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May 29 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas

Paul M. Burch, Circuit Court Judge
Patrick J. McLaughlin, Special Referee

Appellate Case No. 2023-001016

Samantha Joanne Carwile, individually and
as the Personal Representative of the Estate
of Marlayna Joan Carwile,.....Respondent,

v.

Chris Anderson and Danielle Anderson,.....Appellants.

RESPONDENT’S PETITION FOR REHEARING

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Pursuant to Rules 221(a) and 240, SCACR, Respondent Samantha Joanne Carwile, individually and as the Personal Representative of the Estate of Marlayna Joan Carwile, petitions for rehearing of the Court’s decision in *Carwile v. Anderson*, Op. No. 2025-UP-165 (S.C. Ct. App. filed May 14, 2025), 2025 S.C. App. Unpub. LEXIS 158, as to only the Court’s reversal of the amount of the award. Respondent submits that the Court misapprehended the law or overlooked the evidence when it reversed the lower court’s damages award. Respondent respectfully requests the Court reconsider its decision for the reasons stated in its briefs, at oral argument, and those discussed below.

Samantha Carwile and Justin Baxter watched their only daughter—Marlayna Joan Carwile, die in front of them at three-years-old after she was hit by a truck while crossing the road to go home from the Andersons’ house. The shock from watching her death and the grief from her loss destroyed their lives and is a daily, constant source of pain and grief. A special referee entered a default judgment awarding \$15,000,000 to each parent, for a total judgment of \$30,000,000.

On appeal, this Court found that award grossly excessive because it exceeds the awards in other minor wrongful death cases with reported appellate opinions. This is an improper basis to find a verdict grossly excessive.

ARGUMENT

“Motions for a new trial on the ground of either excessiveness or inadequacy are addressed to the sound discretion of the trial judge.” *Riley v. Ford Motor Co.*, 414 S.C. 185, 192, 777 S.E.2d 824, 828 (2015) (internal quotation marks omitted). “Unless the award is so grossly excessive as to indicate it is the result of passion or prejudice, it is deemed to be within the discretion of the trier of facts.” *Varn v. S.C. Dep’t of Highways & Pub. Transp.*, 311 S.C. 349, 353, 428 S.E.2d 895, 898 (Ct. App. 1993). The Court does not find that the damages award is

the result of passion or prejudice. The Court did not find the special referee committed any legal or evidentiary error. *Id.* at *10 (“We do not find sufficient grounds to conclude the special referee based the amount of the judgment on improper elements of damage.”). In the absence of any error, the Court applied a strict verdict-comparison analysis and found the judgment amount grossly excessive because it is larger than the amounts awarded in other reported appellate opinions. There are multiple legal errors in this analysis.

I. The Court does not analyze the evidence of damages

In deciding a motion for a new trial based on an alleged grossly excessive verdict, the focus is on the evidence of damages. *See King v. Daniel Int’l Corp.*, 278 S.C. 350, 355, 296 S.E.2d 335, 338 (1982) (stating a verdict may be “grossly excessive” if “deemed the result of a disregard *of the facts*” (emphasis added)); *Mickle v. Blackmon*, 252 S.C. 202, 248, 166 S.E.2d 173, 194 (1969) (“[A] verdict which may be supported by any rational view of the *evidence*, or as to which reasonable and disinterested men might draw different inferences, is not of this class” of excessive verdicts. (emphasis added)); *Watson v. Wilkinson Trucking Co.*, 244 S.C. 217, 224, 136 S.E.2d 286, 289 (1964) (stating the standard for determining whether a verdict amount is excessive is that “the *facts* must be viewed in the light most favorable to the plaintiff” (emphasis added)). The Court conducted no analysis of the facts or evidence in this case. Instead it focused solely on a comparison of the amount of this award with reported appellate decisions from other minor wrongful death cases.

Comparison of other verdicts is not necessary to the determination of whether a verdict is grossly excessive. The Supreme Court cautioned against overreliance on comparison to prior verdicts when judging for excessiveness, and instructed that instead each verdict “must be evaluated as an individual one, within the framework of its distinctive facts.” *Lucht v. Youngblood*, 266 S.C. 127, 136, 221 S.E.2d 854, 858 (1976). That neither the Court nor the

Appellants have said that the damages are too much for the particular injuries in this case is significant. The reason for this omission is likely that it is difficult to say that the award is “grossly excessive” given the depth and severity of these parents’ grief and loss.

Considering the evidence, and viewing it in a light most favorable to Respondent, it shows that Samantha and Justin witnessed the violent and gruesome death of their three-year-old daughter.¹ She died in front of their eyes. They saw blood coming out of her eyes and ears. Justin tried to save her life with CPR, and Samantha begged EMS to shock her lifeless body back to life.

Both parents were suicidal after her death and continued years later to suffer from regular panic attacks, anxiety, insomnia, loss of appetite, and severe social detachment. Justin barely got out of bed for months. He went to rehab and has been in and out of the hospital for panic attacks caused by his anxiety, anger, and grief over Marlayna’s death. Both parents were unable to work after her death and had to move to other states to cope with their grief. Both sought counseling and medical treatment for physical manifestations of their grief that they still experienced over five years later at the damages hearing.

Samantha had survivor’s guilt and was unable to properly care for her surviving son, Rylan, who she also watched suffer with his own grief, anger, depression, and anxiety because of the loss of his sister and witnessing her death.

Marlayna served “as the glue and focal point of that family.” (R. p. 91). Without her, Samantha and Justin’s family fell apart, and they have both struggled to maintain a normal life. Samantha and Justin lost out on decades of memories and experiences with Marlayna. (R. pp. 91-92, 45-46). Samantha’s counselor testified to her intense grief and compared it to PTSD

¹ A complete statement of the facts and damages evidence is in Respondent’s brief, which is incorporated in this petition.

because of the gruesome nature of Marlayna's death. (R. p. 42). The Special Referee explained how the particular and unique grief of these parents contributed to the amount awarded:

The damages hearing on this matter took place 1,954 days after Marlayna's death. Over five years after her passing, it was visibly obvious that neither Ms. Carwile nor Mr. Baxter were healed and that they still suffer extreme grief and sorrow. Given the extremely credible and authentic testimony they provided, the Court finds it more likely than not that these two parents' wounds from the unnatural loss of their daughter will never heal and that it is more likely than not they will continue to struggle with their loss for the remainder of their lives.

(R. p. 47). Neither the Court nor the Appellants question or challenge these findings. The Appellants did not argue, and this Court did not find, that \$30,000,000.00 is too much money for the deep and abiding loss these two parents suffered and continue to suffer.

The Special Referee heard and saw Samantha and Justin testify and relive Marlayna's death. He considered all of the damages evidence and went to great lengths to fully explain his rulings and reasoning for the amount awarded. The Court impermissibly ignores all of this in favor of a cold, strict comparison approach when that is not required by law and, in fact, is discouraged.

Whether a judgment award is grossly excessive must be based on the evidence presented. Under the correct analysis, "[t]he appellate court will intervene only where the verdict is so grossly excessive and the amount awarded is so shockingly *disproportionate to the injuries* to indicate that it was the result of caprice, passion, prejudice, or other considerations *not found on the evidence.*" *Miller v. City of W. Columbia*, 322 S.C. 224, 231, 471 S.E.2d 683, 687 (1996) (emphasis added). The Court erred when it did not analyze whether the amount awarded is disproportionate to the evidence of Samantha and Justin's injuries. The Court should grant the petition, consider the evidence of damages, and affirm the judgment amount.

II. Comparable-case analysis is not required and cannot be the sole measure of excessiveness.

The Court found “the \$30 million judgment here is so greatly different from these comparable cases” considered by the Court. *Id.* at *15. The Court’s sole basis for reversing the judgment is that it is higher than “comparable cases.” This is legal error because a comparison approach is not required and the *sole* fact that a judgment is larger than alleged-“comparable cases” does not mean that it is grossly excessive.

The Court acknowledges “that a comparison analysis is not required” but then uses that as the sole basis for its finding of gross excessiveness. *Id.* at *12. This is contrary to the law.

The existence of a comparable verdict does not make a verdict proper just as the absence of one does not make it grossly excessive. Instead, as discussed above, the focus is on the evidence.

In *Haselden v. Atl. Coast Line R.R. Co.*, 214 S.C. 410, 426, 53 S.E.2d 60, 66 (1949), the Supreme Court held that “the fact that no verdict of this size has been given heretofore for a similar injury ***does not of itself*** portend excessiveness, passion, prejudice or capriciousness.” *Id.* at 426, 53 S.E.2d at 66 (emphasis added); *see also Mickle v. Blackmon*, 252 S.C. 202, 248, 166 S.E.2d 173, 194 (1969) (affirming the denial of a new trial absolute of “probably the highest verdict in a personal injury case in the history of this State”). This shows that a comparison approach cannot be the sole basis for finding a verdict grossly excessive. As the Supreme Court explained “[t]he difficulty in drawing comparisons with prior awards, in order to determine excessiveness, is especially evident in cases involving pain and suffering as an element of damage because the nature and extent of the injuries and the suffering resulting therefrom is seldom, if ever, alike in any two cases.” *Id.* That directly applies to this case which includes only noneconomic damages.

Further, the notion of comparing verdicts is useless without any meaningful explanation of what “comparable” means. Here, there is no comparable case. There is no case in which a minor toddler child died in front of her parents and left behind a uniquely loving and close family. Grief cannot be compared. That is precisely why the appellate courts have, until now, not relied solely on a comparison of other verdict amounts.

The sole fact that a judgment is larger than a judgment before it on barely similar facts does not mean that the judgment amount is grossly excessive. “[A] verdict which may be supported by any rational view *of the evidence*, or as to which reasonable and disinterested men might draw different inferences, is not of this class” of excessive verdicts. *Mickle v. Blackmon*, 252 S.C. 202, 248, 166 S.E.2d 173, 194 (1969) (emphasis added).

The Court’s only reason for finding the judgment amount grossly excessive is that it exceeds the verdict amounts in reported appellate opinions for wrongful death cases. The Court did not find any error committed by the special referee. The Court did not discuss the evidence and state that the damages are too much for the injuries. The Court did not find any instance of passion or prejudice or other similar improper motive for the verdict amount. To find a judgment grossly excessive solely because it is greater than other verdicts is a legal error and is contrary to the law. The Court should grant the petition for rehearing and affirm the judgment amount based on a review of the evidence.

Further, even if a comparison analysis could be the sole measure of excessiveness, the Court’s comparison is flawed. Although stating that “precedent puts a premium on jury verdicts,” the Court limited its analysis to reported appellate opinions instead of considering jury verdicts in general regardless of whether the case proceeded to an appeal. *Id.* at *13.

Recent jury verdicts show that the judgment amount in this case is comparable to what juries are currently awarding for minor wrongful death cases. For example, in November 2024,

in the case of *Uiley v. McLeod Physician Associates II*, 2022-CP-33-00362, a Marion County jury awarded two parents \$30 million for the wrongful death of their sixteen-year-old daughter. In March 2025, in the case of *Robinson v. Spartanburg & Pelham OB-GYN, PA*, 2021-CP-42-03497, a Spartanburg County jury awarded two parents \$16 million for the wrongful death of their newborn child. These examples demonstrate that the \$30 million award for Samantha and Justin is not a grossly excessive outlier but, instead, is in line with current jury verdicts.

III. A special referee factfinder is given same deference as a jury.

The Court states that the task of assessing damages is granted to the discretion of a jury but that, in this case, “the task of valuing these damages was not undertaken by a jury, but fell on the shoulders of one lawyer acting as a special referee.” *Id.* at *12-13. To the extent the Court’s decision is based on it discounting the special referee’s assessment of damages because it was decided by one person rather than a jury, that is legal error.

The Court does not cite to any authority for discounting a special referee’s assessment of damages because he was one person instead of twelve. The law specifically provides that the court—not a jury—is to decide the amount of damages for a case that is in default. Rule 55(b), SCRPC. To discount that determination of damages solely because it is made as the law requires treats a defendant in default more favorably than a defendant whose case is decided by a jury. There is no such distinction in the Rules of Civil Procedure or in case law that counsel could find.

A logical extension of the Court’s decision is that a bench trial damages determination is not given the same deference as a jury’s award. Again, the law does not support this distinction. The Court’s failure to give deference to the special referee—who heard Samantha and Justin’s grief and saw their tears at the hearing—is a legal error.

The lower court, “being cognizant of the evidentiary atmosphere at trial, is in a far better position to review the damages than this court. Accordingly, great deference is given to the circuit court, especially in the area of damages.” *RRR, Inc. v. Toggas*, 378 S.C. 174, 184, 662 S.E.2d 438, 443 (Ct. App. 2008). The Court should grant the petition for rehearing and use the proper standard of review by giving deference to the special referee’s decision.

CONCLUSION

For these reasons, the Court should grant the petition for rehearing and affirm the judgment amount entered by the special referee.

May 29, 2025

Respectfully submitted,

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Chris Anderson and Danielle Anderson,.....Appellants.

PROOF OF SERVICE

The undersigned certifies that a copy of *Respondent's Petition for Rehearing* has been served upon counsel for Appellants via electronic mail at the email addresses stated in the Attorney Information System as set forth below on May 29, 2025.

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May 29, 2025

Via Email only

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SC Court of Appeals

Re: *Samantha Joanne Carwile, individually and as the Personal Representative of the Estate of Marlayna Joan Carwile v. Chris Anderson and Danielle Anderson*
Appellate Case No. 2023-001016
Respondent's Petition for Rehearing

Dear Mrs. Kitchings:

Attached for electronic filing and service please find:

1. Respondent's Petition for Rehearing and
2. Proof of Service.

Please file the documents and return one file-stamped copy to me via email. By electronic copy of this letter, I am serving all counsel of record with a copy of the same.

Sincerely,

s/Kathleen C. Barnes

Enclosures

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