COA 24-454 40TH JUDICIAL DISTRICT

NORTH CAROLINA COURT OF APPEALS

****

ALLISON SWEENEY MOHEBALI,

Plaintiff-Appellant,

v.

JOHN DAVID HAYES, MD and HARVEST MOON WOMEN's HEALTH, PLLC

Defendant-Appellees.

From Buncombe County
No. 21 CVS 2884

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PLAINTIFF-APPELLANT'S REPLY BRIEF

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INTRODUCTION

After the multitude of arguments raised by the twenty-plus amici here, it is important to clarify what this case is and is not about.[1]

This case is not about tort reform. This case is not about the policy rationales for or against caps on damages. (*See generally* amici briefs). Those issues are wholly irrelevant to the Court's constitutional review here, which—as Plaintiff and Appointed-Amicus agree—is not conducted under a "rational basis" standard. (*See* Am. Br. at 7–9).

This case is not about second-guessing Plaintiff's trial strategy. (*See* Am. Br. at 2–6). As the only person who lost her baby and suffered life-altering harm in this case, Allison was free to prosecute this matter independent of any aspersions from outside counsel.

This case is not about whether N.C.G.S. § 90-21.19 is facially unconstitutional. (*See* Am. Br. at 9–15). Defendants failed to preserve that substantive issue below, Appointed-Amicus lacks standing to raise it here, and this Court may not raise it *sua sponte*. It therefore falls outside of this Court's jurisdiction and should be disregarded.[2] In any event, this issue is of no

[1] Court-appointed amicus is referred to as "Appointed-Amicus."

[2] *See* Plaintiff's Motion to Strike and Brief in Support.

consequence here, as Plaintiff and Appointed-Amicus agree that Plaintiff's challenge does not invoke the three-judge panel statutes.

This case is about one issue: whether the trial court's application of the statutory cap on compensatory damages violated Allison's constitutional right to trial by jury. On this point, Appointed-Amicus raises one primary argument: N.C.G.S. § 90-21.19 is not unconstitutional because it restricts the trial court's judgment, not the jury's verdict. (*See* Am. Br. at 15).

This argument makes a hollow mockery of the constitutional right to trial by jury. It "pays lip service to the form of the jury but robs the institution of its function." *Sofie v. Fibreboard Corp.*, 771 P.2d 711, 721 (Wash. 1989). In doing so, it violates longstanding caselaw regarding the necessary nexus between verdicts and judgments, and renders the constitutional right to trial by jury meaningless. *See, e.g., Rhyne v. K-Mart Corp.*, 358 N.C. 160, 174 (2004) (rejecting a proposed interpretation that renders a constitutional provision "arcane and meaningless"). Accordingly, this Court should reject it.

Appointed-Amicus's contention that Plaintiff's alternative as-applied challenge is underdeveloped likewise fails. (Am. Br. at 29). The horrific facts here speak for themselves, and place this case far outside of the realm of any equitable or constitutional legislative purpose supporting the enforcement of the statute.

Ultimately, this Court need only look to our Supreme Court's rulings in *Osborn* and *Rhyne* to resolve this case. There, the Court reasoned that the *exact type* of statutory restriction enacted by N.C.G.S. § 90-21.9 "would be unconstitutional." *Osborn v. Leach*, 135 N.C. 628, 640 (1904); *Rhyne v. K-Mart Corp.*, 358 N.C. 160 (2004). While that reasoning may be *dicta*, the opinions were thorough, well-reasoned, and constitute highly persuasive authority worthy of utmost deference from this Court. *See State v. Martin*, 223 N.C. App. 507, 509 (2012) (applying Supreme Court *dicta* as highly persuasive authority).

Our Constitution and caselaw protect Allison's right to recover compensatory damages based on a jury's unanimous verdict. Because the trial court's application of N.C.G.S. § 90-21.19 violated that right, this Court should reverse and vacate the trial court's reduced judgment order and remand for the entry of a new judgment restoring the jury's full verdict.

ARGUMENT

Amici's arguments supporting the damages cap statute fail for four reasons. First, Appointed-Amicus's argument impermissibly severs judgments from verdicts, rendering the constitutional right to trial by jury meaningless. Second, amici's policy arguments are irrelevant to the constitutional analysis at hand. Third, the extraordinary facts of this case independently render the statute unconstitutional as applied to Plaintiff. Fourth, our Supreme Court's rulings in *Osborn* and *Rhyne* dictate reversal here. Accordingly, this Court

should reverse the trial court's application of the statutory cap to Plaintiff's unanimous jury verdict.

I. Appointed-Amicus's Argument Impermissibly Severs Judgments from Verdicts, Rendering the Right to Trial by Jury Meaningless.

The only issue presented by this appeal is whether the trial court's application of N.C.G.S. § 90-21.19 violated Plaintiff's constitutional right to trial by jury. Plaintiff contends that the statute is unconstitutional both as applied to her claim for medical malpractice compensatory damages (*see* App. Br. at 20–35) and as applied to the horrific circumstances of this case (*see* App. Br. at 37–38).

In response, Appointed-Amicus raises a single primary argument: the statute only restricts the trial court's judgment, not the jury's verdict, and thus does not invade the right to trial by jury. (*See* Am. Br. at 15–29). Notably, Appointed-Amicus ***concedes*** that a plaintiff's right to a jury's determination of compensatory damages in medical malpractice actions was protected under common law, and thus is protected from statutory infringement under Article I, § 25. (*See* Am. Br. at 15–16). Nevertheless, Appointed-Amicus contends, the fact "[t]hat there is a right to have a jury determine damages in a medical malpractice case does not mean that an injured plaintiff is entitled to recover a judgment of liability against the offender in the amount determined by a jury." (Am. Br. at 19). Accordingly, Appointed-Amicus contends that because

the statute only restricts judgments, not verdicts, it passes constitutional muster.

This argument makes a hollow mockery of the constitutional right to trial by jury. It fails for two reasons: (a) it is contrary to our caselaw requiring a nexus between judgments and verdicts; and (b) it impermissibly renders the right to trial by jury meaningless, setting a dangerous precedent for all future jury verdicts in North Carolina.

a. Caselaw Requires a Nexus between Judgments and Verdicts.

First, Appointed-Amicus's argument is contrary to our time-honored and fundamental law requiring a nexus between verdicts and judgments. Indeed, the very cases relied upon by Appointed-Amicus show that a trial court's judgment is only legitimate *to the extent that* it is directly based on the jury's verdict.

For instance, Appointed-Amicus cites *Gibson v. Central Manufacturers' Mutual Insurance Company*, 232 N.C. 712, 716 (1950), for the proposition that "[a] jury verdict, however, is not a judgment." (Am. Br. at 17). True enough. But Appointed-Amicus conspicuously fails to mention the rest of the Supreme Court's sentence: "And while a verdict is not a judgment, *it is the basis on which a judgment may or may not be entered*." *Gibson*, 232 N.C. at 716 (emphasis added).

The Court made the same observation in *Sedbury v. Southern Express Company*, 164 N.C. 363 (1913). (*See* Am. Br. at 17). There, the Court held that "a judgment is the conclusion of law *upon facts*," and that "*without this essential fact, the Court is not in a position to make final decision on the rights of the parties*." *Sedbury*, 164 N.C. at 264 (emphasis added).

This Court has held the same. In *Hardy v. Crawford*, this Court observed that "a judgment is a conclusion of law *based upon facts*," and "[w]ithout established facts, the court *cannot make a decision on the merits of the case*." 62 N.C. App. 689, 693 (1983); (*see* Am. Br. at 17).

These cases and others make repeatedly clear: a trial court's judgment is only valid to the extent that it is based upon the facts as determined by a jury. *See, e.g.*, *Eborn v. Ellis*, 225 N.C. 386, 389 (1945). Indeed, the jury's factual findings in a verdict "*are conclusive if there is any evidence to support them*." John V. Orth and Paul Martin Newby, *The North Carolina State Constitution*, 2d Ed., 138 (2013) (citing *Cauble v. Bell*, 249 N.C. 722 (1959)) (emphasis added).

For this reason, North Carolina has long prohibited trial courts from using a judgment to unilaterally alter a jury's verdict. *See Hyatt v. McCoy*, 194 N.C. 760, 762 (1927). Absent party consent, the trial court "has no power . . . to change or modify a verdict as returned by the jury and render judgment on the verdict as changed or modified by [the court]." *Edwards v. Upchurch*, 212

N.C. 249, 250 (1937). It has long been held reversible error for a trial court to use a judgment to reduce the dollar amount of the jury's verdict without party consent. *See Hyatt*, 194 N.C. at 762; *Edwards*, 212 N.C. at 250 (same result).

The trial court in a judgment "is not in a position to make [a] final decision" as to the dollar amount of compensatory damages a plaintiff has suffered, and it must instead accept the jury's properly rendered verdict as dispositive of that factual issue. *Sedbury*, 164 N.C. at 264. It is only the parties' consent to remittitur (or additur) that renders the trial court's adjustment of the verdict compliant with the constitutional right to trial by jury, because party consent waives the constitutional right. *Caudle v. Swanson*, 248 N.C. 249, 257 (1958). That bears repeating: ***absent consent from both parties, a trial court's reduction of the jury's verdict in its judgment violates the constitutional right to trial by jury***. *See id.*

Appointed-Amicus's argument to the contrary severs the necessary nexus between the facts and the judgment. When the court's judgment would be identical whether the jury's verdict was $10 over the cap or $10 million over the cap, that judgment is no longer "based upon the facts." Instead, it is based exclusively upon an arbitrary line drawn by legislators, completely independent of the facts or circumstances of any specific case. The trial court's reduced judgment here was no longer "based upon the facts" as determined by the jury. This severance defies our constitution and caselaw.

To be sure, North Carolina law already provides safeguards to allow a trial court to reject a jury's damages verdict under rare and specific circumstances. Rule 59(a)(6) of our Rules of Civil Procedure establishes that a trial court may set aside a jury's damages verdict and grant a new trial if "[e]xcessive or inadequate damages appear[ ] to have been given under the influence of passion or prejudice."

Crucially, though, Rule 59 *protects* the necessary nexus between verdicts and judgments rather than severing it. Instead of allowing the trial court to unilaterally reduce an excessive jury verdict, which North Carolina law prohibits,[3] Rule 59 requires a trial court to order a new trial, where the facts can be assessed anew by a new jury to render a new verdict upon which the court can enter judgment. *See Rhyne v. K-Mart Corp.*, 149 N.C. App. 672, 679–80 (2002), *aff'd*, 358 N.C. 160 (2004). In this way, the trial court serves as the vital backstop for excessive or prejudicial jury verdicts. And in deference to the trial court's firsthand assessment of the parties, testimony, evidence, and jurors in the case, our appellate courts will only reverse a trial court's ruling granting or denying a new trial under Rule 59 "in those exceptional cases

[3] Importantly, trial courts in Nort Carolina are *not* granted the power of remittitur to lower a jury verdict absent party consent. Instead, Rule 59 only allows a judge to order a new trial before a new jury who will assume the sacred and inviolable role of determining damages based on the facts. *See Rhyne*, 149 N.C. App. at 679–80.

where an abuse of discretion is clearly shown." *Worthington v. Bynum*, 305 N.C. 478, 484 (1982).

Here, despite Defendants' choice not to participate at trial, the trial court served as this vital backstop. In its judgment, the trial court exercised its discretion to conduct a robust Rule 59 analysis, including seven pages of factual findings and legal conclusions, and concluded that the jury's verdict was "fair," "not excessive," "not the product of passion or prejudice," and "fully supported by the evidence." (R p 450 ¶ 10). The trial court "base[d] this decision upon a multitude of factors, including but not limited to" the evidence, admissions, and testimony, at trial. (R p 443–50 ¶ 9).

Under our caselaw, that should end the analysis. The trial court must adopt the jury's properly rendered verdict. Instead, the trial court's applied N.C.G.S. § 90-21.19 to arbitrarily cut that verdict by over 90%. Appointed-Amicus's contention that this restriction respected Plaintiff's constitutional right to trial by jury because it only restricted the judgment, not the verdict, is a dangerous argument that runs contrary to our caselaw requiring a judgment to be based on a verdict. This Court should squarely reject it.

b. Appointed-Amicus's Argument Impermissibly Renders the Constitutional Right to Trial by Jury Meaningless.

Our courts reject interpretations of statutory or constitutional provisions that would render those provision meaningless. *See M.E. v. T.J.*, 380 N.C. 539, 541 (2022) ("For well over a century, North Carolina courts have abided by the foundational principle that administering equity and justice prohibits the elevation of form over substance."); *see, e.g., Coastal Conservation Ass'n v. State*, 285 N.C. App. 267, 282 (2022) (rejecting a proposed interpretation that would render a constitutional provision "meaningless").

Yet Appointed-Amicus proffers just such an interpretation here. Appointed-Amicus asserts that because N.C.G.S. § 90-21.19 only restricts the trial court's judgment, and not the jury's verdict, it does not infringe upon the constitutional right to trial by jury. (Am. Br. at 15–29). In doing so, Appointed-Amicus contends that the right to a jury's determination of damages is satisfied the moment that a jury returns a verdict, even if the trial court's subsequent judgment disregards that verdict based on a statutory restriction. (*See* Am. Br. at 16–23).

That interpretation renders the right to trial by jury meaningless. It "ignores the constitutional magnitude of the jury's fact-finding province, including its role to determine damages." *Sofie*, 771 P.2d at 721. It "pays lip service to the form of the jury but robs the institution of its function." *Id*. It

renders the jury's deliberative determination of damages based on the facts not just advisory, but irrelevant. It would give the same approval to a $1 damages cap as to the statutory cap enacted here. In short, while acknowledging the constitutional right may not be infringed when the jury renders a verdict, amici contend the very same verdict can be ignored as soon as the jury leaves the courtroom.

Our Constitution does not preserve the "ancient" and "sacred" right to a jury trial just for show. It preserves the right for critically important reasons. The jury's role must be consequential, not performative. Where citizens hear the facts, carefully deliberate, and reach a unanimous and just verdict, *then that verdict must mean something*. It must establish the parties' rights. When their verdict is torn asunder, the jury trial ceases to be "one of the best securities of the rights of the people." N.C. Const. art. I, § 25.

All amici advocate for this result. This Court should reject it and reverse the trial court's application of N.C.G.S. § 90-21.19 as unconstitutional.

II. Amici's Policy Arguments Are Irrelevant to the Court's Constitutional Analysis.

Amici spill much ink asserting the purported policy benefits of statutory caps on damages like N.C.G.S. § 90-21.19. (*See, e.g.*, Am. Prop. Cas. Ins. Ass'n, et al. Am. Br. at 3–10; N.C. Chamber Legal Ins., et. al. Am. Br. at 5–13; N.C. Med. Society, et al. Am. Br. at 4–13).

Despite their attempt to reframe the issues presented, Plaintiff did not raise an equal protection or due process challenge. Therefore, the Court does not consider whether the statute in question "is rationally related to a legitimate government purpose." *Halikierra Cmty. Servs. LLC v. NCDHHS*, 385 N.C. 660, 663 (2024).

Plaintiff's challenge is based solely on the right to trial by jury under Article I, § 25, a ground where rational basis review has no application. As Plaintiff and Appointed-Amicus agree, this Court reviews Plaintiff's constitutional challenge only to determine whether N.C.G.S. § 90-21.19 is unconstitutional beyond a reasonable doubt. (See Am. Br. at 7–8). The purported reasoning behind the statute is thus irrelevant. *See Hart v. State*, 368 N.C. 122, 126 (2015).

Accordingly, this Court should disregard amici's irrelevant policy arguments from its constitutional review.

III. The Extraordinary Facts Here Render the Statute Unconstitutional As-Applied to Plaintiff.

Appointed-Amicus also contends that Plaintiff's constitutional challenge based on the exceptional and horrific facts of this case is insufficiently developed to warrant reversal. (Am. Br. at 29). This argument likewise fails.

As an initial matter, the astonishing facts here speak for themselves and were fully developed in Plaintiff's Appellant Brief. (*See* App. Br. at 7–18). No

honest assessment of these facts could conclude that the legislature intended to restrict Allison's compensatory damages under these extraordinary circumstances, where Plaintiff demonstrated her catastrophic injuries and life-altering suffering at the hands of Defendants by uncontroverted and sufficient evidence. Not even Defendants attempted to justify their actions before the jury. It falls squarely within the inherent authority of this Court to hold that the application of the statute serves no equitable or constitutional purpose here. *See, e.g.*, *State v. Thompson*, 349 N.C. 483, 503 (1998) (holding the application of a statute to a particular defendant unconstitutional based on case-specific circumstances). Indeed, justice demands it.

Ironically, amici's policy arguments only further emphasize the inapplicability of the statute to these circumstances. Amici note that statutory caps like N.C.G.S. § 90-21.19 were enacted to prevent unreasonable, arbitrary, or disproportionate damages verdicts (*see, e.g.*, *Am. Prop. Cas. Ins. Ass'n., et al.* Am. Br. at 3–10). Here, by contrast, the trial court expressly concluded after a robust Rule 59 analysis that the jury's verdict was *not* unreasonable, disproportionate, arbitrary, or the result of passion or prejudice. (R p 443–50). Indeed, the trial court's judgment includes *seven pages* of factual findings and legal conclusions supporting its determination that the jury's unanimous verdict was fair, reasonable, and based on the evidence presented. (R p 443–50 ¶¶ 9, 10).

Accordingly, the circumstances of this case fall well outside of any equitable or constitutional application of N.C.G.S. § 90-21.19. This Court should thus hold the statute unconstitutional as applied to Plaintiff.

IV. *Osborn* and *Rhyne* Dictate Reversal.

Ultimately, this Court must determine whether N.C.G.S. § 90-21.19's cap on compensatory damages violates Plaintiff's constitutional right to trial by jury. Although technically an issue of first impression, this Court has clear guidance from precedent. Indeed, our Supreme Court's reasoning in *Osborn v. Leach*, 135 N.C. 628 (1904), and *Rhyne v. K-Mart Corp.*, 358 N.C. 160 (2004), speak directly to this issue and dictate reversal here.

In *Osborn*, the Court determined that a libel law was constitutional even though it abolished a plaintiff's right to recover punitive damages. 135 N.C. at 632–33. The Court noted, however, that if the statute had restricted the recovery of actual or compensatory damages, it "***would be unconstitutional***." *Id.* at 640 (emphasis added). The Court drew this distinction because while "the right to have punitive damages assessed is . . . not property[,] [t]he right to recover actual or compensatory damages *is property*." *Id.* at 633 (emphasis added). The Court further noted that as property, compensatory damages are "protected by the ordinary constitutional guarantees." *Id.*

In *Rhyne*, the Court similarly reasoned that a statute restricting punitive damages did not violate the constitutional right to trial by jury

because punitive damages, unlike compensatory damages, are not property. 358 N.C. at 176–78. And because Article I, § 25 only applies to "controversies at law *respecting property*," the Court held that "the jury's role in awarding punitive damages can be dictated by [the legislature] without violating plaintiffs' constitutional right to trial by jury." *Id*. at 178 (emphasis added). *Rhyne* also restated *Osborn*'s reasoning that "had the act restricted the recovery of actual or compensatory damages, *it would have been unconstitutional*." *Id*. at 176–177 (emphasis added).

Notably, the Court did not sustain the constitutionality of the punitive damages cap statute on the grounds that—just like N.C.G.S. § 90-21.19—it only restricted judgments, not verdicts. *See id.* at 172–78. The Court made no mention of such a distinction (*id*.) because such a distinction yields absurd results and flies in the face of long-standing North Carolina law.

Osborn and *Rhyne* squarely call for reversal here. N.C.G.S. § 90-21.19 presents *exactly* the type of statute that our Supreme Court opined would be unconstitutional: a legislative restriction on compensatory damages. As *Osborn* and *Rhyne* make abundantly plain, "the right to recover . . . compensatory damages *is property*," 135 N.C. 633, and thus *cannot* "be dictated by [the legislature] without violating plaintiffs' constitutional right to trial by jury." 358 N.C. at 178 (emphasis added).

To be sure, Appointed-Amicus is correct that because the statutes reviewed in *Osborn* and *Rhyne* only restricted punitive damages, the Court's reasoning regarding compensatory damages in those cases constitutes *dicta*. (See Am. Br. at 26). But that does not undermine its elevated persuasive authority before this Court. *See, e.g.*, *Martin*, 223 N.C. App. at 509 (applying Supreme Court *dicta* as highly persuasive authority). Rather, this Court should give utmost deference to the clear import of the Supreme Court's reasoning in *Osborn* and *Rhyne*: N.C.G.S. § 90-21.19 violates the constitutional right to trial by jury. Accordingly, this Court should reverse.

CONCLUSION

For the foregoing reasons, N.C.G.S. § 90-21.19 is unconstitutional as applied to Plaintiff beyond a reasonable doubt. This Court should thus reverse and vacate the trial court's reduced judgment order and remand for the entry of a new judgment restoring the jury's full and unanimous verdict.

This the 25th day of November 2024.

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N.C. R. App. P. 33(b) Certification: I certify that all of the attorneys listed below have authorized me to

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 28(j) of the North Carolina Rules of Appellate Procedure, Plaintiff-Appellant certifies that the foregoing brief, which is prepared using a proportional font, is less than 3,750 words (excluding Cover Page, Caption, Index, Table of Authorities, Signature blocks, Certificate of Service, and this Certificate of Compliance) as reported by the word-processing software.

This the 25th day of November 2024.

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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served PLAINTIFF-APPELLANT'S REPLY BRIEF in the above-entitled action upon the following persons by [ ] hand delivering a copy of same, properly addressed as follows: [X] by depositing a copy hereof in a postpaid wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service; [X] via electronic mail; [ ] via facsimile, properly addressed as follows and/or to the address identified below which is the last address known to me:

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