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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.

REPLY BRIEF OF APPELLANT MCLEOD PHYSICIAN ASSOCIATES II

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes, Rules and Other Authorities

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.

The Appellants have made a compelling showing that the trial court's denial of a change of venue from Marion County to Florence County after the settlement of Marion County School District was a clear error of law which warrants a reversal and remand for a new trial in Florence County. The strength of the Appellants' position is amply demonstrated by the Respondent's response. The Respondent barely addresses the merits of the trial court's ruling in denying the change of venue and focuses almost exclusively on a preservation defense. Notably, the Respondent fails to even attempt to refute that Section 15-7-30, which is the general venue statute on which the Appellants principally based their change of venue motion, was drastically amended in 2005, and that the Respondent's position on venue was based on the statutory language that pre-dated the 2005 amendments. In effect, the Respondent makes no attempt to support the venue ruling based on the *existing* law at the time this case was litigated.

A. The Appellants' challenge to the denial of the change of venue to Florence County is properly preserved for appellate review.

As an initial point, the Respondent asserts a preservation argument that has no merit. As our appellate courts have stated, issue preservation "is not a 'gotcha' game aimed at embarrassing attorneys or harming litigants." *Atlantic Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 730 S.E.2d 282, 285 (2012). This Court has explained: "While it may be good practice for us to reach the merits of an issue when error preservation is doubtful, we should follow our longstanding precedent and resolve the issue on preservation grounds when it *clearly* is

unpreserved." *Id*. (Emphasis added). "[W]here the question of issue preservation is subject to multiple interpretations, any doubt should be resolved in favor of preservation." 730 S.E.2d at 287. (Toal, C.J., concurring in result in part and dissenting in part). Additionally, "[e]rror preservation rules do not require a party to use the exact name of a legal doctrine in order to preserve an issue for appellate review. Instead, a litigant is only required to fairly raise the issue to the trial court, thereby giving it an opportunity to rule on the issue." *State v. Brannon*, 388 S.C. 498, 697 S.E.2d 593, 595-96 (2010).

To fully gauge the error of the Respondent's preservation position, it is necessary to view the procedural history that culminated in the change of venue motion being made and decided. The case was originally scheduled for trial to begin on September 9, 2024. At that point, there were three Defendants, including McLeod Physician Associates II ("MPA II"), Dr. Charles Trant, and the Marion County School District. With the School District named as a party, the case was governed by the South Carolina Tort Claims Act, and venue was proper in Marion County. *See*, S.C. Code Ann. § 15-78-100(b). The School District remained a party through jury selection and, in fact, participated in the selection process, even to the point of conferencing and sharing strikes with the Appellants' counsel. Unknown to the trial court and the Appellants' counsel, however, a settlement had already been struck between the Respondent and the School District, and there was a further agreement to keep that settlement concealed until the jury could be empaneled. Of note, the Respondent's counsel later confessed that he had "an agreement to agree" with the School District, but "there is no settlements [sic] until we impanel a jury because that is statutorily what begins the trial, and that is what starts the train down the tracks in Marion County." (R. 420). The trial court even commented that "it seems to me like that [the settlement] had to have been done before the jury selection process began." (R. 419). Thus, the Respondent's counsel was looking to use

deception to manipulate the venue to keep it in Marion County.

Immediately after the jury was selected (but not yet sworn) and before there was even an opportunity for counsel to confirm, let alone discuss, a settlement, the Respondent's counsel announced to the trial court and the Appellants that "[w]e've actually got a settlement with the Marion County School District." (R. 410). The Appellants' counsel then advised the trial court that "we'll be moving for a change of venue." (R. 411). Demonstrating this was pre-planned, the Respondent's counsel quickly retorted: "The trial has started. …. The jury has been empaneled; trial has started. This would be no different than a directed verdict granted. This train is rolling, and the venue is here." (R. 411). Unlike their counterparts, the Respondent's counsel anticipated and prepared for a change of venue motion to be made because they knew the impact that the absence of the School District would have. This is the definition of gamesmanship and should not have been condoned.

At that point, an oral motion to change venue was made. The trial court took a recess from 1:13 p.m. to 1:59 p.m. (R. 414). During that interval, the Appellants' counsel were able to quickly get a written Motion for Change of Venue prepared and filed by 1:57 p.m. (R. 118-119). In that written motion, the Appellants first explained the dismissal of the School District and then asserted that "venue is now only proper in Florence County." (R. 188). The grounds were further stated as follows:

> Pursuant to S.C. Code § 15-7-30(C) a civil action tried pursuant to this section against a resident individual defendant must be brought and tried in the county in which the: (1) defendant resides at the time the cause of action arose; or (2) the most substantial part of the alleged act or omission giving rise to the cause of action occurred.
>
> Dr. Trant is a citizen and resident of Florence County. Dr. Trant does not own property or transact business in Marion County. At the time the cause of action arose, Dr. Trant was a citizen and resident of Florence County, and all of the alleged acts or omissions of Dr. Trant

> giving rise to Plaintiff's alleged claims occurred in Florence County. The right of a defendant to be tried in a county of his/her residence is a substantial right.

(R. 118-119). Of note, the Appellants cited to the general venue statute, Section 15-7-30, *as it existed in 2024*, and not the pre-2005 amendments version of Section 15-7-30 which is cited in *Jeter v. South Carolina Dept. of Transportation*, 369 S.C. 433, 633 S.E.2d 143 (2006), on which the Respondent relied then and continues to rely in error now.

Starting back at 1:59 p.m., the trial court heard some brief arguments from counsel on the venue motion, but the court also stated "my inclination is to hear from the parties, give you some time this afternoon to brief these legal issues and come back in the morning and let you know what my decision is." (R. 414). At that point, the trial had not yet been continued. As to venue, the Appellants' counsel argued that "Dr. Trant has the right, a substantial right now in the posture of this case to be tried in the county of his residence. That's Florence County." (R. 424). While the Respondent now tries to portray the venue arguments as based only on Section 15-7-100, that is not accurate. Indeed, even the Respondent's counsel first addressed Section 15-7-30; he just relied on an obsolete version of the statute. (R. 421). The Appellants' counsel, as noted above, relied on and cited to the language of the current version of Section 15-7-30. Ultimately, the trial court recessed for the day and allowed the parties to further brief the venue issue. (R. 426).

On that same date, at 7:24 p.m., the Appellants' counsel filed their Memorandum of Law in Support of Motion to Change Venue. (R. 122-125). That memorandum provided further analysis and again cited to the current version of Section 15-7-30. The Appellants also cited extensively the case of *Chestnut v. Reid*, 299 S.C. 305, 384 S.E.2d 713 (1989), in which the Supreme Court wrote, using mandatory language, 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." 384 S.E.2d at 714. (Emphasis added). The memorandum concludes that "Florence County is the correct venue for this action against Dr. Trant and MPA II since Marion County School District is no longer a party." (R. 123).

On the following day, September 10, 2024, the trial court acknowledged reviewing "the filings that the attorneys made overnight." (R. 430). The judge also heard additional oral argument, but in no manner did he indicate that the oral argument superseded or waived any prior arguments made, including the written arguments in the motion and memorandum. The Appellants' counsel reiterated that "Dr. Trant and MPA II contend that the venue is now proper in Florence County." (R. 432-433). There was additional argument, which supplemented the argument from the previous day, regarding the alternative position for a change of venue based on Section 15-7-100. However, the Appellants never waived their original and primary contention, which was legally correct, that the trial court was mandated by Section 15-7-30 and the *Chestnut* decision to transfer venue to Florence County. In actuality, the discussion of Section 15-7-100 was premature because, as *Chestnut* requires, consideration of Section 15-7-100 should not have been adjudicated until after the venue had been transferred to Florence County, to the extent there was an attempt to transfer venue back to Marion County. *See*, *Chestnut*, 384 S.E.2d at 714 ("If the plaintiff then wishes to change venue based on the convenience of witnesses and the promotion of justice, he may make such motion to the trial judge in the county of the defendant's residence"). The Appellants' counsel ended his argument by reiterating "the substantial right of both Dr. Trant and MPA to be tried in Florence." (R. 438).

Before the trial court ruled, he also directed that both sides submit proposed orders. (R. 440). Thus, for preservation purposes, the proposed orders should also be considered as additional argument presented to the trial court prior to ruling. The Appellants submitted a proposed order

which cited Section 15-7-30 and reiterated that "the school district was no longer a party, and therefore, venue was now proper only in Florence County where Trant resides, where the incident of alleged malpractice occurred, and where MPA II has its principal place of business." (R. 1482). The Appellants cited the existing language of Section 15-7-30 and the *Chestnut* decision. The proposed order also advised the trial court that, as *Chestnut* directs, the factors of Section 15-7-100 "[are] not the proper inquiry of the court at this juncture of the case" and that "[t]he court's decision is controlled by the *Chestnut* decision." (R. 1484). The proposed order further discussed the *Jeter* decision and explained: "The presence of SCDOT as a governmental defendant in *Jeter* made venue proper in Union County. That situation no longer exists in this case. The school district is no longer a party. The *Jeter* decision does not prevent a change of venue under § 15-7-30." (R. 1484).

All of those points of law recited in the proposed order are correct. Contrary to the suggestion made by the Respondent in her attempt to maintain the verdict received in Marion County, the Appellants never abandoned or wavered from their primary reliance on the specific language of the current version of Section 15-7-30 and the impact of the *Chestnut* decision, including the language that "[a] civil action tried pursuant to this section against a resident individual defendant *must be brought and tried* in the court in which the (1) defendant resides at the time the cause of action arose." S.C. Code Ann. § 15-7-30(C). (Emphasis added). Also, the Appellants correctly argued that *Jeter* is not controlling authority. Thus, to the extent that the Respondent argues that the Appellants made one argument at trial and another on appeal, that contention is not borne out, as the aforementioned procedural history fully demonstrates. Clearly, the Appellants cited the correct statute and the correct case law in arguing that they were entitled to a change of venue to Florence County.

Frankly, the rules of preservation are not so onerous (nor should they be) as to preclude a

litigant from providing an additional citation to a case, statute, or rule, if needed, or to provide a clearer explanation on appeal for an argument clearly raised in and considered by the trial court. In essence, the Respondent is asking this Court to affirm a clearly erroneous decision that implicates substantial rights, as identified by the Supreme Court, because the Appellants on appeal pointed out what should have been obvious to the trial court -- that *Jeter* was decided under an obsolete statute and was not controlling authority. Indeed, while the Respondent insists that no one told the trial court that "Jeter was no longer good law," the *Jeter* decision provides that very admonition: "[t]he 2005 amendments to 15-7-30 are not applicable to this case." 633 S.E. 2d at 147, n.7.

In short, providing a clearer explanation on appeal does not render the Appellants' arguments as being unpreserved, nor should it. That, quite frankly, would be the epitome of using preservation rules for a "gotcha game," and that would be particularly true in the case at bar given its procedural history where the venue issue was sprung at the last minute into the case because the Respondent concealed from the trial court and the Appellants that she had settled with the School District, which was the impetus for the venue motion to arise in the first place. The Appellants were then forced to move swiftly in preparing and presenting a change of venue motion, which, to reiterate, raised the correct law and made the correct arguments. The trial court, nonetheless, chose to follow the lead of the Respondent, who deliberately or perhaps inadvertently, argued obsolete law that convinced the trial court to deny the change of venue. Respectfully, based upon the existing preservation rules and fundamental fairness which is the hallmark of due process, the Court should find that the venue grounds on appeal are preserved for appellate review.

B. The Respondent cannot prevail on the merits of the venue issue.

As noted above, the Respondent places all her proverbial eggs in the preservation basket. She barely addresses the merits of the venue question assuming this Court finds, as it should, that the issue on appeal to be preserved. The Respondent baldly claims that "Judge DeBerry was correct on the merits and in basing his decision on *Jeter*." *See*, Respondent's Brief, p. 9. Frankly, that is untenable.

What should stand out to this Court is that the Respondent's argument on the venue ruling is based solely on *facts* rather than law. The Respondent even concedes this where, after discussing the procedural history of *Jeter*, she states, "[t]he similarities between the facts here and those in *Jeter* are striking." *See*, Respondent's Brief, p. 10. As already explained in MPA II's opening brief, the factual "similarities" are deceiving and not accurate. But what is really remarkable, and also quite telling, is that the Respondent *never addresses how the venue issue should have been adjudicated under Section 15-7-30 as it existed in 2024*, rather than how it existed in *Jeter*, which pre-dated the 2005 amendments that overhauled the venue laws as part of comprehensive tort reform.

To that point, the Appellants have explained what should have been clear about *Jeter* – that the general venue statute, Section 15-7-30, was entirely re-written in 2005. Whereas pre-2005 cases like *Jeter* relied on the "at the commencement of the action" language that appears twice in the old version of Section 15-7-30, that critical language was *not retained* when Section 15-7-30 was re-written in 2005. As a result, since 2005, venue is not "locked-in" at the time of commencement of the action. Instead, 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). Accordingly, under the general venue statute as applicable *in this case* as opposed to in *Jeter*, venue must be proper when the case is brought *and* when it is tried.

The Respondent, however, deliberately chooses not to engage on this issue. She refuses to address the law. Of course, the reason for that should be rather obvious – she loses on the law. Section 15-7-30, as it existed in 2024, as well as the *Chestnut* decision demonstrate that the trial court committed a clear error of law in refusing to transfer venue to Florence County.[1]

As mentioned, the Respondent clings to her argument that *Jeter* is factually the same as the case at bar, and even that is incorrect. To recap, *Jeter* 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

[1] Strangely, the Respondent questions the utility of *Chestnut* as precedent because *Jeter* was decided seventeen years after *Chestnut*. But the *Jeter* decision not only cites favorably to *Chestnut*, but it certainly did not overrule it. *Chestnut* remains "good law" for the overarching principle 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" and 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." *Chestnut*, 384 S.E.2d at 714. *Chestnut* also remains "good law" for its application of a *de novo* standard of review because the issue presented by a change of venue under Section 15-7-30 is a question of law. *Id*.

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, and hence, contrary to the Respondent's representation, she was not a "defendant" who had any right to be sued in the county of her residence. In actuality, SCDOT 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(c).

Critically, unlike in the present case, *Jeter* did not involve the dismissal of a party-defendant prior to trial. As indicated, 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. The Respondent's continued reliance on *Jeter*, therefore, is misplaced for two reasons: first, *Jeter* is based on an obsolete version of Section 15-7-30, and second, *Jeter* is factually and procedurally different from the case at bar.

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.

The Appellants argue 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. The Appellants rely on the legislative history of the Charitable Funds Act to show that the General Assembly did not adopt the "occurrence" language and definition from the Tort Claims Act and incorporate it into the Charitable Funds Act. The trial court, however, never addressed this issue other than stating in a conclusory footnote that it "disagreed" with the argument without providing any analysis of the issue. (R. 14).

In her response brief, the Respondent does not fare better. Rather than addressing the issue head-on, the Respondent also opts for a conclusory footnote to discount without any credible analysis the argument that, if the General Assembly intended to adopt the "occurrence" language and definition from the Tort Claims Act in Act No. 336 of 2000, that would have been more than a "technical change" as reflected in the title to the Act. Remarkably, the Respondent discounts this argument by only stating that the General Assembly is presumed to know the law. The Respondent then points to the Supreme Court's decision in *Chastain v. AnMed Health Foundation*, 388 S.C. 170, 694 S.E.2d 541 (2010), but that 2010 decision did not exist in 2000, and there can be no presumption that the General Assembly was omniscient and knew of a case ten years into the future. In short, the Respondent, like the trial court, dodges this issue because she cannot square the claimed adoption of the "occurrence" framework into the Charitable Funds Act with the characterization of merely a "technical change."

The reality is what the Appellants have posited. The General Assembly did adopt a "technical change" in 2000 by substituting what had been a specific sum of $250,000 (with no

"occurrence" language) with another specific sum, which would be the monetary caps in the Tort Claims Act, namely caps of $300,000 for non-physician torts and $1.2 million for physician-torts. In effect, the charitable monetary caps would change as the monetary caps in the Tort Claims Act changed. Notably, there is no legislative intent expressed 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. That would not constitute a "technical change" as defined by the Supreme Court. *See*, *Robertson v. State,* 276 S.C. 356, 276 S.E.2d 770, 770 (1981) (observing that "[t]he term technical is defined as 'immaterial, not affecting substantial rights, without substance'").

Rather than address head-on this issue of only a "technical change" being intended, the Respondent instead opts for a discussion that Act No. 336 is not in derogation of the common law because, as she claims, the common law doctrine of charitable immunity had been abrogated in 1981 in the case of *Fitzer v. Greater Greenville South Carolina YMCA*, 277 S.C. 1, 282 S.E.2d 230 (1981). Her argument, however, is flawed. As she concedes, the *Fitzer* case was followed by the reinstatement of partial charitable immunity by the General Assembly with the passage of the predecessor to the Charitable Funds Act. The Act reinstated charitable immunity for claims exceeding the express monetary cap on liability. Thus, South Carolina adopted what our Supreme Court has called a "charitable immunity statutory cap." *Chastain*, 694 S.E.2d at 543, n.2.

Accordingly, the enactment of the Charitable Funds Act (and its predecessor) should be treated as an abrogation of the common law. For that reason, Act No. 336 is subject to strict construction. Under the rule of strict construction, "a statute restricting the common law will not be extended beyond the *clear intent* of the legislature." *Eades v. Palmetto Cardiovascular and*

Thoracic, P.A., 422 S.C. 196, 810 S.E.2d 848, 850 (2018). (Emphasis added). Moreover, "[w]ords in a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's application." *Epstein v. Coastal Timber Co., Inc.*, 393 S.C. 276, 711 S.E.2d 912, 917 (2011). The Respondent argues that the "plain language" of Section 33-56-180(A) adopts a "per occurrence" monetary cap. That position is untenable. The strict construction of Section 33-56-180(A) shows that the statute does not mention the word "occurrence" or define the word "occurrence" or otherwise state that a plaintiff may be able to recover a separate cap on monetary relief for each separate "occurrence." Most importantly, the Respondent's "plain language" construction ignores the legislative intent, as expressed in the title of Act No. 336, that the change in the charitable immunity statutory cap was intended only to be a "technical" or immaterial change.

In sum, the amendment to Section 33-56-180(A) referring to "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.

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 contends 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 determined that the jury found two "occurrences" as defined by the Tort Claims Act by concluding 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). To that point, the Respondent argues that Dr. Chang's testimony supported a finding 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." *See*, Respondent's Brief, p. 20. She then proceeds to baldly assert that "Dr. Chang indisputably testified to two separate acts of negligence." *See*, Respondent's Brief, p. 21. Not surprisingly, no cite to the testimony is made as to this last assertion. In its opening brief, the Appellant MPA II pointed out that 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" or "independent and separate" (using the test from *Boiter v. South Carolina Department of Transportation,* 393 S.C. 123, 712 S.E.2d 401 (2011)). Critically, the Respondent does not even attempt to refute this critical point by any citation to Dr. Chang's testimony that meets the *Boiter* test. This is significant because the totality of Dr. Chang's testimony indicates that the failure to perform a proper workup including testing *actually resulted* in Dr. Trant signing the sports clearance form for Taylor. In other words, the "deviations of the standard of care" were closely intertwined or connected and, in effect, part of the same unfolding sequence of events. There were not "independent and separate acts of

negligence" as is required under the test explained in *Boiter* for a finding of multiple occurrences. Thus, the Respondent has not carried her evidentiary burden of proving two occurrences, and for that reason, the trial court erred in not reducing the verdict to a single cap of $1.2 million.

Additionally, upon concluding that the jury found "two deviations from the standard of care," the trial court was required to examine whether those breaches gave rise to or proximately caused a different "unfolding sequence of events." Importantly, as the Supreme Court has held, 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"). Thus, if those breaches 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." However, if those breaches gave rise to the same "unfolding sequence of events," then there was a single occurrence. The Respondent simply disregards this argument and certainly provides no evidence to support a finding of two different "unfolding sequences of events."

As the Appellant MPA II has shown, 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 not separate and distinct deviations unrelated to one another. The Respondent's silence on this point further shows that the Respondent has not carried her evidentiary burden of proving two occurrences, and for that additional reason, the trial court erred in not reducing the verdict to a single cap of $1.2 million.

Finally, it should be noted that the Respondent relies on this Court's unpublished decision in *Wood v. Horry County School District*, Op. No. 2023-UP-244 (S.C. Ct. App. 2023). However, that decision is unpublished and therefore cannot be treated as precedent. *See*, Rule 268(d)(2), SCACR ("[m]emorandum opinions and unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved"). The Respondent then attempts to bolster the unpublished decision in *Wood* by pointing out that the Supreme Court granted and then denied a writ of certiorari as improvidently granted. However, the denial of a writ of certiorari does not in any way reflect or imply any view on the merits of a decision. *See, State v. Rucker*, 321 S.C. 552, 471 S.E.2d 145, 145 (1996) ("[t]he denial of a petition for a writ of certiorari to the Court of Appeals does not dismiss or decide the underlying appeal; it simply determines that, as a matter of discretion, [the Supreme] Court does not desire to review the decision of the Court of Appeals"). *See also*, *United States v. Carver*, 260 U.S. 482, 490 (1923) ("[t]he denial of a writ of certiorari imports no expression of opinion upon the merits of the case, as the bar has been told many times"); *House v. Mayo*, 324 U.S. 42, 48 (1945) ("as we have often said, a denial of certiorari by this Court imports no expression of opinion upon the merits of a case"), *overruled on other grounds by Hohn v. United States*, 524 U.S. 236 (1998); *Hughes Tool Co. v. Trans World Airlines, Inc.*, 409 U.S. 363, 365, n.1 (1973) (reiterating "the well-settled view that denial of certiorari imparts no implication or inference concerning the Court's view of the merits"); *Teague v. Lane*, 489 U.S. 288, 296 (1989) ("[a]s we have often stated, the denial of a writ of certiorari imports no expression of opinion upon the merits of the case. The variety of considerations that underlie denials of the writ counsels against according denials of certiorari any precedential value").

Additionally, the Respondent attempts to cite two federal cases and their varied approaches in adjudicating an "occurrence" issue. However, our appellate courts have held that they are not bound to follow a federal court's interpretation of South Carolina law. *See, Hooper v. Ebenezer Senior Services & Rehabilitation Center*, 377 S.C. 217, 659 S.E.2d 213, 233 (Ct. App. 2008). *See also*, *Santee River Cypress Lumber Co. v. Query*, 168 S.C. 112, 167 S.E. 22, 24 (1932) ("[w]e are not bound by the construction placed upon [a state] statute by any federal court").

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, Dr. Trant, working for the same charitable entity, MPA II. There were not two separate and independent "sequences of events" resulting in the decedent's death. The Appellant 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 aggregate cap of $1.2 million in accordance with the mandate of Section 15-78-120(a)(3).

IV. 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 argues that the trial court properly awarded $380,843.84 in offer of judgment interest despite that being in contravention of the legislative intent explicitly stated in Section 18 of 2005 Act No. 32. Like her approach with other issues, the Respondent takes a superficial approach to statutory construction and argues merely that the Court should disregard the General Assembly's explicit statement of its intent.

The Respondent acknowledges that Section 18 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." She, nonetheless, points out that Section 18 does not explicitly reference "offer of judgment interest" and, more importantly, was never *codified* as part of the Charitable Funds Act. The Respondent observes that Section 18 was codified as part of the Tort Claims Act. *See*, S.C. Code Ann. § 15-78-220. She further notes that Section 18 was codified as part of South Carolina Noneconomic Damage Awards Act of 2005. *See*, S.C. Code Ann. § 15-32-240. But, Section 18 was *not codified* as part of the Charitable Funds Act.

In effect, the Respondent argues that an obvious codification error by the Code Commissioner should be dispositive of the issue presented. She insists that the absence of the limitation language in the Charitable Funds Act or even in Section 15-35-400 makes the *clear and unequivocal language in Section 18* vanish into thin air simply because the Code Commissioner did not do its job. Explicit legislative intent, however, should not be discounted so cavalierly.

In reality, the language of the actual enactment by the General Assembly should trump the codification as performed by the Code Commissioner. Indeed, the Code Commissioner is powerless to alter or disregard the actual language that the General Assembly used in its enactments. *See*, S.C. Code Ann. § 2-13-60 (setting forth the authority of the Code Commissioner in codifying statutes); *State v. Huntley*, 349 S.C. 1, 562 S.E.2d 472, 473 (2002) (addressing the Code Commissioner's limited authority). In codifying Section 18, the Code Commissioner included the limiting language from Section 18 verbatim in the Tort Claims Act by codifying Section 15-78-220 but inexplicably did not do the same with the Charitable Funds Act. Yet, as indicated, that obvious error in codification

does not mitigate or alter the express language of Section 18, which the General Assembly clearly intended to apply as well to cases brought pursuant to the Charitable Funds Act.

In sum, the Respondent's reliance on that codification error or oversight should not be deemed determinative of the legislative intent. That intent is clear from Section 18 and should apply to Charitable Funds Act cases, just as it applies to Tort Claims Act cases. Quite simply, the offer of judgment interest provision in Act No. 32 is not applicable in this case, and therefore, 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.

CONCLUSION

Based on the foregoing discussion and analysis, the Appellant McLeod Physician Associates II respectfully renews its request 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 renews its request 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,

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January 27, 2026

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CERTIFICATE OF COUNSEL

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

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CERTIFICATE OF COMPLIANCE

The undersigned counsel for the Appellant McLeod Physician Associates II certifies that the Final Reply 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.

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