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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM MARION COUNTY
Court of Common Pleas

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

Appellate Case No. 2025-000434

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

v.

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

FINAL BRIEF OF RESPONDENT

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"Syncope." *Merriam-Webster.com Dictionary*, Merriam-Webster, https://www.merriam-webster.com/dictionary/syncope 3

COUNTERSTATEMENT OF ISSUES ON APPEAL

I. **The trial court did not err in refusing to transfer venue to Florence County because this lawsuit was properly instituted in Marion County, and Appellants did not demonstrate that changing venue would serve either the convenience of the witnesses or the ends of justice.**[1]

II. **The trial court did not err in submitting this case to the jury and denying Appellants' motions for JNOV or a new trial as to proximate cause and gross negligence because ample evidence existed to create a quintessential jury issue on these matters.**[2]

III. **The trial court did not err in submitting the question of the number of occurrences to the jury because this was a factually driven issue that should not have been decided as a matter of law.**[3]

IV. **The trial court did not err in charging the jury on gross negligence and declining to give a selectively edited portion of the South Carolina Solicitation of Charitable Funds Act.**[4]

V. **The trial court correctly declined to set aside the verdict because the jury's award was not "grossly excessive" and therefore, a new trial absolute was not warranted.**[5]

VI. **The trial court correctly determined the charitable immunity damages cap does not apply to Dr. Trant and properly refused to reduce the judgment to $1.2 million.**[6]

VII. **The trial court properly awarded offer of judgment interest against Appellant McLeod.**[7]

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[1] This issue addresses Appellant McLeod Physician Associates II ("McLeod")'s Argument I and Appellant Charles Trant's Argument D.
[2] This issue addresses McLeod's Argument IV and Trant's Arguments B and C.
[3] This issue addresses McLeod's Argument III.
[4] This issue addresses Trant's Argument E.
[5] This issue addresses Trant's Argument F.
[6] This issue addresses Trant's Argument G and McLeod's Argument II.
[7] This issue addresses McLeod's Argument V.

STATEMENT OF THE CASE

This medical malpractice action was filed in Marion County on July 13, 2022, following the collapse and death of sixteen-year-old Taylor Danielle Price on December 17, 2021. The suit was brought by Taylor's mother, Respondent Demetrice Utley, against Appellants, McLeod Physician Associates II, Charles Trant, MD, and the Marion County School District.

Taylor Price died of sudden cardiac arrest following a pick-up game of basketball at Marion County High School due to a detectable, but undiagnosed heart condition known as "arrhythmogenic right ventricular cardiomyopathy" (ARVC) or, alternatively, "arrhythmogenic right ventricular dysplasia" (ARVD). (R. p. 694, line 12-p. 695, line 9). Prior to the specific incident that resulted in her death, Taylor had had several prior instances of collapsing or loss of consciousness while playing basketball, so her pediatrician, Dr. Marc Bahan, referred her to Appellant Charles Trant, a pediatric cardiologist, at the request of Taylor's mother. Dr. Trant saw Taylor for approximately 13 minutes on January 24, 2019. Electronic records indicate that he did not review Taylor's medical referral sent by Dr. Bahan that listed Taylor's diagnosis as "[s]yncope and collapse[.]" (R. p. 707, line 18-p. 708, line 6; p. 1359). It is recognized that "syncope occurring during exercise is an ominous sign and warrants a high degree of suspicion for underlying cardiac disease." (R. p. 768, lines 20-22). However, Dr. Trant did not perform or order any tests on Taylor. Instead, in the course of a single, cursory visit, he diagnosed her with simple "hyperventilation syndrome," recommended she stay hydrated, and consider using a paper bag to regulate her breathing. (R. p. 1067, lines 16-17). He also signed a document clearing Taylor to resume playing sports. Taylor collapsed and died on December 17, 2021.

The case was initially called for trial on September 9, 2024, before Circuit Court Judge H. Steven DeBerry, IV. Following jury selection, Respondent's counsel apprised the court that a

settlement had been reached with the Marion County School District. (R. p. 410, line 19-p. 411, line 1). Counsel for Dr. Trant then moved for a change of venue to Florence County on behalf of both medical defendants. The court excused the jury until the following morning and heard arguments on the motion. At that time, counsel for Dr. Trant also made an oral motion for a mistrial. (R. p. 411, line 3). The next morning, counsel for Dr. Trant requested a continuance. (R. p. 430, lines 1-2). Judge DeBerry ultimately dismissed the jury and heard further arguments on the motion for a change of venue. (R. p. 430, line 16-p. 432, line 14). The court took the matter under advisement, and proposed orders were submitted by both sides. Judge DeBerry then held a hearing to approve the plaintiff's $130,000 settlement with the Marion County School District. (R. p. 445, line 16-p. 449, line 18). By order dated September 19, 2024, the court denied the medical defendants' motion for a change of venue, holding the lawsuit was properly commenced in Marion County and that the medical defendants had not shown a transfer of venue would serve both the convenience of the witnesses and the ends of justice. (R. pp. 4-13). Judge DeBerry noted in his order that counsel for the medical defendants had conceded during the hearing that a fair and impartial trial could be had in Marion County. (R. p. 9).

On November 4, 2024, this case was called a second time for trial in Marion County with Circuit Court Judge R. Ferrell Cothran presiding. In addition to the testimony of Taylor's mother, Respondent's primary witness was Dr. Anthony Chang, director of the heart failure program at Children's Hospital in Orange County, California. Dr. Chang testified that Dr. Trant breached the standard of care of a pediatric cardiologist when, after learning Taylor had experienced syncope or near syncope[8] during exertion, he failed to perform any tests on her which would have shown she

[8] According to Merriam-Webster dictionary, syncope is the loss of consciousness resulting from insufficient blood flow to the brain. "Syncope." *Merriam-Webster.com Dictionary*, Merriam-Webster, https://www.merriam-webster.com/dictionary/syncope (last visited Oct. 2, 2025).

was suffering from arrhythmogenic right ventricle dysplasia or cardiomyopathy, generally referred to as ARVD. During the defense case, Dr. Claudius Shuler testified that Dr. Trant did not breach the standard of care by failing to order any testing on Taylor, but conceded among other things that the standard of care requires a review of available medical records. (R. p. 935, lines 17-19).

The case was submitted to the jury. The jury found the medical defendants were negligent and that negligence proximately caused the death of Taylor Price. The jury was instructed on the definition of occurrence, found there was more than one occurrence of negligence, and that Dr. Trant was grossly negligent. The jury awarded actual damages of $30,000,000. (R. p. 1213, line 20-p. 1214, line 12).

Post-trial motions were filed by both sides. Respondent requested that the court confirm the jury's finding of two occurrences and award interest based on her offer of judgment. (R. pp. 174-95). Appellants moved for Judgment Notwithstanding the Verdict, or in the alternative, for a New Trial Absolute based on the excessiveness of the verdict or for a New Trial Absolute based on the thirteenth juror doctrine. (R. pp. 196-250).[9]

Following a hearing, Judge Cothran issued an order denying the medical defendants' motions for JNOV and for a New Trial Absolute. (R. pp. 38-62). The court confirmed that the $130,000 settlement with the Marion County School District should be applied as a set-off from the jury's verdict and reduced the verdict to $29,870,000. The court also confirmed the jury's finding of two occurrences and applied the charitable limitation on liability to Appellant McLeod. Accordingly, the court entered judgment against McLeod for $2.4 million together with interest of $380,843.84 based on the offer of judgment. The court also entered judgment against Appellant

[9] Appellants did not move for a New Trial Nisi Remittitur.

Trant for $27,470,000. (R. p. 61). Following Judge Cothran's denial of the medical defendants' Motion to Alter or Amend, this appeal followed.

STANDARD OF REVIEW

Venue

Motions for a change of venue are addressed to the sound discretion of the trial court and will not be disturbed on appeal unless a manifest abuse of discretion is found resulting in an error of law. *Jeter v. S.C. DOT*, 369 S.C. 433, 437, 633 S.E.2d 143, 143 (2006). Respondent disagrees with Appellants' assertion that venue should have been transferred as a matter of law based on the earlier case of *Chestnut v. Reid*, 299 S.C. 305, 384 S.E.2d 713 (1989), because in *Chestnut,* venue was improper at the inception of the lawsuit, unlike here and in *Jeter* where suit was originally commenced in a proper venue.

Judgment Notwithstanding the Verdict

This Court's standard of review over a decision to grant JNOV is as circumscribed as that of the trial court. Both courts are concerned with the existence of evidence, not weight. *Jinks v. Richland County*, 355 S.C. 341, 585 S.E.2d 281 (2003). The jury's verdict must be upheld unless no evidence reasonably supports the jury's findings. *Curcio v. Caterpillar, Inc.* 355 S.C. 316, 320, 585 S.E.2d 272, 275 (2003).

New Trial Absolute and Thirteenth Juror Doctrine

A trial court views motions for a new trial absolute and a new trial under the thirteenth juror doctrine through a similarly narrow lens. The authority to grant a new trial absolute should only be used when the verdict "is shockingly disproportionate to the injuries suffered, thereby indicating that passion, caprice, prejudice, or some other improper consideration not reflected by the evidence affected the amount awarded." *Becker v. Wal-Mart Stores, Inc.,* 339 S.C. 629, 635,

529 S.E.2d 758, 761 (2000). Likewise, a trial court's decision denying a motion for a new trial under the thirteenth juror doctrine "will not be disturbed unless [its] decision is wholly unsupported by the evidence, or the conclusion reached was controlled by an error of law." *Sapp v. Wheeler*, 402 S.C. 502, 513, 741 S.E.2d 565, 571 (Ct. App. 2013).

Number of Occurrences

A plaintiff who alleges multiple occurrences bears the burden of proving each occurrence, and where the plaintiff has presented such evidence at trial, the jury is to be instructed on the definition of occurrence and asked to determine whether the plaintiff has proven more than one occurrence. *Knox v. United States*, No. 0:17-cv-36-CMC, 2018 U.S. Dist. LEXIS 111445 (D.S.C. 2019), construing *Chastain v. AnMed Health Foundation*, 388 S.C. 170, 694 S.E.2d 541 (2010). Accordingly, where the issue of multiple occurrences was submitted to the jury under these circumstances, this Court's standard of review should be the same as the standard for directed verdict motions and for JNOV, and the trial court's ruling should be upheld unless no evidence reasonably supports the jury's findings. *Jinks*, 355 S.C. at 349, 585 S.E.2d at 285.

ARGUMENT

I. The trial court did not err in refusing to transfer venue to Florence County because this lawsuit was properly instituted in Marion County, and Appellants did not demonstrate that changing venue would serve either the convenience of the witnesses or the ends of justice.

Marion County School District was a viable defendant when this action was instituted and continued to be a viable defendant until a settlement was consummated the morning the case was scheduled for trial. The settlement reached was not negligible; it was $130,0000.[10] Because counsel for the school district had participated, albeit minimally, in jury selection, Judge DeBerry

[10] Respondent strongly objects to Appellants' characterization of the suit against Marion County School District and the timing of the parties' settlement as "forum manipulation." (McLeod Br., p. 11).

did not grant Respondent's request that the case go forward with the jury chosen that morning. Accordingly, Judge DeBerry discharged the jury and heard fulsome arguments on Appellants' motion for change of venue.

During the arguments, Respondent asserted the case of *Jeter v. S.C. DOT*, 369 S.C. 433, 633 S.E.2d 143 (2006), controlled. Counsel for the medical defendants agreed with Respondent on the applicability of *Jeter*, and sought to bring themselves within the statutory and caselaw parameters for changing venue, specifically acknowledging:

> 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 venue may only be transferred if there exists some statutory grounds for the transfer. . . .*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 that 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.*

(emphasis supplied). (R. p. 433, lines 3-15). Appellants' counsel continued with this argument: "[W]e believe there is a mechanism that equity and justice and fairness require this case be moved to Florence County." (R. p. 435, lines 8-10).[11]

[11] In response to a question from Judge DeBerry as to why a future Marion County jury could not be fair and impartial, Appellants conceded this point on the record. (R. p. 435, line 14). This concession formed a cornerstone of his ultimate ruling, with Judge DeBerry noting in his Order:

> During the hearing of the Motion, counsel for the Medical Defendants agreed that a fair and impartial trial could be had in Marion County. Accordingly, the Court finds that the Medical Defendants have failed to make the necessary showing that "there is reason to believe that a fair and impartial trial cannot be had" in Marion County.

(R. p. 9).

Thus, during arguments on Appellants' motion for a change of venue, only the *Jeter* case and S.C. Code Section 15-7-100 were argued.[12] The framework both sides agreed controlled Judge DeBerry's decision was, in the words of Appellants' counsel, whether "equity and justice and fairness require this case to be moved to Florence County." (R. p. 435, lines 8-10). Additionally, while Appellants' counsel did assert their clients' rights to be tried in the county of their residence, the first time the case of *Chestnut v. Reid*, 299 S.C. 305, 384 S.E.2d 713 (1989), was mentioned was in their proposed order. Conspicuously 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. Nor did Appellants' counsel ask Judge DeBerry to overrule *Jeter*. However, on appeal, both Appellants make a new and markedly different argument than that made before Judge DeBerry. Appellant McLeod now asserts: "Importantly, *Jeter*, while decided in 2006, did not interpret the venue statutes adopted as part of the 2005 tort reform at which time the venue statutes were entirely re-written and were of particular focus during the General Assembly's debate." (McLeod Br., pp. 8-9). And Dr. Trant now argues: "Initially, *Jeter* is inapplicable because it construed a prior version of the venue statute, which has been materially amended." (Trant Br., p. 29). Neither of these arguments can be found anywhere in the transcript of the hearing on the motion before Judge DeBerry nor in the proposed order submitted for his signature. Arguments on this motion were held in September 2024, so Appellants had YEARS to discern and formulate these arguments to Judge DeBerry, but they did not. Even

[12] While Appellants cited section 15-7-30 in their written motions, the argument before the trial court focused on the interests of justice and convenience of the witnesses. Further, Appellants never asserted to the trial court that the 2005 amendments changed the law. The record demonstrates the parties and the trial court focused on the factual circumstances of *Jeter*, and Appellants never argued to the trial court that *Jeter* was no longer good law. Nor did Appellants raise the issue that the law had been changed in their Rule 59(e) motion.

though new arguments cannot be raised in post-trial motions, Appellants in their Rule 59(e) motion did not argue to the trial court that *Jeter* was superseded by the 2005 amendments. In other words, Appellants ask this Court to reverse the circuit court on an issue that was neither raised nor decided.

Accordingly, Respondent's threshold argument in response to the arguments of Appellants concerning change of venue is that they are not preserved for appellate review. An appellant cannot make one argument at trial and another, different argument on appeal, but that is precisely what the Appellants are attempting to do here. They should not succeed in this endeavor. *See, e.g.*, *State ex rel. Wilson v. Ortho-McNeil-Janssen Pharm.*, 414 S.C. 33, 60, 777 S.E.2d 176, 190 (2015) (finding an issue unpreserved where the appellant "argues a different basis on appeal than was argued at trial"); *Wilburn v. Wilburn*, 403 S.C. 372, 386 n.2, 743 S.E.2d 734, 742 n.2 (2013) ("[An] appellant cannot argue one ground at trial and another ground on appeal."); *Carson v. CSX Transp. Inc.*, 400 S.C. 221, 243, 734 S.E.2d 148, 160 (2012) ("[A]n appellant cannot change or add to the arguments he made at trial on appeal."); *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) ("A party may not argue one ground at trial and an alternate ground on appeal.").

The transcript of the hearing before Judge DeBerry demonstrates that the arguments now asserted were never raised to him. Judge DeBerry had no opportunity to rule on these arguments because they were not presented to him, and Appellants' request that he be reversed on this basis should be summarily denied. *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 660, 661 S.E.2d 791. 800 (2008) ("Because these issues were neither raised to nor ruled upon by the circuit court judge, we find they were not properly preserved for our review.")

Even assuming this Court addresses the arguments about change of venue, they should be rejected because Judge DeBerry was correct on the merits and in basing his decision on *Jeter*. The

facts of *Jeter,* including the procedural posture*,* are much more analogous to this case than are the facts presented in *Chestnut*.

In *Jeter*, the plaintiffs filed suit against the South Carolina Department of Transportation after their car was struck by another vehicle traveling on a recently resurfaced road in Union County. SCDOT then filed a third-party complaint against the driver of the other vehicle, who, in turn, filed a counterclaim against SCDOT for the injuries she received in the crash. After settling with the Jeters, the third-party complainant filed an amended answer and counterclaim, alleging that venue in Union County was improper and should now be transferred to Fairfield County, the county of her residence. The circuit court granted the motion for a change of venue, and SCDOT appealed. The Court of Appeals upheld the change in venue, but the South Carolina Supreme Court reversed, holding that while a defendant does have a substantial right to be tried in the county of his residence under to S.C. Code Section 15-7-30, "where 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." 369 S.C. at 442, 633 S.E.2d at 148. That is exactly the situation here where there were multiple defendants residing in both Florence and Marion Counties, and Respondent properly brought the action in Marion County.

The similarities between the facts here and those in *Jeter* are striking. Both involved multiple defendants and a settlement between the plaintiff and one of the defendants. In both cases there was no question that initially, the actions were filed in a proper venue. In both cases, the remaining defendants moved for a change of venue based on the substantial right of a defendant to be tried in the county of his or her residence. The Supreme Court was very clear in its opinion

that because the Jeters properly initiated their action in Union County, the lower court abused its discretion by transferring venue.[13]

Appellants' argument in their briefs that the motion for a change of venue should have been granted as a matter of law under *Chestnut* is unavailing because the facts and procedural posture of that case are substantially different from the case here. *Chestnut* also involved a motor vehicle accident. The accident occurred in Horry County, and, importantly, Chestnut improperly brought the action there rather than in York County, the county of the defendant's residence. The trial judge denied the defendant's motion for a change of venue, holding that although a defendant's right to have venue changed to his home county is a substantial right, it is not absolute, and the court has discretion to consider the convenience of the witnesses and the interest of justice. The South Carolina Supreme Court reversed, holding that under those facts, *where an action had been instituted in the wrong county*, the right of a defendant to have a case tried against him in the county in which he resides is a substantial right and, as a matter of law, venue should have been changed. That factual scenario is completely different than the one presented here where all parties acknowledge that the action was properly begun in Marion County.

The *Jeter* decision was issued seventeen years after the decision in *Chestnut* and does not rely on *Chestnut* at all,[14] likely because the facts and the procedural posture of the two decisions are so dissimilar. If Appellants were correct that review of a trial court's decision on a motion for change of venue when suit was originally instituted in a proper venue was as a matter of law, the

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[13] In a footnote, the *Jeter* Court stated that the parties were not precluded from bringing a subsequent motion under S.C. Code Section 15-7-100—the precise statutory framework argued to Judge DeBerry by both parties here—to change venue based on the convenience of witnesses and the promotion of justice. 369 S.C. at 443, 633 S.E.2d at 148.

[14] Respondent acknowledges that the *Jeter* decision does mention *Chestnut* in a footnote but only on a different point of law irrelevant here. In no way does the *Jeter* Court rely on *Chestnut* for the basis of its decision.

Court in *Jeter* would have said so. Instead, the *Jeter* opinion employed an abuse of discretion standard of review in a case whose facts are strikingly similar to those presented here. *Jeter*, 369 S.C. at 437, 633 S.E.2d at 145 (noting an appellate court will not disturb a trial court's decision on a motion to change venue "unless a manifest abuse of discretion is found resulting in an error law").

In *Jeter*, SCDOT argued just as Respondent argued here, that it would be error to transfer venue when the original venue was proper. The Supreme Court, while acknowledging that a defendant has a substantial right to be tried in the county of his residence, cited to this longstanding principle of law:

> [T]he general rule is that where an action is properly instituted in a county other than that of the defendant's residence, a defendant has no right to request a change of venue to the county of his or her residence on the ground that the action was not brought in a proper county, even if the action could also have been commenced in the county where the defendant resides.

Id. at 442, 633 S.E.2d at 148 (quoting 92A C.J.S. Venue § 163). Judge DeBerry's Order Denying Defendants' Motion for Change of Venue correctly relied on *Jeter* in holding that "[i]t is undisputed that this action was properly commenced in Marion County in which one of the defendants resided at the time of commencement of the action. . . . 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." (R. p. 8). Judge DeBerry found *Jeter* to be compelling precedent, not only because both sides treated it as the appropriate legal framework, but also because it likewise involved a suit that was initially properly instituted, a vastly different situation than in *Chestnut*, where an action was brought improperly in the county where the accident occurred. Judge DeBerry correctly held that Appellants' reliance on *Chestnut* was "misplaced" because unlike the present action, "[t]he sole

defendant in that action was a resident of York County, which causes *Chestnut* to be entirely distinguishable and inapplicable to the situation presented here." (R. p. 8).

In summary, Respondent contends the arguments advanced by the Appellants before this Court were never raised to Judge DeBerry and therefore are unpreserved. Even on the merits, the arguments fail because Judge DeBerry was correct in holding that these facts are much more aligned with those of *Jeter* than those of *Chestnut*, where the action was instituted in an improper venue. Only under those circumstances is a change of venue warranted as a matter of law.[15] As a final, desperate attempt to persuade this Court, Appellant Trant argues that if this Court does not accept his unpreserved argument that the 2005 amendments to the venue statutes altered the holding in *Jeter,* or that this case is controlled by *Chestnu*t rather than *Jeter*, then *Jeter* should be overruled. That argument, akin to a Hail Mary pass, is not available to Appellants because this request was never raised to Judge DeBerry and also because the court of appeals does not have "authority to overrule Supreme Court precedent." *Caldwell v. Wiquist*, 402 S.C. 565, 570, 741 S.E.2d 583, 586 (Ct. App. 2013) ("This court has 'no authority to overrule Supreme Court precedent'…. Thus, we decline to address Wiquist's argument that the *Yates* line of cases should be overruled.") (internal citation omitted). Therefore, this Court should not entertain this argument.

Judge DeBerry thoughtfully considered all arguments made to him and removed any potential problem with the initial jury selected by dismissing it. He found that *Jeter* controlled and that Appellants' reliance on *Chestnut* was misplaced. He did not consider what effect, if any, the 2005 amendments to the venue statute might have because that argument was never raised to him.

[15] Thus, Appellants are also mistaken in their asserted standard of review. *Jeter* made clear that the standard of review of a motion to change venue in a situation where the action was properly initiated is abuse of discretion, not de novo as a matter of law. *Jeter*, 369 S.C. at 438, 633 S.E.2d at 145.

In finding that the case could be fairly and justly tried by a Marion County jury, he considered not only Appellants' counsel's express concession on that point, but also the state of the trial docket in Marion County as opposed to Florence County, noting on the record that the case would be tried much sooner in Marion County, which would serve the ends of justice. He did not abuse his discretion in denying Appellants' motion for a change of venue and his well-reasoned order should be affirmed.

II. The trial court did not err in submitting this case to the jury and denying Appellants' motions for JNOV or a new trial as to proximate cause and gross negligence because ample evidence existed to create a quintessential jury issue on these matters.

The standard of review when considering a trial court's ruling on a motion for directed verdict or JNOV is limited and mirrors that of the trial court. The evidence and all reasonable inferences that can be reasonably drawn from it must be viewed in the light most favorable to the non-moving party, and if, through that lens, more than one reasonable inference can be drawn or the inferences to be drawn therefrom are in doubt,[16] the case should be submitted to the jury. *See, e.g.*, *RFT Mgmt. Co., LLC v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 332, 732 S.E.2d 166, 171 (2012) ("The trial court must deny a motion for a directed verdict or JNOV if the evidence yields more than one reasonable inference or its inference is in doubt."); *Gastineau v. Murphy*, 331 S.C. 565, 568, 503 S.E.2d 712, 713 (1998) ("A motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict."). Appellate review of the denial of a motion for a new trial absolute or a new trial based on the thirteenth juror doctrine is similarly limited in that it is reviewed for abuse of discretion. *See, e.g.*, *Sapp v. Wheeler*, 402 S.C. 502, 513, 741 S.E.2d

[16] To be clear, Respondent does not rely solely on possible inferences that might be drawn from the evidence presented. Rather, Respondent relies on the strong and unwavering testimony of Dr. Chang that Dr. Trant breached the standard of care of a pediatric cardiologist and that breach proximately caused the death of Taylor Price.

565, 571 (Ct. App. 2013) ("A trial [court]'s order granting or denying a new trial upon the facts will not be disturbed unless [its] decision is wholly unsupported by the evidence, or the conclusion reached was controlled by an error of law.") (quoting *Vinson v. Hartley*, 324 S.C. 389, 403, 477 S.E.2d 715, 722 (Ct. App. 1996)).

Respondent and Appellants do not disagree on the prevailing standard of review over the trial court's rulings on these issues; rather, our disagreement is grounded on our divergent views of the evidence adduced at trial. In order to accept Appellants' arguments that this case should have been decided as a matter of law by the court rather than by a jury, this Court would have to completely disregard the very credible expert testimony presented by Dr. Anthony Chang. Dr. Chang provided ample evidence of both proximate cause and gross negligence by Dr. Trant.

That Dr. Chang was highly qualified to provide expert testimony in the field of pediatric cardiology is clear. Appellants did not object to his qualifications, and it would have been virtually impossible to do so. His academic qualifications were most impressive. After studying molecular biology at Johns Hopkins, Dr. Chang went to medical school at Georgetown.[17] (R. p. 720, lines 13-21). Following his pediatric residency at the Children's National Medical Center in Washington, D.C., Dr. Chang did a pediatric fellowship at the Children's Hospital in Philadelphia. (R. p. 721, lines 2-8). His first job after the fellowship was at Children's Hospital in Boston, which is associated with Harvard Medical School. (R. p. 721, lines 9-24).

His experience in the field of pediatric cardiology, particularly concerning ARVD, establishes him as one of the nation's leading experts in this area. As the director of the heart failure program at the Children's Hospital in Orange County for the past twenty years, Dr. Chang

[17] Dr. Chang also has a master's degree in public health and a master's degree in business administration. (R. p. 722, lines 2-5).

regularly sees patients and has diagnosed ARVD in approximately one or two dozen cases. (R. p. 725, line 9-p. 726, line 20; p. 729, lines 9-25). In addition, he teaches medical students in his weekly clinics and has also written numerous articles and textbooks on cardiac intensive care and pediatric cardiology, specifically on the diagnosis of ARVC.[18] (R. p. 726, lines 1-20). Dr. Chang first served as an expert witness in 1990 and has done so in approximately twenty cases since that time. (R. p. 726, line 21-p. 727, line 8).

Dr. Chang carefully explained to the jury the importance of the relationship between exercise and heart-related symptoms, testifying that it is definitely a "red flag" and something that should be taken "very seriously." (R. p. 728, line 25-p. 729, line 3). And particularly as it related to Taylor Price, Dr. Chang stated: "When a young person comes to us with complaints of chest pain, or dizziness, or palpitations with exercise, then we take it even more seriously because that's concerning." (R. p. 730, lines 18-20). Dr. Chang noted that Taylor's case did not involve a fainting spell while sitting in class; all four episodes were associated with exercise. (R. p. 738, lines 21-25). As he explained, "[E]xertional syncope[19], exertional chest pain is much more likely to have a cardiac or a pulmonary reason for the pain or the dizziness than someone who is just having interim chest pain just sitting and not exercising." (R. p. 738, line 25-p. 739, line 4).

Dr. Chang unequivocally testified that Dr. Trant breached the standard of care of a pediatric cardiologist when he failed to perform or order any tests on Taylor, given her four episodes of syncope or near syncope, all of which occurred while she was playing basketball. (R. p. 742, line

[18] Dr. Chang testified that ARVD and ARVC are "virtually the same thing." (R. p. 729, lines 4-10).

[19] Syncope is another word for fainting or passing out. According to Dr. Chang, syncope is "loss of consciousness, or near syncope which is coming close to loss of consciousness. All of that is essentially virtually the same in terms of the significance of the symptom to warrant a full cardiac workup." (R. p. 744, lines 12-15).

10-p. 744, line 18). The referral order from Dr. Bahan stated under diagnosis that Taylor has suffered "syncope and collapse." (R. p. 756, lines 8-10). Dr. Chang testified that the information presented to Dr. Trant revealed "[r]epeated exertion-related symptoms including syncope and chest pain and difficulty breathing." (R. p. 757, lines 15-22). In Dr. Chang's expert opinion, a full cardiac workup was warranted, including an EKG, echocardiogram or MRI, and exercise testing. (R. p. 744, lines 15-18; p. 768, lines 5-13). Yet in the less than fifteen minutes that Dr. Trant saw Taylor, he did none of these things. (R. p. 757, line 23-p. 758, line 13).

Regarding Dr. Trant's performance of a PPE on Taylor to determine whether it was appropriate for Taylor to play sports, Dr. Chang cited the well-regarded guidebook endorsed by the American Academy of Pediatrics, the American Academy of Physicians, and the American Heart Association, which contains bullet points for physicians in performing physical evaluations for sports. (R. p. 758, line 14-p. 760, line 20). Importantly, one of the principal bullet points states: "[W]arning symptoms that require cardiac workup before returning to exercise include exertional chest pain, exertional syncope, or near syncope, unexplained seizures, excessive dyspnea, or fatigue disproportionate to the level of exertion, and palpitations or irregular heartbeats." (R. p. 760, lines 3-7). Dr. Chang testified that whether or not to do a cardiac workup in the presence of these symptoms is not optional. (R. p. 760, lines 18-20). The key point, according to Dr. Chang, is when these symptoms are presented with exertion: "We see quite a few patients with chest pain not during exertion, and that's up to the discretion of the cardiologist to work up. But in this case, and especially since its repeated episodes of exertional chest pain, I think that takes any doubt out of any clinician that this should be worked up." (R. p. 760, line 24-p. 761, line 4).

Dr. Chang testified, repeatedly and without objection, that given Taylor's four episodes of syncope or near syncope within approximately one year—all during exertion—Dr. Trant should

have done "a full cardiac workup" and a "careful and thorough cardiovascular evaluation." (R. p. 744, lines 15-18; p. 761, line 5-p. 765, line 16). In his opinion, this was not optional; it was mandatory. (R. p. 763, lines 16-22). The jury was well-informed by Dr. Chang concerning the red flag that Dr. Trant should have recognized when he knew Taylor had experienced four episodes of syncope or near syncope during exertion. As Dr. Chang stated: "Syncope occurring during exercise is an ominous sign and warrants a high index of suspicion for underlying cardiac disease." (R. p. 768, lines 20-22). Dr. Chang testified that he was absolutely certain that Dr. Trant deviated from the standard of care by failing to perform a cardiac workup. (R. p. 770, lines 8-14). In fact, in Dr. Chang's opinion, any one of Taylor's four episodes warranted "a complete workup," and Dr. Trant was "significantly inadequate" in not doing so. (R. p. 771, lines 5-12). Additionally, Dr. Chang testified that he viewed Dr. Trant's failure to do a cardiac workup and his signing off on Taylor's return to sports as two separate and distinct failures. (R. p. 764, line 17-p. 765, line 2). Finally, Dr. Trant testified that in his professional medical opinion, to a reasonable degree of medical certainty, Dr. Trant's failures caused the death of Taylor Price. (R. p. 772, lines 9-15). When asked what would have happened if Taylor had received proper medical care, Dr. Chang testified without hesitation that "she would be alive today." (R. p. 772, lines 12-15).

Moreover, Dr. Trant's own testimony provides compelling evidence of his gross negligence. As to his failure to order any testing on Taylor, Dr. Trant unequivocally testified that he did not "accidentally forget" to order tests, and that he consciously made that decision. (R. p. 1124, line 20-p. 1125, line 25). In his words: "I did not forget to do it because it was not indicated." (R. p. 1124, line 23). He stated: "I made a choice based upon my evaluation of the patient. She had non-cardiac complaints, as we have described in other parts of the testimony, and we don't do cardiac tests when the patient has noncardiac issues." (R. p. 1125, lines 17-20).

Finally, there was evidence presented that Dr. Trant did not review Dr. Bahan's referral order prior to Taylor's visit. One of the Requests to Admit asked: "Admit that you did not view the medical records from Taylor Price's primary care physician, Dr. Marc Bahan, as part of the evaluation and treatment that you provided to Taylor Price on January 24th, 2019." (R. p. 945, lines 6-12). The Response: "Admitted." (R. p. 945, line 12). It was established that if a physician reviews a record, that can be seen in the electronic trail. (R. p. 942, lines 1-3). Dr. Trant was cross-examined about the electronic audit trail of Taylor's visit, and responded "Nope" when asked if he saw anything with his name in either of the two columns discussing the referral document. (R. p. 1091, lines 9-15). In response to the question that there was no evidence in the electronic audit trail that he looked at the referral order, Dr. Trant stated, "Yes." (R. p. 1091, lines 16-20). Dr. Trant's expert witness, Dr. Nicole Cain, testified that she would have reviewed all available records before making a diagnosis. (R. p. 1031, lines 23-25). In fact, she stated that if records were available, "[i]t would be rare" for a doctor not to have reviewed them. (R. p. 1019, lines 15-16). Dr. Trant's expert witness, Dr. Claudius Shuler, also testified that his own method would be "to review as many records as I can get." (R. p. 939, lines 20-22).

Dr. Chang's testimony provides more than ample evidence to warrant submission of this case to the jury on the issues of both proximate cause and Dr. Trant's gross negligence. Indeed, it is hard to fathom a more credible or qualified expert witness than Dr. Chang or stronger testimony from an expert on a doctor's breach of the standard of care. Dr. Chang testified compellingly what the standard of care required of a pediatric cardiologist under these circumstances, and rather than adhering to that standard of care, Dr. Trant, without conducting or ordering any testing, summarily advised Taylor to stay hydrated and breathe into a paper bag. It was for the jury to determine whether Dr. Trant's failure to do any cardiac workup and his clearance of her to return to sports

proximately caused her death. It was also a jury issue as to whether Dr. Trant's breach of the standard of care constituted gross negligence. Apart from Dr. Chang's testimony, Dr. Trant's own testimony and that of his expert witnesses created a clear jury issue as to whether Dr. Trant's failure to review the referral order from Dr. Bahan was grossly negligent.

The seasoned trial judge, who adhered to the lens through which he was to view the evidence presented, was absolutely correct in denying Appellants' motions for directed verdict, JNOV, and for a new trial absolute or a new trial based on the thirteenth juror doctrine. This Court should affirm his decision. Moreover, this Court should soundly reject the suggestion in Appellant Trant's brief that the trial court assumes a different role when assessing the sufficiency of the evidence of gross negligence. (Appellant Trant's Br., p. 21) ("A trial judge should usually give deference to a jury's deliberations. However, the judge serves a critical gatekeeping function where, as here, the results of a finding of gross negligence are so dire as to strip the Defendant of the protections that the law accorded him as an employee of a charitable organization.").[20] Appellant Trant cites no authority for this heightened standard of review, and there is none. Even if the trial judge should be held to a higher standard in cases such as this—a proposition with which Respondent disagrees—the experienced trial judge here fulfilled his role as a gatekeeper in analyzing the ample evidence presented of gross negligence.

III. The trial court did not err in submitting the question of the number of occurrences to the jury because this was a factually driven issue that should not have been decided as a matter of law.

Appellant McLeod argued at trial and now argues to this Court that the number of occurrences was an issue that should have been decided as a matter of law by the trial court, and

[20] Respondent notes that in making this argument, Appellants arguably concede that, upon a finding of gross negligence, the employee—Dr. Trant here—is not afforded the benefit of the statutory cap.

the court erred in submitting this question to the jury. Respondent asserts this was an issue properly submitted to the jury in the face of conflicting evidence, and that here, Dr. Chang's testimony that Dr. Trant breached the standard of care in two distinct ways—for failing to perform a cardiac workup on Taylor and in clearing her to return to sports—supports the trial court's decision to permit the jury to determine the number of occurrences. Jurisprudence also bolsters Respondent's position.

The definition of an occurrence is clearly and succinctly set forth in the South Carolina Tort Claims Act (SCTCA) as "an unfolding sequence of events which proximately flow from a single act of negligence." S.C. Code Ann. § 15-78-30(g). Accordingly, two things are required for there to be an occurrence—an unfolding sequence of events AND a single act of negligence. Because Dr. Chang indisputably testified to two separate acts of negligence by Dr. Trant, there was evidence presented of more than one occurrence, and the trial court properly submitted the issue of the number of occurrences to the jury, which specifically found that there was more than one.

Appellant McLeod cites two cases in support of its argument that the trial court should have resolved this issue as a matter of law, neither of which should be persuasive to this Court. *Campbell v. City of North Charleston*, 431 S.C. 454, 848 S.E.2d 788 (Ct. App. 2020); *Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276, 607 S.E.2d 711 (Ct. App. 2005). Neither *Parker* nor *Campbell* add anything to McLeod's position that the number of occurrences here should have been decided as a matter of law.

The *Parker* case concerned whether a defendant was required to plead the statutory cap under the SCTCA as an affirmative defense. There, the defendant moved during trial to amend its answer to assert the cap, and the trial judge denied the motion and entered judgment without applying the cap. On appeal, this Court reversed, holding that "the monetary statutory cap is self-

executing, and the court is required to apply [it]" regardless of whether or not it has been pled. 362 S.C. at 282-85, 607 S.E.2d at 714-16, 718. The issue of whether a statutory cap must be pled as an affirmative defense or is "self-executing" and thus applied as a matter of law by the court, is not probative on whether the number of occurrences should be decided by a jury or as a matter of law by the court. Thus, this holding is irrelevant to the question presented here.

Similarly, in *Campbell*, this Court ruled that the statutory cap is applied regardless of whether it is pled as an affirmative defense. Even though the defendant in *Campbell* had not filed an answer, this Court rejected the plaintiff's argument that the defense of the cap was waived upon entry of default and reiterated its holding in *Parker* that the cap was self-executing, even in the face of default. Again, *Campbell*, like *Parker*, has nothing to do with whether the number of occurrences should be decided by a trial judge or by a jury, and Appellant McLeod's insistence that these two cases are controlling is unavailing and perplexing.

The two cases which *are* relevant to determining whether the number of occurrences should be decided as a matter of law or by a jury, both decided by the South Carolina Supreme Court, are *Chastain v. AnMed Health Foundation*, 388 S.C. 170, 694 S.E.2d 541 (2010), and *Boiter v. South Carolina Department of Transportation*, 393 S.C. 123, 712 S.E.2d 401 (2011). Both of these cases provided guidance to the trial court as to how to handle this issue.

In *Chastain*, the plaintiff brought a medical malpractice suit against AnMed, a charitable institution, and six nurses, after her left leg was amputated due to a severe sacral pressure sore she developed at AnMed. Following a verdict against AnMed for $2.2 million dollars, a finding that the plaintiff was 30% at fault, and a verdict for the six nurses, the trial court reduced the verdict to $1.54 million to reflect the jury's finding of plaintiff's negligence, and AnMed moved to reduce the verdict to the statutory cap of $300,000. The trial court reduced the verdict accordingly,

holding that from the jury instruction and the verdict forms, it was impossible to determine whether the jury found more than one occurrence. The South Carolina Supreme Court held that the trial court correctly reformed the verdict to reflect a single occurrence, stating:

> Just as in any tort action, a CFA plaintiff bears the burden of proof. If she alleges multiple occurrences, that is, that there was more than one single act of negligence from which proximately flowed from an unfolding sequence of events, she bears the burden of proving each occurrence. Here the jury was never instructed on the definition of occurrence nor was it asked to determine whether there was more than one occurrence, either in the instructions or in its verdict.

388 S.C. at 174, 694 S.E.2d at 543-44.

Therefore in *Chastain*, it was impossible to discern from the record that there was more than one occurrence. The jury was not instructed on the definition of occurrence nor was it asked to determine whether there was more than one occurrence. This is completely different from the situation here where two separate occurrences were alleged at the outset, proof was adduced at trial that Dr. Trant breached the standard of care in two distinct ways, the jury was instructed on the definition of occurrence,[21] and the jury specifically found there had been two separate occurrences.[22] (R. pp. 80-81; p. 764, line 18-p. 765, line 2; p. 1203, lines 8-16; p. 1213, line 24-p. 1214, line 1). In this case, Respondent's attorneys, the trial court, and the jury did everything that the Supreme Court noted was not done in *Chastain*.

It is also crystal clear that the trial judge here thoroughly understood his role in determining whether to submit the issue of the number of occurrences to the jury. During the directed verdict motion, counsel for McLeod asked Judge Cothran not to give the jury an opportunity to find

[21] In addition to defining the term occurrence, the trial judge instructed the jury that: "The plaintiff has the burden of proving that each act of negligence was separate and independent in order for you to find that more than one occurrence occurred." (R. p. 1203, lines 13-16).

[22] This language is taken from the jury's verdict: "Having been instructed by the Judge on the definition of an occurrence, do you find there was more than one occurrence? Yes." (R. p. 1213, line 24-p. 1214, line 1).

multiple occurrences. (R. p. 1149, lines 9-13). In denying the motion, the trial judge exhibited his excellent grasp of both the facts adduced at trial and the prevailing law when he stated:

> As far as the occurrence is concerned, my understanding of the law is it is a judicial decision, as long as there is no other reasonable act that can be determined from the facts in this case. Basically, what has been argued throughout this case and the plaintiff is (sic) argued that there are possibly two occurrences. One was the visit that he made with the client, Taylor, and the fact that he did not order sufficient testing is one potential occurrence. The next potential occurrence is the fact that he signed a form saying she could return to athletics . . . . I think there are facts in this record that it's turning into a factual question for the jury based on the *Chastain* case, as well as others that it now becomes a jury question as to whether there was more than one occurrence.

(R. p. 1150, lines 1-19).

The second explication of the issue of occurrences from the South Carolina Supreme Court that is relevant here is the opinion in *Boiter*, issued the year following *Chastain*. The facts in *Boiter* are quite different than those presented here because there, two separate governmental entities—South Carolina Department of Transportation (SCDOT) and South Carolina Department of Public Safety (SCDPS)—allegedly committed two separate and distinct acts of negligence which proximately caused injuries to the plaintiffs. The Boiters were injured when the motorcycle they were riding collided with another vehicle at an intersection because the red signal light bulbs for the road the other driver was driving on had burned out earlier that day. SCDOT was sued because it failed to implement an appropriate re-lamping policy, and SCDPS was sued because it failed to act on a citizen's report of the outage over an hour before the incident. A jury found in favor of both plaintiffs, awarding the Boiters a total of $1.875 million dollars. In response to the defendants' post-trial motions for JNOV, a new trial, and to reduce the verdict under the SCTCA, the Boiters claimed, in addition to challenging the constitutionality of the cap, that there were two separate occurrences under the Act. The trial court found only one occurrence, and the South Carolina Supreme Court reversed.

Although Appellant McLeod appears to rely on *Boiter* for its argument that only the trial court can decide the number of occurrences, *Boiter* does not state that. Because of the procedural posture of *Boiter*—the trial court found only one occurrence and the Supreme Court reversed—the appellate court held the number of occurrences could be determined as a matter of law "based on the peculiar facts" of that case. *Id.* at 133, 712 S.E.2d at 406.[23]

This reasoning applies to the facts presented here. Dr. Chang provided expert testimony of two separate breaches of the standard of care by Dr. Trant. (R. p. 771, line 15-p. 772, line 15). In the face of that evidence, the trial court properly instructed the jury on the definition of occurrence and submitted to it a verdict form which included a specific question on that issue. (R. pp. 179-80). The jury found two separate and distinct acts of negligence—two occurrences. (R. p. 180). As Respondent's position had consistently been that there were two separate occurrences, and Dr. Chang's testimony unequivocally supported that position, the trial court correctly submitted this issue to the jury—and the jury properly resolved it.

This Court has recently wrestled with the issue of occurrences and affirmed the trial court's determination that the jury had correctly found two occurrences of negligence. *Wood v. Horry*

[23] Even though *Boiter* involved two entities, which was relevant to the Court's decision, that fact alone was not dipositive. The below passage constitutes the nut of the *Boiter* decision:

> Based on the facts presented here, we cannot see how SCDOT's negligent act "unfolded" into SCDPS' negligent act. SCDPS only became involved due to a citizen call regarding the burned-out light bulb; SCDOT never called SCDPS regarding the light, and SCDPS never informed SCDOT about the citizen call. We can find no causal connection between the actions of SCDOT and SCDPS; had the jury not found SCDOT negligent, the verdict against SCDPS could still stand, and the converse is also true. Therefore, we do not believe that these two separate and independent acts of negligence constituted an unfolding sequence of events which injured the Boiters.

Boiter, 393 S.C. at 134, 712 S.E.2d at 407.

County School Dist., Memorandum Op. No. 2024-MO-023 (Oct. 9, 2024). Although the opinion is unpublished and therefore not argued by Respondent as precedent, it does undermine Appellant McLeod's argument that this is an issue to be determined as a matter of law by the court rather than submitted to a jury, particularly when *Wood* involved exactly the same arguments raised by the very same attorney. Not only were these arguments rejected by this Court, but the South Carolina Supreme Court also rejected them by holding that certiorari was improvidently granted in the matter. *Wood v. Horry County*, Memorandum Op. No. 2024-MO-023 (Oct. 9, 2024).

Even federal courts considering this issue have recognized the relevance of *Chastain* and *Boiter* and have relied on them in addressing this same issue. *Knox v. United States*, No. 0:17-cv-36-CMC, 2018 U.S. Dist. LEXIS 111445 (D.S.C. 2019) ("If Plaintiff presents evidence at trial to support more than one act of negligence, the jury will be instructed on the definition of occurrence and asked to determine whether Plaintiff has proven more than one occurrence."); *W.S. v. Daniels*, No. 8:16-cv-01032-DCC, 2019 U.S. Dist. LEXIS 183894, at *7 (D.S.C. Oct. 24, 2019) (holding where there was evidence to support a finding that there had been more than one occurrence, the jury was properly instructed on the definition of occurrence and asked to determine how many occurrence the plaintiff had proven).

Therefore, under the prevailing law on the issue of multiple occurrences as well as the facts presented here through the expert testimony of Anthony Chang, the trial court properly submitted this issue to the jury. His decision should be affirmed.

IV. The trial court did not err in charging the jury on gross negligence and declining to give a selectively edited portion of the South Carolina Solicitation of Charitable Funds Act.

a. Appellants did not place the jury charge conference on the record, and therefore, Appellants' arguments are not preserved for review.

As a threshold matter, Appellants failed to place the charge conference on the record, and thus it is impossible for this Court to review the trial court's decisions concerning the propriety of jury instructions. South Carolina law is clear 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." *Smalls v. State*, 422 S.C. 174, 182 n.3, 810 S.E.2d 836, 840 (2018); *see also State v. Washington*, 431 S.C. 394, 405 n.4, 848 S.E.2d 779, 785 (2020) ("[W]e stress the importance of placing on the record arguments and rulings that took place off the record, whether during a bench conference, in emails, or in chambers.").

The record does not include the parties' arguments on Appellants' requested charge or the trial court's reasons for declining to give the charge. Therefore, any argument about the trial court's jury instructions is unpreserved.

b. The trial court's gross negligence jury instruction is prevailing law.

Even without this monumental preservation hurdle, Appellants cannot demonstrate the trial court erred. The experienced trial court judge charged the jury exactly what the law requires: "[t]he trial judge is required to charge only the current and correct law of South Carolina." *McCourt by & Through McCourt v. Abernathy*, 318 S.C. 301, 306, 457 S.E.2d 603, 606 (1995). The trial court charged:

> Gross negligence is the intentional and conscious failure to do something perceived as 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, excuse me, is a relative term. It means the absence of care which 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 not to do, or the doing of something one ought to do or something one ought not to do. A defendant is guilty of gross negligence if he is so indifferent to the consequences in his conduct he is not -- he is not to give slight care as to what he is doing.

(R. p. 1202, line 18-p. 1203, line 7).

There is no dispute that the charge given represents the law in this state; and even Appellants acknowledge a long list of decisions defining gross negligence precisely as the trial court instructed the jury in this case. *See, e.g.*, *Bass v. S.C. Dep't of Soc. Servs*., 414 S.C. 558, 571, 780 S.E.2d 252, 259 (2015) ("Gross negligence has also been defined as a relative term, and means the absence of care that is necessary under the circumstances."); *Berberich v. Jack*, 392 S.C. 278, 287 n.1, 709 S.E.2d 607, 612 (2011) (same); *Doe v. Greenville Cty. Sch. Dist*., 375 S.C. 63, 71, 651 S.E.2d 305, 309 (2007) (same); *Steinke v. S.C. Dep't of Labor, Licensing and Regul.*, 336 S.C. 373, 395, 520 S.E.2d 142, 153 (1999) (same).

Appellants contend juries have been charged incorrectly on gross negligence for over seventy years despite the legion of cases defining gross negligence just as the trial court did here. Even assuming the gross negligence charge contains a problematic phrase, which Respondents strenuously reject, Appellants' argument still fails because the charge as a whole is correct. A charge must be read as a whole rather than dissected and taken out of context. *See, e.g*., *Keaton v. Greenville Hosp. Sys*., 334 S.C. 488, 497, 514 S.E.2d 570, 575 (1999) ("In reviewing jury charges for error, we must consider the court's jury charge as a whole in light of the evidence and issues presented at trial. If, as a whole, the charges are reasonably free from error, isolated portions which might be misleading do not constitute reversible error."); *McCourt by & Through McCourt v. Abernathy*, 318 S.C. 301, 306, 457 S.E.2d 603, 606 (1995) ("Refusal to give a properly requested charge is not error if the general instructions are sufficiently broad to enable the jury to understand the law and the issues involved.").

In addition to distinguishing negligence in the gross negligence charge,[24] the trial court also fully charged the jury on negligence as follows:

> Negligence is 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, or the doing of something that an ordinary careful and prudent doctor would not have done under the same and similar circumstances . . . A doctor is not responsible for the lack of success of a particular treatment, unless that lack of success resulted from his failure to exercise ordinary skill and care in the treatment of the patient.

(R. p. 1199, lines 17-21; p. 1200, lines 3-7). The trial court's general negligence charge, which was detailed and encompassed over five pages in the record, included:

- [M]edical malpractice is a form of negligence that consists of not applying the degree of skill and care which is ordinarily employed by those in the medical profession under similar circumstances and in the like surrounding circumstances. (R. p. 1196, line 23-p. 1197, line 2).

- During the existence of the physician/patient relationship, a physician is under a duty to give the patient all the necessary care as long as the patient requires attention. A lack of diligence in attending to the patient at the assumption of the care renders the physician liable for negligence or malpractice. (R. p. 1198, lines 8-13).

- A patient who is treated by a physical is entitled to a thorough and careful examination as permitted by the circumstance with such diligence and methods for discovering the nature of the ailment as are usually approved and practiced by physician of ordinary or average training, judgment, and skill in that field of practice. (R. p. 1198, lines 13-19).

- A patient who is treated by a doctor is entitled to a careful examination. The examination should be made with the diligence and methods of diagnosis that are usually approved and practiced by doctors of ordinary learning, judgment, and skill, acting under the same or similar circumstances. (R. p. 1199, lines 2-6).

Appellants' demand that this Court overturn the jury verdict based on a single sentence in a thorough jury charge that represents current and correct law should be rejected. The charge when

[24] Specifically, the court distinguished negligence and gross negligence as: "Negligence is the failure to exercise due care, while gross negligence is the failure to exercise even the slightest care." (R. p. 1202, lines 21-22).

read is free from error. Even if Appellants are correct that an isolated portion of the charge could be interpreted as misleading, reversal is not warranted because "isolated portions which might be misleading do not constitute reversible error." *Welch v. Epstein*, 342 S.C. 279, 311, 536 S.E.2d 408, 425 (Ct. App. 2000); *see also State v. Stewart*, 433 S.C. 382, 390, 858 S.E.2d 808, 812 (2021) (concluding that although an isolated portion of a jury charge "failed to convey both elements to the jury," the charge as a whole was not erroneous); *Pope v. Heritage Cmtys., Inc*., 395 S.C. 404, 414, 717 S.E.2d 765, 770 (Ct. App. 2011) (holding although the trial court may have initially given a misleading negligence charge, the charge as a whole was not erroneous).

Appellants' argument that the jury's note and the trial court's decision to recharge negligence and gross negligence demonstrates prejudicial error is unavailing for several reasons. As a threshold matter, this argument fails because Appellants did not object to recharging the jury. The trial court informed the parties it would give the same charge on gross negligence, which contained language distinguishing negligence from gross negligence, and Appellants' counsel stated, "Negligence is failure to give due care, while gross negligence is failure to exercise slight care. I think that's fair." (R. p. 1211, lines 21-23). The trial court then recharged the jury on gross negligence and negligence, and Appellants did not object or renew their objection that the single sentence in the gross negligence charge was erroneous. (R. p. 1212, lines 7-24); *Parker v. Morin (Ex parte McMillan)*, 319 S.C. 331, 335, 461 S.E.2d 43, 45 (1995) (holding a party cannot acquiesce to an issue at trial and then complain on appeal).

Moreover, as demonstrated above, Appellants have not met their burden of proving that the gross negligence charge was incorrect. When a jury asks a question about the original jury instructions, it is not error for the trial court to simply recharge the jury on the specific charges at issue. *See, e.g*., *State v. Nichols*, 325 S.C. 111, 119, 481 S.E.2d 118, 122 (1997) ("When a jury

requests an additional charge, it is sufficient for the court to charge only those matters necessary to answer the jury's request."); *State v. Anderson*, 322 S.C. 89, 94, 470 S.E.2d 103, 106 (1996) ("The jury requested a recharge only on the definitions of murder, malice, and involuntary manslaughter, and the recharge was properly limited to answering the jury's question. We find no error."). Because the gross negligence charge is a correct statement of the law, the trial court did not err in recharging the jury.

c. The trial court did not err in declining to charge a selectively edited portion of the South Carolina Solicitation of Charitable Funds Act.

Prior to trial, the parties stipulated that McLeod 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 an employee of McLeod and was acting in the course and scope of his employment. Despite the jury having been presented with no evidence or context relating to the South Carolina Solicitation of Charitable Funds Act, Appellants proposed a jury charge that included selectively edited portions of Section 33-56-180 of the South Carolina Solicitation of Charitable Funds Act, entitled "Limitation of liability for injury or death caused by employee of charitable organization." *See* S.C. Code § 33-56-180.

As Respondent has already noted, the record does not contain the charge conference, so appellate review concerning the propriety of Appellants' requested charge is impossible. *Smalls v. State*, 422 S.C. 174, 182 n.3, 810 S.E.2d 836, 840 (2018) ("When 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."). The record does not include the parties' arguments on Appellants' requested charge

or the trial court's reasons for declining to give the charge.[25] Thus, Appellants have failed to meet this threshold burden in order to even make this argument.

Even if this Court were to proceed to the merits, the trial court did not err in refusing to give Appellants' instruction on charitable immunity. First, "charitable status is not a jury issue," *James v. Lister*, 331 S.C. 277, 282, 500 S.E.2d 198, 201 (Ct. App. 1998), so the trial court did not err in declining to give the charge. Second, the charge as a whole adequately conveyed the substance of Appellants' request. The trial court instructed the jury on gross negligence and explained that the verdict form had a box for the jury to decide whether Dr. Trant committed gross negligence. Appellants' requested jury charge conveyed that an employee is not liable unless "a specific finding is made that the employee acted in a reckless, willful, or grossly negligent manner." This is exactly what is required pursuant to section 33-56-180(A). Thus, the charge as a whole, coupled with the verdict form, clearly encompassed the substance of Appellants' requested charge. Therefore, the trial court did not err in declining to give the instruction. Even if it did, Appellants cannot demonstrate prejudice. *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.").

V. The trial court correctly declined to set aside the verdict because the jury's award was not "grossly excessive" and therefore, a new trial absolute was not warranted.

Despite this Court's "highly deferential standard of review," Appellants ask this Court to cast aside the jury's damages award as grossly excessive. *Burke v. AnMed Health*, 393 S.C. 48, 55, 57, 710 S.E.2d 84, 88, 89 (Ct. App. 2011). Appellants did not move for a new trial *nisi remittitur*,

[25] While the post-trial order provides context, the record does not contain any argument or ruling concerning Appellant's requested charitable immunity charge. Further, the fact that the charge conference may have occurred in chambers is "meaningless" for preservation purposes. *Smalls v. State*, 422 S.C. 174, 182 n.3, 810 S.E.2d 836, 840 (2018) ("Such a conference is meaningless in this appeal" because the substance and ruling were not subsequently placed on the record).

so the sole question is whether the verdict "is so grossly excessive that it shocks the conscience of the court and clearly indicates the amount of the verdict was the result of caprice, passion, prejudice, partiality, corruption, or other improper motive." *Knoke v. S.C. Dep't of Parks, Rec. & Tourism*, 324 S.C. 136, 141, 478 S.E.2d 256, 258 (1996). Stated differently, a new trial absolute should only be granted when it is clear that the size of the verdict is "the result of the jury's disregard of the facts and the court's instructions." *Craven v. Cunningham*, 292 S.C. 441, 443-44, 357 S.E.2d 23, 25 (1987). Furthermore, the intentional decision of Appellants to not seek *remittitur* creates a legitimate question whether this Court should even consider the issue at all.

When reviewing the denial of a new trial absolute, appellate courts must recognize "the solemn importance of the jury trial in civil cases and demonstrate the respect this Court has always shown for a jury's determination of damages." *Jolly v. Fisher Controls Int'l, LLC*, 443 S.C. 511, 525, 905 S.E.2d 380, 387 (2024). Further, a "highly deferential standard of review" applies in part because of "the unique position of the trial judge to hear the evidence firsthand, evaluate the credibility of the witnesses, and assess the impact of the wrongful conduct on the plaintiff in terms of damages." *Burke*, 393 S.C. at 57, 710 S.E.2d at 88-89. An appellate court does not "sit . . . to determine whether [it] agree[s] with the verdict" or "to decide whether [it] agree[s] with the trial court's decision not to disturb it." *Id.*; *Rush v. Blanchard*, 310 S.C. 375, 380, 426 S.E.2d 802, 805 (1993) ("The decision to grant a new trial is left to the sound discretion of the trial court and ordinarily will not be disturbed on appeal.").

All facts must be viewed in the light most favorable to the nonmoving party. *Hamilton v. Reg'l Med. Ctr.*, 440 S.C. 605, 626, 891 S.E.2d 682, 693 (Ct. App. 2023) (noting the reviewing court "consider[s] the testimony and reasonable inferences therefrom in the light most favorable to the nonmoving party"). Likewise, the issue of damages—especially the amount awarded—is a

quintessential jury question and its verdict is entitled to broad deference. *See Rush*, 310 S.C. at 379, 426 S.E.2d at 805 ("The jury's determination of damages, however, is entitled to substantial deference.").[26] These principles highlight why an appellate court will rarely reverse the trial court's decision. *Elam v. S.C. DOT*, 361 S.C. 9, 27, 602 S.E.2d 772, 781 (2004).

The law recognizes a distinction between an "unduly liberal verdict" and one that is "actuated by passion, caprice, or prejudice." *Riley v. Ford Motor Co.*, 414 S.C. 185, 192, 777 S.E.2d 824, 828 (2015) (quoting *Allstate Ins. Co. v. Durham*, 314 S.C. 529, 530-31, 431 S.E.2d 557, 558 (1993)). An appellate court will not set aside a jury verdict "for its possibly undue liberality." *Easler v. Hejaz Temple A. A. O. N. M. S.*, 285 S.C. 348, 356, 329 S.E.2d 753, 758 (1985). Instead, to find a verdict grossly excessive, the verdict "must be deemed the result of the jury's disregard of the facts and the court's instructions." *Craven v. Cunningham*, 292 S.C. 441, 443-44, 357 S.E.2d 23, 25 (1987); *see O'Neal v. Bowles*, 314 S.C. 525, 527, 431 S.E.2d 555, 556 (1993); *Kunst v. Loree*, 424 S.C. 24, 46, 817 S.E.2d 295, 306 (Ct. App. 2018) (citing *Miller v. City of West Columbia*, 322 S.C. 224, 231, 471 S.E.2d 683, 687 (1996)).

The evidence here portrays the tragic, avoidable death of a sixteen-year-old girl, and the loss suffered by her family. The jury heard compelling evidence of the gross negligence committed by Dr. Trant, and the trial court correctly refused to set aside the verdict because there was no evidence the jury's decision was motivated by any improper basis. Red flags for fatal cardiac disease were ignored by Trant and these failures were the proximate cause of Taylor's preventable death at just sixteen years of age. (R. p. 767, line 11-p. 772, line 15). This Court should reject

[26] It has been recognized that in cases involving no significant items of measurable economic loss, "translating legal damage into money damages ... is a matter peculiarly within a jury's ken." *Finch v. Covil Corp.*, 388 F. Supp. 3d 593, 620 (M.D.N.C. 2019), *aff'd*, 972 F.3d 507 (4th Cir. 2020) (refusing to set aside jury's verdict of $32,700,000 in wrongful death case where, as here, "plaintiff's evidence on damages was compelling and virtually uncontradicted").

Appellants' contention that a sixteen-year-old girl's life and the resulting destruction of a family unit is categorically not worth $30 million.[27]

The jury awarded Respondent damages for her profound loss because of the death of her sixteen-year-old daughter, Taylor, a loss which Dr. Chang testified need not have occurred. The jury heard testimony from Respondent, who described the emotional and permanent damages she has sustained by the tragic death of her daughter. Respondent testified that the loss of her daughter has left her broken and no longer the same woman she had been before her daughter's death. In Respondent's words: "I'm a shell of the person I used to be. As a parent, you always think your children will bury you; you never think that you will have to bury your child. I don't seem like the same anymore. I'm just not who I used to be. My heart is forever broken." (R. p. 618, lines 6-10). Respondent testified that she had lost: "[o]ne half of my heart. I'll never have grandkids. I love Ren, but she doesn't want kids, and it's unfair to push something off on her that she doesn't want. So I'm okay with her not wanting children. But Taylor wanted a family. So, I will never have that. I will never see her accomplish her dreams, help people, all that was taken from me." (R. p. 623, lines 2-7).

[27] Although "comparing verdicts" is not a reliable basis for determining the propriety of damages awarded in any given case, other verdicts do help demonstrate that are no categorical boundaries to the amount of noneconomic damages that a jury may award when the verdict is supported by evidence. *See, e.g.*, *Ahmad v. State*, 432 P.3d 932 (Ariz. Ct. App. 2018) (reversing remittitur by trial court and remanding case for reinstatement of non-economic damages of $30,000,000 to surviving parents); *Fernandez v. Jimenez*, 253 Cal. Rptr. 3d 236 (2019) (upholding award of $45,000,000 in noneconomic damages to four children of pedestrian killed by vehicle); *Morga v. FedEx Ground Package Sys.*, *Inc.*, 512 P.3d 774, 784 (N.M. 2022) (declining to "substitute our judgment for that of the jury" and refusing to set aside jury's award of $165,000,000 in noneconomic damages in wrongful death case involving two decedents); *Finch v. Covil Corp.*, 388 F. Supp. 3d 593, 620 (M.D.N.C. 2019), *aff'd*, 972 F.3d 507 (4th Cir. 2020) (refusing to set aside jury's verdict of $32,700,000 in wrongful death case of 78-year old man where, as here, "plaintiff's evidence on damages was compelling and virtually uncontradicted").

The loss to parents 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.* Appellants may not substitute their own judgment in place of the jury's. Appellants should not be permitted to invade the province of the jury here absent any evidence the jury based its award on any improper consideration. *Craven*, 292 S.C. at 443-44, 357 S.E.2d at 25.

Appellants fall well short of the high bar for setting aside the jury's verdict as grossly excessive. 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 Respondent and are addressed in 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). At trial, the jury heard arguments and statements from Respondent's counsel as to the suggested amount that the jury could consider awarding if it found that Respondent had proven every element necessary in her case. The jury's verdict of $30 million is the amount discussed by Respondent's counsel in both opening statement and again in

rebuttal argument. The verdict was not the result of passion or prejudice or any other improper motive that could justify a finding of excessiveness. Moreover, neither before the jury in closing argument nor before the trial court in a motion for a new trial absolute, or even now on appeal, have the Appellants ever suggested a figure which would be appropriate for the loss of the life of a beloved, beautiful, and talented sixteen-year-old girl.[28]

Appellants summarily state that the "sheer magnitude" of the verdict conclusively demonstrates it was motivated by improper purposes—race and socioeconomic status—and cite statements made during closing argument. Initially, Respondent notes this argument is not preserved for review because Appellants failed to contemporaneously object. *See Bunch v. Charleston & WC. Ry. Co*., 91 S.C. 139, 74 S.E. 363 (1912) (noting because the failure to object is a waiver, an improper argument of counsel that is not objected to at the time cannot be complained of later); *see also 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).[29]

But even if this Court considers Appellants' unpreserved argument, it should be quickly rejected because Respondent did not inject race or socioeconomic disparities during closing.

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[28] In the fall of 2022, Taylor's high school made her honorary homecoming queen. (R. p. 620, lines 4-5). Prior to her death from ARVD, Taylor had already been crowned "Ms. Freshman," "Ms. Sophomore," and "Ms. Junior" at Mullins High School. (R. p. 602, lines 9-18).

[29] South Carolina law recognizes the general rule that a party must make a contemporaneous objection to an improper argument, or the objection is waived. *See Dial v. Niggel Assocs., Inc*., 333 S.C. 253, 256-57, 509 S.E.2d 269, 271 (1998). The South Carolina Supreme Court recognizes a "narrow exception to this general rule" in flagrant cases where a vicious, inflammatory argument results in clear prejudice. *See Toyota of Florence, Inc. v. Lynch*, 314 S.C. 257, 263, 442 S.E.2d 611, 615 (1994). Even in such narrow exception, the failure to make contemporaneous objection to an inflammatory argument is excused only where challenged argument constitutes abuse of a party or witness. *Dial*, 333 S.C. at 260, 509 S.E.2d at 272. The statements by Respondent's counsel in closing argument do not meet the "narrow exception" to justify Appellants' failure to make a timely objection.

Respondent'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. (R. p. 1174, line 22-p. 1175, line 7). This "message," which has been routinely argued in courtrooms across this state for decades, aligns with the fundamental purpose and function of tort law in South Carolina, which seeks to promote 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). Respondent's counsel argued that the standards of care apply to every patient, which is correct; there was no statement at trial that Appellants failed to meet the standard of care on the basis of race or socioeconomic condition, and Appellants should not be permitted to contort Respondent's closing argument—one which was not objected to—in order to inject a statement that was never made.

Accordingly, because there is no evidence that the jury's verdict was grossly excessive or that the jury was motivated by an improper basis, this Court should affirm the trial court's decision to deny Appellants' motion for a new trial absolute. This Court should also reject Appellants' motion for a new trial pursuant to the thirteenth juror doctrine for the same reasons. If Appellants believe that the verdict is excessive, they should have moved for a new trial nisi remittitur, which would have allowed them to suggest a figure more palatable to them and would have afforded the trial court an opportunity to reduce the verdict. Having made the decision not to do so, this Court should not rescue Appellants from the results of their own strategy in failing to suggest an amount for Taylor's life they deemed reasonable or by failing to move for a new trial nisi remittitur. *Equivest Fin., LLC v. Ravenel*, 422 S.C. 499, 505, 812 S.E.2d 438, 441 (Ct. App. 2018) ("A party cannot complain of error his own conduct has induced.").

VI. The trial court correctly determined the charitable immunity damages cap does not apply to Dr. Trant and properly refused to reduce the judgment to $1.2 million.

a. The charitable immunity cap does not apply to Dr. Trant.

Appellant Trant argues that section 33-56-180(A)'s damages cap applies to both McLeod and Dr. Trant. This argument ignores the plain language of the statute and misconstrues binding precedent. Further, in support of his argument, Appellant Trant primarily relies on a tortured interpretation of the legislative history, something which is irrelevant here because the plain language of the statute is unambiguous.

Section 33-56-180(A) provides:

> 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. If the charitable organization for which the employee was acting cannot be determined at the time the action is instituted, the plaintiff may name as a party defendant the employee, and the entity for which the employee was acting must be added or substituted as party defendant when it reasonably can be determined.

(emphasis added). This provision (1) limits the damages recoverable "against the charitable organization to the actual damages sustained "in an amount not exceeding the limitations on liability imposed" by the Tort Claims Act, (2) provides immunity to an individual doctor for general negligence, and (3) permits recovery against a doctor upon a specific finding of gross negligence against the doctor. Section 33-56-180(A) includes a damages cap for a charitable organization, but the plain language of the statute does not include any damages cap against an

individual doctor. Thus, the analysis ends here. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) ("Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute."); *Timmons v. S.C. Tricentennial Com*, 254 S.C. 378, 402, 175 S.E.2d 805, 817 (1970) (noting when a statute is "plain and ambiguous, [l]egislative intent in such a case is to be determined from the language employed; legislative history only can be resorted to for the purpose of solving doubt, not for the purpose of creating it").

This Court's precedent supports Respondent's interpretation of the plain language of the statute. *See James v. Lister*, 331 S.C. 277, 282, 500 S.E.2d 198, 201 (Ct. App. 1998) (finding the charitable statute provides a mechanism for seeking damages in excess of the charitable limitation through an action against a charitable organization's employees) (cert. denied). In *James*, this Court addressed the availability of damages against an employee of a charitable organization in excess of the statutory cap under the prior version of the Solicitation of Charitable Funds Act, which was $200,000. The prior version is identical to the current statute in all other respects. *Id.* In such instances, the statute specifically requires joinder of the employee as a party, and a special finding by the jury that the employee's gross negligence was a proximate cause of the injury. *Id.*

Appellant Trant contends that *James v. Lister* is merely dicta, but that ignores the fact that our appellate courts have reaffirmed the central premise that the charitable immunity caps do not apply to an individual defendant. First, the South Carolina Supreme Court denied certiorari in *James v. Lister*, refuting Appellant's contention that the *James* opinion is incorrect law. If the Supreme Court believed that *James* needed to be clarified to correct problematic language, it would have granted certiorari. *See, e.g.*, *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 458, 892 S.E.2d 297, 299 (2023) (granting certiorari to clarify the correct standard of review but nevertheless upholding the court of appeals' decision on the merits); *Branham v. Leaphart*, 311

S.C. 231, 232, 428 S.E.2d 707, 708 (1993) ("The Court of Appeals reversed, citing its decision in *Ellison v. Pope*, 290 S.C. 100, 348 S.E.2d 367 (Ct. App. 1986). We granted certiorari to correct any misimpression that *Ellison* extends to this situation.").

Additionally, *James* has been cited favorably by this Court and our Supreme Court. In *Myat v. Tuomey Regional Medical Center*, 427 S.C. 601, 608, 832 S.E.2d 306, 309 (Ct. App. 2019), this Court cited *James* and acknowledged that the charitable immunity cap did not apply to individual defendants. *Id.* ("[T]he statute of limitations had run against potential individual defendants, i.e., the employee(s) that created the dangerous condition that Myat could have pursued *to avoid the statutory cap*.") (emphasis added).[30] And both this Court and the Supreme Court relied on *James* in *Garrison v. Target*, which acknowledged the "issue in *James*—a special finding of gross negligence by the jury and joinder of additional parties" is required by section 33-56-180(A). *Garrison v. Target Corp.*, 435 S.C. 566, 582, 869 S.E.2d 797, 806 (2022). Despite Appellant Trant's attempt to create confusion where none exists, this Court concluded in *James* that the charitable immunity cap does not apply to individual defendants. Not only did the Supreme Court forgo any effort to correct this determination by denying certiorari, the *James* decision has been cited subsequently both by this Court and the Supreme Court.

Further, Appellant's interpretation of section 33-56-180(A) 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. If Appellant Trant's

[30] The Supreme Court granted certiorari but dismissed the writ as improvidently granted. *Myat v. Tuomey Reg'l Med. Ctr.*, 433 S.C. 68, 856 S.E.2d 550 (2021). If the Supreme Court believed the charitable immunity cap applied to individual defendants, it certainly would have corrected the court of appeals' opinion.

argument were correct, there can be no plausible explanation for the General Assembly's inclusion of this language: "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." Stated differently, there would be no reason for a plaintiff to ever join an individual doctor and seek to meet the gross negligence burden if the damages cap also applied, thereby rendering the exception surplusage. Appellate courts reject statutory interpretations that lead to an absurd result or result in essentially rewriting the plain statutory text. *Duke Energy Corp. v. S.C. Dep't of Revenue*, 415 S.C. 351, 355, 782 S.E.2d 590, 592 (2016) ("If possible, the Court will construe a statute so as to escape the absurdity and carry the intention into effect."); *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) ("[W]e read the statute as a whole and in a manner consonant and in harmony with its purpose. In that vein, we must read the statute so 'that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous,' for '[t]he General Assembly obviously intended [the statute] to have some efficacy, or the legislature would not have enacted it into law'") (quoting *State v. Sweat*, 379 S.C. 367, 376, 665 S.E.2d 645, 650 (Ct. App. 2008)).

b. The trial court correctly refused to reduce the judgment to a single occurrence against both Appellants.

Appellants contend the General Assembly did not intend to provide unlimited liability to individual employees of a charitable organization, and that section 33-56-180(A) did not adopt the occurrence language from the Tort Claims Act. However, this argument not only ignores the plain language of the statute and would render the exception for joining an individual doctor meaningless, but it is also inconsistent with the policy of charitable immunity. Our Supreme Court discussed charitable immunity in *Doe v. Bishop of Charleston*, where the Court held that "logic and experience discredited" the grounds supporting the doctrine. *Doe v. Charleston*, 445 S.C. 31,

33, 911 S.E.2d 323, 324 (2025). Appellants seek to resurrect the doctrine of charitable immunity through their tortured interpretation of section 33-56-180(A). But Appellants' interpretation of section 33-56-180(A) is in derogation of the common law and cannot stand absent a clear directive from the General Assembly. *16 Jade St., LLC v. R. Design Constr. Co., LLC*, 398 S.C. 338, 347, 728 S.E.2d 448, 452-53 (2012) ("[A] statute is not to be construed in derogation of common law rights if another interpretation is reasonable."). No such intent exists here.

Appellants also incorrectly assert that section 33-56-180(A) must be construed in favor of immunity and therefore only a single occurrence applies, but South Carolina law requires that statutes in derogation of the common law must be strictly construed. In the seminal case of *Fitzer v. Greater Greenville South Carolina YMCA*, our Supreme Court abolished charitable immunity, stating "[t]here is no tenet more fundamental in our law than liability follows the tortious wrongdoer. Yet, in South Carolina immunity is the rule and liability the exception. It is time to once and for all lay this anachronism to rest." 277 S.C. 1, 3, 282 S.E.2d 230, 231 (1981). The Court concluded:

> 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.

Id. at 4, 282 S.E.2d at 231-32.[31] While the General Assembly responded by passing the Charitable Funds Act, which includes the predecessor to section 33-56-180(A), critically, the common law

[31] Moreover, South Carolina is not alone in restricting the scope of charitable immunity. As our sister state of Georgia has noted,

> Insulating [individual doctors] from liability for breaching this duty simply because they were employed by a charitable hospital would not further the purpose of the charitable immunity doctrine. "By design the charitable immunity doctrine protects the funds of the charitable institution from depletion in order that these funds may

did not recognize charitable immunity at that time. Thus, Appellants are wrong the section 33-56-180(A) must be construed in favor of limiting liability.

In an attempt to avoid the plain language of section 33-56-180(A), Appellant McLeod devotes a significant portion of its brief to an unnecessary and torturous interpretation of what McLeod views as the legislative history of the Charitable Funds Act. But again, the plain language of the statute controls and refutes McLeod's position.

Section 33-56-180(A) permits recovery against a charitable organization of "an amount not exceeding the limitations on liability imposed in the South Carolina Tort Claims Act in Chapter 78 of Title 15." While McLeod contends section 33-56-180(A) does not use the word "occurrence," the "limitations on liability" under the Tort Claims Act is set forth in section 15-78-120, which specifically limit liability to an amount "arising from a single occurrence." Thus, each damages cap is tied to a single occurrence. Here, there were two occurrences, meaning two damages caps applied against Appellant McLeod. There is simply no need to torture the legislative history and rewrite what section 33-56-180(A) makes clear.

> be [preserved] to carry out the charitable purpose of the institution for the benefit of its beneficiaries." (Emphasis supplied.) *Ponder v. Fulton-DeKalb Hosp. Auth*., supra at 834 (1). To extend the doctrine of charitable immunity to physicians who are employed by charitable hospitals would only serve to insulate the resources of those physicians from the claims of patients who were injured as a result of alleged medical malpractice.

Cutts v. Fulton-Dekalb Hosp. Auth., 385 S.E.2d 436, 437-38 (Ga. Ct. App. 1989) (quoting *Ponder v. Fulton-DeKalb Hosp. Auth*., 353 S.E.2d 515 (Ga. 1987)); *Bagley v. Fulton-Dekalb Hosp. Auth*., 455 S.E.2d 325, 328 (Ga. Ct. App. 1995) (declining to extend the doctrine of charitable immunity to an individual doctor employed by a charitable institution even where the charitable organization agreed to indemnify the doctor because "it is not within the doctrine, nor within public policy, to allow Grady to enter into private agreements to spread the protection of a public policy doctrine over private parties who commit malpractice").

Further, McLeod's argument that there can never be more than one occurrence against a charitable organization is inconsistent with case law. In *Chastain*, the Supreme Court stated,

> Just as in any tort action, a CFA plaintiff bears the burden of proof. If she alleges multiple occurrences, that is, that there was more than one single act of negligence from which proximately flowed an unfolding sequence of events, she bears the burden of proving each occurrence. Here, the jury was never instructed on the definition of occurrence nor was it asked to determine whether there was more than one occurrence, either in the instructions or in its verdict. The trial judge correctly reformed this verdict to reflect a single occurrence.

Chastain, 388 S.C. at 174, 694 S.E.2d at 543-44. The Supreme Court declined to address whether the trial court erred in concluding the facts of the case supported only one occurrence. Instead, the Court concluded it was impossible to ascertain whether the jury had found multiple occurrences. There would have been no reason to discuss the jury's finding if the charitable immunity statute limited recovery to one damages cap.

Respondents submit that the plain language of the statute and the purpose of charitable immunity squarely refute Appellants' arguments.[32] Accordingly, this Court should reject Appellant's interpretation as the trial court correctly did below.

[32] McLeod's argument that the General Assembly only intended a "technical change" when it amended section 33-56-180(A) to limit recovery to the "limitations on liability imposed in the South Carolina Tort Claims Act in Chapter 78 of Title 15" fares no better. "The General Assembly is presumed to know the law" *Williams v. Gov't Emples. Ins. Co*., 409 S.C. 586, 602, 762 S.E.2d 705, 714 (2014), and the limits on recovery under the Tort Claims Act is per occurrence. *See Chastain*, 388 S.C. at 173, 694 S.E.2d at 543 ("Under the Tort Claims Act (TCA), recovery for an individual plaintiff is limited to $ 300,000 per occurrence, unless the tort-feasor is a licensed physician or dentist in which case the cap for an individual plaintiff is $ 1.2 million per occurrence. S.C. Code Ann. §§ 15-78-120(a)(1) and (a)(3) (2005). 'Occurrence' is defined in the TCA as 'an unfolding sequence of events which proximately flow from a single act of negligence.' § 15-78-30(g).").

VII. The trial court properly awarded offer of judgment interest against Appellant McLeod.

In this argument, Appellant Mcleod again ignores the plain statutory text and baldly claims the offer of judgment statute excludes offer of judgment interest imposed against a charitable organization. In fact, the statute does no such thing. Because the text of the statute contains no such exception, this argument must be rejected.

Section 15-35-400 permits "any party" to file an offer of judgment in any civil action for which the consequences of nonacceptance permit an offeror who is ultimately successful to collect judgment interest against the offeree. Rule 68, SCRCP mirrors section 15-35-400. Neither the statute nor the rule provides any exception for a charitable organization, so the analysis ends here. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) ("Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute."); *Lexington Cty. Health Servs. Dist. v. S.C. Dep't of Revenue*, 384 S.C. 647, 651, 682 S.E.2d 508, 509 (Ct. App. 2009) (noting that when a statute is clear, "'the court has no right to impose another meaning.' The legislative language in a statute is considered the best evidence of the legislative intent or will, and courts are bound to implement the legislature's expressed intent") (quoting *Hodges*, 341 S.C. at 85, 533 S.E.2d at 581).

While Appellant McLeod relies on 2005 Act No. 32 to support its contention that the legislature intended to exclude imposing offer of judgment interest on charitable organizations, the plain text of section 15-35-400 demonstrates otherwise. First, section 15-78-220, which Appellant McLeod cites as codifying section 18 of 2005 Act No. 32, is silent as to offer of judgment interest and certainly does not mention any exclusion of offer of judgment interest against a charitable organization. *See Univ. of S.C. v. Mehlman*, 245 S.C. 180, 186, 139 S.E.2d 771, 774 (1964) (noting "the provisions of one statute may be applicable to another by reference to the former in the latter

in the absence of constitutional restrictions"). Because section 15-35-400 does not reference section 15-32-240 at all, there is no basis to conclude that the General Assembly intended to incorporate section 15-32-240 in the offer of judgment statute.[33]

Further, section 15-35-400 was created after the South Carolina Solicitation of Charitable Funds Act. The General Assembly is presumed to have knowledge of previous legislation when later statutes are enacted concerning related subjects. *See Whitner v. State*, 328 S.C. 1, 6, 492 S.E.2d 777, 779 (1997). When statutory terms are clear and unambiguous, there is no room for construction and courts are required to apply them according to their literal meaning. *Carolina Power & Light Co. v. City of Bennettsville*, 314 S.C. 137, 139, 442 S.E.2d 177, 179 (1994). Accordingly, the trial court did not err in assessing offer of judgment interest under section 15-35-400 and Rule 68, SCRP against Appellant McLeod.

CONCLUSION

Appellants have presented no compelling arguments to justify overturning the jury verdict or the rulings by Judges DeBerry and Cothran. Many of their arguments are not even preserved for appellate review. The expert testimony by Dr. Anthony Chang, as well as the testimony of Dr. Trant himself and his witnesses, amply support the jury's findings of breach of the standard of care, proximate cause, and multiple occurrences. Venue was proper in Marion County at the time the lawsuit was instituted, and Judge DeBerry adhered to the proper legal framework in denying Appellants' motion to change venue. Judge Cothran properly instructed the jury on the definition of gross negligence, the meaning of occurrence, and its responsibility to determine breach,

[33] The General Assembly knew how to expressly incorporate provisions of 2005 Act. No. 32 in other statutes. For example, section 15-32-240, which codified section 2 of 2005 Act No. 32, contains similar language exempting the South Carolina Tort Claims Act or the South Carolina Solicitation of Charitable Funds Act. No such language is contained in section 15-35-400.

proximate cause, the number of occurrences, and damages. It was wholly within the province of the jury to determine the loss suffered by Respondent by the preventable death of her precious child, Taylor. For these reasons, the verdict should be affirmed.

Respectfully submitted,

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