

COURT OF APPEALS OF VIRGINIA

Record No. 0013-25-2

VISTA PARK MEMORY CARE CENTER, LLC, T/A
VISTA PARK MEMORY CARE CENTER, ET AL.

v.

JESSICA M. CLARK, AS ADMINISTRATOR OF THE
ESTATE OF JAMES E. CLARK, SR., DECEASED

Present: Judges Callins, Duffan and Senior Judge Clements

Argued at Richmond, Virginia

Opinion Issued October 6, 2026*

FROM THE CIRCUIT COURT OF THE CITY OF RICHMOND

Jacqueline S. McClenney, Judge

David R Berry (Monica T. Monday; Charles Y. Sipe; Jessica M. Flage; Gentry Locke; Kiernan Trebach LLP, on briefs), for appellants.

James J. O’Keefe IV (Robert W. Carter, Jr.; Mary Estfanous; MichieHamlett, PLLC; Robert Carter, Jr., Attorney at Law, on brief), for appellee.

MEMORANDUM OPINION BY JUDGE KEVIN M. DUFFAN

This appeal arises from a wrongful death suit. James E. Clark, an elderly man with progressive dementia, died after a pressure ulcer became infected while staying at Vista Park Memory Care Center, an assisted living facility operated by Saber, a limited liability company. Mr. Clark’s administrator, and daughter, Jessica M. Clark (Ms. Clark), sued Saber in the City of Richmond Circuit Court. After a five-day jury trial, the Clarks prevailed. On appeal, Saber raises five assignments of error¹ that fall into three categories: (1) whether the circuit court should have

* This opinion is not designated for publication. *See* Code § 17.1-413(A).

¹ Saber originally raised six assignments of error but withdrew one.

granted Saber’s motion to strike, (2) whether the circuit court should have excluded evidence and testimony regarding an employee’s termination, and (3) whether the circuit court should have set aside the jury verdict as to two beneficiaries. Because the circuit court did not err, we affirm.

BACKGROUND

“When reviewing a [circuit] court’s decision on appeal,” this Court views “the evidence in the light most favorable to the prevailing party, granting it the benefit of any reasonable inferences.” *Nielsen v. Nielsen*, 73 Va. App. 370, 377 (2021) (quoting *Congdon v. Congdon*, 40 Va. App. 255, 258 (2003)).

I. General Background

Saber is a company that owns Vista Park Memory Care Center, an assisted living facility. Unlike a hospital or a nursing home, an assisted living facility does not provide medical care. Instead, it provides housing and assists residents with “activities of daily living.” Such activities include bathing, dressing, and toileting. If a resident needed medical care, their own providers would travel to the facility.

Despite being “non-medical residential facilit[ies],” assisted living facilities must comply with certain Virginia Department of Social Services (DSS) regulations. Relevant to this appeal, these regulations require facilities to: (1) report stageable wounds, like pressure ulcers, above a stage I; (2) discharge patients with stage III wounds, unless it is healing, or stage IV wounds, unless the patient is in hospice; and (3) provide sufficient staffing to meet residents’ needs.

The accuracy of wound staging is central to this case. While staging is somewhat subjective, particularly in the middle stages, there are certain well-defined characteristics of note. A stage I pressure ulcer refers to an area that is reddened and remains after pressure has been removed for considerable time. A stage II pressure ulcer is a cavity that has eaten into the epidermis, the injury is about “as deep as 2-3 credit cards.” A stage III pressure ulcer is one that

has penetrated the fatty tissue, creating a deeper crater. A stage IV pressure ulcer is one that has eroded muscle, tendon, or bone. And, lastly, an unstageable pressure ulcer is one that cannot be staged because there is “slough or like a yellow or scar tissue” at the bottom—effectively blocking any exposed muscle or tendon.

II. Mr. Clark’s Time at Vista Park

Mr. Clark moved to Vista Park in February 2014. Although he showed signs of progressive dementia, he was mobile at the time of his move. Throughout Mr. Clark’s time at Vista Park, Dr. David Neff, his primary care provider, made “house calls.” In April 2015, Dr. Neff referred Mr. Clark to hospice, which generally indicates that a patient has a life expectancy of six months or less, but Dr. Neff clarified at trial that—in Mr. Clark’s case—the referral was not a “declaration that [Mr. Clark] had six months or less to live,” but, rather, that it was to allow the family to “discuss what hospice could offer.”²

Between April and August 2015, Mr. Clark developed joint pain and contractures in his knees. A contracture is the “permanent tightening of the tendons, muscles, and ligaments, usually in the knee” that eventually cause the joint to freeze. Contractures can be avoided by exercising joints “a couple of times a day.” The contractures, paired with his progressive dementia, made it difficult for Mr. Clark to reposition himself. Mr. Clark was also “incontinent of both bowels and urine.”

In late July 2015, Mr. Clark developed a stage II pressure ulcer on his left hip. Vista Park notified Dr. Neff, who, in turn, ordered wound care through At Home Care (At Home), a skilled-nursing provider. Dr. Neff also told Vista Park that Mr. Clark could not position himself, so he needed frequent position changes. Vista Park did not report the stage II ulcer to DSS.

² Mr. Clark’s power of attorney declined the referral and did so again in July of that year.

In the ensuing three months, At Home’s nurses visited Mr. Clark around 60 times, with each visit lasting about 30 to 60 minutes. Dr. Neff and his nurse practitioner, Laura Bass, similarly visited Mr. Clark.

During their visits, At Home’s nurses advised Vista Park staff to reposition Mr. Clark every one to two hours; they also put signs in his room reminding the staff to reposition Mr. Clark. The At Home nurses also applied medicated dressings and excised dead tissue. At Home’s nurses also taught Vista Park staff how to cover Mr. Clark’s pressure ulcer if the dressings came off between visits. Dr. Neff, for his part, ordered additional interventions like a specialized bed, a wheelchair, and Ensure, a protein supplement.

As time passed, At Home’s nurses often found Mr. Clark soiled with both urine and feces, because he was incontinent. At Home’s nurses also found Mr. Clark without dressings on his wound. While Vista Park’s non-nurse staff could apply a dry covering, they were barred from applying medicated dressings to the wound.

Vista Park had one licensed nurse on its staff: Pam Harrell. Harrell, who was the clinical director, oversaw Vista Park’s nursing capacity and served as the direct supervisor for Vista Park’s non-nurse staff, such as medication aides. She also coordinated services with outside care, like At Home. At Home documented wound information through electronic reports, which Harrell would then sign after visits.³ But concerns or opinions on care were communicated orally. Dr. Neff also orally relayed “concern[s] or criticism[s]” of Vista Park’s care. Harrell was fired in August 2015, after she instructed a medical aide to give one patient another’s medication. The medication was ultimately not administered, and Mr. Clark was not involved in

³ Many of these records did not show concerns about the quality of care Mr. Clark received between visits, however, the conflicting evidence is viewed in the light most favorable to Ms. Clark—the prevailing party. *See Nielsen*, 73 Va. App. at 377.

the incident. Although Vista Park did hire a new clinical director, it did not hire a nurse to the position—leaving no nurses on Vista Park’s staff.

Despite Vista Park’s documentation process, Vista Park’s chart for Mr. Clark had two references to repositioning between July 1, 2015 and October 29, 2015. Similarly, the medication administration records did not reflect that Vista Park staff had given Mr. Clark the prescribed Ensure. Vista Park records similarly did not show that Mr. Clark was weighed between April 2015 and October 2015.

In August of that year, Mr. Clark’s pressure ulcer could have been categorized as a stage III ulcer because it had reached full thickness and appeared to have eaten into the fatty tissue. But Dr. Neff did not diagnose, or consider, the wound to be a stage III ulcer until late September 2015. Saber did not report the new stage to DSS.

Mr. Clark’s health continued to decline. According to Dr. James Avery, the causation expert witness called by the plaintiff, in late August and early September of that year the wound was likely either unstageable or a stage IV, and thus required debridements—a procedure where a sharp scalpel is used to remove the slough on the bottom of the ulcer so one can see how deep the wound is. The wound had begun showing signs of infection, like purulent drainage that was “greenish”; there was also yellow “necrotic tissue.” Dr. Neff prescribed antibiotics and ordered an x-ray to “rule out osteomyelitis” which is an “infection down in the bone.” Although Dr. Neff testified that the x-ray “came back negative for osteomyelitis,” Dr. Avery disagreed. Dr. Avery noted that, by late September 2015, the wound was likely a stage IV, although Dr. Neff never reported it as such. Mr. Clark was moved to hospice on October 16, 2015 and remained at Vista Park until the end of that month.

On October 29, 2015, Mr. Clark went to Southside Regional Medical Center via ambulance after his daughter, Jackie, instructed Vista Park to transport him. Jackie, who was

visiting her father, as she did almost every weekend, noticed that “[h]e didn’t look good” and was “on fire” when she greeted him. Once he arrived at the hospital, it was clear that Mr. Clark was in pain. He was “screaming and yelling.” His pressure ulcer had developed an abscess that required a surgical incision to drain and was hooked up to a wound vac. The hospital also gave Mr. Clark “[intravenous] antibiotics,” and performed blood cultures. The cultures revealed there were multiple bacteria traveling throughout his bloodstream. The hospital also diagnosed Mr. Clark with a urinary tract infection and pneumonia.

After 12 days in the hospital, Mr. Clark was discharged to a nursing home that could better meet his needs. He stayed there for the rest of his life, dying on December 31, 2015 as a result of sepsis caused by an infected wound.

III. The Trial

Ms. Clark, as administrator, sued Vista Park, Saber and At Home for negligence and wrongful death.⁴ Ms. Clark, however, settled with At Home before trial—leaving Saber as the lone defendant.

A five-day jury trial commenced on March 18, 2024. During her opening statement, Ms. Clark foreshadowed the central theme of her case by telling the jury it would “hear about neglect so pervasive that it [would] disturb [them].” After opening statements, and prior to the commencement of the presentation of evidence, Saber sought to limit Ms. Clark’s ability to use the reasons behind Harrell’s termination by contending that they were irrelevant. Ms. Clark responded that Harrell was “a vital link” and that the staff that Harrell oversaw failed to give Mr. Clark his prescribed Ensure—which then made Harrell’s actions relevant. Ms. Clark also averred that Harrell had a “fairly tortured” relationship with Vista Park’s medical aides. The

⁴ Saber Healthcare Holdings, LLC and Saber Healthcare Group, LLC were treated collectively as the “Saber defendants” in the complaint, and owned and operated the Vista Park Memory Care Center.

circuit court took the matter under advisement, and decided that if an appropriate foundation was laid, then it would allow the incident report, but not the termination and separation report,⁵ subject to Saber’s contemporaneous objection. The circuit court reasoned that the incident report was separate from the termination and separation report, because—at that point—there was no evidence that the two were connected and thus the evidence suggesting she was terminated “would not be relevant or acceptable.”

Amanda Stanfield, a registered nurse, was Ms. Clark’s first witness and her standard of care expert. She testified about the standards of care at assisted living facilities and described the DSS regulations mentioned above. She opined that Saber was responsible for caring for Mr. Clark’s needs when “[At Home] wasn’t physically present.” She also testified that nurses had the appropriate experience and training to dress and medicate pressure ulcers and other wounds. According to Stanfield, Saber should have had a plan listing steps to prevent “weight loss, contractures, [and] pressure ulcers.” A plan, she noted, would have included repositioning Mr. Clark at least every two hours, monitoring his weight, and keeping records to make sure that he was given Ensure three times a day once Dr. Neff ordered it. Stanfield concluded that Saber had violated many standards of care while Mr. Clark lived there, including a failure to comply with DSS regulations regarding the reporting of pressure ulcers and a failure to provide Mr. Clark with access to a nurse after firing Harrell.

Ms. Clark’s causation expert, Dr. Avery, testified that “the care at Vista Park was deficient.” He justified this determination by explaining that “[p]ressure ulcers, when they’re attacked aggressively, will heal” so when a pressure ulcer is “getting worse or doesn’t heal, you know there’s been deficient care.” He then highlighted that, with hydration and protein, regularly repositioning a patient would heal a pressure ulcer in two to four weeks, and could

⁵ The report detailed the termination.

prevent pressure ulcers altogether. He also explained that pressure ulcers form because there is “a lack of oxygen to [the] cells and then those cells die.” So once a pressure ulcer exists it has “to be kept clean” or else “more cells will die.”

Dr. Avery opined to a reasonable degree of medical certainty that Mr. Clark experienced multiple forms of trauma to his wound, and that by the time Mr. Clark went to the hospital, the wound was “beyond repair” and “unlikely” to heal because “too much damage ha[d] occurred.” He further opined that there was “virtually no benefit” to repositioning Mr. Clark for the “30 minutes or an hour” that At Home was present if Mr. Clark went “23 hours” without “good care.” Ultimately, Dr. Avery stated that in his medical opinion Mr. Clark would not have died when he did if Vista Park had “provided proper care.”

After the experts testified, At Home’s nurses testified as to the conditions at Vista Park and the nature of their care. The nurses testified that dressing a wound was beyond the scope of Vista Park’s non-nurse staff. They also described how they advised Vista Park’s staff to reposition Mr. Clark every two hours. As for the sign they left over the bed, one nurse highlighted that they “[did not] typically” leave signs for staff. And they noted their impression that Mr. Clark was not being repositioned “with the kind of frequency that At Home . . . had advised.” At Home’s nurses also described situations where Vista Park staff waited until the next day for At Home’s nurses to address Mr. Clark’s needs. They testified that they often found Mr. Clark’s briefs and dressings saturated with urine and, less often, stool. They explained that they “frequently” found Mr. Clark soiled and that “sometimes” the dressing was so saturated that it “was beyond” changing or replacing; other times, they found Mr. Clark with no dressings at all. They also testified that At Home instructed nurses not to record “opinions” or “concerns” in their notes.

Later at trial, Vista Park's former executive director, Channell Lockhart, testified. Among other things, she testified that Harrell's relationship with the medical aides that she was charged with supervising "was a little rocky." Saber objected, seeking to exclude any mention of Harrell's relationship with the facility staff and the reasons behind Harrell's termination as irrelevant. The circuit court reiterated its decision to allow the disciplinary form and exclude the separation report, and allowed Ms. Clark to question Lockhart about the termination, noting it would rule on every question's relevance before her answer. After a few objections were sustained as to form, Ms. Clark asked Lockhart why Harrell was terminated. Lockhart responded that Harrell had "directed a medication aide to give a medication that belonged to another resident to a different resident." Ms. Clark asked two additional questions that Lockhart answered before Saber interposed another objection, arguing Lockhart's testimony describing Harrell's termination was irrelevant. The circuit court overruled the objection. Lockhart further testified that, following Harrell's termination, the position was not filled with a registered nurse.

Towards the conclusion of the trial, Mr. Clark's surviving children testified about their experiences and the family's sorrow. Although two of Mr. Clark's grandsons, Phillip and Nicholas, did not testify, their aunt Jackie and uncle James Jr. did testify regarding the two grandsons' feelings. Regarding Phillip, Jackie noted that Phillip was "buddies" with Mr. Clark and that Phillip "would always tell [her] that losing Granddad was, it was like . . . extra sad." She noted that he cried a lot. James Jr. added that Phillip "was upset" because he was "really spoiled by [Mr. Clark]." Regarding Nicholas, James Jr. testified that Nicholas and Phillip were brothers, and that their father, Vincent, predeceased Mr. Clark. After James Jr. recalled Phillip's response to Mr. Clark's death, Ms. Clark's counsel asked James Jr. if he "[w]ould . . . say that Vincent dealt with [the death] the same way as Phillip?" He answered "yes."

During closing arguments, Ms. Clark stated that there was “negligence from top down in this case that resulted in Mr. Clark seldom” receiving the care he needed. She stated that Vista Park was “managed clinically by a nurse that herself instructed her staff to ignore every established medication rule known to mankind,” and rhetorically asked the jury whether it thought that “Mr. Clark got the care that he needed from the facility being overseen by Ms. Harrell who was terminated August 28th, 2015.” The jury ultimately found for Ms. Clark and awarded 7.6 million dollars.⁶

Saber appeals.⁷

ANALYSIS

Saber’s five assignments of error can be properly analyzed in three categories. The first is whether the circuit court erred by denying Saber’s motions to strike regarding DSS reporting and nurse staffing requirements. The second is whether the circuit court erred by admitting testimony regarding Harrell’s termination. And the third is whether the circuit court erred by denying the motions to set aside the verdict as it relates to two statutory beneficiaries, Phillip and Nicholas. We analyze each in turn.

I. Saber’s Motion to Strike

In its first two assignments of error, Saber asserts that the circuit court erred by failing to strike the evidence relating to DSS reporting and nurse staffing. Saber contends that Clark failed to present evidence that the lack of onsite nurses or the failure to report Mr. Clark’s injuries to

⁶ The circuit court granted Saber’s post-trial motion to reduce the total verdict amount for compensatory damages to the \$6 million *ad damnum* in the complaint.

⁷ Appellants collectively refer to themselves as Saber, and we do so here.

DSS contributed to his death. Saber also avers that these errors are reversible because they are prejudicial and “lur[ed]” the jury away from the facts presented. We disagree.

“Where, as here, the circuit court has ‘declined to strike the plaintiff’s evidence or to set aside a jury verdict, the standard of appellate review in Virginia requires this Court to consider whether the evidence presented, taken in the light most favorable to the plaintiff, was sufficient to support the jury verdict in favor of the plaintiff.’” *N. Va. Kitchen, Bath & Basement, Inc. v. Ellis*, 299 Va. 615, 622 (2021) (quoting *Parson v. Miller*, 296 Va. 509, 523-24 (2018)). From this vantage point, “[w]hen the sufficiency of a plaintiff’s evidence is challenged by a motion to strike, . . . courts should resolve any reasonable doubt as to the sufficiency of the evidence in plaintiff’s favor.” *Navar, Inc. v. Fed. Bus. Council*, 291 Va. 338, 344 (2016). Trial courts may only grant a motion to strike if it is conclusively apparent that (1) the plaintiff has failed to prove a cause of action against defendant or (2) the circuit court “would be compelled to set aside any verdict found for the plaintiff as being without evidence to support it.” *Id.* (quoting *Saks Fifth Ave., Inc. v. James, Ltd.*, 272 Va. 177, 188 (2006)). A trial court is “not to judge the weight and credibility of the evidence, and may not reject any inference from the evidence favorable to the plaintiff unless it would defy logic and common sense.” *Austin v. Shoney’s, Inc.*, 254 Va. 134, 138 (1997).

A wrongful death action, like this one, “is a statutory action created by Code § 8.01-50, which permits a personal representative of a decedent to bring an action on behalf of the decedent’s beneficiaries to recover damages caused by the wrongful act, neglect, or default of another.” *Kone v. Wilson*, 272 Va. 59, 62 (2006). “Under Code § 8.01-50(A), a wrongful death action is predicated on the ability of the deceased to maintain the action, had death not ensued.” *Giordano v. McBar Indus.*, 284 Va. 259, 267 n.8 (2012). Thus, success in a wrongful death action is predicated on the plaintiff’s ability to satisfy the elements of a negligence suit.

“All negligence causes of action are based on allegations that a person having a duty of care to another person violated that duty of care through actions that were the proximate cause of injury to the other person.” *Al-Saray v. Furr*, 304 Va. 19, 28 (2025) (quoting *Steward v. Holland Fam. Props., LLC*, 284 Va. 282, 286 (2012)). “The elements of an action in negligence are a legal duty on the part of the defendant, breach of that duty, and a showing that such breach was the proximate cause of injury, resulting in damage to the plaintiff.” *Id.* (quoting *Blue Ridge Serv. Corp. v. Saxon Shoes, Inc.*, 271 Va. 206, 218 (2006)).

“The proximate cause of an event is that act or omission which, in natural and continuous sequence, unbroken by an efficient intervening cause, produces the event, and without which that event would not have occurred.” *Williams v. Cong Le*, 276 Va. 161, 167 (2008) (quoting *Beverly Enters.-Va. v. Nichols*, 247 Va. 264, 269 (1994)). “[P]roximate cause may be established by circumstantial evidence,” if the evidence is enough to transform the causation alleged from being a “mere possibility” into a “probability.” *Al-Saray*, 304 Va. at 28 (citing *Bussey v. E.S.C. Rests. Inc.*, 270 Va. 531, 536 (2005)).

Generally, negligence and proximate cause are jury issues. *Griffin v. Shively*, 227 Va. 317, 320 (1984). “They only become questions of law to be determined by a court, when reasonable minds could not differ.” *Id.* This is a low bar that is surpassed when a plaintiff presents evidence that establishes the “nature of the treatment the decedent could have undergone . . . and the probability that such a treatment would have extended the decedent’s life.” *Tahboub v. Thiagarajah*, 298 Va. 366, 377 (2020) (quoting *Dixon v. Sublett*, 295 Va. 60, 68 (2018)).

Here, Ms. Clark’s theory was grounded in general negligence. Throughout the trial, she argued that Saber’s indifference to Mr. Clark’s condition led to his death. Saber’s failure to report and its lack of nurses were elements of a larger failure to adequately account and care for

Mr. Clark. Plaintiff's expert witness, Dr. Avery, noted that Mr. Clark would not have died when he did if Saber had "provided proper care." He opened his testimony by highlighting that pressure ulcers, "when . . . attacked aggressively, *will* heal." (Emphasis added). He explained that keeping the wound clean was essential to proper care because if the wound was not kept clean "more cells [would] die." Although Saber insists that Ms. Clark needed to establish its failure to comply with DSS reporting requirements was an independent cause of Mr. Clark's death, the jury was free to view this as additional evidence of negligent care.

Plaintiff's standard of care expert, Amanda Stanfield, testified that nurses have the appropriate experience and training to dress and medicate pressure ulcers and other wounds. Multiple At Home nurses confirmed that—in Mr. Clark's case—dressing a wound was beyond the scope of Vista Park's non-nurse staff. As a result, Vista Park staff sometimes waited until the next day for At Home's nurses to come and address Mr. Clark's needs. The At Home nurses further testified that they often found Mr. Clark's briefs and dressings saturated with urine and, less often, stool. They described how they "frequently" found Mr. Clark soiled and that "sometimes" the dressing was so saturated that it "was beyond" changing or replacing, or they would find him with no dressing at all. Medicated dressings—the kind only a nurse could administer—are part of keeping the wound clean. Furthermore, Dr. Avery explained that there was "virtually no benefit" to the limited amount of "good care" Mr. Clark received when At Home's nurses were at Vista Park because of the "23 hours" per day that he spent without "good care" when the At Home nurses were not there.

Taken together, this evidence allowed the jury to reasonably infer that additional nurses providing adequate care would have allowed Mr. Clark's pressure ulcers to heal and prevented them from becoming septic because the wounds would have been kept clean.

Ultimately Ms. Clark’s theory was that Saber did not do enough to care for Mr. Clark. This theme carried through from her opening statement—when she told the jury that it would “hear about neglect so pervasive that it will disturb you”—through her closing argument when she asserted that “there’s the negligence from top down in this case that resulted in Mr. Clark seldom getting [the care he needed].” But this theme was perhaps best summarized in Saber’s own closing argument: “[t]he question is, did Saber Healthcare Group and Vista Park act reasonably? Did they do what a reasonabl[e] assisted living facility would do?” The jury answered Saber’s question in the negative. And on appeal, we review only whether the jury’s answer was supported by the evidence. Here, we find that it was. Accordingly, we affirm the circuit court as to the first and second assignments of error.

II. Admissibility of Evidence

In its third assignment of error, Saber contends that the circuit court erred in admitting testimony and evidence of Pam Harrell’s prior misconduct, disciplinary record, and termination. Saber argues that testimony and evidence about Pam Harrell was irrelevant or unfairly prejudicial. We disagree.

Appellate courts review a circuit court’s decision to admit or exclude evidence under an abuse of discretion standard. *John Crane, Inc. v. Jones*, 274 Va. 581, 590 (2007). Under this standard, the Court will not disturb a “decision to admit evidence absent a finding of abuse of that discretion.” *Id.* While a circuit court may not “admit clearly inadmissible evidence,” it has “a great deal” of discretion to determine “whether evidence is relevant to the issue or not.” *Id.*

The “exercise of judicial discretion presupposes ‘that, for some decisions, conscientious jurists could reach different conclusions based on exactly the same facts—yet still remain entirely reasonable.’” *Commonwealth v. Kartoza*, 304 Va. 321, 331 (2025) (quoting *Commonwealth v. Barney*, 302 Va. 84, 94 (2023)). Therefore, “[o]nly when reasonable jurists

could not differ can we say an abuse of discretion has occurred.” *Bista v. Commonwealth*, 303 Va. 354, 370 (2024) (quoting *Commonwealth v. Swann*, 290 Va. 194, 197 (2015)). At its core, “[t]he abuse of discretion standard draws a line—or rather, demarcates a region—between the unsupportable and the merely mistaken, between the legal error . . . that a reviewing court may always correct, and the simple disagreement that, on this standard, it may not.” *Jefferson v. Commonwealth*, 298 Va. 1, 10-11 (2019) (second alteration in original) (quoting *Reyes v. Commonwealth*, 297 Va. 133, 139 (2019)).

Our Supreme Court has explained that a circuit court abuses its discretion in three primary ways: (1) when it fails to consider a “relevant factor that should have been given significant weight,” (2) when it considers and gives significant weight to an irrelevant or improper factor, or (3) when it considers only proper factors, “but the court, in weighing those factors, commits a clear error of judgment.” *Murry v. Commonwealth*, 288 Va. 117, 122 (2014) (quoting *Landrum v. Chippenham & Johnston-Willis Hosps., Inc.*, 282 Va. 346, 352 (2011)).

“Evidence is relevant if it has any logical tendency to prove an issue in a case.” *Gilliam v. Immel*, 293 Va. 18, 28 (2017). Put differently, “[t]he criterion of relevancy is whether or not the evidence tends to cast any light upon the subject of the inquiry.” *McNeir v. Greer-Hale Chinchilla Ranch*, 194 Va. 623, 629 (1954). These definitions combine two concepts: (1) probative value, which is the evidence’s tendency “to support the proposition for which it is offered,” Kent Sinclair, *The Law of Evidence in Virginia* § 6-1 (2018), and (2) materiality, which is the evidence’s relationship “to a matter properly at issue,” *Via v. Commonwealth*, 44 Va. App. 164, 183 (2004) (quoting *Evans-Smith v. Commonwealth*, 5 Va. App. 188, 196 (1987)). To be material, evidence must have some logical bearing upon the case. *See Evans-Smith*, 5 Va. App. at 198 (“Matters which have no logical bearing upon the case are said to be immaterial.”).

Relevance, combining probative value with materiality, presents a low barrier to admissibility because “[e]very fact, however remote or insignificant, that tends to establish the probability or improbability of a fact in issue is relevant.” *Commonwealth v. Proffitt*, 292 Va. 626, 634 (2016) (quoting *Virginia Elec. & Power Co. v. Dungee*, 258 Va. 235, 260 (1999)).

The admissibility inquiry does not end at relevance, however. As even “[r]elevant evidence may be excluded if . . . the probative value of the evidence is *substantially outweighed* by . . . the danger of unfair prejudice.” *Id.* at 635 (alterations in original) (quoting Va. R. Evid. 2:403(a)(i)). When balancing these considerations, the circuit court must be mindful that “all probative direct evidence generally has a prejudicial effect to the opposing party.” *Lee v. Spoden*, 290 Va. 235, 251 (2015) (citing *Powell v. Commonwealth*, 267 Va. 107, 141 (2004)). So the more relevant question is “whether the probative value of the evidence is substantially outweighed by its unfair or unduly prejudicial effects.” *Id.* at 252. “[U]nfair prejudice’ refers to the tendency of some proof to inflame the passions of the trier of fact, or to invite decision based upon a factor unrelated to the elements of the claims and defenses in the pending case.” *Id.* at 251. The purpose of this rule is to limit the ability of conceptually relevant evidence to entice the factfinder into declaring liability on “a ground different from proof specific to the elements of a case.” *Id.* at 251-52.

Turning to this case, we review the circuit court’s relevance and unfair prejudice decisions for an abuse of discretion. *See John Crane*, 274 Va. at 590. As mentioned earlier, the circuit court is barred from admitting “clearly inadmissible evidence,” but it has “a great deal” of discretion to determine “whether evidence is relevant.” *Id.*

The record reveals that the circuit court carefully analyzed if Harrell’s termination and contentious relationship with the medical aides were relevant. Before trial, the circuit court took the proffered evidence of Harrell’s termination under advisement and presumptively excluded

the termination because there was no evidence—at that point—that the termination and the environment were connected, thus finding evidence suggesting she was terminated “would not be relevant or acceptable.” The circuit court qualified its ruling by noting that its decision was “based on the documents . . . presented to [it that day].” But during trial, and after hearing testimony from multiple witnesses, it allowed Ms. Clark to go question-by-question and inquire about Harrell’s termination. The circuit court then allowed Lockhart, the former executive director, to explain the termination but did not allow admission of the separation report. This series of events demonstrates that the circuit court tailored its ruling narrowly.

We also find the circuit court did not err in determining that the evidence was probative. A core aspect of Ms. Clark’s argument was that there were several breakdowns in communication at Vista Park. Pam Harrell, the clinical director—and the only nurse on staff—was charged with overseeing the medical aides that Vista Park employed. As clinical director, she also served as the link between At Home’s nurses and Vista Park’s staff. Harrell would receive reports and commentary from At Home’s nurses and Dr. Neff. Under Ms. Clark’s theory, a breakdown in communication led to the perpetuation of the status quo and ultimately led to Mr. Clark’s death. Therefore, any evidence, whether testimony or otherwise, that clarifies (1) whether there was a breakdown, (2) the extent of any breakdown, or (3) what caused the breakdown is relevant. *See Gilliam*, 293 Va. at 28 (“Evidence is relevant if it has any logical tendency to prove an issue in a case.”).

The circuit court has broad discretion to determine whether Ms. Clark’s evidence fit into any of these categories. On appeal, we intrude on the circuit court’s discretion when its decision ventures into the “unsupportable” or makes a “legal error.” *Jefferson*, 298 Va. at 10-11. We cannot say that the circuit court’s decision here encroached on such territory. Evidence of a rocky relationship with Harrell’s subordinates falls squarely into each of the three categories

denoted above because it speaks to the conditions of communication at Vista Park. The disciplinary action form, in particular, highlights a dysfunctional environment where Lockhart—as the Executive Director of Vista Park—had to step in, override Harrell, and instruct the medical aide not to give medication to a different patient. The circuit court was within its prerogative to find such information relevant and probative to Vista Park’s general environment.

Saber’s unfair prejudice argument meets the same fate. Under the balancing test, evidence is excluded only if “the probative value of the evidence is substantially outweighed by its *unfair* or *unduly* prejudicial effects.” *Lee*, 290 Va. at 252. As explained above, the circuit court found that the evidence was probative. The next step was balancing the probative value against the prejudicial effect Harrell’s termination could have had on the jury. Taken as a whole, the evidence of Harrell’s termination was prejudicial. But that—alone—is not sufficient. “Virginia law . . . intervenes only when the alleged prejudice tends to inflame irrational emotions or leads to illegitimate inferences. And even then, it becomes a matter of degree.” *Thomas v. Commonwealth*, 44 Va. App. 741, 758, *adopted upon reh’g en banc*, 45 Va. App. 811 (2005). Deciding the degree of prejudice is squarely in the province of the circuit court. *Gross v. Stuart*, 297 Va. 769, 771 (2019) (quoting *Lombard v. Rohrbaugh*, 262 Va. 484, 492 (2001)) (“With regard to the admission of evidence, the responsibility for balancing the competing considerations of probative value and prejudice rests in the sound discretion of the trial court.”). On one hand, the jury may hold Saber accountable for an incident that did not involve Mr. Clark and for employing someone who would instruct others to switch medicine between patients. On the other hand, however, that Harrell wrongly instructed the medical aid and was subsequently fired, by itself, would likely not rise to the level of “inflam[ing] irrational emotions.” *Id.* The circuit court weighed each side and came to its decision. From our vantage point, we give that decision deference and will only reverse if we conclude that no reasonable jurist would have

come to the same conclusion. We cannot reach that conclusion here. Accordingly, we conclude the circuit court did not abuse its discretion when deciding whether to admit the evidence of Harrell's termination.

III. Validity of Phillip's and Nicholas's Awards

Finally, Saber argues that the circuit court erred by denying its motion to set aside the verdict as to Phillip Clark (fifth assignment of error) and Nicholas Clark (sixth assignment of error). Saber contends that while Phillip and Nicholas were eligible to receive damages, Ms. Clark failed to present evidence sufficient to prove they experienced sorrow, mental anguish, or loss of solace following Mr. Clark's death—leaving the jury's verdict without evidence to support it. Regarding Phillip, Saber asserts that the evidence presented was “scarce and conflicting.” For Nicholas, Saber posits that Clark presented no evidence relating to him and thus the verdict was plainly wrong. We disagree with this conclusion.

Our Supreme Court has noted that a party “with a jury verdict approved by the circuit court ‘occupies the most favored position known to the law.’” *N. Va. Kitchen, Bath & Basement*, 299 Va. at 622 (quoting *Ravenwood Towers, Inc. v. Woodyard*, 244 Va. 51, 57 (1992)). Thus, “[a]s a general rule, [Virginia courts] will not set aside a [circuit] court’s judgment sustaining a jury verdict unless it is ‘plainly wrong or without evidence to support it.’” *Id.* (third alteration in original) (quoting *Parson*, 296 Va. at 523-24); *see also* Code § 8.01-680 (“[T]he judgment of the trial court shall not be set aside unless it appears from the evidence that such judgment is plainly wrong or without evidence to support it.”). When the circuit court has “declined . . . to set aside a jury verdict, the standard of appellate review in Virginia requires this Court to consider whether the evidence presented, taken in the light most favorable to the plaintiff, was sufficient to support the jury verdict in favor of the plaintiff.” *N. Va. Kitchen, Bath & Basement*, 299 Va. at 622 (quoting *Parson*, 296 Va. at 523-24).

The damages a statutory beneficiary receives are for their “[s]orrow, mental anguish, and [loss of] solace.” Code § 8.01-52(1). In wrongful death suits, “‘the surviving spouse, children of the deceased and children of any deceased child of the deceased’ are statutory beneficiaries.” *Halifax Reg’l Long Term Care, Inc. T/A the Woodview v. Nelson*, No. 0685-23-2, slip op. at 12 (Va. Ct. App. Nov. 26, 2024) (quoting Code § 8.01-53(A)). These statutory beneficiaries are “eligible to receive [a damages] distribution [that] shall be fixed (i) at the time the verdict is entered if the jury makes the specification or (ii) at the time the judgment is rendered if the court specifies the distribution.” *Id.* (quoting Code § 8.01-53(B)).

A. Phillip

Saber argues that the evidence about Phillip’s sorrow, mental anguish, and loss of solace was “scant and conflicting.” But even relying on Saber’s characterization, such evidence would not mean the jury’s decision is “plainly wrong or without evidence to support it.” Code § 8.01-680. When viewed under the deferential lens, the testimony that Phillip was “extra sad” and “upset” and “cried a lot” was sufficient to place the issue before the jury. That he was sad about missing the funeral or because his grandparents spoiled him does not change the underlying reason for his sorrow: his grandfather’s death. To say otherwise—as Saber asks us to—would require us to weigh the evidence and second-guess the jury’s decision when there is evidence to support it. We decline Saber’s invitation to do so, and affirm the circuit court as to assignment of error five.

B. Nicholas

We acknowledge that, as opposed to Phillip, the evidence of Nicholas’s feelings was limited. That, however, is not dispositive. Instead, the question presented is whether a statutory beneficiary must produce direct evidence of their sorrow, mental anguish, or loss of solace to recover damages, or whether these factors may be inferred. Our Supreme Court has answered

this question definitively, holding that a jury may infer that the death of a close family member “brought sorrow, suffering and mental anguish” even in the absence of direct proof. *Gamble v. Hill*, 208 Va. 171, 180 (1967). Nicholas is Vincent’s child—the deceased child of Mr. Clark—making him a statutory beneficiary of Mr. Clark’s estate. Here, that means that the jury could infer that Nicholas, as a result of his grandfather’s death, experienced sorrow, mental anguish, or loss of solace.⁸ The jury’s decision was not “plainly wrong or without evidence to support it,” and therefore we affirm the circuit court as to assignment of error six.

CONCLUSION

Four of Saber’s five assignments of error require that we uphold the circuit court’s ruling unless it was plainly wrong or had no evidence to support it. Saber’s other assignment of error is only slightly less deferential, and requires us to uphold the circuit court’s decision unless no reasonable jurist would have ruled similarly. To prevail under either of these standards, an appealing party must clear a high bar. Saber fails to do so. First, there was evidence to support denying the motion to strike because Ms. Clark’s theory was one of general negligence that Saber failed to care for Mr. Clark adequately. Second, the circuit court did not abuse its

⁸ Despite Saber’s argument that *Nelson* held that statutory beneficiaries must produce evidence of their sorrow, mental anguish, or loss of solace to support a damages award under Code § 8.01-53(B), this cannot contradict the controlling precedent set by the Supreme Court’s decision in *Gamble*. As in *Gamble*, where the jury reasonably inferred a father experienced “sorrow, suffering and mental anguish” when his sixteen-year-old daughter was killed in a car accident, the same inference applies here: the jury reasonably inferred that two grandsons—after already losing their father—experienced sorrow, suffering, and mental anguish when their grandfather passed away. In *Nelson*, we held that if the “jury was unaware of [the statutory beneficiary’s] existence or involvement until closing arguments,” there was no evidence to support the verdict. Slip op. at 14. Here, Nicholas and Phillip were mentioned together as siblings during the *evidence* phase of trial. At that point, the jury could infer their sorrow given the familial relationship to Mr. Clark. See *Gamble*, 208 Va. at 180.

discretion in admitting evidence of Harrell's termination. And third, the judgements to Phillip and Nicholas were not plainly wrong. For these reasons, we affirm the circuit court.

Affirmed.