IN THE SUPREME COURT
STATE OF GEORGIA

Supreme Court Case No: S18C1189

ROCKDALE HOSPITAL, LLC d/b/a ROCKDALE MEDICAL CENTER,

Appellant

v.

SHAWN G. EVANS, Individually and as Guardian of JANICE K. EVANS,

Appellee

BRIEF OF APPELLANT

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I. INTRODUCTION AND SUMMARY OF ARGUMENT[1]

The preponderance of the evidence standard for reviewing a jury's award of damages, which is codified in O.C.G.A. § 51-12-12(a), applies only to trial courts; it does not apply to appellate review. As this Court has held, O.C.G.A. § 51-12-12(a) allows the *trial court* to interfere with a jury verdict in two opposite situations—where the award is so inadequate or so excessive as to be contrary to the preponderance of the evidence. See Moody v. Dykes, 269 Ga. 217, 221 (1998) (emphasis in original). By its express language, the statute empowers a trial judge to consider all the evidence introduced at trial to determine whether an award of damages is inadequate or excessive. The trial judge, of course, is uniquely positioned to conduct such a review because, while sitting as the "thirteenth juror," the court sees the witnesses, hears the testimony, and personally observes all the factors that may affect the jury's ultimate decision. It makes sense, therefore, that the trial judge is granted discretion under O.C.G.A. § 51-12-12 to "interfere with jury's verdict" when the statutory standard of review is met.

Once the trial court approves a jury's verdict, however, the review process set forth in O.C.G.A. § 51-12-12 is complete, and a presumption of correctness attaches

[1] The Appellant gratefully acknowledges the extension of time granted by this Court for the filing of this brief. As required by Supreme Court Rule 12, a copy of this Court's Order granting the extension is attached as Exhibit "A".

to the trial court's decision. For this reason, on appeal, the threshold for reversing the trial court's decision is "extremely high." On appeal from a ruling pursuant to O.C.G.A. § 51-12-12, the standard of review changes dramatically. Whereas the trial court is authorized to conduct a *de novo* review of the evidence to determine whether the jury's award of damages was appropriate, an appellate court has no such power or authority. Instead, once the trial court denies a motion under O.C.G.A. § 51-12-12, an appellate court is obliged to affirm the court's decision if there is "any evidence" to support it. This is especially true because a motion brought pursuant to O.C.G.A. § 51-12-12 is, in effect, a conditional motion for new trial, and under Georgia law a trial court's ruling on a new trial motion always has been subject to the "any evidence" appellate standard of review.

Here, in reversing the decision of the trial court, the Court of Appeals erroneously applied the ***trial court's*** standard of review set forth in O.C.G.A. § 51-12-12(a), rather than the "any evidence" ***appellate*** standard of review. The court conducted a *de novo* review of the evidence, substituted its judgment for that of the jury ***and*** the trial judge, and concluded that the jury's award of more than $1.2 million was "so clearly inadequate under a preponderance of the evidence as to shock the conscience . . ." [Court of Appeals Opinion, p. 1.] Rather than focusing on whether there was "any evidence" to support the decisions of the jury and the trial

judge, the Court of Appeals instead focused on whether there was any evidence to support a different conclusion. The Court of Appeals' entire analytical approach to this appeal was improper, requiring reversal of the decision by this Court and reinstatement of the jury's verdict.

Reversal also is required because, under the "any evidence" appellate standard of review, there is ample information in the record to support the jury's award and the trial court's denial of the new trial motion filed by Appellees Shawn and Janice Evans ("the Evans"). Appellant Rockdale Hospital, LLC d/b/a Rockdale Medical Center ("Rockdale") provided the Court of Appeals with citations to trial evidence and other practical explanations for the amount awarded by the jury and approved by the trial judge, yet the court did not mention ***any*** of these potential justifications for the award in its Opinion. For example, there is little question that the amount awarded by the jury to the Evans represented a compromise verdict between jurors who wanted to return an outright defense verdict and jurors who wanted to award at least some damages to a severely-injured, sympathetic plaintiff. Yet, in its Opinion, the Court of Appeals never even mentioned or acknowledged that juror compromise was a potential explanation for the damage award, nor did the court discuss or mention the other evidence cited by Rockdale which supports the jury's award of damages. In short, the Court of Appeals applied the incorrect legal standard to this

appeal, resulting in the improper reversal of a valid jury verdict which was expressly approved by the trial judge. Rockdale therefore respectfully asks this Court to reverse the decision of the Court of Appeals and reinstate the jury's verdict.

II. JURISDICTIONAL STATMEMENT

The Supreme Court of Georgia has jurisdiction to hear this appeal pursuant to Article VI, Section VI, Paragraph V of the Georgia Constitution, O.C.G.A. § 5-6-15, and Supreme Court Rule 45.

III. JUDGMENT APPEALED

Rockdale appeals from the decision of the Court of Appeals of Georgia entered April 12, 2018 in the case of *Evans et al v. Rockdale Hospital, LLC*, Court of Appeals Case No. A18A0233. In the decision, the Court of Appeals reversed the trial court's denial of the Plaintiff's Motion for Additur or, In the Alternative, For A New Trial As To Damages Only. Specifically, the Court of Appeals held that a total jury award of more than $1.2 million was "so clearly inadequate under a preponderance of the evidence as to shock the conscience and necessitate a new trial under O.C.G.A. § 51-12-12(b)."

IV. STATEMENT OF PERTINENT FACTS

A. Background Facts

During the night on January 14, 2012, Janice Evans awoke up from her sleep and exclaimed "oh my head." [T. V. 5, 710:5–11.] She then ran out of the bedroom, into another room, and vomited on herself. [Id.] Shawn Evans, Ms. Evans' husband, followed her and escorted her to the bathroom, where she continued to experience episodes of vomiting and diarrhea. [Id., 710:12–19.] The couple slept on the floor of the bathroom for the rest of night. [Id., 711:1–4.] Ms. Evans continued to experience these symptoms for nearly 44 hours, until she finally presented to the Emergency Department at Rockdale around 8:00 p.m. on January 16, 2012. [Id., 789:2–790:1.] Upon presentation to the Emergency Department, Ms. Evans documented that the reason for her visit was "dehydration." [Id., 791:12–25.]

At Rockdale, Ms. Evans was first assessed by a triage nurse, Mr. Harold Hildreth. [T. V. 4, 319:17–320:2.] Mr. Hildreth was not informed of the events that occurred on January 14, 2012, nor was he informed that Ms. Evans was experiencing a headache. [Id., 324:21–325:1.] Ms. Evans was taken from triage to a room in a timely fashion and was soon evaluated by the emergency room physician, Dr. Tamaurus Sutton. [Id., 319:22–320:2; T. V. 7 1181:12–15.] Similarly, Ms. Evans did not make a complaint of headache to Dr. Sutton, nor did she mention the events

which occurred on January 14, 2012. [T. V. 7, 1185:8–19.] Indeed, it is undisputed that Ms. Evans did not inform any healthcare provider at Rockdale of the January 14, 2012 incident of waking up from her sleep, vomiting on herself and sleeping on the bathroom floor. [T. V. 5, 810:1–6.]

Ms. Evans was discharged around 12:30 a.m. on the morning of January 17, 2012, and she was given discharge instructions which included the following:

(1) Follow-up with a primary care physician by January 20, 2012 due to uncontrolled hypertension [T. V. 7, 1204:22–1205:5], and

(2) Return to the Emergency Department if her condition worsened [T. V. 8, 1654:17–22].

Ms. Evans signed the discharge instructions, attesting to her understanding of the instructions. [Id.] During the next several days, Ms. Evans' physical condition continued to deteriorate, as she experienced at least three falls [T. V. 5, 809:2–3], slurred speech [T. V. 7, 1501:20–1502:1] and reported leaning to the left when she walked. [T. V. 5, 810:7–12.] In fact, although Ms. Evans had never previously missed a day of work, she was unable to attend work for the next five days. [Id., 803:14–20.] Moreover, on the evening of January 21, 2012, Ms. Evans experienced an episode of falling after which she was unable to get up and was forced to crawl to bed. [T. V. 5, 805:12–20.] Despite these dramatic, worsening symptoms, by the morning of January 22, 2012, Ms. Evans still had not seen a primary care physician

as she had been instructed to do, nor had she returned to the Emergency Department. [T. V. 5, 732:13–19.] It was not until January 22, 2012—five days after Ms. Evans' discharge from Rockdale—that the Evans finally contacted 911 Emergency Services. [Id., 749:8–11.] Ms. Evans subsequently was diagnosed with significant brain damage due to an intracranial hemorrhage which likely was caused by her longstanding, uncontrolled hypertension. [T. V. 6, 834:19–835:24.]

B. The Trial And The Jury's Verdict

The trial of this medical malpractice case proceeded over the course of nine days in February 2016. During the trial, the jurors heard testimony from 27 witnesses and reviewed hundreds of pages of documentary exhibits. Although the parties agreed that Ms. Evans was catastrophically injured, Rockdale challenged the nature and extent of the damages sought by the Evans in multiple ways, including through cross-examination of two of the Evans' damages experts, Payal M. Fadia M.D. and Cathy Gragg-Smith, R.N. [T. V. 7, 1280:22– 1283:12; 1301:8–1309:11; 1312:25–1313:20.] Specifically, Dr. Fadia, a brain injury rehabilitation specialist, confirmed on cross-examination that the rehabilitative and supportive medical care and services Ms. Evans had been receiving were "excellent," undercutting to some degree the Evans' argument that Ms. Evans needed to receive future care from more experienced (and more expensive) healthcare providers. [Id., 1282:4-22.] Similarly,

Ms. Gragg-Smith, a life care planner, was questioned regarding her limited training, education and experience in preparing life care plans, the limited information she obtained when preparing Ms. Evans' life care plan, the availability of less-expensive treatment options, and other similar issues. [Id., 1301:14-1309:11.] Indeed, it was revealed that the life care plan Ms. Gragg-Smith authored in this case was the first life care plan she had ever prepared independently. [Id., 1301:24–1302:1.] Like Dr. Fadia, Ms. Gragg-Smith conceded on cross-examination that the ongoing care Ms. Evans had been receiving was "wonderful" and "excellent." [Id. 1306:15-1307:20.]

In addition, during trial, the jury was presented with evidence related to Ms. Evans' failure to properly care for her own health by receiving basic, routine medical care and treatment. Mr. Evans conceded, for example, that his wife had not seen a primary care physician since 2002, nor had she seen a gynecologist or obtained other yearly screenings such as pap smears and mammograms since at least 2007. [T. V. 5, 783:11-16; 786:14–21.] Additionally, despite her known history of uncontrolled hypertension, Ms. Evans did not see any physician on a routine basis to monitor her high blood pressure, nor did she regularly take any medications to control her high blood pressure. [Id., 784:15–785:2.] Importantly, it was well accepted at trial that Ms. Evans' longstanding, uncontrolled hypertension was the primary cause of her aneurysm, intracranial hemorrhage and subsequent brain damage.

Based upon multiple, undisputed facts, *e.g.* that Ms. Evans failed to generally care for her own health, failed to regularly see a primary care physician, failed to receive treatment for uncontrolled hypertension, failed to provide a complete history to the healthcare providers at Rockdale, failed to follow the discharge instructions given to her on January 17, and failed to seek further treatment after discharge despite alarming, worsening symptoms, the jury was charged on the issue of comparative negligence at trial. [T. V. 10, 1994:22–1996:11.] The jury subsequently deliberated for approximately 13 hours, asking numerous questions to the trial judge along the way. At the end of the proceedings, the jury returned a verdict for the Evans against Rockdale. [Id., 2042:23–2043:12.] The jury assigned 51% responsibility to Rockdale and 49% to Ms. Evans. In total, the jury awarded the Evans $1,263,843.97, although this amount was reduced by 49% according to the percentage of fault assigned to Ms. Evans by the jury. [Id., 2043:15–17.] The remaining defendants, Dr. Sutton and his professional corporation, received a defense verdict.

C. Post-Trial Motion And Subsequent Appeal

After the trial, the Evans filed a Motion for Additur or, in the Alternative, For a New Trial as to Damages Only pursuant to O.C.G.A § 51-12-12. The parties filed extensive briefs regarding the Evans' motion, with thorough citations to the trial

record and the applicable law, and the trial court held a lengthy hearing on the motion during which the parties fully argued their respective positions. Subsequently, the trial judge, who served as the "thirteenth juror" and heard all the evidence presented during trial, concluded that the jury's award of more than $1.2 million in damages was consistent with the preponderance of the evidence introduced at trial. He therefore denied the Evans' post-trial motion, and an appeal followed. [R. V. II, 124-125.]

In the Court of Appeals, the Evans again sought additur or a new trial on damages only. On April 12, 2018, in an opinion authored by Presiding Judge Anne E. Barnes, the Court of Appeals reversed the trial court's denial of the Evans' motion for additur, holding that the jury's award of more than $1.2 million was "so clearly inadequate under a preponderance of the evidence as to shock the conscience. . . ." [Court of Appeals' Opinion, p. 1.] This Court granted Rockdale's Petition for a Writ of Certiorari by Order dated January 7, 2019. In its Order, this Court identified the following issue of particular concern:

> **What is the standard by which an appellate court reviews a claim that a trial court erred in considering a claim under O.C.G.A. § 51-12-12, and did the Court of Appeals properly apply that standard?**

V. ENUMERATION OF ERROR

The Court of Appeals erred in reversing the trial court's denial of the Evans' Motion for Additur Or, In The Alternative For A New Trial. The jury returned a substantial monetary award in the Evans' favor at trial, and the trial judge, after extensive briefing and a lengthy hearing on the Evans' motion, concluded that the amount awarded was consistent with the preponderance of the evidence introduced at trial. There was ample evidence to support the amount awarded by the jury and the trial court's subsequent decision to approve the award.

Once the trial judge approved the jury's verdict, the Court of Appeals was obligated to uphold the verdict if there was ***"any evidence"*** to support it. Instead, the Court of Appeals improperly weighed the evidence itself and substituted its judgment for that of the jury and the trial judge. The standard of review applied by the Court of Appeals, and in fact the court's entire analytical approach to this appeal, constituted error, and therefore reversal of the Court of Appeals' decision is required.

VI. ARGUMENT AND CITATION OF AUTHORITY

A. The Court of Appeals Applied An Incorrect Standard Of Review And Ignored The "Any Evidence" Standard That Applies When A Trial Court Denies A Motion For New Trial.

1. The "any evidence" standard of review should have been applied by the Court of Appeals in reviewing the trial court's denial of the Evans' Motion for New Trial.

Although the Evans sought relief from the jury's award pursuant to O.C.G.A. § 51-12-12, which primarily addresses additur and remittitur, there is no question that, for all practical and legal purposes, their motion was one for a new trial. As this Court first recognized in Spence v. Maurice H. Hilliard, Jr., P.C., 260 Ga. 107, 107 (1990), the "three statutory options [afforded by O.C.G.A. § 51-12-12] involve *granting* a motion for new trial." (emphasis in original). See also Lisle v. Willis, 265 Ga. 861, 862 (1995). "O.C.G.A. § 51-12-12 does not empower the trial judge to reduce an award but empowers the trial judge to seek the parties to accept an additur or remittitur upon the threat of a new trial and allows the judge to order a new trial on the issue of damages only; refusal by either party to accept leaves the judge with the power only to grant or to deny a new trial and to decide what issues will be retried." Smith v. Crump, 223 Ga. App. 52, 57 (1996) (*citing* Spence, 260 Ga. 107;

Jacobsen v. Haldi, 210 Ga. App. 817 (1993)). See also ARA Health Services v. Stitt, 250 Ga. App. 420, 424 (2001) (holding that review of the grant of a motion for additur pursuant to O.C.G.A. § 51-12-12 must be reviewed "under the appellate standard of review employed for motions for new trial.")

Given the above, the case law applicable to the denial of a motion for new trial plainly governs appellate review of motions for additur brought pursuant to O.C.G.A. § 51-12-12. And the standard of appellate review for the denial of a new trial motion is well-established and clear—the denial must be upheld if "there is any evidence in the record supporting the jury's verdict." Breedlove v. Breedlove, 293 Ga. 567, 568 (2013) (*citing* Maddox v. Maddox, 278 Ga. 606, 607 (2004)). See also Pace v. Turner, 292 Ga. 520, 520 (2013); Drake v. State, 241 Ga. 583, 585 (1978). An appellate court must affirm a jury's verdict that has the approval of the trial court if there is any evidence to support it because "the jurors are the sole and exclusive judges of the weight and credit given the evidence." Hensley v. Henry, 246 Ga. App. 417, 419 (2000). See also McIntee v. Deramus, 313 Ga. App. 653, 653 (2012); Burchfield v. Madrie, 241 Ga. App. 39, 41-42 (1999).

In the specific context of cases discussing O.C.G.A. § 51-12-12, Georgia courts have held that while an appellate court may set aside an inadequate jury award under the statute, the threshold for doing so is "extremely high." Moody v. Dykes,

269 Ga. 217, 221 (1998). See also Gold Kist, Inc. v. Base Mfg., Inc., 289 Ga. App. 690, 692 (2008); ARA Health Services, 250 Ga. App. at 425; Stewart v. Medical Center of Central Georgia, Inc., 239 Ga. App. 90, 91 (1999); Alternative Health Care Systems, Inc. v. McCown, 237 Ga. App. 355, 361 (1999). As this Court has held, the role of an appellate court is "not to enter the jury box." Robinson v. Star Gas of Hawkinsville, 269 Ga. 102, 104 (1998); Moody, 269 Ga. at 221. See also Gold Kist, 289 Ga. App. at 694. Moreover, an allegedly inadequate verdict is "a mistake of fact rather than law and addresses itself to the discretion of the trial judge who, like the jury, saw the witnesses and heard the testimony." Moody, 269 Ga. at 221 (*citing* Southeastern Security Ins. Co. v. Hotle, 222 Ga. App. 161, 165 (1996)); Barnes v. O'Connell, 300 Ga. App. 399, 399-400 (2009); Anderson v. L&R Smith, Inc., 265 Ga. App. 469, 472 (2004). In fact, the trial court's approval of a verdict creates a presumption of correctness which will not be disturbed on appeal absent "compelling evidence." Moody, 269 Ga. at 221; Barnes, 300 Ga. App. at 400; Gold Kist, 289 Ga. App. at 692-693; Anderson, 265 Ga. App. at 472. Georgia appellate courts traditionally defer to and are "loathe to interfere" with the trial court's decision on a motion for new trial under O.C.G.A. § 51-12-12, and such decisions are upheld absent an abuse of discretion. Riddle v. Golden Isles Broadcasting, LLC,

292 Ga. App. 888, 889 (2008) (*quoting* Little v. Chesser, 256 Ga. App. 228, 230 (2002)).

Most importantly, when a trial judge denies a motion brought pursuant to O.C.G.A. § 51-12-12, the presumption of correctness that arises from the trial court's decision is so strong that the verdict must be affirmed on appeal if there is ***any evidence*** to support it. See, e.g., Vineyard Indus., Inc. v. Bailey, 343 Ga. App. 517, 523 (2017); Reliance Trust Co. v. Candler, 315 Ga. App. 495, 498 (2012) (*cits. omitted)* (vacated on other grounds); Arnsdorff v. Fortner, 276 Ga. App. 1, 4 (2005); Shasta Beverages, Inc. v. Tetley USA, Inc., 248 Ga. App. 381, 386 (2001); Sims v. Heath, 258 Ga. App. 681, 688 (2002); Sykes v. Sin, 229 Ga. App. 155, 159 (1997). See also Georgia Clinic, P.C. v. Stout, 323 Ga. App. 487, 493 (2013); McIntee v. Deramus, 313 Ga. App. 653 (2012); Hensley, 246 Ga. App. at 419, 420; Brock v. Douglas Kohoutek, L.P., 225 Ga. App. 104, 109 (1997). As stated by the Court of Appeals in Sims:

> Where the trial judge approves the jury's verdict, the sole question for determination is whether there is any evidence to authorize it, with a view toward not upsetting it. We will not substitute our judgment based upon a cold record for that of enlightened jurors who heard the evidence and saw the witnesses.

Sims, 258 Ga. App. at 688. "Under either ground [set forth in O.C.G.A. § 51-12-12] the grant or denial of a motion for new trial is a matter within the sound discretion

of the trial court and will not be disturbed if there is any evidence to authorize it." Reliance Trust, 315 Ga. App. at 498. When reviewing a motion brought pursuant to O.C.G.A. § 51-12-12, an appellate court "must affirm a judgment entered on a jury verdict if there is any evidence to support it . . ." Shasta, 248 Ga. App. at 386.

2. The preponderance of the evidence standard of review set forth in O.C.G.A. § 51-12-12(a) applies to the trial court; it does not apply to appellate review.

"The focus of O.C.G.A. § 51-12-12 . . . . is to allow the ***trial court*** to interfere with a jury verdict in two opposite situations—where the award is so inadequate or so excessive as to be contrary to the preponderance of the evidence." Moody, 269 Ga. at 221; Kohl v. Tirado 256 Ga. App. 681, 682 (2002) (emphasis in originals). An excessive or inadequate verdict is a mistake of fact rather than of law and addresses itself to the discretion of the trial judge who, like the jury, saw the witnesses and heard the testimony. Moody, 269 Ga. at 221. The express language of O.C.G.A. § 51-12-12(a) requires the court to weigh all the evidence presented at trial to determine whether "the damages awarded by the jury are clearly so inadequate or so excessive as to be inconsistent with the preponderance of the evidence in the case." It is only the trial court, rather than an appellate court, that is authorized to perform this function because only the trial court is authorized to weigh the evidence

and evaluate the credibility of witnesses, which would necessarily be required to conduct the inquiry prescribed by O.C.G.A. § 51-12-12(a).

In fact, this Court repeatedly has held that "[a]ppellate courts . . . . do not re-weigh evidence or determine the credibility of witnesses on appeal, but rather appellate courts defer to the jury's findings." Berrian v. State, 297 Ga. 740, 742 (2015) (*citing* Powell v. State, 297 Ga. 352, 354 (2015)). See also Shockley v. State, 297 Ga. 661, 663–64 (2015). "Nor do appellate courts resolve conflicts in testimony or evidence, as that is the function of the jury." Shockley, 297 Ga. at 663–64 (*citing* Slaton v. State, 296 Ga. 122, (2014)). It is well-established in Georgia that the job of re-weighing evidence and resolving conflicts in testimony "are functions within the exclusive province of the jury" and the trial court. Rai v. State, 297 Ga. 472, 476 (2015) (*citing* Vega v. State, 285 Ga. 32 (2009)).

Thus, when O.C.G.A. § 51-12-12(a) is read in combination with the rule against the re-weighing of evidence by an appellate court, it is apparent that the standard set forth in the statute is meant for the trial court and does not affect the standard of review on appeal. It simply is not possible for an appellate court to determine whether a jury's award of damages is "inconsistent with the preponderance of the evidence" because, to do so, the appellate court necessarily would be required to weigh all the evidence presented at trial. This fact is especially

true in a case like this one, which lasted nearly two weeks, involved 27 witnesses and hundreds of pages of documentary evidence. As stated by this Court in Moody, therefore, it is apparent that O.C.G.A. § 51-12-12 empowers the ***trial court*** to determine whether a damage award is inconsistent with the preponderance of the evidence presented during a trial. Once the trial court makes its determination in this regard, the appellate standard of review is that the court's decision must be upheld if there is "any evidence" to support it.

3. The Court of Appeals erred by failing to apply or even mention the "any evidence" standard of review.

The Court of Appeals' opinion substantially ignored the "heavy appellate burden" and "extremely high threshold" for reversal that applied to the court's review of the denial of the Evans' motion for additur. In its briefing and at oral argument in the Court of Appeals, Rockdale devoted extensive time to the standard-of-review issue and repeatedly emphasized the importance of applying the correct "any evidence" standard. Rockdale also emphasized that, given the "extremely high" threshold for reversal and the "presumption of correctness" that applied to the trial court's decision, historically it has been extraordinarily rare for Georgia appellate courts to reverse a trial court's decision on a motion brought pursuant to the current version of O.C.G.A. § 51-12-12. In fact, other than this case, Rockdale has identified

only one published decision since the 1987 amendment of O.C.G.A. § 51-12-12 in which a Georgia appellate court has reversed a trial court's denial of a motion for additur brought pursuant to the amended statute. See Moore v. TCI Cablevision of Georgia, Inc., 235 Ga. App. 796, 797 (1998) (reversing denial of motion for additur based upon "the peculiar facts of this case" and holding that a motion for new trial on all issues should have been granted on "general grounds").

Despite Rockdale's considerable emphasis on the appropriate appellate standard of review, the Court of Appeals devoted less than one page to the issue in its Opinion. [See Court of Appeals Opinion, p. 8.] In doing so, the court simply quoted the language of the statute itself and then quoted an excerpt from this Court's opinion in Moody, which referenced the presumption of correctness and the need for compelling evidence. Otherwise, the court provided no analysis or discussion of the applicable standard of review and never even mentioned or acknowledged Rockdale's position that the "any evidence" standard was the appropriate standard to be applied. Further, the court never acknowledged or mentioned the many cases that hold that an appellate court is not permitted to re-weigh the evidence, especially following a trial court's express approval of a jury's verdict.

It is evident from the Court of Appeals' Opinion that the court incorrectly conducted a *de novo* review of the trial court's decision, applying the trial court

standard set forth in O.C.G.A. § 51-12-12(a) rather than the "any evidence" standard for appellate review. The court improperly weighed the evidence presented at trial, compared the evidence to the damages awarded, and then simply substituted its judgment for that of the jury and the trial court to conclude that the award of damages was "clearly inadequate under a preponderance of the evidence. . . ." [Id., p. 1.] The court's analytical approach to this appeal was improper, as it devoted most of its opinion to a discussion of the trial evidence that arguably supported a larger damage award, rather than focusing on whether there was "any evidence" to support the trial court's approval of the jury's award of more than $1.2 million. Rockdale respectfully asks this Court to reverse the Court of Appeals' decision to ensure that the correct standard of review is applied in this case.

B. The Trial Record Contains Ample Evidence And Justification For The Jury's Damage Award.

The Court of Appeals reached the remarkable conclusion that a seven-figure award of damages in the total amount of **$1,263,843.97** somehow was so "clearly inadequate" as to "shock the conscience." As an initial matter, to Rockdale's knowledge, no Georgia court ever has held such a large, seven-figure verdict to be legally inadequate. In fact, all the cases cited by the Court of Appeals in which a jury award was deemed inadequate involved awards of either zero or relatively nominal

damages. [See Court of Appeals Opinion, pp. 8-9.] Given the absence of any case in Georgia in which such a large award was deemed inadequate, there certainly is an argument that such a large award is *per se* ***adequate*** under Georgia law, especially under the appropriate "any evidence" appellate standard of review.

Regardless, the Court of Appeals concluded that the adequacy of the jury's award must be evaluated by comparing it to the total amount of damages proven by the Evans at trial and the full extent of Ms. Evans' injury, especially because those damages and the extent of the injury were not aggressively contested by Rockdale. [Opinion, pp. 10-14.] The logical extension of the court's decision is that, if a jury finds in favor of a plaintiff, the jury is required by law to award nearly every penny requested by the plaintiff, unless the defendant presented evidence at trial challenging the amount requested. This conclusion is contrary to Georgia law and ignores the broad discretion given to juries to determine damages. "A jury is not obligated to accept an expert's testimony even when it is uncontradicted." Stewart v. Medical Center of Central Georgia, Inc., 239 Ga. App. 90, 91 (1999) (*citing* Smith v. Godfrey, 155 Ga. App. 113, 114 (1980)). See also Gold Kist, 289 Ga. App. at 693 (same). Instead, a jury is authorized to make its own determinations regarding the credibility of the witnesses, the legitimacy of the damages claimed, the actual damages that truly flow from the defendant's breach of duty, and the appropriate

amount to award. Gold Kist, 289 Ga. App. at 693. See also Ray v. Stinson, 172 Ga. App. 718, 719-720 (1984) (rejecting plaintiff's argument that the verdict was "illogical and inconsistent" even though she was awarded an amount for special damages but no amount for pain and suffering); Salvador v. Coppinger, 198 Ga. App. 386, 387-388 (1991) (same).

Here, the Court of Appeals found the jury's verdict to be inadequate solely because the jury awarded past medical expenses but did not award any damages for pain and suffering. [Court of Appeals Opinion, p. 14.] As an initial matter, "Georgia law is clear that 'pain and suffering in the past, present, and future are measured by the enlightened conscience of a fair and impartial jury. There exists no rule or yardstick against which damages for pain and suffering are to be measured.'" Arnsdorff, 276 Ga. App. at 5 (*quoting* Smith v. Crump, 223 Ga. App. 52, 57 (1996)). Because damages for pain and suffering are determined solely by the enlightened conscience of impartial jurors, an award (or lack thereof) of such damages ordinarily will not be disturbed on appeal. See Turpin v. Worley, 206 Ga. App. 341, 342 (1992); Salvador, 198 Ga. App. at 387-388; Ray, 172 Ga. App. at 719-720. See also Gold Kist, 289 Ga. App. at 693 ("A jury is not obligated to accept a witness's testimony even when it is uncontradicted. Thus, the jury was not required to conclude that [the plaintiff's] proposed damage amounts constituted the precise measure of damages.")

Moreover, despite the Court of Appeals' statement to the contrary, this Court's decision in Columbus Regional Healthcare System v. Henderson, 262 Ga. 598, 599-600 (2007) provides support for the trial court's decision to deny the Evans' post-trial motion. Like this case, Columbus Regional was a medical malpractice case in which the patient (a 15-month old baby) suffered a cerebral hemorrhage and eventually died. The plaintiff sought damages for medical expenses, pain and suffering, and wrongful death, and the jury found in the plaintiff's favor. The jury awarded the full amount of past medical expenses incurred, added $100,000 for pain and suffering, but awarded zero damages on the claim for wrongful death. 282 Ga. at 598-599. The plaintiff filed a post-trial motion for additur under O.C.G.A. § 51-12-12, and the trial court granted the motion, finding that "it was inconsistent to find malpractice, to award the full amount of medical bills, and to award nothing for the wrongful death." Id. at 599. In granting the motion, the trial court concluded that $1,000,000 was an appropriate amount to add to the verdict for the wrongful death claim.

In reversing the trial court's decision, this Court first noted that "because additur is contrary to the common law, the power of additur granted to trial courts under O.C.G.A. § 51-12-12(b) must be strictly construed." The Court then held:

> The reason that a jury, as in the present case, may award damages on one claim but not on another may be ambiguous, inconsistent, and

> contradictory. In such a case, when a jury finds that no damages should be awarded, a trial court's addition of damages to the verdict may, in fact, be substituting its own finding regarding damages for the jury's finding that no amount of damages should be recovered and is, in that sense, adding something to the verdict that cannot be said to have been included in the verdict. For this reason, and because a trial court's power of additur must be strictly construed, we conclude that a jury's finding, such as that in the present case, that no damages should be awarded on one claim may be an inconsistent or contradictory verdict, for which a trial court may use its traditional powers to grant a motion for new trial on liability and damages, but the verdict is not one reflecting "inadequate" damages for which the trial court may use its power to add to the verdict under O.C.G.A. § 51-12-12(b).

Id. at 599-600.

The same conclusion should have prevailed here. The jury in this case awarded significant damages on the Evans' claims for past medical expenses and loss of consortium but awarded zero damages on their claims for lost wages, future medical expenses, and pain and suffering. The primary basis for the Court of Appeals' decision was that the jury awarded zero damages on the pain and suffering claim. According to Columbus Regional, however, additur under O.C.G.A. § 51-12-12 is not an appropriate remedy where zero damages are awarded.[2]

[2] Rockdale acknowledges the reasoning behind the Court of Appeals' conclusion that the Columbus Regional case is inapposite. [Court of Appeals Opinion, pp. 18-19, n.6.] At a minimum, however, the decision confirms that damage awards may be ambiguous, inconsistent, and contradictory without being illegal, and that an award of zero damages following a verdict for the plaintiff is not automatically "inadequate" under O.C.G.A. § 51-12-12.

If the "any evidence" standard of review had been properly applied to this case, the Court of Appeals would have found numerous references to the evidence and potential explanations in the record for why this jury chose not to award the damages for pain and suffering requested by the Evans. First, the jury may have decided that the more than $1.2 million award was sufficient to fully compensate the Evans given the totality of the evidence, and the jury simply decided to write this amount in the first blank on the verdict form and enter zeros in the remaining blanks. Second, the jury may have concluded that the Evans' damages evidence was not credible and therefore chose not to rely upon it in determining the proper amount to award. Third, the jury may have concluded that further damages were not appropriate given the admissions from several witnesses that Ms. Evans already was receiving "excellent" and "wonderful" ongoing rehabilitative and supportive care. [T. V. 7, 1282:4-22; 1306:15-1307:20.] Fourth, the jury may have decided that Ms. Evans's longstanding history of uncontrolled hypertension, and her refusal to take medicine or otherwise seek medical care to address it, made her eventual aneurysm and subsequent injuries inevitable. The jury therefore may have concluded that Ms. Evans' pain and suffering was not causally related to Rockdale's alleged negligence. See, e.g., Anderson, 265 Ga. App. at 472 (holding that a jury may reduce an award of damages if there is evidence that the damages resulted in part from a pre-existing

medical condition); Kohl, 256 Ga. App. at 683 (holding that an award for less than the plaintiff's medical expenses was not inadequate where there was evidence that the plaintiff's pre-existing medical condition may have contributed to her injuries); McCormick v. Harris, 253 Ga. App. 417, 419 (2002) (same).

Finally, it is obvious that the jury came very close to returning a defense verdict for all defendants. The jury granted a defense verdict to Dr. Sutton and Emerginet and assigned Rockdale only 51% responsibility. It therefore is likely that the jury simply compromised and chose to award a reduced amount rather than give the Evans nothing at all. As stated by this Court in Werk v. Big Bunker Hill Mining Corp., 193 Ga. 217, 224 (1941):

> Anyone who has ever practiced law knows that frequently verdicts are the result of compromise; and it is no reflection on the jury and no disparagement on the jury system to say so. A unanimous verdict is required. It represents the unified view of the whole jury. It is a composite picture of the truth of the issue or issues submitted, founded on their opinion of the evidence produced, and the law as given them in charge by the court. It is in many cases a blending of the views of the twelve [jurors.] In order to reach a verdict, it is their duty to seek to reconcile their differences of opinion, and it would be expecting too much of frail human nature, even if the high standard of the law did in theory discountenance it, not to find, in frequent instances, compromise verdicts.

See also McGill v. Precision Press, Inc., 130 Ga. App. 546, 546 (1974) (holding that "[w]hile the verdict was for an amount less than that which the plaintiff was entitled to recover if entitled to recover at all, the defendant cannot complain of this apparent

compromise verdict."); Mullitte Co. of America v. Thornton, 124 Ga. App. 568, 569 (1971) (holding that "[t]here is no inherent wrong in a verdict arrived at by jurors compromising among themselves. Indeed, lawyers must agree that a very large percentage of all verdicts are end products reached that way.") In fact, during oral argument in the Court of Appeals, Presiding Judge Barnes openly acknowledged that the jury's damage award obviously was the result of a so-called "compromise verdict." Yet, in its opinion, the court never even mentioned or acknowledged that juror compromise was even a potential explanation for the damage award.

Thus, there were numerous evidentiary and practical explanations for the jury's award, and the trial court's approval of the award. In its Opinion, however, the Court of Appeals did not mention any of these potential explanations, further confirming that the court was improperly focused on finding evidence to undercut the jury's award rather than looking for "any evidence" to uphold it. The practical implications of the court's decision are significant. If allowed to stand, the decision will send a message to juries, judges, litigants and lawyers that compromise in the jury room is no longer allowed. Further, plaintiffs who are in any way dissatisfied with their award at trial will quickly move for additur, relying on the Court of Appeals' decision to argue that any award that falls short of their claimed damages is "clearly inadequate." Civil defendants also will be affected, as they will be forced

to contest all injuries and damages at trial or risk suffering post-trial additur if a jury returns a reduced award. In short, the Court of Appeals' decision will have significant lasting effects on civil jury trials in Georgia, especially those involving catastrophic injuries. Reversal by this Court is essential, therefore, to ensure that the well-established rules governing civil litigation, and the rights of all Georgia citizens, are fully respected.

VII. CONCLUSION

For the foregoing reasons, Appellant Rockdale Hospital, LLC d/b/a Rockdale Medical Center respectfully requests that this Court reverse the Court of Appeals' decision and reinstate the jury verdict returned below.

Respectfully submitted this 11th day of February, 2019.

HUFF, POWELL & BAILEY, LLC

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EXHIBIT “A”

SUPREME COURT OF GEORGIA
Case No. S18G1189

Atlanta, January 23, 2019

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

ROCKDALE HOSPITAL, LLC v. SHAWN G. EVANS et al.

Your request for an extension of time to file the brief of appellant in the above case is granted. You are given an extension until February 11, 2019.

Appellee's brief shall be filed within 20 days after the filing of appellant's brief.

A request for oral argument must be independently timely filed, except in direct appeals from judgments imposing the death penalty, every interim review which is granted pursuant to Rule 37, appeals following the grant of petitions for writ of certiorari, applications of certificates of probable cause to appeal in habeas corpus cases where a death sentence is under review, and appeals in habeas corpus cases where a death sentence has been vacated in the lower court, where oral argument is mandatory. Rule 50(1)-(2). No extensions of time for requesting oral argument will be granted. Rule 50(3).

A copy of this order **MUST** be attached as an exhibit to the document for which you received this extension.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

, Clerk

IN THE SUPREME COURT
STATE OF GEORGIA

Supreme Court Case No: S18C1189

ROCKDALE HOSPITAL, LLC d/b/a ROCKDALE MEDICAL CENTER,

Appellant

v.

SHAWN G. EVANS, Individually and as Guardian of JANICE K. EVANS,

Appellee

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the within and foregoing **BRIEF OF APPELLANT** by U.S. Mail to assure delivery to the following addresses:

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This 11th day of February, 2019.

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