THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

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

Appellate Case No. 2025-000434

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

vs.

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

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CORRECTED FINAL BRIEF OF APPELLANT CHARLES A. TRANT, M.D.

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SUGGESTED ANSWER TO ALL QUESTIONS: *Yes.*

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2. **Did the trial court err in denying JNOV or a new trial where the evidence did not support the jury's finding of proximate cause?**

3. **Did the trial court err in refusing to change venue for trial to Defendants' county of residence where the School District, the "anchor" for venue when suit was originally filed, had been dismissed?**

4. **Did the trial court err in denying a new trial where it provided incomplete and insufficient instructions on the definition of "gross negligence" and the statutory standards governing Dr. Trant's immunity from suit under the South Carolina Solicitation of Charitable Funds Act?**

5. **Did the trial court err in denying Defendants' Motion for New Trial where the verdict of $30,000,000.00 was not supported by evidence showing specific harm to the statutory beneficiaries of Decedent and where Plaintiff's counsel made inflammatory arguments to the jury in closing?**

6. **Did the trial court err in refusing to apply the caps on liability under the South Carolina Solicitation of Charitable Funds Act to Dr. Trant?**

STATEMENT OF THE CASE

A. Introduction

This case involves the tragic death of Taylor Price, a high school junior, from a rare and difficult to diagnose condition called Arrhythmogenic Right Ventricular Dysplasia ("ARVD"). ARVD is such a rare and elusive condition that it is usually diagnosed on autopsy. But also tragic for pediatric cardiologist Dr. Charles Trant and his family was the jury's stunning and ruinous thirty-million-dollar verdict against him—deliberating little more than 30 minutes. Dr. Trant saw Taylor only once, three years prior to her death. Taylor had experienced shortness of breath and collapsed during basketball practice before recovering fully. Based on the history he was given at that time, after examining her, and reviewing a recent EKG, Dr. Trant diagnosed Taylor with hyperventilation syndrome and cleared her to play middle school sports that year. Dr. Trant advised Taylor and her mother to return if any complaints reappeared. However, Dr. Trant never saw Taylor again. She underwent other sports physical examinations, was cleared to play, and participated in activities and lived her life without incident over the next three years. After her sudden and tragic death, her mother sued Dr. Trant for not diagnosing her with ARVD three years earlier.

Nobody is entitled to a perfect trial, but everyone is entitled to a fair trial. Dr. Trant did not have a fair trial. He was forced to defend himself in an emotionally-charged trial in Marion County, where Taylor's family and friends live, rather than in Florence County, where he lives and works. The jury found him grossly negligent, stripping him of his charitable immunity rights, because the trial court gave the jury a misleading instruction on the definition of gross negligence and refused to charge the charitable immunity statute. The trial court should have granted Dr. Trant a JNOV because there was no evidence that he was grossly negligent or that his one examination of Taylor could have caused her death three years later. At the very least, he should have been granted a new trial because the verdict, both as to liability and damages, was manifestly unsupported by the evidence. Finally, he should have at least been accorded the benefit of the

charitable cap on liability rather than having to shoulder the full burden of a crushing thirty-million-dollar verdict, while his employer received the benefit of the cap.

B. Procedural History

Demetrice Utley ("Plaintiff") commenced this wrongful death action on July 13, 2022, individually and as Personal Representative of the Estate of Taylor Danielle Price ("Decedent"). (*See generally* R. pp. 69-99). Plaintiff sued three defendants (two of which remain parties and are Appellants): McLeod Physician Associates II ("MPA"); Charles A. Trant, MD ("Dr. Trant"); and Marion County School District (the "School District").

1. Defendants' Motion to Transfer Venue

In the Complaint, Plaintiff alleged that venue was proper in Marion County because: (a) some of the alleged acts or omissions giving rise to Plaintiff's claims occurred in Marion County; and (b) S.C. Code § 15-78-100(b) required that venue be in Marion County because the School District was a Defendant. (*See* R. p. 71 ¶ 7). Dr. Trant lives and works in Florence County. However, he did not immediately move to dismiss or transfer venue because the joinder of the School District arguably made Marion County a proper venue. However, he expressly reserved the right to raise improper venue, if appropriate.

This action was originally set for trial in Marion County on September 9, 2024. After that jury was seated, Plaintiff's counsel advised the trial court that he had reached a settlement agreement with the School District.[1] (*See* R. p. 4). Upon learning that the School District would no longer be a party, on the same day trial had originally been set to begin, Defendants Trant and MPA moved to transfer venue from Marion County to Florence County. (*See* R. p. 120-21). In that motion, Defendants Trant and MPA asserted:

> 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

[1] The trial court approved Plaintiff's settlement with the School District for $130,000 on September 18, 2024. (*See generally* R. pp. 1-3). The School District was dismissed by stipulation on September 25, 2024. (*See generally* R. p. 173).

> 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.

(*See* R. p. 121). Because of these events, the case did not go to trial on September 9, 2024.

After the parties briefed the Amended Motion for Change of Venue, on September 19, 2024, the Honorable H. Steven DeBerry, IV entered an Order Denying Defendants' motion. (*See generally* R. pp. 4-13). The trial court concluded that venue was proper in Marion County because "[i]t is undisputed that this action was properly commenced in Marion County in which one of the defendants resided at the time of the commencement of the action." (*See* R. p. 9). It further held that transfer of venue was not appropriate under S.C. Code § 15-7-100 to -110. As a result, Defendant Trant was forced to go to trial in Marion County even though, at the time of trial, there was no statutory basis for venue there.

2. <u>Trial and Post-Trial Motions</u>

After resolution of the venue motion, the parties (Plaintiff, Dr. Trant, and MPA) tried this matter before a jury from November 4-8, 2024. The Honorable R.F. Cothran, Jr. presided over the jury trial. Ultimately, the jury returned a verdict in favor of Plaintiffs in the amount of $30,000,000.00. (*See* R. pp. 226-28). The jury found that there was "more than one occurrence" and that Dr. Trant was grossly negligent. (*See id.*).

On November 15, 2024, Plaintiff filed her Post-Trial Motion for Confirmation of Two Occurrences. (*See generally* R. pp. 174-180). On the same day, Plaintiff filed her Motion for Award of Offer of Judgment Interest.[2] (*See generally* R. pp. 181-195).

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[2] On November 15, 2022, Plaintiff filed an Offer of Judgment only as to Defendant MPA. (*See generally* R. pp. 115-17). Because the Offer of Judgment was not directed to Defendant Dr. Trant, the trial judge ultimately (and correctly) "decline[d] to impose offer of judgment interest on the verdict against Dr. Trant because Plaintiff did not serve its Offer of Judgment on Dr. Trant nor did Plaintiff direct the Offer of Judgment to him." (*See* R. pp. 35-36).

On November 18, 2024, Defendants Trant and MPA filed their Motion for JNOV or, in the Alternative, for a New Trial Absolute or, in the Alternative, for Reduction of the Verdicts and Supporting Memorandum of Law ("Defendants' Post-Trial Motions"). (*See generally* R. pp. 196-250). Defendants' Post-Trial Motions contended, *inter alia*:

- Defendants were entitled to judgment notwithstanding the verdict because, viewing the evidence in the light most favorable to Plaintiff, Dr. Trant was not grossly negligent, as a matter of law. The undisputed evidence showed that, at the very least, Dr. Trant acted with slight care.

- Defendants were entitled to judgment notwithstanding the verdict because, viewing the evidence in the light most favorable to Plaintiff, there was not sufficient evidence to support a jury verdict as to proximate causation and it was undisputed that an intervening cause broke the causal chain.

- Defendants were entitled to a new trial absolute because the case should have been transferred from Marion County to Florence County.

- Defendants were entitled to a new trial absolute because the trial judge erred in several erroneous and prejudicial jury instructions:

    - The trial judge's instruction on the substance of the gross negligence was erroneous because it was really the definition of ordinary negligence.

    - The trial judge's instructions were erroneous because he did not instruct the jury on the charitable immunity statute.

- Defendants were entitled to a new trial absolute because the verdict was excessive.

- Defendants were entitled to a new trial absolute under the "thirteenth juror" doctrine because the evidence does not support the verdict.

- Defendants are entitled to a set-off in the amount of $130,000.00 paid to settle Plaintiff's claims against the School District.

- The total judgment of $30 million should be reduced to a total of $1.2 million in accordance with the South Carolina Solicitation of Charitable Funds Act.

- The South Carolina Solicitation of Charitable Funds Act cap on liability applies to Dr. Trant.

(*See generally id.*).

On November 25, 2024, the trial court held oral argument on the parties' post-trial motions.

The parties were provided the opportunity to submit supplemental materials on the post-trial motions. On February 3 and 5, 2025, Judge Cothran entered an Order on Post-Trial Motions. (*See generally* R. pp. 14-62). In that Order, the trial court:

- Denied Defendants' motions for JNOV because: (a) there was evidence in the record that Dr. Trant was grossly negligent; (b) the evidence supported a finding of two occurrences; and (c) the evidence supported that Dr. Trant's negligence was a proximate cause of Plaintiff's injuries;

- Denied Defendants' motions for new trial absolute because: (a) the denial of the Motion to Change Venue was appropriate; (b) a new trial was not required because of Judge Cothran's instructions on gross negligence and the Solicitation of Charitable Funds Act; and (c) the size of the verdict did not require a new trial; and

- Granted in part and denied in part Plaintiff's motions as to the amount of the verdict by: (a) reducing the verdict against MPA to $2.4 million plus offer of judgment interest of $380,843.84; and (b) refusing to reduce the $30 million verdict as to Dr. Trant

(*See generally id.*). On February 13, 2025, Defendants filed a Motion to Alter or Amend Order and/or Motion to Reconsider. (*See generally* R. pp. 312-20). On March 3, 2025, the trial judge entered an Order Denying Motion to Alter or Amend. (*See generally* R. pp. 63-64). Defendants Dr. Trant and MPA filed their Notice of Appeal on March 5, 2025. (*See generally* R. pp. 1516-18).

C. Factual Background

At the time of her death, Decedent was a junior at Mullins High School. (*See* R. pp. 513:25-514:1). Decedent started playing basketball for Marion Rec and later played in seventh grade at Palmetto Middle School. (*See* R. pp. 517:10-520:5). Plaintiff testified about what occurred on January 24, 2018, at a seventh grade home game:

> Taylor was playing, and she just collapsed to the floor. I know basketball is a very physical sport, so when she collapsed, I wasn't really sure if she got tripped or anything. So, I just, you know, sat in the stands, waiting to see if she was gonna get up. And then somebody closer to her, because I was sitting on the opposite side, they motioned for me to come over. So, whenever I went over Taylor was on the floor. She was not getting up, and I was like, Taylor, like, get up. You okay? Like, what happened, what happened? She couldn't really express herself. She was just laying on the floor, like complaining of -- I think at that time, it was tingling, hot, or something. I can't remember specifically, but she was complaining of facial

> tingling and some other things. . . . Shortness of breath, yeah, she was saying she couldn't breathe.

(*See* R. pp. 520:16-521:7). Decedent was treated and released that day at MUSC Florence, where she saw Dr. Steven M. Halus, who diagnosed her with hyperventilation syndrome:

> The patient presents with difficulty breathing and Complaint asthma became short of breath then appeared to have some carpal pedal spasm. The course/duration of symptoms is improving. Degree at onset moderate. Degree at present none. The Exacerbating factors is exertion. The Relieving factors is rest. Risk factors consist of none. Prior episodes: none. Therapy today: Deep breathing and Gatorade. Associated symptoms: denies chest pain and denies fever.

(*See* R. pp. 1220-21). Plaintiff testified that this was the first time Decedent had had any collapses. (*See* R. p. 528:19-25).

Within a few days after this, Decedent had another incident at basketball practice, and Plaintiff had to go to pick her up. (*See* R. p. 529:1-18). On February 1, 2018, Decedent followed up with Dr. Marc Bahan, who had long been her regular pediatrician. (*See* R. pp. 527:13-528:13). At that time, records reflect that she had complaints of stomach ache, vomiting, passing out, blurred vision, thirsty, and sweating. (*See* R. p. 1240). Dr. Bahan's records further state, "patient with symptoms of syncope x2 after basketball practice patient with poor feeding during the day for hydration mom concerned about diabetes or hypoglycemia, patient with improvement of symptoms when drinking juice after symptoms began." (*See* R. p. 1241). Both Drs. Halus and Bahan instructed Decedent to be properly hydrated. (*See* R. p. 527:8-12, 530:21-25).

Between February 1 and December 11, 2018, Decedent did not have any issues with collapsing, breathing, or chest pains. (*See* R. pp. 532:22-533:4, 538:22-539:11). From February 1 through the end of football season, Decedent was not playing basketball; she was participating in cheerleading instead. (*See* R. pp. 538:19-541:11). After football season, Decedent went out for the eighth grade basketball team. (*See* R. pp. 541:12-542:16).

On December 12, 2018, Decedent again collapsed at a basketball game and had to go to MUSC Florence. (*See* R. p. 543:1-15). The record from that visit includes the following history of the present illness:

> The patient presents with chest pain. The onset was just prior to arrival. The course/duration of symptoms is resolved. Location: Anterior chest. Radiating pain: none. The character of symptoms is sharp. The degree at onset was moderate. The degree at maximum was moderate. The degree at present is none. The exacerbating factor is none. The relieving factor is rest. Risk factors consist of not hypertension, not diabetes mellitus, not smoking, not obesity, not pulmonary embolism and not deep vein thrombosis. Prior episodes: none. Associated symptoms: denies shortness of breath, denies nausea, denies vomiting, denies diaphoresis, denies anxiety and denies palpitations. Additional history: Per mom, child was playing in a basketball game at school when she suddenly felt hot, had some chest pain/tightness and vomited once. Mom states child continued to complain of being hot but did not feel hot to touch. Symptoms had completely resolved by the time they got to the emergency room.

(*See* R. pp. 1334-35). Chest x-rays were normal, with "[n]o acute cardiopulmonary disease." (*See* R. p. 1338). An interpretive statement in the record noted: "Normal sinus rhythm IRBBB[3] Otherwise normal ECG." (*See* R. p. 1341). She was diagnosed with chest wall pain and told to follow up with her primary doctor in 1-2 days and return if pain worsened. (*See* R. p. 1338).

Several days later, on December 18, 2018, Decedent again collapsed during a basketball game; Plaintiff took Decedent home to rest after she began feeling better. (*See* R. pp. 550:16-560:12). Plaintiff did not take Decedent to the emergency room for this incident because she had already been to the ER twice and "they were basically telling me the same thing." (*See* R. pp. 561:16-562:13). After this incident, Plaintiff was told that Decedent would need a letter from a doctor before she could return to play. (*See* R. pp. 560:20-561:11).

In January, 2019, Plaintiff contacted Dr. Bahan to get a referral for a pediatric cardiologist. (*See* R. pp. 563:15-565:9). On January 21, 2019, Dr. Bahan referred Decedent to Dr. Trant with a diagnosis of syncope:

[3] IRBBB refers to an Incomplete Right Bundle Branch Block, a benign nonpathological finding for an asymptomatic 13 year old. (*See* R. p. 779:13-21).

Referral Order Information

Diagnosis	Syncope ICD-10: R55: Syncope and collapse
Order Name	Orders included: 1 Syncope ICD-10: R55: Syncope and collapse • PEDIATRIC CARDIOLOGY REFERRAL Schedule Within: provider's discretion
Notes	

(*See* R. p. 1359).

Dr. Trant saw Decedent on January 24, 2019, exactly a year after her first collapse. (*See generally* R. pp. 1361-63; *see also* R. p. 574:7-9). Dr. Trant recounted her history of present illness as follows:

> Thank you for referring your patient for evaluation of shortness of breath and near syncope. Lately, she has had no difficulty with basketball practice, including doing suicides, but at the last bas[k]e[t]ball game, she became short of breath and felt unsteady. She also felt hot, as if she was going to faint. Spell lasted for a few minutes and then she recovered. Otherwise she reported no other issues or concerns. Family history is negative for congenital heart disease.

(*See* R. p. 1361). He obtained her medical and family history and her vitals. (*See id.*). Plaintiff testified that during this visit she never told Dr. Trant that Decedent had ever experienced syncope to the point of complete unconsciousness. (*See* R. p. 655:13-21).

Dr. Trant conducted a full pediatric cardiology exam, including: general (affect, arousal, nourishment, and distress), eyes (lids and conjunctiva), mouth/teeth/gums, neck (thyroidomegaly and JVD), lungs (auscultation and respiratory effort), cardiovascular (precordium, auscultation, murmur, and pulses), extremities/skin, abdomen, and musculoskeletal. (*See* R. pp. 1361-62). Dr. Trant made the following assessments: 1. Hyperventilation syndrome—F45.8 (Primary), 2. Hyperventilation—Ro6.4, and 3. Vagal reaction—Rs5. (*See* R. p. 1362). His records reflect the following treatment for the primary assessment (hyperventilation syndrome):

> Notes: She is currently stable. Her symptoms are most consistent with a combination of hyperventilation and hyper vagotonia. Both of which are related to all the changes related to puberty. We spent several minutes discussing both including the usual treatments. I recommended changing her breathing pattern during the spells to avoid panting. We also discussed the use of a paper bag. I also

> recommended super hydration and added salt as needed. I invited h[er] to call should the symptoms persist or not respond as expected.

(*See id.*). The records reflect that Decedent was to follow up "prn," or as needed. (*See* R. p. 1363). Dr. Trant cleared Decedent for "sports/physical education/cheer squad." (*See* R. p. 1364).

During the nearly three years between Dr. Trant seeing Decedent and Decedent's unfortunate death, Decedent did not return to see Dr. Trant:

> Q: Yes, ma'am. So, that's true that -- he didn't discharge you, he invited you and Taylor to come back should the need arise and her symptoms persisted or didn't improve as expected?
>
> A: Correct.
>
> Q: But because Taylor had no other issues from that point until she tragically died, there was no need to take Taylor back to see Doctor Trant, correct?
>
> A: Correct.

(*See* R. p. 655:4-12).

Decedent passed away nearly three years later on December 17, 2021, at the age of sixteen. (*See* R. p. 496:10-17). Decedent collapsed shortly after playing several games of basketball with her school ROTC. (*See* R. p. 615:2-16). The autopsy report stated that the cause of death was arrhythmogenic right ventricular dysplasia ("ARVD"), also known as arrhythmogenic right ventricular cardiomyopathy. (*See* R. p. 1369). Microscopic analysis from the autopsy disclosed:

> Sections of the right ventricle of the heart show areas of extensive adipose tissue replacement in conjunction thinning of the myocardium. Sections of the left ventricle shows areas of increased interstitial fibrosis. Lungs and liver show no significant pathologic abnormalities although generalized vascular congestion is present.

(*See* R. p. 1373). Toxicology tests disclosed amiodarone, cotinine, caffeine, and naloxone. (*See id.*).

ARGUMENTS

A. Standard of Review

1. JNOV and New Trial

On review from a trial court's denial of a directed verdict or JNOV, this Court should apply the same standard as the trial court. *See Allegro, Inc. v. Scully*, 418 S.C. 24, 32, 791 S.E.2d 140, 144 (2016). The standard of review governing motions for directed verdict or JNOV is well-settled in South Carolina:

> In ruling on motions for directed verdict and JNOV, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions and to deny the motions where either the evidence yields more than one inference or its inference is in doubt.

See Solanki v. Wal-Mart Store #2806, 410 S.C. 229, 236, 763 S.E.2d 615, 618 (Ct. App. 2014). A court may grant JNOV a reasonable jury could not reach the challenged verdict. *See Gastineau v. Murphy*, 331 S.C. 565, 568, 503 S.E.2d 712, 713 (1998). "If more than one inference can be drawn from the evidence, the grant of a JNOV is improper." *Burns v. Universal Health Servs.*, 361 S.C. 221, 232, 603 S.E.2d 605, 611 (Ct. App. 2004) (citation omitted).

The denial of a motion for new trial is reviewed for abuse of discretion. *See Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 42, 691 S.E.2d 135, 145 (2010). "Under the 'thirteenth juror' doctrine, a trial judge may grant a new trial absolute when he finds the evidence does not justify the verdict." *Gastineau*, 323 S.C. at 181, 473 S.E.2d at 827.

2. Motion to Change Venue

"[W]hen 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). As a result, this Court should review the denial of Dr. Trant's motion to change venue under a *de novo* standard of review. *See, e.g., Fairchild v. South Carolina Dep't of Transp.*, 385 S.C. 344, 358, 683 S.E.2d 818, 826 (Ct. App. 2009) ("As a general rule, appellate courts will be bound by the findings of the trial court on motions preliminary to trial when the evidence conflicts or the findings are supported by evidence

and not clearly wrong *or controlled by an error of law.*" (emphasis added); *Sucampo Pharm., Inc. v. Astellas Pharma, Inc.*, 471 F.3d 544, 550 (4th Cir. 2006) ("We review a district court's grant of a motion to dismiss under Rule 12(b)(1), (3), or (6) 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). This Court is "free to decide matters of law with no particular deference to the fact finder." *Id.*

Dr. Trant anticipates that Plaintiff will argue that the standard of should be: "Motions to change the venue of a trial are addressed to the sound discretion of the trial court. This Court will not disturb the trial judge's decision on appeal unless a manifest abuse of discretion is found resulting in an error of law." *See Jeter v. South Carolina Dep't of Transp.*, 369 S.C. 433, 438, 633 S.E.2d 143, 145 (2006). However, this standard governs motions to change venue where the chosen forum remains a proper venue at the time of trial. In this matter, the dismissal of the School District made Marion County an improper venue at the time of trial.

B. <u>The Trial Court Erred in Denying JNOV or a New Trial Because Dr. Trant Was Not Grossly Negligent, as a Matter of Law.</u>

Under South Carolina law, as an employee of MPA, a charitable organization, Dr. Trant was immune from liability unless Plaintiff proved, and the jury returned a specific finding, that he acted "in a reckless, wilful (sic), or grossly negligent manner." *See* S.C. Code § 33-56-180(A). The jury affirmatively responded that Dr. Trant was grossly negligent.[4] (*See* R. pp. 226-28). For the reasons that follow, the trial court should have granted JNOV to Dr. Trant because the evidence could not support a verdict finding gross negligence. In the alternative, the trial court should have granted Dr. Trant a new trial on this basis.

"Gross" negligence does not simply mean "extreme" or "severe" negligence; rather, the South Carolina Tort Claims Act[5] definition of "gross negligence" imposes a stringent burden on

[4] Plaintiff did not contend that Dr. Trant's actions were reckless or willful. (*See* R. p. 1147:5-16).
[5] Like the Solicitation of Charitable Funds Act, the Tort Claims Act at times provides immunity from liability, except where gross negligence is proven. *See e.g.,* S.C. Code § 15-78-60(25) (immunizing government entities from liability for injuries caused by "responsibility or duty

plaintiffs. "Gross negligence is proved by demonstrating the 'intentional conscious failure to do something which is incumbent upon one to do or the doing of a thing intentionally that one ought not to do,' or 'the failure of slight care.'" *See Bass v. South Carolina Dep't of Soc. Servs.*, 403 S.C. 184, 190-91, 742 S.E.2d 667, 671 (Ct. App. 2013) (citation omitted).

"'A defendant is guilty of gross negligence if he is so indifferent to the consequences of his conduct as *not to give slight care* to what he is doing.'" *Hamilton v. Charleston Cty. Sheriff's Dep't*, 399 S.C. 252, 255, 731 S.E.2d 727, 728 (Ct. App. 2012) (emphasis added) (citation omitted). The fact that a defendant "might have done more does not negate the fact that it exercised 'slight care.'" *Etheredge v. Richland Sch. Dist. One*, 341 S.C. 307, 312, 534 S.E.2d 275, 278 (2000); *accord Clyburn v. Sumter Cty. Sch. Dist. 17*, 311 S.C. 521, 429 S.E.2d 862 (Ct. App. 1993) ("[T]he only reasonable inference that can be drawn from these facts is that the School District, at the very least, exercised 'slight care.'").

Cases construing the "gross negligence" standard under the Tort Claims Act illustrate just how stringent that rule is in practice. In *Hamilton,* an inmate sued the county alleging improper supervision of a guard who sexually assaulted her. In support of her claim, the plaintiff proffered expert testimony of gross negligence:

> Dr. Kirkham, a criminologist, testified the Department was grossly negligent because it "was in gross violation of what would have been nationally accepted standards." He explained the Department ignored a foreseeable harm of sexual assaults against inmates by failing to minimize contact of male officers with female inmates, monitor the officers' whereabouts, and implement adequate supervision mechanisms such as cameras and locked doors.

See Hamilton, 399 S.C. at 255-56, 731 S.E.2d at 729. The Court of Appeals affirmed a directed verdict because there was evidence of at least *some* care: "We find the only inference from the evidence is that *the Department exercised at least slight care* in its supervision of Officer Aiken." *See id.*, 399 S.C. at 257, 731 S.E.2d at 730 (emphasis added).

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including but not limited to supervision, protection, control, confinement, or custody of any student, patient, prisoner, inmate, or client of any governmental entity, *except when the responsibility or duty is exercised in a grossly negligent manner.*")

In *Clyburn*, the Supreme Court upheld summary judgment for a school district in its handling a non-student's attack of a student on a school bus with a knife. Concluding that the school district was not grossly negligent as a matter of law, the Court noted that after hearing of an initial altercation, the school bus administrator called the student and the non-student's sister into the office to discuss the situation, warned the sister that the non-student would face criminal charges if she boarded the bus again, and attempted to contact the parents. The bus driver would not stop the bus if she saw the non-student. The Court found that, as a matter of law, the school district exercised at the very least "slight care." 451 S.E.2d at 888.

In *Etheredge*, the Supreme Court reinstated summary judgment for a school district where one student shot another at school. The evidence showed the students were high school age, and the school district had no direct knowledge or notice of the animosity between them. "The only reasonable inference that can be drawn is that the school district, at the very least, exercised 'slight care' to ensure the safety of its students." 534 S.E.2d at 277. The principals and two security personnel monitored the hallways and were in constant contact with each other. The teachers stood in their doorways to watch students during class changes. Some doors were locked to limit traffic. A list of suspended students was circulated daily, and an intervention system helped resolve student conflicts. At the very least, "slight care" was taken. The fact that the school district could have done more does not negate the fact that it exercised "slight care."

"'[W]hile gross negligence ordinarily is a mixed question of law and fact, when the evidence supports but one reasonable inference, the question becomes a matter of law for the court.'" *Proctor v. Department of Health and Env'tal Control*, 368 S.C. 279, 294, 628 S.E.2d 496, 504 (Ct. App. 2006) (*quoting Etheredge*, 341 S.C. at 310, 534 S.E.2d at 277).

The key inquiry is whether the conduct constitutes carelessness or mere inadvertence which are the hallmarks of ordinary negligence (and fall far short of gross negligence). *See Sturken v. Richland Oil Co.*, 248 S.C. 355, 150 S.E.2d 341, 343 (1966); *accord Powell v. Shore*, 242 S.C. 403, 131 S.E.2d 155, 159 (1963) (describing "mere inadvertence" as "simple negligence"); *Jumper v. Goodwin*, 239 S.C. 508, 123 S.E.2d 857, 861 (1962) (same). Gross negligence requires more

than proof of an error or mistake. *See Pilot Industries v. Southern Bell Telephone & Telegraph Co.*, 495 F. Supp. 356, 362 (D.S.C. 1979) ("[p]roof of error or mistake alone has been held to be insufficient to make out a case of gross negligence"). The conduct required to demonstrate gross negligence requires a consciousness of wrongdoing. *See Rogers v. Florence Printing Co.*, 233 S.C. 567, 106 S.E.2d 258, 264 (1958).

The undisputed evidence shows that Dr. Trant exercised at least slight care. He only had one encounter with Decedent nearly three years before she passed and exercised his professional judgment as a pediatric cardiologist to treat Decedent. Plaintiff does not contend that Dr. Trant did essentially nothing. Instead, Plaintiff contends that due care required that Dr. Trant do *more* by ordering specific additional testing. As a matter of law, this is insufficient to meet the heavy burden of showing "gross negligence." Under Plaintiff's view of the law, nearly any negligence case could be converted to gross negligence, since they all involve claims that the defendant should have done more.

The evidence shows that Dr. Trant treated Decedent in a professional and appropriate manner. The record from Dr. Trant's examination recounted her history of present illness:

> Thank you for referring your patient for evaluation of shortness of breath and near syncope. Lately, she has had no difficulty with basketball practice, including doing suicides, but at the last bas[k]e[t]ball game, she became short of breath and felt unsteady. She also felt hot, as if she was going to faint. Spell lasted for a few minutes and then she recovered. Otherwise she reported no other issues or concerns. Family history is negative for congenital heart disease.

(*See* R. p. 1361). He obtained her medical and family history and her vitals. (*See id.*). Dr. Trant conducted a full exam, including: general (affect, arousal, nourishment, and distress), eyes (lids and conjunctiva), mouth/teeth/gums, neck (thyroidomegaly and JVD), lungs (auscultation and respiratory effort), cardiovascular (precordium, auscultation, murmur, and pulses), extremities/skin, abdomen, and musculoskeletal. (*See* R. pp. 1361-62). In addition, he reviewed an EKG of Decedent taken only a month prior, which was normal.[6] (*See* R. pp. 1065:25-1066:5).

[6] Dr. Trant testified that, in his professional judgment, he did not see the need to order another EKG. (*See* R. p. 1066:6-13).

His record details everything that he did in connection with his visit with Decedent. Based on the information available to him, Dr. Trant made the following assessments: 1. Hyperventilation syndrome—F45.8 (Primary), 2. Hyperventilation—Ro6.4, and 3. Vagal reaction—Rs5. (*See* R. p. 1362). His records recommended treatments for hyperventilation syndrome:

> Notes: She is currently stable. Her symptoms are most consistent with a combination of hyperventilation and hyper vagotonia. Both of which are related to all the changes related to puberty. We spent several minutes discussing both including the usual treatments. I recommended changing her breathing pattern during the spells to avoid panting. We also discussed the use of a paper bag. I also recommended super hydration and added salt as needed. I invited h[er] to call should the symptoms persist or not respond as expected.

(*See id.*). Plaintiff confirmed her recollection of Dr. Trant's appointment with Decedent, which was consistent with Dr. Trant's testimony. (*See* R. pp. 644:8-650:21).

In addition, although he did not recall this specific incident, Dr. Trant testified that his standard practice was to review any and all medical records that were available to him:

> It was my standard practice to review any and all medical records that were available to me either before I went in to see the patient or shortly thereafter just to make sure there was nothing missing. Getting medical records is always a struggle, and we did the best we could to get everything we could in a timely manner.

(*See* R. pp. 1063:21-1064:1). He would often review records sent to him by facsimile. (*See* R. p. 1064:2-8). He further testified as to his standard practice for making notes:

> When I -- my standard practice was review the records, go in and see the patient. And I almost always had a clipboard in my hand to jot down some notes. And the reason I did that was because I didn't want to make the other patients have to wait with me going in the room and typing a bunch of stuff. So, I would jot down pertinent information, any pertinent pieces of the physical exam, what I told the family, and then I to go on to the next case.

(*See* R. pp. 1064:19-1065:1).

Dr. Trant testified at trial about why he did not order additional testing for Decedent, responding that, in his professional opinion, such testing was not necessary in light of what he knew:

> Q: Okay. When do you order a test, Dr. Trant?

A: So, after I evaluate the patient and developed the differential diagnosis in my head like Dr. Shuler talked about, I then -- I'm sorry -- I then formulate questions and then decide on which test can answer those specific questions. . . . If I have a good faith belief in -- if I feel like I have more than enough information to determine what is going on at that particular time with those particular complaints, then further testing isn't indicated.

Q: Okay. Now, a lot of testimony has centered on the fact, Doctor, you did no testing yourself. And what's your reaction to that?

A: I didn't order -- to order, there has to be a reason. One of my attendings at Duke loved her -- one of her favorite questions to ask the medical students that she was teaching who wanted to order a whole bunch of tests, she would say what's the question? What are you asking this test to tell you? If you don't have a specific question, why are you ordering the test. You will get a result back, but you won't know what it means. If it comes back negative, is it a true negative or false negative? If you don't know why you ordered it, you can't answer that question. If it comes back positive, true positive or false positive? Every test we have has false negatives and false positives. They all do. So, we have to be smart about what we are ordering and why we are ordering it to make sure we are getting the best data.

(*See* R. pp. 1066:14-1067:15).

Thus, the evidence showed that Dr. Trant asked Decedent and Plaintiff about relevant family medical history and Decedent's medical history. Dr. Trant reviewed Decedent's symptoms with her and asked about any limitations on physical activities, such as playing basketball and running suicides. He correctly read a recent EKG as normal. He listened to Decedent's heart with a stethoscope. After his evaluation he made a diagnosis of hyperventilation syndrome and a vagal reaction, neither of which are cardiac related. He discussed treatments including breathing patterns to avoid panting, breathing into a paper bag, super hydration, and adding salt to Decedent's diet. Dr. Trant invited Decedent and her mother to call back if symptoms persisted or did not respond as expected. While Plaintiff may now criticize Dr. Trant for not doing enough, the evidence simply does not show that he failed to exercise even slight care.

Dr. Trant arguably could have ordered more tests, even though he did not believe any new tests were clinically indicated. It is also true that he could have declined to give Decedent a written authorization to participate in sports, physical education, or cheering. He arguably could have insisted on a follow up examination. Obviously, in light of Decedent's tragic death, it is easy to

second guess with 20/20 hindsight. However, this is not a case where violation of the ordinary standard of care would be sufficient to impose liability. To the contrary, the fact that Dr. Trant *could* have done more does not negate the fact that he *did* exercise at least slight care as a matter of law. He engaged in a standard initial cardiac examination of a patient and, satisfied with the information he received, rendered a diagnosis. The evidence did not rise to the level of gross negligence; it did not even come close.[7]

Dr. Ellen Riemer, the forensic pathologist who conducted Decedent's autopsy, testified that there is a split in the medical community as to the cause of ARVD:

> So, from what I know about it, and I'm by no means like the expert on the etiology of ARVD, on the cause, but there is a variety of underlying causes that could lead somebody to develop this disease. Some of them are a genetic component. . . .
>
> And then some are -- could be a result of an infection that damages the heart and causes these changes. So, and in many cases, there is -- the cause is never known. So, it's not a -- there's not a single explanation why somebody would develop ARVD.

(*See* R. p. 697:13-25). She agreed that "some experts thinks it's acquired and some think it might be heredity by genetics." (*See* R. p. 698:1-3). Dr. Riemer testified that she could not say with certainty whether Decedent had the rare condition ARVD on January 24, 2019. (*See* R. p. 699:1-15). She testified that, in her experience, she had only diagnosed ARVD at autopsy. (*See* R. p. 699:16-20). Thus, the medical examiner who provided the cause of death agreed that ARVD is little-understood condition that is often, tragically only diagnosed in an autopsy.

Simply put, the evidence showed only that Dr. Trant used reasonable care and medical judgment with the information provided to him. The only challenge to his treatment was his alleged failure to request certain tests. Dr. Claudius Shuler, Dr. Trant's expert, testified that which, if any, tests to perform is a matter of judgment for the physician based on the information provided to him:

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[7] Plaintiff blames Dr. Trant for not being omniscient and detecting a rare problem that is difficult to detect. In fact, Plaintiff's expert, Dr. Anthony Chang testified that—having seen pediatric patients for more than 35 years—he only diagnosed ARVD "one or two dozen times." (*See* R. pp. 721:18-24, 729:13-15).

Q: What workup do you do to determine if a patient has a true heart disease problem?

A: My workup would start reviewing all the records, ER records, whatever is available to me, EKGs, if one has been done. I'll review any lab work they've had done. I'll then do a -- take a history from the patient and the family, perform a physical exam, and then order any further testing that I feel is indicated based on all the previous.

Q: Is testing required in that circumstance?

A: No.

Q: You use your judgment on what tests are appropriate and clinically indicated?

A: Yes. Generally, when we are in the process of evaluating a complaint or a sign or a symptom, we'll go through the process of reviewing, talking to the patient, and formulate our mind what we refer to as a differential diagnosis or a list of possible things that could cause that symptom. And we don't write that down, we just -- it's just something we do in our mind and how we think and how we've been trained based on what we think is the most likely cause of the symptom, we will then order further testing.

Q: So, a differential has to include probability? . . . Likelihood?

A: Yes.

(*See* R. pp. 917:20-918:19). Plaintiff's claims in this case really boil down to a dispute about the exercise of Dr. Trant's medical judgment.

Dr. Trant presented evidence showing that—not only was he not grossly negligent—he fulfilled his standard of care to Decedent. For example. Dr. Shuler testified:

Q: And, Doctor, looking at that not from Dr. Trant, and looking at Taylor's symptoms, Dr. Trant did not order further testing. What is your reaction to that? Was that a deviation from standard of care of Dr. Trant?

A: No. It was not.

Q: Would you have done anything differently from that examination?

A: I do ultrasounds or echocardiograms on some of my patients who have similar symptoms. I generally will reserve that for the patients who have syncope, who have complete loss of consciousness. But it is possible that I *may have* done an echocardiogram on this patient.

Q: Was it a deviation from standard of care for Dr. Trant not to order an echocardiogram?

A: It was not. There are publications, and I can't quote you the year or the journal, but there are recommendations of indications for ultrasound, and these type symptoms are not necessarily a recommendation for echocardiogram. That's generally observed by most of our societies.

Q: Was there any evidence in that examination of ARVD?

A: No, there was not. . . .

Q: Let me ask you again, did Dr. Trant deviate from accepted standards of medical care by not ordering any further testing of Taylor on January 24th?

A: No, [h]e did not.

(*See* R. pp. 914:16-915:24). Additionally, Dr. Nicole Cain testified, in relevant part:

Q: Okay. Was it necessary on that visit for Dr. Trant to do any further testing beyond having the EKG?

A: No.

Q: Would you have done any further testing?

A: I would not have.

Q: What is your philosophy on testing, Dr. Cain? You told me something -- do you remember what you said?

A: Sure. I mean, all of our goal is to do the right tests on the right patients to make the correct diagnoses. There's a huge push in medicine to make sure that we don't order unnecessary tests, so we're all very thoughtful about when to take the next step for each evaluation.

Q: In your practice, should a medical test be clinically indicated?

A: Yes.

Q: Was there any clinical indication in that visit with Dr. Trant that further testing or any testing was necessary beyond the EKG?

A: No.

Q: Okay. Do you see any deviation from standard of care by Dr. Trant from that evaluation?

A: No.

(*See* R. pp. 995:10-996:6).

Dr. Trant directs the Court to this testimony not to simply argue that the jury erred in disagreeing with his view of the weight of the evidence. Rather, the mere existence of such expert opinions shows beyond dispute that Dr. Trant exercised at least slight care in his treatment of Decedent. While Plaintiff understandably questions specifics of Dr. Trant's professional judgment, she can present no evidence to show that he fell so far below the standard as to have been grossly negligent. Instead, she has argued, as most medical malpractice plaintiffs do, that Defendants should have done more. That is not a claim of gross negligence. It is ordinary negligence. The evidence can support only the conclusion that Dr. Trant's actions—even if they fell short of the ordinary standard of care—were not grossly negligent.

A trial judge should usually give due deference to a jury's deliberations. However, the judge serves a critical gatekeeping function where, as here, the results of a finding of gross negligence are so dire as to strip the Defendant of the protections that the law accorded him as an employee of a charitable organization. In light of the foregoing, the trial judge erred in denying Dr. Trant's post-trial motion for JNOV because there was absolutely no evidence in the record supporting a finding that Dr. Trant was grossly negligent. In the alternative, the trial judge abused his discretion in denying Dr. Trant's motion for a new trial.

C. The Trial Court Erred in Denying Defendants' Motion for JNOV or For a New Trial Because There Was Insufficient Evidence of Proximate Causation.

The jury erroneously concluded that Defendants' negligence proximately caused damage to the Plaintiff. Upon Dr. Trant's post-trial motion, the trial judge incorrectly determined that "[t]he jury was presented with ample evidence that Defendants' negligence proximately caused the wrongful death of Taylor Price." (*See* R. pp. 22, 46). The trial judge should have granted Dr. Trant JNOV or, in the alternative, a new trial.

Plaintiff was obligated to prove that Dr. Trant's departure from the standard of care proximately caused the alleged injuries and damages. *See Hoard v. Roper Hosp., Inc.*, 387 S.C. 539, 545 (2010) (*citing David v. McLeod Reg. Med. Ctr.*, 367 S.C. 242, 248, 626 S.E.2d 1, 4

(2006)). "In a medical malpractice action, it is incumbent on the plaintiff to establish proximate cause as well as the negligence of the [healthcare provider]." *Hoard v. Roper Hosp., Inc.*, 387 S.C. 539, 545 (2010) (*citing Ellis v. Oliver*, 323 S.C. 121, 125, 473 S.E.2d 793, 795 (1996) (*citing Armstrong v. Weiland*, 267 S.C. 12, 225 S.E.2d 851 (1976)). Proximate cause is the efficient or direct cause of the injury. *See Roof v. Kimbrough*, 297 S.C. 156, 375 S.E.2d 318 (Ct. App. 1988) (*citing Willis v. Floyd Brace Co., Inc.*, 458, 309 S.E.2d 295 (Ct. App. 1983)). Proof of proximate cause requires proof of both "causation in fact" and "legal cause." *See Vinson v. Hartley*, 324 S.C. 389, 477 S.E.2d 715 (Ct. App. 1996). Causation in fact is proved by establishing that the injury would not have occurred "but for" the defendant's negligence; on the other hand, "legal cause" focuses on foreseeability. *See id.*, 477 S.E.2d at 715.

When Plaintiff relies on expert testimony to establish cause in fact, "the experts must, with reasonable certainty, state that in their professional opinion, the injuries complained of most probably resulted from the defendant's negligence." *Id.; Hoard*, 387 S.C. at 546. Such "testimony 'must provide a *significant causal link* between the alleged negligence and the plaintiff's injuries, rather than a tenuous and hypothetical connection." *Id.* at 546-547 (emphasis added). Legal cause requires proof of foreseeability:

> An injury is foreseeable if it is the natural and probable consequence of a breach of duty. [Citation omitted]. *Foreseeability is not determined from hindsight, but rather from the defendant's perspective at the time of the alleged breach.*

See Parks v. Characters Night Club, 345 S.C. 484, 491, 548 S.E.2d 605, 609 (Ct. App. 2001) (emphasis added).

Dr. Trant is cognizant that proximate cause is usually reserved for the jury; however, when the evidence is susceptible to only one inference, it becomes a matter of law for the court rather than the jury. *See Platt v. CSX Transp., Inc.*, 379 S.C. 249, 665 S.E.2d 631, 640 (Ct. App. 2008).

It is not disputed that Decedent died almost three years after her only visit with Dr. Trant. Dr. Trant told Decedent and Plaintiff to return for any issues, but they did not:

> Q: Okay. Now, the last sentence there, I invited him to put and meaning Taylor, to call should the symptoms persist or not respond as expected, correct?

A: Correct. . . .

Q: So, that's true that -- he didn't discharge you, he invited you and Taylor to come back should the need arise and her symptoms persisted or didn't improve as expected?

A: Correct.

Q: But because Taylor had no other issues from that point until she tragically died, there was no need to take Taylor back to see Doctor Trant, correct?

A: Correct.

(*See* R. pp. 654:20-655:12). There is no evidence that Plaintiff or Decedent made any effort to contact Dr. Trant or his successor between January 24, 2019 and her death on December 17, 2021. There is no evidence that Plaintiff or Decedent sought a second opinion or any further advice concerning Decedent's condition between January 24, 2019 and her death.

There is no evidence that Decedent experienced even a single symptom during the intervening three years between seeing Dr. Trant and her death. To the contrary, Plaintiff testified:

Q: Okay. Now, from that appointment, Ms. Utley, on January 24th of 2019 until Taylor tragically died, December 17 of 2021, almost three years, 34 months to be exact, did Taylor have any other episodes like she previously experienced?

A: No, sir

(*See* R. pp. 650:23-651:2; *accord* R. p. 1072:9-14). Plaintiff's expert, Dr. Anthony Chang, confirmed this. (*See* R. p. 786:12-25).

On the day of Decedent's passing, she was not even participating in basketball under Dr. Trant's sports clearance. Rather, during the nearly three-year period between Decedent's visit to Dr. Trant and her passing, Decedent was granted permission without restriction to participate in basketball, track, and cheering through High School Athletic Pre-Participation Physical Forms signed by Palmetto Medical Care, LLC. (*See* R. pp. 1350-58). In a July 16, 2019 form (six months after the visit to Dr. Trant), a parent's section for providing history advised: "Please assure all questions are answered to the best of your knowledge. Not disclosing accurate information may put your child at risk during sports activity." (*See* R. p. 1353). Plaintiff noted that Decedent "[had]

an issue last year over exertion and nearly passing out . . . nothing was found cleared to return to sports issues were result of dehydration." (*See id.*). Similarly, in a 2020 form, Plaintiff did not disclose any issues with Decedent's health and did not mention any of her incidents discussed herein. (*See* R. pp. 1354-58). On the day Decedent died, she did not participate in athletic activities pursuant to a release given her by Dr. Trant.

The undisputed evidence shows passage of an extremely long time (34 months) and intervening acts (including subsequent medical clearance to participate in sports). Together, these factors break the chain of proximate cause. In *McKnight v South Carolina Dep't of Corrections*, 385 S.C. 380, 684 S.E.2d 566 (Ct. App. 2009), deficient mental health treatment in a prison hospital was too far removed from the inmate's suicide a year after his release from the hospital to be a proximate cause. This was especially true because the inmate returned to prison with no further treatment. In *McKnight*, this Court relied on *Tolton v. American Biodyne, Inc.*, 48 F.3d 937, 944 (6th Cir. 1995), which held that when a decedent committed suicide more than a month after his last hospital visit and received treatment from two other hospitals during that time, the plaintiffs could not prove causation because of the time lapse and intervening treatment.

In this case, the evidence is clear that—whatever condition Plaintiff had in January of 2019 when she saw Dr. Trant—she did not die until nearly three years later. The mere introduction of such a long period of time renders any attribution of the cause to Dr. Trant sheer speculation. The jury had no evidence of whether any intervening events might have changed her condition. It had no way of knowing what actually occurred with Decedent's ARVD during that three-year interval, particularly since Decedent was engaging in at least some physical exertion during that time without issue. The verdict was fatally defective because it blamed Decedent's death on a single visit three years prior, without any evidence of what occurred in the interval. The only evidence is that Decedent had been cleared for participation in sports through High School Athletic Pre-Participation Physical Forms executed by someone other than Dr. Trant.

For the foregoing reasons, as a matter of law, Dr. Trant's actions could not be a proximate cause of Decedent's death, given the passage of almost three years and the intervention of sports

physicals in 2019 and 2020. The trial judge should have granted Dr. Trant JNOV because the evidence does not support a verdict of proximate causation. In the alternative, the trial judge abused his discretion by denying Dr. Trant's motion for a new trial.

D. <u>The Trial Court Erred in Denying Defendants' Motion for Change of Venue and Motion for New Trial Absolute With Regard to Venue Because Marion County Was Not a Proper Venue After the School District Settled.</u>[8]

On September 19, 2024, Judge H. Steven DeBerry, IV denied Defendants' motion to change venue. (*See generally* R. pp. 4-13). He based his refusal to change venue on the conclusion that: "South Carolina law is clear that, where there are multiple defendants in an action who reside 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." (*See* R. p. 8). For the reasons that follow, the trial court erred.

When Plaintiff first filed suit in July of 2022, she named as Defendants Dr. Trant, MPA, *and the School District*. (*See generally* R. pp. 69-99). At that time, she alleged that venue was proper in Marion County:

> Venue is proper in this court because some of the alleged acts or omissions giving rise to Plaintiff's claims occurred in Marion County. Not only is venue proper in Marion County, but pursuant to S.C. Code Ann. § 15-78-100(b)[9] venue must be Marion County, as Marion County School District is a Defendant.

(*See* R. p. 71 ¶ 7). In response to this allegation, Dr. Tran alleged, in part, that "Defendants reserve the right to file a Motion for a Change of Venue should circumstances change." (*See* R. p. 101 ¶ 7).

Dr. Trant could not object to the propriety of Marion County as a venue at that time, given

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[8] Additionally, a court may change venue if "there is reason to believe that a fair and impartial trial cannot be had" or "the convenience of witnesses and the ends of justice would be promoted by the change." *See* S.C. Code § 15-7-100(A)(2)-(3). As demonstrated by the ruinous verdict entered against Dr. Trant, he could not obtain a fair trial in Marion County.

[9] "Jurisdiction for any action brought under this chapter is in the circuit court and brought in the county in which the act or omission occurred." S.C. Code § 15-78-100(b); *accord Ellis by Ellis v. Oliver*, 307 S.C. 365, 367, 415 S.E.2d 400, 401 (1992) ("Under the SCTCA, venue is proper where the act or omission occurred.").

the presence of the School District as a Defendant and the Tort Claims Act's venue provision, S.C. Code § 15-78-100(b). "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." *See* S.C. Code § 15-7-30(B). As a result, because venue in Marion County was proper under Section 15-78-100(b), when the action was commenced, venue was proper as to Dr. Trant because it was proper as to Defendant School District. Dr. Trant has never argued that Plaintiff could not have originally sued in Marion County. Rather, because the School District was a Defendant when the case was first filed, Marion County was an appropriate venue *at that time.* However, the School District settled with Plaintiff, with the trial court approving the settlement, for only $130,000, on September 18, 2024. (*See generally* R. pp. 1-3). The School District was dismissed from this action by stipulation on September 25, 2024, more than a month before trial. (*See generally* R. p. 173).

The general South Carolina venue statute applicable to Dr. Trant,[10] an individual resident of the state, provides as follows:

> A civil action ***tried*** pursuant to this section[11] against a resident individual[12] 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

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10 With regard to Defendant MPA, venue would be proper where it has its principal place of business at the time the cause of action arose or the most substantial part of the alleged act or omission giving rise to the cause of action occurred. *See* S.C. Code §15-7-30(E). MPA's "principal place of business" would be its home office location or where the majority of its corporate activity takes place in South Carolina. *See* S.C. Code §15-7-30(A)(10). "Owning property and transacting business in a county is insufficient in and of itself to establish the principal place of business for a corporation for purposes of this section." S.C. Code § 15-7-30(H). The evidence plainly does not support Marion County being a proper venue for a claim against MPA under these statutes.

11 This section applies to "cases not provided for in Sections 15-7-10, 15-7-20, or 15-78-100." *See* S.C. Code § 15-7-30(B). Those sections establish venue for: (a) cases involving real property that must be tried where the property is located (Section 15-7-10); (b) actions for statutory penalty or forfeiture and for failure of a public officer to perform duties (Section 15-7-20); and (c) cases where a change of venue is needed for, *inter alia*, convenience of the parties or partiality of the original venue (Section 15-7-100).

12 A "resident individual" is a person who is domiciled in South Carolina. *See* S.C. Code § 57-3-30(A)(11).

alleged act or omission giving rise to the cause of action occurred.

See S.C. Code § 15-7-30(C) (emphasis added). "The 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 (1989). "[W]hen motion to change venue is brought pursuant to S.C. Code § 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." *See Chestnut*, 299 S.C. at 307, 384 S.E.2d at 714.

It is beyond doubt that, if Plaintiff had sued only Dr. Trant, she could not have done so in Marion County. It is undisputed that Dr. Trant did not live in Marion County. Rather, he has lived in Florence County since 1995. (*See* R. pp. 1044:23-1045:5). Additionally, as to the claims against Dr. Trant, *none of the alleged acts or omissions* for which he was sued occurred in Marion County. There is no allegation that Dr. Trant ever did anything in Marion County to give rise to this lawsuit. As a result, if this action had been styled simply *Utley v. Trant*, there is little doubt that the trial court would have granted a motion to dismiss or change venue. The only reason Dr. Trant could not file such a motion was the presence of the School District as a Defendant. Because the School District was entitled to venue in Marion County under the Tort Claims Act, Dr. Trant reasonably determined that a motion challenging venue would not succeed at the time he filed his answer.

However, the parties to this matter changed before trial. The School District—which had been the anchor for venue in Marion County—was dismissed. When the School District was dismissed, there was no longer any arguable basis for venue in the trial court. Plaintiff sought to force Dr. Trant—in derogation of his statutory rights—to go to trial in a county other than his county of residence with no ongoing justification. The language of the venue statute requires that suit be "brought ***and tried*** in the county" of the resident Defendant's residence. Without any reason for the case to remain in Marion County, it was plainly error for the trial judge to deprive Dr. Trant of his right to trial in his county of residence merely because Marion County had previously been (but was no longer) a potentially proper venue.

Plaintiff can cite no case law, statutory language, or legislative history to support the trial

of this matter in an improper venue. There is no law supporting that—where a lawsuit initially has more than one proper venue—trial may occur in a county that ceases to be a proper venue. Such a result would encourage forum shopping and judicial gamesmanship. If a plaintiff wished to avoid a particular county, she could simply name a defendant who could anchor venue in another county. Then, before trial, she could dismiss the claims against that anchor defendant, but keep the remaining defendants tethered to her chosen venue, *even though her chosen venue is improper as to the remaining defendants.* It defies logic to suggest that the legislature intended to invite flagrant forum shopping, and the plain language of the statute shows otherwise. As such, the trial judge should have transferred venue from Marion County to Florence County, the only county that could be a proper trial venue.

Both Plaintiff and the trial judge relied heavily on *Jeter v. South Carolina Dep't of Transp.*, 369 S.C. 433, 633 S.E.2d 143 (2006), for the proposition that venue was proper in Marion County because venue was proper there when the lawsuit was first commenced. However, *Jeter* is inapposite for a very important reason. In *Jeter,* plaintiffs—who had been involved in a collision with a car driver—sued the Department of Transportation, alleging that it failed to safely maintain the roadway and warn drivers. The Department filed a third-part complaint joining the driver as a defendant. The trial court granted the driver's motion to change venue from the county where the accident occurred to her county of residence. The Supreme Court reversed, holding:

> SCDOT argues if § 15-78-100(b) establishes venue in the county in which the act or omission occurred, then the Court of Appeals erred in affirming the lower court's transfer of venue under § 15-7-30 when the original venue was proper under § 15-78-100(b). We agree. . . . [W]here there are multiple defendants residing in different counties, the plaintiff may properly bring the action in the county where any one of the defendants resides at the time of the commencement of the action. In such a case, the plaintiff ordinarily has the right of election as to the county in which an action will be brought. . . . The Jeters properly instituted their actions against SCDOT by filing their actions in the Union County Court of Common Pleas pursuant to § 15-78-100(b). Because the actions were properly instituted, Brown, as a defendant, had no right to request a change of venue to the county of her residence based on an allegation that the actions were brought in an improper venue.

See id., 369 S.C. at 441-42, 633 S.E.2d at 147-48. The Department of Transportation—the original

defendant, who provided the original basis for venue—remained a defendant (and, in fact, was the party contesting the change of venue). As a result, S.C. Code § 15-78-100(b) still allowed Plaintiff to bring this suit in the county where the accident occurred. The change of venue was not based on a contention that venue was no longer proper as to any remaining parties. To the contrary, under S.C. Code § 15-78-100(b), venue remained proper in the original forum because the Department of Transportation was a defendant. For the following reasons, *Jeter* does not support the trial judge's denial of the Motion to Change Venue.

Initially, *Jeter* is inapplicable because it construed a prior version of the venue statute, which has been materially amended. In fact, the *Jeter* Court acknowledged that "[t]he 2005 amendments to 15-7-30 are not applicable in this case." *See id.*, 633 S.E.2d, at 147 n.7. The pre-2005 amendment version of Section 15-7-30 expressly provided that venue should be determined based on a defendant's residence when the lawsuit commenced:

> 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***.

See S.C. Code § 15-7-30 (Supp. 2004) (emphasis added). On the other hand, the statute currently bases venue on a defendant's residence "at the time the cause of action arose." The statute no longer refers to a defendant's residence "at the time of commencement of the action."

Further, the 2005 amendment added language demonstrating the intent of the legislature to require that proper venue exist *up to and through trial.* Specifically, Section 15-7-30(C), requires 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 § 15-7-30(C). Because this provision uses the conjunctive "and," it must require proper venue ***both*** at the time of commencement ***and*** at the time of trial. *See* S.C. Code § 15-7-30(B). Likewise, Sections 15-7-30(B) and (E) also require proper venue both when the case is "brought and tried." *See*, S.C. Code Ann. § 15-7-30(C) and (E). Additionally, Section 15-7-30(b) states that where there are multiple

defendants, "the action may be tried in any county where the action *properly may be maintained* against one of the defendants pursuant to this section." *See id.* (emphasis added).

These 2005 changes to the venue statute make clear that proper venue must exist at the time of trial, not merely when the case was first filed. As a result, to the extent *Jeter* states that "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," it is no longer good law. Such a statement was based on the pre-2005 statutory language, which was dramatically changed as part of tort reform. The trial judge's and Plaintiff's reliance on *Jeter* for the contention that venue was proper in Marion County because the School District was a party at the time the lawsuit was commenced was simply misplaced.

Additionally, *Jeter* is readily distinguishable from this case because it was decided under facts very different from the case at bar. By the time this matter went to trial, Marion County was no longer an appropriate venue because the source of venue in the first instance—the School District—had been dismissed. As a result, Section 15-78-100(b), no longer supported venue there. If this suit had been commenced against the Defendants who went to trial, Marion County would not have been a proper venue. In other words, at the time of trial, there was no longer any factual or legal basis supporting Marion County as a venue. Moreover, to the extent *Jeter* may be read to support Plaintiff's arguments, it should be overruled.

Simply put, Plaintiff can cite no South Carolina authority depriving a resident defendant of his right to trial in his county of residence (or where most of his alleged conduct occurred) when the anchor for venue in another county has been dismissed as a defendant. Dr. Trant did not simply ask the trial court to transfer venue in the interest of justice. He asserted his statutory right to trial in his home county because *there was no remaining basis for trial in Marion County.* The trial judge, without legal basis, denied him this right. As a result, Dr. Trant was forced to stand trial in a county where Plaintiff could not have originally commenced this action (but for the joinder of the School District). The dismissal of the School District *required* that the trial judge transfer

venue. This was not a question of the judge's exercise of discretion.

As a result, the Court should reverse the trial judge's refusal to transfer venue to the proper forum and remand this case with instructions to transfer the matter to Florence County for trial.

E. The Trial Court Erred in Denying Defendants' Motion for a New Trial Absolute Because the Trial Judge Gave Incorrect and Prejudicial Jury Instructions.

1. Gross Negligence Jury Charge

The trial court erred in charging the jury in part[13] that "[g]ross negligence . . . is a relative term and means the absence of care which is necessary under the circumstances." (Tr. Transc., at 784:23-25). This definition of "gross negligence" has been often cited by appellate courts, but when carefully examined, that definition is actually a definition of simple or ordinary negligence and not gross negligence. "[T]he absence of care which is necessary under the circumstances" characterizes simple negligence. The definition provided to the jury equates gross negligence with the "absence of due care," not the absence of slight care. The trial court charged the jury that gross negligence is "the absence of care that is necessary under the circumstances" not once, but twice, after the jury asked a question about the difference between negligence and gross negligence. (*See* R. p. 1212:3-22, 1376). This error by the trial judge was particularly prejudicial because it declined to charge the jury as to the *difference between* simple and gross negligence; this denied the jury critical information by which it could distinguish the two levels of culpability.

Dr. Trant's position on this issue is supported by an analysis of the origins of the trial judge's erroneous definition. That definition has its origins in the case of *Hicks v. McCandlish,* 221 S.C. 410, 70 S.E.2d 629, 631 (1952), where the Supreme Court wrote:

> Gross negligence is a relative term, and means the absence of care that is necessary under the circumstances, but the absence of this care alone, whether called 'gross' or 'ordinary' negligence, does not authorize the jury to give exemplary damages. We have held in many cases that exemplary damages should not be awarded for mere gross negligence, and that the element that distinguishes actionable negligence from wilful (sic) tort is inadvertence.

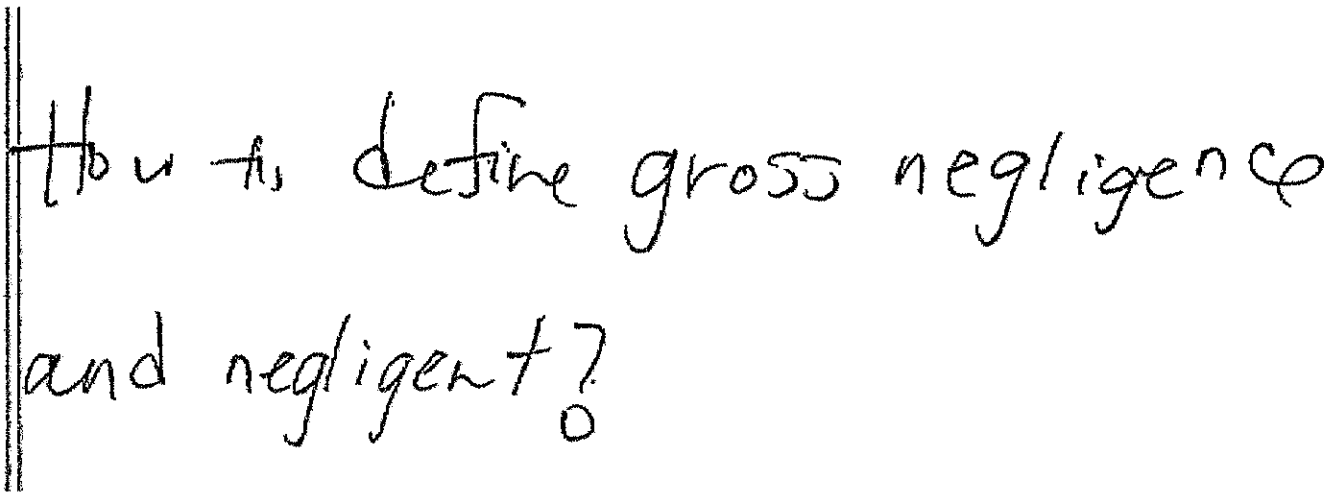
[13] While the jury charge did also use the "slight care" language, Dr. Trant respectfully submits that the inclusion of ordinary negligence language was unduly prejudicial when the charge is read as a whole. (*See* R. pp. 1202:17-1203:7).

The definition does not pre-date *Hicks*. *Hicks* is the case routinely cited in many Tort Claims Act cases for this erroneous definition. This is a misreading of *Hicks* as is evident when the definition is read in context. In actuality, the definition describes simple or ordinary negligence, which is the absence of due care, i.e., "the care that is necessary under the circumstances." In *Hicks*, the Supreme Court was discussing the type of negligence that did not support an award of punitive damages. The Supreme Court explained that regardless of its name, gross negligence or ordinary negligence, the "absence of care that is necessary under the circumstances" does not support an award of punitive damages. In fact, the Supreme Court stated that "exemplary damages should not be awarded for mere gross negligence." *See* 70 S.E.2d at 631.

As such, it is clear that the Supreme Court in *Hicks* was describing ordinary negligence because, under the current law, gross negligence *will* support an award of punitive damages, while regular negligence does not. *See Cohen v. Allendale Coca-Cola Bottling Co.,* 291 S.C. 35, 351 S.E.2d 897, 900 (Ct. App. 1986) ("Simple negligence affords no basis for an award of punitive damages"); *Carter v. R.L. Jordan Oil Co.,* 301 S.C. 84, 390 S.E.2d 367 (Ct. App. 1990) (same).

In short, the *Hicks* definition of "gross negligence" is inaccurate under current jurisprudence. The "absence of care that is necessary under the circumstances"—which *Hicks* says will not support an award of punitive damages—is merely a definition of ordinary negligence. That definition is an inaccurate description of gross negligence because it does not clearly distinguish gross negligence from simple negligence. This definition threatens to cause jury confusion and should not have been part of the trial court's charge on gross negligence.

Defendants requested that the trial court clearly instruct the jury about the difference between simple and gross negligence: "Negligence is the failure to exercise due care, while gross negligence is the failure to exercise even the slightest care." (*See* R. p. 238). The trial judge did not do so. Because he did not clearly differentiate the types of negligence, the jury could not comprehend the distinction, which was a critical and dispositive issue for Dr. Trant. The jury's actual confusion is best evidenced by its question submitted to the Court during deliberations:



(*See* R. p. 1376).

Without dispute, Dr. Trant is entitled to absolute immunity for simple negligence under S.C. Code § 33-56-180. The trial judge did not provide the jury with the necessary tools to make this most critical factual determination as to Dr. Trant's liability. Giving an imprecise definition of gross negligence was extremely prejudicial because it led the jury to unwittingly strip Dr. Trant of the statutory protections to which he was entitled as an employee of a charitable organization. Because the trial judge erred in giving the jury confusing instructions as to the critical issue of gross negligence, this Court should reverse the denial of Dr. Trant's motion for a new trial absolute.

2. Charitable Immunity Charge

The parties stipulated that MPA is a charitable organization and that Dr. Trant was acting within the course and scope of his employment for MPA. Defendants' Request to Charge #10 asked the judge to instruct the jury about portions of the charitable immunity statute:

> A person sustaining an injury or dying by reason of the tortious act of commission or omission of an employee of a charitable organization, when the employee is acting within the scope of his employment, may recover in an action brought against the charitable organization only the actual damages he sustains.
>
> An action against the charitable organization constitutes a complete bar to any recovery by the claimant, by reason of the same subject matter, against the employee of the charitable organization whose act or omission gave rise to the claim unless it is alleged and proved in the action that the employee acted in a reckless, wilful (sic), or grossly negligent manner.
>
> A judgment against an employee of a charitable organization may not be returned

> unless a specific finding is made that the employee acted in a reckless, wilful (sic), or grossly negligent manner.

(*See* R. p. 241). The trial judge declined to do so. (*See* R. pp. 1192). In fact, the jury charge did not even mention the charitable immunity statute, despite the fact that charitable immunity was a vitally important aspect of this case.

In *Burns v. South Carolina Comm'n for the Blind*, 323 S.C. 77, 448 S.E.2d 589 (Ct. App. 1994), this Court held that the failure to charge premises liability as limited by the Tort Claims Act was prejudicial error and that when general instructions are insufficient to enable the jury to fully understand the law, a refusal to give a requested charge is reversible error. The error here requires reversal and the grant of a new trial absolute.

Plaintiff's counsel urged the jury to check "yes" to every answer on the verdict form to grant full relief: "If you choose to award the full justice that the plaintiffs have asked you to award, *that requires you to answer everything yes.*" (Tr. Transc., at 773:3-5 (emphasis added)). Coupled with the failure to instruct on the charitable immunity statute, this statement led the jury to believe that it had to find Dr. Trant grossly negligent for the Plaintiff to recover. That is not the law. Giving the jury a complete instruction on the charitable immunity statute—as Dr. Trant requested—could have prevented such confusion. The trial court compounded its error in refusing to instruct the jury on the Solicitation of Charitable Funds Act by giving an erroneous and incomplete charge on gross negligence, as discussed in the prior section.

Because the trial judge erred in refusing to instruct the jury on the charitable immunity statute, this Court should reverse the denial of Dr. Trant's motion for a new trial absolute.

F. The Trial Court Erred in Denying Defendants' Motion for a New Trial Absolute Because the Verdict Was Excessive.

Dr. Trant's Post-Trial Motions also asked the trial court to grant a new trial absolute because the evidence did not support a verdict of $30 million, which was so shocking as to indicate that the jury was moved by passion, caprice, prejudice, or other considerations outside of the evidence. The trial judge denied that motion, finding that the "verdict is entitled to substantial deference and was not, under the circumstances, the result of improper means or considerations."

(*See* R. pp. 26-30, 50-54).

As the Supreme Court has explained, "[w]hen a party moved for a new trial based on a challenge that the verdict is either excessive or inadequate, the trial judge must distinguish between awards that are merely unduly liberal or conservative and awards that are actuated by passion, caprice, or prejudice." *Allstate Ins. Co. v. Durham*, 314 S.C. 529, 431 S.E.2d 557, 558 (1993). "[W]hen the verdict is so grossly excessive ... that the amount awarded is so shockingly disproportionate to the injuries as to indicate that the jury was moved or actuated by passion, caprice, prejudice, or other considerations not found in the evidence, it becomes the duty of the trial judge ... to set aside the verdict absolutely." *Id., citing Easler v. Hejaz Temple,* 285 S.C. 348, 329 S.E.2d 753, 758 (1985).

"Under the South Carolina wrongful death statute, the question of damages is not directed toward the value of the human life that was lost, but rather the damages sustained by the beneficiaries as a result of the death." *Hawkins v. Pathology Associates of Greenville, P.A.*, 330 S.C. 92, 498 S.E.2d 395, 407 (Ct. App. 1998); *accord Zorn v. Crawford*, 252 S.C. 127, 165 S.E.2d 640, 645 (1969) (finding measure of damages is injury to beneficiaries, not social or intrinsic value of human life); *Singletary v. Shuler*, 33 S.C. 600, 861 S.E.2d 591, 596 (Ct. App. 2021) (same). The general elements of damages recoverable are: (1) pecuniary loss, (2) mental shock and suffering, (3) wounded feelings, (4) grief and sorrow, (5) loss of companionship, and (6) deprivation of the use and comfort of the intestate's society, including the loss of his experience, knowledge, and judgment in managing of the affairs of himself and of his beneficiaries. *See Self v. Goodrich*, 300 S.C. 349, 387 S.E.2d 713, 714 (Ct. App. 1993).

Decedent died leaving two statutory beneficiaries, her biological mother (Demetrice Utley) and her biological father (Derrie Price). Taylor's stepfather is not a statutory beneficiary. Plaintiff presented no evidence of pecuniary loss. Taylor was 16 years old at the time of her death and did not provide financial support or benefit to the statutory beneficiaries. The loss to the statutory beneficiaries accordingly consists entirely of subjective components of wrongful death damages. Critically, there was no evidence that Decedent's biological father, Derrie Price, sustained any

compensable injury. Notably, Mr. Price did not testify at trial. Witnesses did not testify about the impact of Decedent's death on Mr. Price, and Plaintiff presented no evidence of his relationship, if any, with Decedent during her life. Thus, any damages attributable to the loss to Derrie Price are entirely speculative. As for beneficiary Demetrice Utley, the evidence does not support the unprecedented award of $30 million in actual damages for emotional loss, including grief, sorrow, wounded feelings, and loss of companionship. While Ms. Utley's loss was undoubtedly staggering, it does not rise to the level of a $30 million verdict.

The sheer magnitude of the verdict demonstrates that the jury was moved or actuated by passion, caprice, prejudice, or other considerations not found in the evidence. This most probably resulted from Plaintiff's counsel injecting race and socioeconomic disparities into his closing argument: "The standards of care we've talked about, they're there to protect all patients, rich or poor, black or white, it doesn't matter who you are; they're there to protect each of the patients." (Tr. Transc., at 736:4-7). Later, Plaintiff's counsel again injected race, socioeconomic inequalities, and other inappropriate considerations when he stated:

> Those standards of care, folks, there (sic) a hundred percent equal opportunity, a hundred percent color blind, because they have to be. It doesn't matter if you're black, you're white, if you live in a mansion, or a three-bedroom house, or an apartment. It doesn't matter if you're a millionaire or on Medicaid. Those standards of care, they're in effect for each and every patient.

(Tr. Transc., at 746:4-10). Plaintiff's counsel also argued that the verdict should be large enough to have a deterrent effect, *i.e.* to "send a message" not just to Defendants, but to other doctors throughout the state—even calling out non-party doctors by name:

> But whatever you do, whatever you do, it's got to be loud. It's got to be loud enough to be heard in Charleston, South Carolina, so that Dr. Cain can hear it. It needs to be loud enough in Columbia, South Carolina, so Dr. Shuler can hear it.
>
> And it certainly needs to be loud enough to be heard over in Florence at McLeod. Across the Pee Dee, they need to hear it and take notice so that when a doctor is making a decision on whether or not a patient can receive the testing that they remember this, that those patients can get the proper care. You can be the conscience of the community. They need to hear that message.

(Tr. Transc., at 756:18-757:7).

However, compensatory damages are not awarded to have a deterrent effect or to "send a message"; instead they are awarded only to make a plaintiff whole. *See Mellen v. Lane*, 377 S.C. 261, 659 S.E.2d 236, 250 (Ct. App. 2008) ("Actual damages are properly called compensatory damages, meaning to compensate, to make the injured party whole, to put him in the same position he was in prior to the damages received insofar as this is monetarily possible"). Only punitive damages may be awarded as a deterrent or to "send a message"; however, Plaintiff did not seek punitive damages, primarily because punitive damages were not recoverable from Defendants under S.C. Code § 33-56-180. In light of Plaintiff's inflammatory closing argument and the verdict, it is more likely than not that the jury heeded Plaintiff's call and returned a verdict that was intended not to compensate the statutory beneficiaries but to "send a message."

The evidence presented at trial did not support the excessive verdict of $30 million. The sheer and unprecedented size of the verdict, together with the Plaintiff's call to "send a message" during closing argument and the unsupported injection of race and socioeconomic inequalities, further demonstrates that the jury was moved or actuated by passion, caprice, prejudice, or other considerations not found in the evidence.

For the foregoing reasons, the trial judge erred in denying Defendants a new trial absolute because of the excessiveness of the verdict.

G. Even If Dr. Trant Could Be Held Liable, the Trial Court Erred in Not Applying the South Carolina Solicitation of Charitable Funds Act's Cap on Liability to Him.

Under the Solicitation of Charitable Funds Act, Plaintiff was limited to recovering "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." *See* S.C. Code § 33-56-180(A). The Tort Claims Act caps on recovery in a malpractice case are:

> (3) 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.
>
> (4) 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.

See S.C. Code § 15-78-120(3) and (4). Although he granted Defendant MPA's request to apply these caps, the trial judge denied Dr. Trant's motion to reduce the verdict against him to the amount of the statutory cap, concluding that the cap did not apply to him. (*See* R. pp. 31-35, 55-59).

The trial court erred in this regard and should have capped Dr. Trant's joint and several liability to the same extent it capped the liability of his charitable organization employer. The Solicitation of Charitable Funds Act does not explicitly impose unlimited liability on employees, even where there is gross negligence. As a result, the trial judge should have capped Dr. Trant's liability at $2.4 million (as it did for MPA).

Section 33-56-180(A) of the South Carolina Solicitation of Charitable Funds Act provides, in relevant part:

> An action against the charitable organization pursuant to this section constitutes a complete bar to any recovery by the claimant, by reason of the same subject matter, against the employee of the charitable organization whose act or omission gave rise to the claim unless it is alleged and proved in the action that the employee acted in a reckless, wilful (sic), or grossly negligent manner, and the employee must be joined properly as a party defendant. A judgment against an employee of a charitable organization may not be returned unless a specific finding is made that the employee acted in a reckless, wilful (sic), or grossly negligent manner.

See S.C. Code § 33-56-180(A). This language specifically addresses the immunity of *employees* of charitable organizations and the limited circumstances under which a judgment may be entered against such an employee. The highlighted provision was adopted as part of Act No. 461 of 1994, which is entitled in part as:

> AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 56 TO TITLE 33 SO AS TO ENACT THE "SOUTH CAROLINA SOLICITATION OF CHARITABLE FUNDS ACT" WHICH INCLUDES ... PROVISIONS STIPULATING 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.

See 1994 Act No. 461. Thus, it is apparent that the General Assembly intended to "stipulate[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." *See id.* The legislative history says nothing to suggest that an employee could be liable for *more than* the maximum amount recoverable from the charitable organization. Nothing in the law suggests that damages recoverable from an employee are unlimited and unqualified, even if that employee was grossly negligent. Rather, Section 33-56-180(A) simply provides that the employee *may be included* on the judgment as a judgment debtor where he acts "in a reckless, wilful (sic), or grossly negligent manner."

The Solicitation of Charitable Funds Act, which results in a partial waiver of charitable immunity for charitable organizations and their employees, is in derogation of the common law, and accordingly, must be strictly construed in favor of limiting liability.[14] Any change from the common law must be explicit and clearly expressed in the Act. However, Section 33-56-180(A) does not explicitly and plainly authorize unlimited liability for employees of charitable organizations or even suggest that an employee's liability may be *greater than that of the charitable organization*. Instead, the Act merely states that an employee may be included in a judgment if he is "joined properly as a party defendant" and "a specific finding is made that [he] . . . acted in a reckless, wilful (sic), or grossly negligent manner." *See* S.C. Code § 33-56-180(A).

Dr. Trant anticipates that—like the trial judge (*see* R. pp. 33-34, 57-58)—Plaintiff will rely on *James v. Lister*, 331 S.C. 277, 500 S.E.2d 198 (Ct. App. 1998). In *James*, this Court examined a predecessor statute, Section 33-55-210(A), and stated—in what is clearly *dicta*[15]—that "Section

[14] To the extent that the Solicitation of Charitable Funds Act adopts the limitations on liability imposed in the Tort Claims Act, it must likewise be strictly construed to limit the liability of a charitable organization and its employees. *See* S.C. Code § 33-56-180(A).

[15] *See Drummond v. Beasley*, 331 S.C. 559, 503 S.E.2d 455 (1998) (characterizing as dicta language not within the question before Court); *Hampton v. Richland County*, 296 S.C. 72, 370 S.E.2d 714, 714 (1988) (concluding discussion of legal principle was *dicta* where "clearly unnecessary to a resolution of the issue before the court"); *Dennis v. South Carolina National*

33-55-210(A) provides a mechanism for seeking damages in excess of the charitable limitation, through an action against a charitable organization's employees." *See* 500 S.E.2d at 201. In stating this *dicta*, this Court did not closely scrutinize the 1988 amendment to Section 33-55-210 and the legislative history. Act No. 674 of 1988 made significant changes to Section 33-55-210, including adding subsection (A) for the following purpose derived from the title to the Act:

> AN ACT TO AMEND SECTION 33-55-210, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE RECOVERY AGAINST CHARITABLE ORGANIZATIONS AND LIABILITY OF A HEALTH CARE PROVIDER FOR SERVICES RENDERED VOLUNTARILY AND WITHOUT COMPENSATION, SO AS TO PROVIDE THAT AN ACTION AGAINST THE CHARITABLE ORGANIZATION, RATHER THAN THE JUDGMENT IN AN ACTION, UNDER SECTIONS 33-55-210 THROUGH 33-55-230 CONSTITUTES A COMPLETE BAR TO ANY RECOVERY, RATHER THAN A COMPLETE BAR TO ANY ACTION, BY THE CLAIMANT, BY REASON OF THE SAME SUBJECT MATTER, AGAINST THE EMPLOYEE OF THE CHARITABLE ORGANIZATION WHOSE ACT OR OMISSION GAVE RISE TO THE CLAIM UNLESS IT IS ALLEGED AND PROVED IN THE ACTION THAT THE EMPLOYEE ACTED IN A RECKLESS, WILFUL (sic), OR GROSSLY NEGLIGENT MANNER, PROVIDE THAT, IN SUCH A CASE, THE EMPLOYEE MUST BE PROPERLY JOINED AS A PARTY DEFENDANT, PROVIDE THAT NO JUDGMENT AGAINST AN EMPLOYEE OF A CHARITABLE ORGANIZATION MAY BE RETURNED EXCEPT UNDER SPECIFIC CONDITIONS.

See 1988 Act No. 674. Like the Act's current incarnation, Section 33-55-210(A), as adopted in 1988, included did not explicitly and clearly impose unlimited liability on the employees of charitable organizations. Rather, that version of the Act merely stated that an employee was not immune and could be included on a judgment if he was "properly joined as a party defendant" and "a specific finding is made that the employee acted in a reckless, wilful (sic), or grossly negligent manner." *See* S.C. Code Ann. § 33-55-210(A) (repealed in 1994).

More importantly, 1988 Act No. 674 also repealed Section 33-55-220, which until that time stated that "the bar to any action against the employee shall not apply where the employee is

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Bank, 299 S.C. 34, 382 S.E.2d 237, 240 (Ct. App. 1988) (construing language as *dicta* because it was "an expression or statement by the court on a matter not necessarily involved in the case nor necessary to a decision thereof").

adjudged to have acted recklessly, wantonly, or grossly negligent." S.C. Code Ann. § 33-55-220 (repealed in 1988). The title to 1988 Act No. 674 states the legislative intent "TO REPEAL SECTION 33-55-220 RELATING TO THE PROVISION THAT THE BAR TO ANY ACTION AGAINST THE EMPLOYEE DOES NOT APPLY WHERE THE EMPLOYEE IS ADJUDGED TO HAVE ACTED RECKLESSLY OR WANTONLY OR WITH GROSS NEGLIGENCE." *See* 1988 Act No. 674. Hence, in 1988, the General Assembly intended to repeal language stating that the "bar to any action" does not apply to employees of a charitable organization who acted with gross negligence. That repeal was maintained in 1994, when the Solicitation of Charitable Funds Act was enacted.

A reading of *James* shows that this Court did not consider the legislative history of Section 33-55-210(A) or the repeal of Section 33-55-220 when it suggested in *dicta* that a recovery in excess of the $200,000 cap could be made against an employee of a charitable organization. When the Court considers and strictly construes the Solicitation of Charitable Funds Act—particularly Section 33-56-180—it should become clear that the legislature did not intend to allow a claimant to recover from an individual employee of a charitable organization *more* than she could recover against the entity itself. Even if he was grossly negligent, Dr. Trant could not face unlimited liability; rather, like MPA, his liability is capped by the monetary limit of Section 33-56-180.

CONCLUSION

For all of the foregoing reasons, the Court should reverse the trial court's denial of Dr. Trant's Motion to Change Venue and the denial of his Post-Trial Motions. Specifically, the Court should enter judgment in favor of Dr. Trant because the evidence did not create a jury question as to gross negligence and proximate cause. In the alternative, the Court should grant Dr. Trant a new trial in Florence County because Marion County was not a proper venue for trial upon dismissal of the School District. In the alternative, the Court should grant Dr. Trant a new trial because of errors in the trial court's jury instructions. Alternatively, the Court should grant a new trial because the amount of the verdict was excessive. Finally, in the alternative, the Court should reduce the amount of the verdict against Dr. Trant to reflect the cap set forth in the South

Carolina Solicitation of Charitable Funds Act.

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

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

Appellate Case No. 2025-000434

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

vs.

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

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RULE 211(b) CERTIFICATE

The undersigned certifies that this Corrected Final Brief of Appellant complies with Rule 211(b), SCACR.

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