STATE OF SOUTH CAROLINA COUNTY OF MARION DEMETRICE UTLEY, individually and as Personal Representative of the ESTATE OF TAYLOR DANIELLE PRICE, Plaintiff, vs. MCLEOD PHYSICIAN ASSOCIATES II and CHARLES A. TRANT, MD, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE TWELFTH JUDICIAL CIRCUIT Case No.: 2022-CP-33-00362 **ORDER ON POST-TRIAL MOTIONS**

This case ended in a jury verdict following a weeklong trial in favor of Plaintiff Demetrice Utley, individually and as the Personal Representative of the Estate of Taylor Danielle Price ("Plaintiff") against Defendants McLeod Physician Associates II ("MPA II") and Charles A. Trant, MD's ("Trant") ("collectively "Defendants"). Both parties timely filed post-trial motions. Defendants filed: (i) a Motion for Judgment Notwithstanding the Verdict; a Motion for New Trial Absolute; and (iii) a Motion for Reduction of the Jury's Verdict to $1.2 Million. Plaintiff filed: (i) a Motion for Confirmation of Two Occurrences; and (ii) a Motion for Award of Offer of Judgment Interest.

This Court has carefully considered all of the arguments raised in the parties' post-trial briefings[1], as well as all of the evidence and the arguments presented by counsel for the parties

[1] In their post-trial briefing, Defendants relied on the legislative history of the Solicitation of Charitable Funds Act. Defendants presented extensive briefing and oral arguments regarding the legislative intent in support of their post-trial motions. This Court carefully considered all of these arguments but respectfully disagrees with the arguments raised by Defendants relating to the legislative history and legislative intent specific to the Solicitation of Charitable Funds Act, for the reasons provided in this Order.

during the trial that concluded with a jury verdict on November 8, 2024. Full consideration has also been given to the arguments presented by counsel during a three-hour hearing on the post-trial motions, which was held November 25, 2024. Defendants requested the opportunity to make additional filings after the hearing, which was permitted, and the supplemental filings, including a letter from Defendants' appellate counsel addressing issues in the initial proposed post-trial order, were reviewed.

Following this thorough review, and as set forth more fully below, this Court holds: (1) Defendants' Motion for JNOV is denied; (2) Defendants' Motion for New Trial Absolute is denied; (3) Defendants' Motion for Set-Off is denied as moot based on the stipulation and agreement of the parties; (4) Defendants' Motion for Reduction of the Judgment is granted in part and denied in part; (5) Plaintiff's Motion for Confirmation of Two Occurrences is denied as moot in light of the Court's decisions on Defendants' post-trial motions; and (6) Plaintiff's Motion for Award of Offer of Judgment Interest is granted in part and denied in part.

LEGAL STANDARD

Judgment Notwithstanding the Verdict

When considering a motion for judgment notwithstanding the verdict, the trial judge must view the evidence and all inferences therefrom in the light most favorable to the non-moving party. *See Horry Cnty. v. Laychur*, 315 S.C. 364, 367, 434 S.E.2d 259, 261 (1993). If the evidence is susceptible of more than one reasonable inference, the case should be submitted to the jury. *Id.* A court considering a JNOV does not have authority to decide credibility issues or to resolve conflicts in the testimony or the evidence. *See Curcio v. Caterpillar, Inc.*, 355 S.C. 316, 320, 585 S.E.2d 272, 274 (2003). The trial judge, when considering a JNOV motion, is concerned with the existence of evidence, not its weight. A JNOV motion must be denied when the evidence yields

more than one inference or its inferences are in doubt. *See Jinks v. Richland Cnty*., 355 S.C. 341, 585 S.E.2d 281 (2003).

A trial judge's authority to grant a judgment notwithstanding the verdict is therefore extremely limited. "The jury's verdict must be upheld unless no evidence reasonably supports the jury's findings." *Curcio*, 355 S.C. at 320, 585 S.E.2d at 274 (reversing trial court's grant of JNOV on basis that "trial judge improperly weighed evidence rather than merely considering its existence"). A motion for JNOV is the renewal of a directed verdict motion and cannot raise grounds beyond those stated in the earlier motion. *See Roland v. Palmetto Hills*, 308 S.C. 283, 286, 417 S.E.2d 626, 628 (Ct. App. 1992).

New Trial Absolute

While a trial judge also has the power to grant a new trial absolute, that authority is likewise circumscribed and should be exercised "only when the verdict is shockingly disproportionate to the injuries suffered and thus indicates that passion, caprice, prejudice, or other considerations not reflected by the evidence affected the amount awarded." *Welch v. Epstein*, 342 S.C. 279, 302, 536 S.E.2d 408, 420 (Ct. App. 2000) (affirming trial court's denial of new trial absolute in medical malpractice action). A motion for new trial absolute based on the amount of a jury verdict may be granted if the verdict amount is "so grossly . . . excessive so as to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice, corruption, or some other improper motives." *Brinkley v. S.C. Dep't of Corrections*, 386 S.C. 182, 185, 687 S.E.2d 54, 56 (Ct. App. 2009). "In other words, to warrant a new trial absolute, the verdict reached must be so 'grossly excessive' as to clearly indicate the influence of an improper motive on the jury." *Welch*, 342 S.C. at 302, 536 S.E.2d at 420.

Disagreement with the Amount of the Jury Verdict

A jury's determination of damages is entitled to "substantial deference." *Jolly v. Fisher Controls Int'l, LLC*, 443 S.C. 511, 524, 905 S.E.2d 380, 387 (2024). The foundation for this deference arises from Article I, Section 14 of the South Carolina Constitution, which states that "[t]he right of trial by jury shall be preserved inviolate." *See* S.C. Const. art. I, § 14. Thus, every party to a civil jury trial "is entitled to the constitutional privilege of the fair judgment of a jury" and a court must "not interfere with the verdict of a jury simply because it is greater [or less] than its own estimate." *See Brabham v. S. Asphalt Haulers, Inc*., 223 S.C. 421, 430, 76 S.E.2d 301, 306 (1953. Only "compelling reasons" justify upending the principle that "trial courts must honor the sanctity of a jury's verdict." *Jolly*, 443 S.C. at 524, 905 S.E.2d at 387. Accordingly, cognizant of the constraints on the court's power to alter the verdict of the jury, the post-trial motions are resolved below.

FINDINGS AND CONCLUSIONS

I. DEFENDANTS' MOTION FOR JNOV IS DENIED.

Defendants seek a judgment notwithstanding the verdict based on their allegation that Dr. Trant was not grossly negligent as a matter of law, there was only one (1) occurrence, and there was no evidence showing proximate cause. The court is convinced that the evidence, taken as a whole and viewed through the appropriate lens—in the light most favorable to Plaintiff—amply supports the jury's verdict, contrary to the contention of Defendants that no such evidence exists. Therefore, Defendants' JNOV motion must be denied.

A. There is Evidence in the Record to Support the Jury's Conclusion That Dr. Trant Was Grossly Negligent.

Evidence supports the jury's conclusion that Dr. Trant was grossly negligent, and therefore, Defendants' JNOV motion on this ground fails. *Bass v. S.C. Dep't of Soc. Servs*., 414 S.C. 558,

780 S.E.2d 252 (2015) (upholding trial court's order denying motion for JNOV on gross negligence, as "trial judge is concerned with the existence of evidence, not its weight").

Gross negligence is defined as "the intentional conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do," *Bass v. S.C. Dep't of Soc. Servs.*, 414 S.C. 558, 571, 780 S.E.2d 252, 258-59 (2015), and has also been referred to as a "relative term" meaning "the absence of care that is necessary under the circumstances" or "the failure to exercise slight care." *Etheredge v. Richland Sch. Dist. One*, 341 S.C. 307, 310, 534 S.E.2d 275, 277 (2000). The issue of gross negligence "is a mixed question of law and fact" that should generally be resolved by a jury. *Id.*, 341 S.C. at 310, 534 S.E.2d at 277. Evidence of gross negligence can take many forms. *See, e.g., Cole v. S.C. Elec. & Gas, Inc.*, 335 S.C. 183, 193, 584 S.E.2d 405, 411 (Ct. App. 2003) (holding that a jury determining gross negligence may consider statutory and regulatory violations as well as "other facts and circumstances surrounding the event"). A violation of operational policies can be strong evidence of gross negligence. *See Proctor v. Dep't of Health & Env't Control*, 368 S.C. 279, 297, 628 S.E.2d 496, 506 (Ct. App. 2006) (finding jury question on gross negligence where state agency's conduct was against what "was its policy to do"); *see also Clark v. S.C. Dep't of Public Safety*, 362 S.C. 377, 384-85, 608 S.E.2d 573, 577-78 (2005) (holding that trial court properly submitted gross negligence to jury based in part on an expert description of department policy).

Dr. Trant, a specialist, did not order a single test for Taylor Price, who presented with multiple episodes of exercise-induced "syncope" or "near syncope."[2] Plaintiff presented the electronic medical records to the jury that were admitted as evidence during the trial and argued

[2] As established at trial, "syncope" is a loss of consciousness whereas "near syncope" is a near loss of consciousness.

that these records indicated that Dr. Trant did not even review the referral order for Taylor that was sent to his office prior to Taylor's visit, which specifically stated she was being referred due to a diagnosis of "syncope and collapse." This jury heard testimony from Plaintiff's duly qualified expert witness, Anthony Christopher Chang, M.D., M.B.A., M.P.H., M.S. Dr. Chang is board certified by the American Board of Pediatrics in pediatric cardiology, has served as the medical director of pediatric cardiac intensive care programs throughout the United States, and is the chief editor of medical textbooks on pediatric cardiac intensive care and heart failure in children and young adults. Dr. Chang testified relating to Dr. Trant's treatment of Taylor Price. Dr. Chang confirmed that even one episode of exercise-induced syncope, much less multiple instances, is a "red flag" for a pediatric cardiologist that requires testing and follow-up. The jury also heard testimony by Dr. Chang that the standard of care required a cardiac workup to include, at a minimum, a stress test and an echocardiogram to rule out life threatening conditions, and if those tests were inconclusive, the standard of care required a cardiac MRI, a testing protocol that he opined would have diagnosed Taylor's condition of arrhythmogenic right ventricular dysplasia (ARVC).

Dr. Chang further testified that the failure of Dr. Trant to follow the minimum guidelines necessary when performing a preparticipation sports physical as stated in "PPE Preparticipation Physical Evaluation, Fourth Edition" published by the American Academy of Pediatrics violated the standard of care required under the circumstances. This widely accepted publication that was acknowledged to provide evidence relating to the standard of care confirms that:

> Athletes identified with cardiovascular symptoms such as **exertional syncope or near-syncope**, chest pain, palpitations, or excessive exertional dyspnea **require a careful and thorough cardiovascular evaluation to exclude underlying heart disease** before allowing an athlete to return to sport. **Syncope occurring during exercise is an ominous sign and warrants a high index of suspicion for underlying cardiac disease.** The diagnostic workup of exertional syncope is

> usually performed in consultation with a cardiologist and may include ECG, echocardiogram, stress ECG, and possibly advanced cardiac imaging (such as MRI or CT) to rule out rare structural abnormalities such as **ARVC** or congenital coronary artery anomalies.

PPE Preparticipation Physical Evaluation, Fourth Edition, at p. 51 (emphases added). Pointedly, Dr. Chang testified that Dr. Trant's deliberate choice to not do what was required under the circumstances was "grossly inadequate" and "significantly inadequate."

Dr. Chang's testimony made it clear that the failure of Dr. Trant to do any testing whatsoever as well as Dr. Trant's decision to sign off on Taylor Price's return to sports were not merely deviations from the standard of care, but were "grossly inadequate" and "significantly inadequate." Dr. Chang testified that both of these decisions were a proximate cause of Taylor Price's death.

In addition to the expert testimony, Dr. Trant's own testimony supports the jury's finding of gross negligence. Significantly, Trant testified that he could have ordered an echocardiogram, a stress test, or a cardiac MRI if he wanted to. In other words, Trant admitted it was not an accidental oversight to order an echocardiogram, a stress test, or a cardiac MRI, but that he chose not to order any of those tests. He conceded that this omission was a conscious and knowing choice. Contrary to Chang's testimony, Trant testified that such tests were not necessary notwithstanding the clear diagnosis stated in the referral order, thus setting up a quintessential jury issue. The conflicting evidence required that the issue be presented to the jury for resolution, and because the jury's decision is supported by the evidence, Defendants' JNOV motion on this ground is denied. *Bass*, 414 S.C. at 573-74, 780 S.E.2d at 260 (confirming ***existence*** of evidence in the record supporting jury's finding of gross negligence despite evidence of "slight care" and reversing decision by court of appeals premised improper ***weighing*** of evidence).

B. The Jury's Finding That There Was More Than One Occurrence Is Supported By The Evidence.

This court is convinced that the number of occurrences in this particular case was a matter for the jury to decide. Factual issues were presented that support a finding of more than one occurrence, including specific testimony and other evidence that identified and described two occurrences. Plaintiff alleged, argued, and the jury ultimately concluded that there were two distinct occurrences that led to the death of 16-year-old-Taylor Price: (i) Dr. Trant's failure to order any tests which led to the grossly inadequate cardiac workup of Taylor; and (ii) Dr. Trant's signing the return to sports clearance for Taylor. The separate and distinct nature of the two occurrences is supported by the expert testimony presented at trial. Dr. Chang, Plaintiff's pediatric cardiologist expert (who has substantial clinical experience specifically with ARVC) testified that in his expert opinion, there were two separate and distinct failures, and that these two failures were deviations from the standard of care. Dr. Chang further testified that, to a reasonable degree of medical certainty, these two deviations from the standard of care constituted two separate and distinct reasons that led to the death of Taylor Price.

Having heard and received this evidence, which came in without objection, the jury found that there were multiple occurrences. Additionally, the jury made this finding using the verdict form that was drafted by counsel for Defendants as to the issue of occurrences. Defendants never requested nor submitted any proposed jury charge relating to occurrences. Moreover, Defendants never raised any objection to the jury charge submitted by Plaintiff on this issue that was ultimately utilized by the Court.

In the Court's view, the question of whether or not there were two distinct occurrences presented a jury issue, as evidence was presented and admitted that could support the finding of

multiple occurrences. For the same reasons that the Motion for Directed Verdict made by Defendants at trial was denied, the Motion for JNOV is now denied.[3]

C. The Jury's Finding Of Proximate Cause Is Supported By The Evidence.

The jury was presented with ample evidence that Defendants' negligence proximately caused the wrongful death of Taylor Price. The existence of such evidence is the pivotal concern of the trial court in deciding a motion for JNOV. *See Curcio*, 355 S.C. at 320, 585 S.E.2d at 274 (stating that in deciding a motion for JNOV, "the trial judge is concerned with the existence of evidence, not its weight").

As discussed above, the jury was presented with expert testimony as to Dr. Trant's multiple deviations from the standard of care required under the circumstances, deviations which proximately caused the death of Taylor Price. Further, Dr. Chang stated to a reasonable degree of medical certainty that Taylor died as a result of Dr. Trant's negligence. The jury was also presented with expert testimony from Dr. Ellen Riemer, MD, JD, the board-certified forensic pathologist who performed the autopsy on Taylor at MUSC in Charleston. Dr. Riemer testified that she was "as certain as a gunshot wound to the head" that ARVC was the cause of Taylor's death, and that there was no evidence detected in her autopsy that could support any other contributing cause of death. This testimony alone created a factual issue for the jury to resolve. Because the jury's decision on proximate cause is supported by the evidence, Defendants' JNOV motion on this ground is denied.

II. THE COURT DENIES DEFENDANTS' MOTION FOR A NEW TRIAL ABSOLUTE.

A. Motion For New Trial Absolute Based On Change In Venue Is Denied.

[3] Because the Court determines there is factual evidence in the record that multiple occurrences have occurred, a jury question was presented. Because the jury found two occurrences, the damages award against Defendant MPA II is subject to two statutory caps.

Defendants' change of venue motion was originally brought before Judge DeBerry, who denied the motion. Judge DeBerry's ruling was still in place when Defendants' motion was again argued before this Court, and there were no new circumstances presented; therefore, this motion is denied again. *Rice v. Doe*, 442 S.C. 160, 165, 898 S.E.2d 127, 129 (2024) ("If the prior ruling addresses a substantive point of law, or if nothing of significance has changed, the second judge should consider the previous judge's ruling to be final."). Even if another circuit court judge had not already ruled on this issue, this court would deny the motion for a new trial on this basis.

B. The Motion for New Trial Absolute Based on the Gross Negligence Jury Charge is Denied.

Defendants seek a new trial absolute based on one sentence contained in the gross negligence jury charge, which correctly recites existing South Carolina law. In addition, Defendants request a new trial absolute on the ground that the jury should have been charged with an edited portion of the South Carolina Solicitation of Charitable Funds Act. As set forth below, Defendants are not entitled to a new trial absolute on these grounds.

This Court charged the current law on gross negligence, and therefore, Defendants' argument that the charge is erroneous or should be modified by an appellate court is denied. A jury charge that is substantially correct and covers the existing law does not provide a basis for a new trial. *See Keaton ex rel. Foster v. Greenville Hosp. Sys*., 334 S.C. 488, 496, 514 S.E.2d 570, 574 (1999). A trial judge does not have the power to change settled law by predicting what an appellate court may do in the future. Here, this Court used the charge provided in the current trial judge's bench book, which is also the same charge presented in Judge Anderson's South Carolina Requests to Charge – Civil, 2nd Edition. Additionally, the language that Defendants contend is erroneous—that gross negligence is the absence of care that is necessary under the circumstances—has been repeatedly cited by our appellate courts in defining gross negligence. *See, e.g., Hollins v. Richland*

Cnty. Sch. Dist. One, 310 S.C. 486, 490, 427 S.E.2d 654, 656 (1993); *Jinks*, 355 S.C. at 348, 585 S.E.2d at 285; *see also Hamilton v. Reg'l Med. Ctr*., 440 S.C. 605, 627, 891 S.E.2d 682, 694 (Ct. App. 2023), *reh'g denied* (Sept. 21, 2023), *cert. denied* (May 1, 2024).

Moreover, even if this Court had the power and the inclination to depart from settled law on this issue, this single sentence in the gross negligence charge would not justify the grant of a new trial. It is well settled that when a charge, read as a whole, is correct, a single line does not require reversal. *See, e.g., Keaton ex rel. Foster v. Greenville Hosp. Sys*., 334 S.C. 488, 497, 514 S.E.2d 570, 575 (1999) (finding a jury charge should be reviewed as a whole, and if the charges are reasonably free from error, isolated portions that might be misleading do not constitute reversible error); *Priest v. Scott*, 266 S.C. 321, 324, 223 S.E.2d 36, 38 (1976) (finding an alleged error in a jury charge must be prejudicial to warrant a new trial); *Pope v. Heritage Communities, Inc*., 395 S.C. 404, 414, 717 S.E.2d 765, 770–71 (Ct. App. 2011) (finding defendants were not prejudiced by trial court's initial language which misstated the law on negligence).

Accordingly, apart from the fact that this court is required to charge the existing law, and that the statement Defendants complain about is supported by our jurisprudence, focusing on this single line ignores the charge as a whole. A review of the substance of the charge, as set forth below, convinces this court that even assuming *arguendo* that the single line was improper, the charge as a whole is correct:

> Gross negligence is the intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do. Negligence is the failure to exercise due care, while gross negligence is the failure to exercise even the slightest care. Gross negligence is a relative term, and means the absence of care that is necessary under the circumstances.
>
> Gross negligence connotes the failure to exercise a slight degree of care. Gross negligence involves an intentional, conscious failure to do something which one ought to do or the doing of something one ought not to do. A defendant is guilty of

> gross negligence if he is so indifferent to the consequences of his conduct as not to give slight care of what he is doing.

The absence of due care necessary under the circumstances language cannot be read in isolation. Rather, when reading the charge as a whole, even if the line which Defendants single out is arguably misleading, a new trial is not warranted. Defendants have failed to demonstrate prejudice from the inclusion of this one sentence in the gross negligence charge. In their argument, Defendants rely solely on a 72-year-old case, *Hicks v. McCandlish*, 221 S.C. 410, 70 S.E.2d 629 (1952). However, they fail to acknowledge the litany of cases that have followed which established the law on gross negligence. The jury charge is correct under the law and any possible error from the single line to which Defendants object does not warrant setting aside this weeklong trial and the jury's verdict. Accordingly, Defendants' motion on this ground is denied.

C. The Court Did Not Err in Declining to Charge Defendants' Requested Charge on the South Carolina Solicitation of Charitable Funds Act.

Prior to trial, the parties stipulated that MPA II was a charitable entity, as defined and governed by the South Carolina Solicitation of Charitable Funds Act. The parties further stipulated that Dr. Trant was at all times an employee of MPA II and, for all purposes in this matter, was acting in the course and scope of his employment. This stipulation was placed on the record on the first day of trial. Defendants benefitted from this stipulation because as result, it was not necessary for Defendants to call any witnesses or enter any exhibits into evidence that would have otherwise been required to prove the viability of their affirmative defense based on the South Carolina Solicitation of Charitable Funds Act. Despite the jury having been presented with no evidence or context relating to the South Carolina Solicitation of Charitable Funds Act, Defendants proposed a jury charge that included selectively edited portions of S.C. Code § 33-56-180, entitled "Limitation of liability for injury or death caused by employee of charitable organization."

Plaintiff responded that if the Court were inclined to charge Section 33-56-180, then it should charge the statute in its entirety, including the reference to the limitations on liability imposed by the South Carolina Tort Claims Act; however, Defendants objected to Plaintiff's proposal. Given those circumstances, the Court decided not to charge a selectively edited portion of the South Carolina Solicitation of Charitable Funds Act without the context of the remaining language in the subsection.

Jury instructions should be confined to the issues raised and supported by the evidence presented at trial. *See Stephens v. CSX Transp., Inc.,* 415 S.C. 182, 197, 781 S.E.2d 534, 542 (2015). Defendants have not demonstrated that the decision not to charge the jury with a selectively edited portion of the South Carolina Solicitation of Charitable Funds Act was prejudicial. *See Pittman v. Stevens,* 364 S.C. 337, 340, 613 S.E.2d 378, 380 (2005) ("A trial court's refusal to give a properly requested charge is reversible error only when the requesting party can demonstrate prejudice from the refusal"). Thus, a new trial absolute is not warranted on this ground.

III. THIS COURT DISAGREES WITH DEFENDANTS THAT THE SIZE OF THE JURY'S DAMAGES AWARD REQUIRES A NEW TRIAL.

Defendants' challenge to the size of the verdict was limited to a new trial absolute and a new trial based on the thirteenth juror doctrine. Defendants did not move for a new trial *nisi remittitur*. Thus, Defendants intentionally did not ask this Court to reduce the amount of the verdict. Nor have they suggested what amount would have been appropriate for this tragic case of the loss of a young life. Their argument at trial was that a defense verdict was the only proper outcome. After receiving the evidence, the jury disagreed. Because the Court finds that evidence supports the jury's damages award, and its verdict is not grossly excessive, Defendants' motion for a new trial is denied.

The jury's determination of damages is entitled to "substantial deference." *Todd*, 385 S.C. at 517, 686 S.E.2d at 618. The loss to a parent from the untimely death of a devoted child is not to be minimized. *Lucht v. Youngblood*, 266 S.C. 127, 137, 221 S.E.2d 854, 859 (1976). When a child is lost to a parent, those losses "are intangibles, the value of which cannot be determined by any fixed yardstick." *Id*. They "must be estimated by the jury in the exercise of their sound judgment under all of the facts and circumstances of the case." *Id*. Given the evidence presented, the jury awarded Plaintiff damages for the wrongful death of her daughter Taylor in an amount that this Court does not believe should be disturbed in light of applicable law and the decision by Defendants to forego any request for *remittitur*.

It is within the province of the jury to determine the amount of damages awarded, and a verdict should not be disturbed unless it is so flagrantly excessive as to raise a presumption that it was the result of passion and prejudice rather than sober, reflective judgment. *Lucht* at 137–38, 221 S.E.2d at 859. A "grossly excessive" verdict is one "deemed the result of a disregard of the facts and of the court's instructions, and to be due to passion and prejudice rather than reason." *King v. Daniel Int'l Corp.,* 278 S.C. 350, 355, 296 S.E.2d 335, 338 (1982). However, 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." *Mickle v. Blackmon,* 252 S.C. 202, 248, 166 S.E.2d 173, 194 (1969) (affirming the denial of a new trial absolute of what the court referred to at the time as "probably the highest verdict in a personal injury case in the history of this State"). In determining whether the verdict is excessive, the facts must be viewed in the light most favorable to Plaintiff and this determination is addressed to the sound discretion of the trial judge. *See Watson v. Wilkinson Trucking Co.,* 244 S.C. 217, 224, 136 S.E.2d 286, 289 (1964); *Riley v. Ford Motor Co.*, 414 S.C. 185, 192, 777 S.E.2d 824, 828 (2015).

The record in this case cuts squarely against the argument that the jury's damages award was motivated by improper means. The jury awarded Plaintiff damages for the devastating and preventable loss of her 16-year-old daughter, Taylor. Plaintiff's testimony was particularly poignant. She testified that the loss of her teenage child left her "broken" for life and no longer the same woman she was before her daughter's death. Ms. Utley also testified that she encouraged her only remaining child, Taylor's older sister Serenity Hunt, to join the United States Air Force and move away from Marion, primarily because she knew she had nothing to offer her as a parent because of Ms. Utley's broken state. The testimony of Emerson Hunt, who helped raise Taylor and treated her as his own daughter, underscored the deep loss and impact of Taylor's death on her mother. The jury, having heard the evidence during the course of the weeklong trial, performed its duty to assign a dollar figure to the loss suffered by Plaintiff after confirming the presence of gross negligence and multiple occurrences.[4] Their verdict is entitled to substantial deference and was not, under the circumstances, the result of improper means or considerations.

[4] Defendants assert that Plaintiff's closing argument contained improper comments designed to impassion the jury in its determination of damages. This Court disagrees for two reasons. First, Defendants never objected during closing argument, so this Court will not allow Defendants to belatedly bootstrap arguments challenging statements made at trial without a contemporaneous objection by way of a post-trial challenge to the size of the verdict. *See, e.g.*, *State v. Lynn*, 277 S.C. 222, 284 S.E.2d 786 (1981) (finding that a failure to make the required contemporaneous objection may not be "bootstrapped" by a subsequent motion or request). Secondly, the Court also finds Defendants' arguments fail on the merits. The statements of Plaintiff's counsel cited in the Motion for New Trial Absolute are neither improper nor objectionable, much less "vicious and inflammatory." As the transcript of the closing argument reflects, Plaintiff's counsel argued that the jury's verdict should be loud enough to be heard by the medical community throughout South Carolina for the purpose of protecting society from preventable deaths. This "message" aligns with the fundamental purpose and function of tort law in South Carolina, which seeks to protect safety interests and is rooted in the concept of protecting society as a whole from physical harm to person or property. *See Sapp v. Ford Motor Co.*, 386 S.C. 143, 147, 687 S.E.2d 47, 49 (2009). Plaintiff's counsel argued that the standards of care are applicable to every patient. No statement or argument was made during trial to suggest that Defendants acted as they did due to race or socioeconomic conditions. And, as noted above, no contemporaneous objection was made.

Defendants also contend the relative length of deliberations demonstrate the amount of the verdict necessitates a new trial, but this Court disagrees. While the jury deliberated for less than an hour, the Court finds the jury properly executed its responsibility to reach a just verdict. This Court observed the jury paying close attention to the testimony and evidence presented during all phases of this trial up to and including closing arguments. Also, during the direct examination of Plaintiff's expert witness, Dr. Chang, this Court observed the jury watching closely when Dr. Chang stepped down from the witness stand to draw a diagram of a human heart on a whiteboard and proceeded to explain how the heart functioned and how Taylor's ARVC would have presented and should have been diagnosed. This Court observed the jury's close attention to the testimony of other witnesses as well.

Further, the length of a jury's deliberations alone is not a sufficient basis on which to grant a new trial. *See State v. Holland,* 261 S.C. 488, 499, 201 S.E.2d 118, 123 (1973) ("There is no prescribed length of time for a jury to reach a verdict"). Given Dr. Chang's expert testimony and the admissions of Dr. Trant that he did not recall reading the referral order, performed no tests and conducted no follow up, confirming liability was not particularly difficult in this case. Moreover, having determined that Dr. Trant was grossly negligence in his treatment of Taylor, the amount of damages sufficient to compensate her family for the loss of her young life was peculiarly a matter for the jury to decide. The jury weighed the evidence when determining the wrongful death damages awarded to Plaintiff resulting from the tragic and preventable death of her 16-year-old daughter, Taylor. The verdict was supported by ample evidence and compelling testimony from Plaintiff relating to the unimaginable pain and trauma she has suffered as a result of the Defendants'

negligence.[5] This Court has no hesitation in concluding that the verdict is "supported by any rational view of the evidence and bears a reasonable relationship to the character and extent of the injury and damage sustained." *See King v. Daniel Int'l Corp.,* 278 S.C. 350, 355, 296 S.E.2d 335, 338 (1982).[6] Accordingly, Defendants' challenges to amount of the jury's verdict under the new trial absolute and thirteenth juror doctrine are denied.[7]

IV. PLAINTIFF'S MOTION FOR REDUCTION OF THE TOTAL JUDGMENT IS GRANTED IN PART AND DENIED IN PART.

A. Motion for Reduction of the Judgment Against Defendant MPA II to the Statutory Cap is Granted.

The parties stipulated and this Court finds that Defendant MPA II is a charitable entity, as defined and governed by the South Carolina Solicitation of Charitable Funds Act. Defendant MPA II is entitled to the statutory limitation on damages which provides that a person sustaining an injury or dying by reason of the tortious act of commission or omission of an employee of a charitable organization, when the employee is acting within the scope of his employment, may recover in an action brought against the charitable organization only the actual damages sustained

[5] Further, the jury verdict reflected the minimum requested by plaintiff's counsel during opening statements and closing arguments. While counsel's statements are not evidence, the Court finds it relevant that the jury returned the minimum amount argued by plaintiff's counsel.

[6] Further, as Defendants have not moved for a new trial nisi remittitur, this Court declines to do so *sua sponte* as the verdict is not unduly liberal.

[7] The parties agree and this Court finds that Defendant Trant is entitled to a $130,000.00 set off against the jury's verdict of $30,000,000.00 based on a settlement reached by Plaintiffs and the Marion County School District.

in an amount not exceeding the limitations on liability imposed in the South Carolina Tort Claims Act in Chapter 78 of Title 15. [8] *See* S.C. Code Ann. § 33-56-180(A).

Plaintiff's recovery from Defendant MPA II is limited to $1.2 Million in actual damages for each occurrence of liability. As there was factual evidence in the record that supports multiple occurrences, the determination of the number of occurrences was properly submitted to the jury. The jury received a charge regarding the statutory definition of "occurrence" as stated in South Carolina Tort Claims Act in Chapter 78 of Title 15 and was further charged that Plaintiff has the burden of proving that each occurrence was separate and independent. The jury found that Plaintiff had met her burden in proving multiple occurrences in this matter. Additionally, Plaintiff stipulated that only two occurrences were alleged and being sought in this matter. As a result of the jury's determination that there were multiple occurrences and the applicability of the statutory cap to Defendant MPA II, the judgment against Defendant MPA II shall be modified to $2,400,000.00, plus offer of judgment interest in the amount of $380,843.84 as confirmed and calculated below, resulting in an amended judgment amount of **$2,780,843.84** against Defendant MPA II.

B. Motion for Reduction of the Judgment Against Defendant Trant to the Statutory Cap is Denied.

Defendants also seek a reduction of the total judgment of $30,000,000.00 as to Defendant Trant to the statutory limitation on damages as stated in Section 33-56-180(A) of the South Carolina Solicitation of Charitable Funds Act. This Court respectfully denies Defendants' Motion

[8] The South Carolina Tort Claims Act in Chapter 78 of Title 15 provides that 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. *See* S.C. Code Ann. § 15-78-120(a)(4).

based on the unambiguous language of S.C. Code Ann. § 33-56-180(A) coupled with the jury's finding of multiple occurrences of gross negligence as to Defendant Trant.

Placing any limitation on the judgment that a tort victim is entitled to receive against a charitable entity (or its employee) is in derogation of the common law. Several years before the South Carolina Solicitation of Charitable Funds Act ("SCFA") was passed, the South Carolina Supreme Court expressly abolished the doctrine of charitable immunity, stating:

> **The doctrine of charitable immunity has no place in today's society.** We hold a charitable institution is subject to liability for its tortious conduct the same as any other person or corporation. **The doctrine of charitable immunity is abolished in its entirety** and the case is reversed and remanded for trial.

Fitzer v. Greater Greenville South Carolina Young Men's Christian Ass'n, 277 S.C. 1, 282 S.E.2d 230 (1981) (emphasis added). Notably, four years before *Fitzer*, in *Brown v. Anderson County Hosp. Association*, the Supreme Court significantly limited the doctrine of charitable immunity by holding that a hospital could be held liable when a plaintiff proved "the injuries occurred because of the hospital's heedlessness and reckless disregard of the plaintiff's rights." *Id*. 268 S.C. 479, 487, 234 S.E.2d 873, 876 (1977).

Thus, based on *Fitzer* (and in part on *Brown* as well), there was no charitable immunity of any sort under our state's common law and, as such, the provisions of the SCFA (passed in 1994) are in derogation of the common law and must be strictly construed. *See Epstein v. Coastal Timber Co.*, 393 S.C. 276, 285, 711 S.E.2d 912, 917 (2011) (nothing that statutes in derogation of the common law are to be strictly construed). "Under this rule, a statute restricting the common law will 'not be extended beyond the clear intent of the legislature'" and this strict construction includes statutes which "limit a claimant's right to bring suit." *Grier v. AMISUB of S.C., Inc.*, 397 S.C. 532, 536, 725 S.E.2d 693, 696 (2012), *quoting Crosby v. Glasscock Trucking Co.*, 340 S.C. 626, 628, 532 S.E.2d 856, 857 (2000) and *citing* 82 C.J.S. Statutes § 535. Thus, if a statute can be

reasonably construed in a manner that would not be in derogation of a plaintiff's right at common law right to have the jury's verdict entered without limitation, this Court should construe the statute strictly to maintain the common law rights.

The statute at issue, S.C. Code § 33-56-180(A), reads as follows:

> An action against the charitable organization pursuant to this section constitutes a complete bar to any recovery by the claimant, by reason of the same subject matter, against the employee of the charitable organization whose act or omission gave rise to the claim ***unless*** **it is alleged and proved in the action that the employee acted in a reckless, wilful, or grossly negligent manner, and the employee must be joined properly as a party defendant. A *judgment against an employee* of a charitable organization** may not be returned ***unless*** a specific finding is made that the employee acted in a reckless, wilful, or grossly negligent manner.

(emphasis added). The plain language of the SCFA specifically provides that if the jury determines that an employee of a charitable entity acted in a grossly negligent manner, he can be held individually liable and a judgment rendered against him. Thus, as a result of the jury's finding of gross negligence against Defendant Trant, he is no longer entitled to receive protections set forth in the SCFA, and, consequently, there is no limitation on the amount of the judgment under the SCFA that Plaintiff can recover against him personally.

This principle has been repeatedly addressed by our appellate courts. In *James v. Lister*, the South Carolina Court of Appeals stated:

> **[The SCFA] provides a mechanism for seeking damages in excess of the charitable limitation, through an action against a charitable organization's employees.** In such instances, the statute specifically requires joinder of the employee as a party, and a special finding by the jury that the employee was proved guilty of gross negligence as a proximate cause of the injury.

331 S.C. 277, 284, 500 S.E.2d 198, 202 (Ct. App. 1998) (emphasis added). Although the *James* case involved S.C. Code § 33-55-210(A), which was part of the prior version of the SCFA, the

operative language is the same as in the current version of the SCFA, as found at S.C. Code § 33-56-180(A).

Defendants argue the legislative history of the SCFA demonstrates that the General Assembly intended to cap the amount of damages that may be awarded against an employee of a charitable organization, but the Court disagrees. As an initial matter, legislative history is only relevant when a statute is ambiguous, which the Court does not find to be the case. *Smith v. Tiffany*, 419 S.C. 548, 553, 555, 799 S.E.2d 479, 482-83 (2017) ("It is axiomatic that statutory interpretation begins (and often ends) with the text of the statute in question" and noting the court "must honor legislative intent as clearly expressed in the Act, lest we run afoul of separation of powers"); *Id.* at 555, 799 S.E.2d at 483 ("If a statute is clear and explicit in its language, then there is no need to resort to statutory interpretation or legislative intent to determine its meaning.") (quoting *Timmons v. S.C. Tricentennial Com*, 254 S.C. 378, 401, 175 S.E.2d 805, 817 (1970)). The first sentence of section 33-56-180(A) expressly limits recover to only against the charitable organization and only for actual damages. The next sentence prohibits recovery against an employee "unless it is alleged and proved in the action that the employee acted in a reckless, wilful, or grossly negligent manner." The statute does not contain any other limitation on recovery against an employee, and this Court will not rewrite the statute to do so.

But even if the legislative history is considered, this Court finds subsequent appellate court decisions instructive. Following the *James* decision, in *Chastain v. AnMed Health*, the Supreme Court stated that employees of a charitable organization could be held "individually liable" for conduct rising to the level of gross negligence. 388 S.C. 170, 172, 694 S.E.2d 541, 542 (2010) (noting "employee of charitable organization *individually liable* only for gross negligence") (citing S.C. Code Ann. § 33-56-180(A)) (emphasis added). Similarly, in *Myat v. Tuomey Regional*

Medical Center, the Court of Appeals held that pursuing a gross negligence claim against an employee of a charitable entity provides a manner for a plaintiff "to avoid the statutory cap." 427 S.C. 601, 607-08, 832 S.E.2d 306, 309 (Ct. App. 2019). In 2020, the Court of Appeals reaffirmed the holding in *James* that the charitable statute provides for a mechanism for seeking damages in excess of the charitable limitation, through an action against a charitable organization's employees. *See Garrison v. Target Corp.*, 429 S.C. 324, 363, 838 S.E.2d 18, 38-39 (Ct. App. 2020), *aff'd in part as modified, rev'd in part*, 435 S.C. 566, 869 S.E.2d 797 (2022). Therefore, Defendants' Motion to reduce the $30,000,000.00 judgment against Dr. Trant is denied for the reasons stated above.

V. PLAINTIFF'S MOTION FOR OFFER OF JUDGMENT INTEREST IS GRANTED IN PART AND DENIED IN PART.

Plaintiff served an Offer of Judgment on Defendant MPA II on November 12, 2022 for $1,199,999.00. Defendant MPA II took the position that Section 15-35-400 and Rule 68(b), SCRCP, on which the Plaintiff's motion is based, are not applicable to charitable organizations such as MPA II. MPA II cited to both Section 18 of Act No. 32 and Section 15-78-220 as the bases for that argument. This Court disagrees with Defendants' argument that charitable organizations, such as MPA II, are not subject to offer of judgment interest under S.C. Code § 15-35-400 or Rule 68, SCRCP. Because this Court concludes the judgment against MPA II is $2,400,000.00, Plaintiff is entitled to interest on the refused offer of judgment. *See* S.C. Code § 15-35-400(B); *see also* Rule 68(b), SCRCP.

This Court finds that Defendant MPA II is required to pay offer of judgment interest from the time of Plaintiff's offer of judgment to the verdict, but the amount of interest should be calculated on the Amended Judgment of $2,400,00.00 against MPA II, rather than the full, original

amount of the jury's verdict.[9][10] Accordingly, the Amended Judgment against MPA II is $2,780,843.84, including the offer of judgment interest due by law.[11] The Court declines to impose offer of judgment interest on the verdict against Dr. Trant because Plaintiff did not serve its Offer of Judgment on Dr. Trant nor did Plaintiff direct the Offer of Judgment to him.

CONCLUSION

For the reasons fully set forth above: (1) Defendants' Motion for JNOV is denied; (2) Defendants' Motion for New Trial Absolute is denied; (3) Defendants' Motion for Set-Off is denied as moot based on the agreement of the parties; (4) Defendants' Motion for Reduction of the Total Judgment is Granted in Part and Denied in Part; (5) Plaintiff's Motion for Confirmation of Two Occurrences is denied as moot in light of the Court's decisions on Defendants' post-trial motions; and (6) Plaintiff's Motion for Award of Offer of Judgment Interest is granted in part and denied in part.

[9] Plaintiff argued that she was entitled to Offer of Judgment interest against Defendant MPA II on the entire amount of the verdict from the date of the offer to the entry of the judgment, which would have resulted in an additional $4,760,547.95 and an amended judgment against Defendant MPA II of $7,160,547.95. In support of this argument Plaintiff relied upon *Garrison v. Target Corp.*, 435 S.C. 566, 586, 869 S.E.2d 797, 808 (2022). The Court respectfully disagrees with this argument.

[10] Defendants argued that any calculation of Offer of Judgment Interest against Defendant MPA II must be calculated on the amount of the judgment after the Court reduced the judgment pursuant to the Solicitation of Charitable Funds Act. In support of their argument Defendants relied upon *O'Shields v. Columbia Auto., LLC*, 435 S.C. 319, 867 S.E.2d 446 (Ct. App. 2021), *aff'd*, 443 S.C. 29, 902 S.E.2d 375 (2024). The Court agrees that this is the proper method to calculate Offer of Judgment Interest.

[11] Plaintiff served her Offer of Judgment on Defendant MPA II on November 15, 2022. It was 724 days later when the jury returned its verdict (November 8, 2024). Using the applicable rate (8% simple interest annually), the accrued interest is $380,843.84, based on a *per diem* amount of $526.03 × 724 days = $380,843.84.

Confirming the resulting amounts of the amended judgments, the Court confirms that the $130,000.00 court-approved settlement with Marion County School District should be applied as a set-off from the jury's verdict, thereby reducing the $30,000,000.00 jury verdict to $29,870,000.00 after applying the set-off. Moreover, in light of the provisions of S.C. Code 33-56-180(A) and the jury's confirmation of multiple occurrences, an amended judgment against Defendant MPA II is hereby entered in the amount of **$2,780,843.84**,[12] which includes the offer of judgment interest that is due under applicable law, and an amended judgment against Defendant Trant is hereby entered in the amount of **$27,470,000.00**.[13]

Accordingly, it is **ORDERED** that the Amended Judgment against Defendant MPA II is $2,780,843.84.

It is further **ORDERED** that the Amended Judgment against Defendant Trant is $27,470,000.00.

IT IS SO ORDERED.

The Honorable R. Ferrell Cothran, Jr.
Presiding Judge
Marion County Court of Common Pleas

[12] Defendants MPA II and Trant are jointly and severally liable for $2,400,000.00 of the $2,780,843.84 amended judgment entered against Defendant MPA II. Defendant MPA II is solely responsible for the remainder of the amended judgment entered against it.

[13] Defendants MPA II and Trant are jointly and severally liable for $2,400,000.00 of the $27,470,000.00 amended judgment entered against Defendant Trant. Defendant Trant is solely responsible for the remainder of the amended judgment entered against him.

Marion Common Pleas

Case Caption: Demetrice Utley VS Charles A Trant , defendant, et al

Case Number: 2022CP3300362

Type: Order/Other

So Ordered

s/ R. Ferrell Cothran, Jr., 2144