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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON)	
)	
Amy S. Davis as Personal Representative of)	Civil Action No: 2016-CP-32-00950
The Estate of Utricia Shealy, deceased,)	
)	
Plaintiff,)	
)	**ORDER**
v.)	
)	
Agape Nursing Rehabilitation Center, Inc.,)	
Agape Management Services, Inc., John)	
Doe, Richard Roe Corporation, Jane Doe,)	
and Mary Doe Corporation,)	
)	
Defendants.)	
)	

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SC Court of Appeals

A jury trial was held in the above-captioned case beginning on October 22, 2018. Following five (5) days of trial, the jury returned a verdict in favor of Plaintiff Amy S. Davis as Personal Representative of the Estate of Utricia Shealy, deceased ("Plaintiff"), in a personal injury action against Defendants Agape Nursing & Rehabilitation Center, Inc. ("Agape Nursing") and Agape Management Services, Inc. ("Agape Management") (collectively as "Defendants"). Following the trial, on November 5, 2018, the Defendants filed a Motion for Judgment Notwithstanding the Verdict, or in the alternative, a Motion for a New Trial Absolute, or in the alternative, a Motion for a New Trial *Nisi Remittitur* (collectively as the "Motions"). After a review of the Motions and the file, the court denies each of the Defendants' Motions as specified in the following findings of facts and conclusions of law:

STATEMENT OF FACTS

The injuries that form the basis of this action arise from Utricia Shealy's ("Ms. Shealy") 27-hour admission to Defendants' skilled nursing facility. On July 1, 2014, Ms. Shealy was admitted to Agape Nursing & Rehabilitation Center in West Columbia, South Carolina for short-

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term rehabilitation. Ms. Shealy remained a resident there until July 2, 2014, when she was emergently transferred to Lexington Medical Center after experiencing a fall, which was not witnessed.

Plaintiff filed this action on March 16, 2016, which was twice amended, alleging causes of action for professional negligence and "ordinary" negligence and seeking punitive damages. During the aforementioned trial, Plaintiff presented the case that during Ms. Shealy's residency, Defendants were responsible for protecting Ms. Shealy from avoidable injury and providing the services necessary to keep her safe. Plaintiff presented that the duties Defendants were obligated to uphold included acting with due care and ensuring sufficient financial and operational resources be allocated to comply with all standards of care, laws, codes, and regulations in place to prevent harm to residents of the facility, including Ms. Shealy, and that as a consequence of Defendants' negligence, Ms. Shealy suffered a fall resulting in significant injuries. These injuries included a right femoral neck fracture requiring hospitalization and surgery, a facial contusion, conscious pain and suffering, mental distress, disability, and significant medical expenses, amongst other damages. After hearing testimony from family members of Ms. Shealy, employees of Defendants, and Plaintiff's nursing expert, Ellen Lewis, the Plaintiff rested. The Defendants then made a motion for a directed verdict, which was denied. After the Defendants rested, they renewed their motion for a directed verdict, which was also denied. The Plaintiff made a motion for a directed verdict as to Defendants' intervening cause defense, which was granted.

After hearing closing arguments, the jury that found Ms. Shealy's injuries were proximately caused by the professional and ordinary negligence of Defendants acting in concert under theories of agency, joint venture, and amalgamation of interests and awarded $47,500.00 in economic damages and $250,000.00 as compensation for Ms. Shealy's non-economic injuries.

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LEGAL STANDARDS

A. Judgment Notwithstanding the Verdict and/or Granting a New Trial:

It is within the discretion of the trial judge to grant or deny a motion for a new trial, and his or her decision "will not be disturbed on appeal unless his [or her] findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law." Howard v. Roberson, 376 S.C. 143, 149, 654 S.E.2d 877, 880 (Ct. App. 2007). A motion for judgment notwithstanding the verdict under Rule 50(b), SCRCP is simply a renewal of a motion for directed verdict. Wright v. Craft, 372 S.C. 1, 20, 640 S.E.2d 486, 496 (Ct. App. 2006). When a party makes a motion for directed verdict, he or she "must state the specific grounds relied upon therefor, and the trial court may grant the motion when the case presents only issues of law." Rule 50(a), SCRCP; RFT Mgmt. Co. v. Tinsley & Adams L.L.P., 399 S.C. 322, 331, 732 S.E.2d 166, 170 (2001). It follows that "[o]nly the grounds raised in the directed verdict motion may properly be reasserted" in a motion for judgment notwithstanding the verdict. RFT Mgmt. Co., at 331, 732 S.E.2d at 170; In re McCracken, 346 S.C. 87, 92, 551 S.E.2d 235, 238 (2001). In deciding motions for judgment notwithstanding the verdict, the trial court does not have the authority to decide "credibility issues or to resolve conflicts in the testimony or the evidence." RFT Mgmt. Co., at 332, 732 S.E.2d at 332.

B. South Carolina's Thirteenth Juror Doctrine and a New Trial Upon the Facts:

Under the "thirteenth juror doctrine' a judge may grant a new trial absolute when he or she finds that the evidence does not justify the verdict. Folkens v. Hunt, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (1990). In effect, the trial judge as the thirteenth juror "hangs" the jury. Id. Such veto power or "discretion is founded upon the facts, the evidence, the witnesses, the trial circumstances, the verdict[,] and the judge's view of them." S.C. State Highway Dep't v. Townsend, 265 S.C.

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253, 258, 217 S.E.2d 778, 781 (1975) (citing Fallon v. Rucks, 217 S.C. 180, 60 S.E.2d 88 (1950)). This ruling constitutes "granting of a new trial upon the facts" and should only be used when the court "is convinced that a new trial is necessitated on the basis of the facts in the case." Vinson v. Hartley, 324 S.C. 389, 402-03, 477 S.E.2d 715, 722 (Ct. App. 1996).

C. Granting a New Trial Absolute or New Trial *Nisi Remittitur* due to Excessive Verdict:

Discretion in granting or denying a motion for a new trial rests with the trial judge, and his or her decision "will not be disturbed on appeal unless his [or her] findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law." Howard, at 149, 654 S.E.2d at 880. "A trial court may grant a new trial absolute on the ground that the verdict is excessive or inadequate." Vinson, at 404, 477 S.E.2d at 723 (citing Rush v. Blanchard, 310 S.C. 375, 379-80, 426 S.E.2d 802, 805 (1993)). Granting a new trial absolute is appropriate only if the amount of the verdict is "grossly inadequate" or so excessive "as to shock the conscience"; it must clearly indicate that the figure reached was the result of "passion, caprice, prejudice, partiality, correction[,] or some other improper motives." Vinson, at 404, 477 S.E.2d at 723. In contrast, a motion for new trial *nisi remittitur* is a request to reduce an excessive verdict. James v. Horace Mann Ins. Co., 371 S.C. 187, 193, 638 S.E.2d 667, 670 (2006).

ANALYSIS

A. The Motion for a New Trial Absolute is Denied Because the Court was Proper in Granting Plaintiff's Motion for Directed Verdict on Defendants' Defense of Intervening Cause.

Defendants' argue that this court should alter or amend its decision granting a motion for directed verdict in favor of Plaintiff on Defendants' affirmative defense of intervening or superseding clause.

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A defendant has the burden of proof in establishing his or her affirmative defense by the preponderance of the evidence. Cole v. South Carolina Electric and Gas, Inc., 355 S.C. 183, 195, 584 S.E.2d 405, 412 (2003) (internal citation omitted). The affirmative defense of intervening cause requires that the intervening cause "be one which breaks the sequence or causal connection between the defendant's negligence and the injury alleged." Gause v. Smithers, 403 S.C. 140, 150, 742 S.E.2d 644, 649 (2013).

To establish negligence by a physician, a party must provide "evidence, through expert testimony, showing (1) the generally recognized and accepted practices and procedures that would be followed by average, competent practitioners in the physician's field of medicine under the same or similar circumstances, and (2) that the physician departed from the recognized and generally acceptable standards." Melton v. Medtronic, Inc., 389 S.C. 641, 655, 698 S.E.2d 886, 893 (Ct. App. 2010). Also, the party must show that the physician's departure from such standards was the proximate cause of the patient's injuries and damages. David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 248, 626 S.E.2d 1, 4 (2006).

Here, Defendants argue that there was evidence that Dr. Gal D. Margalit's conduct was an intervening and superseding cause of Ms. Shealy's fall. However, such evidence must be established by a preponderance of the evidence. Defendants failed to use an expert witness to show that Dr. Gal D. Margalit was subject to certain recognized and generally acceptable standards, that his or her conduct departed from such standards, and that as a result of such departure, Ms. Shealy suffered injuries. The court finds that Defendants failed to provide evidence to support this assertion.

The Defendants also argue that the jury could have inferred from testimony of Plaintiff's nurse expert, Ellen Lewis, that Dr. Gal Margalit's supervening decision as the "treating physician,

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not to order restraints . . . is a sufficient break in the sequence or causal connection between all of the Defendants' alleged negligence . . .". Def's Mot. 7. Ellen Lewis was tendered, without objection, as an expert in the field of nursing. She is not a medical doctor nor did she hold herself out as competent to testify concerning the standard of care by members of that profession. In this action, there was simply little to no evidence of, let alone the preponderance of evidence of, negligence by a third-party physician, including Dr. Gal D. Margalit. As such, the court finds that Defendant's reliance on Ellen Lewis' testimony to support their affirmative defense of intervening cause fails as a matter of law and the directed verdict on the matter was appropriate.

Because the court finds there was sufficient evidence to support the court's grant of Plaintiff's motion for directed verdict, Defendant's Motion for New Trial Absolute based on this issue is denied.

B. Defendants' Motion for Judgement Notwithstanding the Verdict is Denied Because there is Sufficient Evidence to Support the Court's Denial of Defendants' Motions for Directed Verdict Regarding Professional Negligence and Ordinary Negligence.

1. Neither Defendant is Entitled to Entry of Judgment Notwithstanding the Verdict on Plaintiff's Claims for Professional Negligence or Ordinary Negligence.

The Defendants argue that the court committed error when it refused to grant Defendants' motion for directed verdict on the Plaintiff's claims of professional negligence and ordinary negligence.

The Defendants allege that the Plaintiff failed to present adequate expert testimony whereby the jury could adequately determine either Defendant's liability under the Plaintiff's claim for professional negligence.

Similarly, the Defendants assert that the Plaintiff failed to present any direct or circumstantial evidence that Ms. Shealy's fall was the proximate result of ordinary, non-

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professional negligence. They assert that the Plaintiff argued that because Ms. Shealy suffered an unwitnessed fall in a nursing home, it must have been the result of some negligence and that such an approach is equivalent to the doctrine of *res ipsa loquitur*, which is not recognized in South Carolina.

To show professional negligence, South Carolina requires expert testimony to show: (1) the generally recognized and accepted practices and procedures or standard of care; (2) the defendant departed from those standards; and (3) the defendant's departure proximately caused the plaintiff's alleged injuries and damages. S.C. Code Ann. § 15-79-125 (2017); David, at 247-48, 626 S.E.2d at 4. However, not every injury suffered in a nursing home results from malpractice or requires expert testimony to establish a claim for professional negligence. See Dawkins v. Union Hosp. Dist, 408 S.C. 171, 177, 758 S.E.2d 501 504 (2014). Moreover, "if the patient receives allegedly negligent professional medical care, then expert testimony as to the standard of that type of care is necessary, and the action sounds in medical malpractice"; although, "if the patient instead receives 'nonmedical, administrative, ministerial, or routine care,' expert testimony establishing the standard of care is not required, and the action instead sounds in ordinary negligence." Dawkins, at 177, 758 S.E.2d at 504 (internal citation omitted).

In contrast, ordinary negligence simply requires a plaintiff to show "(1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by a negligence act or omission; and (3) damages proximately resulting from the breach." Crolley v. Hutchins, 300 S.C. 355, 356, 387 S.E.2d 416, 717 (Ct. App. 1989). Administrative acts whose performance requires no professional knowledge, skill, or expert experience can constitute negligence and do not require expert testimony. Additionally, no expert testimony is needed if the subject matter lies with the ambit of

common knowledge and experience so that no special learning is needed to evaluate the conduct of the defendant. Peterson v. Gould, 288 S.C. 141, 143, 341 S.E.2d 633, 634 (1986).

Ordinary negligence may also be shown by a violation of a rule or regulation that is designed primarily for the safety of nursing home residents if the violation proximately results in the injury. Madison ex rel. Bryan v. Babcock Ctr., Inc., 371 S.C. 123, 141, 638 S.E.2d 650, 659 (2006). This is called negligence *per se*. Likewise, a defendant's violation of their own internal policies, procedures, and rules can be considered as evidence of negligence as such violations may be relevant on the issue of the defendant's failure to exercise due care. Caldwell v. K-Mart Corp., 306 S.C. 27, 31-32, 410 S.E.2d 21, 24 (Ct. App. 1991); see also Madison, at 140-41, 638 S.E.2d at 659.

Considering the testimony and other evidence offered at trial, the record is replete with evidence to support the jury's findings of negligence committed by Defendants. Though only offered as examples, evidence presented at trial confirmed Ms. Shealy was "extremely prone to fall", had "no safety awareness", and "need[ed] constant supervision." Ellen Lewis testified that Defendants deviated from the standard of care owed to Ms. Shealy by failing to provide a safe environment for Ms. Shealy, failing to conduct appropriate assessments, failing to provide an adequate and effective interim care plan, failing to implement a host of appropriate interventions to protect Ms. Shealy, and failing to properly train caregivers. In particular, Ellen Lewis identified numerous interventions that could have been implemented by Defendants to prevent Ms. Shealy's fall and resulting injuries, including, but not limited to, the engagement of her family, contact of a physician upon observed changes in condition, more frequent rounding, closer observation to ensure Ms. Shealy remained in line of sight of facility staff, engagement of a sitter, chair alarms, placement in a group setting, and so on.

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As required to support a claim of professional negligence, Ellen Lewis testified that, within a reasonable degree of nursing probability, Defendants' breaches of the standard of care regarding the steps of the nursing process constituted professional negligence and caused harm to Ms. Shealy, including her fall and right fractured hip. With ample evidence in the record to support this conclusion, denial of Defendants' request for directed verdict regarding professional negligence was appropriate and proper. The court finds that this evidence was affirmed by the jury's verdict and that the jury's finding should not be overturned pursuant to Rules 50(b) and 59(a), SCRCP or the Thirteenth Juror Doctrine.

Ellen Lewis also testified that Defendants breached a multitude of their own policies and procedures (Joint Ex. 20) in the provision of care to Ms. Shealy. Testimony of Defendants' employees and Ms. Shealy's family members further confirmed numerous violations of internal policies and procedures, as well as a disregard of promises and commitments made to residents and family members through various marketing materials (Pl.'s Ex. 2), employee handbooks (Joint Ex. 23), code of conduct and compliance (Joint Ex. 25), and training documents and video relating to fall prevention (Joint Ex. 22 and 28). The testimony and evidence reflected that the failure to ensure appropriate staff were hired and trained, the misrepresentations made to consumers about services offered at the facility by "Team Agape", and the failure to manage and supervise the overall operations of the company with due care all constitute ordinary negligence. Furthermore, Ellen Lewis testified that the Defendants violated federal and statute regulations. These violations included inadequate training and the retention of unqualified staff. No expert testimony is required for ordinary negligence, and the jury is allowed to rely upon their ambit of common knowledge and experience to evaluate the conduct of the Defendants. Based on this evidence, the Defendants are incorrect in their assertion that the case at hand appears to be an application of the doctrine of

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res ipsa loquitur, which is not allowed under South Carolina law. See Gilland v. Peter's Dry Cleaning Co., 195 S.C. 417, 11 S.E.2d 857, 859 (1940). Again, the court finds that based on the evidence, it properly denied Defendants' motion for directed verdict regarding ordinary negligence as there was sufficient evidence to support the Defendants' liability and the jury agreed. The court further finds that the jury's findings should be upheld and not be overturned pursuant to Rules 50(b) and 59(a), SCRCP or the Thirteenth Juror Doctrine.

2. Defendant Agape Management Operated, Managed, and Controlled Defendant Agape Nursing and was, Therefore, Liable for Professional Negligence.

The Defendants argue that there is no basis in fact whereby the jury could conclude that Defendant Agape Management is liable for professional negligence because it fails to meet any definition under S.C. Code Ann. § 15-79-110 (2017) whereby it may be liable for professional negligence. Defendants suggest that the only evidence at trial outlining Agape Management's role in connection with the nursing home is the "Agreement to Provide Management Services" (Joint Ex. 18) and the consistent testimony of Gregory Scott Middleton, an owner and officer of both Defendants.

"Vicarious liability attaches to a parent company or employer as the result of negligence on behalf of its employees, such as through the doctrine of *respondeat superior*." Morrow v. Fundamental Long-Term Care Holdings, LLC, 412 S.C. 534, 538, 773, S.E.2d 144, 146 (2015) (citing Martin C. McWilliams, Jr. & Hamilton E. Russell, III, Hospital Liability for Torts of Independent Contractor Physicians, 47 S.C. L. Rev. 431, 439 (1996)). Direct liability also "attaches due to a breach of a duty [that] runs directly between a parent company and a patient, arising from negligence in actions such as leaving a hospital underfunded, understaffed, or undertrained so as to provide substandard care." Id. (internal citation omitted). Thus, "the two

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theories of vicarious liability and corporate liability can coexist in a lawsuit, and a finding of one does not necessarily preclude a finding of the other. Id.

Moreover, in South Carolina, a corporate defendant may be liable to third persons for negligence and other malfeasance and omissions of duty of the agent acting within the scope of the agency. See generally, Crystal Ice Co. of Columbia v. First Colonial Corp., 273 S.C. 306, 308-09, 257 S.E.2d 496, 497 (1979). A defendant may also be liable if engaged in a joint venture or enterprise that involves the operation, management, or control of an entity responsible for negligence. Peoples Fed. Sav. & Loan Ass'n v. Myrtle Beach Golf & Yacht Club, 310 S.C. 132, 147, 425 S.E.2d 764, 774 (Ct. App. 1992). Furthermore, where defendants are amalgamated "so as to blur the legal distinction" between the entities they are in effect one and the same as far as their representation and operation of the nursing home, and the actions of one should apply to the others. Kincaid v. Landing Dev. Corp., 289 S.C. 89, 96, 344 S.E.2d 869, 874 (Ct. App. 1986).

In her Second Amended Complaint, Plaintiff alleged that Defendants were directly liable for their own wrongful conduct or vicariously or indirectly liable for wrongful conduct under alternative legal theories of alter ego, agency, joint venture, or amalgamation of interests. Second Am. Complaint at ¶ 23(a)-(c). Plaintiff also alleged that Defendants made "operational, budgetary, and administrative decisions that were determined more by the financial needs and goals of Defendants than by the custodial, medical, and nursing needs of residents of the facility, including Ms. Shealy." Second Am. Complaint at ¶ 28. Plaintiff further alleged that "Defendants entered into a continuing course of negligent conduct, creating, implementing[,] and enforcing dangerous operational budgets, practices, and policies at the facility which deprived residents, including Ms. Shealy, of safe, adequate, and essential care and resources." Second Am. Complaint at ¶ 29.

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During the trial, Plaintiff offered numerous evidentiary examples of Defendant Agape Management's involvement in the operation, management, and control of the nursing home. For example, Defendants' "Team Agape" marketing materials hold themselves out as offering an "integrated networking including assisted living, physician services, therapy, and skilled nursing', medical staff and other services, as well as a "team of professional registered nurses, licensed practical and nurses' assistances," which provide "24-hour nursing care." Defendants' facility management agreement (Joint Ex. 18) further illustrated Defendant Agape Management's control over nursing home operations, including operational budgets, provision of in-service training for nursing home staff, development, preparation of employee policies and procedures, and provision of technological systems used by the facility.

Defendants' corporate representative, Danielle "DeeDee" Henderson, also affirmed Defendant Agape Management's integral role in training of nursing home employees, or their failure to do so, their responsibility for implementation of corporate policies and procedures, and ensuring compliance with such guidelines. She further testified regarding Defendant Agape Management's supervision and involvement during regulatory surveys, response to those surveys, and negotiation of penalties and corrective action for deficiencies. Additionally, Plaintiff offered evidence to show common ownership and control of owners, officers, shareholders, and location of Defendants, including Greggory Scott Middleton as President and Gregory A. Middleton as Vice President of each company. In short, the evidence of Defendant Agape Management's participation in the overall operation of the nursing home and the direct impact its activities had on patient care overwhelmingly supports the court's denial of Defendants' motion for directed verdict as to professional negligence. As such, the jury's findings should not be overturned pursuant to Rules 50(b) and 59(a), SCRCP or the Thirteenth Juror Doctrine.

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C. The Motion for a New Trial Absolute Based on Improper Evidence is Denied because the Court was Proper in Admitting Evidence over the Defendants' Objections.

Defendants argue that the court erred in allowing Plaintiff to present evidence to the jury of certain Department of Health and Environmental Control (DHEC) survey results. Defendants contend that this admission of evidence of allegedly similar "bad acts" was error that warrants a new trial.

1. Notice of Similar Deficiencies.

During the trial, Plaintiff was permitted, over objection, to inquire of Defendants' witnesses about recent deficiencies cited by DHEC prior to Ms. Shealy's admission. The reports at issue are available to the public through DHEC, are generated in accordance with its regulatory oversight duties, and are kept in the normal course of business by the agency. See Rule 803(8), SCRE. Although witnesses were questioned about the Defendants' notice and knowledge of DHEC survey findings, the report itself was not offered or admitted into evidence. The court allowed evidence of relevant violations for the purpose of establishing motive, intent, and the absence of mistake of the nursing home operator as well as prior knowledge or notice of dangerous condition existing on the Defendants' premises. Rule 404(b), SCRE; see also Rutledge v. St. Paul Fire and Marine Ins. Co., 286 S.C. 360, 369, 334 S.E.2d 131, 136-37 (Ct. App. 1985). It is well established that "notice" evidence aids the jury in determining whether a reasonably careful defendant would have taken further precaution under the facts and circumstances. Rutledge, at 369, 334 S.E.2d at 136-37.

Therefore, the court finds that no improper evidence was admitted and that a new trial on the matter is not warranted.

2. Evidence of "Financial Information".

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Plaintiff was also permitted to elicit testimony regarding certain financial information or exhibits that included matters of a financial nature. Examples of such evidence include the testimony by Gregory Scott Middleton, owner and Chief Executive Officer of Defendants, regarding the following: the sales price the Defendants received for the acquisition of three (3) skilled nursing facilities, including Agape Nursing in West Columbia; and compensation for corporate officers, including payments to family members unilaterally appointed by him in those roles. Defendants now challenge the admission of a redacted Medicare Cost Report (Pl.'s Ex. 3). In each of these instances, the testimony or exhibits were admitted for a proper purpose.

The information was admissible for purposes unrelated to the financial condition of Defendants, including for the purpose of showing bias, for impeachment, and to show Defendant Agape Management's operation, management, and control of the nursing home and other indicia relevant to theories of alter ego, agency, joint venture, and/or amalgamation of interests. For example, the Medicare Cost Report, which had been redacted by Defendants to remove any references to financial figures, was admitted to show related parties of Defendants with whom the nursing home contracted for services, further evincing Defendant Agape Management's operation, management, and control of the nursing home.

Plaintiff had the burden to show such control and intertwining of entities and operations to support her legal theories, and an element of such evidence is illustrated by the parent's exercise of control over the subsidiary, including an amalgamation of corporate interests so as to blur the legal distinction existing between the corporations. Walbeck v. The I'On Co., LLC, 2018 WL 3748668, *19 (Ct. App. 2018); Kincaid v. Landing Development Corp., 289 S.C. 89, 96, 344 S.E.2d 869, 874 (Ct. App. 1986).

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Therefore, the court finds that no improper evidence was admitted and that a new trial on the matter is not warranted.

D. The Motions for a New Trial Absolute or a New Trial *Nisi Remittitur* Based on an Excessive Jury Verdict are Denied Because there is Sufficient Evidence to Support the Verdict and the Verdict is Reasonable.

Defendants assert that the court should order a new trial absolute or new trial *nisi remittitur* because the verdict is objectively excessive, not supported by the evidence, and is the clear result of undue prejudice or passion caused by the improper admission of evidence and argument pertaining to the same.

In a personal injury action, a plaintiff can recover economic damages, such as the reasonable value of medical services, as determined by the jury. South Carolina Damages, Personal Injury Damages, § 3.A.1.a(1) (2d ed. 2009). Generally, this includes "necessary and reasonable expenses caused by the injury such as amounts necessarily paid for medicine, medical attendance, hospital expense[,] and care and nursing." Sossamon v. Nationwide Mut. Ins. Co., 243 S.C. 552, 559, 135 S.E.2d 87, 91 (1964). Damages for pain and suffering attributable to personal injury have no market price and rest in the sound discretion of the jury. Harper v. Bolton, 239 S.C. 541, 547-48, 124 S.E.2d 54, 57 (1962). Damages for pain and suffering are meant to compensate the victim for physical discomfort and mental sensation related to the pain. Boan v. Blackwell, 343 S.C. 498, 501-02, 541 S.E.2d 242, 244 (2000). Additional non-economic damages include disfigurement, disability, emotional or mental distress, and loss of enjoyment of life. See generally, South Carolina Damages at § 3.

In the case at hand, the jury awarded $47,500.00 in economic damages to include Ms. Shealy's medical expenses. The evidence to support an award of this amount includes stipulated medical records and bills (Joint Ex. 5, 6, 7, and 8). The jury also awarded $250,000.00 as

compensation for Ms. Shealy's non-economic injuries. These non-economic damages include pain and suffering (which has no market price), disfigurement, disability, emotional or mental distress, and loss of enjoyment of life, and the amount of these damages rests with the sound discretion of the jury. It appears that the jury did overly weigh the testimony regarding Ms. Shealy's recovery and the fact that Ms. Shealy was more ambulatory and more independent in her ambulation within a week of her fall. Based on the testimony of several witnesses, there is evidence supporting an award of this amount.

As such, the court finds that there was sufficient evidence to support the jury's finding of economic and non-economic damages and that the awards were not actuated by passion, caprice, or prejudice. Further, the court finds that the awards were not so grossly excessive that it shocks the conscience of the court. Lastly, the court finds that the verdict was reasonable and not merely excessive as alleged by the Defendants.

CONCLUSION

THEREFORE, based upon the foregoing, **IT IS HEREBY ORDERED** that Defendants' Motion for Judgment Notwithstanding the Verdict, or in the alternative, Motion for a New Trial Absolute, or in the alternative, Motion for a New Trial *Nisi Remittitur* are each **DENIED.**

IT IS SO ORDERED.

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Lexington Common Pleas

Case Caption: Amy S Davis Personal Representative , plaintiff, et al VS Agape Nursing & Rehabilitation Inc , defendant, et al

Case Number: 2016CP3200950

Type: Order/Other

So Ordered

s/Walton J. McLeod, 2765