THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Maite Murphy, Circuit Court Judge

Appellate Case No. 2024-000443
Case No. 2021-CP-38-1138

Se'Anne Davis (Personal Representative for the
Estate of Adrianne Branton) ..... Respondent,

v.

The Regional Medical Center of Orangeburg and Calhoun Counties, ... Appellant.

INITIAL BRIEF OF APPELLANT

ANDREW F. LINDEMANN
LINDEMANN LAW FIRM, P.A.
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920

MICHAEL C. TANNER
EMRY ERSOY
MICHAEL C. TANNER, LLC
302 Second Street
Post Office Box 1061
Bamberg, South Carolina 29003
(803) 245-9153

Counsel for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes, Rules, and Other Authorities

STATEMENT OF ISSUES ON APPEAL

I. Did the trial court err in failing to correctly interpret and apply the Tort Claims Act definition of "occurrence" and in failing to reduce the verdict for the Respondent to $1.2 million based on the monetary caps set forth in S.C. Code Ann. § 15-78-120(a)(3) and (4)?

II. Did the trial court err in making an award of “offer of judgment interest” which is in contravention of the legislative intent as expressed in 2005 Act Number 32 and the provisions of the Tort Claims Act including the express bar on any type of “interest prior to judgment”?

STATEMENT OF THE CASE

This is an appeal from a medical malpractice action. On September 27, 2021, the Respondent Se'Anne S. Davis, as the Personal Representative of the Estate of Adrianne T. Branton, filed a Complaint against the Appellant The Regional Medical Center of Orangeburg and Calhoun Counties ("TRMC"). In addition, the Complaint was asserted against other Defendants, including Orangeburg County and the Orangeburg County Sheriff's Office, both of which settled prior to trial.

The Respondent is the daughter of the decedent, Adrianne T. Branton. She alleged causes of action for wrongful death and survival arising out of the decedent's death on October 3, 2019. The claims against the Appellant TRMC were based on the decedent's visit to the emergency room on October 2, 2019, during which time she was seen by non-employee physicians. She was also seen as part of a psychiatric consult by Dr. Bryan West, who was a TRMC employee. TRMC is a governmental hospital, and accordingly, this action against TRMC was brought pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, *et seq*.

After the completion of discovery, this case was tried from October 9-13, 2023, before Circuit Court Judge Maite Murphy and an Orangeburg County jury. At the close of the Respondent's case-in-chief, TRMC moved for a directed verdict at which time issues relating to the number of "occurrences" were argued. (Tr. 532-534). The same directed verdict motion was renewed at the close of all evidence. (Tr. 722). Those motions were denied. The "occurrence" issue was also discussed as part of a pre-trial motion in limine. (Tr. 13-18).

The trial court submitted the case to the jury which returned a special verdict form finding two "breaches of the standard of care" by TRMC. Specifically, the jury found that

TRMC "breached the standard of care by failing to stabilize Adrianne Branton, who was actively psychotic" and also "breached the standard of care by discharging Adrianne Branton to an environment unequipped to handle her medical needs." (Verdict Form). Additionally, the jury found in favor of TRMC as to whether it "breached the standard of care by failing to admit Adrianne Branton to the Behavioral Health Unit." (Verdict Form).

The jury awarded actual damages in the amount of $1 million on the wrongful death claims and $4 million on the survival claim. (Verdict Form). The Appellant TRMC's post-trial motions were denied, except that the trial court did grant a set-off for the amounts paid by the settling Defendants. The wrongful death verdict was reduced to $925,000, and the survival verdict was reduced to $3,925,000. (Order, p. 10). The trial court also applied the monetary caps under Sections 15-78-120(a)(3) and (4) of the Tort Claims Act, and entered judgment in the amount of $2.4 million, with $925,000 awarded on the wrongful death claim and $1,475,000 awarded on the survival claim. (Order, p. 10). Over TRMC's objection, the trial court also awarded "offer of judgment interest" to the Respondent in the amount of $31,035.62. (Order, p. 11).

The Appellant TRMC filed a timely appeal to this Court.

STATEMENT OF FACTS

The Respondent brought this action as a result of the death of her mother, Adrianne Branton, a 69-year-old African-American female, who died on October 3, 2019. The decedent had been in and out of mental institutions around the Columbia area for several years prior to her death. She had a longstanding history of severe mental illness, including schizophrenia and a neurocognitive disorder.

Adrianne Branton had lived with her daughter until she moved to an apartment in Lexington where she stayed until August 2019. It was reported that while living with her daughter, the decedent would hallucinate and throw things away. It was also reported that the decedent accused her grandson of poisoning her with one of his diabetic needles.

In August and September 2019, Adrianne Branton had been an inpatient at Three Rivers Behavioral Health in Lexington and later at the Mary Black campus of Spartanburg Medical Center. On October 1, 2019, she was discharged from Spartanburg Medical Center into the care of Estelle Hutchinson, who owned and operated iKare Boarding House in St. Matthews. On October 2, 2019, the decedent refused to take her medicine. Later that day she was found knocking on doors of other residents and taking her property out of her room. Hutchinson called the police who also could not get the decedent to take her medicine. As a result, Hutchinson took her to TRMC on October 2, 2019. At TRMC, Hutchinson signed the admission and discharge as the decedent's caretaker.

The decedent was initially seen by a non-TRMC employee, Dr. Stephen Burkholz, who noted at 10:11 a.m. that she appeared "depressed and angry, anxious, paranoid, agitated and had impaired judgment." Dr. Burkholz noted that her triggers for the diagnosis of schizophrenia-

bipolar type were a recent personal loss, estrangement, loneliness, and being alone and life stage transitions. Dr. Burkholz did find her "clear in direction, thinking and processing with no evidence of harm to herself or others." He ordered a Haldol injection of 5 mg, Ativan 1 mg, and Benadryl 50 mg. He also ordered a psychiatric consult with Dr. Alberto Gonzales, a long-term psychiatrist who was also not a TRMC employee. Per his records, Dr. Gonzales saw the decedent at 11:27 a.m. and noted she was irritated and moody and labile and non-compliant with her medicine. He also noted she was paranoid but denied suicidal and homicidal ideations and auditory and visual hallucinations. Dr. Gonzales found her to have paranoid persecutory active delusions. He recommended in-patient psychiatric care**.**

Several hours later at 2:04 p.m., a different psychiatrist and TRMC employee, Dr. Bryan West evaluated the decedent and deemed her stable for discharge and reversed the petition for involuntary admission. Dr. West did not believe the patient needed to be admitted because she was calm, cooperative, not suicidal and not internally distracted. Dr. West felt she was taking care of herself with good hygiene. Dr. West noted the patient denied suicidal and homicidal ideations and auditory and visual hallucinations. Dr. West attributed her complaints to the Klonopin, and advised discontinuation of this medication as the patient stated it made her dizzy. Dr. West made no other changes to her care and discharged the decedent back to her boarding home.

Additionally, Dr. West had his nurse practitioner, Cameo Green, call the boarding home with the plan. NP Green called Estelle Hutchinson and told her to stop the Klonopin. She documented that Hutchinson was "concerned the patient may act out and she was advised to bring her back to the Hospital if she was concerned." The decedent was reportedly discharged from TRMC at 3:03 p.m. with Hutchinson accompanying her.

After discharge from TRMC, Adrianne Branton reportedly had several more behavioral episodes at iKare Boarding House. Thereafter, Hutchinson transferred the decedent to Heavenly Living Boarding which was operated by Brenda Williams in Orangeburg. While at Heavenly Living Boarding, the decedent refused to come inside and insisted on remaining outside in the heat while wearing a heavy wool coat. That evening, a call was placed to Orangeburg County 911 for an ambulance to return the decedent to TRMC. After arriving at the scene, an Orangeburg County sheriff's deputy cancelled the EMS run despite the fact that the decedent was exhibiting clear signs of distress. The deputy, however, was able to get the decedent to go inside.

The next day, October 3, 2019, Hutchinson returned and attempted to take the decedent to her mental health appointment, but the decedent refused. Hutchinson observed the decedent was wearing her "heavy wool coat" when she arrived and told her she wanted to go stay with relatives. Later, the decedent reportedly took a folding chair from the porch while wearing her coat to wait for her family to arrive. In the early afternoon, one of the staff at Heavenly Living Boarding, Rosa Starkes, tried unsuccessfully to get the decedent to come inside out of the heat to eat. Reportedly, the decedent cursed at her. At approximately 5 p.m., Starkes checked on the decedent again and noticed she was unresponsive. Orangeburg County 911 was called at approximately 5:39 p.m. She was found by a deputy and EMS as unresponsive, sitting in a metal folding chair in the front yard, and wearing a heavy wool military-style coat. The autopsy report listed the cause of death as prolonged exposure to environmental heat with hypotonic dehydration and acute renal failure.

STANDARD OF REVIEW

The standard of review for questions of law is *de novo*. The appellate court "may reverse where the decision is affected by any error of law." *Murphy v. Owens Corning*, 393 S.C. 77, 710 S.E.2d 454, 457 (Ct. App. 2011). The appellate courts are "free to decide matters of law with no particular deference to the fact finder." *Id*.

ARGUMENTS

I. The trial court erred in failing to correctly interpret and apply the Tort Claims Act definition of "occurrence" and in failing to reduce the verdict for the Respondent to $1.2 million based on the monetary caps set forth in S.C. Code Ann. § 15-78-120(a)(3) and (4).

The trial court determined that the jury found "two occurrences of negligence" and that the evidence "supported its finding that separate and distinct acts of negligence combined to cause Mrs. Branton's death." (Order, p. 3). Based thereon, the trial court "capped" the damages at $2.4 million "based on the jury's finding of two occurrences." (Order, p. 10). Accordingly, judgment was entered in that amount, with $925,000 awarded on the wrongful death claim and $1,475,000 awarded on the survival claim. (Order, p. 10). The Appellant TRMC, however, submits that the verdict should have been reduced to a single aggregate "cap" of $1.2 million based on the monetary caps set forth in Sections 15-78-120(a)(3) and (4).

Section 15-78-120 of the South Carolina Tort Claims Act establishes the monetary caps or limits on a governmental entity's liability for money damages. Section 15-78-120(a)(3) provides that "[n]o person may recover in any action or claim brought hereunder against any governmental entity and caused by the tort of any licensed physician or dentist, employed by a governmental entity and acting within the scope of his profession, *a sum exceeding one million two hundred thousand dollars because of loss arising from a single occurrence* regardless of the number of agencies or political subdivisions involved." S.C. Code Ann. § 15-78-120(a)(3). (Emphasis added). Additionally, Section 15-78-120(a)(4) establishes an aggregate cap of $1.2 million for multiple claims as follows: "The total sum recovered hereunder arising out of a single occurrence of liability of any governmental entity for any tort caused by any licensed

physician or dentist, employed by a governmental entity and acting within the scope of his profession, may not exceed one million two hundred thousand dollars regardless of the number of agencies or political subdivisions or claims or actions involved." S.C. Code Ann. § 15-78-120(a)(4).

As a threshold issue, it is a plaintiff's burden of proving each "occurrence" as pled. In *Chastain v. AnMed Health Foundation*, 388 S.C. 170, 694 S.E.2d 541 (2010), the South Carolina Supreme Court clearly ruled that "[i]f [plaintiff] *alleges* multiple occurrences, that is, that there was more than a single act of negligence from which proximately flowed an unfolding sequence of events, she bears the burden of proving each occurrence." 694 S.E.2d at 544. (Emphasis added). In the current case, however, the Respondent did not properly allege nor plead "multiple occurrences" in her Complaint, but rather she merely mentioned in the prayer of her Complaint that "Plaintiff further seeks judgment against Defendants for (a) actual and consequential damages as to each independent cause of action for each occurrence against the Defendants." (Complaint, p. 14). The trial court, nonetheless, rejected TRMC's argument that multiple occurrences had not been pled and instead ruled that "Plaintiff pled multiple occurrences in Paragraph 10 of her Complaint," and the court also referenced the non-descript reference to "occurrence" in the prayer. (Order, p. 1). The trial court was clearly mistaken as Paragraph 10 of the Complaint is a venue allegation. (Complaint, p. 6). The trial court also gave the Respondent a pass by pointing out that the Complaint "incorporated" the expert affidavit, although that affidavit does not use the terminology of "multiple occurrences" nor offers any clear description of multiple occurrences. At best, the expert affidavit addresses alleged breaches of the standard of care, but those are not synonymous with nor necessarily indicative of multiple occurrences. Notably, the Respondent did not plead in her Complaint any specific

incidents, including date and time, nor any alleged "loss" specifically arising from any purported "occurrences."[1]

The Appellant TRMC further argued that the issue relating to the number of occurrences should be a question of law based upon factual findings by the jury rather than simply a question of fact which would be submitted to the jury to answer. The trial court erred in rejecting that position.

Importantly, in *Parker v. Spartanburg Sanitary Sewer District*, 362 S.C. 276, 607 S.E.2d 711 (Ct. App. 2005), this Court, using mandatory language, states: "We conclude that the monetary statutory cap is self-executing and the court is required to apply the monetary statutory cap to any jury verdict exceeding $300,000." 607 S.E.2d at 716. The same is true with respect to the statutory cap for torts committed by a physician pursuant to Section 15-78-120(a)(3). Notably, in *Campbell v. City of North Charleston*, 431 S.C. 454, 848 S.E.2d 788 (Ct. App. 2020), this Court again reaffirmed that "the plain meaning of the statute indicates this cap must be executed" and that "under the plain meaning of section 15-78-120(a), courts must apply the statutory cap to actions brought pursuant to the Act." 848 S.E.2d at 793-794. This Court also emphasized that "the application of the cap is mandatory and self-executing." 848 S.E.2d at 793.

[1] As the record demonstrates, the Respondent initially argued during the motion in *limine* hearing that there were two occurrences, and in the middle of the trial, surprised TRMC by alleging the existence of four occurrences. The Respondent eventually reduced her claim to three occurrences as to (1) whether TRMC breached the standard of care by failing to stabilize the decedent who was believed to be actively psychotic; (2) whether TRMC breached the standard of care by failing to admit the decedent to Behavioral Health Unit; and (3) whether TRMC breached the standard of care by discharging the decedent to an environment unequipped to handle her medical needs. TRMC maintained its objections throughout the trial that Respondent had not pled with the required specificity any of the above-mentioned occurrence claims in her Complaint.

Thus, the application of the monetary caps is a mandatory duty imposed on the trial court where, as here, the jury's verdict in a physician tort case exceeds $1.2 million.

As TRMC argued in the court below, the application of the monetary cap pursuant to Sections 15-78-120(a)(3) and (4) presents a mixed question of law and fact. In effect, the application of the monetary cap requires an analysis of the term "single occurrence" which is incorporated in Sections 15-78-120(a)(3) and (4). *See, Charleston County Parks & Recreation Commission v. Somers,* 319 S.C. 65, 459 S.E.2d 841 (1995) (questions of statutory construction are a matter of law).[2] The term "occurrence" is statutorily defined to mean "an unfolding sequence of events which proximately flow from a single act of negligence." S.C. Code Ann. § 15-78-30(g).[3] As the italicized language above shows, Section 15-78-120(a)(3) caps a judgment at $1.2 million "because of loss arising from a single occurrence." S.C. Code Ann. § 15-78-120(a)(3). Thus, to carry out the mandatory and self-executing duty recognized in *Parker* and

---

[2] TRMC's position that the number of occurrences presents an issue of law for the court is further supported by reference to the related context of insurance coverage where the Supreme Court has treated as an issue of law whether a particular factual scenario gives rise to a single occurrence or multiple occurrences. *See e.g.*, *Owners Ins. Co. v. Salmonsen*, 366 S.C. 336, 622 S.E.2d 525, 526 (2005) (the Supreme Court determined as matter of law that "placing a defective product into the stream of commerce is one occurrence" rather than multiple occurrences); *Beaufort County School District v. United National Ins. Co.*, 392 S.C. 506, 709 S.E.2d 85 (2011) (the Supreme Court determined as matter of law that the sexual molestation of multiple victims constituted multiple occurrences).

[3] As discussed in more detail below, the statutory definition of "occurrence" is poorly articulated by the General Assembly and hence gives rise to a challenging application. Trial courts, including the one in this case, are repeatedly erring in charging a jury with the definition of "occurrence" and then expecting a jury to navigate its meaning and application on the mistaken premise that a jury question is presented. The statutory definition of "occurrence" is complex and nuanced and frankly not one that can be easily understood or applied by a jury. Indeed, even the South Carolina appellate courts that have addressed that definition have struggled with its meaning and application. *See, Boiter v. South Carolina Department of Transportation,* 393 S.C. 123, 712 S.E.2d 401 (2011)*; Chastain v. AnMed Health Foundation,* 388 S.C. 170, 694 S.E.2d 541 (2010).

Campbell, the trial court was required to take the fact-finding of the jury and then determine whether the award for any "loss arising from" any "single occurrence" exceeds $1.2 million. The trial court erred in failing to fulfill that mandatory duty.[4]

As the trial court instructed and the special verdict form allowed, the jury in the case at bar made a factual determination as to the number of "breaches of the standard of care" that were committed by Dr. West. The jury concluded that there were two breaches, one based on the failure to stabilize the decedent who was actively psychotic, and the other by discharging the decedent to an environment unequipped to handle her medical needs. (Verdict Form). With that special verdict form, that is the extent of what the jury was asked to determine.

Taking that factual determination, the trial court was then required to apply the statutory definition of "occurrence" and determine as a matter of law whether those two "breaches of the standard of care" give rise to or proximately caused the same "sequence of events" that is "unfolding" (or "evolving" or "progressing" to apply useful synonyms). That is the mandatory and self-executing duty imposed by Section 15-78-120(a)(3) as recognized in *Parker* and *Campbell*. As indicated, the trial court did not, however, fulfill that duty or responsibility. Instead, the trial court treated the number of occurrences and the application of the monetary caps as purely a factual question for the jury's determination and concluded erroneously that the jury actually found multiple "occurrences" giving rise to presumably multiple "losses," which the jury did not actually find. The special verdict form stated no such thing. In effect, the jury was only asked to find breaches of the

[4] Notably, in *Boiter v. South Carolina Department of Transportation*, 393 S.C. 123, 712 S.E.2d 401 (2011), the Supreme Court made the determination that the facts as found by the jury gave rise to multiple occurrences. While often overlooked or misapprehended, the jury in *Boiter* did not actually make any determination regarding the number of occurrences; the jury only determined that both defendants committed acts of negligence. The Supreme Court treated the issue as a question of law for the court.

standard of care. The jury was also not called upon on the special verdict form to find that the two breaches of the standard of care, as found by the jury, were "separate and independent" acts of negligence as opposed to concurrent acts of negligence.

Moreover, the "loss arising from a single occurrence" language in Section 15-78-120(a)(3) is often overlooked and misapplied, as it was in this case.[5] A plaintiff has the burden of pleading and proving not only the number of "occurrences," but also proving the damages awarded for a *loss arising from each separate occurrence*. In other words, if multiple occurrences are claimed, a plaintiff has the burden of proving each purported "occurrence" proximately resulted in a "loss" and the amount of damages to compensate each such "loss." Even where there may be multiple occurrences, it is certainly possible that all of the damages were caused by just one of the occurrences. It is also just as possible that one or more of the occurrences caused damages less than $1.2 million. In effect, in order for a trial court to fulfill its mandatory and self-executing duty to apply the monetary caps, it is necessary for the court to be provided information on the verdict form as to each "loss" arising from each "occurrence," so that the monetary caps may be properly applied. The court did not have that requisite information.

Ultimately, the trial court erred in failing to correctly interpret and apply the definition of "occurrence" to the findings of fact actually made by the jury on the special verdict form. The trial court's use of the phrase "two occurrences of negligence" demonstrates that the court failed to correctly apply the law on "multiple occurrences" under the Tort Claims Act, including the

[5] "Loss" is a defined term under the Tort Claims Act. Section 15-78-30(f) provides: "'Loss' means bodily injury, disease, death, or damage to tangible property, including lost wages and economic loss to the person who suffered the injury, disease, or death, pain and suffering, mental anguish, and any other element of actual damages recoverable in actions for negligence, but does not include the intentional infliction of emotional harm." *See,* S.C. Code Ann. § 15-78-30(f).

statutory definition of "occurrence." The number of "occurrences" under a proper analysis is not determined by the number of acts of negligence. In effect, two acts of negligence do not equate to "two occurrences of negligence." The Supreme Court, in fact, made that *very clear* in *Boiter, supra*, where the Court explained: "we do not adopt a bright-line test based on the existence of multiple acts of negligence." *Boiter*, 712 S.E.2d at 406. Importantly, the number of "occurrences" is *not* tied to the number of acts of negligence and thus, contrary to the trial court's ruling, there were not "two occurrences of negligence" found by the jury.[6] The trial court thus erred in failing to decide whether there were two different "unfolding sequences of events" that proximately flowed from the findings of two "breaches of the standard of care" by the jury. That is the dispositive question and was never answered by the trial court.

To answer that question correctly, it is critical to consider both the purpose of the Tort Claims Act and the controlling rules of statutory construction. Section 15-78-20(a) sets forth the legislative intent behind the Tort Claims Act to allow the government to be held responsible for its torts but to limit that liability in light of the "financial limitations" within which each governmental entity must exercise its powers. To that end, the General Assembly provided a

---

[6] This very error is also reflected in the trial court's jury charge on "occurrences," a charge to which TRMC objected. (Tr. 724-732). The court charged the jury as follows:

> Occurrence means an unfolding sequence of events which proximately flow from a single act of negligence. The Plaintiff has alleged multiple occurrences of negligence in this case. Where there are multiple occurrences of negligence, a Plaintiff must recover damages for each occurrence of negligence. The Plaintiff has the burden of proving that each act of negligence was a separate and independent in order for you to find that more than one occurrence occurred.

(Tr. 797-798). Again, the court uses the term "multiple occurrences of negligence" which suggests that multiple findings of negligence equate to multiple occurrences, which of course they do not, as the Supreme Court in *Boiter* made clear.

statutory scheme under which the government is neither totally immune from liability nor subjected to unqualified liability. *See*, *Wright v. Colleton County School District*, 301 S.C. 282, 391 S.E.2d 564, 570 (1990) (the Supreme Court recognized the "legislative objectives" of the Tort Claims Act are "relieving the government from hardships of unlimited and unqualified liability and preserving the finite assets of governmental entities which are needed for an effective and efficient government").

Additionally, the General Assembly intended for the Tort Claims Act *to be liberally construed to limit the liability of the state and its political subdivisions*. The General Assembly did not leave such a construction to chance but included that rule *explicitly* in its codified legislative findings. *See*, S.C. Code Ann. § 15-78-20(f) ("The provisions of this chapter establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must be liberally construed in favor of limiting the liability of the State"). *See also, Faile v. South Carolina Department of Juvenile Justice,* 350 S.C. 315, 566 S.E.2d 536, 540 (2002) ("[p]rovisions establishing limitations on liability must be liberally construed in the State's favor"); *Baker v. Sanders,* 301 S.C. 170, 391 S.E.2d 229 (1990) (same). Thus, where there is an ambiguous or challenging term like the statutory definition of "occurrence," that provision must be liberally construed to limit the liability of the governmental entity. That was not done by the trial court in this case.[7]

[7] The issue of "multiple occurrences" under the Tort Claims Act is becoming increasingly prevalent, and quite simply, the existing decisional guidance from our appellate courts -- consisting of two published decisions, *Chastain* from 2010 and *Boiter* from 2011 -- is frankly insufficient. That is evident from the varied approaches that state and federal trial courts are taking in addressing the procedure to be applied in adjudicating the "caps" question. Indisputably, this issue is of critical importance because the increasing prevalence of the "multiple occurrence" question arising in litigation against governmental entities, including hospitals, is jeopardizing and in some case nullifying the "legislative objectives" of the Tort

With the rules of statutory construction in mind, to properly read the statute *as written*, an "occurrence" is an "unfolding sequence of events." From a grammatical standpoint, "an unfolding sequence of events" is the predicate clause that defines the term "occurrence." Nonetheless, the trial court relied only on the back-end of the definition by focusing on "a single act of negligence." To reiterate, in *Boiter*, the Supreme Court has already rejected any notion that the number of "occurrences" is tied to the number of acts of negligence or gross negligence. *Boiter,* 712 S.E.2d at 406. Moreover, as *Boiter* further instructs, multiple acts of negligence may give rise to a single occurrence. Indeed, the Supreme Court recognized that "[i]n many situations, negligent acts from more than one entity would still equal but one occurrence." *Boiter*, 712 S.E.2d at 407. This would likewise be true where there are multiple acts of negligence committed by the same entity or even the same person as in the case at bar. In sum, an "occurrence" is "an unfolding sequence of events," and that critical piece of the definition cannot be ignored or written out of the statute.

Given the jury's verdict which found two "breaches of the standard of care" (and not "two occurrences of negligence"), the trial court was required to apply that definition of "occurrence," and analyze whether those breaches gave rise to or proximately caused a different "unfolding sequence of events." If those breaches each give rise to a new "sequence of events" so as not to be "unfolding" or "evolving" from past events, only then is there a new and separate "occurrence." However, that did not occur in the case at bar. Dr. West was the only TRMC employee who examined and treated the decedent on October 2, 2019. He saw her over the course of seventy minutes before reaching his "Impression and Plan." This plan recommended:

Claims Act, including "preserving the finite assets of governmental entities." *Wright*, 391 S.E.2d at 570.

> Discharge to home once medically cleared, recommendation to stop Clonazepam 1 mg daily as it is self tapering… the patient got Haldol in the ED with an improvement in behavior. Her main complaint to me at bedside was that she was dizzy and didn't want to take meds that made her dizzy. Most likely the Clonazepam was making her dizzy. She should stop taking this medication Says she is comfortable with this plan. Lives at a boarding home and this plan should be communicated to the boarding home regarding med administration.

(R. ___). Thus, it is hard to fathom how a single medical encounter of seventy minutes on one date by a single physician gives rise to anything other than one "unfolding sequence of events." As the Supreme Court instructs in *Boiter*, if the same "unfolding sequence of events" proximately flows from the two acts of negligence by the same entity, there is but a "single occurrence." That is what occurred in this case. In fact, it was not even one entity but rather one physician-employee whose acts gave rise to a "single occurrence."

By way of further explanation, in *Boiter*, the Supreme Court concluded that there were separate "occurrences" by two state agencies that resulted in a motor vehicle accident. The Boiters' vehicle and another vehicle collided when both vehicles entered an intersection at the same time. At the time of the accident, the red signal light bulbs in the traffic signal for the other vehicle's direction of travel had burned out. The Boiters brought suit against the South Carolina Department of Transportation (SCDOT) alleging negligence in failing to have a relamping policy in place. The Boiters also brought suit against the South Carolina Department of Public Safety (SCDPS) alleging negligence in failing to send a trooper to direct traffic at the intersection after being notified that the red lights were out. In a 4-1 decision, the Supreme Court found that the negligence committed by SCDOT constituted one "occurrence" and the negligence by SCDPS constituted a separate "occurrence." In other words, the Supreme Court concluded that there were "independent and separate acts of negligence" by the two state agencies. Importantly, the

Supreme Court expressly decided the issue "based solely on the peculiar facts of this case" and further states that no "bright-line test" was being adopted by the Court. 712 S.E.2d at 406. The Supreme Court did, in fact, acknowledge that "[i]n many situations, negligent acts from more than one entity would still equal but one occurrence." 712 S.E.2d at 407. But, based on what it described as "peculiar facts," the Supreme Court found that "there were two separate entities which committed two separate and independent acts of negligence, and we do not believe the General Assembly's intent was to limit recovery in such situations based on there being only one occurrence." *Id.*[8]

As indicated, the present case is readily distinguishable from *Boiter* in that this case involves a single governmental entity, specifically a single physician (Dr. West), who the jury found committed two breaches of the standard of care. The Supreme Court in *Boiter* offers considerable insight as to how a case with those characteristics should be adjudicated. The Supreme Court points out that "[c]ases from other jurisdictions are similarly inapposite because they involve a single governmental entity which committed multiple acts of negligence, a completely different situation than the one before us." *Boiter*, 712 S.E.2d at 406. The Supreme

[8] Other courts have misread *Boiter* as not requiring the factfinder to allocate the "loss" arising from each occurrence. *See e.g.*, *Gifford v. Horry County Police Department*, 2023 WL 2702953, *6 (D.S.C. 2023) (where the federal district court erroneously concluded that the jury in *Boiter* did not "parse out" the verdicts between each claim and each defendant). As reflected in the Supreme Court's opinion, *Boiter* did not involve one lawsuit with two plaintiffs and two defendants. Instead, as the Supreme Court explained, "[t]he Boiters filed four separate lawsuits against South Carolina Department of Transportation (SCDOT) and South Carolina Department of Public Safety (SCDPS) (collectively, Respondents) alleging negligence in their failure to prevent the accident." *Boiter*, 712 S.E.2d at 402. Thus, there were four separate lawsuits, and as a result, when the cases were tried, the jury returned *four separate verdicts*. Those four verdicts totaled $1.875 million for each plaintiff. 712 S.E.2d at 402-403. In adjudging the post-trial motions, the trial judge in *Boiter* did have available to him the jury's determination of the "loss" attributable to each defendant (SCDOT or SCDPS) in favor of each plaintiff (Larry Boiter and Jeannie Boiter). That allowed the Supreme Court to know on appeal that the jury found in excess of $300,000 in damages for each of the two occurrences that the Supreme Court found, one by SCDOT and another by SCDPS.

Court then cites favorably two cases from other jurisdictions that are instructive in the present case. Those cases are factually similar to the present case where, unlike in *Boiter*, there is a single governmental entity that allegedly committed multiple acts of negligence that gave rise to a single occurrence.

The most comparable of those cases is *Folz v. State*, 110 N.M. 457, 797 P.2d 246 (1990), which the South Carolina Supreme Court described as holding that the "negligence by [the] highway department which resulted in a truck striking five separate vehicles in [a] collision was only one occurrence under [the applicable] statute." Id. In *Folz*, a personal injury suit was brought against the state highway department after a runaway truck successively struck five vehicles in a mountainous construction site. The plaintiffs alleged that the highway department committed two acts of negligence described as "negligen[ce] in failing to design and implement an appropriate traffic-control plan for the project." 797 P.2d at 249. The court concluded that "[t]he Department committed at least two negligent acts or omissions (planning and implementation) that, although committed successively, combined concurrently with the negligence of the other tortfeasors to proximately cause indivisible harm to each of multiple person facing the singular risk of a runaway truck." 797 P.2d at 252. The court further explained "while a 'series' of acts or omissions on the part of the Department created an undue risk of injury, these acts contributed to a unitary risk, and only one triggering event occurred giving rise to liability." 797 P.2d at 254. The New Mexico court found that there was a "single occurrence" under that state's Tort Claims Act.

Importantly, in *Boiter*, the South Carolina Supreme Court recognized that "[i]n many situations, negligent acts from more than one entity would still equal but one occurrence." 712 S.E.2d at 407. This would likewise be true where there are multiple acts of negligence

committed by the same entity, particularly where those acts are the same or similar and result in a continuous "unfolding sequence of events" and particularly, as here, where the acts are committed by a single person. To reiterate, in *Boiter*, the Supreme Court found two occurrences when the facts revealed that two governmental defendants each committed a separate and distinct wrongful act that did not combine or "unfold" to cause each plaintiff's injury. Here, the facts as found by the jury reveal that one governmental defendant committed the same or at least similar or related breaches of the standard of care that combined or "unfolded" to result in Dr. West failing to appropriately stabilize the decedent and in improperly discharging her.

In other words, there was a single event which proximately flowed from the two breaches of the standard of care as found by the jury, that being the decedent's discharge on October 2, 2019, without providing additional psychiatric care. The two breaches of the standard of care flow into that singular event, i.e., they combined and concurred to proximately cause at most a single occurrence – the unfolding sequence of events that ended with the decedent's death on October 3, 2019. In sum, if the same "unfolding sequence of events" proximately flows from multiple acts of negligence (or in this case breaches of the standard of care since the jury did not find acts of negligence), there is still but a single occurrence. That is the scenario the Respondent has presented in the case at bar. The Respondent has not pled multiple "unfolding sequence of events." Moreover, the evidence does not support a finding of new or different "unfolding sequences of events."

In sum, as *Boiter* instructs, the trial court should have ruled as a matter of law that the same "unfolding sequence of events" proximately flowed from the two "breaches of the standard of care" committed by the same governmental entity and same physician-employee. There were not two separate and independent sequences of events resulting in the decedent's injury and death. Instead,

there was a singular, finite medical encounter by one physician, and hence, there was but one "unfolding sequence of events" and thus one "occurrence." The Appellant TRMC, therefore, requests that this Court properly analyze the "occurrence" issue by applying the *entire definition* and not just the back-end of the definition. When properly analyzed under the rubric from *Boiter*, TRMC submits that the trial court should only have found a "single occurrence" and, accordingly, the verdict should have been reduced to a single aggregate cap of $1.2 million in accordance with the mandates of Sections 15-78-120(a)(3) and (4).

II. The trial court erred in making an award of "offer of judgment interest" which is in contravention of the legislative intent as expressed in 2005 Act Number 32 and the provisions of the Tort Claims Act including the express bar on any type of "interest prior to judgment."

The Respondent filed a post-trial motion seeking an award of so-called "offer of judgment interest" and additional costs pursuant to Section 15-35-400 and Rule 68, SCRCP. The Appellant TRMC opposed that motion on the basis that "offer of judgment interest" or any type of "interest prior to judgment" is not recoverable against a governmental entity pursuant to Section 15-78-120(b). Furthermore, TRMC asserted that Section 15-35-400 and Rule 68(b), SCRCP, on which the Respondent's motion is based, are not applicable to governmental entities. In rejecting those arguments, the trial court ruled that "[t]he eight-percent offer-of-judgment interest is distinct from prejudgment interest and thus is not barred by the Tort Claims Act." (Order, p. 11). Accordingly, the trial court granted the motion for "offer of judgment interest" and awarded $31,035.62. (Order, p. 11). TRMC contends that the trial court erred in awarding the "offer of judgment interest" against a governmental entity.

By way of background, Section 15-35-400 was enacted as part of Act 32 of 2005. Section 18 of Act 32 reads: "The provisions of this act do not affect any right, privilege, or provision of the South Carolina Tort Claims Act contained in Chapter 78, Title 15 of the 1976 Code or the South Carolina Solicitation of Charitable Funds Act as contained in Chapter 56 of Title 33." Section 18 was then codified as part of the Tort Claims Act. S.C. Code Ann. § 15-78-220 provides: "The provisions of Act 32 of 2005 do not affect any right, privilege, or provision of the South Carolina Tort Claims Act contained in Chapter 78, Title 15 of the 1976 Code or the South Carolina Solicitation of Charitable Funds Act as contained in Chapter 56 of Title 33." *See,* S.C. Code Ann. § 15-78-220. Thus, the provisions of Act 32, including Section 15-35-400, are inapplicable to cases brought pursuant to the Tort Claims Act.

Additionally, Section 15-35-400 conflicts with a specific section of the Tort Claims Act, as Section 15-78-120(b) provides that a Tort Claims Act defendant is not liable for pre-judgment interest or any "interest prior to judgment." *See*, S.C. Code Ann. § 15-78-120(b) ("No award for damages under this chapter shall include punitive or exemplary damages or interest prior to judgment"). If the General Assembly had intended for pre-judgment interest or any "interest prior to judgment" to be recoverable under Section 15-35-400 against a governmental entity, then Section 15-78-120(b) would have been amended to reflect that exception. It was not, which clearly reflects the legislative intent that Section 15-35-400 is not applicable to Tort Claims Act cases.[9]

[9] Since 2006, the General Assembly has also demonstrated by their consideration of proposed amendments to the Tort Claims Act that Section 15-35-400 and Rule 68(b) do not apply under current law to Tort Claims Act cases. As part of comprehensive bills seeking to amend the Tort Claims Act which were debated but not enacted during the past several sessions of the General Assembly, the amendments under consideration include an amendment to Section

Rule 68, SCRCP, was amended in 2006 to adopt certain language and provisions from Section 15-35-400. Rule 68(b), however, is not and cannot be construed as applicable to governmental entities sued under the Tort Claims Act. Otherwise, Rule 68(b) would be in direct conflict with Section 15-78-120(b) and also would be unconstitutional.[10] Section 4 of Article V of the South Carolina Constitution requires that procedural rules must be subordinate to statutory law. That constitutional provision states: "The Supreme Court shall make rules governing the administration of all the courts of the State. Subject to the statutory law, the Supreme Court shall make rules governing the practice and procedure in all such courts." *See*, S.C. Const., art. V, § 4. (Emphasis added). In construing this provision, the Supreme Court in *Stokes v. Denmark Emergency Medical Services,* 315 S.C. 263, 433 S.E.2d 850 (1993), explained that "[t]he clause 'subject to the statutory law' establishes the intent to subordinate to the General Assembly the Court's rulemaking power in regard to practice and procedure." 433 S.E.2d at 852. *See also, Marichris v. Derrick,* 384 S.C. 345, 682 S.E.2d 301, 305 (Ct. App. 2009) ("A rule of civil procedure may not limit the provisions of a statute"). Consequently, Rule 68(b) cannot be read as creating liability for pre-judgment interest where statutory law, namely Section 15-78-l20(b), provides for sovereign immunity for pre-judgment interest or any "interest prior to judgment" and where the General Assembly has expressly

---

15-78-120(b) to make a variation of Section 15-35-400 and Rule 68(b) applicable to governmental entities sued under the Tort Claims Act. *See* e.g., Bill S. 81, § 6 (introduced in the Senate during 2021 session); Bill S. 386, § 6 (introduced in the Senate during 2019 session). This legislative activity further reflects that an amendment to the Tort Claims Act – which has not been enacted to date – would be necessary to make Section 15-35-400 and Rule 68(b) applicable to Tort Claims Act cases such as the case at bar.

[10] The Note to the 2006 Amendment for Rule 68 provides: "This amendment makes this provision consistent with S.C. Code Ann. § 15-35-400, which became effective July 1, 2005." The intent, therefore, was not to make Rule 68(b) broader in scope or application that Section 15-35-400. If Section 15-35-400 is not applicable to a particular case, then Rule 68(b) is also not applicable to that case.

provided that Section 15-35-400 is not applicable to governmental officials or entities sued under the Tort Claims Act. Therefore, in order to be constitutional, Rule 68(b) must be read as being inapplicable to Tort Claims Act cases including the present case.

In sum, the trial court erred in making an award of "offer of judgment interest" against a governmental entity. The award of $31,035.62 in interest should be reversed.

CONCLUSION

Based on the foregoing discussion and analysis, the Appellant Regional Medical Center of Orangeburg and Calhoun Counties respectfully requests that the Court reverse in part the post-trial order of Circuit Court Judge Maite Murphy and order that the judgment be reduced to a single aggregate cap of $1.2 million. In addition, the Court is requested to reverse the award of offer of judgment interest.

Respectfully submitted,

LINDEMANN LAW FIRM, P.A.

BY: *s/ Andrew F. Lindemann*

ANDREW F. LINDEMANN #13030
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920
Email: andrew@ldlawsc.com

MICHAEL C. TANNER #12424
EMRY ERSOY #104958
MICHAEL C. TANNER, LLC
302 Second Street
Post Office Box 1061
Bamberg, South Carolina 29003
(803) 245-9153
Email: michaelctannerllc@bellsouth.net

Counsel for Appellant Regional Medical Center of Orangeburg and Calhoun Counties

December 4, 2024