

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
April 15, 2026 Session

FILED

10/19/2026

Clerk of the
Appellate Courts

JAMES STAMPER v. KYLE A. MILLER ET AL.

Appeal from the Circuit Court for Hamilton County
No. 23C172 **Kyle E. Hedrick, Judge**

No. E2025-01304-COA-R3-CV

This is a negligence action arising from an accident wherein the plaintiff pedestrian was struck by a motor vehicle driven by the defendant driver in a crosswalk. The crosswalk was partially blocked by a parked repair truck belonging to the defendant city and operated by a city employee. Following a jury trial, the jury found that all parties were negligent and assigned comparative fault of twenty-five percent to the plaintiff, seventy percent to the city, and five percent to the driver. Upon the jury's finding that the plaintiff had suffered \$250,000.00 in damages, the trial court entered a judgment in favor of the plaintiff in the amount of \$187,500.00 (as seventy-five percent of his damages), with \$175,000.00 to be paid by the city and \$12,500.00 to be paid by the driver. The city and the driver each filed motions for judgment notwithstanding the verdict and remittitur, and the city also filed a motion for new trial. Following a hearing, the trial court denied all post-trial motions. The city appealed, and the driver has also raised an issue on appeal. Discerning no reversible error, we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court
Affirmed; Case Remanded

THOMAS R. FRIERSON, II, J., delivered the opinion of the court, in which KRISTI M. DAVIS and WILLIAM E. PHILLIPS, II, JJ., joined.

Andrew S. Trundle, Gregory E. Glass, and Phillip A. Noblett, Chattanooga, Tennessee, for the appellant, City of Chattanooga, Division of Public Works.

Douglas M. Campbell, Jr., Chattanooga, Tennessee, for the appellee, Kyle A. Miller.

G. Brent Burks and Kathleen M. Reed, Chattanooga, Tennessee, for the appellee, James Stamper.

OPINION

I. Factual and Procedural Background

On January 25, 2023, the plaintiff, James Stamper, filed a complaint in the Hamilton County Circuit Court (“trial court”), alleging claims of negligence and negligence *per se* against the defendants, the City of Chattanooga, Division of Public Works (“the City”) and Kyle A. Miller. Mr. Stamper averred that on January 28, 2022, at approximately 2:35 p.m., he had been walking south on East Main Street in Chattanooga (“East Main”) when he had entered a crosswalk at the intersection of East Main and Rossville Avenue and had been struck by a Toyota Tundra pick-up truck driven by Mr. Miller. According to Mr. Stamper, he had “pressed the crosswalk flashers that allow[ed] him to enter the intersection with the right of way.” Mr. Stamper acknowledged that Mr. Miller had previously alleged an inability to see the flashing crosswalk sign due to the presence of a parked vehicle owned by the City. Mr. Stamper alleged that due to the defendants’ negligence, he had suffered severe injuries; pain, mental anguish, and suffering; medical and hospital expenses; and loss of enjoyment of life. He requested a jury trial and a judgment in an amount up to \$250,000.00.

Mr. Miller filed an answer on February 24, 2023, admitting that the accident had occurred but denying all allegations of negligence against him. Mr. Miller averred that the City’s vehicle had been “improperly parked on [East Main] blocking [Mr. Miller’s] view of the crosswalk and sidewalk ahead.” Mr. Miller also alleged that Mr. Stamper had been guilty of negligence because he had “bolted across the roadway without stopping and looking, and [had run] directly into Miller’s front passenger side-view mirror and wheel well.” Mr. Miller requested a jury trial.

On March 15, 2023, the City filed a motion to dismiss or for a more definite statement. Pursuant to Tennessee Rule of Civil Procedure 12.02(6), the City asserted that Mr. Stamper had failed to state a claim upon which relief could be granted because he had made “no allegations that would remove [the] City’s immunity from suit.” Mr. Stamper filed a response opposing the City’s motion. Following a hearing, the trial court entered an order allowing Mr. Stamper to file an amended complaint within fifteen days. Mr. Stamper subsequently filed a timely amended complaint, adding an allegation that at all times during the incident, employees of the City had been acting within the course and scope of their employment and that their negligence should be imputed to the City through the doctrine of *respondeat superior*.

The City filed an answer to the amended complaint on May 19, 2023, raising defenses of (1) failure to state a claim upon which relief could be granted; (2) denial that the City’s employees had acted negligently; (3) immunity under Tennessee’s Governmental Tort Liability Act (“GTLA”); (4) the City’s exemption from “the statutory

rules of the road,” pursuant to Tennessee Code Annotated §§ 55-8-106 and 55-8-107, because the City’s employees were “actually and actively engaged in highway maintenance”; (5) the doctrine of comparative negligence; (6) Mr. Miller’s comparative fault; (7) the public duty doctrine; and (8) Mr. Stamper’s allegedly reckless conduct. Upon additional discovery, the City filed an amended answer striking its sixth defense regarding Mr. Miller’s comparative fault. On December 4, 2024, Mr. Miller filed an answer to the amended complaint wherein he alleged that Mr. Stamper had committed statutory violations governing pedestrian conduct that constituted negligence *per se* and that, together with Mr. Stamper’s alleged acts of common law negligence, had proximately caused the accident and damages.

On December 6, 2024, Mr. Stamper filed a “Motion to Amend Amended Complaint,” seeking to add a claim that the City had violated Tennessee Code Annotated § 39-17-307, which is entitled: “Highways and roads; obstruction; penalties; exemptions.” Mr. Stamper subsequently filed a supplemental motion to amend the amended complaint, seeking to add Chattanooga City Code 24-286 (“Prohibited in certain specified places”) and Chattanooga City Code 24-9 (“Obedience by public employees”) as grounds for relief. By agreed order, the trial court allowed Mr. Stamper to file his second amended complaint, which he did on February 4, 2025. The City and Mr. Miller each filed an answer to the second amended complaint.

In preparation for trial, the parties filed various motions *in limine*. At issue on appeal is the City’s motion *in limine* to “exclude all statements referencing and/or alluding to the alleged illegality of the parking of the City’s highway maintenance vehicle” pursuant to Tennessee Code Annotated § 55-8-107. The City argued that its vehicle was “engaged in work upon the surface of the highway,” *see* Tenn. Code Ann. § 55-8-107 (West July 9, 2012, to current), because the vehicle’s operator, Jake Keller, a traffic signal technician, had parked the vehicle, a truck with a bucket extension (“the Bucket Truck”), in order to have access to the traffic signal at the crosswalk. Mr. Stamper filed a memorandum of law opposing the inclusion of § 55-8-107. Following two hearings on the matter, the trial court denied the City’s motion *in limine* concerning § 55-8-107 in an order entered on May 1, 2025. The court determined that the City had failed to show that “it was necessary for [Mr. Keller] to be parked there that day to do his job and, in fact, the facts demonstrate quite the opposite, that he never used his bucket on that day.”

Each of the parties submitted proposed jury instructions to the trial court. At issue on appeal are two instructions that the court declined to give the jury: (1) the City’s proposed jury instruction regarding § 55-8-107 (described above) and (2) Mr. Miller’s proposed instruction regarding Tennessee Code Annotated § 55-8-112(a)(2) (West August 14, 2008, to current), which provides for drivers to proceed with caution upon a flashing yellow signal. Mr. Miller averred that although he admittedly did not stop his vehicle at the crosswalk, the evidence demonstrated that he did follow the requirement of § 55-8-112(a)(2) by proceeding with caution.

The trial court conducted a three-day trial beginning on April 29, 2025. In addition to his own testimony, Mr. Stamper presented testimony from the following witnesses: Mr. Keller, the City employee who had parked the City vehicle at issue; City police officer Gina Avila, who had responded to the accident; Rebecca Campbell, an eyewitness to the accident; Derek Green, Mr. Stamper's brother; and Cindy Green, Mr. Stamper's mother. By agreement, Mr. Stamper also presented the deposition testimony of Dr. James Peter Little, a medical expert who had examined Mr. Stamper. It is undisputed that Mr. Stamper suffered a fracture of his right foot at the base of the fifth metatarsal, which required surgery and immobilization in a cast for approximately six months. Mr. Stamper's testimony and that of his mother and brother indicated that Mr. Stamper had also suffered depression due to the injury, as well as fear of walking in crosswalks and operating a motor vehicle. Mr. Miller testified on his own behalf.

At the close of Mr. Stamper's proof and again at the close of Mr. Miller's proof, the City and Mr. Miller each moved for a directed verdict. The trial court denied the motions, concluding that there was sufficient evidence to send the case to the jury. The parties announced that they had agreed upon the jury verdict form before it was presented to the jury.

After deliberation, the jury announced its verdict on May 1, 2025. On the jury verdict form, the jury found it more likely than not that the City, Mr. Miller, and Mr. Stamper each had been negligent and that the actions of each had been a legal cause of Mr. Stamper's injuries. The jury assigned comparative fault as follows:

Mr. Stamper:	25%
Mr. Miller:	5%
The City:	70%

The jury further found that Mr. Stamper had proven, by a preponderance of the evidence, damages in the total amount of \$250,000.00, delineated as follows:

Non-Economic Damages:

(a)	Pain and suffering—past	\$50,000.00
(b)	Pain and suffering—future	\$35,000.00
(c)	Permanent impairment	0.00
(d)	Loss of ability to enjoy life—past	\$40,000.00
(e)	Loss of ability to enjoy life—future	\$11,261.18
(f)	Mental anguish	\$75,000.00

Economic Damages:

(g)	Medical care/services—past	\$38,738.82
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On May 5, 2025, the trial court entered a “Final Judgment” approving the jury’s verdict and damages award without further comment.

On June 4, 2025, the City filed a “Motion for Judgment Notwithstanding the Verdict, or alternatively, Motion for a New Trial, or alternatively, Motion for Remittitur of Jury Verdict.” Mr. Miller concomitantly filed a motion for judgment notwithstanding the verdict and motion for remittitur. Regarding remittitur, the City and Mr. Miller asserted that the jury’s awards for “pain and suffering” and “mental anguish” were duplicative. Mr. Stamper filed responses opposing the post-trial motions. Following a hearing, the trial court entered an order on August 18, 2025, denying all post-trial motions. The City timely appealed.

II. Issues Presented

The City has presented three issues on appeal, which we have restated as follows:

1. Whether the trial court erred by declining to find that the City had sovereign immunity from Mr. Stamper’s claims pursuant to the GTLA.
2. Whether the trial court erred by denying the City’s motion *in limine* and proposed jury instruction predicated on Tennessee Code Annotated § 55-8-107.
3. Whether the trial court erred by denying the City’s motion for remittitur predicated on purportedly duplicative damages awarded to Mr. Stamper.

Mr. Miller has presented the following additional issue, which we have also restated:

4. Whether the trial court erred by denying Mr. Miller’s motions for directed verdict and judgment notwithstanding the verdict.

III. Standard of Review

We review a trial court’s decision to grant or deny a directed verdict *de novo*. See *Brown v. Crown Equip. Corp.*, 181 S.W.3d 268, 281 (Tenn. 2005) (“We will affirm a directed verdict when the evidence is susceptible to only one conclusion.”). The same standard applies to a motion for judgment notwithstanding the verdict. *Mairose v. Fed. Exp. Corp.*, 86 S.W.3d 502, 511 (Tenn. Ct. App. 2001) (“In ruling on a motion for a judgment notwithstanding the verdict, the standard applied by both the trial court and the appellate court is the same as that applied to a motion for a directed verdict made during the trial.”).

We review a trial court's decision concerning a motion *in limine* for an abuse of discretion. *See Singh v. Larry Fowler Trucking, Inc.*, 390 S.W.3d 280, 284 (Tenn. Ct. App. 2012) (noting that an appellate court reviews a trial court's ruling on a motion *in limine* under an abuse of discretion standard). As this Court has explained:

Trial courts are given wide latitude on evidentiary decisions and we will only overturn the trial court's decision upon a showing of an abuse of discretion. *Danny L. Davis Contractors, Inc. v. Hobbs*, 157 S.W.3d 414, 419 (Tenn. Ct. App. 2004). "The abuse of discretion standard requires us to consider: (1) whether the decision has a sufficient evidentiary foundation; (2) whether the trial court correctly identified and properly applied the appropriate legal principles; and (3) whether the decision is within the range of acceptable alternatives." *Id.* (citing *Crowe v. First Am. Nat'l Bank*, No. W2001-00800-COA-R3-CV, 2001 WL 1683710, at *9 (Tenn. Ct. App. Dec. 10, 2001)).

McGarity v. Jerrolds, 429 S.W.3d 562, 566 (Tenn. Ct. App. 2013).

Respecting review of a trial court's jury charge, our Supreme Court has elucidated:

Whether a jury instruction is erroneous is a question of law and is therefore subject to de novo review with no presumption of correctness. *Solomon v. First Am. National Bank of Nashville*, 774 S.W.2d 935, 940 (Tenn. Ct. App. 1989). The legitimacy of a jury's verdict is dependent on the accuracy of the trial court's instructions, which are the sole source of the legal principles required for the jury's deliberations. Therefore, a trial court is under a duty to impart "substantially accurate instructions concerning the law applicable to the matters at issue." *Hensley v. CSX Transp., Inc.*, 310 S.W.3d 824, 833 (Tenn. Ct. App. 2009) (quoting *Bara v. Clarksville Mem'l Health Sys., Inc.*, 104 S.W.3d 1, 304 (Tenn. Ct. App. 2002)). When considering whether a trial court committed prejudicial error in a jury instruction, it is our duty to review the charge in its entirety and consider it as a whole, and the instruction will not be invalidated if it "fairly defines the legal issues involved in the case and does not mislead the jury." *Otis v. Cambridge Mut. Fire Ins. Co.*, 850 S.W.2d 439, 446 (Tenn. 1992). The judgment of a trial court will not be set aside based on an erroneous jury instruction unless it appears that the erroneous instruction more probably than not affected the judgment of the jury. Tenn. R. App. P. 36(b); *Gorman v. Earhart*, 876 S.W.2d 832, 836 (Tenn. 1994).

Nye v. Bayer Cropscience, Inc., 347 S.W.3d 686, 699 (Tenn. 2011).

Concerning review of a jury's verdict, our Supreme Court has instructed:

Where a party invokes the right to a jury trial, our constitution requires “that the jury be allowed to determine all disputed issues of fact.” *Spence v. Allstate Ins. Co.*, 883 S.W.2d 586, 594 (Tenn. 1994). The questions of disputed fact to be resolved by the jury include the type and amount of any damages awarded to the plaintiff.

However, “a verdict of a jury is subject to the supervision of the trial court.” *Foster v. Amcon Int’l, Inc.*, 621 S.W.2d 142, 144 (Tenn. 1981). “No verdict is valid until it is approved by the trial court judge.” *Davidson v. Lindsey*, 104 S.W.3d 483, 488 (Tenn. 2003) (citing *Cumberland Tel. & Tel. Co. v. Smithwick*, 112 Tenn. 463, 79 S.W. 803, 805 (1904)). In determining whether to approve the jury’s verdict, the trial judge acts as a “thirteenth juror”:

“The reasons given for the rule are, in substance, that the circuit judge hears the testimony, just as the jury does, sees the witnesses, and observes their demeanor upon the witness stand; that, by his training and experience in the weighing of testimony, and the application of legal rules thereto, he is especially qualified for the correction of any errors into which the jury by inexperience may have fallen, whereby they have failed, in their verdict, to reach the justice and right of the case, under the testimony and the charge of the court; that, in our system, this is one of the functions the circuit judge possesses and should exercise—as it were, that of a thirteenth juror. So it is said that he must be satisfied, as well as the jury; that it is his duty to weigh the evidence; and, if he is dissatisfied with the verdict of the jury, he should set it aside.”

Davidson, 104 S.W.3d at 488 (quoting *Smithwick*, 79 S.W. at 804). “The purpose of the thirteenth juror rule is to be a ‘safeguard . . . against a miscarriage of justice by the jury.’” *State v. Moats*, 906 S.W.2d 431, 434 (Tenn. 1995) (quoting *State v. Johnson*, 692 S.W.2d 412, 415 (Tenn. 1985) (Drowota, J., dissenting)).

The trial judge must be independently satisfied with the verdict; if the trial judge is dissatisfied with the verdict, the verdict must be set aside. *Holden v. Rannick*, 682 S.W.2d 903, 905 (Tenn. 1984). In addressing a motion for a new trial, the trial court has such broad discretion that it is not bound to give reasons for its action in granting or denying a new trial based on the preponderance of the evidence. *James E. Strates Shows, Inc. v. Jakobik*, 554 S.W.2d 613, 615 (Tenn. 1977). Indeed, when a trial judge approves the verdict without comment, the appellate court will presume that

the trial judge has adequately performed his function as the thirteenth juror. *Holden*, 682 S.W.2d at 905 (citing *Cent. Truckaway Sys. v. Waltner*, 36 Tenn. App. 202, 253 S.W.2d 985, 991 (1952)).

Borne v. Celadon Trucking Servs., Inc., 532 S.W.3d 274, 308 (Tenn. 2017) (additional internal citations omitted). Finally, when “the trial court has denied a defendant’s motion seeking remittitur, this Court must review that decision by determining whether there is material evidence to support the amount of [the] verdict.” *Hutsell v. Kenley*, No. E2013-01837-COA-R3-CV, 2014 WL 2949455, at *5 (Tenn. Ct. App. June 27, 2014).

IV. Governmental Tort Liability Act

The City contends that it has retained sovereign immunity from Mr. Stamper’s claims under the GTLA because the trial court’s “Final Judgment” and the jury verdict form, taken together, failed to state sufficient findings of fact necessary to remove the City’s immunity. Mr. Stamper responds that the trial court “correctly held that the City’s sovereign immunity was removed . . . based on the jury’s finding that the City’s negligent operation of its vehicle was a proximate cause of [Mr. Stamper’s] injuries.”¹ The City raised this issue in its motion for a judgment notwithstanding the verdict or for new trial. In denying the motion, the trial court determined that (1) Mr. Stamper had presented legally sufficient evidence to remove immunity under the GTLA, (2) the City employee’s negligent operation or use of a motor vehicle in the scope of his employment warranted removal of immunity, and (3) the City had waived any objection to the jury verdict form. Upon careful review, we agree with the trial court.

Governmental entities, such as the City, possess sovereign immunity from lawsuits except as they consent to be sued. *See Lawson v. Hawkins Cnty.*, 661 S.W.3d 54, 59 (Tenn. 2023). The GTLA, codified at Tennessee Code Annotated § 29-20-101, *et seq.*, governs claims against governmental entities. *See Lawson*, 661 S.W.3d at 59-60. As our Supreme Court has explained:

In 1973, the Legislature enacted the GTLA, which reaffirmed generally the grant of sovereign immunity provided at common law and in the Tennessee Constitution by stating that “all governmental entities shall be immune from suit for any injury which may result from the activities of such governmental entities wherein such governmental entities are engaged in the exercise and discharge of any of their functions, governmental or proprietary.” Tenn. Code Ann. § 29-20-201(a). However, in addition to reaffirming the general grant of immunity, the GTLA also enumerates certain

¹ Although the City maintains that the trial court never explicitly made this finding regarding the removal of immunity under the GTLA, we note that the court did make the finding in its order denying all post-judgment motions.

statutory exceptions where governmental immunity is specifically removed.
Id. § 29-20-202 [through-205.]

Young v. City of LaFollette, 479 S.W.3d 785, 790 (Tenn. 2015) (additional internal citations omitted). Pursuant to Tennessee Code Annotated § 29-20-201(c) (West July 1, 2008, to current), “[w]hen immunity is removed by this chapter any claim for damages must be brought in strict compliance with the terms of this chapter.”

Tennessee Code Annotated § 29-20-202(a) (West July 9, 2012, to current) provides:

Immunity from suit of all governmental entities is removed for injuries resulting from the negligent operation by any employee of a motor vehicle or other equipment while in the scope of employment.

Tennessee Code Annotated § 29-20-310(a) (West June 1, 2022, to March 20, 2023) further provides:

The court, before holding a governmental entity liable for damages, must first determine that the employee’s or employees’ act or acts were negligent and the proximate cause of plaintiff’s injury, that the employee or employees acted within the scope of their employment and that none of the exceptions listed in § 29-20-205 are applicable to the facts before the court.

See Lawson, 661 S.W.3d at 60 (“In particular, the Act lifted immunity for ‘injur[ies] proximately caused by a negligent act or omission of any employee within the scope of his employment.’”). None of the exceptions provided in Tennessee Code Annotated § 29-20-205 (West June 1, 2022, to March 20, 2023) apply to this action. Although the GTLA requires that actions against a governmental entity be heard without a jury, in cases such as this one when at least one defendant is a governmental entity and at least one is not, “the case shall be heard and decided by a jury upon the demand of any party.” *See* Tenn. Code Ann. § 29-20-313(b) (West July 9, 2012, to current).

Regarding negligence, this Court has previously explained:

To bring a successful negligence claim, a plaintiff must present evidence to establish each of the following elements: (1) a duty of care owed by the defendant to the plaintiff; (2) conduct by the defendant falling below the applicable standard of care that amounts to a breach of that duty; (3) an injury or loss; (4) causation in fact; and (5) proximate, or legal, causation.

Peters-Asbury v. Knoxville Area Transit, Inc., 544 S.W.3d 354, 359 (Tenn. Ct. App. 2016); *see Haynes v. Hamilton Cnty.*, 883 S.W.2d 606, 611 (Tenn. 1994) (“In Tennessee, no claim for negligence can succeed in the absence of any one of [these] elements.”).

In arguing that a final judgment must explicitly contain findings related to all elements necessary to remove sovereign immunity under the GTLA, the City relies on this Court's decision in *Brandon v. Shelby Cnty.*, No. W2017-00780-COA-R3-CV, 2018 WL 5013779 (Tenn. Ct. App. Oct. 16, 2018). In *Brandon*, this Court affirmed the trial court's dismissal of the plaintiff's negligence action because the complaint "contain[ed] no express allegation that an employee of [the defendant county] negligently caused [the plaintiff's] injuries while acting within the scope of his or her employment." *Id.* at *4. The *Brandon* Court clarified:

Pursuant to this Court's well-settled interpretation of the GTLA, in order to remove immunity under the statute, any complaint seeking to hold a governmental entity liable for the negligence of an employee under the GTLA must contain an express allegation that negligence occurred while a government employee acted within the scope of his or her employment.

Id. (emphasis added).

In the instant action, the City initially responded to Mr. Stamper's complaint by filing a motion to dismiss wherein the City averred that Mr. Stamper had made "no allegations that would remove [the] City's immunity from suit" under the GTLA. Mr. Stamper then filed an amended complaint to add his allegation that during the incident, employees of the City had been acting within the course and scope of their employment. In his amended complaint and second amended complaint, which the court allowed Mr. Stamper to file by agreed order, Mr. Stamper specifically alleged that "[a]t all times herein the negligent/reckless acting city employee(s) were acting within the course and scope of their employment and their negligence is imputed to the City of Chattanooga through the doctrine of *Respondeat Superior*." On appeal, the City has not challenged whether the allegations contained in Mr. Stamper's amended and second amended complaints were sufficient to satisfy the requirements set forth in *Brandon*. *See id.* Instead, the City seeks to have this Court extend the *Brandon* holding to apply those requirements to the final judgment and jury verdict form.

In its answer to the second amended complaint, the City, while denying that its employee, Mr. Keller, committed any negligent act, admitted that "a truck driven by its employee was parked at the intersection where the collision took place." The City also averred that at the time of the accident, its employees (Mr. Keller and a coworker) were "actually and actively engaged in highway maintenance." Thus, it is problematic for the City to now argue that Mr. Stamper failed to establish that Mr. Keller's allegedly negligent acts were performed within the scope of his employment. It is clear from the record that at trial, there was no dispute as to whether the Bucket Truck was operated and used by a City employee or employees acting within the scope of their employment. In fact, as the trial court noted during the hearing on the post-judgment motions, the City's "entire

position in this case from its inception has been that [Mr. Keller] was in the scope of his employment and doing exactly what he needed to do.”

Mr. Stamper argues that the City’s admission in its answer “satisfies the [employee’s] ‘acting within the scope’ threshold requirement.” In support, Mr. Stamper relies on this Court’s decision in *Butcher v. Shelby Cnty. Bd. of Educ.*, No. W2024-01202-COA-R3-CV, 2025 WL 2888021 (Tenn. Ct. App. Oct. 10, 2025), which we find to be on point. In *Butcher*, the plaintiffs brought a negligence action against the defendant county school board after one of the plaintiffs was injured in an automobile accident caused by an employee of the school board. *Id.* at *1. The school board moved for involuntary dismissal at the close of trial, asserting that the plaintiff had failed to establish that the individual who caused the accident was an employee. *Id.* The trial court denied the motion upon finding that the school board had admitted that the individual “was its employee acting within the scope of his employment at the time of the accident.” *Id.* at *3.

On appeal in *Butcher*, the school board argued that the plaintiff had failed to prove that the board’s employee was the “right type” of employee, citing to elements that must be demonstrated under Tennessee Code Annotated § 29-20-107(a) to establish that an individual not elected or appointed to a board is a board employee. *Id.* at *3. This Court rejected the school board’s argument because the board had admitted in its answer, as well as another pleading, that the individual was an employee acting within the scope of his employment at the time of the accident. *Id.* (“We conclude that [the plaintiffs] were not required to prove that [the employee] was the ‘right type’ of employee because the Board admitted that he was.”). As the *Butcher* Court stated:

It is well-established that “[a]n admission in a pleading is conclusive against the pleader.” *John P. Saad & Sons, Inc. v. Nashville Thermal Transfer Corp.*, 642 S.W.2d 151, 152-53 (Tenn. Ct. App. 1982). This Court has explained the reasoning behind this rule, to-wit:

This is so because pleadings are for the purpose of notifying adversary and the court of the contentions of the pleader and thus defining the issues. If a fact alleged in a pleading is admitted in the pleading of the adversary, then that fact ceases to be an issue in the case and there is no need to prepare or hear evidence on the subject.

Facts confessed in pleadings are binding on the parties and offered evidence of such facts is properly excluded as irrelevant. *Wilson v. Maury County Bd. of Ed.*, [302 S.W.2d 502, 507 (Tenn. 1957)].

John P. Saad & Sons, Inc., 642 S.W.2d at 152[.]

Id. at *3-4 (additional internal citations omitted). The *Butcher* Court further held that “because the facts had been conclusively established, the trial court was not required to make specific findings of fact as to whether [the employee who caused the accident] was a Board employee.” *Id.* at *4.

Here, the City argues that to establish the removal of sovereign immunity under the strict compliance requirement of § 29-20-201(c) and the employee requirements of § 29-20-202(a), the final judgment, coupled with the jury verdict form, had to state the following specific findings:

1. Mr. Stamper suffered an injury;
2. the injury was both factually and legally caused by the operation of a motor vehicle or other equipment;
3. the motor vehicle or other equipment was operated negligently;
4. the motor vehicle or other equipment was operated by a government employee; and
5. the government employee was operating the motor vehicle or other equipment in the scope of his government employment.

The flaw in the City’s argument is that only the second and third elements listed above were disputed at trial. The City admitted in its answer and openly acknowledged at trial that Mr. Stamper suffered an injury and that Mr. Keller was a City employee acting within the scope of his employment when he parked the Bucket Truck partially in the crosswalk where the accident occurred. The disputed elements—whether the Bucket Truck was operated negligently and whether its negligent operation factually and legally caused Mr. Stamper’s injury—were decided by the jury with specific findings stated in the jury verdict form and approved by the trial court in its final judgment.

Moreover, insofar as the City is arguing that the jury verdict form was insufficient, we agree with the trial court’s finding that the City had waived “any challenge to its structure or content” by failing to object to the form at trial. The trial court cited this Court’s decision in *Keith v. Murfreesboro Livestock Mkt., Inc.*, 780 S.W.2d 751 (Tenn. Ct. App. 1989). In *Keith*, this Court determined that the appellants had “waived their objections to the verdict form used by the jury because of their failure to raise them in a timely manner” when the appellants “[d]espite having the opportunity . . . did not object to the form when the trial court gave it to the jury and did not include the issue in their motion for a new trial.” *Id.* at 759. The *Keith* Court held:

Counsel should object promptly to a proposed verdict form. If possible, they should object to the form before its submission to the jury. However, if unaware of the form’s substance, they should object before the

jury returns its verdict. Failure to make a timely objection to a verdict form constitutes a waiver of the objection.

Id. (internal citations omitted). See *Keeling v. Coffee Cnty.*, No. M2017-01809-COA-R3-CV, 2018 WL 4468401, at *15 (Tenn. Ct. App. Sept. 18, 2018) (determining that the defendant county “waived any objection to the jury verdict form used by the trial court” when “the County assisted the court in drafting the jury verdict form, and the court gave both parties an opportunity to object to the form prior to the beginning of jury deliberations”).

In this case, Mr. Stamper and the City each filed a proposed jury verdict form prior to trial. On the last day of trial, prior to closing arguments and instructions to the jury, the parties announced that they had agreed on a jury verdict form. In particular, when the trial court asked counsel for all parties whether they had been “able to reach a consensus on the verdict form,” the City’s counsel stated: “We were. We were able to work together.” Clearly, the City was fully aware of the jury verdict form’s substance and, rather than objecting to the form, announced the parties’ agreement to it at trial.

The City attempts to distinguish the holding in *Keith* by insisting that “the City is not asserting a technical flaw with the Jury Verdict Form but asserting that it cannot be relied upon to establish findings of fact sufficient to meet [Mr. Stamper’s] burden to remove the City’s sovereign immunity.” We find this distinction unavailing. As noted above, Mr. Stamper was not required to ensure that the trial court’s final judgment and the jury verdict form restated facts already admitted in pleadings by the City. See *Butcher*, 2025 WL 2888021, at *3. Additionally, we agree with the *Keeling* Court’s observation that although the “*Keith* court noted the appellants’ failure to object to the jury verdict form in their motion for a new trial,” the *Keith* court “did not indicate that it would have reached a different result if the appellants had raised the verdict form as an issue in their motion for a new trial.” See *Keeling*, 2018 WL 4468401, at *13 n.6 (citing *Keith*, 780 S.W.2d at 759).² We therefore conclude that the City waived any objections to the jury verdict form.

² The City posits that “a more forgiving standard” concerning when an objection to a jury verdict form must be lodged was established by this Court in *Malibu Equestrian Estate, Inc. v. Sequatchie Concrete Serv., Inc.*, No. M2005-02954-COA-R3-CV, 2007 WL 2200171 (Tenn. Ct. App. July 30, 2007). The *Malibu Equestrian* Court cited the holding in *Keith*, 780 S.W.2d at 759, with approval while noting that Tennessee Rule of Appellate Procedure 3(e) “has been interpreted to encompass alleged errors in verdict forms, so that if the issue had been properly raised in the motion for new trial, it would still be preserved for appeal.” 2007 WL 2200171, at *4. In *Malibu Equestrian*, this Court determined that the appellant’s challenges to the jury verdict form had been waived because in its motion for new trial, the appellant had “simply allege[d] errors in the verdict forms used” without specificity. *Id.* Given that the City has not alleged an “error” in the jury verdict form but has instead alleged that the form prompted insufficient findings of fact by the jury, we determine the City’s reliance on *Malibu Equestrian* to be unpersuasive.

Finally, the City asserts that Mr. Stamper raised issues at trial concerning the City's alleged negligence that were not pled in Mr. Stamper's second amended complaint. Specifically, the City asserts that Mr. Stamper's counsel elicited testimony that may have created doubt in the jurors' minds regarding whether the flashing safety lights on the Bucket Truck were turned on and whether the flashing crosswalk signal was working properly, as well as why the City employees did not set out safety cones. The City thereby urges that the jury may have found the City negligent for reasons that were outside the allegations of the pleadings. In response to this argument during the hearing on the post-judgment motions, the trial court stated, as recorded in the transcript attached to the post-judgment order, that "the only proof put on was with respect to this truck."

It is undisputed that on the day of the accident, Mr. Keller parked the Bucket Truck partially in the crosswalk where Mr. Stamper had crossed after taking a break from his employment at the Hart Gallery to purchase a Dr. Pepper at Ria's Market. The accident occurred when Mr. Stamper attempted to recross the street from Ria's Market to the Hart Gallery. Mr. Stamper testified that he could not see around the Bucket Truck and did not see Mr. Miller's vehicle approaching. Ms. Campbell testified that from her vantage point in her parked vehicle, she could not see Mr. Miller's vehicle approaching until it struck Mr. Stamper.

Regarding signal lights, Mr. Stamper testified that he definitely pushed the button on the crosswalk signal before crossing toward Ria's Market and believed, but was not certain, that he had pushed the button before attempting to recross the street. Mr. Stamper further testified that he did not remember or had not observed whether the crosswalk lights were flashing when he was struck by Mr. Miller's vehicle. Similarly, Ms. Campbell testified that although she observed Mr. Stamper standing by the crosswalk signal button before he recrossed the street, she did not remember whether the crosswalk lights were flashing when he attempted to cross. As to safety equipment on the Bucket Truck, Mr. Keller testified that he had activated safety strobe lights on the Bucket Truck when he parked it. In response to one question from Mr. Stamper's counsel, Mr. Keller acknowledged that he had not set out safety cones but stated that this was because he "was not blocking a lane of vehicle traffic."

Upon thorough review of the record, we agree with the trial court's ruling that the proof centered on the location of the Bucket Truck when the accident occurred and that this proof aligned with the negligence alleged in Mr. Stamper's pleadings. We determine that the City's sovereign immunity had been properly removed under the GTLA, and we discern no error in the trial court's denial of the City's post-judgment motion on this issue.

V. Tennessee Code Annotated § 55-8-107

The City contends that the trial court erred by denying the City the opportunity to present a statutory defense when the court denied the City's motion *in limine* and proposed

jury instruction predicated on Tennessee Code Annotated § 55-8-107. In the motion *in limine*, the City requested exclusion of “all statements referencing and/or alluding to the alleged illegality of the parking” of the Bucket Truck. On appeal, the City argues that § 55-8-107 operates to exempt Mr. Keller’s action in parking the Bucket Truck from the “statutory rules of the road.”³ Mr. Stamper responds that the trial court properly denied the City’s motion *in limine* and proposed jury instructions upon finding that Mr. Keller had parked the Bucket Truck in the crosswalk for the sake of convenience and was not “actually engaged in work” with the Bucket Truck as required by § 55-8-107. Following thorough review, we conclude that the trial court did not err in denying the City’s motion *in limine* and proposed jury instruction related to § 55-8-107.

We review the trial court’s denial of a motion *in limine* for an abuse of discretion. *See McGarity*, 429 S.W.3d at 566. To the extent that this review involves statutory interpretation, we adhere to the following longstanding principles:

When dealing with statutory interpretation, well-defined precepts apply. Our primary objective is to carry out legislative intent without broadening or restricting the statute beyond its intended scope. *Houghton v. Aramark Educ. Res., Inc.*, 90 S.W.3d 676, 678 (Tenn. 2002). In construing legislative enactments, we presume that every word in a statute has meaning and purpose and should be given full effect if the obvious intention of the General Assembly is not violated by so doing. *In re C.K.G.*, 173 S.W.3d 714, 722 (Tenn. 2005). When a statute is clear, we apply the plain meaning without complicating the task. *Eastman Chem. Co. v. Johnson*, 151 S.W.3d 503, 507 (Tenn. 2004). Our obligation is simply to enforce the written language. *Abels ex rel. Hunt v. Genie Indus., Inc.*, 202 S.W.3d 99, 102 (Tenn. 2006). It is only when a statute is ambiguous that we may reference the broader statutory scheme, the history of the legislation, or other sources. *Parks v. Tenn. Mun. League Risk Mgmt. Pool*, 974 S.W.2d 677, 679 (Tenn. 1998). Further, the language of a statute cannot be considered in a vacuum, but “should be construed, if practicable, so that its component parts are consistent and reasonable.” *Marsh v. Henderson*, 221 Tenn. 42, 424 S.W.2d 193, 196 (1968). Any interpretation of the statute that “would render one section of the act repugnant to another” should be avoided. *Tenn. Elec. Power Co. v. City of Chattanooga*, 172 Tenn. 505, 114 S.W.2d 441, 444 (1937). We also must presume that the General Assembly was aware of any prior enactments at the time the legislation passed. *Owens v. State*, 908 S.W.2d 923, 926 (Tenn. 1995).

³ Chapter 8 of Title 55 is entitled, “Operation of Vehicles—Rules of the Road.” In his second amended complaint, Mr. Stamper alleged that the City, through its employees, had committed a negligent act of “Illegal/Improper Parking,” but Mr. Stamper did not cite a specific statute under Title 55, Chapter 8. Mr. Stamper also alleged that the City had violated Tennessee Code Annotated § 39-17-307 (“Highways and roads; obstruction; penalties; exceptions”) and two sections of the Chattanooga City Code.

In re Estate of Tanner, 295 S.W.3d 610, 613-14 (Tenn. 2009).

Tennessee Code Annotated § 55-8-107 provides:

Unless specifically made applicable, the provisions of this chapter and chapter 10, parts 1-5 of this title, except those contained in § 55-10-205 [regarding reckless driving], shall not apply to persons, teams, motor vehicles and other equipment while actually engaged in work upon the surface of a highway or the adjacent right-of-way, but shall apply to these persons and vehicles when traveling to or from such work. This section shall not relieve the driver of a motor vehicle or equipment covered by this section from the duty to drive with due regard for the safety of all persons, all as provided by law.

In December 2024, the City initially filed its motion *in limine* concerning illegality of parking and § 55-8-107. Following a hearing, the trial court entered an order on January 30, 2025, ruling on other motions *in limine* but reserving its decision on the subject motion. On April 29, 2025, the first day of trial, the City filed a brief supporting its motion, and the court heard argument prior to jury selection. It is apparent from the transcript of this argument that on April 29, 2025, the City presented to the court an audio recording of legislative history related to the General Assembly's 2002 amendment of the statute, which added the phrase, "or the adjacent right-of-way," as well as the closing sentence concerning "due regard for the safety of all persons." *See* 2002 Tenn. Pub. Acts, §§ 1-2 (H.B. 2916), eff. May 8, 2002. The trial court reserved its ruling on the motion until after jury selection and a recess during which the court listened to the audio recording.

With the jury out of the courtroom, the trial court denied the City's motion *in limine*. The court ruled that the statute did not apply in the situation at issue because at the time of the accident, the Bucket Truck had been parked on the opposite side of the road from where the City employees were working on the traffic signal. The court stated:

We've got a truck parked on the opposite side of the road and the potential of somebody getting up here and saying, well, at some point we may have moved it across the road to use it on that. That's my understanding of the testimony that might come in in front of this jury is that at some point we may use the bucket, but the truck was not parked where the bucket was to be used. The truck was parked on the other side of the road. The work was being conducted away from the bucket. And I don't find that that is an appropriate circumstance for use of this statute.

Now, before I lay down the gavel and say that, I want to make sure I have the facts right because this is one of those things that the ruling is being

made primarily—I don't think I have to get into the statute itself and interpreting for the first time whether it includes a bucket truck parked in a spot it can't park in as opposed to a road crew out there. Was it really the intent to cover the City street that we're going to call a highway?

And I'm just looking strictly at when we are talking about protecting a vehicle from the rules of the road, is this the circumstance under which this vehicle is supposed to be protected?

There can be an argument made that, well, we were repairing two of them and we parked it at one of them. I don't know if they used it on that one. Does anybody know whether or not the bucket was ever used on that one?

In response to the court's question, the City's counsel acknowledged that the employees had not used the extending bucket in their work on either side of the road. The court concluded:

So they didn't use it on that one. We don't know for sure they were going to use it on the other. So really it's just a mode of transportation to get to the light or to the flashing light or to whatever that apparatus was.

So for those reasons the Court is going to exclude the use of 55-8-107 as a means of defending the City against the rules of the road.

At the close of proof the next day and with the jury in recess, the City renewed its motion *in limine* regarding § 55-8-107 while also arguing in support of its proposed jury instruction related to the statute. The City based its renewed motion on Mr. Keller's testimony. Mr. Keller testified that he and his coworker had been dispatched to the intersection at Main Street and Rossville Avenue to investigate "an issue where when you hit one of the push buttons to cross the street, it would flash longer than it was supposed to." Concerning why he had parked the Bucket Truck at the location he had chosen, which he admitted was partially in the crosswalk, Mr. Keller stated:

Well, for one thing, to park where I was working. Also to make sure that the truck was within my sight and any tools that I might need were available to me. If I had to get in the bucket and go up to work on the system, I could get to the system. I can't park too far away. Otherwise, I can't do my job.

When questioned regarding whether there were other locations where he could have parked the Bucket Truck, Mr. Keller responded: "Yes, but I can't park too far away because, like I said, if I have to get up in the bucket and go up in the air, I can't reach it from too far

away.” Mr. Keller further testified that he “felt [he] left adequate space for pedestrians to cross safely” and that he and his coworker had crossed the street there without incident. Mr. Keller confirmed that when the accident occurred, he and his coworker were working on the opposite side of the street from where the Bucket Truck was parked.

Mr. Keller described his “work plan” for resolving the issue with the signal as follows:

Start out by making sure that both push buttons are working, which is, one, make sure when you hit the button, the flashing beacons come on. From there on the ground they have a little handhold that’s not a hole, but you take the cover off and make sure everything within the base of the pole looks okay. Make sure nothing is shorted out.

Okay. Then from there, had I been able to get there, I would have likely gotten in the bucket and went up and looked inside the little cabinet on top to see if maybe something was going on with the software or chips or anything.

Mr. Keller acknowledged that he had not used the bucket that day, adding that he “did not get to that point in troubleshooting.”

A. Motion *in Limine*

On May 1, 2025, the trial court entered its written order denying the City’s renewed motion *in limine* regarding illegality of parking. The court attached a transcript excerpt to the order, noting that its ruling was “set forth in detail in the attached transcript of the proceedings.” The court stated in its ruling:

In order for this statute to apply, I think he has to demonstrate that it was required for the job he was doing for that vehicle to be there.

Here’s what he says at the bottom of page seven. “Question: You didn’t use your bucket that day; correct?”

“Answer: Correct.”

He never used his bucket that day. He never had to park there. He parked there as a matter of convenience. There was no requirement that in order to do his job, that bucket truck had to be there.

This Court believes that it would be incumbent on the City at a minimum to produce testimony that said he could not do his job—just like

you can't mow grass without a lawn mower or these tractors, those were absolutely necessary for the job that was being performed, I think that bucket truck had to be necessary for the job that was being performed in order to fall under this statute.

I don't believe there is any evidence to suggest that it was necessary for him to be parked there that day to do his job and, in fact, the facts demonstrate quite the opposite, that he never used his bucket on that day.

Accordingly, the trial court grounded its ruling in the plain language of the statute, particularly the requirement that to qualify for immunity under this section, the "persons, teams, motor vehicles and other equipment" must be "actually engaged in work." *See* Tenn. Code Ann. § 55-8-107. The trial court found that the Bucket Truck was not actively engaged in work and that Mr. Keller's act of parking the Bucket Truck did not qualify for immunity under § 55-8-107 from the statutory rules of the road. The City maintains that Mr. Keller's testimony demonstrated that he needed the Bucket Truck at the crosswalk to be prepared for the possible necessity of "look[ing] inside the little cabinet on top" of the signal pole, as Mr. Keller described it. We disagree and discern no error in the trial court's findings that Mr. Keller had not utilized the bucket and had chosen the parking location for the sake of convenience.

The City urges this Court, as it did the trial court, to interpret the 2002 amendment to § 55-8-107 as extending immunity to its employees working on the sidewalk as "an adjacent right-of-way" to the street. The City posits that the street where this accident occurred fits the statutory definition of "highway." *See* Tenn. Code Ann. § 55-8-101(30) (West April 7, 2021, to June 30, 2024) ("Highway" means the entire width between the boundary lines of every way when any part thereto is open to the use of the public for purposes of vehicular travel."). As the City acknowledges, the statutory definition of "right-of-way" pertains to "the privilege of the immediate use of the roadway" rather than to location of a physical right-of-way. *See* Tenn. Code Ann. § 55-8-101(66). The City argues that the sidewalk should be treated as an adjacent right-of-way to the street in the same manner that a median may be treated as an adjacent right-of-way to a highway.⁴

However, the trial court determined that it did not need to address whether § 55-8-107 could be extended to a sidewalk as an adjacent right-of-way because the Bucket Truck was not "actually engaged in work" when Mr. Stamper was struck. The trial court therefore concluded that under the plain language of the statute, an essential condition of immunity had not been met. *See Estate of Tanner*, 295 S.W.3d at 614 ("When a statute is clear, we apply the plain meaning without complicating the task."). We agree and determine that the

⁴ We note that although the statutory definition of "highway" is substantively identical to the definition of "street," *see* Tenn. Code Ann. § 55-8-101(30), (80), the definition of "sidewalk" directly refers to its presence on a "street." *See* Tenn. Code Ann. § 55-8-101(72).

trial court did not abuse its discretion by denying the City's motion *in limine* predicated on § 55-8-107.

B. Proposed Jury Instruction

The trial court approved Tennessee Pattern Jury Instruction—Civil 3.09 with no objections. That instruction states:

T.P.I.—CIVIL 3.09 Negligence *Per se*

A person who violates a statute or ordinance is negligent. However, a person violating a statute or ordinance is not at fault unless you also find that the violation was a legal cause of the injury or damage for which claim has been made.

The City's proposed jury instruction at issue was taken from the language of Tennessee Code Annotated § 55-8-107 and § 55-8-101(30) to provide the following addition to T.P.I. 3.09:

Under Tennessee law, the statutory "rules of the road" (except for the prohibition on reckless driving) shall not apply to persons, teams, motor vehicles and other equipment while actually engaged in work upon the surface of a highway or the adjacent right-of-way, but shall apply to these persons and vehicles when traveling to or from such work. This section shall not relieve the driver of a motor vehicle or equipment covered by this section from the duty to drive with due regard for the safety of all persons, all as provided by law. For the purposes of this rule, "Highway" or "street" means the entire width between boundary lines of every way publicly maintained, when any part thereof is open to the use of the public for purposes of vehicular travel.

The trial court considered the City's argument in support of the proposed jury instruction in tandem with the City's motion *in limine* predicated on § 55-8-107. "Trial courts should give a requested instruction if it satisfies three requirements: (1) it is supported by the evidence, (2) it embodies the party's theory, (3) it is a correct statement of the law." *Newcomb v. Kohler Co.*, 222 S.W.3d 368, 395 (Tenn. Ct. App. 2006) (quoting *Otis v. Cambridge Mut. Fire Ins. Co.*, 850 S.W.2d 439, 445 (Tenn.1992)). Here, the trial court denied the City's proposed jury instruction fashioned after § 55-8-107 when the court found that an essential element of § 55-8-107 could not be supported by the evidence because the Bucket Truck had not been "actually engaged in work" at the time of the accident. *See* Tenn. Code Ann. § 55-8-107.

We have determined that the evidence supported the trial court's finding that § 55-8-107 was not applicable to the facts of this case. Therefore, upon our *de novo* review, we

further determine that the trial court properly denied the City's request to add this jury instruction. *See Solomon v. First Am. Nat'l Bank of Nashville*, 774 S.W.2d 935, 940 (Tenn. Ct. App. 1989) (“[T]he determination of proper instructions to the jury is a question of law to be determined from the theories of the parties, the evidence in the record and the law applicable thereto.”). Moreover, having reviewed the jury instructions given by the trial court in their entirety, we conclude that the instructions were correct and fair. *See Goodale v. Langenberg*, 243 S.W.3d 575, 584 (Tenn. Ct. App. 2007) (noting that this Court reviews “a trial court’s instructions to the jury in their entirety and in context of the entire charge” and that “[j]ury instructions must be correct and fair as a whole, although they do not have to be perfect in every detail.”).

We discern no reversible error in the trial court’s denial of the City’s request to present a statutory defense predicated on Tennessee Code Annotated § 55-8-107 through its related motion *in limine* and proposed jury instruction. Accordingly, we also find no error in the trial court’s denial of the City’s motion for new trial.

VI. Mr. Miller’s Motions for Directed Verdict and Judgment Notwithstanding the Verdict

Mr. Miller asserts that the trial court erred by denying his motion for directed verdict, raised at the close of Mr. Stamper’s proof and renewed at the close of all proof, and his motion for judgment notwithstanding the verdict, filed following entry of the court’s order approving the jury’s verdict. Mr. Miller insists that there was “no proof whatsoever that he was negligent” and that Mr. Stamper’s “negligence and negligence per se were the proximate cause of his own damages.” Within this issue, Mr. Miller also argues that the trial court’s denial of his request for a jury instruction on Tennessee Code Annotated § 55-8-112(a)(2), concerning flashing yellow lights, removed “important context” necessary for the jury’s decision. Mr. Stamper maintains that the trial court properly denied Mr. Miller’s motions for directed verdict and judgment notwithstanding the verdict because “the evidence presented at trial could lead to multiple conclusions” and because there was material evidence supporting the jury’s finding that Mr. Miller was negligent. Mr. Stamper also maintains that the trial court properly declined to give a jury instruction related to § 55-8-112(a)(2). Upon our *de novo* review, we conclude that the trial court did not err by denying Mr. Miller’s motions for directed verdict and judgment notwithstanding the verdict.⁵

Pursuant to Tennessee Rule of Civil Procedure 50.01, “[a] motion for directed verdict may be made at the close of the evidence offered by an opposing party or at the close of the case.” As our Supreme Court has explained:

⁵ The City in its reply brief “offer[s] its support” for Mr. Miller’s argument that Mr. Stamper’s negligence and negligence *per se* were the proximate causes of his own damages.

In reviewing the trial court's decision to deny a motion for a directed verdict, an appellate court must take the strongest legitimate view of the evidence in favor of the non-moving party, construing all evidence in that party's favor and disregarding all countervailing evidence. *Gaston v. Tenn. Farmers Mut. Ins. Co.*, 120 S.W.3d 815, 819 (Tenn. 2003). A motion for a directed verdict should not be granted unless reasonable minds could reach only one conclusion from the evidence. *Id.* The standard of review applicable to a motion for a directed verdict does not permit an appellate court to weigh the evidence. *Cecil v. Hardin*, 575 S.W.2d 268, 270 (Tenn. 1978). Moreover, in reviewing the trial court's denial of a motion for a directed verdict, an appellate court must not evaluate the credibility of witnesses. *Benson v. Tenn. Valley Elec. Coop.*, 868 S.W.2d 630, 638-39 (Tenn. Ct. App. 1993). Accordingly, if material evidence is in dispute or doubt exists as to the conclusions to be drawn from that evidence, the motion must be denied. *Hurley v. Tenn. Farmers Mut. Ins. Co.*, 922 S.W.2d 887, 891 (Tenn. Ct. App. 1995).

Johnson v. Tenn. Farmers Mut. Ins. Co., 205 S.W.3d 365, 370 (Tenn. 2006). Furthermore, “[w]e treat a motion for judgment notwithstanding the verdict the same as a motion for a directed verdict.” *Cole v. Skin RN Aesthetics, LLC*, No. M2022-01555-COA-R3-CV, 2024 WL 3494128, at *3 (Tenn. Ct. App. July 22, 2024) (citing *Holmes v. Wilson*, 551 S.W.2d 682, 685 (Tenn. 1977)); see *Huskey v. Crisp*, 865 S.W.2d 451, 453 n.1 (Tenn. 1993) (explaining that there is “no substantive difference” between the term, “judgment notwithstanding the verdict,” and the term employed in Tennessee Rule of Civil Procedure 50.02, “judgment entered in accordance with the motion for directed verdict”).

In his second amended complaint, Mr. Stamper claimed that Mr. Miller was liable for both common law negligence and negligence *per se*. He specifically alleged that Mr. Miller had been negligent by failing to (1) “keep a proper lookout ahead,” (2) “operate the vehicle as an ordinary and prudent person would have done under existing traffic conditions,” and (3) “keep the vehicle under due and proper control.” As to negligence *per se*, Mr. Stamper alleged that Mr. Miller had violated Tennessee Code Annotated § 55-8-134(a) (West July 1, 2008, to current), which requires that vehicles yield to pedestrians in crosswalks.⁶

Considering the elements of a negligence claim, Mr. Miller does not argue that he owed no duty of care to Mr. Stamper as a pedestrian or that Mr. Stamper was not injured, nor does Mr. Miller directly address the element of factual, or “but-for,” causation. See

⁶ Although Mr. Stamper also appeared to invoke Tennessee Code Annotated § 54-5-206 in relation to Mr. Miller, albeit with a typographical error, this statute, which involves “[i]nterstate highways; maintenance and repairs; lights and lighting,” would not apply to Mr. Miller's actions.

Peters-Asbury, 544 S.W.3d at 359 (listing the five elements of a negligence claim as (1) a duty of care owed, (2) conduct falling below the applicable standard amounting to a breach of that duty, (3) injury or loss, (4) factual causation, and (5) proximate or legal causation). Instead, Mr. Miller asserts that Mr. Stamper failed to present any evidence that Mr. Miller's conduct fell below the applicable standard of care owed to a pedestrian by a motor vehicle operator or any evidence that Mr. Miller's conduct was a proximate cause of Mr. Stamper's injuries.

"Cause in fact and proximate cause are 'ordinarily jury questions, unless the uncontroverted facts and inferences to be drawn from them make it so clear that all reasonable persons must agree on the proper outcome.'" *Hale v. Ostrow*, 166 S.W.3d 713, 718 (Tenn. 2005) (quoting *Haynes*, 883 S.W.2d at 612). As the *Hale* Court instructed:

The defendant's conduct is the cause in fact of the plaintiff's injury if, as a factual matter, it directly contributed to the plaintiff's injury. In a case such as this one, we must ask whether the plaintiff's injury would have happened "but for" the defendants' act. See *Wood v. Newman, Hayes & Dixon Ins. Agency*, 905 S.W.2d 559, 562 (Tenn. 1995). If not, then the defendants' conduct is a cause in fact of the plaintiff's injury. It is not necessary that the defendants' act be the *sole* cause of the plaintiff's injury, only that it be *a* cause.

* * *

Once it is determined that the plaintiff's injury would not have happened but for the defendants' breach of duty, the next question is whether the defendants' breach was a proximate cause of the plaintiff's injury, which is very different from a cause in fact of the injury. Proximate cause puts a limit on the causal chain, such that, even though the plaintiff's injury would not have happened but for the defendants' breach, defendants will not be held liable for injuries that were not substantially caused by their conduct or were not reasonably foreseeable results of their conduct. *Haynes*, 883 S.W.2d at 612. "Thus, proximate cause, or legal cause, concerns a determination of whether legal liability should be imposed where cause in fact has been established." *Kilpatrick [v. Bryant]*, 868 S.W.2d [594,] 598 [(Tenn. 1993)].

* * *

Proximate cause is addressed with a three-pronged test:

- (1) the tortfeasor's conduct must have been a "substantial factor" in bringing about the harm being complained of; and
- (2) there is no rule or policy that should relieve the wrongdoer

from liability because of the manner in which the negligence has resulted in the harm; and (3) the harm giving rise to the action could have reasonably been foreseen or anticipated by a person of ordinary intelligence and prudence.

Haynes, 883 S.W.2d at 612 (quoting *McClenahan* [v. *Cooley*], 806 S.W.2d [767,] 775 [(Tenn. 1991)]).

Hale, 166 S.W.3d at 718-19.

“Liability under the negligence *per se* doctrine can arise when a party fails to perform a duty imposed by statute or ordinance.” *Shaw v. Metro. Gov’t of Nashville & Davidson Cnty.*, 596 S.W.3d 726, 734 (Tenn. Ct. App. 2019). As the *Shaw* Court delineated in relevant part:

Specifically, the following elements must be established in order for a party to recover under the theory of negligence *per se*:

First, the defendant must have violated a statute or ordinance that imposes a duty or prohibition for the benefit of a person or the public. Second, the injured party must be within the class of persons intended to benefit from or be protected by the statute. Finally, the injured party must show that the negligence was the proximate cause of the injury.

Id. (quoting *Harden v. Danek Med., Inc.*, 985 S.W.2d 449, 452 (Tenn. Ct. App. 1998)) (internal citations omitted in *Shaw*). Under Tennessee’s comparative fault system, a plaintiff in a multi-party action “may recover only if his fault is less than the combined fault of all tortfeasors.” *Grandstaff v. Hawks*, 36 S.W.3d 482, 493 (Tenn. Ct. App. 2000).

The issue then on appeal is whether the record contains any material evidence supporting a finding that Mr. Miller’s actions exhibited negligence or negligence *per se*. The trial court denied all motions for directed verdict upon ruling that “there is evidence sufficient to send [the case] to the jury and we’ll send this case to the jury.” In denying the City’s and Mr. Miller’s motions for judgment notwithstanding the verdict, the court concluded:

Taking the strongest legitimate view of the evidence in favor of the non-moving party, the Court finds that reasonable minds could differ as to the conclusions to be drawn from the evidence supporting a claim against the Defendants. *See Brown v. Crown Equip. Corp.*, 181 S.W.3d 268, 281 (Tenn. 2005).

Specifically regarding Mr. Miller's motion, the court determined:

[T]he jury had material evidence from which it could conclude that Mr. Miller was negligent. [Mr. Stamper] testified that he activated the pedestrian signal, waited, and observed traffic stopping before entering the crosswalk. The jury also heard evidence that Mr. Miller observed traffic stopping in the opposite direction, which could reasonably indicate that a pedestrian was in the crosswalk. In addition, the jury could have considered that the crosswalk flashers were activated and visible to Mr. Miller from his position on the opposite side of the road. The jury was entitled to weigh this evidence, evaluate the credibility of the witnesses, and reach its own conclusions regarding Mr. Miller's conduct.

(Internal citations to record omitted.)

Mr. Miller testified that at the time of the accident, the traffic on Main Street was "[m]oving, but heavy" and that his maximum speed was fifteen to twenty miles per hour. He stated that there were vehicles in front of and behind him and that he was driving approximately one truck-length behind the vehicle in front of him. According to Mr. Miller, he noticed the Bucket Truck "[b]ut not really . . . noticed it until I got up close because all of the spots there were cars parked." Mr. Miller testified that he was not able to see the crosswalk at Rossville and Main "[b]ecause of the cars and the truck" and that he did not see a flashing light. He stated that the arm of the bucket, which he termed a "cherry picker," obstructed his view of the crosswalk sign. Mr. Miller relayed that as he approached the intersection, he "took [his] foot off the gas pedal and began to slow. [He] never slammed [his] feet on the brakes or had to hit them until the moment of contact." Mr. Miller reported that he did not see Mr. Stamper until Mr. Stamper was "against the side of [Mr. Miller's] vehicle." Mr. Miller acknowledged that the impact with Mr. Stamper occurred within the crosswalk.

Mr. Stamper testified that he was certain that he had pushed the pedestrian crosswalk button when he crossed from the Hart Gallery to Ria's Market. When asked to describe his attempt to re-cross the street, he stated:

I pressed the button again and I looked both ways. I looked left because I knew the truck was blocking my way and right. . . . I looked left and right. And I know the truck was blocking my view. So I pressed the button again so, you know, drivers from both sides could see my intention.

Mr. Stamper acknowledged that he was "unsure" whether the flashing pedestrian lights had activated when he pushed the button. Mr. Stamper reported that he could see vehicles on his right and that "[t]hey all looked like they were stopping. So I just had to wait for the left side before I could cross." He stated that he waved to the vehicle on his right, "[s]o I

know it was clear to cross because I wouldn't cross if I didn't see their sign." Mr. Stamper admitted that he was not able to see traffic coming from the left, the direction that Mr. Miller was traveling, and that he had not attempted to inch out and look past the Bucket Truck. When questioned regarding what happened as he moved past the Bucket Truck in the crosswalk, Mr. Stamper said, "I got hit by a truck."

Concerning the speed at which he entered the crosswalk, Mr. Stamper testified:

I was speed walking, but it wasn't extremely fast. I was just trying to be polite as to the driver on the right side. I knew the driver was on the right side and I believe it was safe to cross from the left side. I thought I was safe to cross politely.

On cross-examination, Mr. Stamper acknowledged that in his deposition testimony, he had stated that no one had stopped and waved him across. He also acknowledged that at the hospital, he had told an officer that he "just ran for it." However, Mr. Stamper testified at trial: "[W]hen I thought it was safe for me to cross, I was speed walking. I wasn't running."

Ms. Campbell testified as an eyewitness to the accident, noting that she had been subpoenaed to appear. She stated that when the accident occurred, she had been parked in a parking space on Rossville Avenue and had been waiting to enter traffic on Main Street. Ms. Campbell reported:

[A]s I was sitting there, I saw a car slow down and kind of slow down and then they stopped. And I was like that's weird. There's not a stop sign or anything here.

And so then I looked and saw a young man look at them and wave and—or I think I remember him waving. And there was a car parked right there on the corner.

Ms. Campbell identified the young man as Mr. Stamper and clarified that he had been standing by the walk signal. She did not see whether Mr. Stamper pushed the button for the walk signal or whether he looked right and left. Ms. Campbell relayed that she "probably had a better vantage point at seeing something coming than [Mr. Stamper] did . . . And [she] was shocked when he got hit." She stated that with the Bucket Truck parked there, she was not able to see clearly down Main Street. Ms. Campbell testified that she did not see Mr. Miller's vehicle until it hit Mr. Stamper.

Regarding Mr. Stamper's actions as he attempted to cross the street, Ms. Campbell stated:

[I]t seemed like [Mr. Stamper] was being responsible to me. I didn't—it didn't seem like he was—I mean, it did not at all seem like he would have just run out into the street. . . . He waited until he made sure that car that was kind of slowing down, like they didn't like come to a stop, until they came to a stop, that was when he crossed.

When questioned regarding whether Mr. Stamper seemed to be hurrying across the street, Ms. Campbell responded, “Maybe out of just being considerate for the person who was stopping. I don’t know. It wasn’t like rushed” Ms. Campbell did not remember whether the pedestrian lights were flashing. She confirmed that Mr. Miller had hit his brakes but stated that she was not sure if it was before or after the impact. Reviewing the statement that she had given to Officer Avila at the scene, Ms. Campbell acknowledged that she had said that Mr. Stamper “bolted” into the intersection. At trial, Ms. Campbell stated that “bolted might have been a strong word” to use for Mr. Stamper’s actions, adding that Mr. Stamper “was for sure not being careless” and “was just being considerate” of the driver waving him across. Ms. Campbell further testified: “I don’t know how on earth Mr. Miller would have been able to see [Mr. Stamper].”

Upon careful review, we agree with the trial court’s determination that the “jury had material evidence from which it could conclude that Mr. Miller was negligent,” and we determine that this was true for Mr. Stamper’s claims of both negligence and negligence *per se*. As the trial court noted, the jury “heard evidence that Mr. Miller observed traffic stopping in the opposite direction, which could reasonably indicate that a pedestrian was in the crosswalk,” and the jury “could have considered that the crosswalk flashers were activated and visible to Mr. Miller from his position on the opposite side of the road.” As to causation, the jury could reasonably have concluded that Mr. Stamper would not have been struck but for Mr. Miller’s failure to yield the crosswalk (factual causation) and that a collision with a pedestrian could have reasonably been foreseen (proximate causation). *See Hale*, 166 S.W.3d at 718-19.

We emphasize the trial court’s finding that “[t]he jury was entitled to weigh this evidence, evaluate the credibility of the witnesses, and reach its own conclusions regarding Mr. Miller’s conduct.” *See Caldwell v. Ruby Falls, LLC*, 674 S.W.3d 899, 923-24 (Tenn. Ct. App. 2023) (“Upon reviewing ‘the evidentiary foundation of a jury’s verdict regarding liability,’ ‘[a]ppellate courts are not a jury of three with the prerogative to re-weigh the evidence or to determine where the ‘truth’ lies.’” (quoting *Duran v. Hyundai Motor Am., Inc.*, 271 S.W.3d 178, 204-05 (Tenn. Ct. App. 2008))); *Boggs v. Rhea*, 459 S.W.3d 539, 545-46 (Tenn. Ct. App. 2014) (“It is clear from the record on appeal that the jury made credibility determinations, as is its responsibility to do It is within the jury’s province to make determinations regarding witness credibility.”). Taking the strongest legitimate view of this evidence in favor of Mr. Stamper as the non-movant, we cannot conclude that the evidence presented at trial was “‘susceptible to only one conclusion.’” *See Lake v.*

Memphis Landsmen, LLC, 405 S.W.3d 47, 67 (Tenn. 2013) (quoting *Brown*, 181 S.W.3d at 281).

The jury also heard testimony that Mr. Miller slowed down but did not stop until the collision occurred despite having his view of the crosswalk obscured by the Bucket Truck. Mr. Miller contends that the trial court's denial of his request for a jury instruction predicated on Tennessee Code Annotated § 55-8-112(a)(2) removed "important context" because the jury may have believed that Mr. Miller was required by the flashing yellow lights to stop. Section 55-8-112(a) provides:

- (a) Whenever an illuminated flashing red or yellow signal is used in a traffic sign or signal, it shall require obedience by vehicular traffic as follows:
 - (1) Flashing red (stop signal). When a red lens is illuminated with rapid intermittent flashes, and the light is clearly visible for a sufficient distance ahead to permit stopping, drivers of vehicles shall stop before entering the nearest crosswalk at an intersection or at a limit line when marked, or, if none, then before entering the intersection, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign; and
 - (2) Flashing yellow (caution signal). When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past the signal only with caution.

In denying Mr. Miller's request for a jury instruction grounded on § 55-8-112(a)(2), the trial court found that it was inapplicable to a pedestrian crosswalk and would apply to an intersection with flashing red and yellow lights. Ruling from the bench, the court concluded: "If they say they can always go through on a yellow, the pedestrian all of a sudden does not have the right-of-way, the car does."

Upon consideration, we determine that the jury was properly instructed concerning the requirement that a driver yield to a pedestrian's right-of-way in a crosswalk by slowing down or stopping when necessary. Predicated on Tennessee Code Annotated § 55-8-134, the jury was instructed as follows:

Drivers of all vehicles must yield the right-of-way to a pedestrian who is crossing within a marked crosswalk or an unmarked crosswalk at an intersection. However, a pedestrian crossing a roadway at a marked or

unmarked crosswalk still must exercise reasonable care for the pedestrian's own safety.

A pedestrian shall not suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield. Unless in a marked school zone when a warning flasher or flashers are in operations when . . . traffic signals are not in place or not in operation, the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger. No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield.

This Court reviews “the jury charge in its entirety and consider[s] the charge as a whole in order to determine whether the trial judge committed prejudicial error.” *Johnson*, 205 S.W.3d at 372. Here, we conclude that the substance of the jury instruction requested by Mr. Miller was covered in the general instructions provided to the jury by the trial court. *See Bogner v. Vanderbilt Univ.*, No. M2015-00669-COA-R3-CV, 2017 WL 716011, at *8 (Tenn. Ct. App. Feb. 23, 2017) (“The trial court did not err if the substance of the requested instructions was covered in the general instructions. (citing *Johnson*, 205 S.W.3d at 372)). Moreover, as determined in a previous section of this Opinion, we find that the jury instructions given by the trial court in their entirety were correct and fair. *See Goodale*, 243 S.W.3d at 584. The trial court did not err in denying Mr. Miller's motions for direct verdict and judgment notwithstanding the verdict.

VII. Remittitur

The City advances the position that the trial court erred by denying the City's request for remittitur because the jury's award to Mr. Stamper for mental anguish was duplicative of its award for pain and suffering. The City urges that in the jury instructions, “mental anguish was included as a factor of pain and suffering,” and that this instruction conflicted with the jury verdict form that separated the two categories. The City requests that this Court suggest a remittitur that would strike the “duplicative amount.” Mr. Stamper contends that the trial court properly denied the City's motion for remittitur because there was material evidence to support the jury's verdict, the separate categories of damages were permissible, and the City agreed to the jury verdict form.

As our Supreme Court has explained regarding a jury's award of damages:

We entrust the responsibility of resolving questions of disputed fact, including the assessment of damages, to the jury.

* * *

The trial judge, charged with ensuring a fair trial, serves as an important check on a jury's discretion to award damages. One way the trial judge does this is by serving as the thirteenth juror. As thirteenth juror, the trial judge must independently weigh and review the evidence presented at trial to determine whether it preponderates in favor of the verdict and decide whether he or she agrees with and is satisfied with the jury's verdict. No verdict is valid unless approved by the trial judge acting as the thirteenth juror.

Generally, if the trial judge is not satisfied with the jury's verdict, the judge must set aside the verdict and order a new trial. If the trial judge's dissatisfaction, however, is based only upon the jury's award of damages, the trial judge may suggest a remittitur, which, if accepted by the plaintiff, would reduce the award to an amount the judge deems appropriate.

* * *

Due to concerns of cost and efficiency, we have encouraged trial courts to cure excessive verdicts, whenever feasible, through the practice of remittitur, rather than by ordering a new trial. A request for remittitur is implicit in a motion for a new trial and is a valid alternative to a new trial.

Trial judges may suggest adjustments to a jury's verdict even if the verdict is within the range of reasonableness. The range of reasonableness is determined by establishing the upper and lower limits of an award of damages that can be supported by material proof.

* * *

Where the trial judge has approved the verdict in its role as thirteenth juror—as the trial court did in this case—the Court of Appeals' review of the verdict and its ability to suggest a remittitur is limited to a review of the record to determine whether the verdict is supported by material evidence. Material evidence is “evidence material to the question in controversy, which must necessarily enter into the consideration of the controversy and by itself, or in connection with the other evidence, be determinative of the case.” An appellate court is required to take “the strongest legitimate view of all the evidence in favor of the verdict, assume the truth of all evidence that supports

the verdict, allowing all reasonable inferences to sustain the verdict, and to discard all countervailing evidence.” *Akers v. Prime Succession of Tenn., Inc.*, 387 S.W.3d 495, 501-02 (Tenn. 2012) (quoting *Barkes v. River Park Hosp., Inc.*, 328 S.W.3d 829, 833 (Tenn. 2010)). The material evidence analysis is very deferential to the award by the jury and the judgment of the trial court when it affirms the verdict as the thirteenth juror. See *Ellis [v. White Freightliner Corp.]*, 603 S.W.2d [125,] 129 [(Tenn. 1980)] (“[W]hen the trial judge has approved the verdict, the review in the Court of Appeals is subject to the rule that if there is *any* material evidence to support the award, it should not be disturbed.” (emphasis added)). “It matters not a whit where the weight or preponderance of the evidence lies under a material evidence review.” *Hohenberg Bros. Co. v. Mo. Pac. R.R. Co.*, 586 S.W.2d 117, 119-20 (Tenn. Ct. App. 1979). “It is simply a search of the record to ascertain if material evidence is present to support the verdict.” *Id.* Because the material evidence standard lies at the foundation of the right to trial by jury, if there is material evidence to support a jury verdict, the appellate courts must affirm it.

Meals ex rel. Meals v. Ford Motor Co., 417 S.W.3d 414, 420-23 (Tenn. 2013) (additional internal citations omitted) (footnotes omitted).

The jury returned a verdict finding a total of \$250,000.00 in damages, comprised of \$38,738.82 in economic damages and \$211,261.18 in non-economic damages. The jury completed the jury verdict form to award specific amounts in the following categories of non-economic damages:

(a)	Pain and suffering—past	\$50,000.00
(b)	Pain and suffering—future	\$35,000.00
(c)	Permanent impairment	0.00
(d)	Loss of ability to enjoy life—past	\$40,000.00
(e)	Loss of ability to enjoy life—future	\$11,261.18
(f)	Mental anguish	\$75,000.00

The trial court approved the jury’s verdict upon finding that it was supported by material evidence in the record.

In denying the City’s motion for remittitur, the trial court found:

[T]he jury’s award was supported by the trial evidence and was not excessive. The Court observed the witnesses and their demeanor, independently weighed the evidence, passed upon the issues, and determined that the verdict is supported by the record. [Mr. Stamper] testified in detail about his physical pain, continued discomfort due to surgical hardware, and

the emotional impact of the incident. His testimony was corroborated by medical records, expert opinions, and lay witness accounts. The mental anguish award was supported by testimony regarding [Mr. Stamper's] post-accident emotional struggles, including fear, anxiety, and disruptions to his daily functioning.

The verdict form was agreed upon by all parties, and no objection was raised prior to its submission. As a result, any challenge to its structure or content has been waived. *See Keith v. Murfreesboro Livestock Mkt., Inc.*, 780 S.W.2d 751, 759 (Tenn. Ct. App. 1989). The Court further finds that the argument concerning duplicative damages is without merit. The jury itemized distinct elements of noneconomic harm, and the record does not reflect any overlap warranting a reduction. *See id.* The overall award is within the range of reasonableness given the nature and extent of [Mr. Stamper's] injuries. *See id.*

(Internal citations to record omitted.)

The City relies on what it asserts was a conflict between a jury instruction describing “pain and suffering” and the separation of “pain and suffering” and “mental anguish” on the jury verdict form. The jury instruction referenced by the City stated:

Pain and suffering is reasonable compensation for any physical pain and discomfort and for any mental pain and discomfort suffered by the plaintiff and the present cash value for physical and mental discomfort likely to be experienced in the future. Mental discomfort includes anguish, grief, shame or worry.

However, as we have determined in a previous section of this Opinion, the City waived any objection to the jury verdict form by announcing the City's agreement to the form. *See Keith*, 780 S.W.2d at 759.

Upon thorough review, we agree with the trial court's findings that material evidence supported the trial court's damages verdict and that the verdict was not excessive. Mr. Stamper's testimony concerning what the trial court described as his “post-accident emotional struggles, including fear, anxiety, and disruptions to his daily functioning” was corroborated by Mr. Stamper's mother's and brother's respective testimonies. *See Duran v. Hyundai Motor Am., Inc.*, 271 S.W.3d 178, 210 (Tenn. Ct. App. 2008) (“The search for material evidence supporting the verdict entails ascertaining whether the record contains any properly admissible evidence relating to the matters at issue that supports the jury's verdict.”).

Other than its reliance on the jury instruction form, the City offers no authority, and we know of none, to support its contention that the damage categories of “pain and suffering” and “mental anguish” may not be included on the same verdict form with a jury instruction such as the one quoted above. Mr. Stamper relies on this Court’s decision in *Overstreet v. Shoney’s, Inc.*, 4 S.W.3d 694, 714 (Tenn. Ct. App. 1999), wherein this Court affirmed the trial court’s utilization of an “itemized verdict form[] to aid the jury in calculating damages.” Although the specific category of “mental anguish” was not included on the jury verdict form at issue in *Overstreet*, we do find the *Overstreet* decision instructive. The Court explained that “[p]ain and suffering encompasses the physical and mental discomfort caused by an injury.” *Overstreet*, 4 S.W.3d at 715. The *Overstreet* plaintiff “suffered a painful injury to her left eye, underwent five invasive surgical procedures involving hospital stays, and suffered mental anguish, including the uncertainty of not knowing whether she would ever see out of her left eye again.” *Id.* at 716 (emphasis added). Thus, the *Overstreet* plaintiff’s mental anguish went beyond the mental discomfort she experienced immediately surrounding the injury. *See id.* Moreover, here we agree with the trial court’s finding that “[t]he jury itemized distinct elements of noneconomic harm, and the record does not reflect any overlap warranting a reduction.” The trial court did not abuse its discretion by denying the City’s motion for remittitur.⁷

VIII. Conclusion

For the foregoing reasons, we affirm the trial court’s judgment. We remand this matter to the trial court for enforcement of the judgment and collection of costs assessed below. Costs on appeal are assessed one-half to the appellant, the City of Chattanooga (Division of Public Works), and one-half to the appellee, Kyle A. Miller.

s/ Thomas R. Frierson, II

THOMAS R. FRIERSON, II, JUDGE

⁷ The City, in challenging the trial court’s denial of its post-judgment motions, has focused its issues on the GTLA, Tennessee Code Annotated § 55-8-107, and remittitur. Apparently out of an abundance of caution, Mr. Stamper has stated a general issue regarding whether the jury’s verdict against the City for negligence was supported by material evidence. We clarify here that our review of the record demonstrates that there was material evidence to support the jury’s verdict finding the City negligent and that we discern no error in the trial court’s denial of the City’s motion for judgment notwithstanding the verdict on that basis. *See Brown*, 181 S.W.3d at 281; *Mairose*, 86 S.W.3d at 511.