

jury's findings are inconsistent and irreconcilable. River Park also contends the trial court erred in (1) refusing to charge the jury with an instruction that River Park could only be liable if one of the individual health care providers was liable; (2) refusing to use a jury verdict form that allowed the jury to consider River Park's fault only if it first found at least one individual health care provider at fault; (3) abandoning its role as thirteenth juror when the jury found that none of the individual health care providers were at fault; and (4) allowing Mrs. Barkes' counsel to make prejudicial statements to the jury.

STANDARD OF REVIEW

Our review of this case is governed by Tenn. R. App. P. 13(d), which permits findings of fact by juries in civil actions to "be set aside only if there is no material evidence to support the verdict." Tenn. R. App. P. 13(d). This highly deferential standard of review requires us "to take the strongest legitimate view of the evidence in favor of the verdict, assume the truth of all the evidence in support thereof, allow all reasonable inferences to sustain the verdict and disregard all to the contrary." *Johnson v. Cargill, Inc.*, 984 S.W.2d 233, 234 (Tenn. Ct. App.1998). "Where the record contains material evidence supporting the verdict, the judgment based on that verdict will not be disturbed on appeal." *Reynolds v. Ozark Motor Lines, Inc.*, 887 S.W.2d 822, 823 (Tenn.1994).

Well-settled law requires courts to construe the terms of a verdict in a manner that upholds the jury's findings, if it is able to do so. *Briscoe v. Allison*, 290 S.W.2d 864, 868 (Tenn.1956). We must presume that the jury followed the instructions given. *Perkins v. Sadler*, 826 S.W.2d 439, 443 (Tenn. Ct. App.1991).

ANALYSIS

I.

At the close of all the proof at trial, River Park Hospital made a motion for a directed verdict on all remaining claims. The trial court partially granted River Park's motion, dismissing claims against River Park pertaining to the maintenance of a safe environment, negligent hiring, claims that the hospital was negligent in the establishment of policies and procedures, and claims that it did not properly oversee the care provided in the Emergency Room. The only claim of direct liability against the hospital that survived was whether the hospital was liable for not enforcing the written policies and procedures existing at the time of Mr. Barkes' treatment.⁵ That claim arises out of Plaintiff's assertion that the hospital was negligent due to its failure to adhere to the 1997 policy No. 001-02-005, which required "[a]ll patients presenting for treatment in the emergency room [be] assessed by an emergency room physician."

⁵The vicarious liability claim against River Park for the alleged negligence of Paramedic Jolly also survived.