IN THE STATE COURT OF BIBB COUNTY
STATE OF GEORGIA

CHARLES CLARK INDIVIDUALLY and APRIL D. CLARK AS ADMINISTRATOR OF THE ESTATE OF APRIL S. CLARK, DECEASED, Plaintiffs, v. COLISEUM MEDICAL CENTER, LLC; THOMAS C. WOODYARD, MD; A. KEITH MARTIN, M.D., P.C.; THOMAS B. LEIGH, M.D.; WILLIAM SHIRLEY, M.D.; and OB/GYN SPECIALISTS, LLP, Defendants.	CIVIL ACTION FILE NO. 20-SCCV-091967

ORDER GRANTING DEFENDANTS' MOTION TO REMIT AND AMEND JUDGMENT

This matter comes before the Court on Defendants' motion to remit and amend judgment, asking the Court to reduce the amount awarded in the judgment for wrongful death so as to comply with the statutory cap on noneconomic damages imposed by O.C.G.A. §51-13-1. At trial, Plaintiffs Charles Clark and April D. Clark prevailed on their claims against Defendants Dr. Thomas Leigh, Dr. William Shirley, and their practice for medical malpractice and wrongful death, arising out of the death of April S. Clark. The jury awarded Plaintiffs a total of $33,465,176: $1,715,176 for medical expenses, $2,500,000 million for April S. Clark's pain and suffering, and $29,250,000 for the full value of April S. Clark's life. Based on the jury's apportionment of fault, the Court entered judgment against Defendants for a total of $25,098,882, with $21,937,500 of that amount awarded to Charles Clark on his claim for wrongful death.

In their motion, Defendants ask the Court to reduce the amount of the judgment pertaining to Charles Clark's claim for wrongful death to $350,000, based on the application of O.C.G.A. § 51-13-1's statutory cap on noneconomic damages. Having considered the parties' briefs, their arguments at the hearing on these motions, proposed orders regarding this issue, and the entire record, the Court enters this Order.

DISCUSSION

I. Application of O.C.G.A. § 51-13-1's Cap to This Case

First, the Court concludes that O.C.G.A. § 51-13-1 applies to the damages awarded for wrongful death here. Under O.C.G.A. § 51-13-1(b), a plaintiff's ability to recover noneconomic damages in medical malpractice actions is limited:

> In any verdict returned or judgment entered in a medical malpractice action, including an action for wrongful death, against one or more health care providers, the total amount recoverable by a claimant for noneconomic damages in such action shall be limited to an amount not to exceed $350,000.00, regardless of the number of defendant health care providers against whom the claim is asserted or the number of separate causes of action on which the claim is based.

O.C.G.A. § 51-13-1(b). The parties do not dispute that this is "a medical malpractice action" against "one or more healthcare providers." And, based on the evidence presented at trial, the jury's $29.25 million award for wrongful death consisted entirely of noneconomic damages, awarded for the full, intangible value of April S. Clark's life. *See Bibbs v. Toyota Motor Corp.*, 304 Ga. 68, 75 (2018) (recognizing that wrongful death award can consist of both economic, and non-economic components). The statute facially applies to limit the wrongful death award here.

In 2010, the Supreme Court held that a plaintiff's constitutional right to a trial by jury prevents O.C.G.A. § 51-13-1 from limiting certain forms of noneconomic damages in a medical malpractice case where juries in 1798 could have awarded those damages. *See generally Atlanta Oculoplastic Surgery, P.C. v. Nestlehutt*, 286 Ga. 731 (2010). But after the parties briefed and argued Defendants' post-trial motions in this case, the Supreme Court held that *Nestlehutt* only considered "whether O.C.G.A. § 51-13-1's caps could be constitutionally applied to reduce a jury's award of noneconomic damages for pain and suffering and loss of consortium." *Med. Ctr. of Cent. Ga., Inc. v. Turner*, No. S25G0132, 2025 WL 1737447, at *2 (Ga. June 24, 2025). "The question of whether O.C.G.A. § 51-13-1's caps can be constitutionally applied to statutory wrongful death claims (and their associated 'full value of the life' damages) was not at issue in *Nestlehutt*," so *Nestlehutt* "could not (and did not) decide [that] issue." *Id*. As such, the Supreme Court held that "*Nestlehutt*'s holding does not control the question at issue" in that case, regarding the constitutionality of a cap on damages awarded for wrongful death. *Id*. A trial court

must therefore "apply the analytical framework set out by [the Court's] precedent" to decide that constitutional question. *Id*. at *3.[1]

Based on the Supreme Court's decision in *Turner*, O.C.G.A. § 51-13-1 has not been invalidated as applied to damages awarded for wrongful death. Thus, the statutory cap applies to the wrongful death award here.

II. Plaintiffs' Constitutional Challenges

Plaintiffs challenge, and the parties have briefed and argued, the constitutionality of applying O.C.G.A. § 51-13-1(b) to the wrongful death award here. Plaintiffs put forward three constitutional challenges: (1) that, under *Nestlehutt*'s framework, a cap on wrongful death damages violated Plaintiffs' right to trial by jury; (2) that applying O.C.G.A. § 51-13-1's cap only to wrongful death damages rewrites the statute in a way which violates the separation of powers; and (3) that applying O.C.G.A. § 51-13-1's cap only to wrongful death damages violates equal protection. The Court will address the challenges in turn.

A. Jury Trial Right

Plaintiffs first argue that applying O.C.G.A. § 51-13-1's caps to wrongful death damages violates their right to trial by jury.

Nestlehutt's framework. The Court begins with the application of the Supreme Court's framework for evaluating the scope of the jury trial right in the context of statutory damages caps. In *Nestlehutt*, the Supreme Court explained that the right to trial by jury is limited "to cases as to which there existed a right to jury trial at common law or by statute at the time of the adoption of the Georgia Constitution in 1798." 286 Ga. at 733. The Supreme Court recently reaffirmed that framework in a case evaluating the constitutionality of statutory caps on punitive damages. *Taylor v. Devereux Foundation, Inc*., 316 Ga. 44, 58-59 (2023) ("Because Georgia's constitutional jury trial right protects only those rights to a jury trial that existed in Georgia in 1798, to determine whether a party has a right to a jury trial for a particular claim, we must determine whether such a claim existed and was decided by a jury in Georgia in 1798.").

[1] This order was prepared after soliciting input from Plaintiffs and Defendants regarding the effect of the Supreme Court's decision in *Turner*.

Under this framework, if the "type of claim at issue in the case" was subject to a right to trial by jury as of 1798, "our Constitution's right to a trial by jury applies in the same way the right applied in 1798." *Id*. at 45, 77, 81. "For other types of claims, the right does not attach," as the General Assembly's power to create statutory causes of actions and remedies "that did not exist before 1798" does not mean that those claims and remedies "automatically come with a constitutional right to a trial by jury." *Id*. at 58.

To show that the jury trial right applies to a given claim, a plaintiff must show two things: (1) "that at least one of [the plaintiff's] claims of liability against [the defendant] existed in Georgia in 1798"; and (2) "that the kind of damages [the plaintiff sought] were within the scope of [the plaintiff's] right to a jury trial on that claim." *Id*. at 59. A plaintiff must demonstrate *both* components, as damages awarded for claims which existed before 1798 may still be subjected to statutory damages caps if the kind of damages currently awarded for that claim is of a more recent vintage. In *Taylor* itself, for example, the Supreme Court noted how the plaintiff had shown that both her underlying claim (premises liability) and claims for punitive damages were decided by Georgia juries before 1798. *Id*. at 45, 63-70. But historically, punitive damages were based only on *intentional* misconduct. The plaintiff in *Taylor* had only sought punitive damages based on an "entire want of care," a kind of punitive damages which juries did not award until the General Assembly allowed it by statute. *Id*. at 55, 71-74, 77. So, because the plaintiff could not show that the jury trial right included "the kind of punitive damages she sought," those damages could be capped by statute. *Id*. at 77, 81. At core, when a remedy "is not of constitutional origin and is instead purely a creation of statute, the Georgia Constitution's jury-trial right does not prevent the General Assembly from modifying that remedy—including by restricting it." *Id*. at 81 n.48.

The history of wrongful death claims. At issue in this case is Charles Clark's award of damages for wrongful death, a recovery personal to him, measured by the full, intangible value of April S. Clark's life. Juries in Georgia before 1798 did not decide such claims, either as a cause of action or as a kind of damages, because wrongful death claims did not exist in Georgia in 1798. As the Supreme Court has explained, "there is no common law right to file a claim for wrongful death; the claim is entirely a statutory creation." *Tolbert v. Maner*, 271 Ga. 207, 208 (1999); *see*

also Bibbs, 304 Ga. at 70 ("At common law, no recovery could be had for an injury resulting in death, because the right of action died with the person."); *see also Shields v. Yonge,* 15 Ga. 349, 350 (1854) (at common law, "the death of a human being could not be complained of as an injury").

Instead, wrongful death statutes emerged in the mid-1800's, to "ameliorate the harshness and inequity of the common law." *Bibbs*, 304 Ga. at 70. These statutes originated with the English Parliament's adoption of Lord Campbell's Act in 1846, permitting "the legal representative of a decedent to recover damages for wrongful injury to the decedent that the decedent could have recovered himself 'if death had not ensued.'" *Id.* at 70 & n.3. Several American states followed, with Georgia adopting its first wrongful death statute in 1850. *Id*. at 71. This statute permitted a decedent's representative "to have and maintain an action at Law against the person committing the act from which the death has resulted" where death ensued from circumstances which would have entitled the decedent to sue the perpetrator. *Id*.

Georgia's early wrongful death statutes did not set their own measure of damages, as they were framed in terms of a representative suing for damages as if the decedent had survived. *See* Robert E. Cleary, Jr., *Eldridge's Georgia Wrongful Death Actions*, §§ 1.4, 1.6, 1.8 (4th ed. 2018) (noting implicit limit of damages under early statutes to that "which the decedent would have sustained had he survived as a totally disabled person"). The current measure of damages—the "full value" of the decedent's life, including both economic and noneconomic components—originally appeared in 1858, in the first decision on an action for death in Georgia and the only case decided under the 1850 act. *Id*. § 1.7 (discussing *Sw. R.R. Co. v. Paulk*, 24 Ga. 356 (1858)).

The modern form of wrongful death claims in Georgia arose with the codification of Georgia law, through a new statute in 1861. *Bibbs*, 304 Ga. at 71. The statute vested a right to a new cause of action in certain individuals, providing that "a widow, or if no widow a child or children, may recover for the homicide of the husband or parent." *Id*. at 71-72. In doing so, the statute "eliminated any action vested in the legal representative of the decedent and vested the right of action in specific beneficiaries only," breaking from prior statutes and establishing the modern system of standing for wrongful death claims. *See* Cleary, *supra*, § 1.9; *id*. § 1.3 (distinguishing "later Georgia acts" because "they vest a new cause of action in a specified

individual or class of individuals without reference to the prior common law"). The 1861 codification still did not set a measure of damages, however. So, when the Supreme Court considered the question in 1868, it emphasized how the codified statute had abandoned the prior use of legal representatives and granted a right of action only to survivors. *See Macon & W.R. Co. v. Johnson*, 38 Ga. 409, 433 (1868). Thus, damages for wrongful death were now measured by the loss *to the survivors*, in terms of their loss of economic support. *Id*. at 433-34. A decade later, in 1878, the General Assembly finally codified a measure of damages for wrongful death, arriving at the one used today: "the full value of the life of the deceased, as shown by the evidence." *Bibbs*, 304 Ga. at 72. This measure "has survived essentially unchanged to this day." *Id*. at 72 & n.5. *Compare id*. *with* O.C.G.A. § 51-4-2(a).

So, considering this history, Georgia juries in 1798 could neither have decided claims for wrongful death nor awarded the full, intangible value of a person's life as damages for such claims. "Wrongful death" did not exist as a claim in Georgia until the mid-1800's, the modern form of the action pursued by Plaintiffs here did not exist until 1861, and the kind of damages the jury awarded here did not exist until 1878. Thus, because wrongful death claims fully post-date 1798, *Nestlehutt*'s framework indicates that limitations on claims seeking noneconomic damages for wrongful death do not implicate Georgia's jury trial right, and the General Assembly may properly limit the scope of the statutory remedy of wrongful death.

Plaintiffs argue that *Nestlehutt*'s framework requires that a cap on wrongful death damages be unconstitutional, on the grounds that Charles Clark's wrongful death claim is "wholly derivative" of the malpractice claim made by April S. Clark's estate, so wrongful death damages are necessarily part of medical malpractice claims considered by juries before 1798. But this argument is inconsistent with precedent explaining that an estate's claims and a survivor's wrongful death claim are distinct causes of action. *Mays*, 306 Ga. App. at 306 ("[A] survivor's statutory claim for a decedent's wrongful death and an estate's common-law claim for the same decedent's pain and suffering are distinct causes of action."); *see also Blackstone v. Blackstone*, 282 Ga. App. 515, 517 n.5 (2006) ("A wrongful death action . . . is separate and distinct from a survival action for pain and suffering."). Moreover, this argument appears at odds with the Supreme Court's analysis in *Turner*. If a claim for wrongful death traveled under the cloak of an

estate's medical malpractice claim, then damages for wrongful death *would* have been part of the "full measure of damages" considered in *Nestlehutt*, and *Nestlehutt* would control the constitutionality of a cap on wrongful death. But the Supreme Court held that wrongful death damages were *not* part of the damages considered in *Nestlehutt*. *Turner*, 2025 WL 1737447, at *2. And *Turner* vacated a decision from the Court of Appeals which employed essentially the same reasoning Plaintiffs employ here. *See Med. Ctr. of Cent. Ga., Inc. v. Turner*, 372 Ga. App. 644, 654-55 (2024) (asserting that medical malpractice claims considered by *Nestlehutt* include wrongful death claims). In short, wrongful death claims are a distinct claim and kind of damages, which must be evaluated differently from other forms of noneconomic damages. And for the reasons stated above, that different analysis finds no violation of the right to trial by jury.

Alternatively, Plaintiffs argue that *Nestlehutt*'s framework should be governed by a different key date, arguing for reliance upon Georgia's most recent constitution of 1983. But the Supreme Court appears to have rejected that argument. When it explained *Nestlehutt*'s framework in *Taylor*, the Supreme Court described 1798's use as the key date for the jury trial right as "well-settled," observing that "for almost 175 years, this Court has consistently interpreted" the jury trial right "as it was used in the State prior to the Constitution of 1798." *Taylor*, 316 Ga. at 56-57 & nn. 18-19. It did so despite noting several of the authorities proffered by Plaintiffs here. And for whatever uncertainty it noted, the Court (including Justice Ellington in dissent) only proposed alternative key dates which were farther *back* in time than 1798, proposing either 1777 or 1789. *See id*. at 57 n.19; *id*. at 106-07 (Ellington, J., dissenting in part, concurring in judgment only in part). Thus, the 1798 key date used in *Nestlehutt*'s framework controls, and nothing in the consistent interpretation of Georgia's jury trial right warrants pulling the key date forward to 1983, as Plaintiffs seek here. Plaintiffs do not demonstrate a violation of their right to trial by jury.

B. Judicial Rewriting and Separation of Powers

Second, Plaintiffs argue that, in order to apply O.C.G.A. § 51-13-1 only to wrongful death claims, the statute would have to be reenacted, and allowing its use only in applications which were not struck down by the Supreme Court would effectively rewrite the statute in a way which functionally constitutes legislation. The Court disagrees. Precedent indicates that the kind of

word-by-word editing Plaintiffs propose is unnecessary. Courts can declare that a statute is constitutional when applied to some circumstances, but unconstitutional when applied to others. *See State v. Jefferson*, 302 Ga. 435, 437-38, 443 (2017) (declaring statute regarding use of non-party convictions in gang prosecutions "unconstitutional on its face," but only "to the extent that it authorizes the admission of the convictions of non-testifying non-parties as evidence of a criminal street gang"); *City of Atlanta v. Barnes*, 276 Ga. 449, 450-51 (2003) (affirming order which declared occupation tax constitutional when applied to most professions, but unconstitutional when applied to lawyers); *Nunn v. State*, 1 Ga. 243, 251 (1846) (holding statute unconstitutional where it prohibited bearing arms openly, but constitutional "so far as [it sought] to suppress the practice of carrying certain weapons secretly"). Such declarations do not constitute lawmaking.

This process tracks the Supreme Court's recent discussion of *Nestlehutt*'s holding in *Turner*. The Court explained that *Nestlehutt* examined the "*application* of O.C.G.A. § 51-13-1's caps to the noneconomic damages for pain and suffering and loss of consortium that were awarded to the plaintiffs." *See* 2025 WL 1737447, at *2 (emphasis added). That left open "the question of whether O.C.G.A. § 51-13-1's caps can be constitutionally applied to statutory wrongful death claims," because *Nestlehutt*'s reasoning and principles were "claim- and remedy-specific." *Id*. So, by holding that wrongful death damages must receive a fresh application of *Nestlehutt*'s analytical framework, the Supreme Court's decision in *Turner* suggested no fear about whether applications of O.C.G.A. § 51-13-1 can be separated from each other, let alone that considering these different applications required rewriting the statute. Plaintiffs have not shown any violation of the separation of powers.

C. Equal Protection

Finally, Plaintiffs argue that applying a statutory cap to damages for wrongful death, but not other forms of noneconomic damages in medical malpractice cases, creates an irrational classification between those who are fatally injured by medical malpractice and those who are injured but survive. As explained above, a statutory cap on wrongful death damages does not implicate Plaintiffs' right to trial by jury, meaning that it is subject only to rational basis review. *See Taylor*, 316 Ga. at 83-84 (applying rational basis review in equal protection challenge to

punitive damages cap, where cap did not implicate jury trial right). Under rational basis review, the Court asks if a statute's classification is rationally related to a legitimate government purpose "under any conceivable set of facts," and a party challenging a law under this standard "must negate every conceivable basis that might support it." *Id*. at 84-85.

There is a fundamental difference between the categories raised by Plaintiffs' argument: the fact of a death. As the Supreme Court has explained, there are "practical differences in the measure of damages" for a deceased person and a significantly injured one, including "one who is totally and permanently disabled." *Bibbs*, 304 Ga. at 74 n.7. A person injured, but not killed, by medical malpractice may be entitled to recover long-term care expenses or damages for "certain [additional] elements of pain and suffering." *Id*. And death replaces that recovery with a measure of damages which some courts have called punitive, rather than compensatory. *Id*. at 74 n.7, 80. Accordingly, Plaintiffs have not demonstrated differential treatment of "similarly situated plaintiffs," the "threshold requirement of an equal protection argument." *Taylor*, 316 Ga. at 85.

In any event, the General Assembly could rationally decide that death is different, determining that a flat-sum cap appropriately balanced the economic uncertainty of highly-discretionary measures of damages against the desire to provide a remedy for wrongful death. *See id*. (rejecting equal protection challenge to punitive damages cap).[2] There is a conceivable basis for limiting the statutory remedy of wrongful death by statute, so Plaintiffs have failed to establish that applying such a limitation here violates their right to equal protection.

III. Plaintiffs' Procedural Objections

Plaintiffs also assert a series of procedural objections to Defendants' motion to remit and amend. The Court finds none of these arguments persuasive.

First, Plaintiffs argue that Defendants' motion to remit was untimely because the term of court changed three days after the Court entered judgment. But Defendants' motion arises under O.C.G.A. § 9-12-8, which provides that, "if a part of a verdict is legal and a part illegal, the court will construe the verdict and order it amended by entering a remittitur as to that part which is illegal and giving judgment for the balance." The statute does not propose a deadline to correct

[2] This uncertainty is particularly acute for awards encompassing the intangible component of the full value of a human life. *See Greory*, 670 S.W.3d at 558 (describing "plac[ing] a value on human life" as "an even more nebulous and speculative task than monetizing mental anguish and loss of companionship").

an illegal verdict. Moreover, Defendants also requested the application of O.C.G.A. § 51-13-1 as part of a timely motion for new trial. Through that mechanism, the Court retains power over the judgment, and it may properly invoke O.C.G.A. § 9-12-8 when considering a motion for new trial. *Cleaveland v. Alford*, 188 Ga. App. 690, 690 (1988) (mentioning O.C.G.A. § 9-12-8 in considering defendant's motion for new trial, where court ordered remittitur to address illegal verdict). This Court thus retains the power to consider whether the verdict is illegal under O.C.G.A. § 51-13-1.

Second, and similarly, Plaintiffs assert that Defendants' motion fails to satisfy the requirements of O.C.G.A. § 9-11-60 to set aside a judgment. But Defendants' motion is based on O.C.G.A. § 9-12-8. And an "illegal verdict" under that statute includes verdicts (and judgments) which award a plaintiff damages which are not legally recoverable. *See Fletcher v. C.W. Matthews Contracting Co., Inc.*, 322 Ga. App. 751, 757-58 (2013) (referencing O.C.G.A. § 9-12-8 in affirming a trial court's decision to "wr[i]te off the illegal portion of the verdict and reduce[ ] the principal amount of the judgment," which had already been entered at the time of the trial court's amendment). The judgment as currently rendered grants Charles Clark a recovery which Georgia law does not allow, and the illegal portion of the judgment is determinable and separable, so the Court can write off that portion of the judgment to comply with O.C.G.A. § 51-13-1. *See Dept. of Transp. v. Davison Inv. Co.*, 267 Ga. 568, 568 (1997) (noting appellate court's power to affirm a judgment on the condition that it "be corrected by writing off the illegal portion, if the illegal portion can be determined and is separable from the rest").

Third, Plaintiffs argue that Defendants waived the application of O.C.G.A. § 51-13-1 by not raising it as an issue in the pretrial order. But the purpose of a pretrial order is to define the issues for trial, "limit[ing] the claims, contentions, defenses, and evidence that will be submitted to the jury." *Ga. Dept. of Hum. Res. v. Phillips*, 268 Ga. 316, 318 (1997).[3] But O.C.G.A. § 51-13-1's caps do not present an issue for the jury to decide; they define the limits of the recovery a plaintiff

[3] Plaintiffs relied on *Phillips* in their briefing and at the hearing, in part because it concerned damages caps under the State Tort Claims Act. *Phillips* is distinguishable, however. There, the plaintiff had affirmatively agreed to a portion of the pretrial order stating that an overall damages cap applied. *Phillips*, 268 Ga. at 317. Her counsel then argued for damages exceeding that cap, and she only sought to amend the pretrial order to undo her acquiescence to the cap nine days after the trial concluded and the jury sought to award an amount greater than the cap allowed. *Id*. at 319-20. The Court finds that the circumstances here—a defendant seeking to *apply* a statutory cap after the jury renders an award exceeding it—are distinguishable.

may actually obtain following the jury's decision. Further, these damages caps "are automatically triggered when a damages award exceeds the threshold amount" *Nestlehutt*, 286 Ga. at 737. Accordingly, their enforcement only arises once there is a "total amount recoverable by a claimant" which exceeds the cap, and they apply as a matter of law in that situation. Defendants thus properly asserted the caps' application after a verdict and judgment were entered, establishing a "total amount recoverable" in excess of the cap.

CONCLUSION

For the foregoing reasons, Defendants' motion to remit and amend is **GRANTED**. The Court shall enter an amended judgment in this matter, reducing the amount awarded to Charles Clark for wrongful death to $350,000.00.

SO ORDERED this 13th day of August 2025.

Sharell F. Lewis, Judge
Bibb County State Court

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