THIRD DIVISION
DILLARD, P. J.,
GOBEIL and PIPKIN, JJ.

NOTICE: Motions for reconsideration must be received no later than 4:30 pm on the 10th day after the decision was issued to be deemed timely filed.
https://www.gaappeals.gov/rules

October 29, 2026

In the Court of Appeals of Georgia

A26A1599. WAL-MART STORES EAST, L.P. v. MEDDERS.

PIPKIN, Judge.

Appellant Wal-Mart Stores East, L.P.[1] appeals the judgment on jury verdict entered against it in this personal-injury action filed by Appellee Ruby Medders. As explained below, we agree with Wal-Mart that portions of closing argument made by Medders' counsel concerning noneconomic damages were improper and harmful; consequently, we reverse the judgment of the trial court and remand this matter for a new trial.

---

[1] This Court has been presented with at least two different spellings of Appellant's name; the record and transcript reflect a spelling of Wal-Mart, while Appellant's brief reflects a spelling of Walmart. Because this Court must be guided by the record, we use the spelling "Wal-Mart."

1. The issue before us is a legal one -- which we review de novo, see *Cardinale v. Keane*, 362 Ga. App. 644, 646(1) (869 SE2d 613) (2022) -- and requires only a brief exploration of the factual allegations and procedural history underlying this appeal.

In September 2022, Medders brought this action against Wal-Mart for injuries she allegedly sustained to her knee and ankle after a slip-and-fall incident during a November 2020 visit to a Valdosta Wal-Mart store. The record reflects that Medders had some pre-existing knee issues but that, at a January 2026 jury trial, she asserted that her knee pain intensified after the fall and eventually required surgical intervention. Wal-Mart, on the other hand, maintained that Medders' injury was pre-existing and that the fall did not necessitate Medders' subsequent surgeries. Both parties presented expert testimony at trial; during Medders' cross-examination of Wal-Mart's expert witness, she focused on the expert's fees, highlighting that the physician's rate as an expert witness was $2,000 an hour generally and $8,000 per trial day.

During closing argument, when addressing how to formulate a sum for Medders' noneconomic damages -- particularly damages for pain and suffering -- Medders argued to the jury as follows: "The defense's own expert ... if he came to the

courtroom like all of us did the last three days, he would have charged $8,000 for a full day ...." Wal-Mart objected and then argued, pointing at certain statutory revisions made as part of Georgia's 2025 tort reform legislation, that Medders' argument was improper because it was not rationally related to evidence of her alleged noneconomic damages. After hearing extensive argument during a bench conference, the trial court, while concerned,[2] concluded that Medders' closing argument was permissible because the expert's rates were part of the evidence presented during trial.

After the bench conference, Medders continued making argument based on the expert's rate -- suggesting that the expert's per diem fee was the equivalent of three-million dollars annually -- and Wal-Mart again objected to Medders' "phantom numbers," eventually moving for a mistrial or, in the alternative, "a really good curative instruction." Both requests were denied. Medders' counsel again returned to his closing, pivoting to a different basis for calculating noneconomic damages -- which, again, Wal-Mart objected to -- and suggested to the jury that it could formulate

[2] The transcript reflects that the trial court was faced with interpreting novel statutory authority on the fly during closing argument while an "aggravated" jury waited for resolution.

a damage award at an hourly rate closer to minimum wage, between $7.25 an hour and $12.15 an hour.

The case was eventually submitted to the jury, which returned a general verdict in favor of Medders and awarded her $975,000 in damages; the trial court entered a judgment on that verdict. Now, on appeal, Wal-Mart asserts that the trial court erred as a matter of law by denying its motion for mistrial or, "at a minimum, the request for a curative instruction." The heart of Wal-Mart's claim is that the trial court misconstrued and misapplied statutory authority. We agree.

2. From 1960 until April 2025, OCGA § 9-10-184 (1960) provided, in whole, as follows: "In the trial of a civil action for personal injuries, counsel shall be allowed to argue the worth or monetary value of pain and suffering to the jury; provided, however, that any such argument shall conform to the evidence or reasonable deductions from the evidence in the case." Early on, this Court afforded this statute a liberal interpretation and application, beginning with *Hardwick v. Price*, 114 Ga. App. 817 (152 SE2d 905) (1966). In that case, plaintiff's counsel asked the jury during closing argument to calculate damages for pain and suffering by awarding his client "a dime an hour, the price of a measl[y] bottle of Coca-Cola" for "what she has gone

through, from now to the end of her allotted time on this earth .... At ten cents an hour, that is $2.40 a day, there are 365 days in a year." Id. at 820(2). On appeal, this Court affirmed, concluding that OCGA § 9-10-184 (1960) authorized counsel "to argue to the jury the per diem, monthly or yearly value of a plaintiff's pain and suffering provided such argument is within the bounds of reasonable deduction from the evidence in the case," and, further, that trial counsel's suggestion "that the hourly worth of the plaintiff's pain and suffering should be as much as the price of a measly bottle of Coca-Cola was not, under the facts of this case, an unreasonable deduction from the evidence." *Hardwick*, 114 Ga. App. at 820-21(2).

More recent decisions from this Court reflect that these "unit value" arguments referencing arbitrary sums have continued more than a half-century later. For instance, in *Barker v. Grier*, 380 Ga. App. 157 (932 SE2d 436) (2026), counsel asked the jury to give the plaintiff "500 dollars for every single day that the defense has denied taking responsibility," id. at 159(1); in *Southern Clearing & Grinding v. Garcia*, 375 Ga. App. 62 (913 SE2d 732) (2025), plaintiff's counsel asked the jury to calculate "compensatory damages" based on the defendant's payments to their expert, id at 68(3)(a)(iii); and, in *White v. McGouirk*, 370 Ga. App. 318 (897 SE2d 100)

(2024), counsel asked the jury to formulate noneconomic damages based on the salary of CEOs and professional athletes, id. at 320-21(1).

However, effective April 21, 2025, OCGA § 9-10-184 was overhauled, see Ga. L. 2025 p. 19 § 1, and now states, in relevant part, as follows:

> In the trial of any action to recover damages for bodily injury or wrongful death, counsel for any party shall be allowed to argue the worth or monetary value of noneconomic damages only after the close of evidence and at the time of such party's first opportunity to argue the issue of damages, provided that such argument shall be rationally related to the evidence of noneconomic damages[3] and shall not make reference to objects or values having no rational connection to the facts proved by the evidence.

OCGA § 9-10-184(c)(1). The statute also reaffirms that "the measure of such damages being the enlightened conscience of an impartial jury." Id at (b).

Looking at this text in accordance with its plain language, see *Deal v. Coleman*, 294 Ga. 170, 172-73(1)(a) (751 SE2d 337) (2013), the revised statute provides that, in

---

[3] The statute defines "[n]oneconomic damages," in relevant part, to mean "all damages recoverable in tort for bodily injury ... other than economic damages, including, but not limited to, damages for physical or emotional pain, discomfort, anxiety, hardship, distress, suffering, inconvenience, physical impairment, [and] mental anguish[.]" OCGA § 9-10-184(a)(2).

relevant cases, (1) attorneys are entitled "to argue the worth or monetary value of noneconomic damages"; (2) such an argument may only be made "after the close of evidence and at the time of such party's first opportunity to argue the issue of damages"; (3) the argument must be "rationally related to the evidence of noneconomic damages"; and, finally, (4) the attorney must "not make reference to objects or values having no rational connection to the facts proved by the evidence." Id. Having outlined the substance of the new statute, it is apparent that Medders is mistaken when she asserts that "the core provision concerning closing argument" is "essentially the same" in both the old and new version of the statute.

Under the old provision, any argument concerning noneconomic damages was permissible so long as it "conform[ed] to the evidence or reasonable deductions from the evidence *in the case*," whereas the new provision restricts, at the very least, such argument to that which is rationally related specifically to *evidence of noneconomic damages* and, further, prohibits references to "objects and values" unrelated to the evidence of the case. In light of these changes, we agree with Wal-Mart that OCGA 9-10-184(c)(1) now "precludes arguments that compare noneconomic damages to unrelated values like Plaintiff advanced in this case." Indeed, Wal-Mart is correct in

asserting that Medders' counsel violated the statute because "references to [the expert's] hourly rate and to $7.25 ... had no rational connection to Plaintiff's noneconomic damages[.]"[4]

Medders disagrees, asserting that "the real jist of Wal-Mart's argument" is related to OCGA § 24-4-403 ("Rule 403"),[5] namely, "that a reference to an expert's rate has low probative value or a weak connection to the value of pain and suffering, and is out-weighed by some risk of unfair prejudice." This argument misses the mark. Rule 403 concerns whether evidence is admissible in the first instance, while OCGA § 9-10-184(c)(1) concerns how the evidence adduced at trial may be presented to the jury in a closing argument; Rule 403 requires weighing the value of potential evidence for admissibility, while OCGA § 9-10-184(c)(1) demands an evaluation of the relationship between admitted evidence and closing argument. Thus, on appeal, we are tasked with evaluating whether the arguments in question were rationally related

[4] We also agree with Wal-Mart that the minimum-wage argument had no rational connection to the facts proved by the evidence.

[5] Rule 403 states: "Relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

to evidence of noneconomic damages that was admitted at trial -- independent of any questions of admissibility or probative value -- and we agree with Wal-Mart that, under the evidence presented at trial, the arguments concerning minimum wage and the expert's fee were improper under the new statute.

That said, we disagree with Wal-Mart that OCGA § 9-10-184(c)(1) prohibits "unit value" and so-called "per diem" arguments like the one used by Medders' counsel during closing in this case. Although Wal-mart contends that such arguments "are impermissible because, as a matter of logic, an hourly rate paid twenty-four hours per day for the rest of an individual's life has no rational connection to noneconomic damages," these "unit value" or "per diem" arguments concern the manner of formulating or calculating damages, and, under the plain language of OCGA § 9-10-184(c)(1), counsel is expressly entitled to make argument concerning "the worth or value of noneconomic damages." Id.

3. Had the trial court recognized that Medders' argument ran afoul of OCGA § 9-10-184(c), remedial action would have been required. Subsection (d) explains, in relevant part, that "[i]f counsel ... makes any argument or reference, prohibited by this Code section in the hearing of the jury ... the court *shall* take remedial measures as

provided in Code Section 9-10-185." (Emphasis supplied.) Turning to OCGA § 9-10-185, that statute provides as follows:

> Where counsel in the hearing of the jury make statements of prejudicial matters which are not in evidence, it is the duty of the court to interpose and prevent the same. On objection made, the court shall also rebuke counsel and by all needful and proper instructions to the jury endeavor to remove the improper impression from their minds. In its discretion, the court may order a mistrial if the plaintiff's attorney is the offender.

In this case, as explained above, Wal-Mart asked the trial court for both a curative instruction and a mistrial; however, both were denied. In such circumstances,

> when a litigant's closing argument is improper under the law, and the trial court overrules his opponent's objection on that basis and fails to take corrective action, an appellate court will reverse a judgment if it finds that the uncorrected improper argument could have affected the jury's verdict.

White, 370 Ga. App. at 322-23(1)(a). See also *Stolte v. Fagan*, 291 Ga. 477, 482(2)(a) (731 SE2d 653) (2012), overruled on other grounds, *Williams v. Harvey*, 311 Ga. 439, 447-51(1)(b) (585 SE2d 479) (2021).

Here, there is no dispute that Medders was seeking only $186,000 in medical bills, but then, on the back of her improper argument, she asked the jury for

approximately $950,000 in noneconomic damages and asserted that an "appropriate award could be $1,136,000." The jury subsequently returned a verdict for $975,000, and we have little trouble concluding that the uncorrected improper argument of counsel could have affected the jury's verdict. Cf. *Myrick v. Stephanos*, 220 Ga. App. 520, 520(1) (472 SE2d 431) (1996) (reversing jury verdict as a result of an improper closing that included, among other things, an argument that amounted to a plea for punitive damages where only compensatory damages were sought).

For theses reasons, the judgment of the trial court is reversed, and this matter is remanded for a new trial.

Judgment reversed and case remanded. Dillard, P. J., and Gobeil, J., concur.