RECEIVED
Jan 27 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM MARION COUNTY
The Honorable R. Ferrell Cothran, Jr.
The Honorable H. Steven DeBerry, IV

Appellate Case No. 2025-000434
Case No. 2022-CP-33-0362

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.

BRIEF OF APPELLANT MCLEOD PHYSICIAN ASSOCIATES II

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

Counsel for Appellant McLeod Physician Associates II

J. BOONE AIKEN, III
JOSEPH P. MCLEAN
AIKEN, BRIDGES, ELLIOT, TYLER & SALEEBY, P.A.
Post Office Drawer 1931
Florence, South Carolina 29503
(843) 669-8787

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes, Rules and Other Authorities

STATEMENT OF ISSUES ON APPEAL

I. Did the trial court err as a matter of law in refusing to transfer venue to Florence County following the dismissal of the Defendant Marion County School District?

II. Did the trial court err in failing to reduce the total judgment of $30 million to $1.2 million total against both Appellants in accordance with the South Carolina Solicitation of Charitable Funds Act?

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

IV. Did the trial court err in denying the Appellants' motions for directed verdict and JNOV motion on the issue of proximate cause?

V. Did the trial court err in making an award of "offer of judgment interest" which is in contravention of the legislative intent as expressed in 2005 Act Number 32?

STATEMENT OF THE CASE

This is a medical malpractice case. The Respondent Demetrice Utley, individually and as the Personal Representative of the Estate of Taylor Danielle Price, commenced this action on July 13, 2022. The named Defendants included the Appellant McLeod Physician Associates II ("MPA II"), the Appellant Charles A. Trant, M.D., and the Marion County School District ("School District"). While initially brought as a survival and wrongful death action, the Respondent proceeded to trial solely on the wrongful death claim. (R. 885). The parties agreed that MPA II qualified as a "charitable organization" pursuant to Section 33-56-170 of the Solicitation of Charitable Funds Act and that its employee, Dr. Trant, qualified as an employee of a "charitable organization." (R. 878-879).

The action was initially brought in Marion County with the venue established by the fact that the School District was sued, and venue under the South Carolina Tort Claims Act was properly in Marion County. The case was called for a day-certain trial on September 9, 2024, before Circuit Court Judge H. Steven DeBerry, IV. At the call of the case, all three Defendants ostensibly remained as parties. Immediately after jury selection occurred but before the jury was sworn, the Respondent's counsel announced for the first time to the trial court and to the Appellants' counsel that the Respondent had settled with the School District. (R. 410). Based on that representation, the Appellants immediately made an oral motion, followed by a written motion, for the change of venue to Florence County on the basis that venue was no longer proper in Marion County. (R. 118-119, 411). The Appellants asserted, and it was not disputed, that the Appellant Trant was a resident of Florence County when the cause of action accrued, the Appellant MPA II had its principal place of business in Florence County, and the alleged

malpractice occurred in Florence County. (R. 118-119). After taking some time to reflect on the unusual posture created by the clandestine settlement between the Respondent and the School District, the trial court dismissed the jury and continued the trial to another term of court. (R. 431-432). The trial court expressly found that "[i]t was obvious to the court and not disputed by plaintiff or the school district that the settlement agreement between them was reached before jury selection began." (R. 5).

Judge DeBerry also heard arguments on the Appellants' motion to change venue. He ultimately issued an order filed September 19, 2024, denying the change of venue to Florence County. (R. 4-13). The court determined that venue in Marion County was proper at the commencement of the action, and as a result, venue could not be changed pursuant to Section 15-7-30, and as a result, the Appellants were not entitled to be tried in the county of Dr. Trant's residence or where MPA II has its principal place of business. (R. 5-6).

Subsequently, the case was called to trial in Marion County on November 4, 2024, with Circuit Court Judge R. Ferrell Cothran presiding. After several days of testimony, the case was submitted to the jury which returned a verdict of $30 million in actual damages against both Appellants. (R. 226-227). With the verdict form, the jury found there was "more than one occurrence" and that Dr. Trant had acted with gross negligence. (R. 227). During the trial, the trial court heard and denied the Appellants' motions for directed verdict on several issues including the question as to the number of "occurrences."

On November 15, 2024, the respondent filed a Post-Trial Motion for Confirmation of Two Occurrences. (R. 174-177). The Respondent also filed a Motion for Award of Offer of Judgment Interest. (R. 181-187). On November 18, 2024, the Appellants filed their Motion for

JNOV or, in the Alternative, for a New Trial Absolute or, in the Alternative, for Reduction of the Verdicts. (R. 196-225). The Appellants raised numerous grounds for relief from the verdict.

On November 25, 2024, the trial court held a hearing on the parties' post-trial motions. (R. 1377-1480). Thereafter, on February 3, 2025, Judge Cothran issued an Order on Post-Trial Motions, which ruled as follows:

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

(R. 36). The trial court confirmed that the $130,000 court-approved settlement with Marion County School District should be applied as a set-off from the jury's verdict, thereby reducing the $30,000,000.00 jury verdict to $29,870,000.00, after applying the set-off. Moreover, the trial court determined that the jury found two "occurrences," and applying the limitation on monetary liability pursuant to Section 33-56-180 of the Solicitation of Charitable Funds Act, the court entered an amended judgment against the Appellant MPA II for $2.4 million (representing two "caps" of $1.2 million each) and $380,843.84 in offer of judgment interest. (R. 37). The trial court also entered an amended judgment against the Appellant Trant for $27,470,000. (R. 37).

The Appellants thereafter filed a motion for reconsideration pursuant to Rule 59(e), SCRCP. (R. 312-315). That motion was summarily denied by Order Denying Motion to Alter or Amend filed on March 3, 2025. (R. 63-64).

The Appellants then filed a timely appeal to this Court on March 5, 2025.

STATEMENT OF FACTS

In accordance with Rule 208(6), SCACR, the Appellant MPA II hereby adopts and incorporates herein the ”Factual Background” as contained on pages 6 through 10 of the Opening Appellant’s Brief filed by the Appellant Trant.

STANDARD OF REVIEW

The standard of review for the denial of change of venue is *de novo* and not an abuse of discretion standard. As the Supreme Court has held, "when the motion to change venue is based on the ground that a particular county is the residence of the defendant, then a question of law is presented, rather than a matter of discretion." *Chestnut v. Reid*, 299 S.C. 305, 384 S.E.2d 713, 714 (1989). Thus, the Supreme Court concluded that "when a motion to change venue is brought pursuant to § 15-7-30 and the facts concerning the defendant's residence are uncontradicted, the trial court must change the venue to the county where the defendant resides." *Id*.

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

"In an action at law, on appeal of a case tried by a jury, [appellate courts] may only correct errors of law. The factual findings of the jury will not be disturbed unless no evidence reasonably supports the jury's findings." *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 691 S.E.2d 135, 142 (2010).

ARGUMENTS

I. The trial court erred as a matter of law in refusing to transfer venue to Florence County following the dismissal of the Defendant Marion County School District.

When this action was initially filed, the Respondent sued the Appellants as well as the Marion County School District. At that point, this action was necessarily brought pursuant to the South Carolina Tort Claims Act given the claims against the School District, and as a result, venue was proper in Marion County as the Tort Claims Act dictates. Section 15-78-100(b) provides that the venue lies "in the county in which the act or omission occurred." S.C. Code Ann. § 15-78-100(b). For the allegations asserted against the School District, which occurred in Marion County, venue properly was in Marion County. However, once the School District was dismissed on September 9, 2024, there no longer was *any basis* for venue to remain in Marion County. Nonetheless, the trial court denied the Appellants' motion to change venue to Florence County, despite the fact that venue properly was in Florence County where the Appellant Trant was a resident when the cause of action accrued, the Appellant MPA II had its principal place of business, and the alleged malpractice occurred. The denial of the change of venue was a clear error of law and warrants a reversal and remand for a new trial in Florence County.[1]

There should be no dispute that proper venue for the Appellants MPA II and Trant is governed by Section 15-7-30, which is the general venue statute. The Appellants MPA II and Trant are not governmental actors, and as a result, the Tort Claims Act has no applicability to this case and no longer controlled venue after the dismissal of the School District. As for the

[1] As discussed above, the standard of review for the denial of change of venue is *de novo* and not an abuse of discretion standard. *See*, *Chestnut v. Reid*, 299 S.C. 305, 384 S.E.2d 713, 714 (1989).

Appellant Trant, who qualifies as a "resident individual defendant," Section 15-7-30(C) provides:

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

S.C. Code Ann. § 15-7-30(C). Clearly, venue for Dr. Trant properly lies in Florence County where he was a resident when the cause of action arose and where the office visit with Taylor Price and the alleged malpractice occurred. As for the Appellant MPA II, which qualifies as a non-profit domestic corporation, Section 15-7-30(E) provides:

> A civil action tried pursuant to this section against a domestic corporation, domestic limited partnership, domestic limited liability company, or domestic limited liability partnership, must be brought and tried in the county in which the:
>
> (1) corporation, limited partnership, limited liability company, or limited liability partnership has its principal place of business at the time the cause of action arose; or
>
> (2) most substantial part of the alleged act or omission giving rise to the cause of action occurred.

S.C. Code Ann. § 15-7-30(E). MPA II has its principal place of business in Florence County, and again, the alleged malpractice occurred in Florence County.

In denying the Appellants' motion to change venue to Florence County, the trial court erred in relying on the Supreme Court's decision in *Jeter v. South Carolina Dept. of Transportation*, 369 S.C. 433, 633 S.E.2d 143 (2006). Although *Jeter* has not been overruled *per se* by the Supreme Court, the decision is outdated and should definitely not be considered binding authority as to the application of Section 15-7-30. 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. In *Jeter*, the Supreme Court even acknowledged that "[t]he 2005 amendments to 15-7-30 are not applicable in this case." 633 S.E.2d at 147, n.7. That is critical to understanding the error made by the trial court in the present case.

Prior to the 2005 amendments, Section 15-7-30 then provided:

> In all other cases the action shall be tried in the county in which the defendant resides *at the time of the commencement of the action*. If there be more than one defendant then the action may be tried in any county in which one or more of the defendants to such action resides *at the time of the commencement of the action*. If none of the parties shall reside in the State the action may be tried in any county which the plaintiff shall designate in his complaint. This section is subject however to the power of the court to change the place of trial in certain cases as provided by law.

S.C. Code Ann. § 15-7-30 (Supp. 2004). (Emphasis added). Of note, the venue statute mandated that venue be determined "at the time of the commencement of the action." Based thereon, in *Jeter*, the Supreme Court held as follows: "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*. In such a case, the plaintiff ordinarily has the right of election as to the county in which an action will be brought." *Jeter*, 633 S.E.2d at 148. The Supreme Court further held that "[w]here an action is properly commenced in any one of two or more venues and is properly brought in one of such venues, it is removable to the other proper venue only if there exists some statutory ground for removal other than the bringing of suit in the wrong venue." *Id*. Those holdings, however, were based on the general venue statute in existence prior to the 2005 amendments resulting from tort reform. Those holdings are no longer "good law" and should not have been applied in this case.

As adopted as part of tort reform and as applicable to this case, Section 15-7-30 does not include the "at the time of the commencement of the action" language which was critical to the rulings in *Jeter*. In its complete overhaul of venue law in 2005, the General Assembly explicitly removed that language and no longer provides for venue to be "locked-in" at the commencement of the case. In fact, the General Assembly adopted language showing that proper venue must exist throughout the progress of the litigation *including up through trial*. Specifically, in Section 15-7-30(B), the General Assembly provides that "the action must be tried in the county where it properly may be *brought and tried* against the defendant according to the provisions of this section." S.C. Code Ann. § 15-7-30(B). Additionally, Section 15-7-30(B) states: "If there is more than one defendant, the action may be tried in any county where the action *properly may be maintained* against one of the defendants pursuant to this section." *Id*. (Emphasis added). Thus, in Section 15-7-30(B), using the conjunctive "and," the General Assembly requires proper venue both when the case is "brought and tried." *See*, S.C. Code Ann. § 15-7-30(B). The same is true in both Section 15-7-30(C) and Section 15-7-30(E), where the General Assembly requires proper venue both when the case is "brought and tried." *See*, S.C. Code Ann. § 15-7-30(C) and (E). Further, unlike the statute at issue in *Jeter*, the General Assembly explicitly removed the "at the time of the commencement of the action" language when addressing cases with multiple defendants. Instead, the General Assembly focused not at the commencement of the case but only *at the time of trial* and stated that venue was proper at that time "where the action *properly may be maintained* against one of the defendants pursuant to this section." *Id*. (Emphasis added).

Thus, under the general venue statute as applicable *in this case* as opposed to in *Jeter*, venue must be proper when the case is tried. Unlike in *Jeter*, proper venue is not established and

"locked-in" "at the time of the commencement of the action." This significant change in the general venue statute served two critical purposes. First, it reaffirmed and preserved the longstanding tradition in this state's jurisprudence recognizing that "[t]he right of a defendant to have a case tried against him in the county in which he resides is a substantial right." *Chestnut v. Reid*, 299 S.C. 305, 384 S.E.2d 713, 714 (1989). Second, and perhaps more importantly, the General Assembly created a system whereby lawyers could no longer engage in forum shopping (or forum manipulation) by naming sham or even negligible defendants at the commencement of the litigation to lock-in a certain favorable venue. That practice was rampant in South Carolina prior to tort reform and is viewed by this Court to be contrary to public policy. *See*, *Nash v. Tindall*, 375 S.C. 36, 650 S.E.2d 81, 84 (Ct. App. 2007) (describing "forum shopping" as "an act that violates public policy"). Section 15-7-30 thus allows for venue to be moved to the residence of the defendants even up to the time of trial.

By denying the change in venue to Florence County, the trial court permitted such forum manipulation to occur *in this very case*. As the trial court explains it its order, the Respondent settled with the School District prior to the commencement of the trial. In its order, the trial court writes: "It was obvious to the court and not disputed by plaintiff or the school district that the settlement agreement between them was reached before jury selection began." (R. 5). The trial court was then critical that the School District remained a party when the trial commenced and specifically that the School District's counsel participated in jury selection. (R. 5). However, as the transcript from September 9, 2024 demonstrates, the real motive for keeping the settlement with the School District hidden from the court and the Appellants until the trial "began" was not to impact jury selection but rather to manipulate the venue to hold the trial in

Marion County, which was not a proper venue for either Appellant.[2] However, the case did not proceed to trial on September 9, 2024. Because of the Respondent's improper conduct, which the trial court described as "the unfair and prejudicial jury selection process," the court dismissed the jury and continued the case to another term of court. (R. 5). At that point, the trial court heard the motion to change venue. Thus, because of the continuance, the motion was heard before the trial began, at which time the venue was not "locked-in" as *Jeter* may have suggested. The case was not tried until November 4, 2024, and thus, the motion to change venue was timely made and should have been granted *as a matter of law*. *See, Chestnut v. Reid*, 299 S.C. 305, 384 S.E.2d 713, 714 (1989) ("when a motion to change venue is brought pursuant to § 15-7-30 and the facts concerning the defendant's residence are uncontradicted, the trial court *must* change the venue to the county where the defendant resides"). (Emphasis added).

It should further be noted that, even if this Court were to conclude that *Jeter* remains "good law" for the construction of the post-2005 venue statutes, it is readily distinguishable given the facts and procedural history of this case. In *Jeter*, the plaintiffs properly brought the action in Union County against the South Carolina Department of Transportation ("SCDOT"). Because that case was governed by the Tort Claims Act, the venue was proper under Section 15-78-100(b) in Union County where the motor vehicle accident occurred. The at-fault driver, who was a resident of Fairfield County, was not originally sued by the plaintiffs. However, SCDOT

[2] The September 9, 2024 transcript reflects that as soon as the Respondent's counsel announced to the trial court that his client had settled with the School District which was immediately after jury selection was completed but before the jury was sworn, the Appellants' counsel asserted a change of venue motion and the Respondent's counsel immediately declared "the trial has started" and that "the trial has begun because we've empaneled a jury." (R. 411). The Respondent's counsel later confessed that he had "an agreement to agree" with the School District and that "there is no settlements [sic] until we impanel a jury because that is statutorily what begins the trial, and that is what starts this train down the tracks in Marion County." (R. 420). In effect, the Respondent has admitted to improper forum manipulation.

named the driver in a third-party complaint on the premise that she was a necessary party for purposes of apportionment of fault pursuant to Section 15-78-100(c). The at-fault driver made a motion to transfer venue to her county of residence (Fairfield County), which was granted by the trial court. The Supreme Court reversed that decision and held that venue in Union County was proper, which was correct under Section 15-78-100(b). However, unlike in the present case, *Jeter* did not involve the dismissal of a party-defendant prior to trial. The at-fault driver was neither a defendant (she was a third-party defendant) nor had she been dismissed before trial. Thus, in addition to interpreting a since-amended general venue statute, the Supreme Court in *Jeter* addressed a very different factual and procedural case from that presented here.

For each of these reasons, the trial court committed a prejudicial and reversible error of law in denying the Appellants their substantial right to be tried in Florence County. On that basis alone, the Appellants are entitled as a matter of law to a new trial in Florence County.

II. The trial court erred in failing to reduce the total judgment of $30 million to $1.2 million total against both Appellants in accordance with the South Carolina Solicitation of Charitable Funds Act.

In their post-trial motions, the Appellants argued that the total judgment of $30 million actual damages should be reduced to $1.2 million in accordance with the South Carolina Solicitation of Charitable Funds Act. As addressed in detail below, the Appellants relied on the legislative history of the Solicitation of Charitable Funds Act to show that the General Assembly did not adopt the "occurrence" language from the Tort Claims Act and incorporate it into the Solicitation of Charitable Funds Act. However, the trial court's Order on Post-Trial Motions does not address the merits of that argument. In footnote one, the trial court writes:

> In their post-trial briefing, Defendants relied on the legislative history of the Solicitation of Charitable Funds Act. Defendants

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

(R. 14). In essence, the trial court relegated this critical issue of statutory construction to a mere footnote that addresses the arguments by stating only that the trial court "respectfully disagrees with the arguments raised by Defendants." (R. 14). The Appellant MPA II submits that simply saying that the court "disagrees" without providing any analysis of the issue or giving the basis for the "disagreement" is not a "proper ruling" that allows for meaningful appellate review.[3] The footnote proceeds to state "for the reasons provided in this Order," but a review of the remainder of the order does not reflect any additional consideration or discussion of this argument. The Appellants filed a motion for reconsideration pointing out these shortcomings in the order and requesting a legal ruling from the trial court, but that was rejected by a summary denial of that Rule 59(e) motion. (R. 63-64). Thus, the trial court has not provided the bases for its "disagreement" with the Appellants' position.

The Appellant MPA II submits that this issue of statutory construction is meritorious, as evidenced in part by the fact that the Respondent was unable to refute the position and ultimately the trial court refused to provide any legal analysis to demonstrate why the court "disagreed" with the Appellants. By way of background, Section 33-56-180(A) of that Act provides in pertinent part as follows:

---

[3] In its Rule 59(e) motion, MPA II requested the trial court to provide its analysis of those arguments to provide for a "proper ruling" as contemplated by appellate case law. *See*, *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 594 S.E.2d 485, 498 (Ct. App. 2004) ("Error preservation requirements are intended 'to enable the lower court to *rule properly* after it has considered all relevant facts, law, and arguments'") (Emphasis added); *I'On v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716, 724 (2000).

> 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*.

S.C. Code Ann. § 33-56-180(A). (Emphasis added). Prior to its amendment in 2000, the reference to the Tort Claims Act, as italicized above, did not exist. Instead, the limit on liability in Section 33-56-180(A) was the specific sum of $250,000. *See*, 1994 Act No. 461. The statutory monetary caps imposed in the Tort Claims Act are set forth in Section 15-78-120. Section 15-78-120(a)(3) provides that "no person may recover in any action or claim brought hereunder against any governmental entity and caused by the tort of any licensed physician or dentist, employed by a governmental entity and acting within the scope of his profession, a sum exceeding one million two hundred thousand dollars because of loss arising from a single occurrence regardless of the number of agencies or political subdivisions involved. " S.C. Code Ann. § 15-78-120(a)(3). In adopting the statutory caps set forth in the Tort Claims Act, the General Assembly did not expressly adopt any other provision of the Tort Claims Act.

When it enacted the South Carolina Solicitation of Charitable Funds Act in 1994, the General Assembly expressly intended to "stipulat[e] the amount that a person may recover and from whom as a result of an injury by reason of certain tortious acts of an employee of the charitable organization." 1994 Act No. 461. At that time, the monetary cap on liability was established as $250,000.

Later, in 2000, the General Assembly amended the Solicitation of Charitable Funds Act and at that time adopted the Tort Claims Act limits of liability. There was not, however, an

intent to dramatically alter or increase the potential liability of charitable organizations. In fact, the title to Act No. 336 of 2000 states:

> AN ACT TO AMEND CHAPTER 56, TITLE 33, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE SOLICITATION OF CHARITABLE FUNDS ACT, SO AS TO REVISE THE CONTENT BY, INTER ALIA, ADDING CERTAIN DISCLOSURE REQUIREMENTS, DEFINITIONS OF AFFECTED SOLICITORS, CRIMINAL AND OTHER PENALTIES FOR VIOLATIONS, AND TECHNICAL CHANGES.

2000 Act No. 336. Notably, the title to the Act does not reflect any intent by the General Assembly to dramatically increase the potential liability of charitable organizations. The title does not even expressly describe the increase in the limits but rather refers to that as a "technical change."[4] In *Robertson v. State,* 276 S.C. 356, 276 S.E.2d 770 (1981), the Supreme Court examined the meaning of "made certain technical corrections" in interpreting the impact of an amendment to a statute. The Supreme Court observed that "[t]he term technical is defined as 'immaterial, not affecting substantial rights, without substance.'" 276 S.E.2d at 770. Ultimately, the Supreme Court concluded that "the legislature intended the change not to affect substantial rights." *Id*. In applying that rationale in the case at bar, it is clear that the General Assembly, by describing the change as "technical," did not intend to affect substantial rights and that the amendment was indeed "immaterial." Therefore, the General Assembly's reference to the Tort Claims Act caps in the 2000 Act does not evince an intent to create what would be an extreme

[4] *See*, *Joytime Distribution & Amusement v. State of South* Carolina, 338 S.C. 634, 528 S.E.2d 647, 655 (1999) ("it is proper to consider the title or caption of an act in aid of construction to show the intent of the legislature"). *See also*, *Kennedy v. South Carolina Retirement System*, 345 S.C. 339, 549 S.E.2d 243, 248 (2001) (where the Court looked at the title of an Act to glean legislative intent); *Demas v. Convention Motor Inns*, 268 S.C. 186, 232 S.E.2d 724, 726 (1977) (noting that it is proper to discern legislative intent from the title of an Act); *Duvall v. South Carolina Budget & Control Board*, 377 S.C. 36, 659 S.E.2d 125, 130 (2008) (same).

and unprecedented level of monetary liability in cases such as this one. Certainly, that would not constitute a mere "technical change."

The only appellate decision addressing the 2000 amendment to the monetary caps under the Solicitation of Charitable Funds Act is *Chastain v. AnMed Health Foundation*, 388 S.C. 170, 694 S.E.2d 541 (2010). In *Chastain*, the trial court reduced a $1.54 million verdict to $300,000 based on two alternative grounds. In the Supreme Court opinion, the two grounds are described as follows:

> The trial judge reasoned the intent of the CFA was to limit the amount of damages recoverable from a charitable organization, and that to read the term "'occurrence' to include every incident where the defendant nurses violated the applicable standard of care would clearly defeat the legislature's [intent]...." Alternatively, the judge held that based on the jury charge and verdict form, it was impossible to determine the number of negligent acts or negligent nurses found by the jury and thus only one recovery was appropriate.

694 S.E.2d at 543. While the appellant in *Chastain* appealed both grounds, the Supreme Court addressed only the alternative position finding "it necessary to uphold only one ground in order to affirm the trial judge's decision to reduce the verdict." *Id*. Consequently, neither the Supreme Court nor any appellate court has addressed the trial court's first basis for reducing the verdict to $300,000.

The Appellants in the case at bar re-assert that basis for reducing the $30 million to a single $1.2 million cap under the Solicitation of Charitable Funds Act. A fair reading of the Charitable Funds Act shows that the legislature's intent is to limit the amount of damages recoverable against a charitable organization and its employees. Importantly, like the Tort Claims Act with respect to its impact on sovereign immunity, the Charitable Funds Act, which results in a partial waiver of charitable immunity, is in derogation of the common law, and

accordingly, must be strictly construed in favor of limiting the liability of charitable organizations and their employees. *See*, *Eades v. Palmetto Cardiovascular and Thoracic, P.A.*, 422 S.C. 196, 810 S.E.2d 848, 850 (2018) ("[s]tatutes in derogation of the common law are to be strictly construed"). In fact, in *Sandel v. State*, 126 S.C. 1, 119 S.E. 776 (1922), the Supreme Court recognized that "[s]tatutes in derogation of the sovereignty of the state must be strictly construed, and *a waiver of immunity from liability must be clearly expressed*." 119 S.E. at 793. (Emphasis added). Certainly, Section 33-56-180(A) does not mention the word "occurrence" or otherwise indicate that a plaintiff may be able to recover a separate cap on monetary relief for each separate "occurrence." Any waiver of charitable immunity beyond $1.2 million was not clearly expressed by the General Assembly, and in all fairness, would constitute more than a "technical change."

As such, the Charitable Funds Act cannot be construed as adopting any other provision of the Tort Claims Act, including the definition of "occurrence," particularly when that intent is not *explicitly* stated in the title to 2000 Act No. 336 nor any other legislative history. The legislative intent was simply to borrow the alternative monetary caps of $300,000 and $1.2 million from the Tort Claims Act in place of the existing $250,000. There was no intent to adopt any "per occurrence" scheme where the charitable organizations and their employees would be subject to essentially unlimited liability, such as the $30 million verdict at issue in this case.

The *Chastain* case presents such a scenario. In that case, the plaintiff alleged that AnMed's nurses deviated from the standard of care on 2,372 separate occasions. To accept Chastain's interpretation of Section 33-56-180 would allow a recovery of up to $300,000 for each deviation from the standard of care leading to potential liability of over $600 million in damages against AnMed, a charitable organization. As the trial judge in *Chastain* recognized, the General Assembly did not intend to create such unprecedented and tremendously expanded

exposure for charitable organizations and their employees with the adoption of a "technical change" in 2000 to the Solicitation of Charitable Funds Act. Any suggestion to the contrary is really hard to fathom – it certainly renders the concept of "technical changes" to a statute to an absurd meaning. Clearly, the General Assembly did not intend to create such unprecedented exposure for charitable organizations and their employees with the adoption of a "technical change" to the Solicitation of Charitable Funds Act. Therefore, with proper consideration of the 2000 Act and the legislative history, the change to Section 33-56-180(A) to reference "*an amount not exceeding the limitations on liability imposed in the South Carolina Tort Claims Act in Chapter 78 of Title 15*" in place of a specific monetary amount should not be interpreted to allow for a separate amount of monetary recovery for each separate occurrence as defined in the Tort Claims Act but not in the Charitable Funds Act. Instead, the General Assembly intended that the monetary liability of charitable organizations and their employees be capped at $300,000 for non-physician torts and $1.2 million for physician-torts.

In sum, the amendment to Section 33-56-180(A) to reference "*an amount not exceeding the limitations on liability imposed in the South Carolina Tort Claims Act in Chapter 78 of Title 15*" in place of a specific monetary amount should not be interpreted to allow for a separate amount of monetary recovery for each separate "occurrence" as defined in the Tort Claims Act but not in the Charitable Funds Act. There was no legislative intent – and certainly no explicit and clearly expressed intent as required where the statute is in derogation of the common law – to adopt any "per occurrence" monetary scheme. The legislative intent was simply to borrow the alternative monetary caps of $300,000 and $1.2 million from the Tort Claims Act in place of the then existing $250,000. Accordingly, the monetary liability of the Appellants should be capped

at $1.2 million, and the trial court erred in refusing to reduce the $30 million verdict to $1.2 million on this basis.

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

Alternatively, the Appellant MPA II argued in the trial court that even if the General Assembly intended in 2000 to adopt a "per occurrence" limit on liability as a "technical change" to the Solicitation of Charitable Funds Act (which seems highly unlikely), the evidence in this case does not support the finding of two separate "occurrences," and accordingly, the judgment against MPA II should have been reduced to $1.2 million on that basis. The trial court disagreed and ruled the "occurrence" issue was purely a fact question for the jury. The court explained that "the jury ultimately concluded that there were two distinct occurrences that led to the death of 16-year-old Taylor Price: (i) Dr. Trant's failure to order any tests which led to the grossly inadequate cardiac workup of Taylor; and (ii) Dr. Trant's signing the return to sports clearance for Taylor." (R. 21). Based thereon, the trial court ruled that there were two "occurrences" and capped the liability of MPA II to $1.2 million for each "occurrence" for a total judgment of $2.4 million against the practice.[5]

[5] In its Order on Post-Trial Motions, the trial court noted that the Appellants did not make an objection to the verdict form or to the proposed charge relating to the "occurrence" issue. (R. 21). While the import of those observations is not stated with clarity, to the extent the trial court was making a pre-appeal preservation ruling, that was in error and frankly is not consistent with the trial court's own statements on the record. As was discussed at the hearing on the post-trial motions, the Appellants argued that once the trial court made a definitive ruling at the close of the evidence, over the Appellants' objection, that the "occurrence" issue presented an issue of fact for the jury (R. 1149-1150), it was unnecessary for the Appellants to continue to object to the jury charge or the verdict form to preserve that issue for appeal. The trial court had

The trial court's rulings on the "occurrence" issue are not only in error but also fail to include any substantive legal analysis of what is a complex legal issue. The Order on Post-Trial Motions cites to no legal authority and is conclusory at best. In effect, the trial court states that it "is convinced that the number of occurrences in this particular case was a matter for the jury to decide." (R. 21). The court never explains why it is "convinced" of such. The trial court then found that the jury actually found the two "occurrences" as described above and further concluded that the expert testimony of Dr. Anthony Chang supported a finding of what the trial court calls "two separate and distinct failures" meaning "two deviations from the standard of care." (R. 21). The trial court's rulings and the brief explanation provided for those rulings are in error and should be reversed.

If adopted in full as part of the Solicitation of Charitable Funds Act (as presumably determined by the trial court), Section 15-78-120(a)(3) provides that "[n]o person may recover in any action or claim brought hereunder against any governmental entity and caused by the tort of any licensed physician or dentist, employed by a governmental entity and acting within the scope of his profession, *a sum exceeding one million two hundred thousand dollars because of loss arising from a single occurrence* regardless of the number of agencies or political subdivisions

---

made its final ruling at that point. (R. 1410-1412). In response to that argument at the post-trial motion hearing, the trial judge initially stated, "I agree with you." (R. 1410. The Appellants' counsel then continued as follows: "But what I take exception to is this argument that we didn't preserve anything by not challenging the verdict form or the charge where you sent that issue to the jury because you had already ruled that it was a jury question, and I think we're preserved on that." (R. 1411). To that, the trial judge replied, "I think you are too." (R. 1411). For these reasons, the language in the Order should not be construed as a pre-appeal preservation ruling, and if that is what was intended, it should be deemed as made in error. *See*, *State v. Jones*, 435 S.C. 138, 866 S.E.2d 558, 561 (2021) ("requiring attorneys to continue to object when a ruling is clearly final would not serve the purpose of our rules of preservation; rather, it would merely foster a game of 'gotcha,' where form is elevated over substance").

involved." S.C. Code Ann. § 15-78-120(a)(3). (Emphasis added).[6] As the italicized language shows, Section 15-78-120(a)(3) caps a judgment at $1.2 million "because of loss arising from a single occurrence." S.C. Code Ann. § 15-78-120(a)(3). The term "occurrence" is defined in the Tort Claims Act as "an unfolding sequence of events which proximately flow from a single act of negligence." S.C. Code Ann. § 15-78-30(g).[7] The statutory definition of "occurrence" is complex and nuanced and frankly not one that can be easily understood or applied by a jury. Indeed, even the South Carolina appellate courts that have addressed that definition have struggled with its meaning and application. *See, Boiter v. South Carolina Department of Transportation,* 393 S.C. 123, 712 S.E.2d 401 (2011); *Chastain v. AnMed Health Foundation,* 388 S.C. 170, 694 S.E.2d 541 (2010).[8]

At trial and again post-trial, the Appellant MPA II argued that the issue relating to the number of occurrences should be a question of law based upon factual findings by the jury rather

---

[6] Section 15-78-120(a)(4) establishes an aggregate cap of $1.2 million for multiple claims as follows: "The total sum recovered hereunder arising out of a single occurrence of liability of any governmental entity for any tort caused by any licensed physician or dentist, employed by a governmental entity and acting within the scope of his profession, may not exceed one million two hundred thousand dollars regardless of the number of agencies or political subdivisions or claims or actions involved." S.C. Code Ann. § 15-78-120(a)(4). However, Section 15-78-120(a)(4) is not applicable in this case because the Respondent brought only a single claim, that being for wrongful death.

[7] The defined term "occurrence" is not mentioned, let alone defined, in the Solicitation of Charitable Funds Act.

[8] The trial judge even commented that "[t]his occurrence situation is all over the board. Every time I think I understand it, the Supreme Court comes out with a different opinion." (R. 876). On his initial comment, the trial judge is correct. The definition of "occurrence" is poorly drafted and extraordinarily difficult to apply. To the judge's latter point, the trial judge is incorrect in that the existing decisional guidance from our appellate courts -- consisting of only two published decisions, *Chastain* from 2010 and *Boiter* from 2011 -- is scant at best. In actuality, the trial judge was likely lamenting the varied approaches that state and federal *trial courts* have been taking in addressing the procedure to be applied in adjudicating the "occurrence" issue.

than simply a question of fact which would be submitted to the jury to answer. The trial court erred in rejecting that position. Importantly, in *Parker v. Spartanburg Sanitary Sewer District*, 362 S.C. 276, 607 S.E.2d 711 (Ct. App. 2005), this Court, using mandatory language, states: "We conclude that the monetary statutory cap is self-executing and the court is required to apply the monetary statutory cap to any jury verdict exceeding $300,000." 607 S.E.2d at 716. The same is true with respect to the statutory cap for torts committed by a physician pursuant to Section 15-78-120(a)(3). Additionally, in *Campbell v. City of North Charleston*, 431 S.C. 454, 848 S.E.2d 788 (Ct. App. 2020), this Court again reaffirmed that "the plain meaning of the statute indicates this cap must be executed" and that "under the plain meaning of section 15-78-120(a), courts must apply the statutory cap to actions brought pursuant to the Act." 848 S.E.2d at 793-794. This Court also emphasized that "the application of the cap is mandatory and self-executing." 848 S.E.2d at 793. Thus, the application of the monetary caps is a mandatory duty imposed on the trial court where, as here, the jury's verdict in a physician-tort case exceeds $1.2 million.

In design and application, the "occurrence" issue presents a mixed question of law and fact. *See, Charleston County Parks & Recreation Comm'n v Somers,* 319 S.C. 65, 459 S.E.2d 841 (1995) (questions of statutory construction are a matter of law). Notably, in *Boiter*, *supra*, the Supreme Court made the determination that the facts as found by the jury gave rise to multiple occurrences. Contrary to common misconception, as even expressed by the Respondent in this case, the jury in *Boiter* did not make that determination; the jury only determined that both defendants committed acts of negligence.[9] The Appellants' position that the number of

[9] In *Boiter v. South Carolina Department of Transportation*, *supra*, the Supreme Court made the determination that the facts as found by the jury gave rise to multiple occurrences. While often overlooked or misapprehended, the jury in *Boiter* did *not* actually

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

The leading case on the application of the term "occurrence" under the Tort Claims Act is *Boiter, supra*. In that case, the Supreme Court concluded that there were separate "occurrences" by two state agencies that resulted in a motor vehicle accident. By way of factual background, the Boiters' vehicle and another vehicle collided when both vehicles entered an intersection at the same time. At the time of the accident, the red signal light bulbs in the traffic signal for the other vehicle's direction of travel had burned out. The Boiters brought suit against the South Carolina Department of Transportation (SCDOT) alleging negligence in failing to have a relamping policy

---

make any determination regarding the number of occurrences; the jury only determined that both defendants committed acts of negligence. The Supreme Court treated the issue as a question of law for the court. As reflected in the Supreme Court's opinion, *Boiter* did not involve one lawsuit with two plaintiffs and two defendants. Instead, as the Supreme Court explained, "[t]he Boiters filed four separate lawsuits against South Carolina Department of Transportation (SCDOT) and South Carolina Department of Public Safety (SCDPS) (collectively, Respondents) alleging negligence in their failure to prevent the accident." *Boiter*, 712 S.E.2d at 402. Thus, there were four separate lawsuits, and as a result, when the cases were tried, the jury returned *four separate verdicts*. Those four verdicts totaled $1.875 million for each plaintiff. 712 S.E.2d at 402-403. In adjudging the post-trial motions, the trial judge in *Boiter* did have available to him the jury's determination of the "loss" attributable to each defendant (SCDOT or SCDPS) in favor of each plaintiff (Larry Boiter and Jeannie Boiter). That allowed the Supreme Court to know on appeal that the jury found in excess of $300,000 in damages for each of the two occurrences that the Supreme Court found, one by SCDOT and another by SCDPS.

in place. The Boiters also brought suit against the South Carolina Department of Public Safety (SCDPS) alleging negligence in failing to send a trooper to direct traffic at the intersection after being notified that the red lights were out. In a 4-1 decision, the Supreme Court found that the negligence committed by SCDOT constituted one "occurrence" and the negligence by SCDPS constituted a separate "occurrence." In other words, the Supreme Court concluded that there were "independent and separate acts of negligence" by the two state agencies. Importantly, the Supreme Court expressly decided the issue "based solely on the peculiar facts of this case" and further states that no "bright-line test" was being adopted by the Court. 712 S.E.2d at 406. The Supreme Court did, in fact, acknowledge that "[i]n many situations, negligent acts from more than one entity would still equal but one occurrence." 712 S.E.2d at 407. But, based on what it described as "peculiar facts," the Supreme Court found that "there were two separate entities which committed two separate and independent acts of negligence, and we do not believe the General Assembly's intent was to limit recovery in such situations based on there being only one occurrence." *Id*.

The present case is readily distinguishable from *Boiter* in that this case involves a single charitable entity, with allegations involving a single employee or physician tortfeasor, namely Dr. Trant, who allegedly committed two “deviations of the standard of care.” The Supreme Court in *Boiter* offers considerable insight as to how a case with those characteristics should be adjudicated. The Supreme Court points out that "[c]ases from other jurisdictions are similarly inapposite because they involve a single governmental entity which committed multiple acts of negligence, a completely different situation than the one before us." *Boiter*, 712 S.E.2d at 406. The Supreme Court then cites favorably two cases from other jurisdictions that are instructive in

the present case. Those cases are factually similar to the present case where, unlike in *Boiter*, there is a single governmental entity that allegedly committed multiple acts of negligence.

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

Importantly, in *Boiter*, the South Carolina Supreme Court recognized that "[i]n many situations, negligent acts from more than one entity would still equal but one occurrence." 712 S.E.2d at 407. This would likewise be true where there are multiple acts of negligence committed by the same entity, particularly where those acts are the same or similar and result in a continuous "unfolding sequence of events." To reiterate, in *Boiter*, the Supreme Court found

two occurrences when the facts revealed that two governmental defendants each committed a separate and distinct wrongful act that did not combine or "unfold" to cause each plaintiff's injury. Here, the facts as found by the jury reveal that one employee of a charitable organization committed the same or at least similar or closely related breaches of the standard of care that combined or "unfolded" to allegedly result in the Plaintiff's decedent being allowed to play sports on the date of her death which was approximately 34 months after the office visit with Dr. Trant.

As mentioned, the trial court concluded that the expert testimony of Dr. Anthony Chang supported a finding of what the trial court calls "two separate and distinct failures" meaning "two deviations from the standard of care." (R. 21). While Dr. Chang did offer testimony that there was a "deviation of the standard of care" by Dr. Trant for "him not to perform those tests" and for him "to send her right back without any of those tests" (R. 772), Dr. Chang never opined that those deviations were "separate and distinct." Indeed, the totality of Dr. Chang's testimony indicates that the failure to perform a proper workup including testing resulted in Dr. Trant signing the sports clearance form for Taylor. In other words, the "deviations of the standard of care" were closely related and, in effect, part of the same unfolding sequence of events.

Critically, the number of "occurrences" is not determined by the number of acts of negligence (or in this case the number of breaches of the standard of care). *Boiter*, 712 S.E.2d at 406 ("we do not adopt a bright-line test based on the existence of multiple acts of negligence"). Rather, an "occurrence" is an "unfolding sequence of events." Given the jury's verdict, the trial court was required to apply the statutory definition of "occurrence" and analyze whether the two breaches of the standard of care, as presumably found by the jury, gave rise to or proximately caused different "unfolding sequences of events." If the two breaches of the standard of care

each give rise to a new "sequence of events" so as not to be "unfolding" or "evolving" from past events, only then is there a new and separate "occurrence." In other words, if the same "unfolding sequence of events" proximately flows from multiple acts of negligence (or in this case breaches of the standard of care since the jury did not find acts of negligence), there is but a single occurrence, as the Supreme Court in *Boiter* readily explains.

In the present case, there was a single event which proximately flowed from the two breaches of the standard of care as presumably found by the jury, both of which occurred as part of and a consequence of a single office visit with Dr. Trant.[10] The two alleged breaches of the standard of care are closely-related (if not identical) and flow into that singular event, i.e., they combined and concurred to proximately cause at most a single occurrence – the unfolding sequence of events that ended with the decedent's death. That is the scenario the Respondent has presented here. The Respondent did not plead nor prove multiple "unfolding sequences of events." Moreover, the evidence does not support a finding of new or different "unfolding sequences of events." As indicated, one deviation actually caused the next. In other words, as Dr. Chang's testimony indicates, it was Dr. Trant's alleged failure to conduct a proper cardiac workup that resulted in his signing the sports clearance form. They were no separate and distinct deviations unrelated to one another.

In sum, as *Boiter* instructs, the trial court should have ruled as a matter of law that the same "unfolding sequence of events" proximately flowed from the two "deviations of the standard of care" committed by the same physician-employee, that being Dr. Trant, working for the same charitable entity. There were not two separate and independent sequences of events resulting in the decedent's injury and death. Instead, there was a singular, finite medical encounter by one

[10] As discussed below, the Appellant MPA II, as well as the Appellant Trant, contest the trial court's rulings on the merits of the proximate cause issue.

physician, and hence, there was but one "unfolding sequence of events" and thus one "occurrence." The Appellant MPA II, therefore, requests that this Court properly analyze the "occurrence" issue by applying the *entire definition* and not just the back-end of the definition. As the Supreme Court made clear in *Boiter*, the number of "occurrences" does not equate to the number of negligent acts or deviations from the standard of care. Thus, when properly analyzed under the rubric from *Boiter*, MPA II submits that the trial court should only have found a "single occurrence," and accordingly, the verdict should have been reduced to a single cap of $1.2 million in accordance with the mandates of Sections 15-78-120(a)(3).

IV. The trial court erred in denying the Appellants' motions for directed verdict and JNOV motion on the issue of proximate cause.

The trial court also erred in denying the Appellants' motions for directed verdict and JNOV on the issue of proximate cause. In its Order on Post-Trial Motions, the trial court concluded that "[t]he jury was presented with ample evidence that Defendants' negligence proximately caused the wrongful death of Taylor Price." (R. 22).

South Carolina law requires a plaintiff in a medical negligence case to present: "(1) evidence of the generally recognized practice and procedures that would be exercised by competent practitioners in a defendant doctor's field of medicine under the same or similar circumstances; and (2) evidence that the defendant doctor departed from the recognized and generally accepted standards, practices, and procedures in the manner alleged by the plaintiff." *Gooding v. St. Francis Xavier Hospital*, 326, S.C. 248, 487 S.E.2d 596, 599 (1997). In addition, "the plaintiff must show that the defendants' departure from such generally recognized practices

and procedures was the proximate cause of the plaintiff's alleged injuries and damages." *David v. McLeod Regional Medical Center*, 367 S.C. 242, 626 S.E.2 1, 4 (2006).

Ordinarily, proximate cause is a question for the jury, but when the evidence is susceptible to only one inference, it becomes a matter of law for the court. *Platt v. CSX Transp., Inc.,* 379 S.C. 249, 665 S.E.2d 631, 640 (Ct. App. 2008). The jury found that the negligence of the Appellants proximately caused damage to the Respondent. However, it is undisputed that Taylor died 34 months after her only visit with Dr. Trant, and that Taylor and her mother were told by Dr. Trant to call back if the symptoms persist or do not respond as expected. They never called back or returned. Further, Taylor received at least one medical clearance to participate in sports after the medical clearance provided by Dr. Trant. Therefore, she was not participating in basketball on the day she died pursuant to the sports clearance issued by Dr. Trant.

The undisputed evidence shows passage of time (34 months) and intervening acts (subsequent medical clearance). Together, they break the causal chain. In *McKnight v South Carolina Dept. of Corrections*, 385 S.C. 380, 684 S.E.2d 566 (Ct. App. 2009), the deficient mental health treatment to an incarcerated inmate in a prison hospital was found too attenuated from the inmate's suicide a year after his release from the prison hospital to have proximately caused it. This was especially true because after this release from the hospital, the inmate returned to prison with no further treatment from the hospital. The *McKnight* opinion cites favorably to the case of *Tolton v. American Biodyne, Inc.,* 48 F.3d 937 (6th Cir. 1995), in which the Sixth Circuit held that when the decedent committed suicide more than one month after his last visit to the hospital and received treatment from two other hospitals during that one-month period, the plaintiffs could not prove damages because of the time lapse and intervening medical treatment.

On these bases and the other arguments made by the Appellant Trant which the Appellant MPA II joins and incorporates herein,[11] the trial court erred in denying the directed verdict motions and the JNOV motion based on the absence of probable cause. [12]

V. The trial court erred in making an award of "offer of judgment interest" which is in contravention of the legislative intent as expressed in 2005 Act Number 32.

The Respondent filed a post-trial motion seeking an award of so-called "offer of judgment interest" pursuant to Section 15-35-400 and Rule 68, SCRCP. The motion is based upon an Offer of Judgment that was served on November 15, 2022. The Offer of Judgment was served on and directed against the Appellant MPA II and MAG Mutual Insurance Company. (R.115-117). MPA II opposed that motion on the basis that Section 15-35-400 and Rule 68(b), SCRCP, on which the Respondent's motion is based, are not applicable to charitable entities. (R. 251-257). In rejecting that argument, the trial court simply states that "[t]his Court disagrees with Defendants' argument that charitable organizations, such as MPA II, are not subject to offer of judgment interest." (R. 35). The trial court provided no legal analysis of the issue nor even

---

[11] In accordance with Rule 208(6), SCACR, the Appellant MPA II hereby adopts and incorporates herein the arguments set forth in Argument C in the Opening Appellant's Brief filed by the Appellant Trant.

[12] The Appellants argued in the court below that the jury's verdict of $30 million in actual damages is grossly excessive and warrants a new trial absolute. Ultimately, the trial court entered a joint and several judgment against MPA II for $2.4 million in actual damages as well as the offer of judgment interest. In accordance with Rule 208(6), SCACR, the Appellant MPA II hereby adopts and incorporates herein the arguments set forth in Argument F in the Opening Appellant's Brief filed by the Appellant Trant. The Appellant MPA II agrees that the $30 million verdict was grossly excessive and should not be permitted to stand for the reasons argued by Dr. Trant. Moreover, for the same reasons, even the portion of that verdict for which a judgment is entered against MPA II is grossly excessive. If the Court agrees with Dr. Trant's position and grants a new trial absolute on this basis, the new trial absolute should be granted for both Appellants as to liability and damages. *See,* S.C. Code Ann. § 15-33-125.

stated why the court "disagreed" with MPA II's position.[13] Accordingly, the trial court granted the motion for offer of judgment interest and awarded $380,843.84 in offer of judgment interest. (R. 36). MPA II contends that the trial court erred in awarding the offer of judgment interest against a charitable entity.

By way of background, Section 15-35-400 was enacted as part of Act No. 32 of 2005. Section 18 of Act No. 32 reads: "The provisions of this act do not affect any right, privilege, or provision of the South Carolina Tort Claims Act contained in Chapter 78, Title 15 of the 1976 Code or the South Carolina Solicitation of Charitable Funds Act as contained in Chapter 56 of Title 33." Section 18 was then codified in Section 15-78-220, which provides verbatim that: "The provisions of Act No. 32 of 2005 do not affect any right, privilege, or provision of the South Carolina Tort Claims Act contained in Chapter 78, Title 15 of the 1976 Code or the South Carolina Solicitation of Charitable Funds Act as contained in Chapter 56 of Title 33." *See,* S.C. Code Ann. § 15-78-220. Accordingly, the provisions of Act No. 32, including Section 15-35-400, are explicitly inapplicable to cases brought pursuant to the Solicitation of Charitable Funds Act, including the present case.

Additionally, Rule 68, SCRCP, was amended in 2006 to adopt certain language and provisions from Section 15-35-400. Rule 68(b), however, is not and cannot be construed as applicable to charitable organizations sued under the Solicitation of Charitable Funds Act.

[13] In its Rule 59(e) motion, MPA II requested the trial court to provide its analysis of those arguments to provide for a "proper ruling" as contemplated by appellate case law. *See*, *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 594 S.E.2d 485, 498 (Ct. App. 2004) ("Error preservation requirements are intended 'to enable the lower court to *rule properly* after it has considered all relevant facts, law, and arguments'") (Emphasis added); *I'On v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716, 724 (2000).

Otherwise, Rule 68(b) would be unconstitutional.[14] Section 4 of Article V of the South Carolina Constitution requires that procedural rules must be subordinate to statutory law. That constitutional provision states: "The Supreme Court shall make rules governing the administration of all the courts of the State. Subject to the statutory law, the Supreme Court shall make rules governing the practice and procedure in all such courts." *See*, S.C. Const., art. V, § 4. (Emphasis added). In construing this provision, the Supreme Court in *Stokes v. Denmark Emergency Medical Services,* 315 S.C. 263, 433 S.E.2d 850 (1993), explained that "[t]he clause 'subject to the statutory law' establishes the intent to subordinate to the General Assembly the Court's rulemaking power in regard to practice and procedure." 433 S.E.2d at 852. *See also, Marichris v. Derrick,* 384 S.C. 345, 682 S.E.2d 301, 305 (Ct. App. 2009) ("[a] rule of civil procedure may not limit the provisions of a statute"). Consequently, Rule 68(b) cannot be read as creating liability for pre-judgment interest or "offer of judgment interest" where the General Assembly has expressly provided that Section 15-35-400 is not applicable to charitable organizations sued under the Solicitation of Charitable Funds Act. Therefore, in order to be constitutional, Rule 68(b) must be read as being inapplicable to Solicitation of Charitable Funds Act cases, including the present case.

In sum, the trial court erred in making an award of offer of judgment interest against a charitable entity. The award of $380,843.84 in interest should be reversed.

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

CONCLUSION

Based on the foregoing discussion and analysis, the Appellant McLeod Physician Associates II respectfully requests that the Court reverse the Order Denying Defendants' Motion for Change of Venue issued by Circuit Court Judge H. Steven DeBerry, IV filed September 19, 2024, and remand this action for a new trial in the Florence County Court of Common Pleas. Additionally, the Appellant MPA II requests that the Court reverse the Orders of Circuit Court Judge R. Ferrell Cothran and the Form Order denying a subsequent motion for reconsideration on the grounds discussed herein. The Court is asked to remand for entry of a JNOV in favor of the Appellants, or in the alternative, that the judgment be reduced to a single cap of $1.2 million. Further, the Court is requested to reverse the award of offer of judgment interest.

Respectfully submitted,

LINDEMANN LAW FIRM, P.A.

BY: *s/ Andrew F. Lindemann*

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

J. BOONE AIKEN, III #307
JOSEPH P. MCLEAN #11839
AIKEN, BRIDGES, ELLIOT,
TYLER & SALEEBY, P.A.
Post Office Drawer 1931
Florence, South Carolina 29503
(843) 669-8787

Counsel for Appellant
McLeod Physician Associates II

January 27, 2026

RECEIVED
Jan 27 2026
SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned counsel for the Appellant McLeod Physician Associates II certifies that the Final Appellant's Brief of Appellant McLeod Physician Associates II complies with Rule 211(b), SCACR.

LINDEMANN LAW FIRM, P.A.

BY: *s/ Andrew F. Lindemann*

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

J. BOONE AIKEN, III #307
JOSEPH P. MCLEAN #11839
AIKEN, BRIDGES, ELLIOT,
TYLER & SALEEBY, P.A.
Post Office Drawer 1931
Florence, South Carolina 29503
(843) 669-8787

Counsel for Appellant
McLeod Physician Associates II

January 27, 2026

CERTIFICATE OF COMPLIANCE

The undersigned counsel for the Appellant McLeod Physician Associates II certifies that the Final Appellant's Brief of Appellant McLeod Physician Associates II complies with the Supreme Court's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, issued April 15, 2014.

LINDEMANN LAW FIRM, P.A.

BY: *s/ Andrew F. Lindemann*

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

J. BOONE AIKEN, III #307
JOSEPH P. MCLEAN #11839
AIKEN, BRIDGES, ELLIOT,
TYLER & SALEEBY, P.A.
Post Office Drawer 1931
Florence, South Carolina 29503
(843) 669-8787

Counsel for Appellant
McLeod Physician Associates II

January 27, 2026