, and the deplorable condition of Mildred Watkins's skin all illustrate Appellants' recidivist conduct.

Finally, the trial court found evidence of "intentional malice, trickery, or deceit." The court determined that Appellants "knowingly and willfully falsified medical records, pretending to provide treatment and services that they could not have provided, because Mrs. Watkins was hospitalized at the time the alleged examinations were performed." (R. p. 60) This factual finding

was supported by falsified records which were admitted into evidence without objection. (R. pp. 1035-1036) These skin audits were all dated and signed by Appellants to have taken place at times when Mildred Watkins was not physically on the Appellants' property due to her hospitalizations. (R. p. 260, line 9 – R. p. 264, line 17; R. pp. 1035-1036) Yet, the records go into great detail about the thorough examination that Appellants performed on Mildred Watkins and the condition of her body, including: the color of her skin; the moisture level of her skin; the temperature of her skin to the touch, "warm" on one occasion " normal" on others; and skin turgor, following "2 seconds" or "3 seconds" of touching of the skin of a patient ***who was not present in the facility.*** (R. pp. 1035-1036) This evidence of "intentional malice, trickery, or deceit" supports the imposition of the punitive damages awards in question.

In sum, the trial court properly considered all relevant "reprehensibility" considerations set forth in Gore and its progeny and found sufficient evidence to support an award of punitive damages. All the relevant considerations weighed in favor of a significant punitive damages award. Furthermore, these factual findings were supported by evidence in the record that was admitted without objection.

b. The disparity between the actual and potential harm suffered by the plaintiff and the amount of the punitive damages award

The second prong of the Due Process analysis of a punitive damages award is commonly referred to as the "ratio" analysis. "The ratio of actual or potential harm to the punitive damages award is 'perhaps the most commonly cited indicium of an unreasonable or excessive punitive damages award.'" Mitchell, Jr. at 588, 686 S.E.2d at 185, 9), quoting Gore, 517 U.S. at 580, 116 S.Ct. 1589.

> With this instruction in mind, we note that a court, when determining the reasonableness of a particular ratio of actual or potential harm to a punitive damages award, may consider: the

> likelihood that the award will deter the defendant from like conduct; whether the award is reasonably related to the harm likely to result from such conduct; and the defendant's ability to pay.

Mitchell, Jr. at 588, 686 S.E.2d at 185. The trial court analyzed each of these considerations.

The ratio of punitive damages to actual damages awarded in this case is 1:3 for the wrongful death award and 6:1 for the survival award. These ratios fall within the spectrum of awards found to comply with Due Process. See, e.g., Duncan v. Ford Motor Co., 385 S.C. 119, 682 S.E.2d 877 (Ct. App. 2009)(approving ratio of 4.9:1); James v. Horace Mann Ins. Co., 371 S.C. 187, 638 S.E.2d 667 (2006)(approving ratio of 6.82 to 1); Collins Entm't Corp. v. Coats & Coats Rental Amusement, 355 S.C. 125, 584 S.E.2d 120 (Ct. App. 2003)(approving ratio of 10:1). Furthermore, the awards ratios in this case do not exceed the "single-digit ratio between punitive and compensatory damages" that the Supreme Court has noted is "more likely to comport with due process…". State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408, 425, 123 S. Ct. 1513, 1524, 155 L. Ed. 2d 585 (2003).

With regard to the potential deterrent effect of the punitive damages award, the trial court observed the following.

> This Court finds it necessary to remind the Defendants, as a facility purporting to provide rehabilitation and care to the vulnerable populations of this State, that the abuse and misconduct which occurred in this case is wholly unacceptable. Punitive damages are necessary in this case to deter the defendants, who own several rehabilitative facilities, from any similar action in the future, and such an award will serve to deter other facilities from similar reprehensible conduct.

(R. p. 64) The trial court's finding is consistent with "[t]he practice of awarding punitive damages … 'to deter the wrongdoer and others from committing like offenses in the future.'" Mitchell, Jr. at 584, 686 S.E.2d at 183. The Appellants allowed Mildred Watkins to sit in her wheelchair, slumped and saturated with drool, without contacting an ambulance, and when Jean Watkins called

for one herself, she was told by the nurse manager that there was no need to call an ambulance because she was "not going to get any better." (R. p. 250, lines 12-19) A punitive damages deterrent is appropriate and necessary. Likewise, the Appellants have a clear and documented history in this case of blatant disregard of Orders issued by the trial courts. (R. p. 13; R. p. 28) They have completely and totally ignored and refused to comply with previous Orders of both Judge Dickson and Judge Lee even following a previously failed Appeal. (R. p. 13; R. p. 28; R. p. 38) The only way to deter these Appellants is with a large punitive award.

With regard to the relation between the punitive award and the harm likely to result from similar conduct, the trial court found "the defendant's gross negligence and lack of care is directly related to the harm caused to Mrs. Watkins and her family." (R. p. 64) The threat of Appellants' misconduct to others beyond the Mildred Watkins is underscored by DHEC's investigative findings of jagged metal attached to not just Mildred Watkins's bed, but 14 other beds at the Countrywide facility. (R. p. 1026) Other evidence of wrongdoing—the separation of her thumb joint and its surgical repair, the repeated failure to prevent urinary tract infections, her terrible skin condition, the dramatic loss of body weight—all go to the physical suffering endured by Mildred Watkins. (R. pp 806-1014; R. 1089-1112).

Finally, the trial court spoke to the Appellants' ability to pay a punitive damages award and voiced concern that "the Defendants' failure to comply with discovery hampers the Court's ability to assess their ability to pay." (R. p. 65). The court declined to reward Appellants' obstructive behavior, however, and determined that "the quality and expense of the lawyers hired by Defendants indicates that they clearly have substantial resources to defend this case." (R. p. 65) The reviewing Court's ability to conduct a de novo analysis of the facts pertaining to Appellants' "ability to pay" is similarly hampered by Appellants' refusal to answer discovery—a refusal

Appellants continue with their appeal of the trial court's discovery order, discussed in Section IV of this brief. The Appellants cannot simultaneously allege that the Court failed to properly analyze the award, while actively ignoring Court Orders for the past seven years requiring them to produce the very information which would allow the Court to provide a detailed analysis of financial considerations related to the Appellants' ability to pay. (R. p. 13; R. 70)

In sum, application of the "ratio" analysis to the facts of this case supports the trial court's award of punitive damages.

c. The difference between the punitive damages awarded and the civil penalties authorized or imposed in comparable cases

The following guidelines apply to the comparison of the punitive damages award in this case and other similar penalties or awards in comparable cases.

> When identifying "comparable cases" a court may consider: the type of harm suffered by the plaintiff or plaintiffs; the reprehensibility of the defendant's conduct; the ratio of actual or potential harm to the punitive damages award; the size of the award; and any other factors the court may deem relevant.

Mitchell, Jr. at 588–89, 686 S.E.2d at 186. The analysis of the facts of this case within these guidelines supports the trial court's punitive damages awards.

In conducting this comparative analysis, the trial court emphatically described the evidence it reviewed as "the most egregious case of elder neglect/abuse I have ever witnessed" and drew its closest parallels in terms of injuries to "the criminal side of my jurisdiction" before lamenting "[t]hat such abuse could take place, and the only remedy is through the court of common pleas, is an injustice in and of itself." (R. p. 68) The trial court's observations are supported by the dramatic 20% weight loss of Mildred Watkins, her exposure to and being wounded by jagged metal edges sawed from her bed, her body being riddles with ulcers, bruises and scratches, and painful and

surgically-corrected thumb injury, her continued suffering from numerous urinary tract infections, and—ultimately—Mrs. Watkins's death. (R. pp 806-1014; R. 1089-1112).

An analysis of similar cases involving gross negligence within the medical field reveals the trial court's award of punitive damages to be similar to awards in cases of this type. See, e.g., Hundley ex rel. Hundley v. Rite Aid of S.C., Inc., 339 S.C. 285, 529 S.E.2d 45 (Ct. App. 2000)(approving punitive damages award of $11,000,000); Taylor v. Medenica, 324 S.C. 200, 479 S.E.2d 35 (1996)(approving punitive damages award of $10,000,000); Welch v. Epstein, 342 S.C. 279, 536 S.E.2d 408 (Ct. App. 2000)(approving punitive damages of $3,900,000); Scott v. Porter, 340 S.C. 158, 530 S.E.2d 389 (Ct. App. 2000)(approving punitive damages of $3,500,000). This consistency further underscores the fact that the trial court's punitive award in this case is not "grossly excessive."

* * *

In sum, a de novo review of the facts of this case under the guidelines set forth in Gore, Mitchell, Jr., and their progeny reveals that the awards of punitive damages in this case are not grossly excessive. As a result, the punitive awards do not offend Due Process and should be affirmed.

III. The trial court appropriately disregarded the statutory caps of S.C. Code Ann. § 15-32-530

Appellants argue the trial court erred in declining to reduce its punitive damages award pursuant to the strictures of S.C. Code Ann. § 15-32-530. That statute provides the following limitations:

> Except as provided in subsections (B) and (C), an award of punitive damages may not exceed the greater of three times the amount of compensatory damages awarded to each claimant entitled thereto or the sum of five hundred thousand dollars.

S.C. Code Ann. § 15-32-530(A). The trial court relied on the exception of subsection (C)(1) to determine that the statute's punitive damages caps do not apply to the judgment in this case.[3] That subsection sets forth the following:

> However, when the trial court determines one of the following apply, there shall be no cap on punitive damages: (1) at the time of injury the defendant had an intent to harm and determines that the defendant's conduct did in fact harm the claimant.

S.C. Code Ann. § 15-32-530(C)(1).

Appellants argue the trial court erred in finding "the defendant had an intent to harm" because "nothing in the record indicates that Appellants acted with malicious intent to harm the decedent." (Appellant's Brief at 25)

> In an action at law, on appeal of a case tried without a jury, the appellate court's standard of review extends only to the correction of errors of law. The trial judge's findings of fact will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings.

Electro-Lab of Aiken, Inc. v. Sharp Constr. Co. of Sumter, 357 S.C. 363, 367, 593 S.E.2d 170, 172 (Ct. App. 2004). Here, substantial evidence "reasonably supports the judge's findings" that Appellants intended to, and did, harm Mildred Watkins.

Pages 26 through 28 of the damages order detail the trial court's evidentiary support for its finding of intent to harm. These include:

[3] The trial court did not analyze whether the caps were implicated by the limits of Section 15-32-530 even if the exception of subsection (C) did not apply. However, the trial court's order found compensatory damages of $10,287,892.20 and punitive damages of $19,227,353.44—much less than the "three times" caps provided by subsection (A) or the "four times" caps provided by subsection (B). Thus, Respondent posits, even if the trial court erred in its application of subsection (C), the trial court's award of punitive damages would not be impacted by Section 15-32-530.

- "[E]vidence that the Defendants' abused Mildred Watkins by either dislocating her thumb, or allowing it to become dislocated despite actual knowledge that she would hit her hand on the bedrail…"; (R. pp. 66-67)

- "[L]acerating her leg by sawing off the bedrails and leaving jagged exposed metal on her bed"; (R. p. 67)

- "[F]ail[ing] to call EMS when it was obvious that Mildred Watkins required immediate medical care"; (R. p. 67)

- "[F]ail[ing] to prevent, monitor, and/or treat Mildred Watkins's UTIs"; (R. p. 67)

- "[F]raudulent weekly skin audits also are clear and convincing acts of intentional misconduct which resulted in harm to Mildred Watkins." (R. p. 67)

The trial court concluded by observing that "[a]ll of these are clear and convincing examples of intent to harm Mrs. Watkins, which in fact, did harm and ultimately kill her." (R. p. 68).[4] This evidence reasonably supports the judge's finding of intent to harm and harm-in-fact and thus the trial court's application of subsection (C)(1)'s exception to Section 15-32-530 should be affirmed.

Appellants clearly disagree with the factual findings of the trial court, spending pages 25 through 29 detailing why they think that Judge Addy was wrong. However, the time for disputing the trial court's factual conclusions has passed.

> The trial court's findings are equivalent to a jury's findings in a law action. "We must look at the evidence in the light most favorable to the respondents and eliminate from consideration all evidence to the contrary." Questions regarding credibility and weight of evidence are exclusively for the trial court.

[4] Other evidence not specifically cited by the trial court in its Section 15-32-530 analysis also supports a finding of intent to harm. This includes the falsification of medical records which the trial court found to be "overwhelming evidence of the extreme measures which the Defendants would take in order to consciously conceal the inadequate care they provided to Mrs. Watkins" (R. p. 60) as well as the creation of "bruises and scratches that have no logical explanation and warranted a call for a criminal investigation." (R. p. 59)

Solley v. Navy Fed. Credit Union, Inc., 397 S.C. 192, 202, 723 S.E.2d 597, 602 (Ct. App. 2012)(internal citation omitted). Furthermore, as is detailed in Section I of this brief, the Appellants' objections to the trial court's consideration of certain pieces of evidence and testimony while reaching its factual findings were not raised during the damages hearing.[5]

The Appellants also seek a ruling on whether Section 15-32-530(B) applies to the facts of this case. (Appellants' Brief at 29-32) However, the trial court made no ruling on this subsection and the Appellants requested no such ruling in their Motion for a New Trial/Reconsideration. (R. p. 1154)

> It is well-settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved for appellate review. … Without an initial ruling by the trial court, a reviewing court simply would not be able to evaluate whether the trial court committed error.

Staubes v. City of Folly Beach, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000). Because the trial court issued no ruling on this point of law, the issue is not available for review on appeal.

In sum, the evidence reasonably supports the judge's finding of intent to harm and harm-in-fact and the trial court's application of subsection (C)(1)'s exception to Section 15-32-530 should be affirmed.

IV. The trial court appropriately ordered the production of documents pertaining to the Appellants' insurance policies and finances

Appellants seek to reverse the trial court's order mandating the disclosure of financial information by mischaracterizing the order as one "attempt[ing] to prematurely expedite post-judgment discovery" pursuant to Rule 69, SCRCP. (Appellants' Brief at 34) However, the order

[5] Appellants argue certain evidence was "speculative" (Appellants' Brief at 25, 27, 28) and "hearsay." (Appellants' Brief at 26)

does not rely upon Rule 69. To the contrary, the trial court specified it issued this order "[b]ecause the Defendants have failed to cooperate with discovery and have blatantly disregarded the Orders of the Court" (R. p. 70) and noted that "[t]his is the same information that the Defendants were ordered to produce by Judge Edgar Dickson November 30, 2016 and discussed again in Judge Lee's Order Striking Defendants' Answer of April 19, 2018." (R. p. 70, n.2) "The court has broad discretion in its supervision over the progression and disposition of a circuit court case in the interests of justice and judicial economy." Cap. City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 103, 674 S.E.2d 524, 530 (Ct. App. 2009). This broad discretion extends to "the court's authority to enforce its own orders…". Glenn v. 3M Co., __ S.E.2d --, No. 2019-001600, 2023 WL 2778309, at *30 (Ct. App. 2023). As such, the trial court was within its power to issue the order mandating the disclosure of financial information.

Despite the trial court's reference of the prior orders from Judge Dickson and Judge Lee, Appellants argue the trial court's discovery order was improper because "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." (Appellants' Brief at 33) This assertion overlooks the fact that Respondent's Motion to Compel and her Rule to Show Cause and Motion for Sanctions had already been ruled upon in her favor by Judge Dickson and Judge Lee years prior to the damages hearing. (R. p. 13, R. p. 28) Contained in those Orders were directives to produce the same insurance and financial information requested at the conclusion of the damages hearing. (R. p. 14, ¶ 6; R. p. 17, ¶ 17; R. p. 20, ¶ 33) Furthermore, in light of the Respondent's request at the damages hearing, a motion to compel pursuant to Rule 37(a), SCRCP is not necessary to empower to the court to order this production.

> The text of Rule 37, SCRCP, tells us a party does not need to file a motion to compel to request a sanction for another party's failure to

> answer a properly served discovery request. A party served with written discovery has a duty to answer it, unless the party objects based on a stated reason or moves for a protective order. If no answer, objection, or motion is received, the discovering party may—but is not required to—move for a court order compelling discovery. … But if a party simply fails to respond to discovery, the discovering party need not proceed under Rule 37(a) and (b); instead a remedy awaits in Rule 37(d), which allows "the court ... on motion" to "make such orders in regard to the failure as are just."

Richardson on Behalf of 15th Cir. Drug Enf't Unit v. Twenty-One Thousand & no/100 Dollars ($21,000.00) U.S. Currency & Various Jewelry, 430 S.C. 594, 598–99, 846 S.E.2d 14, 16 (Ct. App. 2020)(internal citations omitted). In light of this precedent, the trial court's order of production was proper.

Finally, Appellants argue the order should be reversed because "it attempted not only to reach the insurance policies and assets of Appellants themselves, but also those of non-parties…". (Appellants' Brief at 34) The objection to the extension of the order to non-parties, specifically Robert Hagan (the majority owner of the Appellants), is untimely. The trial court ordered this information and documentation be produced on November 30, 2016—nearly seven years ago. (R. p. 14, ¶ 6; R. p. 17, ¶ 17; R. p. 20, ¶ 33) Furthermore, the production the court seeks to enforce in its discovery order is the precise production that was ordered so long ago:

> Defendant Country Wood is hereby Ordered to completely and fully respond to Interrogatory #2. Additionally, this Order specifically directs the Defendants to produce any and all insurance documents, policies, endorsements, declarations pages, etc. which provide coverage of any type to any or all of the Defendants, owners, members, shareholders, key employees, etc., including but not limited to Robert Hagan.

(R. p. 14, ¶ 6) By appealing the trial court's latest order compelling this production, Appellants seek to relitigate issues resolved far in the past.

For the reasons stated herein, the trial court's order demanding the production of financial information should be affirmed.

CONCLUSION

As set forth above, all issues set forth by the Appellants should be rejected and both orders of the trial court should be affirmed.

Respectfully submitted,

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October 13, 2023

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Rule 211(b) Certification

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

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