

To the Clerk: **THIS IS A FINAL APPEALABLE ORDER.**
Please serve upon all parties not in default for failure to appear; Notice of the Judgment and its date or entry upon the Journal

LORAIN COUNTY COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO
JOURNAL ENTRY
Hon. D. Chris Cook, Judge

Date Nov. 1, 2019

Case No. 17CV193745

NADIA GIBBONS, Administrator of the
Estate of Nadia Gibbons Jr., Deceased.

Plaintiff

Dennis Lansdowne

Plaintiff's Attorney

VS

SUMMER SHALODI

Defendant

Defendant's Attorney

This matter is before the Court on the pending Magistrate's Decision, filed July 2, 2019, recommending that the Court render judgment on the verdicts as submitted. Neither party has filed objections to the Magistrate's Decision. An informal hearing was had with Plaintiff's counsel on September 18, 2019, as the Defendant has abandoned any defense of this matter. The Court has also considered Plaintiff's Bench Memo On Damages Caps, filed September 18, 2019, and Plaintiff's Bench Memo On Court's Ability To Reduce Damage Awards *Sua Sponte*, filed October 16, 2019.

Pursuant to Civ. R. 53(D)(4)(c), the Magistrate's Decision is **ADOPTED in part** and **OVERRULED in part**.

After independent review of the matter, the Court finds that the Magistrate properly determined that the jury verdicts for negligence in the amount of \$5,000,000.00 and wrongful death in the amount of \$30,250,000.00 are factually and legally apposite and should be entered in favor of Plaintiff.

However, the Magistrate's recommendation that the Court also adopt the jury verdict for punitive damages in the amount of \$35,250,000.00 shocks the conscious of the Court and, frankly, is borne out of an undefended trial at which no evidence, argument, or facts were presented to the jury on the Defendant's behalf that may, if not would have, substantially mitigated the punitive damages award.

Moreover, as developed *infra*, given the nature of the allegations, the Defendant's conduct, and the evidence adduced in the record and at trial, the Magistrate should not



have allowed a punitive damages instruction or verdict form to go to the jury and as such, his decision to allow the punitive damages claim is tantamount to plain error.

Accordingly, the Court hereby *sua sponte* vacates the punitive damage award.

As such, judgment is hereby granted in favor of Plaintiff, Nadia Gibbons, Administrator of the Estate of Nadia Gibbons Jr., Deceased, in the amount of \$35,250,000.00.


Given the Court's disposition of the Magistrate's Decision, this Entry is a final, appealable order as,

1. The complaint has been resolved *in toto*;
2. The Court previously granted Intervening Defendant, Westfield Insurance Company's, motion for summary judgment and declaratory judgment on June 4, 2019; and
3. Given the Court's disposition of Westfield's motion for summary judgment, its cross-claim against Defendant Shalodi is *sua sponte* dismissed as moot.

Costs to Defendant Shalodi. Case closed.

See Judgment Entry.

IT IS SO ORDERED. No Record.



JUDGE D. Chris Cook

cc: Lansdowne, Esq.
Withrow, Esq.
Fusco Evans, Esq.
Defendant, *Pro Se*



FILED
LORAIN COUNTY
2019 NOV -1 AM 11:14
COURT OF COMMON PLEAS
TOM ORLANDO

LORAIN COUNTY COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO
JUDGMENT ENTRY
Hon. D. Chris Cook, Judge

Date Nov. 1, 2019

Case No. 17CV193745

NADIA GIBBONS, Administrator of the
Estate of Nadia Gibbons Jr., Deceased
Plaintiff

Dennis Lansdowne
Plaintiff's Attorney

VS

SUMMER SHALODI
Defendant

Defendant's Attorney

INTRODUCTION

On June 25, 2019, this case proceeded to jury trial before Magistrate James Blaszak. The Defendant did not appear and abandoned the defense of the matter. After deliberations, the jury returned verdicts as follows: Count One: Negligence - \$5,000,000.00; Count Two: Wrongful Death - \$30,250,000.00; Count Three: Punitive Damages - \$35,250,000.00, for a total verdict of \$70,500,000.00.

On July 2, 2019, the Magistrate issued a Magistrate's Decision recommending the Court render judgment on the verdicts as submitted.

No party objected to the Magistrate's Decision and at the request of the Court, Plaintiff filed two Bench Briefs on the issue of damages.

STANDARD OF REVIEW – CIVIL RULE 53: MAGISTRATE'S DECISION

" [T]he decision to adopt, reject, or modify a magistrate's decision lies within the discretion of the trial court and should not be reversed on appeal absent an abuse of discretion.' *Barlow v. Barlow*, 9th Dist. Wayne No. 08CA0055, 2009–Ohio–3788, ¶ 5. An abuse of discretion is more than an error of judgment; it means that the trial court was unreasonable, arbitrary, or unconscionable in its ruling. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). When applying this standard, a reviewing court is precluded from simply substituting its own judgment for that of the trial court. *Pons v. Ohio State Med. Bd.*, 66 Ohio St.3d 619, 621 (1993)." *Amstutz v. Amstutz*, 9th Dist. Wayne No. 16AP0027, 2017-Ohio-7909, at ¶ 5.



STATEMENT OF PERTINENT FACTS

The facts of this case are largely undisputed.

On or about December 12, 2015, Defendant, Summer Shalodi ("Shalodi"), was babysitting Nadia Gibbons, Jr., a minor ("Nadia"). Shalodi left Nadia alone and unsupervised for a period of time and returned to find her unresponsive. Shalodi attempted to revive Nadia but was unable to do so. Ultimately, Shalodi called 911. Nadia could not be revived and died on or about December 13, 2015.

On February 17, 2016, Shalodi was indicted on multiple felony charges including murder¹, involuntary manslaughter, endangering children, and corrupting another with drugs.

On October 20, 2017, Shalodi pleaded guilty to an amended indictment that included charges of involuntary manslaughter, endangering children, and corrupting another with drugs. On the same day, she was sentenced by this Court to 22 years in prison.²

This civil action followed.

ANALYSIS

THE NEGLIGENCE AND WRONGFUL DEATH CLAIMS

The Court agrees with the Magistrate's Decision recommending the Court render judgment in favor of Plaintiff, and against Defendant, for the amount of damages awarded on Count One: Negligence (\$5,000,000.00) and Count Two: Wrongful Death (\$30,250,000.00), adopts same, and finds that judgment on these two counts in the amount of \$35,250,000.00 is proper.

THE PUNITIVE DAMAGES CLAIM

The Court disagrees, however, with the Magistrate and Plaintiff that the punitive damages award should be adopted and/or that the Court has no authority to *sua sponte* reduce or vacate the punitive damages award based upon this Court's inherent authority to "do equity" and the fact that the punitive damages instruction should *not* have gone to the jury in the first place.

¹ The murder charge was eventually dismissed.

² Shalodi's criminal case was also assigned to this Court.



PUNITIVE DAMAGES

The Ninth District Court of Appeals has said about punitive damages,

Punitive damages are not meant to compensate an injured party. Rather, punitive damages are awarded for the purpose of punishing and deterring certain conduct. (Internal citations omitted.) *Desai v. Franklin*, 177 Ohio App.3d 679, 2008-Ohio-3957, ¶ 40, 895 N.E.2d 875 (9th Dist.), *Phoenix Lighting Group v. Genlyte Thomas Group*, 9th Dist., Summit No. 28082, 2018-Ohio-2393, at ¶ 76.

And,

Punitive damages are intended to punish the tortfeasor and to deter other potential tortfeasors from engaging in similar behavior. *Snyder v. Singer*, 9th Dist. Wayne No. 99CA0020, 2000 WL 631981, *1 (May 17, 2000). Ohio courts have allowed punitive damages to be awarded in tort actions involving fraud, malice, or insult. *Preston v. Murty*, 32 Ohio St.3d 334, 334, 512 N.E.2d 1174 (1987); see also R.C. 2315.21(C) (requiring that the acts or omissions of the defendant demonstrate malice or aggravated or egregious fraud to recover punitive damages). *Wiegand v. Fabrizi Trucking*, 9th Dist., Medina No. 16CA0015-M, at ¶ 39.

In the case at bar, in addition to compensatory damages, the jury awarded punitive damages for Shalodi's conduct in causing the death of Nadia. As discussed *infra*, there is a serious question as to the legal propriety of *any* punitive damages being awarded in this case as it appears based upon the information in the record and facts and evidence adduced at trial that Shalodi acted selfishly, negligently, and recklessly, *but not* purposefully, intentionally, or maliciously.

Accordingly, equity and the plain error rule demand that the punitive damages award be vacated.

R.C. 2315.21(D)(1) mandates that the trier of fact ". . . shall determine the liability of any defendant for punitive or exemplary damages and the amount of those damages."

R.C. 2315.21(C) states *in toto*,

Subject to division (E) of this section, punitive or exemplary damages are not recoverable from a defendant in question in a tort action unless both of the following apply:



(1) The actions or omissions of that defendant demonstrate malice or aggravated or egregious fraud, or that defendant as principal or master knowingly authorized, participated in, or ratified actions or omissions of an agent or servant that so demonstrate.

(2) The trier of fact has returned a verdict or has made a determination pursuant to division (B)(2) or (3) of this section of the total compensatory damages recoverable by the plaintiff from that defendant.

In the case at bar, Shalodi's tortious conduct did result in the death of Nadia and Shalodi pleaded guilty to criminal felony offenses. However, there is no evidence in the record that the Defendant was acting "with one or more of the culpable mental states of purposely or knowingly," as both involuntary manslaughter and endangering children are strict liability offenses with no culpable mental state.

R.C. 2901.21 provides that a particular level of criminal culpability is not required for a person to be guilty of a strict liability offense. It reads in pertinent part,

When the language defining an offense does not specify any degree of culpability, and plainly indicates a purpose to impose strict criminal liability for the conduct described in the section, then culpability is not required for a person to be guilty of the offense. The fact that one division of a section plainly indicates a purpose to impose strict liability for an offense defined in that division does not by itself plainly indicate a purpose to impose strict criminal liability for an offense defined in other divisions of the section that do not specify a degree of culpability.

R.C. 2925.02(A), corrupting another with drugs, does contain an element of knowingly and Shalodi was convicted of three of that crime's subsections. However, those subsections all contain the element of recklessness.

Moreover, there is no evidence in the record that Shalodi acted with "malice or aggravated or egregious fraud." In fact, a review of the record indicates the opposite – that Shalodi acted selfishly, negligently, and even recklessly, but not intentionally in causing or contributing to the death of Nadia.

As noted *supra*, this is a court of equity.



THE COURT'S EQUITY JURISDICTION

This Court has equity jurisdiction and there is precedent for the Court to exercise that jurisdiction. This Court, like all courts situated in the State of Ohio, has authority in the cases before it "to hear and determine *all legal and equitable remedies* necessary or proper for a complete determination of the rights of the parties." *Behrle v. Beam*, 6 Ohio St.3d 41 (1983), emphasis added.

"The function of equity is to supplement the law where it is insufficient, moderating the unjust results that would follow from the unbending application of the law. *Salem Iron Co. v. Hyland* (1906), 74 Ohio St. 160, 77 N.E. 751. The chief characteristic of a court of equity is adequate power to afford full relief to the parties before it. *Brinkerhoff v. Smith* (1897), 57 Ohio St. 610, 49 N.E. 1025; *Cookston v. Box* (1957), 5 O.O.2d 102, 146 N.E.2d 171, reversed on other grounds (1959), 109 Ohio App. 531, 12 O.O.2d 150, 160 N.E.2d 327. A court of equity is a court of conscience that must apply rules of reason and righteousness, within the rules of equity applicable to the case before it. *Id.* The various revisions to Ohio's laws since statehood have not brought about any change in the scope of its courts' equity jurisdiction. 41 Ohio Jurisprudence 3d (1998), Equity, Section 3. Citing: *Discover Bank v. Owens*, 129 Ohio Misc.2d 71, 2004-Ohio-7333, at ¶ 20.

Equity may be invoked to prevent injustice or unfairness. Courts of equity will assist the wronged party on the ground of fraud, imposition, or unconscionable advantage if there has been great inequality in the bargain. *Wagner v. Hummel* (1937), 25 Ohio L.Abs. 400, 1937 WL 2359.

An equity court exercises a broad and flexible jurisdiction to grant remedial relief where justice or good conscience requires it. *Bldg. Serv. & Maint. Union Local 47 v. St. Lukes Hosp.* (1967), 11 Ohio Misc. 218, 40 O.O.2d 500, 227 N.E.2d 265.

Equity abhors penalties, such as "an agreement to pay an arbitrarily fixed sum of money for failing to exactly perform some condition of a contract." *Peppe v. Knoepp*, 3 Ohio St.2 281 (1956). And, equity courts are not bound by formula or restrained by any limitation that tends to trammel the free and just exercise of judicial discretion. *Keystone Driller Co. v. Gen. Excavator Co.*, 290 U.S. 240 (1933).

This Court is guided by the law, the facts of the case, and principles of equity, fairness, reasonableness, and justice for all parties, represented or not, that appear before it.

In consideration of the Bench Briefs filed by Plaintiff, the Court agrees with her general premise that a trial court cannot *sua sponte* raise affirmative defenses on behalf of



defendants and the Ninth District has said as much. See, *Walton v. Higginbottom*, 9th Dist., Summit No. 23802, 2007-Ohio-7056, at ¶ 6, and its progeny.

But that is not what this Court is doing.

Application of this Court's equitable power is not tantamount to applying an affirmative defense – equity transcends any defense, affirmative or otherwise.

In the case at bar, Shalodi committed a horrifically selfish act by abandoning her responsibility to care for Nadia. That abandonment resulted in the heartbreaking loss of a child. Shalodi's conduct was senseless, selfish, negligent, and no-doubt reckless.

But it was not intentional, malicious, or egregiously fraudulent.

Shalodi did not purposely or intentionally cause the death of Nadia. Recall that this Court adjudicated Shalodi's criminal case and is very familiar with the facts, circumstances, and evidence surrounding her convictions. In fact, the murder charge was dismissed by the State for a reason – there was no evidence that Shalodi purposely caused the death of Nadia, the essential element of murder.

Instead, Shalodi was convicted of involuntary manslaughter, which is charged when a person causes the death of another as a result of the offender committing or attempting to commit a felony.

In addition, Shalodi was convicted of endangering children in that she both created a substantial risk to the health or safety of Nadia and abused her by allowing Nadia to gain access to narcotics.

Finally, Shalodi was convicted of corrupting another with drugs for allowing Nadia access to narcotics. There is nothing in this charge, as horrible as it is when involving a minor, that implies Shalodi *intended* to harm Nadia, and as noted, the applicable subsections in the corrupting another with drugs charges all have a recklessness standard.

Moreover, Plaintiff herself has argued that Shalodi did not intentionally harm Nadia in both her briefings filed with the Court and at the jury trial.

In Plaintiff's Brief in Opposition To Intervening Defendant Westfield Insurance Company's Motion For Summary Judgment, Plaintiff urged as follows:



In this case, Westfield has failed to put forward evidence sufficient to show that the action [Shalodi's conduct] necessitated the harm. The administration of Xanax may have contributed to the harm of Nadia, Jr. The real issue, however, is whether there was an intent to harm Nadia, Jr. Shalodi has denied that she gave Xanax to the child. (Shalodi Dep. p. 30-31). She testified that she pled guilty because there were drugs in the house (*Id.*). Moreover, she testified the Xanax were not hers, but belonged to another person who was presented (*sic.*) at the time of this unfortunate incident and he may have administered them to the child. (*Id.* at p. 34, 37-38). Such an intent can only be inferred when it was necessarily so that exposure to Xanax would prove lethal. Westfield has offered no evidence on this point, and Shalodi has testified that she did not intend to cause any harm to Nadia, Jr. (Shalodi Dep. p. 21). **Indeed, Shalodi was very fond of the child, and it is clear that her actions were, like the youths in *Allstate*, ill-conceived and irresponsible.** It is unclear, however, that the administration of Xanax to a child - which Shalodi denies - will necessarily kill the child. It may have contributed to the death in this case, **but that does not infer intent upon Shalodi.**

Id. at pages 7-8, emphasis added.

Accordingly, the record demonstrates that in this case Plaintiff has argued (for purposes of binding insurance coverage) that Shalodi's conduct may not have even caused the death of Nadia, that the drugs were not hers, that Shalodi pleaded guilty because there were drugs in the house (not because she administered the drugs herself), that no inferences can be made as to the cause of Nadia's death, that Shalodi was "very fond" of Nadia, that her actions were "ill-conceived and irresponsible" (i.e., *negligent*), and that the facts and circumstances surrounding Nadia's death cannot lead one to infer that Shalodi ever intended to actually harm the child.

Further, at the (undefended) jury trial, Plaintiff stated the following in her opening statement,³

So no one has heard of the harms and losses suffered by DiDi⁴ before her death. And nobody has heard about the pain and anguish visited upon [Nadia's mother] that she will carry for the rest of her life. **All of this caused by the negligence, the recklessness and selfishness of the defendant.**

³ This Court is aware that an opening statement is not evidence. Nevertheless, it a roadmap of what the party believes the evidence will show and confirms that Plaintiff did not attempt to prove that Shalodi *intentionally* harmed Nadia.

⁴ Nadia's nickname was "Didi."



See: Trial Tr., Pgs. 47-48, Lines 23-25, 1-3, emphasis added.

At trial, Plaintiff engaged in the following exchange during *voir dire*,

JUROR NO. 13: I am sorry. I should have asked this earlier. Was there a criminal trial and what was the end result on that?

MR. LANSDOWNE: Well, you're going to hear about that in the evidence. And there was a plea that will be part of the evidence. The defendant pled.

But despite the fact that she pled, you do have to find based upon the evidence that we present **that she was negligent and reckless, that's our claim, and that that recklessness and negligence caused the injuries and death.**

Trial Tr., Pg. 28, Lines 2-13, emphasis added.

And, during trial, Nadia's mother testified, as to, among other things, her thoughts as to Nadia's cause of death,

Q. After that happened at the defendant's house, where did you go from there?

A. Initially we still didn't know what happened. Initially, **because I knew how much Summer loved DiDi, I didn't want to think that this was intentional. I thought like maybe she fell and it was an accident.**

Trial Tr., Pg. 110, Lines 3-9, emphasis added.

And similarly at the jury trial, Plaintiff stated the following in her closing argument,

There really is no doubt that the defendant **negligently and recklessly** caused the death of DiDi.

Trial Tr., Pg. 119, Lines 7-9.



All things considered, this Court cannot, in good conscious, grant a 70 million dollar judgment against a defendant who did not defend herself in court, accepted responsibility for her actions in the criminal case, is serving 22 years in prison, and especially where even the Plaintiff herself concedes that Shalodi did not *intentionally* harm Nadia.

To that end, in additional to principles of equity, the Magistrate committed plain error by allowing a jury charge and verdict form for punitive damages to go to the jury.

PLAIN ERROR

In *State v. Morgan*, 153 Ohio St.3d 196, 2017-Ohio-7565, the Ohio Supreme Court discussed in detail the plain error doctrine and in particular, plain error in civil cases. The Supreme Court stated,

Prior to the adoption of Crim.R. 52(B), Ohio appellate courts would not consider 'any error which counsel for a party complaining of the trial court's judgment could have called but did not call to the trial court's attention at a time when such error could have been avoided or corrected by the trial court.' *State v. Wolery*, 46 Ohio St.2d 316, 326, 348 N.E.2d 351 (1976), quoting *State v. Gordon*, 28 Ohio St.2d 45, 50, 276 N.E.2d 243 (1971); accord *State v. Lancaster*, 25 Ohio St.2d 83, 267 N.E.2d 291 (1971), paragraph one of the syllabus; *State v. Glaros*, 170 Ohio St. 471, 166 N.E.2d 379 (1960), paragraph one of the syllabus.

Any other rule would relieve counsel from any duty or responsibility to the court, and place the entire responsibility upon the trial court to give faultless instructions upon every possible feature of the case, thereby disregarding entirely the true relation of court and counsel, which enjoins upon counsel the duty to exercise diligence and to aid the court, rather than by silence mislead the court into commission of error. *State v. Driscoll*, 106 Ohio St. 33, 39, 138 N.E. 376 (1922).

Morgan, at ¶ 35.

Regarding civil litigation, the Supreme Court said,

But in 1985, while recognizing that "the plain-error doctrine is a principle applied almost exclusively in criminal cases," we noted that this court had stated that it could apply to a civil case "if the error complained of 'would have a material adverse effect on the character and public confidence in judicial proceedings.'



" *Reichert v. Ingersoll*, 18 Ohio St.3d 220, 223, 480 N.E.2d 802 (1985), quoting *Schade* at 209, 436 N.E.2d 1001.

Id. at ¶ 38.

Twelve years after *Reichert*, this court again considered the application of plain error in a civil matter in *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 679 N.E.2d 1099 (1997). We recognized that " 'the idea that parties must bear the cost of their own mistakes at trial is a central presupposition of our adversarial system of justice.' " *Id.* at 121, 679 N.E.2d 1099, quoting *Montalvo v. Lapez*, 77 Hawai'i 282, 305, 884 P.2d 345 (1994) (Nakayama, J., concurring in part and dissenting in part). A litigant who fails to follow procedural rules might forfeit his or her rights and "may not obtain a new trial based upon the bare assertion that his or her attorney was ineffective." *Id.* at 122, 679 N.E.2d 1099.

Id. at ¶ 39.

And,

Nevertheless, this court reaffirmed the application of the plain-error doctrine in civil cases even though "no analogous provision exists in the Rules of *Civil Procedure*." (Emphasis sic.) *Goldfuss* at 121, 679 N.E.2d 1099. However, application of the doctrine was strictly limited to those occasions when the error impugned the character and public image of the judicial process.

In appeals of civil cases, the plain error doctrine is *not favored* and may be *applied only* in the extremely rare case involving exceptional circumstances *where error, to which no objection was made at the trial court, seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself.* (Emphasis added.) *Id.* at syllabus.

Id. at ¶ 40, emphasis added.

Therefore, in order for a court to find plain error in a civil case, an appellant must establish (1) a deviation from a legal rule, (2) that the error was obvious, and (3) that the error affected the basic fairness, integrity, or public reputation of the judicial process and therefore challenged the legitimacy of the underlying judicial process. *Id.* As when they apply criminal plain-error review, reviewing courts applying civil plain-error review "must proceed with the utmost caution, limiting the doctrine strictly to those extremely rare cases where exceptional circumstances require its application to prevent a manifest miscarriage of justice." *Id.* at 121, 679 N.E.2d 1099.



Id. at ¶ 41.

This Court is cognizant that the plain error doctrine, particularly in a civil case, is to be applied most judiciously, in rare circumstances, and only to prevent a manifest miscarriage of justice.

This case presents just such a situation.

First, the very manner in which this case resulted in a 70 million dollar verdict is almost unheard of. This Court is unaware of any other case involving a civil jury trial where there was no defendant present and no defense presented. Such undefended cases are almost always resolved by way of default judgment and a damages hearing, summary judgment and a damages hearing, or some type of consent or confessed judgment on liability and perhaps, a damages hearing. But to present an undefended case to a jury on liability, damages, *and* punitive damages is unheard of.

Moreover, there was a “deviation from a legal rule” in that there was no evidence presented to the jury that Shalodi engaged in malicious or aggravated or egregious conduct such that punitive damages should even have been considered. In fact, the evidence points to the exact opposite – Plaintiff argued that Shalodi’s conduct was “selfish, negligent, and reckless,” *not* that it was intentional; and, if her conduct was not intentional, it cannot be malicious or egregious. These facts, by review of the pleadings including the complaint and filings as well as the trial transcript, demonstrate “that the error was obvious.”

Finally, the error (the punitive damages charge and verdict) clearly affected the “basic fairness, integrity, or public reputation of the judicial process and therefore challenge the legitimacy of the underlying judicial process.”

Interestingly, note the similarity in the language used by the Supreme Court in discussing a court’s equity powers and the language used by the Court to evaluate the propriety of plain error – words like “moderate unjust results,” “afford full relief,” “reason and righteousness,” “injustice and unfairness,” to name a few regarding equity and “fairness,” “integrity,” “judicial process,” and “legitimacy,” regarding plain error.

Undoubtedly, the principles enunciated in describing a court’s equity powers are eerily similar to those lofty aspirations applicable to plain error. In either event, and under either legal doctrine, this Court has a responsibility, if not a mandate, to do justice. And justice was not served at this trial when the Magistrate allowed the jury to consider punitive damages – whether or not there was an objection raised.



As such, this Court, in applying principals of equity, finds as a matter of law that a judgment consisting of \$5,000,000.00 for Shalodi's negligence, \$30,250,000.00 for the wrongful death of Nadia, for a total verdict of \$35,250,000.00 is fair, measured, and reasonable in the premises.

On a final note, this Court sincerely emphasizes that its rejection of the punitive damages award should in no way be construed to minimize or diminish the tragedy that occurred and the heartbreaking loss of a child. Instead, the Court endeavors to do justice for all who come before it, regardless of their circumstances.

CONCLUSION

After review of the pleadings, briefing, jury verdicts, Magistrate's Decision, trial transcript, and other Civ. R. 53(D)(4) materials and consideration of Plaintiff's Bench Briefs, as well as the Ohio Revised Code and relevant case law, the Court rules as follows:

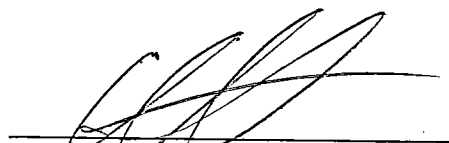
The Magistrate's Decision is ADOPTED *in part* and OVERRULED *in part*.

After independent review of the matter, the Court finds that the Magistrate properly determined that the jury verdicts for negligence in the amount of \$5,000,000.00 and wrongful death in the amount of \$30,250,000.00 are factual and legally apposite.

However, the Magistrate's recommendation that the Court also adopt the jury verdict for punitive damages in the amount of \$35,250,000.00 shocks the conscience of the Court, is inequitable, and constitutes plain error. Accordingly, the punitive damages award is *sua sponte* vacated.

As such, judgment is hereby granted in favor of Plaintiff, Nadia Gibbons, Administrator of the Estate of Nadia Gibbons, Jr., Deceased, in the amount of \$35,250,000.00. Costs to Defendant. Case closed.

IT IS SO ORDERED. No Record.


JUDGE D. CHRIS COOK

TO THE CLERK: PURSUANT TO CIV.R. 58(B), THIS IS A FINAL APPEALABLE ORDER. PLEASE SERVE UPON ALL PARTIES NOT IN DEFAULT FOR FAILURE TO APPEAR NOTICE OF THE JUDGMENT AND ITS DATE OF ENTRY UPON THE JOURNAL.