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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM MARION COUNTY
In the Court of Common Pleas for the Twelfth Judicial Circuit

The Honorable R. Ferrell Cothran, Jr.
The Honorable H. Steven DeBerry, IV
Trial Court Case No. 2022-CP-33-00362

Appellate Case No. 2025-000434

Demetrice Utley, individually and as Personal Representative of the Estate of Taylor Danielle Price .....Respondent

vs.

McLeod Physician Associates II and Charles A. Trant, M.D. ..... Appellants

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INITIAL REPLY BRIEF OF APPELLANT CHARLES A. TRANT, M.D.

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ARGUMENTS[1]

A. Plaintiff's Argument (Section I) Regarding Venue Does Not Defeat Dr. Trant's Contention That the Trial Court Should Have Transferred This Case to Florence County.

1. Dr. Trant Properly Preserved His Venue Arguments for Appellate Review.

Plaintiff's "threshold argument" concerning venue is that Dr. Trant did not preserve this issue for appellate review and that Dr. Trant "cannot make one argument at trial and another, different argument on appeal." (*See* Pl.'s Init. Br., at 9). For the reasons that follow, Dr. Trant has properly preserved the issues he now argues on appeal.

To show why Dr. Trant properly preserved this issue, it is helpful to review its origin in the trial court. The case was set for trial on September 9, 2024. At 11:13 a.m. on that morning, the trial court engaged in voir dire of the jury pool. (*See* Sept. 9-10, 2024 Hrg. Transc., at 1-36:14-23). Attorney Tierney Goodwyn, with several other attorneys, represented the School District in voir dire and the jury selection process. (*See* Sept. 9-10, 2024 Hrg. Transc., at 8:4-11). After the trial court's voir dire, Attorney Goodwyn stated that the School District did not wish to conduct any further voir dire. (*See* Sept. 9-10, 2024 Hrg. Transc., at 26:20-24). The jury pool left the courtroom at 11:55 a.m. so the attorneys could make their strikes. (*See* Sept. 9-10, 2024 Hrg. Transc., at 28:1-22). Counsel for the School District was present with defense counsel during jury selection and did not disclose that there had been any settlement. The trial court came back on the record, with the jury venire present in the courtroom, at 12:47 p.m. (*See* Sept. 9-10, 2024 Hrg. Transc., at 28:24-25). A jury was seated (not sworn) and excused for the day at 1:08 p.m. on September 9, 2024. (*See* Sept. 9-10, 2024 Hrg. Transc., at 31:1-36:16).

Shortly thereafter, counsel for Plaintiff stated that he had "one matter to put on the record," and disclosed that a settlement had been reached with the Marion County School District. (*See*

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[1] Dr. Trant further adopts and incorporates by reference, as if set forth at length herein, the Reply Brief of Appellant McLeod Physician Associates II. *See* S.C.A.C.R., Rule 208(b)(6) ("In cases involving more than one appellant or respondent, including cases consolidated for appeal, any number of parties may join in a single brief, and any party may adopt by reference all or any part of the brief of another.").

Sept. 9-10, 2024 Hrg. Transc., at 36:14-23). Despite the ongoing voir dire and jury selection, this was the first time Plaintiff disclosed to the trial court or Defendants that she had settled with the School District—or even that such a settlement was a possibility.

As Dr. Trant has argued in his Brief of Appellant, the dismissal of the School District from the case was a critical event because it made Marion County an improper venue. Dr. Trant acknowledges that Marion County was initially a proper venue; however, once Plaintiff settled with the School District—whose presence in the case was the basis for venue in Marion County—that venue became improper. In the next sentence uttered after Plaintiff's counsel announced the settlement, Dr. Trant's attorney immediately responded: "[t]hen we'll be moving for change of venue." (*See* Sept. 9-10, 2024 Hrg. Transc., at 37:3).

Less than an hour after learning of the settlement, Dr. Trant filed a Motion for Change of Venue. (*See generally* Sept. 9, 2024 Mot. for Change of Venue). At 5:49 p.m. on September 9, 2024, Dr. Trant filed his Amended Motion for Change of Venue.[2] (*See generally* Sept. 9, 2024 Am. Mot. for Change of Venue). In that Motion, he asserted:

> Paragraph 7 of the Complaint alleges that venue was proper in Marion County because some of the alleged acts or omissions giving rise to Plaintiff's claims occurred in Marion County. The Plaintiff further stated in Paragraph 7 that not only is venue proper in Marion County, but pursuant to S.C. Code Ann. § 15-78-100(b), venue must be in Marion County as Marion County School District is a Defendant.
>
> Attorneys for the Plaintiff advised the Court today after the jury had been drawn that the Plaintiff had reached an agreement with Marion County School District. Therefore, it is anticipated that the Court will release Marion County School District from this litigation.
>
> Thus, venue is now only proper in Florence County.
>
> Pursuant to S.C. Code § 15-7-30(C) a civil action tried pursuant to this section against a resident individual defendant must be brought and tried in the county in which the: (1) defendant resides at the time the cause of action arose; or (2) the most substantial part of the alleged act or omission giving rise to the cause of action occurred.

[2] This Amended Motion for Change of Venue corrected the original Motion for Change of Venue's statement that the School District had been dismissed from the case by summary judgment, rather than by settlement with Plaintiff.

> Dr. Trant is a citizen and resident of Florence County. Dr. Trant does not own property or transact business in Marion County. At the time the cause of action arose, Dr. Trant was a citizen and resident of Florence County, and all of the alleged acts or omissions of Dr. Trant giving rise to Plaintiff's alleged claims occurred in Florence County. The right of a defendant to be tried in a county of his/her residence is a substantial right.

(*See id.* at 1-2). Less than two hours later (7:24 p.m.), Dr. Trant filed a Memorandum of Law In Support of Motion to Change Venue. (*See* Sept. 9, 2024 Mem. of Law Supp. Mot. for Change of Venue).

On September 19, 2024, the trial court denied Dr. Trant's Motion for Change of Venue, stating in relevant part:

> The Court finds that, because this action was properly commenced in Marion County, venue can only be changed at this stage of the litigation for a reason other than the bringing of suit in the wrong venue. *See Jeter*, 369 S.C. at 442, 633 S.E.2d at 148. It is undisputed that this action was properly commenced in Marion County in which one of the defendants resided at the time of the commencement of the action. *See* S.C. Code §15-7-30. Therefore, the Medical Defendants are not entitled to a transfer of venue on the basis of the residency provisions of S.C. Code 15-7-30.

(*See* Sept. 19, 2024 Order Denying Defs.' Mot. for Change of Venue, at 6). In his post-trial motions, Dr. Trant—recognizing that the trial court's denial of his Amended Motion for Change of Venue likely resolved the venue issue—nevertheless again objected to venue in Marion County to ensure that he preserved the question:

> In this case, the Defendants moved to transfer venue from Marion County to Florence County. That motion was denied before trial by Judge H. Steven DeBerry, IV, but the trial judge was Judge R. Ferrell Cothran, Jr. Judge DeBerry's ruling on venue was "the law of the case" when it was tried, and Judge Cothran may not have authority under the two-judge rule to order a new trial absolute due to Judge DeBerry's ruling. Nevertheless, it is raised again herein to avoid an argument that the Defendants have somehow waived their objection to venue in Marion County. For brevity, the Defendants' position is more fully set forth in its proposed order to transfer venue requested by the judge who denied the motion attached as Exhibit 3, and the arguments therein are incorporated here by reference.

(*See* Nov. 18, 2024 Defs.' Mot. for JNOV or, in the Alternative, for New Trial Absolute or, in the Alternative, for Reduction of Verdicts and Supporting Mem. of Law, at 8-9).

In light of these facts, the record shows that Dr. Trant properly preserved the venue

arguments he makes in this appeal. "A trial court's opportunity to rule necessarily includes both parties being aware of the nature of the objection such that they may present their best arguments addressing that objection." *State v. Morales*, 439 S.C. 600, 609, 889 S.E.2d 551, 556 (2023) (*citing Atlantic Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012)). "A party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground." *State v. Russell*, 345 S.C. 128, 546 S.E.2d 202 (Ct. App. 2001) (*citing State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003)).

"[A]ppellate courts are to be 'mindful of the need to approach issue preservation rules with a practical eye and not in a rigid, hyper-technical manner' and thus should not apply preservation rules in a manner that elevat[es] form over substance to trap trial lawyers so as to prevent the appeal of a legitimate issue.'" *Moses v. State*, 442 S.C. 263, 269, 898 S.E.2d 174, 177 (Ct. App. 2024) (*quoting State v. Morales*, 439 S.C. 600, 609, 889 S.E.2d 551, 556 (2023)). In this regard, appellate courts should not treat issue preservation as "some sort of game of 'gotcha.'" *Cone v. State*, 443 S.C. 487, 494, 905 S.E.2d 368, 372 (2024) (*quoting Morales*, 439 S.C. at 609, 889 S.E.2d at 556 (citations omitted)). "'[W]here the question of issue preservation is subject to multiple interpretations, ***any doubt should be resolved in favor of preservation***.'" *Spring Valley Ints., LLC v. Best for Last, LLC*, 444 S.C. 281, 290, 907 S.E.2d 124, 128 (Ct. App. 2024) (emphasis added) (*quoting Johnson v. Roberts*, 422 S.C. 406, 412, 812 S.E.2d 207, 210 (Ct. App. 2018)).

In his Brief of Appellant, Dr. Trant argues that the trial judge erred in refusing to change venue because Marion County did not have jurisdiction after the settlement with the School District under the individual venue statute:

> A civil action ***tried*** pursuant to this section against a resident individual defendant must be ***brought and tried*** in the county in which the: (1) defendant resides at the time the cause of action arose; or (2) most substantial part of the alleged act or omission giving rise to the cause of action occurred.

See S.C. Code § 15-7-30(C). This is the same argument Dr. Trant made in the Circuit Court. Dr. Trant's Amended Motion for Change of Venue focused on the fact that venue was no longer

proper in Marion County: "[I]t is anticipated that the Court will release Marion County School District from this litigation. Thus, venue is now only proper in Florence County." (*See generally* Sept. 9, 2024 Am. Mot. for Change of Venue, at 1-2). Moreover, the proposed order that Dr. Trant submitted on the venue issue is based on the same premise:

> Had the school district not been a defendant, venue would have been proper in Florence County under S.C. Code Ann. §15-7-30(C) and (E). In paragraph 7 of their Answer, Trant and MPAII reserved their right to file a motion for a change of venue "should circumstances change." Circumstances have changed. The school district has settled with plaintiff and is no longer a defendant. The reasons that venue was proper in Marion County no longer exist.

(*See* Defs.' Nov. 18, 2024 Mot. for JNOV or, in the Alternative, for New Tr. Absolute or, in the Alternative for Red. of Verdicts Ex. 3, at 3 (*citing Chestnut v. Reid*, 299 S.C.305, 307, 384 S.E.2d 713 (1989)). Dr. Trant preserved the venue issue after the original grounds for venue no longer existed.

Plaintiff maintains that Dr. Trant failed to preserve this issue because his attorney primarily referenced the *Jeter* case and S.C. Code §15-7-100 at the venue argument. (*See* Pl.'s Br. of Resp., at 8). Plaintiff also asserts that both sides agreed at oral argument that Judge DeBerry's decision turned on whether "equity, justice, and fairness require this case to be moved to Florence County." (*See id.*). However, as set forth above, Dr. Trant's Motion and proposed order plainly also premised his venue argument on S.C. Code §15-7-30 and *Chestnut*. Additionally, Plaintiff now concedes that Dr. Trant's "counsel did assert their clients' rights to be tried in the county of [his] residence." (*See* Pl.'s Br. of Resp., at 8).

At the hearing on September 10, 2024, counsel for Dr. Trant did reference S.C. Code § 15-7-100 and *Jeter*. However, he did so solely to set forth a procedural mechanism for the Court to transfer venue where venue was no longer proper in Marion County:

> Yes, sir. I'll be glad to address that for the Court. I had a bigger argument planned for this morning but I'm gonna try to cut to the chase, since I understand where we have come from when we arrived this morning to where we are now.
>
> Obviously, Dr. Trant and MPA II contend that the venue is now proper in Florence County. And I've heard the argument that there is no mechanism now to transfer

> the venue to Florence County. There is. The *Jeter* case, which was cited by the plaintiffs yesterday, and we agree with what the plaintiff is saying about the *Jeter* case, that when venue is proper in more than one county, the plaintiff gets to choose that county. And that venue may only be transferred if there exists some statutory grounds for the transfer. And here, the statutory grounds are in the venue statute, and Your Honor has talked about those things. They are the—that 15-7-100, changing the place of trial. The Court may change the place of trial if there is reason to believe that a fair and impartial trial cannot be had. We don't believe a fair and impartial trial can be had in Marion on this case going forward. You can also change it with the ends of justice. This is saying the same thing. Ends of justice; fair and impartial trial. Going forward, obviously, Dr. Trant is a resident and citizen of Florence. MPA II is a corporation with its principal place of business in Florence. There's clearly a statutory mechanism, as allowed for in the *Jeter* case to transfer this case to Florence for trial, where the trial should be. So, we disagree with the position of the plaintiffs saying there is no mechanism for doing that. There is. It's right in the venue statute, and the venue statute was enacted to prevent this very sort of forum shopping that we're seeing here.

(*See* Sept. 10, 2024 Transc., at 58:20-60:1). Dr. Trant's counsel contended that "[w]e believe there is a—there's a basis to transfer venue, even now, since the Marion County School District, which kept venue in Marion County, is no longer a party." (*See* Sept. 10, 2024 Transc., at 61:3-6). In making this argument, counsel for Dr. Trant was not waiving or relinquishing the other arguments he had previously made. To the contrary, Dr. Trant relied on *Jeter* and Section 15-7-100 *in conjunction with* his other arguments. Plaintiff has not shown that Dr. Trant failed to preserve his venue argument.

The other focus of Plaintiff's preservation argument is on Dr. Trant's argument in his Brief of Appellant that the *Jeter* case, which Plaintiff relies upon, is inapposite because it was decided under an earlier version of the venue statute. Specifically, Plaintiff maintains that "[c]onspicuously absent from the transcript of the arguments or in Appellants' proposed order is any mention of *Jeter* being 'outdated' or no longer good authority in light of certain 2005 amendments to the venue statutes." (*See* Pl.'s Br. of Resp., at 8). While that may be so, the trial court did receive arguments to the effect that *Jeter* does not apply to this case. Even if Dr. Trant did not specifically argue that *Jeter* was also inapplicable because it was decided under a prior version of the statute, he has consistently argued that *under the current version of the statute*, the trial court should have changed venue. His pointing out the substance of the statute considered in *Jeter* and comparing it

to later versions is not injecting a new argument into this appeal. Dr. Trant's argument is still the same: *Jeter* is not applicable and does not support the trial court's denial of his Motion to Transfer Venue. Plaintiff's interpretation of South Carolina's preservation rules elevates form over substance and should not preclude review on the merits.

For the foregoing reasons, Dr. Trant has properly preserved the issues raised in this appeal with regard to venue for review in this Court.

2. Plaintiff Has Not Shown That the Law Would Permit Trial in a County Where Venue No Longer Exists.

In her Brief of Respondent, Plaintiff contends that the trial court—relying on *Jeter v. South Carolina Dep't of Transp.*, 369 S.C. 433, 633 S.E.2d 143 (2006)—properly denied Dr. Trant's Motion to Transfer Venue. For the reasons that follow (and those set forth in Dr. Trant's opening Brief of Appellant), the trial judge erred in allowing this case to go to trial in a county that was not a proper venue at the time of trial.

The plain language of South Carolina's applicable venue statute required that "[a] civil action ***tried*** pursuant to this section . . . against a resident individual defendant must be ***brought and tried*** in the county in which . . . defendant resides at the time the cause of action arose." *See* S.C. Code § 15-7-30(C) (emphasis added). This statute is so worded that venue must be proper both at the time suit is "brought" and when it is "tried." At the time of trial, Marion County was no longer a proper venue because the School District was no longer a party. Neither Plaintiff nor the trial judge cited a single case allowing a trial to go forward in a county that, without doubt, was not a proper venue at the time of trial.

Plaintiff relies on *Jeter* to support her argument. In *Jeter,* the plaintiffs sued the Department of Transportation in the county where the accident occurred, as required by S.C. Code § 15-78-100(b) ("Jurisdiction for any action brought under this chapter is in the circuit court and brought in the county in which the act or omission occurred."). The Department then joined a driver as a third-party defendant. The driver obtained a change of venue to her county of residence. The Supreme Court reversed the change of venue, holding that:

> [W]here there are multiple defendants residing in different counties, the plaintiff may properly bring the action in the county where any one of the defendants resides at the time of the commencement of the action. In such a case, the plaintiff ordinarily has the right of election as to the county in which an action will be brought. . . . The Jeters properly instituted their actions against SCDOT by filing their actions in the Union County Court of Common Pleas pursuant to § 15-78-100(b). Because the actions were properly instituted, Brown, as a defendant, had no right to request a change of venue to the county of her residence based on an allegation that the actions were brought in an improper venue.

See Jeter, 369 S.C. at 442, 633 S.E.2d at 148.

Jeter is easily distinguished from this case. *Jeter*, like this case, involved multiple defendants and two applicable venue statutes.[3] However, unlike this case, in *Jeter* all defendants were still proper parties at the time of the venue motion, including the government entity upon whom venue was originally based. Thus, in *Jeter,* venue was still proper in the original forum county after the joinder of new defendants, so there were two proper venues. As a result, the Court deferred to the plaintiff's original chosen venue. Here, however, the School District was dismissed as a defendant. As a result, the case was not "tried in the county in which . . . defendant resides at the time the cause of action arose." *See* S.C. Code § 15-7-30(C). This key difference makes *Jeter* inapplicable.

For the foregoing reasons, the Court should reverse the trial judge's denial of Dr. Trant's Motion to Transfer Venue.

B. <u>Plaintiff's Argument (Section II) Regarding the Lack of Evidence of Gross Negligence or Causation Does Not Defeat Dr. Trant's Contention That the Trial Court Should Have Granted Him Judgment As a Matter of Law.</u>

In her Brief of Respondent, Plaintiff contends that her expert witness, Dr. Anthony Chang, "provided ample evidence of both proximate cause and gross negligence by Dr. Trant." (*See* Pl.'s Br. of Respondent, at 15). For the reasons that follow, Plaintiff's reliance on Dr. Chang's testimony as the basis for the jury's verdict is misplaced.

[3] S.C. Code § 15-75-100(b) and 15-7-30(A).

1. **Dr. Chang's Testimony Was Not Sufficient for the Trial Court to Submit Gross Negligence to the Jury.**

In analyzing the proof of breach of the standard of care as to Dr. Trant, the jury could only find Dr. Trant liable if Plaintiff proved, and the jury specifically found, that Dr. Trant acted "in a reckless, wilful (sic), or grossly negligent manner." *See* S.C. Code § 33-56-180(A). Plaintiff did not contend that Dr. Trant's conduct was willful or reckless. (*See* Tr. Transc., at 729:7-11 ("We are not arguing that there was reckless conduct as that statute defines. We are not arguing there was a (sic) willful conduct. We have made this case purely on our position that there was grossly negligent conduct.")). As a result, as to the claims against Dr. Trant individually, Plaintiff was obligated to prove that he was ***grossly*** negligent, not simply negligent.

The trial judge instructed the jury (in part) that the definition of gross negligence focuses around proof of a failure to act with even the slightest care. (*See* Tr. Transc., at 784:17-785:7 (emphasis added)). The fact that a defendant "might have done more" does not mean it failed to exercise slight care. *Etheredge v. Richland Sch. Dist. One*, 341 S.C. 307, 312, 534 S.E.2d 275, 278 (2000). Dr. Chang did not testify to anything that could have supported a jury verdict that Dr. Trant was grossly negligent.

Plaintiff bases her argument that the evidence supported the jury's verdict solely on the testimony of Dr. Chang. Dr. Chang testified that Dr. Trant failed to meet the standard of care applicable to him in various respects:

- "Q: As a practicing pediatric cardiologist, would the standard of care necessitate that you review these records that came from Dr. Bahan? A: Yes." (*See* Tr. Transc., at 337:8-11).

- "Q: Okay. And in accordance with the standard of care, when it says cardiac workup, what is that—what does that phrase mean to you? A: That means an EKG and an echo and exercise test." (*See id.*, at 342:8-11).

- "Q: Do you believe that these key points, are they supportive of what the standard of care would be for a pediatric cardiologist in Florence, South Carolina? A: Yes." (*See id.*, at 344:4-7).

- "Q: Does the standard of care mandate a careful and thorough evaluation of an athlete that reports with these warning symptoms? A: Yes." (*See id.*, at 345:23-

346:1)

- "Q: And regarding medical records, is it the standard of care for the physician or for a pediatric cardiologist in Dr. Trant's position not (sic) review Dr. Bahan's records relating to the referral? A: Yes." (*See id.*, at 349:3-7).

- "Q: With regard to the failure to perform a workup, do you believe that violated the standard of care—do you have higher than a reasonable degree of medical certainty that that was a deviation from the standard of care? A: Yes." (*See id.*, at 352:8-12).

- "Q: Was it a deviation of the standard of care for Dr. Trant to send her right back without any of those tests? A: Yes. Q: And was it a deviation of the standard of care for him not to perform those tests? A: Yes." (*See id.*, at 354:3-8).

Dr. Chang testified that, in his definition, "[s]tandard of care is defined as what a reasonably prudent clinician would do in that particular set of circumstances." (*See* Tr. Transc., at 339:10-14). That is, almost verbatim the standard of care applicable in a medical malpractice negligence case: "'The degree of care which must be observed is, of course, that of an average, competent practitioner acting in the same or similar circumstances.'" *See Keaton v. Greenville Hosp. Sys.*, 334 S.C. 488, 496, 514 S.E.2d 570, 574 (1999) (*quoting King v. Williams,* 276 S.C. 478, 279 S.E.2d 618, 620 (1981)). In other words, Dr. Chang testified *only* that, in his opinion, Dr. Trant was "negligent." He never gave any opinion that Dr. Trant's actions did not show even slight care or that any of the other standards for gross negligence applied.

In fact, the only time any form of the word gross was even used in Dr. Chang's testimony was in the following exchange:

Q: Under the circumstances of how Taylor presented, was that a grossly inadequate workup that Dr. Trant did?

A: Yes. Again, I think any one of those four episodes would warrant a complete workup.

Q: And it was significantly adequate what he did?

A: Significantly inadequate.

(*See* Tr. Transc., at 353:5-10). However, this does not address the substance of the definition of gross negligence under South Carolina law. In fact, in medical terminology, "grossly" has its own

meaning, quite apart from gross negligence: "Coarse or large; large enough to be visible to the naked eye; macroscopic." *See* Farlex Partner Medical Dictionary (2012). Under the circumstances, a simple affirmative response to a question containing the word "grossly" does not constitute an admissible expert opinion that Dr. Trant acted with gross negligence. Dr. Chang's testimony never addressed the question of whether Dr. Trant's conduct failed to show even slight care. (*See generally* Tr. Transc., at 301-380).

Gross negligence sets a high threshold; it requires more than extreme negligence or an obvious omission. It means more than failing to follow professional standards. It certainly takes more than a failure to do "what a reasonably prudent clinician would do in that particular set of circumstances." (*See* Tr. Transc., at 339:10-14). Rather, gross negligence requires proof that the defendant intentionally failed to do, essentially, anything of substance to avoid the harm. Dr. Chang undoubtedly disagreed with Dr. Trant's treatment of Decedent. He testified that Dr. Trant breached the duty of care that a reasonably prudent clinician owes to his patient. However, he did not opine that Dr. Trant breached the much higher gross negligence standard: *i.e.,* that he failed to exercise *even slight care* for Decedent.

Plaintiffs also cite to Dr. Trant's testimony, his discovery responses, and the testimony of his expert witnesses Dr. Nicole Cain and Dr. Claudius Shuler. Once again this evidence cited does not support that Dr. Trant failed to exercise even slight care. Rather, this is evidence of—at most—breach of a duty of care under an ordinary negligence standard. None of this evidence supports a verdict against Dr. Trant.

Dr. Trant's opening brief detailed the care he provided to Decedent and the reasons for his actions. At trial, he testified and explained why he acted as he did in the care of Decedent. Even if Dr. Chang believes that Dr. Trant failed to live up to the standard of reasonable care, his testimony did not evidence the type of conduct required for gross negligence. In fact, Plaintiff has never presented any evidence that Dr. Trant failed to exercise even slight care. Notwithstanding Dr. Chang's credentials, he did not give the jury sufficient evidence to support a verdict against Dr. Trant. Without any evidence of gross negligence, Dr. Trant cannot be liable under South

Carolina law. *See* S.C. Code § 33-56-180(A).

As a result, the trial judge should have granted Dr. Trant's motions for directed verdict or for judgment NOV. The Court should reverse the jury's verdict and enter judgment in favor of Dr. Trant.

2. Dr. Chang's Testimony Was Not Sufficient for the Trial Court to Submit the Issue of Proximate Cause to the Jury.

In her Brief of Respondent, Plaintiff argues that Dr. Chang "testified that in his professional medical opinion, to a reasonable degree of medical certainty, Dr. Trant's failures caused the death of Taylor Price." (*See* Pl.'s Br. of Resp., at 18). The sum and total of Dr. Chang's testimony on proximate causation was:

Q: Was it a deviation of the standard of care for Dr. Trant to send her right back without any of those tests?

A: Yes.

Q: And was it a deviation of the standard of care for him not to perform those tests?

A: Yes.

Q: And do you believe to a reasonable degree of medical certainty that that's why Taylor died?

A: Yes.

Q: And do you also believe to a reasonable degree of medical certainty if she had received proper care that she'd be with us today?

A: Yes; she would be alive today.

(*See* Tr. Transc., at 354:3-15). Plaintiff does not direct the Court to any other evidence of proximate causation. For the reasons that follow, Dr. Chang's testimony was not sufficient for the Court to submit the question of proximate causation to the jury; consequently, the trial judge erred in denying Dr. Trant's motions for directed verdict and post-trial motions.

As argued in Dr. Trant's opening Brief of Appellant, Plaintiff must prove both factual and legal causation.

> Proximate cause requires proof of cause-in-fact and legal cause. *Baggerly v. CSX Transp., Inc.*, 370 S.C. 362, 369, 635 S.E.2d 97, 101 (2006). In causation, as in other contexts, "proximate" is the opposite of "remote." *See Stone v. Bethea*, 251 S.C. 157, 162, 161 S.E.2d 171, 173 (1968) ("When the [conduct] appears merely to have brought about a condition of affairs, or a situation in which another and entirely independent and efficient agency intervenes to cause the injury, the latter is to be deemed the direct or proximate cause, and the former only the indirect or remote cause."). The cause-in-fact and legal cause elements are designed to enable courts and juries to differentiate between proximate and remote causes in a reliable manner.

See Wickersham v. Ford Motor Co., 432 S.C. 384, 390, 853 S.E.2d 329, 332 (2020). Given the lapse of time and other circumstances, even considering Dr. Chang's testimony, there is no evidence to show that any purported causal link between Dr. Trant's actions and Decedent's death was sufficient to support liability.

As Dr. Trant has argued in his opening Brief of Appellant, there was a lapse of 34 months—nearly three years - between his treatment of Decedent and her death. That is 1,058 days. During that time, Decedent was twice cleared to participate without restriction in basketball, track, and cheering through High School Athletic Pre-Participation Physical Forms signed by Palmetto Medical Care, LLC. (*See* Pl. Tr. Exs. 5-6). During that time, she never followed up with Dr. Trant. There is no evidence to show the status or development of her condition during that time. There is no evidence to show that Decedent did not exert herself during that time. It was error to allow the jury to return a verdict for Plaintiff with such an extreme lapse of time. Neither Plaintiff nor the trial court have cited any authority suggesting that proximate cause for a physical injury such as this exists after the passage of such a long period of time—particularly in the absence of evidence of what the condition was during the interim. A lapse of nearly three years is the very definition "remote."

For the foregoing reasons, the Court should reverse the jury's verdict, because it is not supported by evidence and is contrary to the law.

C. Plaintiff's Argument (Section IV) Does Not Refute Dr. Trant's Contention That the Trial Court Committed Prejudicial Errors in the Instructions Given to the Jury.

As Dr. Trant argued in his opening Brief of Appellant, the trial judge erred in two respects with regard to the instructions he gave to the jury. First, he erred in instructing the jury that "[g]ross negligence . . . is a relative term and means the absence of care which is necessary under the circumstances." (*See* Tr. Transc., at 784:23-25). Second, he erroneously declined to instruct the jury on portions of the charitable immunity statute.

1. Dr. Trant Properly Preserved This Issue for Review.

Plaintiff first asserts that Dr. Trant failed to properly preserve his objections to the jury instructions for appellate review.[4] For the reasons that follow, Dr. Trant adequately preserved these issues for appellate review.

"[A]ppellate courts are to be 'mindful of the need to approach issue preservation rules with a practical eye and not in a rigid, hyper-technical manner' and thus should not apply preservation rules in a manner that elevat[es] form over substance to trap trial lawyers so as to prevent the appeal of a legitimate issue.'" *Moses v. State*, 442 S.C. 263, 269, 898 S.E.2d 174, 177 (Ct. App. 2024) (*quoting State v. Morales*, 439 S.C. 600, 609, 889 S.E.2d 551, 556 (2023)). This Court should not view issue preservation as "some sort of game of 'gotcha.'" *Cone v. State*, 443 S.C. 487, 494, 905 S.E.2d 368, 372 (2024) (*quoting Morales*, 439 S.C. at 609, 889 S.E.2d at 556 (citations omitted)). Moreover, it should resolve any doubt in favor of finding preservation. *See Spring Valley Ints., LLC v. Best for Last, LLC*, 444 S.C. 281, 290, 907 S.E.2d 124, 128 (Ct. App. 2024).

Initially, with regard to the Court's instruction that gross negligence is "a relative term and means the absence of care which is necessary under the circumstances" (Tr. Transc., at 784:23-

[4] In support of this argument, Plaintiff cites *Smalls v. State*, 422 S.C. 174, 182 n.3, 810 S.E.2d 836, 840 (2018), for the proposition that "'[w]hen a conference takes place off the record, it is trial counsel's duty to put the substance of the discussion and the trial court's ruling on the record.'" (*See* Pl.'s Br., at 26-27). However, in *Smalls,* the request and ruling at issue were both not on the record at all, having occurred in chambers. Here, however, after the in-chambers charging conference, the trial judge placed his rulings that are currently under review on the record, as well as Dr. Trant's objections thereto.

25), the trial transcript reflects that—contrary to the argument in the Brief of Respondent—Plaintiff's counsel conceded that Dr. Trant properly preserved that issue for review. During the argument on post-trial motions, when this issue was argued, attorney Taylor Powell stated: "If I can just briefly respond just to those two issues, Your Honor. As to the gross negligence and what was charged and what wasn't, ***I do agree with Mr. Lindemann; they did preserve their objection to the one sentence being added back into Judge Anderson's charge***." (*See* Nov. 25, 2024 Hearing Transc., at 58:22-59:1). This admission undermines Plaintiff's argument and conclusively shows that the issue was preserved for review in this Court.

Moreover, the trial transcript confirms that Dr. Trant properly raised this issue and the trial court ruled upon it:

> [THE COURT:] The sentence it left out was that gross negligence is a relative term, meaning the absence of care that is necessary under the circumstances. So, I agreed to add that back in. ***In my understanding, that's over the objection of defense counsel***.
>
> MR. MCLEAN: ***We do object*** to the inclusion of that sentence, but we understand and respect the Court's ruling.

(*See* Tr. Transc., at 726:18-24 (emphasis added)). Similarly, with regard to Dr. Trant's objections to the trial judge's refusal to instruct the jury on the charitable immunity law, the record reflects:

> THE COURT: Okay. And then you also wanted me to charge the statute, let's see, 33-86-180 (sic). And under the circumstances of this case, I am not going to charge that, but ***I understand your objection***.
>
> MR. MCLEAN: Yes, sir.
>
> THE COURT: And ***let you put it on the record***.
>
> MR. MCLEAN: Yes, Sir. Correct.

(*See* Tr. Transc., at 726:25-727:6 (emphasis added)).

It is clear from the above citations to the trial transcript that Dr. Trant did object to these instructions, and the judge rejected them on the record. While the transcript does not include detailed arguments on these instructions, Dr. Trant's counsel made such arguments and that Plaintiff's counsel understood them. Given the record, the Court should find that these arguments

were properly preserved for appellate review:

> Once a party objects to a jury charge and, after opportunity for discussion is denied on the record, no further action is necessary in order to preserve the issue for appeal. *State v. Johnson*, 333 S.C. 62, 64 n.1, 508 S.E.2d 29, 30 n.1 (1998). The failure to raise specific grounds for an objection will not prevent the appellate court from addressing an issue when the record indicates that the trial court and the State understood the basis for the objection. *State v. Hendricks*, 408 S.C. 525, 531, 759 S.E.2d 434, 437 (Ct. App. 2014) (citing *State v. Kromah*, 401 S.C. 340, 353, 737 S.E.2d 490, 497 (2013)).

See State v. Bowers, 428 S.C. 21, 29, 832 S.E.2d 623, 627-28 (Ct. App. 2019).

For the foregoing reasons, the Court should find that Dr. Trant properly preserved his challenges to these jury instructions for appellate review.

2. Plaintiff's Opposition Does Not Refute That the Trial Judge Erred With Regard to Jury Instructions.

a. Definition of "Gross Negligence."

Dr. Trant first contends that a portion of the trial judge's instruction on the definition of gross negligence was erroneous. Specifically, Dr. Trant objects to the inclusion of language stating that gross negligence "is a relative term and means the absence of care which is necessary under the circumstances." (*See* Tr. Transc., at 784:23-25). The trial judge erred in instructing that language because it did not adequately convey the difference between ordinary and gross negligence to the jury and likely led to jury confusion.

Dr. Trant does not dispute that this language—to the effect that gross negligence is a relative term that means the absence of care necessary under the circumstances—does appear in South Carolina case law. In that context, it is being written for an audience of attorneys who, by virtue of their training and experience, understand what that language means. However, it is confusing and misleading language to include in a jury instruction in a case where the jury is asked to decide questions of both ordinary and gross negligence. It was particularly important that the trial judge clearly define gross negligence in this case because Dr. Trant could ***only*** be held liable for gross negligence.

In this case, the trial judge defined ordinary negligence, in part, as "the failure to do what

an ordinary, careful and prudent doctor in the field of medicine would have done under the same or similar circumstances." (*See* Tr. Transc., at 781:17-19). This language is confusingly similar to the language the trial judge used to define *gross* negligence: "the absence of care which is necessary under the circumstances." (*See* Tr. Transc., at 784:23-25). In giving these definitions, the trial judge used language suggesting that both degrees of negligence—ordinary and gross—require a showing of a failure to exercise the level of care due under the circumstances. We do not need to speculate about the impact of these definitions on the jury. The evidence supports that the definition of "gross negligence" given by the court actually confused the jury. The jury foreperson actually submitted a question as to the definitions of "negligence" and "gross negligence." (*See* Tr. Transc., at 793:8-794:25).

In light of the foregoing, the trial judge gave a faulty and confusing instruction to the jury on the definition of gross negligence. This is particularly important here, where Dr. Trant's liability depended solely on the jury understanding and finding that he acted in a grossly negligent manner. Therefore, the Court should reverse and remand this case for a new trial, at which the challenged language should be removed from the jury instruction on gross negligence.

b. Charitable Immunity Statute Instruction.

Dr. Trant next argues that the trial judge should have instructed the jury on his statutory defense. Specifically, he requested the following instruction:

DEFENDANTS' REQUEST TO CHARGE # 10

> It is stipulated and agreed that MPA II is a charitable organization and that Dr. Trant was an employee of MPAII acting at all times within the scope of his employment
>
> 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 he sustains.
>
> An action against the charitable organization 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.
>
> 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.

(*See* Defs.' Nov. 18, 2024 Mot. for JNOV or, in the Alternative, for New Tr. Absolute or, in the Alternative for Red. of Verdicts Ex. 6). Plaintiff contends that "the charge as a whole adequately conveyed the substance of Appellants' request." (*See* Pl.'s Br. of Respondent, at 32).

According to Plaintiff, denying Request to Charge #10 was harmless because the jury was already instructed on gross negligence. Initially, as argued above, the definition of "gross negligence" that the trial judge gave the jury was confusing. More fundamentally, when the trial judge refused to give Defendants' Request to Charge #10, he did not explain to the jury why "gross negligence" was an issue and how it fit into the case. The jury did not understand that the only significance of a finding of "gross negligence" was that Dr. Trant could be personally liable to Plaintiff. Without understanding why the question of gross negligence was so important to this case, the jury reached its decision without sufficient context.

For the foregoing reasons, the Court should reverse and remand this matter for a new trial,

with the instruction to the trial court that the jury be instructed consistently with Defendants' Request to Charge #10.

D. Contrary to Plaintiff's Argument (Section V), the Trial Court Erred in Denying Dr. Trant's Post-Trial Motions Because the Verdict Was Excessive.

In her Brief, Plaintiff forcefully argues that the $30 million compensatory damage verdict was not grossly excessive, based primarily on the trauma that accompanies the death of a child. Dr. Trant submits that, while the loss of a child is a significant and serious matter, there are indications that this verdict was the product of the jury's passion.

"The trial judge must grant a new trial absolute if the amount of the verdict is grossly inadequate or excessive so as to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives." *Vinson v. Hartley*, 324 S.C. 389, 404, 477 S.E.2d 715, 723 (Ct. App. 1996). In such a case, "'it becomes the duty of the trial judge and this Court to set aside the verdict absolutely.'" *See Nestler v. Fields*, 426 S.C. 34, 40, 824 S.E.2d 461, 464-65 (Ct. App. 2019) (*quoting Riley v. Ford Motor Co.*, 414 S.C. 185, 192, 777 S.E.2d 824, 828 (2015)).

Initially, it should be noted that Plaintiff did not respond to Dr. Trant's first arguments on this issue: *i.e.,* that the statutory beneficiaries did not financially rely on Decedent and that there was no evidence that Decedent's father suffered any injury (emotional or otherwise). Instead, Plaintiff contends that the overall trauma and grief from losing a child supports the $30 million verdict. While no parent would put any dollar value on her child's life, allowing a $30 million verdict to stand, with no evidence of actual pecuniary loss, would be grossly excessive. The jury should be given leeway to assess the case and award damages, but the verdict in this case went far beyond the amount of a reasonable verdict.

The record shows that factors outside of the evidence likely influenced the verdict. As Dr. Trant details in his opening Brief, Plaintiff's closing argument included references to issues of race, socioeconomic inequality, and other considerations not relevant to the issue before the jury. Plaintiff urged the jury to "send a message," despite the trial being limited to compensatory

damages. In essence, Plaintiff argued that a desire to punish and deter—not to compensate the Plaintiff—should control the determination of the amount of compensatory damages. *See Brinkley v. South Carolina Dep't of Corr.*, 386 S.C. 182, 186-87, 687 S.E.2d 54, 57 (Ct. App. 2009) ("The circuit court noted Brinkley's counsel came close in his closing statement to asking the jury to 'send a message' to Department when calculating any damages award; this, it concluded, contributed to the excessiveness of the verdict.").[5]

Plaintiff's closing statements, combined with the size of the verdict, suggest that the jury sought to "send a message" rather than focus solely on compensatory damages. It did not simply act to compensate Plaintiff; it acted to punish Defendants and to send a message to other medical providers. As a result, the Court should vacate the jury's verdict and remand this case for a new trial.

E. Notwithstanding Plaintiff's Argument (Section VI), the Cap Under the Solicitation of Charitable Funds Act Does Apply to Dr. Trant.

In her final argument, Plaintiff contends that the trial judge did not err in declining to give Dr. Trant the benefit of the statutory cap on damages contained in S.C. Code § 33-56-180(A).

Plaintiff's arguments on this issue rely heavily on *dicta*[6] in the South Carolina Supreme Court's opinion in *James v. Lister*, 331 S.C. 277, 500 S.E.2d 198 (Ct. App. 1998), stating that "Section 33-55-210(A) provides a mechanism for seeking damages in excess of the charitable limitation, through an action against a charitable organization's employees." *See* 500 S.E.2d at 201. For the reasons that follow, Plaintiff's reliance on *James* is misplaced and is in derogation of the plain language of the statute.

Initially, Dr. Trant wishes to respond to Plaintiff's contention in her Brief of Respondent

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[5] Plaintiff argues that Dr. Trant may not raise the issue of what was said in closing arguments because he did not make a contemporaneous objection. However, Dr. Trant is not referencing the closing to ask the Court to find that it was improper. Rather, he is using the nature of Plaintiff's closing remarks to the jury to demonstrate why it is so apparent that the jury was inflamed and returned a $30 million compensatory damage verdict solely to punish Defendants and to deter other doctors.

[6] Plaintiff does not dispute that the language in *James* was *dicta*, which had no bearing on the Court's decision.

that "the South Carolina Supreme Court denied certiorari in *James v. Lister*, refuting Appellant's contention that the *James* opinion is incorrect law." (*See* Pl.'s Br. of Resp., at 40). The Supreme Court's denial of *certiorari* in *Lister* has no bearing on the precedential value of the Court of Appeals opinion in that matter. As the Supreme Court has stated, "[t]he denial of a petition for a writ of certiorari to the Court of Appeals does not dismiss or decide the underlying appeal; it simply determines that, as a matter of discretion, this Court does not desire to review the decision of the Court of Appeals." *See State v. Rucker*, 321 S.C. 552, 553, 471 S.E.2d 145, 145 (1996). The United States Supreme Court has further stated that "'denial of a writ of certiorari imports no expression of opinion upon the merits of the case.'" *See Teague v. Lane*, 489 U.S. 288, 296 (1989) (quoting *United States* v. *Carver*, 260 U.S. 482, 490 (1923) (Holmes, J.)); *accord Barefoot v. Estelle*, 463 U.S. 880, 907 n.5 (1983) (Marshall, J., dissenting) ("Denials of certiorari ***never have precedential value***."); *County of Sonoma v. Isbell*, 439 U.S. 996 (1978) ("[A] denial of certiorari has no precedential value in any event . . . .").

The Supreme Court could have denied *certiorari* in *Lister* for any one of a number of reasons having nothing to do with the correctness of the Court of Appeals' opinion. In fact, the Rules of Appellate Procedure state that *certiorari* will only be granted for "special and important reasons," such as:

> (1) Where there are novel questions of law.
>
> (2) Where there is a dissent in the decision of the Court of Appeals.
>
> (3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.
>
> (4) Where substantial constitutional issues are directly involved.
>
> (5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

See S.C.R.A.P., Rule 242(b). The fact that *certiorari* was denied is not an indicator that the Supreme Court agreed with the Court of Appeals in that case. It is only an indicator that the Court did not wish to grant discretionary review in that case. Plaintiff's effort to bolster the precedential

effect of *Lister* by noting the denial of *certiorari* is without merit.

Moreover, Plaintiff's argument runs contrary to the plain language of the relevant subsection of the South Carolina Solicitation of Charitable Funds Act. That section states, at length:

> 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 he sustains in an amount not exceeding the limitations on liability imposed in the South Carolina Tort Claims Act in Chapter 78 of Title 15***. 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.

See S.C. Code § 33-56-180(A) (emphasis added). This language makes clear that the statutory cap should apply not only to the charitable organization, but also to its employees.

The cap expressly applies to "an action brought against a charitable organization." This is precisely the case here, where Plaintiff sued both McLeod Physician Associates II and Dr. Trant. Moreover, the statute does not state that "the charitable organization's liability" is capped. Rather, it states that the amount the plaintiff "may recover" is so limited. Finally, the statute states that an "action against a charitable organization" (such as this action) is a complete bar to recovery from an employee of charitable organizations unless the employee is: (a) "joined properly as a defendant"; and (b) is shown to have been grossly negligent.

Read as a whole, Section 33-56-180 makes clear that, in an "action brought against a charitable organization," the Plaintiff's "recovery" is capped. In other words, cap is the maximum that Plaintiff can recover in this "action," meaning this lawsuit. The statute does not contain any language to even suggest an intention that an individual employee of a charitable organization—who is part of the "action brought against a charitable organization"—should be subjected to

limitless liability.

If, as Plaintiff argues under *James*, the intent of the statute was to cap recovery against charitable organizations but authorize limitless liability for its employees, Section 33-56-180 would have been worded differently. For example, it could state that "recovery from a charitable organization" is capped or that the "charitable organization's liability" is capped. It states neither. Rather, it says that in a lawsuit against a charitable organization—to which an employee could be joined as a Defendant—the Plaintiff's "recovery" is limited to the amount of the cap.

Plaintiff contends that Dr. Trant's plain reading of the statute "leads to the absurd result where the General Assembly, while generally limiting liability against individual doctors, then provides an exemption specifically permitting a plaintiff to join the doctor as a party and prove a greater degree of culpability—gross negligence—without any discernible benefit." (*See* Pl.'s Br. of Resp., at 41). To the contrary, Dr. Trant's interpretation aligns with the statute's purpose: protecting those engaged in charitable work by making them immune from suit unless they were grossly negligent. It is illogical to suggest that the statute was intended to shield charitable organizations while leaving their employees exposed to unlimited personal liability.

For the foregoing reasons, the trial court should have applied that statutory cap to Dr. Trant, as well as McLeod Physician Associates II. The Court should reverse the trial court's refusal to cap Dr. Trant's potential liability.

CONCLUSION

For all of the foregoing reasons and those set forth in his opening Brief of Appellant, Dr. Trant respectfully asks the Court to reverse the trial court's denial of his Motion to Change Venue and of his Post-Trial Motions.

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December 8, 2025

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM MARION COUNTY
In the Court of Common Pleas for the Twelfth Judicial Circuit

The Honorable R. Ferrell Cothran, Jr.
The Honorable H. Steven DeBerry, IV

Appellate Case No. 2025-000434

Demetrice Utley, individually and as Personal Representative of the Estate of Taylor Danielle Price ..... Respondent

vs.

McLeod Physician Associates II and Charles A. Trant, M.D. ..... Appellants

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PROOF OF SERVICE OF INITIAL REPLY BRIEF OF APPELLANT CHARLES A. TRANT, M.D.

I certify that I have served the Initial Reply Brief of Appellant Charles A. Trant, M.D. on the above-referenced parties by email in accordance with the South Carolina Supreme Court's Order re: Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended May 6, 2022) on December 8, 2025, addressed to their attorneys of record:

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