

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

NOV 21 2019
SC Court of Appeals

Edgar W. Dickson, Circuit Court Judge

CASE NO.: 2015-CP-38-01234

Tekayah Hamilton, individually and as parent and guardian ad litem for Robert Lee Middleton, Jr.,
a minor child under the age of eighteen,
..... Respondent,

v.

The Regional Medical Center

..... Defendant.

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NOTICE OF APPEAL

NOV 19 2019
SC Court of Appeals

Appellant, The Regional Medical Center appeals the attached Order of the Honorable
Edgar W. Dickson dated October 25, 2019, and filed October 25, 2019. Appellant received
written notice of entry of this Order on October 25, 2019.



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Center

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Attorneys for Respondent

November 19, 2019

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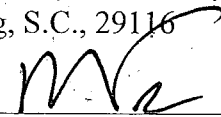
Tekayah Hamilton, individually and as parent and guardian ad litem for Robert Lee Middleton, Jr.,
a minor child under the age of eighteen, Respondent,

v.

The Regional Medical CenterAppellant.

PROOF OF SERVICE

I certify that I have served the Notice of Filing Appeal with Lower Court, by depositing a
copy of it in the United States Mail, postage prepaid, on November 20, 2019, addressed to the
attorneys of record, Jonathan F. Krell, Esquire, Post Office Box 299, Charleston, S.C., 29402, and
David R. Williams, Esquire, Post Office Box 1084, Orangeburg, S.C., 29116


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November 19, 2019

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Tekayah Hamilton, individually and as parent and guardian ad litem for Robert Lee Middleton, Jr.,
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v.

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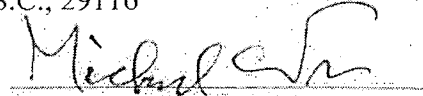
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NOV 19 2019

SC Court of Appeals

I certify that I have served the Notice of Appeal on Tekayah Hamilton, by depositing a copy of it in the United States Mail, postage prepaid, on November 19, 2019, addressed to her attorneys of record, Jonathan F. Krell, Esquire, Post Office Box 299, Charleston, S.C., and David R. Williams, Esquire, Post Office Box 1084, Orangeburg, S.C., 29116



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November 19, 2019

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November 20, 2019

Jenny Abbott Kitchings

Clerk of Court

1220 Senate St.

Columbia, S.C. 29201

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RE: Tekayah Hamilton, individually and as parent and guardian ad litem for Robert Lee
Middleton, Jr., a minor child under the age of eighteen v. The Regional Medical Center
Case No.: 2015-CP-38-01234

Dear Ms. Kitchings:

Pursuant to Rule 203 (B) enclosed, please find proof of filing the Notice of Appeal with
the Orangeburg County Court of Common Pleas on November 19, 2019, via electronic filing.

Yours Truly,


Michael C. Tanner

MCT/ls
enclosure

cc: Jonathan Krell, Esquire
David Williams, Esquire

Courtesy NEF RE: 2015CP3801234

From: efiledonotreply@sccourts.org (efiledonotreply@sccourts.org)

To: jrshakibanasab@charlestonlaw.edu

Cc: lsweatman@bellsouth.net

Date: Tuesday, November 19, 2019, 01:53 PM EST

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2015CP3801234

Official File Stamp: 11-19-2019 01:52:56 PM
Court: CIRCUIT COURT
Common Pleas
Orangeburg
Case Caption: Tekayah Hamilton , plaintiff, et al VS Regional Medical Center ,
defendant, et al
Document(s) Submitted: Appeal/Notice of Appeal to Court of Appeals
Filed by or on behalf of: Michael C. Tanner

This notice was automatically generated by the Court's auto-notification system.

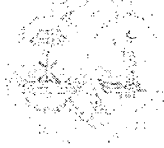
The following people were served electronically:

Joseph Reza Shakibanasab for Regional Medical Center
Virginia Watson Williams
Michael C. Tanner for Regional Medical Center
David Reynolds Williams
Jonathan F Krell for Tekayah Hamilton

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

Robert Lee M, Jr.

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Orangeburg Common Pleas

Case Caption: Tekayah Hamilton , plaintiff, et al VS Regional Medical Center ,  
defendant, et al  
Case Number: 2015CP3801234  
Type: Order/Other

So Ordered

s/ Edgar W. Dickson #2153

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF ORANGEBURG )  
 )  
Tekayah Hamilton, individually and as parent )  
and guardian ad litem for Robert Lee M. Jr., a )  
minor child under the age of 18, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
Regional Medical Center )  
 )  
 )  
Defendant.

IN THE COURT OF COMMON PLEAS  
CIVIL ACTION NO. 2015-CP-38-01234

ORDER GRANTING DEFENDANT'S  
MOTION FOR REDUCTION TO  
STATUTORY CAP AND DENYING  
DEFENDANT'S MOTION FOR JNOV OR  
IN THE ALTERNATIVE FOR A NEW  
TRIAL

This case was tried before a jury in this Court on or about May 9, 2018. The jury returned a verdict finding Defendant was grossly negligent and awarded \$1,127,280.00 to the minor plaintiff Robert Lee M. Jr., and \$135,477.00 to Plaintiff Tekayah Hamilton. Defendant filed two, separate post-trial motions, one to reduce the award to the statutory cap and a JNOV or in the alternative for a new trial. After review of the motions, memoranda of counsel and supporting documents, I grant in part Defendant's Motion for Reduction to Statutory Cap and deny Defendant's Motion for JNOV or in the Alternative for New Trial.

FACTUAL AND PROCEDURAL BACKGROUND

This case arises out of Defendant's alleged failure to implement policies, procedures, and equipment to allow Defendant to properly monitor an IV with ampicillin administered to RJ on or about October 28, 2014, while a patient at Defendant's facility in Orangeburg, South Carolina. Plaintiff's complaint alleges medical negligence, specifically the following:

The impression of the treating physician was high fever and admission to the hospital was necessary in order to work up CBC, LP, blood and urine cultures. It was decided to begin Ampicillin and Claforan. Pl.'s Complaint par.11

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Defendant Regional, by and through its agents and/or employees, and Defendant Downing<sup>1</sup>, owed Plaintiff a duty of care to use that degree of care and skill which ordinarily employed by the profession generally, under similar conditions and in like surrounding circumstances. Pl.'s Complaint par. 33.

Plaintiff asserts Defendants breached that duty of care and were negligent, grossly negligent, careless, willful, wanton, and reckless in the following particulars:

- a) In failing to use reasonable medical care in accordance with the recognized standards of acceptable professional practice in medicine during the care, diagnosis and treatment of Plaintiff;
- b) In failing to act with ordinary and reasonable care in accordance with the recognized standards of acceptable professional practice in medicine;
- c) In failing to follow the Infusion Nurse Society publication on *Policies and Procedures for infusion Nursing of the Pediatric Patient*;
- d) In failing to pursue such appropriate medical modalities and treatments which could have avoided this type of injury and permanent damage;
- e) In failing to act and behave in the same or similar manner that reasonably competent doctors and healthcare facilities and staff would have behaved or acted in the same or similar conditions;
- f) In failing and neglecting to properly inspect the IV site on October 28, 2014, at approximately 4:27 a.m. prior to the administration of antibiotic medication;
- g) In failing and neglecting to properly monitor the IV site after the administration of antibiotic medication;
- h) In failing to adequately train and supervise its medical staff;
- i) In failing to provide the safest care and treatment to Plaintiff; and
- j) For such other acts and omissions that may become more apparent through the discovery of this matter.

Pl.'s Complaint par. 34. Plaintiff attached an affidavit to her complaint by Monica Stobbs, RN, BSN, clarifying and reiterating the breaches in the standard of care by Defendant TRMC, by and through its employees, causing harm to RJ and Tekayah. Specifically, Plaintiff alleged Defendant Regional failed to properly monitor RJ's IV site prior to and after administering medication. Plaintiff did not offer any testimony at trial as to any alleged physician malpractice.

This matter was filed pursuant to South Carolina Tort Claims Act, S.C. Code Ann. §15-78-10, et. Seq. I find that defendant TRMC is a governmental healthcare facility and is afforded the protections of the South Carolina Tort Claims Act, as defined by the Act.

<sup>1</sup> Defendant Downing, a registered nurse, was dismissed as a party after the original Summons and Complaint was filed.

At trial, Plaintiff offered Monica Stobbs RN, BSN, as well as Dr. DeVito regarding RJ's future care and Plaintiff herself took the stand. Plaintiff also called nurse Jamie Downing, RN, and published Plaintiff's answers to Defendant's First Set of Requests to Admit to the jury. RJ's medical records and bills were submitted as evidence along with several pictures of his injury and numerous policies and procedures of Defendant Regional.

Defendant called Dr. Davis to dispute RJ's future care. Nurse Jamie Downing, testified along with Cynthia Hurley as to standard of care and expert issues. Defendant also submitted pictures of RJ's injuries, select medical records and select policies and procedures. Defendant moved for a directed verdict at the end of Plaintiff's case and its own. The Court denied both motions for directed verdict.

Defendant TRMC filed two separate post trial motions. The first post trial motion was a reduction of the damage caps to reduce the child's award to \$300,000.00 and the second was to reduce the mother's jury award to \$20,854.00 pursuant to the Tort Claims Act §15-78-120(a) (1). I find that Defendant TRMC's motion for JNOV/New Trial contained the following grounds: Defendant asserted plaintiff's witness, Monica Stobbs, was not qualified to render pediatric nursing opinions; Defendant TRMC asserted that Plaintiff did not establish gross negligence as required by the Tort Claims Act; Defendant TRMC asserts it was prejudiced by photographs submitted to the jury; Defendant TRMC asserts it was error to not allow its expert to testify to an opinion on gross negligence when Plaintiff's expert was allowed to render such opinion; Defendant TRMC asserts it was an error to publish its answers to Request to Admit to the jury; Defendant TRMC alleges it should be granted a new trial as certain jury charges were not given and finally Defendant's motion stated that the verdict was excessive. In ruling on all of these motions, the court has reviewed the motions submitted by Defendant TRMC, the memoranda of

both parties and a review of the applicable law. The Court incorporates all of Defendant's arguments raised in Defendant's motions and memoranda herein, as if repeated verbatim.

#### STANDARD OF REVIEW

A motion for judgment notwithstanding the verdict may only be granted if no reasonable jury could have reached the challenged verdict. RFT Management Co., LLC v. Tinsley & Adams, LLP, 399 S.C. 322, 332, 732 S.E.2d 166, 171 (2012). A jury's verdict must be upheld unless no evidence reasonably supports the jury's findings. Curcio v. Caterpillar, Inc., 355 S.C.316, 320, 585 S.E.2d 272, 274 (2003). In ruling on a motion for judgment notwithstanding the verdict, the trial court must view the evidence and all inferences reasonably drawn therefrom in the light most favorable to the opposing party. Law v. S.C. Dep't of Corr., 368 S.C. 424, 434, 629 S.E.2d 642, 648 (2006).

The thirteenth juror doctrine is the method used by the trial court to grant a new trial upon a finding that the evidence presented at trial did not support the jury's verdict. Curtis v. Blake, 392 S.C. 494, 505, 709 S.E.2d 79, 85 (Cl. App. 2011). If the amount of the verdict is grossly inadequate or excessive so as to be the result of passion, impulse, prejudice, or some other influence outside the evidence, the trial court must grant a new trial absolute. Id. at 500, 709 S.E.2d at 82. Compelling reasons must be presented to support the trial judge's invasion of the jury's province, merely highlighting that the verdict is greater than the amount of monetary damages is not enough as such other non-monetary factors must be considered as well. Id. at 501, 709 S.E.2d at 83.

#### ANALYSIS

First, this Court finds that the statutory cap on damages pursuant to the South Carolina Tort Claims Act (§ 15-78-10, et seq.) is applicable to this case. This action against TRMC is

subject to the Tort Claims Act, §15-78-10, et. seq. Specifically, the Act provides that no person shall recover a sum exceeding three hundred thousand dollars because of a loss arising from a single occurrence regardless of the number of agencies or political subdivisions involved unless otherwise provided. S.C. Code Ann. § 15-78-120(a)(1).

In this case, the Jury returned a verdict for the minor, Robert Lee Middleton Jr. ("RJ"), in the amount of \$1,127,280.00 and separately for his mother, Tekayah Hamilton, in the amount of \$135,477.00. Defendant believes that the award to RJ should be reduced to the statutory cap of \$300,000 and further argues that the award to Tekayah Hamilton should be reduced to \$20,854. In response, Plaintiff's posits that since this single occurrence involved the totality of Defendant's conduct, which encompasses the alleged conduct of Defendant's physicians, then the applicable recovery cap of \$1,200,000.00 contained in section 15-78-120(a)(3) applies.

Plaintiff's Complaint did not contain any allegations of physician malpractice and I do not find that Plaintiff offered any testimony that a physician breached the standard of care and alleged deviation of same. Plaintiff offered no expert testimony as to this issue at trial.

This Court agrees that the \$1,127,280.00 award to RJ should be reduced to \$300,000.00 pursuant to section 15-78-120(a)(1). As set forth above, the jury verdict for RJ must be reduced pursuant to the Tort Claims Act. Although a doctor ordered the medication and its administration, the crux of Plaintiff's case and the evidence presented at trial was that a nurse breached the applicable standard of care. I find that Plaintiff offered no evidence showing a physician was involved in any of the allegations in this matter. Furthermore, Defendant is correct that the evidence at trial showed RJ's mother incurred \$20,854.00 in past medical expenses. However, the jury was presented evidence that Ms. Hamilton would be required to bear the financial burden to take time off of work and travel for any future expenses. Because she

will remain his guardian for at least fifteen more years, this court finds the award reasonable. Therefore, this Court finds that the award of \$1,127,280.00 to RJ should be reduced to \$300,000.00. Further, the award of \$135,477.00 to Ms. Hamilton should remain without alteration. The Court denies Defendant's motion to reduce Ms. Hamilton's verdict to \$20,854.00 pursuant to the Tort Claims Act.

Next, Defendant asserts that Monica Stobbs was not qualified to give an opinion on the standard of care of pediatric nursing and pediatric IV administration. Nurse Stobbs testified she never managed, maintained or started Pediatric IV's, nor did she review any literature on these issues. She did testify she did these tasks on adult patients. Once qualified, she testified that the assessment, flushing, and other procedures for monitoring and inspecting an IV site prior to the administration of medicine and after the administration of medication are the same regardless of the patient's age. Therefore, this Court sees no reason to depart from its earlier ruling that Monica Stobbs was properly qualified as an expert in nursing, but not as a pediatric nurse. The Court denies the Defendant's motion raised on this ground.

Similarly, Defendant argues that this Court should have directed a verdict in its favor because Gross Negligence was not established. The determination of gross negligence is a mixed question of law and fact and should be presented to the jury when evidence supports it. Staubes v. City of Folly Beach, 331 S.C. 192, 205, 500 S.E.2d 160, 168 (Ct. App. 1998), *aff'd*, 339 S.C. 406, 529 S.E.2d 543 (2000). In this case, an inference that Ms. Downing failed to flush the child's IV is an inference that she failed to use slight care. Further, Plaintiff presented evidence that at least 20 minutes passed between RJ's reaction to the ampicillin and the time Defendant's employees responded to Ms. Hamilton's requests for assistance.

Additionally, witnesses testified that in the medical field, if isn't written down (documented), then it did not happen. Evidence of several failures to document the condition of the IV in question was presented at trial. Because the evidence presented could give rise to intentional conduct and/or a failure to exercise slight care, this Court finds that the evidence presented supported the Jury's finding of Gross Negligence. Defendant's Motion on this ground is denied.

Defendant next argues that the probative value of the photographs of RJ's injuries was substantially outweighed by unfair prejudice. Photographs may be admitted corroborating testimony, however, photographs calculated to arouse the sympathy or prejudice of the jury should be excluded if they are irrelevant or not necessary to substantiate material facts or conditions. State v. Jackson, 364 S.C. 329, 613 S.E.2d 374 (2005). This Court reviewed the photographs prior to their publication.

Although, given the nature of the injury and the child's age, they are hard to look at, there is little doubt the photographs are relevant to corroborate the injury. The photographs were admitted for the purpose of proving the injury and this Court sees no reason to depart from its earlier ruling permitting the pictures because they accurately reflected the facts of the case. Defendant's Motion is denied as to this ground.

Defendant also argues that Defendant's expert, Cynthia Hurley, should have been permitted to testify as to whether or not she believed its' employees were grossly negligent or negligent. Defendant asserts this evidence was proper under Rule 704, SCRE. In general, an expert's testimony on issues of law is inadmissible but not because it simply embraces the ultimate issue. Dawkins v. Fields, 354 S.C. 58 (2003). The Court declines to grant the Defendant's motion on this ground.

The Defendant raised in its motion for JNOV/New Trial the argument that it has been prejudiced by the publication of Request to Produce pursuant to Rule 36, SCRCP. The Court having considered this motion, declines to order a new trial on this ground.

Defendant moved for a new trial as to certain jury charges set forth in its motion of JNOV/New Trial, which are incorporated herein by reference, were not charged to the jury. The Court declines to grant Defendant's motion on this ground, which is denied.

The Defendant requested a new trial based upon the view that the jury verdict was grossly excessive and contrary to the evidence. Defendant asserts in its memoranda that the verdict was 54 times the amount of the actual damages and was a result of passion, caprice, or prejudice. The Court has considered the argument of the Defendant in its memoranda as set forth above, which is incorporated by reference. The Court denies Defendant's motion for a new trial based upon this ground.

Defendant additionally raised that if the Court denied its JNOV or new trial absolute motions it should grant a new trial nisi remittitur as it asserted the damages for excessive compared to the evidence presented at trial. After considering this argument, the court denies to grant the Motion on this ground.

The Court has considered all the issues raised by the Defendant in its post trial motions and denies the motion for JNOV/New Trial as set forth above and partially grants Defendant's motion to reduce the verdict to the Tort Claims Act liability cap. Accordingly, and for these reasons.

IT IS THEREFORE ORDERED, that Defendant's Motion for post-trial relief of 1.) JNOV and 2.) a new trial absolute are DENIED. The Defendant's motion of reduction of damages to the

\$300,000.00 statutory cap is GRANTED as to the verdict for the minor child. R.J. 3) Defendants motion to reduce the mothers verdict is denied.

AND IT IS SO ORDERED.

Resident Judge Edgar W. Dickson  
The First Judicial Circuit

August \_\_\_\_\_, 2019  
Orangeburg, South Carolina

## Certificate of Electronic Notification

### Recipients

Michael Tanner - Notification transmitted on 10-25-2019 11:43:28 AM.

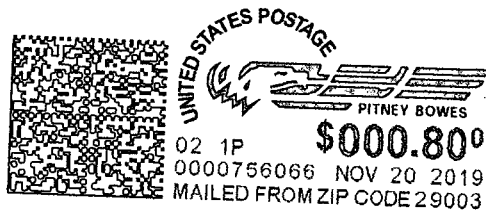
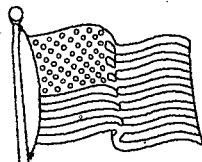
Jonathan Krell - Notification transmitted on 10-25-2019 11:43:28 AM.

Joseph Shakibanasab - Notification transmitted on 10-25-2019 11:43:28 AM.

David Williams - Notification transmitted on 10-25-2019 11:43:28 AM.

Virginia Williams - Notification transmitted on 10-25-2019 11:43:28 AM.

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