

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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**Nov 27 2023**

APPEAL FROM ORANGEBURG COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2023-001626

Tekayah Hamilton, individually and as parent and guardian ad litem for Robert Lee M. Jr., a minor child under the age of 18.....Respondent,

v.

Regional Medical Center, .....Petitioner.

RETURN TO PETITION FOR A WRIT OF CERTIORARI

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## COUNTER STATEMENT OF ISSUES ON APPEAL

- I. Whether the lower court properly exercised its discretion to qualify Nurse Stobbs as a nursing expert and allowed her to testify about the standard of care that applies to adults and children?
- II. Whether the lower court properly exercised its discretion to deny RMC's motions for a new trial or, alternatively, a new trial *nisi remittitur*, where the verdicts are not excessive?

## COUNTER STATEMENT OF THE CASE

This is an appeal from a jury verdict for the Respondent Tekayah Hamilton, individually and as parent and guardian ad litem for Robert Lee M., Jr., a minor child under the age of eighteen, (collectively "Hamilton"), in a medical negligence trial arising out of an IV infiltration burn injury of a five-week-old boy. The lower court granted in part Petitioner The Regional Medical Center's ("RMC") post-trial motions. The Court of Appeals affirmed. *Hamilton v. Reg'l Med. Ctr.*, 891 S.E.2d 682 (Ct. App. 2023).

On October 25, 2014, Robert Lee M., Jr., ("R.J.") was admitted to RMC for a high fever. (App. p. 102). Five days later, R.J. left the hospital with a third-degree burn injury to his right hand because the IV antibiotics RMC administered infiltrated and burned his hand rather than entering his vein. (App. pp. 122, 238). R.J. was five weeks old. (App. p. 102).

Jamie Downing is an RMC nurse who treated R.J. during his hospital admission. She had worked as a nurse for less than three months and been allowed to work on her own for about two weeks when she treated R.J. (App. pp. 275-76).

RMC's policies state that, before putting medication into an IV, the nurse is required to flush the IV with normal saline. (App. pp. 104-05, 305, 506). The saline flush is a way for the nurse to make sure the IV is properly in the vein so that the medicine will go into the vein. (App. pp. 115, 164). Infiltration occurs when medication inserted into an IV goes somewhere besides the vein and can cause injury. (App. pp. 115, 149).

In the early morning of October 28, 2014, Downing administered an antibiotic into R.J.'s IV. (App. p. 106). About twenty minutes later, R.J.'s hand was swollen with a dark spot and he was "really crying" so much that his mother, Tekayah Hamilton, buzzed the nurses' station. (App. pp. 168-69, 303). Tekayah described R.J.'s hand as turning black with a lump full of fluid on it that burst the next day. (App. pp. 170-71, 173). The antibiotic Downing gave R.J. through the IV caused a third-degree burn to his right hand because it infiltrated outside of his vein. (App. pp. 117, 122, 295).

RMC's policies require that an IV is flushed with saline before administering medication and that the saline flush is documented in a patient's medical records. (App. p. 506). Downing testified RMC's policies "are direct instructions" and there is "not room for interpretation" of them. (App. p. 277). R.J.'s medical records do not document a saline flush before the antibiotic. (App. p. 106). Hamilton's expert witness testified: "If it's not documented, it wasn't done." (App. pp. 109 ln. 25, 116, 164). Downing does not remember administering a saline flush prior to the antibiotic. (App. p. 292).

R.J. left RMC on October 30, 2015, with a burn injury that required fifteen visits to a wound care center. (App. p. 173). Dr. Peter DeVito, an expert in plastic surgery, examined R.J. in February 2015, when he was four months old. (App. p. 236, 238). He testified R.J.'s burn injury was "too contaminated for a skin graft" and took "a lot of wound care to heal." (App. p. 238, 240). The burn resulted in keloid scar tissue. (App. p. 238). A keloid is a "tumor of scar tissue" that "invades" the skin surrounding it and causes painful burning and itching symptoms. (App. p. 238).

On October 7, 2015, Hamilton filed this action against RMC for medical negligence. (App. pp. 24-30). RMC generally denied the allegations. (App. pp. 36-39).

RMC filed a pre-trial motion to exclude Monica Stobbs, Hamilton's nursing expert, from testifying at trial. (App. pp. 533-36). RMC argued Nurse Stobbs was not qualified to testify about IV therapy for pediatric patients because she had not administered IV therapy to a pediatric patient and did not review literature specifically about IV therapy for a pediatric patient. (App pp. 533-36, 50-51). Hamilton argued that Nurse Stobbs testified the administration and monitoring of an IV is the same for a pediatric and adult patient, and RMC's argument goes to Nurse Stobbs' credibility rather than her qualifications. (App. p. 49). The lower court ruled it would qualify Nurse Stobbs as a nursing care expert and RMC could "make all the hay you want to" about her pediatric experience. (App. pp. 51-52).

On May 7-9, 2018, the parties tried the case before the Honorable Edgar W. Dickson. (App. p. 66). Nurse Stobbs testified the standard of care for IV management is the same for pediatric and adult patients. (App. pp. 99-100, 119, 124-25, 131, 146-47). The nurse must flush the IV with saline before administering medication to ensure that the IV is going into the vein. (App. pp. 115, 117, 120-21). This is required by RMC's policies and procedures. (App. p. 506). Nurse Stobbs testified that RMC breached the standard of care because Downing did not do a saline flush before administering the medication to R.J. on October 28. (App. pp. 121-22, 164).

After deliberating for three hours, the jury returned a verdict finding RMC's gross negligence caused R.J.'s injuries. (App. pp. 448, 451, 459-60, 546). The jury awarded Tekayah \$135,477.00 and R.J. \$1,127,280.00. (App. p. 546).

RMC filed two post-trial motions. First, it moved for JNOV or, in the alternative, a new trial, arguing that: (1) Nurse Stobbs was not qualified to testify about pediatric IV management, (2) Hamilton did not establish RMC's gross negligence, (3) the lower court should have excluded photographs of R.J.'s hand, (4) the lower court should have allowed RMC's expert, Cynthia

Hurley, to testify that RMC was not grossly negligent, (5) the lower court should not have allowed Hamilton to publish to the jury her responses to RMC’s requests to admit, and (6) the lower court should grant a new trial absolute or *nisi remittitur* because the verdict is disproportionate to the evidence. (App. pp. 547-60).

Second, RMC moved to reduce R.J.’s damages to the \$300,000.00 statutory cap in the South Carolina Tort Claims Act and to reduce Tekayah’s damages to \$20,854.00—the amount of the medical expenses. (App. pp. 563-65).

On October 25, 2019, the lower court issued an Order granting RMC’s motion to reduce R.J.’s damages to the statutory cap of \$300,000.00 but denying the motion to reduce Tekayah’s damages. (App. pp. 12-14). The court denied the motion for JNOV and in the alternative a new trial absolute or *nisi remittitur* in its entirety. (App. pp. 14-17).

On November 19, 2019, RMC filed a notice of appeal. (App. p. 596). The Court of Appeals affirmed on all issues. *Hamilton v. Reg’l Med. Ctr.*, 891 S.E.2d 682 (Ct. App. 2023). It held that the lower court “did not abuse its discretion in allowing Stobbs to testify as an expert witness” and RMC’s arguments about “Stobbs not having experience in pediatric IVs as opposed to general IV knowledge went to the weight of the evidence, not Stobbs’s qualification as an expert.” *Id.* at 693. As to the verdict, the Court of Appeals held the lower court “did not abuse its discretion in denying R[MC]’s motion” because “the record contains evidence to support the damages award,” the award “does not shock the conscience or clearly indicate it was reached as a result of passion,” and “the verdict was not excessive.”<sup>1</sup> *Id.* at 700.

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<sup>1</sup> The Court of Appeals also held that the trial court correctly (1) denied RMC’s motions for a directed verdict and JNOV, (2) admitted photographs of RJ’s hand, (3) prohibited RMC’s expert from testifying whether it was grossly negligent, and (4) allowed Hamilton to publish requests to admit to the jury. *Hamilton*, 891 S.E.2d at 694, 696, 698-99. Because RMC does not raise any of those rulings in this Court, they are the law of the case. See *Shirley’s Iron Works, Inc. v. City of*

RMC filed a petition for rehearing, which the Court of Appeals denied. RMC now files this petition for writ of certiorari.

### ARGUMENT

RMC appealed six issues to the Court of Appeals. It asks this Court to grant certiorari as to only two of those issues—(1) qualification of an expert witness and (2) denial of RMC’s motion for a new trial absolute or new trial *nisi remittitur*. (Pet. pp. 3-11). Both are subject to an abuse of discretion standard, and RMC fails to show that the lower court abused its discretion.

The Court of Appeals correctly affirmed the lower court’s decision to qualify Nurse Stobbs as a nursing expert. The principal issue at trial was the standard of care to flush an IV with saline before administering medication—a standard that is the same for adult or pediatric patients and has nothing to do with RMC’s complaints about Stobbs. (App. p. 399). There was ample testimony about the standard of care besides Nurse Stobbs’s testimony, making any error in its admission harmless. RMC’s arguments all go to the weight and not the admissibility of Nurse Stobbs’s testimony.

Hamilton presented ample evidence of R.J. and Tekayah’s damages. Viewing that evidence in a light most favorable to them, the lower court correctly held that the verdicts were not excessive.

The law and record fully support the Court of Appeals’ Opinion, and this Court should deny the petition for writ of certiorari.

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*Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013) (“An unappealed ruling is the law of the case and requires affirmance.”).

**I. THE LOWER COURT CORRECTLY QUALIFIED NURSE STOBBS AS AN EXPERT AND ALLOWED HER TO TESTIFY ABOUT THE STANDARD OF CARE.**

The lower court properly exercised its discretion to qualify Nurse Stobbs as a nursing expert, and the Court of Appeals correctly affirmed. (App. p. 98). “The qualification of an expert witness and the admissibility of the expert’s testimony are each matters largely within the trial judge’s discretion.” *McMillan v. Durant*, 312 S.C. 200, 204, 439 S.E.2d 829, 831 (1993). “[W]e will not reverse absent an abuse of that discretion.” *Graves v. CAS Med. Sys.*, 401 S.C. 63, 74, 735 S.E.2d 650, 655 (2012). “An abuse of discretion occurs when the circuit court’s rulings either lack evidentiary support or are controlled by an error of law.” *Id.* at 74, 735 S.E.2d at 831 (internal quotation marks omitted).

RMC does not dispute Nurse Stobbs’ qualifications as a nurse or ability to testify about IV management. Instead, it argues that this case is about pediatric nursing such that only someone who has given a pediatric IV treatment is qualified to testify. (Pet. p. 3). The lower court and Court of Appeals correctly rejected these arguments, and this Court should deny the petition on this issue.

***A. The applicable standard of care is the same regardless of whether the patient is an adult or a child.***

The premise of RMC’s argument is irrelevant because it does not affect the applicable standard of care. It is undisputed that in pediatric **and** adult IV management, the standard of care is to flush the IV with saline before administering a medication. (App. pp. 280, 282, 349-50, 378).

The difference between an adult and pediatric patient that RMC complains about is that a pediatric vein is smaller than an adult vein. (App. p. 763). That physiological difference does not change the standard of care to flush an IV site before administering medication or to follow RMC’s policy to document a saline flush. Therefore, in response to all of RMC’s arguments about Nurse Stobbs, its complaint does not make a difference for the evidence in this case. *McCall v. Finley*,

294 S.C. 1, 4, 362 S.E.2d 26, 28 (Ct. App. 1987) (“[W]hatever doesn’t make any difference, doesn’t matter.”). On this basis alone, the Court may deny the petition on this issue.

Regardless, RMC is incorrect that this case is about pediatric nursing. (Pet. p. 4). This case is about the IV management safety practice of doing and documenting a saline flush before administering medication. (App. pp. 399, 424). Nurse Stobbs testified “the same safety practices” and “rules” are used for every patient “whether it’s a baby or an adult.”<sup>2</sup> (App. pp. 99-100). Downing and Hurley testified that a saline flush is always required before administering medication. (App. pp. 280, 282, 349-50, 378). This makes irrelevant RMC’s argument that it was prejudiced by Stobbs’s qualification in “general” rather than pediatric nursing. (Pet. p. 3).

Even if there existed a relevant difference in the IV management of pediatric and adult patients, it was for the jury to decide if and how that affected the applicable standard of care. *Madison v. Babcock Ctr., Inc.*, 371 S.C. 123, 140, 638 S.E.2d 650, 659 (2006) (“The factfinder may consider relevant standards of care from various sources in determining whether a defendant breached a duty owed to an injured person in a negligence case.”). To rule in RMC’s favor on this issue, this Court would have to declare the standard of care as a matter of law, which is inappropriate given that it was a jury issue in this case. The lower court did not abuse its discretion in qualifying Nurse Stobbs as a nursing expert when nursing IV management principles apply to the facts of the case. RMC fails to identify any error of law.

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<sup>2</sup> Nurse Stobbs maintained that the age of a patient does not alter IV management “in terms of the safety practices.” (App. p. 131). She testified that a vein is the same in an adult and a child. (App. pp. 124-25). Physiological differences in adults and children mean “their body size may be different” but “does not mean that their vein would be different.” (App. p. 146). “[T]he management for IV therapy in terms of safety practices and what the rules are, it’s exactly the same.” (App. p. 147).

***B. The lower court correctly held Nurse Stobbs's testimony satisfies Rule 702, SCRE.***

RMC argues the lower court erred in qualifying Nurse Stobbs to testify about IV management in a case involving a pediatric patient because she did not treat pediatric patients and her testimony is, according to RMC, contrary to literature. (Pet. pp. 3-6). The lower court correctly exercised its discretion in ruling that RMC's arguments go to the weight and not the admissibility of her testimony (App. pp. 51-52), and the Court of Appeals correctly affirmed on that basis. *Hamilton*, 891 S.E.2d at 693.

A person may be qualified as an expert based on "knowledge, skill, experience, training, or education." Rule 702, SCRE. "The test for qualification is a relative one that is dependent on the particular witness's reference to the subject." *Lee v. Suess*, 318 S.C. 283, 285, 457 S.E.2d 344, 346 (1995). In deciding whether to admit expert testimony, the court makes three inquiries: whether (1) "the subject matter is beyond the ordinary knowledge of the jury, thus requiring an expert to explain the matter to the jury," (2) the expert has "acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter, although he ***need not be a specialist in the particular branch of the field***," and (3) the substance of the testimony is reliable. *Graves v. CAS Med. Sys.*, 401 S.C. 63, 74, 735 S.E.2d 650, 655 (2012) (internal quotation marks omitted) (emphasis added). RMC disputes only the second inquiry.

An expert witness is not required to be a specialist in the particular branch of his or her profession involved in a case. On the contrary, "[a] physician is not incompetent to testify merely because he is not a specialist in the particular branch of his profession involved. The fact that he is not a specialist goes to the weight of his testimony, not its admissibility." *Creed v. Columbia*, 310 S.C. 342, 345, 426 S.E.2d 785, 786 (1993) (internal citation omitted). Our courts regularly apply this principle in the medical negligence context.

For example, in *Creed*, a “general practitioner” was qualified “to give an opinion on [the plaintiff’s] mental and emotional injuries.” *Id.* 344-45, 426 S.E.2d at 786.

A neurosurgeon was qualified to testify about the appropriate standard of nursing care. *McMillan v. Durant*, 312 S.C. 200, 204-05, 439 S.E.2d 829, 831-32 (1993); *see also Lee v. Suess*, 318 S.C. 283, 285, 457 S.E.2d 344, 345 (1995) (describing *McMillan* as holding “a medical practitioner’s experience teaching in a particular specialty and his professional interaction with practitioners of that specialty are facts sufficient to support his qualification as an expert”).

A plastic surgeon was qualified to testify as an expert in the field of family practice because the surgeon taught family practitioner residents. *Lee*, 318 S.C. at 285, 457 S.E.2d at 345-46. The expert’s “limited exposure to the field of family practice merely goes to the weight of his testimony and not its admissibility.” *Id.* at 286, 457 S.E.2d at 346.

A neonatologist was qualified to testify about sudden infant death syndrome, even though she testified “that she would not consider herself a SIDS expert,” because “an expert need not be a specialist in the particular branch of the field.” *Graves v. CAS Med. Sys.*, 401 S.C. 63, 78, 735 S.E.2d 650, 657 (2012) (internal quotation marks omitted).

All of these cases support the lower court’s decision to qualify Nurse Stobbs as an expert regardless of her lack of hands-on experience with pediatric IV patients because that criticism goes to the weight of her testimony and not its admissibility. Nurse Stobbs worked for over thirty years as a nurse. (App. p. 97). For twenty-one of those years, she worked at Massachusetts General Hospital, “which is Harvard’s Hospital” and “the number one hospital in the country.” (App. p. 97 lns. 3-6). She was certified in IV therapy, administered “thousands” of IVs in her career, and primarily provided IV therapy to her patients. (App. p. 97). She was amply qualified to testify about IV management in this case. RMC’s assertion that Stobbs “had no more qualification to

give testimony [about whether an IV was flushed] than a lay person” wholly ignores the evidence of her qualifications and experience. (Pet. p. 5).

RMC relies on *Botelho v. Bycura*, 282 S.C. 578, 320 S.E.2d 59 (Ct. App. 1984), for its assertion that Nurse Stobbs must have treated pediatric patients to be qualified to testify about IV management. (Pet. p. 3). In *Botelho*, the Court of Appeals ruled that an orthopedic surgeon was not an expert in podiatric standards of care, in part, because he “testified that he is not familiar with the standards of professional care generally observed by podiatrists” and “was not familiar with the surgical procedure [the defendant] performed on [the plaintiff].” *Id.* at 587, 320 S.E.2d at 65. In *McMillan v. Durant*, 312 S.C. 200, 439 S.E.2d 829 (1993), the Supreme Court described the orthopedist expert in *Botelho* as “not versed at all in the practice of podiatry.” *Id.* at 204, 439 S.E.2d at 832. This case is easily distinguishable.

Nurse Stobbs testified the standard of care for IV management is the same for a baby or an adult. (App. p. 100 lns. 1-6). Her thirty years of experience in administering thousands of IVs is evidence that supports the lower court’s decision to find her familiar with the standards of professional care, unlike the expert in *Botelho*.

RMC also relies on *Gooding v. St. Francis Xavier Hosp.*, 326 S.C. 248, 487 S.E.2d 596 (1997). (Pet. p. 3). However, *Gooding* supports Hamilton’s position. In a medical malpractice action against an anesthesiologist regarding an intubation procedure, the Supreme Court held an EMT/paramedic who intubated over 100 patients and taught intubation procedures was qualified in the field of intubation. *Id.* at 251, 253, 487 S.E.2d at 597-98. It explained “[t]here was no requirement that [plaintiff]’s expert witness be an anesthesiologist in order to testify about intubation procedures.” *Id.* at 253, 487 S.E.2d at 598. In this case, Nurse Stobbs is qualified in the

field of IV management and she is not required to specifically practice in pediatric IV management to testify about IV management procedures.

RMC's disagreement with Nurse Stobbs' opinions are (and were at the trial of this case) subjects for cross-examination. The lower court properly exercised its discretion to qualify Nurse Stobbs as a nursing expert, and the Court of Appeals correctly affirmed.<sup>3</sup>

***C. Even if error, the admission of Nurse Stobbs's testimony was harmless.***

Even if the Court could find that the lower court erred in qualifying Nurse Stobbs, it should still deny the petition on this issue because any such error was harmless. "The key factor for determining whether a trial error constitutes reversible error is whether it appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." *State v. Tapp*, 398 S.C. 376, 389, 728 S.E.2d 468, 475 (2012) (internal quotation marks omitted). The court does "not weigh the evidence when determining this." *In re Bilton*, 432 S.C. 157, 167, 851 S.E.2d 442, 447 (Ct. App. 2020). "No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case." *In re Care & Treatment of Gonzalez*, 409 S.C. 621, 636, 763 S.E.2d 210, 217 (2014) (internal quotation marks omitted).

Any alleged error did not contribute to the verdict because Nurse Stobbs's testimony on the standard of care was cumulative to other evidence. "The admission of improper evidence is harmless where the evidence is merely cumulative to other evidence." *Judy v. Judy*, 384 S.C. 634, 646, 682 S.E.2d 836, 842 (Ct. App. 2009).

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<sup>3</sup> RMC argued to the Court of Appeals that Stobbs's testimony exceeded the scope of her qualifications. (App. pp. 767-68). The Court of Appeals found this argument unpreserved. *Hamilton*, 891 S.E.2d at 693 n.7. Because RMC does not raise that issue in its petition, the Court of Appeals' ruling is the law of the case.

Hamilton's theory of liability was RMC's failure to perform and document a saline flush before administering the medication to R.J. (App. pp. 399, 402-03, 409, 424). RMC's policies and procedures admitted into evidence establish that the standard of care is to flush with saline and document it on the medical record. (App. pp. 502-09). RMC's expert, Cynthia Hurley, testified that the standard of care is to perform a saline flush prior to administering medication. (App. pp. 349-50, 378). Nurse Stobbs testified R.J.'s medical records do not document a saline flush prior to Downing administering the medication, and RMC does not argue that she is unqualified to read medical records. Nurse Stobbs's standard of care testimony was cumulative to other evidence.

RMC attacked Nurse Stobbs's experience and credibility throughout the trial. (App. pp. 92-93, 123-132, 144-47). It criticized her for saying something allegedly contrary to articles on IV management. However, Ms. Downing testified that she had never reviewed those articles prior to RMC's attorney giving them to her and that reviewing such articles is not common practice for a nurse. (App. p. 295). RMC disputed Nurse Stobbs's qualifications in its closing argument:

She's never practiced clinical pediatric nursing. She's never started an IV on a child. And more importantly, the issue in this case, she's never maintained, managed and monitored an IV. **She is not qualified.**

...

[Y]ou have one nurse who's never been an expert before, Ms. Stobbs, who's never practiced in this area. She can't tell you what pediatric nursing is. She can't tell you what the literature is. . . . She'd been a nurse for over thirty-three years and guess how many pediatric IVs she started? The same amount as me, none.

...

[S]he has never done this the first shift in her life.

. . . [Downing started more pediatric IVs] a lot more than Nurse Stobbs who, again, has started zero.

...

My witness [Hurley] is more qualified to be an expert [than Stobbs]. My expert is certainly more qualified to be an expert. They could have got a true expert. Ask yourself, why don't they have a pediatric expert? Why don't they have an expert that was qualified for monitoring and managing pediatric IVs? It is because they couldn't get one? Again, use your common sense.

(App. pp. 413-15, 421) (emphasis added). The lower court charged the jury it could disregard an expert's opinion if it found "an expert witness's opinion is not based on sufficient education or experience or . . . the reasons given in support of the opinion are not sound." (App. p. 434).

Given the cumulative nature of Nurse Stobbs's challenged testimony and RMC's blatant attack on her qualifications, any error in qualifying her and admitting her testimony was harmless and RMC suffered no prejudice. The Court may deny the petition on this basis alone.

## **II. THE LOWER COURT DID NOT ABUSE ITS DISCRETION IN DENYING THE MOTION FOR A NEW TRIAL OR *NISI REMITTITUR*.**

The Court of Appeals correctly held that the lower court did not abuse its discretion in denying RMC's new trial motions based on the alleged excessiveness of the verdicts and the thirteenth juror doctrine.<sup>4</sup> "The jury's determination of damages is entitled to substantial deference. The denial of a new trial motion is within the discretion of the trial court and, absent an abuse of discretion, it will not be reversed on appeal." *Clark v. S.C. Dep't of Pub. Safety*, 353 S.C. 291, 309-10, 578 S.E.2d 16, 25 (Ct. App. 2002).

The lower court maintained R.J.'s \$1,127,280.00 verdict but reduced it to the \$300,000.00 cap in the Tort Claims Act, and maintained Tekayah's verdict of \$135,477.00. (App. pp. 16-17). This Court "must accord the trial court's decision great deference, and respect its superior position to gauge credibility and the field of evidence." *Nestler v. Fields*, 426 S.C. 34, 41, 824 S.E.2d 461, 465 (Ct. App. 2019) (internal quotation marks omitted).

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<sup>4</sup> RMC states these as two separate issues in its Petition. However, Hamilton argues them as one issue because the lower court's decision to deny them was based on the same holding.

“A verdict which may be supported by *any* rational view of the evidence and bears a reasonable relationship to the character and extent of the injury and damage sustained is not excessive.” *King v. Daniel Int’l Corp.*, 278 S.C. 350, 355, 296 S.E.2d 335, 338 (1982) (emphasis added). RMC moved for a new trial on three grounds—thirteenth juror doctrine, new trial absolute when a verdict is grossly excessive or inadequate, or a new trial *nisi remittitur* or *additur* when the verdict is merely excessive or inadequate. See *Burke v. AnMed Health*, 393 S.C. 48, 55-57, 710 S.E.2d 84, 88-89 (Ct. App. 2011) (listing the three general grounds for a new trial). “Compelling reasons [] must be given to justify invading the jury’s province in this manner.” *Bailey v. Peacock*, 318 S.C. 13, 14, 455 S.E.2d 690, 691 (1995). The lower court correctly found the verdicts were not excessive in the first place—a basis to affirm as to all three alleged grounds for a new trial in this case.

If the court first finds the verdict excessive, it must determine whether it is merely excessive or grossly excessive. A merely excessive verdict is one that the court views as “not in accord with accepted judicial standards for measuring damages under the facts of the particular case.” *Bowers v. Charleston & W. Carolina R.R. Co.*, 210 S.C. 367, 375, 42 S.E.2d 705, 708 (1947). A grossly excessive verdict is one “deemed to be the result of a disregard of the facts and of the instructions of the Court, and to be due to passion and prejudice rather than reason.” *Id.* at 375, 42 S.E.2d at 708. “[T]o warrant a new trial absolute, the verdict reached must be so grossly excessive as to clearly indicate the influence of an improper motive on the jury.” *Holroyd v. Requa*, 361 S.C. 43, 66, 603 S.E.2d 417, 429 (Ct. App. 2004).

In determining whether a verdict amount is excessive, “the facts must be viewed in the light most favorable to the plaintiff and, where the amount of a verdict bears a reasonable relationship to the character and extent of the injury sustained, it is not excessive.” *Watson v.*

*Wilkinson Trucking Co.*, 244 S.C. 217, 224, 136 S.E.2d 286, 289 (1964). RMC presents no compelling reason for the Court to invade the jury's province. Viewing the evidence in a light most favorable to Hamilton, it bears a reasonable relationship to the character and extent of the injuries sustained and supports the lower court's discretionary finding that the verdict for Hamilton was not excessive.

***A. The evidence supports the jury's verdict for R.J., and there is no basis to grant a new trial under the thirteenth juror doctrine.***

As to the verdict for R.J., RMC argues that the amount is disproportionate to the evidence. (Pet. p. 11). It is incorrect, and the Court of Appeals correctly held that "[t]he record contains evidence to support the damages award." *Hamilton*, 891 S.E.2d at 700. Hamilton presented ample evidence of R.J.'s damages to support the jury's verdict.

"An award for pain and suffering compensates the injured person for the physical discomfort and the emotional response to the sensation of pain caused by the injury itself." *Boan v. Blackwell*, 343 S.C. 498, 501-02, 541 S.E.2d 242, 244 (2001). "Separate damages are given for mental anguish where the evidence shows, for example, that the injured person suffered shock, fright, emotional upset, and/or humiliation as the result of the defendant's negligence." *Id.* at 502, 541 S.E.2d at 244. "One cannot easily or with any mathematical certainty place a value on the amount of a person's pain and suffering." *Smalls v. S.C. Dep't of Educ.*, 339 S.C. 208, 218, 528 S.E.2d 682, 687 (Ct. App. 2000).

There is evidence R.J. experienced pain at the time of the infiltration, during the healing process, and after the scar formed. When the nurses finally called a doctor to look at R.J.'s hand, it was swollen with "a big black scar and it was a bubble" on top of his hand full of fluid. (App. pp. 170-71). R.J. cried during every one of the fifteen visits to the wound care center. (App. pp. 173-74). Dr. DeVito testified the "whole nature of the wound is painful." (App. p. 241). R.J.

could not crawl with his hand out and Hamilton “constantly” watched him to make sure he did not hit it on something or make it bleed. (App. p. 177).

The infiltration resulted in keloid scar tissue that “invades” the skin surrounding it and causes painful burning and itching symptoms. (App. p. 238). Dr. DeVito testified some patients describe the pain “as if someone were putting hot needles to the skin.” (App. p. 238). Dr. DeVito saw R.J. weeks before trial but testified he “couldn’t even examine the child” because R.J. pulled his hand back and withdrew, it is still “a source of pain for him,” and the examination “was really an ordeal.” (App. pp. 247-48).

R.J. was three-years-old at the time of trial, and Hamilton testified he suffered complications from his scar. (App. pp. 176-77). His hand cramps up and he complains about itching and cannot sit still when it hurts. (App. p. 176). Hamilton massages his hand and does hand exercises with him using a ball. (App. p. 176).

Dr. Davis and Dr. DeVito agreed that R.J. will have a permanent scar regardless of any future treatment. (App. pp. 230-31, 247). R.J.’s skin will never be normal again. (App. p. 247). He does not have sweat glands or hair follicles on his right hand. (App. p. 247). Even slightly bumping R.J.’s hand could cause a blister or ulcer. (App. p. 248). The court charged the jury that R.J.’s life expectancy was 73.76 years. (App. p 443).

In the Court of Appeals, RMC argued that the functionality of R.J.’s hand is a basis to find the damages excessive. (App. p. 789). It does not make that argument in this Court. (Pet.). Regardless, it is relevant to damages that, during all of the functionality tests that Dr. Davis performed, R.J. complained that his hand felt tight. (App. p. 227). Dr. Davis testified that scars have a negative psychological impact on a person regardless of functional abilities. (App. pp. 223-23). Almost four years after the infiltration, R.J. still complained of itching on the scar site. (App.

pp. 223-24). Dr. DeVito testified R.J. “has some limitation” compared to a child with no scar because R.J. would not even let Dr. DeVito touch the hand during the examination. (App. p. 259). Tekayah testified that she limits R.J.’s activities for fear that he will injure his hand. (App. p. 178).

“[A] verdict which may be supported by any rational view of the evidence, or as to which reasonable and disinterested men might draw different inferences, is not of this class” of excessive verdicts. *Mickle v. Blackmon*, 252 S.C. 202, 248, 166 S.E.2d 173, 194 (1969) (affirming the denial of a new trial absolute of “probably the highest verdict in a personal injury case in the history of this State”). That RMC disagrees with the jury’s damages determination does not make it excessive. Further, that R.J.’s verdict of \$1,127,280.00 is “54 times” the medical expenses (Pet. p. 11) is not a basis for finding it excessive. RMC does not cite any law requiring that a verdict amount must be within a certain multiplier of alleged actual damages. On the contrary, the law is that there is no yardstick or measure for determining non-economic damages. *See Knoke v. S.C. Dep’t of Parks, Rec. & Tourism*, 324 S.C. 136, 142, 478 S.E.2d 256, 258-59 (1996) (stating “intangible damages” “cannot be determined by any fixed measure”); *Lucht v. Youngblood*, 266 S.C. 127, 137, 221 S.E.2d 854, 859 (1976) (stating non-economic damages “are intangibles, the value of which cannot be determined by any fixed yardstick”). Further, R.J.’s medical expenses are Tekayah’s damages and, therefore, cannot be the “yardstick” for his measure of damages.

A \$1,127,280.00 award for a child who endured this excruciating burn and will endure a scar and the daily physical and emotional pain and limitations associated with it for his *entire life* is neither merely nor grossly excessive. The lower court correctly exercised its discretion to deny RMC’s motion as to R.J.’s verdict. The Court should deny the petition on this issue.

***B. The evidence supports the jury's verdict for Tekayah.***

As an initial matter, RMC incorrectly states that the Court of Appeals did not address the specific issues it raised about Tekayah's verdict. (Pet. pp. 7-8). The Court listed each of those issues in its discussion and plainly understood RMC's arguments. *Hamilton*, 891 S.E.2d at 699-700. That the Court did not then write an analysis of each one does not mean that it did not consider them. See Rule 220, SCACR; see, e.g., *Clark v. S.C. Dep't of Pub. Safety*, 353 S.C. 291, 312, 578 S.E.2d 16, 26 (Ct. App. 2002) (“[T]here is no blanket requirement that the trial court set forth a separate explanation on all of its rulings on post-trial motions.”). RMC raised this concern in its petition for rehearing (Pet. for rehearing pp. 6-7), and the Court of Appeals denied it—plainly showing the Court believes it ruled on and addressed all of the arguments.

On the merits, Hamilton presented ample evidence of Tekayah's damages to support the jury's verdict. A parent can recover medical expenses, loss of services, and other pecuniary losses arising out of the injuries of a minor child. *Doe v. Greenville Cnty. Sch. Dist.*, 375 S.C. 63, 68, 651 S.E.2d 305, 307-08 (2007).

The medical bills totaled \$20,854.00. (App. pp. 427, 517-20). Dr. DeVito's recommended surgical treatment for R.J.'s scar will cost approximately \$2,500.00 for the surgical fee and in excess of \$12,000.00 for other associated costs such as the anesthesia, hospitalization, the operating room, and testing. (App. pp. 250-51). Dr. DeVito testified that R.J. would need steroid injections “indefinitely” and each injection costs \$85.00. (App. pp. 245, 521-23).

RMC argues Hamilton did not establish the future scar treatment. (Pet. pp. 8-9). This is incorrect. Tekayah testified that she did not want to have surgery on R.J.'s hand at the time of trial because he was so young and had already been through a lot. (App. pp. 190-91). Dr. Davis testified that giving the steroid treatment to a three-year-old is “not easy” and “not successful at that age”

because it is traumatic for the child and requires a sedative. (App. pp. 227-28). Dr. DeVito testified that Keloid scars are difficult to treat with steroids because penetrating “a hard scar with a needle and syringe is . . . like trying to inject the paint on [a] wall.” (App. pp. 242-43). Even an alternative vaccination gun that uses high pressure is “painful.” (App. pp. 243-44). Dr. DeVito found it “very understandable” that Tekayah may not want to put R.J. through that pain at three-years-old and agreed it is a “painful dilemma” for a child. (App. pp. 245-46). Based on that testimony, the jury could have accepted Hamilton, Dr. DeVito, and Dr. Davis’s testimony that it is best to wait to pursue scar treatment until R.J. is older. That Tekayah is choosing to wait does not mean she cannot recover for the future treatment.

The lower court considered that Tekayah missed work for a year because she could not trust anyone to properly watch out for R.J.’s hand. (App. pp. 177, 13). The lower court considered that Tekayah would remain R.J.’s guardian for an additional fifteen years from the date of trial. (App. p. 14).

RMC incorrectly argues that Tekayah’s damages are limited to only the medical expenses. (Pet. pp. 7-10). A parent may recover for loss of a child’s services and earning capacity (which are not at issue here), as well as “*other* pecuniary losses, *including* medical expenses incurred as a result of the injury.” *Doe v. Greenville County Sch. Dist.*, 375 S.C. 63, 68, 651 S.E.2d 305, 308 (2007). That the court listed medical expenses as included within the category of “pecuniary losses” necessarily means that a parent’s recovery is not limited to medical expenses.

An award of \$135,477.00 for R.J.’s past and future medical expenses, as well as Tekayah’s pecuniary loss for missed work, travel expenses, and constant daily watching over and caring for R.J. is neither merely nor grossly excessive. Therefore, the Court of Appeals correctly affirmed the lower court’s denial of RMC’s motion for a new trial absolute or new trial *nisi remittitur*.

Finally, even if the Court could find the lower court abused its discretion in finding the verdict not excessive, there is nothing to indicate that the jury “did not pay attention to the jury instructions” or “arrived at its award as a result of passion, caprice, or other improper motives.” (Pet. p. 9). RMC did not complain about the damages jury charge (App. p. 440), and did not ask for a jury charge that limited Tekayah’s damages to only the actual medical expenses.

The Court should deny the petition on this issue.

### CONCLUSION

For these reasons, the Court should deny the petition in its entirety and remand for the circuit court to enforce the judgment.

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Respectfully submitted,

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