The Supreme Court of South Carolina

RE: Lawyers Suspended by the Commission on Continuing Legal Education and Specialization

The Commission on Continuing Legal Education and Specialization has furnished the attached list of lawyers who have been administratively suspended from the practice of law pursuant to Rule 419(b)(2), SCACR, since April 1, 2010. This list is being published pursuant to Rule 419(d)(2), SCACR. If these lawyers are not reinstated by the Commission by June 1, 2010, they will be suspended by order of the Supreme Court and will be required to surrender their certificates to practice law in South Carolina. Rule 419(e)(2), SCACR.

Columbia, South Carolina
May 11, 2010

LAWYERS SUSPENDED FOR NON-COMPLIANCE
WITH MCLE REGULATIONS FOR THE
2009-2010 REPORTING PERIOD
AS OF MAY 1, 2010

Carrie E. Adkins
Carolina Closing Services, LLP
403 Ravengill Court
West Columbia, SC 29169
SUSPENDED BY COURT EFFECTIVE 4/01/10-
FAILURE TO PAY 2010 BAR DUES

Gilbert S. Bagnell
1201 Main Street, Suite 1980
Columbia, SC 29201
INTERIM SUSPENSION 10/09/09

Margaret H. Benson
DaVita Inc.
601 Hawaii Street
El Segundo, CA 90245

Jody V. Bentley
PO Box 415
Summerville, SC 29484
INTERIM SUSPENSION 9/18/09

C. Wesley Black
The Black Law Firm, PLLC
PO Box 876
Lincolnton, NC 28093

John B. Bowden
925 Cleveland Street, Unit 96
Greenville, SC 29601

Richard M. Campbell, Jr.
Richard M. Campbell, Jr., LLC
102 Sandy Creek Court
Greer, SC 29650

Brian D. Coker
4891 Highway 153, Suite G
Easley, SC 29642
INTERIM SUSPENSION 2/3/10

Patrick C. Cork
Cork & Cork
700 North Patterson Street
Valdosta, GA 31601

Daniel L. Crotchett
741 Woodruff Road, #1723
Greenville, SC 29602

Sherry B. Crummey
61 Morris Street
Charleston, SC 29403
INTERIM SUSPENSION 7/08/09

David C. Danielson
Danielson Law Firm, LLC
553 Talley Bridge Road
Marietta, SC 29661
INTERIM SUSPENSION 6/22/09

Tracy S. Dubey
Northwestern Mutual Financial Network
1901 Bull Street
Columbia, SC 29201

Kenneth S. Inman, Jr.
850 Sovereign Terrace
Mt. Pleasant, SC 29464

Thomas A. Jones III
Jones Law Firm, LLC
302 Jennings Avenue
Greenwood, SC 29649

Justin B. Kaplan
Schaeffer Eye Center
PO Box 1310
Birmingham, AL 35173

Beth J. Laddaga
111 Springview Lane, Apartment 738
Summerville, SC 29485
SUSPENDED BY COURT EFFECTIVE 4/01/10-FAILURE TO PAY 2010 BAR DUES

Spencer D. Langley
107 Moultrie Street
Greenville, SC 29605

Nancy H. Mayer
Nancy H. Mayer, Attorney at Law
PO Box 1305
Laurens, SC 29360
INTERIM SUSPENSION 4/30/09

Michael M. McAdams
PO Box 71150
Myrtle Beach, SC 29572
INTERIM SUSPENSION 4/21/10

Michael D. Merolla
1325 Freer Street
Charleston, SC 29412

J. Fitzgerald O'Connor, Jr.
The O'Connor Law Firm, PLLC
PO Box 1207
Chapin, SC 29036
INTERIM SUSPENSION 9/23/09

Rochelle A. Oldfield
Aiken County Solicitor's Office
109 SE Park Avenue
Aiken, SC 29801
SUSPENDED BY COURT EFFECTIVE 4/01/10-FAILURE TO PAY 2010 BAR DUES

Brian C. Reeve
Brian C. Reeve PA
400 Mallet Hill Road, Apartment E
Columbia, SC 29223
SUSPENDED BY COURT EFFECTIVE 4/01/10-FAILURE TO PAY 2010 BAR DUES

William G. Rogers, Jr.
910 East Jackson Street
Lamar, SC 29069

David Rosenblum
Rosenblum & Rosenblum, LLC
PO Box 320039
Alexandria, VA 22320
SUSPENDED BY COURT EFFECTIVE 4/01/10-FAILURE TO PAY 2010 BAR DUES

David H. Smith II
Attorney at Law, PC
812 Towne Park Drive, Suite 300
Rincon, GA 31326
SUSPENDED BY COURT EFFECTIVE 4/01/10-FAILURE TO PAY 2010 BAR DUES

Daniel B. Snipes
Franklin Taulbee Rushing Snipes & Marsh
PO Box 327
Statesboro, GA 30459

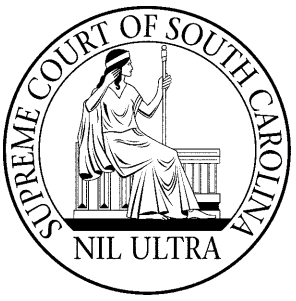
Victoria L. Sprouse
3125 Springbank Lane, Apartment A
Charlotte, NC 28226
SUSPENDED BY COURT EFFECTIVE 4/01/10-FAILURE TO PAY 2010 BAR DUES

Ollie H. Taylor
2609 Atlantic Avenue, Suite 109
Raleigh, NC 27604

Ross B. Toyne
Washington Mutual Bank Building
150 S.E. 2nd Avenue, Suite 1025
Miami, FL 33131

Tamara L. Tucker
600 Peter Jefferson Place, Suite 100
Charlottesville, VA 22911

John D. Watts
118 South Pleasantburg Drive, Suite B
Greenville, SC 29607
SUSPENDED BY COURT EFFECTIVE 4/01/10-FAILURE TO PAY 2010 BAR DUES



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OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 18
May 11, 2010
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of William Grayson Ervin, Respondent.

Opinion No. 26816
Heard April 6, 2010 – Filed May 11, 2010

DEFINITE SUSPENSION

Lesley M. Coggiola, Disciplinary Counsel, and C. Tex Davis, Jr., Senior Assistant Disciplinary Counsel, both of Columbia, for Office of Disciplinary Counsel.

Thomas C. Brittain, of Conway, for Respondent.

PER CURIAM: In this disciplinary matter, the Office of Disciplinary Counsel (ODC) brought formal charges against Respondent William Grayson Ervin following his arrest for pointing and presenting a firearm. The Panel recommended Respondent be suspended for two years retroactively, pay the costs of the proceeding, and attend counseling for two years. We believe a lesser sanction is warranted and suspend Respondent for six months retroactive to the date of his interim suspension.

I.

Respondent graduated from college in 2004 and then worked as a police officer in Horry County for a year and a half. Following his

graduation from law school in 2007, Respondent began working as an assistant solicitor with the Ninth Circuit Solicitor's Office.

This case arises from a road rage incident. On February 15, 2008, Respondent was arrested and charged with pointing and presenting a firearm after he allegedly pointed his gun at a driver ("female driver") in another vehicle while driving. Respondent was immediately fired from the solicitor's office and placed on interim suspension.

The female driver informed law enforcement that she was alone in her vehicle when Respondent, without provocation, displayed a firearm. While Respondent exercised extremely poor judgment warranting a sanction, the facts are not as reprehensible as reported by the female driver.

The record reveals the following facts. Respondent was driving from Charleston to Myrtle Beach on February 15, 2008. As he was merging onto the Ravenel Bridge, he drove behind a vehicle traveling around twenty miles-per-hour. Respondent testified the vehicle was "zigzagging" in the lane, so he attempted to get around it. Respondent admitted he was following the vehicle too closely. As he tried to pass the vehicle, Respondent testified the female driver and her male passenger extended their middle fingers and shouted at him. Respondent testified he tried to pass them a couple of times, but they cut him off each time. When Respondent was eventually able to get in front of the car, he tapped his breaks, apparently in an attempt to frustrate the driver.

The female driver then pursued Respondent and passed him. As the couple's vehicle passed Respondent's vehicle, the male passenger held up a gun, put his middle finger up, and yelled at him. Respondent passed them, took his gun from the center console,[1] and said: "What the hell are you doing, I have one too." This concluded the road rage

[1] Respondent lawfully owned the gun and was lawfully carrying the gun in his vehicle.

incident, and the female driver exited the highway. The female driver called 911 claiming to be a victim of road rage. The female driver provided information concerning Respondent's vehicle. Shortly thereafter, the police stopped Respondent's vehicle and arrested him.

Respondent and the female driver disputed the events leading up to the incident. According to the incident report, the female driver claimed she was by herself in the vehicle, and as she was driving on the highway, Respondent's vehicle came up behind her at a high rate of speed. The female driver stated that as he passed her, Respondent was yelling and pointing a gun at her. The female driver denied any road rage conduct on her part, as well as the presence of a male passenger in her vehicle.

After investigating the matter, the Attorney General's Office offered Respondent the opportunity to enter into pre-trial intervention (PTI) in exchange for the dismissal of the charge.[2] After Respondent successfully completed PTI, the charge was nol prossed and expunged from his record.

For reasons not known, law enforcement never investigated Respondent's claim that a male passenger had first pointed a firearm at Respondent and threatened him. Law enforcement simply accepted the female driver's claim that she was alone. The truth came to light at the Panel Hearing. The female driver's call to 911 was recorded. The 911 recording proves the presence of a male passenger in the vehicle. The voice of the male passenger is heard relaying identifying information about Respondent's vehicle, such as his license plate number.

---

[2] Since Respondent worked for the solicitor's office, the Attorney General's Office (AGO) handled the prosecution. At the hearing, counsel for Respondent stated Respondent did not know whether the AGO planned to present the case to the grand jury for indictment. However, Respondent was under the impression that the process would take a long time due to the AGO's workload, and for this reason, he decided to take the offer of PTI in exchange for the charges being dropped.

Additionally, Respondent submitted affidavits from the female driver's landlord stating she saw the driver and her husband – the male passenger – after the incident and the driver told her "they" had a problem with someone on the bridge. Respondent also submitted an affidavit from the property manager of the female driver's residence. He asserted that the female driver told him about the incident and that both she and her husband were in the vehicle. A day later, she told the property manager the person involved in the incident was a solicitor and "we (she and [her husband]) are going to sue him for 'a lot of money.'"

The true facts concerning the road rage incident in no manner exonerate Respondent, yet the facts mitigate the degree of his misconduct. Respondent exercised extremely poor judgment in participating in this road rage incident. Respondent could have removed himself from the situation after the initial contact, but he chose to further engage the couple in the other vehicle. Respondent was then confronted and threatened by the male passenger with a firearm. The female driver lied to law enforcement, and when law enforcement merely accepted her claims without any scrutiny, she saw an opportunity to leverage Respondent in a civil lawsuit. If law enforcement had simply listened to the 911 transmission, the falsity of the center piece of the female driver's claim would have been revealed.

The Panel questioned Respondent regarding his counseling sessions. Respondent admitted he perhaps had unresolved issues as a result of a prior shooting incident when he was a police officer. Respondent was candid with the Panel and took full responsibility for his actions.

In their report, the Panel adopted Respondent's version of events as a matter of fact, specifically finding that the driver lied when she told police she was alone in the vehicle. We concur in this assessment. The Panel found Respondent violated Rules 8.4(a) and 8.4(b), Rules of Professional Conduct, Rule 407, SCACR. As mitigating factors, the Panel found Respondent made full disclosure to ODC, he demonstrated genuine remorse for his conduct, and he had no disciplinary history.

Respondent has been on interim suspension since his arrest. The Panel recommended Respondent be suspended for two years retroactively, pay the costs of the proceeding, and attend counseling for twenty-four months.

II.

This Court has the sole authority to discipline attorneys and to decide the appropriate sanction after a thorough review of the record. *In re Thompson*, 343 S.C. 1, 10-11, 539 S.E.2d 396, 401 (2000). This Court "may accept, reject, or modify in whole or in part the findings, conclusions and recommendations of the [Panel]." Rule 27(e)(2), Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR.

III.

We adopt the Panel's factual findings regarding the incident and agree that, through his actions on February 15, 2008, Respondent violated Rules 8.4(a) and 8.4(b) of the Rules on Professional Conduct (misconduct to violate the Rules of Professional conduct and to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects). Respondent exercised extremely poor judgment in allowing an avoidable situation to escalate into a dangerous incident. However, we believe Respondent realizes the serious nature of the incident and has expressed genuine remorse for his conduct. We find a six-month suspension is warranted. *See In re Jordan*, 385 S.C. 614, 686 S.E.2d 682 (2009) (imposing a nine-month suspension where attorney was charged with multiple drug offenses, including possession with intent to distribute, but successfully completed the PTI program); *In re Sorenson*, 380 S.C. 119, 669 S.E.2d 91 (2008) (imposing a public reprimand where attorney completed the PTI program after being charged with unlawful gaming and betting on four separate occasions); *In re Hart*, 366 S.C. 557, 623 S.E.2d 650 (2005) (imposing a public reprimand where attorney was arrested for criminal domestic violence, but completed the PTI program).

IV.

We suspend Respondent from the practice of law for six months, retroactive from the date of his interim suspension on February 21, 2008. Additionally, per the Panel's report, we order Respondent attend counseling at least once a month for twenty-four months, submit quarterly reports from his counselor to ODC, and pay the costs of these proceedings.

DEFINITE SUSPENSION.

TOAL, C.J., PLEICONES, BEATTY, KITTREDGE, JJ., and Acting Justice James E. Moore, concur.

The Supreme Court of South Carolina

In the Matter of Richard M. Campbell, Jr.,

Respondent.

ORDER

The Office of Disciplinary Counsel has filed a petition asking this Court to place respondent on interim suspension pursuant to Rule 17(c), RLDE, Rule 413, SCACR, and seeking the appointment of an attorney to protect respondent's clients' interests pursuant to Rule 31, RLDE, Rule 413, SCACR.

IT IS ORDERED that respondent's license to practice law in this state is suspended until further order of the Court.

IT IS FURTHER ORDERED that Lane Whittaker Davis, Esquire, is hereby appointed to assume responsibility for respondent's client files, trust account(s), escrow account(s), operating account(s), and any other law office account(s) respondent may maintain. Mr. Davis shall take action as required by Rule 31, RLDE, Rule 413, SCACR, to protect the interests of respondent's clients. Mr. Davis may make disbursements from respondent's

trust account(s), escrow account(s), operating account(s), and any other law office account(s) respondent may maintain that are necessary to effectuate this appointment.

This Order, when served on any bank or other financial institution maintaining trust, escrow and/or operating accounts of respondent, shall serve as an injunction to prevent respondent from making withdrawals from the account(s) and shall further serve as notice to the bank or other financial institution that Lane Whittaker Davis, Esquire, has been duly appointed by this Court.

Finally, this Order, when served on any office of the United States Postal Service, shall serve as notice that Lane Whittaker Davis, Esquire, has been duly appointed by this Court and has the authority to receive respondent's mail and the authority to direct that respondent's mail be delivered to Mr. Davis' office.

This appointment shall be for a period of no longer than nine months unless request is made to this Court for an extension.

IT IS SO ORDERED.

s/ Jean H. Toal C.J.
FOR THE COURT

Columbia, South Carolina

May 5, 2010

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Glenn Bazen, Respondent,

v.

Badger R. Bazen Company, Inc., Employer and Legion Insurance Company in liquidation through S.C. Property and Casualty Insurance Guaranty Association, Carrier, Appellants.

Appeal From Florence County
Michael G. Nettles, Circuit Court Judge

Opinion No. 4681
Heard November 4, 2009 – Filed May 3, 2010

AFFIRMED

Mark Davis Cauthen, of Columbia, for Appellants.

Steve Wukela, Jr., of Florence, for Respondent.

LOCKEMY, J.: In this workers' compensation action, Badger R. Bazen Company, Inc. and Legion Insurance Company (Carrier) appeal the circuit court's decision affirming the decision of the Appellate Panel of the Workers' Compensation Commission (Appellate Panel) to award Glenn Bazen (Claimant) certain workers' compensation benefits. We affirm.

FACTS

Badger R. Bazen (Father) owned and operated Badger R. Bazen Company, Inc. (Employer) in 2002.[1] Claimant and Father testified they entered into an oral employment contract. Under the contract, Claimant, who was living in Minnesota at the time, would return to South Carolina and work for Employer in exchange for $30,000 per year, a tank of gas per week, and use of a home owned by his parents as a free living arrangement. After Claimant began working for Employer, he sustained injuries while in the scope and course of his employment on February 15, 2002.

In his order addressing average weekly wages, the single commissioner found Father promised to pay Claimant $30,000 per year, or $2,500 per month, a tank of gas per week, and allow him to use a house and storage building free of charge. Relying on testimony, the single commissioner found Claimant's use of the home and storage facility to be an integral part of the parties' employment contract, not a mere fringe benefit as discussed in Anderson v. Baptist Medical Center, 343 S.C. 487, 541 S.E.2d 526 (2001).[2] The single commissioner thereafter determined Claimant's average weekly wage was $853.84 by concluding the fair rental value of the home was $1,200 per month and his agreed upon wage was $30,000 per year. Additionally, the single commissioner awarded Claimant $549.42 per week in temporary total disability benefits. Finally, the single commissioner

[1] At the time of the workers' compensation hearings, Father was retired.

[2] Anderson cites case law that finds mileage deductions and employer contributions to union trust funds for health and welfare, pensions, and training are fringe benefits rather than "the actual sum paid to the employee as his wages . . . ." 343 S.C. at 496, 541 S.E.2d at 530 (citing Stephen v. Avins Const. Co., 324 S.C. 334, 347, 478 S.E.2d 74, 81 (Ct. App. 1996)).

determined Claimant was underpaid by $132.73 per week since February 15, 2005, the date of the accident, until October 31, 2005. Therefore, for a total of 193 weeks, the single commissioner ordered Employer to pay Claimant $25,616.89 as a lump sum back-payment for temporary total disability benefits.

Thereafter, Employer and Carrier applied for review of the single commissioner's findings to the Appellate Panel. Specifically, the parties argued the single commissioner erred in: 1) finding the use of the house, storage building, and land provided by Employer should be included in calculating Claimant's average weekly wage; 2) ruling it was immaterial that the house and building were not owned by Employer; 3) determining that Claimant was entitled to the maximum compensation rate of $549.42 for 2002; 4) finding Claimant was entitled to back-payments for temporary total disability benefits; and 5) failing to grant Employer credit for overpayment of temporary total disability payments. The Appellate Panel unanimously affirmed all of the single commissioner's findings of facts and conclusions of law. Thereafter, the circuit court affirmed the Appellate Panel's order. This appeal followed.

STANDARD OF REVIEW

"The Administrative Procedures Act establishes the standard of review for decisions by the South Carolina Workers' Compensation Commission." Forrest v. A.S. Price Mech., 373 S.C. 303, 306, 644 S.E.2d 784, 785 (Ct. App. 2007) (citing Lark v. Bi-Lo, Inc., 276 S.C. 130, 134-35, 276 S.E.2d 304, 306 (1981)). "In workers' compensation cases, the [Appellate Panel] is the ultimate fact finder." Shealy v. Aiken County, 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000) (citation omitted). This court reviews facts based on the substantial evidence standard. Thompson v. S.C. Steel Erectors, 369 S.C. 606, 612, 632 S.E.2d 874, 877 (Ct. App. 2006). "Under the substantial evidence standard, the appellate court may not substitute its judgment for that of the [Appellate Panel] as to the weight of the evidence on questions of fact." Forrest, 373 S.C. at 306, 644 S.E.2d at 785 (citing S.C. Code § 1-23-380(A)(5) (Supp. 2006)). The appellate court may reverse or modify the Appellate Panel's decision only if the claimant's substantial rights have been prejudiced because the decision is affected by an error of law or is clearly

erroneous in view of the reliable, probative, and substantial evidence in the record. Id. at 306, 644 S.E.2d at 785-86. "Substantial evidence is not a mere scintilla of evidence nor evidence viewed from one side, but such evidence, when the whole record is considered, as would allow reasonable minds to reach the conclusion the [Appellate Panel] reached." Shealy, 341 S.C. at 455, 535 S.E.2d at 442.

LAW/ANALYSIS

I. Value of House as Part of Wage Contract

Employer and Carrier argue the circuit court erred in affirming the Appellate Panel's decision to include the value of the use of the house as part of Claimant's average weekly wage. Specifically, Appellants argue use of the residence was a gratuitous gift from Claimant's mother, and Claimant failed to present evidence in the record to substantiate that the residence was a specified part of a wage contract. In response, Claimant argues the circuit court correctly included the home's value as part of his weekly wage. We agree with Claimant.

Section 42-1-40 of the South Carolina Code (Supp. 2009) defines "average weekly wage" as "the earnings of the injured employee in the employment in which he was working at the time of the injury during the period of fifty-two weeks immediately preceding the date of the injury. . . ." The average weekly wage can include allowances of any character when they are a specified part of his employment contract. See S.C. Code Ann. § 42-1-40 ("Whenever allowances of any character made to an employee in lieu of wages are a specified part of a wage contract they are deemed a part of his earnings."). Anderson directs: "[B]efore an allowance will be included in the average weekly wage calculation, it must (1) be made in lieu of wages, and (2) be a specified part of a wage contract." 343 S.C. 487, 495, 541 S.E.2d 526, 530 (2001). Here, we find there is substantial evidence of both.

In this case, Father's and Claimant's statements regarding an oral agreement are the sole evidence upon which we can rely to determine the components of their contract. Though there is no written contract, no conflicting testimony exists regarding the contract terms. We believe Father

and Claimant presented ample and consistent testimony through depositions and hearings for us to affirm the finding that Claimant's oral wage contract was $30,000 per year, a tank of gas per week, and his rent-free living arrangement.

Specifically, Claimant testified in his deposition that his employment agreement consisted of "[t]hree things: free house; one tank of gas a week; $30,000[] a year." Additionally, Claimant testified, "[t]he house was part of my agreement with [Father] when I came back to work with him, and I still live there." Father corroborated Claimant's testimony through deposition testimony and testimony before the single commissioner.

In his deposition, Father testified that he told Claimant he "would give him [30,000] a year, a house to live in[,] and a tank of gas a week." Father responded affirmatively when asked if Claimant had a guarantee of $2,500 per month in income "on top of the house and the taxes and the insurance and the gasoline . . . ." Father's testimony remained consistent from his deposition to his hearing before the single commissioner. There, Father testified "I told him I would give him $2,500 a month, a tank of gas a week, and the house and little shop there." Father answered affirmatively when asked whether Claimant's compensation was $30,000 per year or $2,500 per month. Further, he testified: "[Claimant] would not have come home for just 2,500 a month without the house." When asked whether he ever charged Claimant rent for use of the house, Father responded "No. That was part of the deal for him to come home." Further, Father testified that Claimant had to sell his home in Minnesota in order to return to South Carolina, so Father felt he should "give him somewhere to stay as far as it was a package deal."

Because ample evidence in the record indicates Claimant's living arrangement was not merely a gift but part of his wage contract, we do not believe Appellant's gratuitous benefit argument has any merit. Therefore, we believe the circuit court did not err in affirming the Appellate Panel's decision to award Claimant the fair market value of the use of the house as part of Claimant's average weekly wage. Accordingly, we affirm the circuit court's decision.

II. Rent Free Living

Employer and Carrier argue the circuit court erred in affirming the Appellate Panel's decision to include the rental value of Claimant's residence when he continued to live rent free in the residence after his employment ended, and he never ceased receiving this benefit. Appellants maintain that to include the rental value unquestionably confers a double benefit upon Claimant.[3] In response, Claimant argues the contractual terms between the parties are factual determinations that are left exclusively to the Appellate Panel. Additionally, Claimant maintains his mother's conveyance of her property to Claimant was not compensation by Employer; therefore, Employer should not be entitled to a credit for the conveyance.

The issue of Claimant's living situation after the single commissioner's ruling and any double recovery he may or may not have received is not preserved for our review. Appellants did not raise this issue to the Appellate Panel after the single commissioner's ruling. In fact, Appellants first raised the double recovery argument to the circuit court on appeal. Therefore this issue is not properly before this court for review. Smith v. NCCI, Inc., 369 S.C. 236, 256, 631 S.E.2d 268, 279 (Ct. App. 2006) ("Only issues raised and ruled upon by the [Appellate Panel] are cognizable on appeal."); see also Creech v. Ducane Co., 320 S.C. 559, 467 S.E.2d 114 (Ct. App. 1995) ("[O]nly issues within the application for review are preserved for the full commission."). Additionally, Appellants do not present any supporting case law for their theory. Therefore, we decline to address this issue on the merits.

III. Error in Calculating Claimant's Average Weekly Wage

Employer and Carrier argue the circuit court erred in affirming the Appellate Panel's determination that Claimant was entitled to the maximum

[3] Specifically, Appellants contend Claimant should have been awarded only $576.92 per week, which would have properly compensated him for the exact loss due to his incapacity to work. Assuming they are correct in their assertion, Appellants argue they should be entitled to a credit of the difference between what was actually awarded and $576.92.

compensation rate for 2002. Additionally, Appellants maintain the Appellate Panel failed to consider Claimant's actual earnings as reported for tax purposes and failed to calculate his average weekly wage according to the method required by section 42-1-40 of the South Carolina Code.[4] We disagree.

Section 42-1-40 provides:

> "Average weekly wage" must be calculated by taking the total wages paid for the last four quarters immediately preceding the quarter in which the injury occurred as reported on the Employment Security Commission's Employer Contribution Reports divided by fifty-two or by the actual number of weeks for which wages were paid, whichever is less.

(emphasis added). Here, the single commissioner determined Claimant earned $27,500 in 2001, and then divided $27,500 by forty-eight, the actual number of weeks Bazen paid Claimant wages, rather than fifty-two. In 2001, Claimant took a one-month vacation to Israel during which time he did not receive compensation. Therefore, Claimant essentially received $27,500 in actual earnings for 2001 rather than $30,000. Thus, Appellants argue the single commissioner should have divided $27,500, by fifty-two in calculating Claimant's average weekly wage to reflect the vacation time. However, because the above mentioned statute requires the average weekly wage be based on the "actual number of weeks for which wages were paid," we find there was no error in the calculation of Claimant's average weekly wage.

Accordingly, we affirm the circuit court's decision to affirm the Appellate Panel's calculation of Claimant's average weekly wage pursuant to section 42-1-40 of the South Carolina Code.

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[4] Employer and Carrier also mention the living arrangement issue in this section. We have already affirmed the portions of the order that concern Claimant's rental income as part of his average weekly wage. Therefore, we do not need to revisit this issue here.

CONCLUSION

We believe the record contains substantial evidence that Claimant's rent-free living situation was part of his oral employment contract. Further, we do not believe Claimant's double recovery issue is preserved for our review. Finally, we do not believe there was any error in the calculation of Claimant's average weekly wage pursuant to section 42-1-40 of the South Carolina Code. Therefore, the circuit court's decision is

AFFIRMED.

WILLIAMS and PIEPER, JJ., concur.

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

Donna Yeargin Farmer, Respondent,

v.

Thomas Michael Farmer, Appellant.

Opinion No. 4682
Heard February 10, 2010 – Filed May 3, 2010

Appeal From Greenville County
Aphrodite K. Konduros, Family Court Judge

AFFIRMED

J. Falkner Wilkes, of Greenville, for Appellant.

Jonathan Kirk Fisher, of Greenville, for Respondent.

LOCKEMY, J.: Thomas Michael Farmer (Husband) appeals from an order of the family court granting him and Donna Yeargin Farmer (Wife) a divorce on grounds of one year's continuous separation. On appeal, Husband argues the family court erred in finding certain payments he received from his employer to be marital property and subject to equitable division. Additionally, Husband maintains the family court erred in ordering he pay Wife attorney's fees and costs. We affirm.

FACTS

Husband and Wife were married in 1984, and had one child as a result of the marriage who was emancipated at the time of the divorce. The parties originally brought the divorce action in 2004, but it was dismissed. Subsequently, the parties reinitiated the divorce action in 2007. Because the parties had reached a settlement regarding the division of marital assets and debt in a stipulation of mediation, the only issues before the family court were a single asset, which the family court refers to as the "fruits of the Management Agreement between [Husband] and CHM Homes, Inc. dated July 27, 1992" and attorney's fees and costs.

The family court granted both parties a divorce on grounds of one year's continuous separation. The family court also approved the stipulation of mediation agreement, finding the parties entered into it freely and voluntarily. In regards to the Management Agreement between Husband and CHM Homes, the family court found he entered into the Management Agreement in 1992—eight years into the parties' marriage. Additionally, the family court found Husband and CHM Homes terminated their employment arrangement on December 3, 2004.[1] Ultimately, the family court found Husband was the primary source of income for the marriage. Accordingly, the family court found the assets Husband received from the Management

[1] Specifically, Husband and CHM Homes entered into the Termination Agreement on December 3, 2004. However, the Termination Agreement states: "The Management Agreement shall be terminated, and the Venture created thereby dissolved, as of September 30, 2004." Therefore, the family court found September 30, 2004, to be the effective date of the Termination Agreement.

Agreement were marital property and equally divided them between the parties. After equally dividing the assets and subtracting money Husband already paid Wife from the total, the family court determined Husband owed Wife $361,060. Further, the family court awarded Wife $9,416.25 in attorney's fees and $8,000 in costs. Thereafter, Husband filed a motion for reconsideration which the family court denied. This appeal followed.

ISSUES

1. Did the family court err by including the proceeds Husband received in a severance package as part of the marital estate and subject to equitable division?

2. Did the family court err in awarding Wife attorney's fees and costs?

STANDARD OF REVIEW

"On appeal from the family court, this court has jurisdiction to correct errors of law and find facts in accordance with its own view of the preponderance of the evidence." Henggeler v. Hanson, 333 S.C. 598, 601-02, 510 S.E.2d 722, 724 (Ct. App. 1998). Although this court may find facts in accordance with our own view of the preponderance of the evidence, we are not required to ignore the fact that the family court, who saw and heard the witnesses, was in a better position to evaluate their credibility and assign comparative weight to their testimony. Marquez v. Caudill, 376 S.C. 229, 239, 656 S.E.2d 737, 742 (2008). "The division of marital property is within the sound discretion of the family court, and on appeal, it will not be disturbed absent an abuse of discretion." See Simpson v. Simpson, 377 S.C. 527, 533, 660 S.E.2d 278, 282 (2008). The decision to award attorney's fees is also within the family court's discretion and will not be disturbed absent an abuse of discretion. Id. at 538, 660 S.E.2d at 284.

LAW/ANALYSIS

I. Non-Compete Clause and Termination Agreement Payments

Husband argues the family court erred by including the money he received from the Termination Agreement as part of the marital estate, thereby making it subject to equitable division. Husband maintains he received funds pursuant to the Management Agreement he entered into with CHM Homes which were intended to provide him future income he would have otherwise obtained through competing employment. To support his argument, Husband cites to Ellerbe v. Ellerbe, 323 S.C. 283, 292-93, 473 S.E.2d 881, 886-87 (Ct. App. 1996), where this court classified a non-compete agreement as non-marital property. Additionally, Husband cites McElveen v. McElveen, 332 S.C. 583, 506 S.E.2d 1 (Ct. App. 1998), *modified on other grounds by*, Wooten v. Wooten, 364 S.C. 532, 615 S.E.2d 98 (2005), for the proposition. As such, Husband argues the money he received from the Management Agreement— where value is attributable to a non-compete agreement or intended to be a substitute for future income— should not be characterized as marital property either.

In response, Wife argues the money Husband received from the Termination Agreement was not for an agreement not to compete but rather was for the "princip[al] payments and property appreciation on the venture." Further, Wife maintains Husband's contention that the non-compete clause allowed Husband to continue to receive money past the termination of his employment and that the payments were to replace the loss of future earnings is simply unsupported by the plain language in the contract. After examining the 1992 Management Agreement and the 2004 Termination Agreement, we agree with Wife.

In 1992, Husband and CHM Homes entered into a Management Agreement. Pursuant to the Management Agreement, Husband agreed to "refrain from any business activities which would compete with" CHM Homes. No time frame was included in the non-compete clause. A detailed

description of what would happen in the event of dissolution was included in the Management Agreement. Upon dissolution, the manager would receive the fair market value of his interest, to be evaluated by the advisory board. Husband worked for CHM Homes for twenty-three years pursuant to this Management Agreement.

Thereafter, Husband and CHM Homes entered into an "Agreement for Termination of Quasi-Partnership" (Termination Agreement) because the parties desired "to effect a termination of the Management Agreement and any and all obligations and relationships created thereby." Pursuant to the Termination Agreement, CHM Homes agreed to pay Husband $771,992.87 "(comprised of $21,992.87 previously given by [Husband] to the Venture in the form of 'Loan Back' as defined in the Management Agreement plus $750,000 owed to [Husband] for principal payments and property appreciation on Venture)." (emphasis added). The Termination Agreement reiterated the purpose of the payments "as consideration for principal payments on note for Venture property and property appreciation." (emphasis added). Both parties agreed to:

> Release, discharge, and hold harmless all other parties to this Termination Agreement from any and all claims, damages, and expenses whatsoever, whether now existing or hereafter arising, relating to the Management Agreement, the Venture or any Loan Backs, employment, compensation, bonuses, assets, or other benefits which may be associated therewith.

Additionally, Husband waived all rights to any future income from the Venture's finance income for which CHM Homes assumed responsibility for any losses on the loan portfolio.

Based on the language in the Termination Agreement, we agree with Wife and believe the money Husband received from the Termination Agreement was part of the marital estate and subject to equitable division by the family court. As Wife points out, the purpose of the Termination Agreement, as is expressly stated twice, was to compensate Husband for his

contributions to the business venture and appreciation of business assets. Nowhere in the Termination Agreement does it state its purpose is to compensate Husband for future income or pay him for his promise to not compete with CHM Housing. Furthermore, we believe there was only one covenant not to compete which was part of the original Management Agreement and is no longer in effect. Accordingly, we agree with the family court's characterization of the "fruits of the [T]ermination [A]greement" as being marital property because Husband's contributions to the Venture, and the Venture's appreciation occurred while the parties were still lawfully married. See S.C. Code Ann. § 20-3-630 (Supp. 2009) (defining "marital property" as real or personal property acquired by the parties during the marriage). Additionally, we see no reason to disturb the family court's equitable division of the money because of the wide discretion given to the family court on these matters. See Greene v. Greene, 351 S.C. 329, 340, 569 S.E.2d 393, 399 (Ct. App. 2002) ("The statute grants the family court discretion to decide what weight to assign various factors."). Accordingly, we affirm the family court's decision.

II. Attorney's Fees and Costs

Husband maintains the family court erred in ordering Husband to pay Wife $9,416.25 in attorney's fees and $8,000.00 in costs. Specifically, Husband argues the family court failed to set forth specific findings of fact and conclusions of law to satisfy Rule 26(a) of the Family Court Rules. Further, Husband maintains the record does not contain sufficient facts to support such an award. Wife maintains the family court did not err in its award of attorney's fees. Further, Wife argues the family court exercised proper discretion in awarding both attorney's fees and the fee for her expert. We agree with Wife.

Section 20-3-130 (H) of the South Carolina Code (Supp. 2009) authorizes the family court to order payment of litigation expenses to either party in a divorce action. An award of attorney's fees rests within the sound discretion of the trial court and should not be disturbed on appeal absent an abuse of discretion. Doe v. Doe, 319 S.C. 151, 157, 459 S.E.2d 892, 896 (Ct. App. 1995). The family court is given broad discretion in this area. See id. The same considerations that apply to awarding attorney's fees also apply to

awarding litigation expenses. See Nienow v. Nienow, 268 S.C. 161, 173, 232 S.E.2d 504, 510 (1977).

A family court should first consider the following factors as set forth in E.D.M. v. T.A.M., in deciding whether to award attorney's fees and costs: (1) each party's ability to pay his or her own fee; (2) the beneficial results obtained by the attorney; (3) the parties' respective financial conditions; and (4) the effect of the fee on each party's standard of living. 307 S.C. 471, 476-77, 415 S.E.2d 812, 816 (1992); see also Glasscock v. Glasscock, 304 S.C. 158, 161 n.1, 403 S.E.2d 313, 315 n.1 (1991). After deciding to award attorney's fees, a family court should then consider the following factors as set forth in Glasscock in deciding how much to award in attorney's fees and costs: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. 304 S.C. at 161, 403 S.E.2d at 315; see also Feldman v. Feldman, 380 S.C. 538, 546-47, 670 S.E.2d 669, 673 (Ct. App. 2008).

Although the family court did not delineate its consideration of the E.D.M. factors, by our own preponderance of the evidence, we find awarding attorney's fees was proper. See Henggeler v. Hanson, 333 S.C. 598, 601-02, 510 S.E.2d 722, 724 (Ct. App. 1998) ("On appeal from the family court, this court has jurisdiction to correct errors of law and find facts in accordance with its own view of the preponderance of the evidence."). We affirm the decision, especially in light of Wife's beneficial results and the likelihood that she initiated litigation in the first place in order to receive her portion of Husband's business venture. The family court noted the Glasscock factors in its order and thoroughly detailed its calculation of attorney's fees. Therefore, considering the E.D.M. factors under our view of the preponderance of the evidence and the family court's consideration of the Glasscock factors, we do not believe the family court abused its discretion in awarding Wife attorney's fees. Furthermore, we find Wife's expert assisted her in obtaining beneficial results and do not believe the family court abused its discretion in awarding costs for the expert. Accordingly, we affirm the family court's decision to award attorney's fees and costs as well as the amount awarded.

CONCLUSION

We affirm the family court's decision to classify the money Husband received as a result of his Termination Agreement as marital property and find the family court exercised proper discretion in equitably dividing said property. Additionally, we find the family court exercised proper discretion in awarding attorney's fees and costs. Accordingly, the decision of the family court is

AFFIRMED.

SHORT and WILLIAMS, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Case No: 2005-CP-07-1738

James O. Hale and Hale and Hale, P.A., Respondents/Appellants,

v.

Thomas Finn, d/b/a Finn Law Firm, Appellant/Respondent.

Case No. 2005-CP-07-73

James O. Hale and Hale and Hale, P.A., Plaintiffs

v.

Thomas Finn, Defendant.

Appeal From Beaufort County
John P. Linton, Special Referee

Opinion No. 4683
Heard March 4, 2010 – File May 5, 2010

AFFIRMED IN PART, REVERSED IN PART

Curtis W. Dowling and J. Todd Kincannon, both of Columbia, for Appellant/Respondent.

John E. Parker, of Hampton, for Respondents/Appellants.

THOMAS, J.: These cross-appeals arise from a dispute between attorneys over the division of fees in a civil litigation matter. In the primary appeal, Appellant/Respondent Thomas Finn, d/b/a Finn Law Firm (Finn) alleges error in the special referee's award of actual and punitive damages to Respondents/Appellants James O. Hale and Hale and Hale, P.A. (Hale) on Hale's cause of action for tortious interference with contract. In his cross-appeal, Hale argues the special referee should have based actual damages on partnership law rather than on quantum meruit. Both Finn and Hale appeal the special referee's decision. We affirm the actual damages award and reverse the punitive damages award.

FACTS AND PROCEDURAL HISTORY

On October 15, 1997, Finn and Hale commenced an action on behalf of the Village West Horizontal Property Regime and the Village West Owners' Association (collectively Village West) arising out of a construction dispute. Hale, an attorney practicing in Beaufort County, had begun representing Village West in 1991 in routine legal matters. At Hale's recommendation, the Mullen Firm, where Finn was employed at the time, was associated in the case.

Because of concerns about the applicable statutes of limitations and repose, the complaint in the Village West lawsuit was filed before Village West finalized a fee agreement with its attorneys. Eventually, an agreement

was reached on December 8, 1997, when Village West signed a contingency fee contract hiring Hale to represent it in the above-mentioned construction litigation. Under the agreement, counsel would receive a contingency fee of thirty-three and one third percent of any amount recovered unless an evidentiary hearing, arbitration, or mediation hearing was required. If any of these were necessary, the contingency fee would be forty percent of the recovery. Shortly after Village West signed the contract with Hale, Hale sent the Mullen Firm a copy of the contract with a letter stating his understanding that the contingency fee would be divided equally between the two law firms. Hale never received a reply to this communication.

Hale, Finn, and various other attorneys from the Mullen Firm, actively worked on the Village West lawsuit during the preliminary stages. A mediation in the lawsuit was scheduled for December 11, 2001. Contrary to instructions from his superior, Finn met with the Village West Board of Directors before the mediation instead of arranging for one of the senior partners of the Mullen Firm to meet with the Board. The mediation was unsuccessful, and a status conference had to be set in the matter.

During this time, the Mullen Firm had become dissatisfied with some of Finn's work on other matters, prompting the senior partner to ask another lawyer in the firm to become involved with the Village West lawsuit. A meeting was scheduled for February 8, 2002, for that lawyer and Finn to review ten files that had been assigned to Finn. On the appointed day, however, Finn advised the other attorney before the meeting was to begin that he intended to leave the Mullen Firm.

By letter dated February 11, 2002, the President of the Village West Board of Directors, advised both the Mullen Firm and Hale of Village West's desire to "move with [Finn]" on the pending construction litigation. On February 22, 2002, attorney Gregory Alford, who had been retained to represent Village West in regime matters, sent Hale a letter requesting that Hale direct all further communications with either the Board or its individual members to Alford's office. Near the end of February 2002, Hale retained counsel to represent his interest in the matter.

By agreement dated March 11, 2002, the Association retained Finn "in association with [the Mullen Firm]" in the Village West construction litigation.[1] In a fax to the Mullen Firm dated April 1, 2002, Alford advised as follows:

> The Board's directive is that this agreement is not effective or to be delivered to either Mullen Law Firm or Finn Law Firm until an agreement to indemnify against Hale is delivered. Finn and Seekings have indicated orally that this would be done and a writing would be forthcoming to that effect.[2]

Despite the Board's directive, neither Finn nor anyone else at the Mullen Firm ever gave written confirmation of an indemnification agreement. Hale apparently continued to believe he was still counsel of record in the Village West lawsuit, as evidenced by his appearance at a status conference in the matter on February 14, 2002, and possibly a summary judgment hearing in May 2002. In July 2002, Alford advised Hale that during its March 2002 meeting, the Village West Board of Directors ratified the termination of Hale's services in the construction litigation. Thereafter, Hale moved to withdraw and assert a lien in the matter.

The Village West lawsuit was settled for $7,002,500 in October 2002, and a settlement disbursement accounting was rendered on November 4, 2002. An attorney's fee of approximately $2,801,000 was disbursed to the Mullen Firm. Finn received 25 percent of this amount. Although Hale's motion to be relieved as counsel and motion for a lien were still pending, a form order was issued dismissing the case.

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[1] Because of personnel changes, the name of the Mullen Firm changed; however, the change does not impact the merits of this appeal.

[2] Seekings was an attorney with the Mullen Firm.

On September 29, 2003, a hearing took place in the Village West lawsuit on Hale's motion to establish a lien for his fees on the proceeds of the settlement. On November 3, 2003, the court issued an order in which it acknowledged Hale had previously been granted leave to amend his motion to assert a retaining lien and any other equitable liens to which he may have been entitled. The court also granted a motion by Hale to join Finn and the Mullen Firm as parties to this action.

On January 6, 2005, Hale filed a separate action against the Mullen Firm and Finn for breach of contract, intentional interference with contractual relations, and breach of fiduciary duties. In his complaint, Hale sought actual and punitive damages.

Hale was formally relieved as counsel in the Village West lawsuit on August 25, 2005. Later, after all parties remaining in the Village West litigation and those in Hale's action waived their right to a jury trial, the two lawsuits were consolidated and referred to the special referee.

The special referee took testimony in the matter on August 16 and 17, 2006. On the second day of the hearing, Hale settled with the Mullen Firm for $400,000 on the breach of fiduciary duty claim, leaving Finn as the only defendant Just before the testimony was to resume, counsel stipulated the only cause of action against Finn was the claim for tortious interference with the contractual relations between Hale and Village West.

Hale acknowledged on direct examination there was no written joint representation agreement to which Finn himself was a party. In support of his claim, Hale testified about his correspondence to the Mullen Firm regarding the fee division between the two law firms. He also presented evidence that he had devoted between six hundred and eight hundred hours to the lawsuit and the directive of the Village West Board of Directors that Finn and the Mullen Firm were to "indemnify against Hale." In addition, it appears undisputed that Finn was aware of Hale's lien.

Sometime during October 2006, the special referee issued to counsel an unsigned draft order. In the draft order, the special referee noted Hale, after settling with all defendants except for Finn, "continued to pursue a single cause of action against Mr. Finn for tortious interference with contractual rights," those contractual rights originating from Hale's representation contract with Village West. With regard to the allegation by Hale that Finn had interfered with the representation agreement between Hale and Village West, the referee's proposed findings were that Hale failed to carry his burden of proof that Finn engaged in tortious interference with this agreement and that the Village West Board "was primarily prompted by the fact that Mr. Finn had earned their respect through his efforts and dedication."

Nevertheless, the special referee proposed to find that "Mr. Finn willfully and recklessly agreed to distribution of the entire fee in total disregard of Mr. Hale's right, and furthermore violated the proper practice of bringing the matter to the Court's attention." Based on this finding, the special referee proposed to order Finn to pay Hale $525,000 in actual damages and $50,000 in punitive damages, with the proviso that the award would be reduced by any amounts paid by those defendants with whom Hale had settled. The amount of actual damages was based on the special referee's determination that Hale was entitled to between 15 and 20 percent of the entire fee based on a quantum meruit theory of recovery. The special referee also rejected Finn's defense that the Mullen Firm was in charge of actual disbursements, noting that Finn, though aware that Hale had never been removed as counsel of record in the case, agreed to the distribution of the entire fee to the Mullen Firm and himself. Citing Barnes v. Alexander, 232 U.S. 117 (1914), and McNair v. Rainsford, 330 S.C. 332, 499 S.E.2d 488 (Ct. App. 1998), the special referee further stated "[t]he attorneys' fees should have been held as a constructive trust, and Mr. Finn's complicity and acquiescence of 100% without justification constituted an interference with [Hale's] right to a portion of the funds."

Because of objections from Finn to the proposed order, the special referee reopened the record and held another hearing on February 16, 2007. Before the testimony began, counsel for Hale moved to amend the pleadings

to conform to the proof offered on the issue of interference with contractual relations at the time the attorney's fees were disbursed and also to include a constructive trust. It is clear from the record that the motion resulted from the special referee's invitation, in which he indicated "that if the original pleading was not adequate to cover interference at the time of disbursement and if the plaintiff wishes to amend to make that a specific allegation then I'll grant that motion and proceed on that basis." Hale declined to submit additional evidence, and the hearing proceeded with Finn as the only witness.

On February 21, 2007, the special referee issued a final order in the matter. As in the draft order previously sent to counsel, the special referee in the final order found Hale failed to carry his burden of proof that Finn tortiously interfered with the representation agreement between Hale and Village West. Nevertheless, although the special referee noted, as he did in the draft order, that Hale's sole cause of action against Finn was for tortious interference with contractual rights, he also retained the findings from his draft order that the contingent fee obtained in the underlying litigation should have been held in trust and that Finn acted improperly in agreeing to the division of the attorney's fee between himself and the Mullen Law Firm without alerting the court to Hale's claim. As he did in the draft order, the special referee ordered Finn to pay actual damages of $525,000.00, less the amount to be paid by the Mullen Firm pursuant to its settlement with Hale; however, punitive damages in the final order were decreased to $15,000. Both Hale and Finn appealed the special referee's final order.

STANDARD OF REVIEW

"Courts have wide latitude in amending pleadings and, while this power should not be exercised indiscriminately or to surprise or prejudice an opposing party, the matter of allowing amendments is left to the sound discretion of the trial judge." Mylin v. Allen-White Pontiac, 281 S.C. 174, 180, 314 S.E.2d 354, 357 (Ct. App. 1984).

A trial court's determination of the constitutionality of a punitive damages award is subject to a de novo standard of review. Mitchell v. Fortis Ins. Co., 385 S.C. 570, 583, 686 S.E.2d 176, 182 (2009).

LAW/ANALYSIS

I. Finn's appeal

A. Actual damages award

On appeal, Finn advances several arguments supporting his position that the special referee's award of actual damages was improper. First, relying on the premise that the only issue before the special referee was Finn's alleged interference with the contractual relations between Hale and Village West, Finn argues an award for a claim for intentional interference with contractual relations cannot be fashioned on quantum meruit entitlement. In conjunction with this argument, he contends that the award was inconsistent with the special referee's findings that he did not interfere with the representation contract between Hale and Village West and that he believed the Mullen Firm would assume responsibility for Hale's fees. Second, he alleges the special referee erred in "bootstrapping" to the claim for intentional interference with contractual relations the elements of several unpled causes of action, namely conversion and constructive trust, to support his decision.

We agree with Finn that because the special referee determined he did not interfere with the representation contract between Hale and Village West, damages for that cause of action were unwarranted. We disagree, however, with his argument that the special referee lacked authority to base the award of actual damages on quantum meruit. Such an award was proper to enforce a constructive trust.

As we have noted in our narrative of the facts, after the settlement agreement between Hale and the Mullen Firm was read into the record, counsel stipulated the only cause of action against Finn was interference with

contractual relations. Nevertheless, at the commencement of the second hearing in the matter, Hale moved to amend his pleadings to "include a constructive trust," a basis for relief that was cited by the special referee in his proposed order and not objected to by Finn when that order was received by counsel. Furthermore, contrary to the contention in Finn's reply brief that the special referee "certainly did not state in the record any reasons for allowing an amendment of the pleadings to conform to the evidence," the special referee indicated he was willing to grant a motion by Hale to amend his complaint to include "a specific allegation" "to cover interference at the time of disbursement." It is apparent from the other statements the special referee made during the colloquy that he believed such an amendment would conform to the evidence of Finn's "interference at the time of disbursement."[3] Such interference can, as the special referee indicated in both his proposed and final orders, give rise to the imposition of a constructive trust.

"A constructive trust arises entirely by operation of law without reference to any actual or supposed intentions of creating a trust." SSI Med. Servs. v. Cox, 301 S.C. 493, 500, 392 S.E.2d 789, 793 (1990). It "arises whenever a party has obtained money which does not equitably belong to him and which he cannot in good conscience retain or withhold from another who is beneficially entitled to it." Id. at 500, 392 S.E.2d at 793-94. Authority exists to support the proposition that "a claim for imposition of a constructive trust is not an independent cause of action." Morrison v. Morrison, 663 S.E.2d 714, 717 (Ga. 2008); see also Faulkner v. Faulkner, 257 S.C. 172, 175-76, 184 S.E.2d 718, 720 (1971) (referring to the doctrine of constructive trust as "a creature of equity jurisprudence, raised without regard to intention to prevent unjust enrichment"). "A constructive trust does not . . . arise because of a manifestation of an intention to create it, but it is imposed as a remedy to prevent unjust enrichment." Restatement (First) of Restitution § 160 cmt. a (1937) (emphasis added). "A constructive trust is a

[3] Moreover, although as Finn argues in his reply brief, the South Carolina Rules of Civil Procedure require the trial judge to "state in the record the reason or reasons for allowing the amendment or evidence," the lack of a formal amendment "does not affect the result of the trial of these issues." Rule 15(b), SCRCP.

flexible equitable remedy whose enforcement is subject to the equitable discretion of the trial court." Wendell Corp. Trustee v. Thurston, 680 A.2d 1314, 1320 (Conn. 1996).

We hold the issue of Hale's right to a constructive trust in his favor was tried with the implied consent of the parties. During the hearing, Hale testified without objection that after he realized he was no longer counsel of record for Village West, he filed a lien to protect his interest in his fee agreement. Moreover, Finn never contended that Hale was not entitled to be paid; rather, his position was that the Mullen Firm was responsible for fulfilling this obligation. Finally, we cannot ignore the duty that Finn, as an officer of the court, must discharge upon receiving funds in which a third person has an interest. See Rule 1.15(d), RPC, Rule 407, SCACR (requiring a lawyer to promptly notify any third persons who have an interest in funds that the lawyer receives, to promptly deliver such funds accordingly, and to render a full accounting upon request).

In challenging the special referee's reliance on a constructive trust remedy, Finn has not asserted any substantive reasons as to why Hale would not be entitled to this relief based on this doctrine. In any event, we believe the special referee correctly determined the attorney's fees from the Village West lawsuit should have been held in trust pending satisfaction of Hale's claim on them and therefore acted properly in imposing a constructive trust on the portion of the funds that, in his determination, would satisfy Hale's right to quantum meruit recovery.

Finn has also taken issue with the special referee's award decision to order a quantum meruit award for a legal cause of action. There is no incongruity, however, in using an equitable measure to determine Hale's recovery on a constructive trust theory. See Verenes v. Alvanos, Op. No. 26780 (S.C. Sup. Ct. filed March 1, 2010) (Shearouse Adv. Sh. at 38, 43 n.7 (noting "a constructive trust . . . can arise from a breach of a fiduciary duty giving rise to the obligation in equity to make restitution") (emphasis added); id. at 41, 44 (determining the respondent sought restitution and disgorgement on as remedies for breach of fiduciary duties and therefore rejecting the

appellant's argument that he was entitled to a jury trial because the cause of action he was defending was "primarily a legal action for money damages"). Regardless of whether the award can stand as damages for interference with contractual relations, the discretion that must be accorded to the special referee compels us to affirm the award as appropriate recompense for misconduct necessitating the imposition of a constructive trust.

B. Punitive damages award

Finn also challenges the punitive damages award, arguing (1) he did not engage in the sort of reprehensible conduct that would justify the imposition of punitive damages; and (2) the award was based on his alleged failure to see that a debt was paid to Hale. In response, Hale contends (1) Finn failed to preserve his arguments on this issue for appeal, alleging they were raised neither in the trial court nor in any post-trial motion; (2) Finn's conduct warranted the imposition of punitive damages; and (3) Finn and Hale were fiduciaries, not debtor and creditor.

We agree with Finn that his arguments concerning punitive damages were preserved for appeal. After the special referee sent a draft order to counsel for the parties for review and comment, Finn's attorney specifically objected to the punitive damages, and the reduction of the punitive damages in the final order was tantamount to a ruling on this objection.

"Punitive damages are . . . by definition 'punishing damages' or 'private fines' levied to punish a wrongdoer for reprehensible conduct and to deter its repetition in the future." Patterson v. I.H. Servs., 295 S.C. 300, 310, 368 S.E.2d 215, 221 (Ct. App. 1998) (citations omitted). "The state's interests in awarding punitive damages must remain consistent with the principle of penal theory that 'the punishment should fit the crime.' " Mitchell, 385 S.C. at 584, 686 S.E.2d at 183 (citations omitted). "In any civil action where punitive damages are claimed, the plaintiff has the burden of proving such damages by clear and convincing evidence." S.C. Code Ann. § 15-33-135 (2005).

Previously, appellate courts in South Carolina have applied an abuse of discretion standard in reviewing a trial court's post-judgment review of a punitive damages award; however, because of changes in federal case law, the South Carolina Supreme Court has recently adopted a de novo standard for the review of trial court determinations of the constitutionality of punitive damages awards. Mitchell, 385 S.C. at 583, 686 S.E.2d at 182. Adoption of this heightened standard of review is consistent with our decision in Longshore v. Saber Security Services, 365 S.C. 554, 619 S.E.2d 5 (Ct. App. 2005), wherein this Court reversed a punitive damages award based on our determination that there was no clear and convincing evidence that the defendant's conduct was willful, wanton, or in reckless disregard of the rights of others. Id. at 564-65, 619 S.E.2d at 11

Although we have upheld the award of actual damages, this affirmance is based solely on our determination that the award constituted the enforcement of a constructive trust, an equitable remedy that in this State does not include the imposition of punitive damages. See Welborn v. Dixon, 70 S.C. 108, 118, 49 S.E. 232, 235 (1904) (stating "punitive damages cannot be awarded on the equity side of the court"); Harper v. Ethridge, 290 S.C. 112, 123, 348 S.E.2d 374, 380 (Ct. App. 1986) (noting in an action involving both legal and equitable causes of action that "the evidence on punitive damages would be irrelevant to the equitable claims"). In any event, we also agree with Finn that his actions do not call for the payment of exemplary damages.[4]

The special referee described Finn's apparent disregard of Hale's right to share in the attorney's fees as "willful and reckless"; however, our review of the record in this case indicates otherwise. As the special referee found, the Mullen Firm was in charge of the actual disbursements, and Finn, at worst, "unilaterally entrust[ed] that responsibility to [the Mullen Firm]." Such behavior, though falling short of what is rightly expected of attorneys

[4] None of the issues in Finn's appeal concern the propriety of awarding punitive damages when the corresponding actual damages award are equitable in nature; therefore, we base our reversal of the punitive damages award on the Mitchell factors.

when they are handling fee disbursements, does not constitute clear and convincing evidence of misconduct that was willful, wanton, or in reckless disregard of another's rights.

We acknowledge comments were made on Finn's behalf that what happened to Hale was "reprehensible"; however, these unfortunate remarks should not be taken as binding admissions that the alleged reprehensibility of Finn's conduct was of such a degree so as to call for punitive measures. Following the criteria set forth by the South Carolina Supreme Court in Mitchell to assess reprehensibility in a dispute concerning punitive damages, we find as follows: (1) the harm resulting from Finn's failure to disclose Hale's interest was economic rather than physical; (2) any breach of duty on Finn's part, therefore, cannot be found to evince an indifference to or a reckless disregard of the health or safety of others; (3) there was no evidence that Hale, aggrieved party in this case, had financial vulnerability; (4) Finn's conduct involved only an isolated incident rather than repeated actions; and (5) the harm to Hale was not the result of intentional malice, trickery, or deceit on Finn's part.[5] See Mitchell, 385 S.C. at 585, 686 S.E.2d at 184-85. Based on these circumstances, we reverse the punitive damages award ordered by the special referee.

[5] As to the fifth factor, we note the special referee himself acknowledged in the appealed order that he was "very impressed with the candor of Mr. Finn's testimony during the reconvened hearing, at which time he explained why he relied upon Mr. Mullen to 'take care of the Hale problem.' " Moreover, apparently based on this testimony, the special referee significantly reduced the amount of punitive damages from what he had proposed in the draft order.

II. Hale's appeal

Hale cross-appeals, contending the calculation of his damages should have been based on partnership law rather than on quantum meruit. We disagree.[6]

In support of his position, Hale cites the South Carolina Uniform Partnership Act, which provides that "the rights and duties of the partners in relation to the partnership shall be determined, subject to any agreement between them, by the following rules: each partner shall . . . share equally in the profits and surplus remaining after all liabilities, including those to partners, are satisfied." S.C. Code Ann. § 33-41-510(1) (2006).

We have upheld the award of actual damages solely on the basis of a constructive trust doctrine. As we previously noted, the trial judge should be given discretion as to how a constructive trust, as an equitable remedy, should be enforced. Considering that such a remedy is fashioned to restore the aggrieved party to the status quo ante and that the only written agreement regarding the division of attorney's fees was between Hale and the Mullen Firm, we cannot say that an award based on quantum meruit was an abuse of discretion. See Lollis v. Lollis, 291 S.C. 525, 529, 354 S.E.2d 559, 561 (1987) ("A constructive trust results from fraud, bad faith, abuse of confidence, or violation of a fiduciary duty which gives rise to an obligation in equity to make restitution.") (emphasis added).

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[6] In his proposed draft order, the special referee proposed to base his determination of actual damages based on quantum meruit. Hale did not object to this proposal, and the provision in the final order regarding actual damages is identical to that in the draft order. It is therefore questionable that the issue of whether the amount of damages should have been based on partnership law was even raised to the special referee. Furthermore, the final order never mentioned that Hale requested damages based on partnership law, much less explicitly ruled on any such request, and Hale did not move to alter or amend the order. Nevertheless, in view of the fact that Hale did not have the opportunity to respond to concerns about error preservation, we address the issue he raised in his cross-appeal on the merits.

CONCLUSION

As to Finn's appeal, we reverse the punitive damages award and affirm the award of actual damages on the doctrine of constructive trust. Regarding Hale's cross-appeal, we hold the special referee acted within his discretion in basing actual damages on quantum meruit.

AFFIRMED IN PART, REVERSED IN PART.

SHORT and GEATHERS, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State Accident Fund, Appellant,

v.

South Carolina Second Injury Fund, Respondent.

[In Re: Clinton Gaskins, Employee/Claimant,

v.

Pee Dee Regional Transportation Authority, Employer.]

Appeal From Florence County
Honorable Thomas A. Russo, Circuit Court Judge

Opinion No. 4684
Heard April 15, 2010 – Filed May 5, 2010

AFFIRMED

Mary Sowell League, of Columbia, for Appellant.

Latonya D. Edwards, of Columbia, for Respondent.

PER CURIAM: The State Accident Fund (Carrier) sought reimbursement from the South Carolina Second Injury Fund (the Fund) for monies Carrier paid to Clinton Gaskins for a stroke he suffered during surgery for a work-related back injury. The Fund and the single commissioner denied Carrier's claim as it related to monies paid for the stroke. Both the Appellate Panel of the Workers' Compensation Commission (Appellate Panel) and the circuit court affirmed. We affirm.

FACTS

On January 30, 2002, while employed by Pee Dee Regional Transportation Authority, Gaskins suffered a work-related back injury. Gaskins already suffered from degenerative disk disease and stenosis of the lumbar spine. On May 9, 2002, Gaskins underwent surgery to treat his back problems. During this surgery, he suffered a stroke that resulted in permanent brain injury. Carrier initially denied coverage for the stroke as not causally related to the back problems, and Gaskins, his employer, and Carrier presented arguments to the single commissioner on the issue of causation.[1]

In the meantime, Carrier presented the Fund with its claim for reimbursement of monies paid for Gaskins's back surgery. On November 29, 2004, the Fund agreed to reimburse Carrier in an agreement that specified:

> Nature of Injury: BACK
> Nature of Prior Impairment: DDD/LUMBAR
> SPINAL STENOSIS/LUMBAR
>
> The terms of this agreement are that the said STATE ACCIDENT FUND shall receive reimbursement of:

[1] The Fund was not a party to this proceeding.

> IN ACCORDANCE WITH THE PROVISIONS OF SECTION 42-9-400.
> FOR THE LUMBAR SPINE ONLY
>
> This agreement is in full and complete satisfaction of any and all claims by STATE ACCIDENT FUND against Second Injury Fund for the above referenced accident claim.

The Workers' Compensation Commission (Commission) approved this agreement. Neither party challenged the Commission's approval.

One month after Carrier and the Fund signed the Agreement to Reimburse (Agreement), the single commissioner issued an order finding the stroke was causally related to the back injury in the action involving Gaskins, his employer, and Carrier. On May 23, 2005, the single commissioner entered a consent order reflecting the agreement among Gaskins, his employer, and Carrier that Gaskins was entitled to $200,000 and all medical care causally related to his injuries. The Fund was not a party to this agreement.

Nearly two years later, on September 25, 2006, Carrier requested reimbursement under the Agreement for monies paid to Gaskins for the stroke he suffered during back surgery, which Carrier asserted was causally connected to the back injury. The Fund denied this request. At the hearing before the single commissioner, Carrier presented evidence from the previous hearing regarding Gaskins's treating physicians that supported its argument the stroke was causally related to the back surgery. In addition, Carrier argued it relied upon the Fund's past practice of including causally related injuries in those covered by its settlement agreements. Finally, Carrier questioned the validity of the Agreement based upon the Fund's change in practice and the fact only one commissioner, rather than a majority, approved

the Agreement.[2] The Fund argued the medical reports did not establish a sufficient causal connection between the back injury and the stroke to justify amending the Agreement to cover the stroke. The single commissioner denied Carrier's claim on the basis that the Agreement's language excluded injuries other than to the lumbar spine and declined to reach the issue of causation. The Appellate Panel affirmed the denial.

Before the circuit court, Carrier argued the statute referenced in the Agreement covered causally related conditions. Because its refusal to amend the agreement represented a departure from the Fund's usual practice, Carrier argued, the Fund should be estopped from refusing to amend and the issue of causal relation should be litigated before the Appellate Panel. Furthermore, according to Carrier, the Appellate Panel committed reversible error by basing its decision upon an unpublished opinion of this court. The Fund protested that Carrier actually sought to void the contract. The circuit court affirmed the denial of Carrier's claim and denied Carrier's motion to reconsider this ruling. This appeal followed.

STANDARD OF REVIEW

The South Carolina Administrative Procedures Act establishes the standard for judicial review of decisions of the Commission. Liberty Mut. Ins. Co. v. S.C. Second Injury Fund, 363 S.C. 612, 619, 611 S.E.2d 297, 300 (Ct. App. 2005). In reviewing decisions of the Commission, the appellate court must ascertain "whether the circuit court properly determined whether the [A]ppellate [P]anel's findings of fact are supported by substantial evidence in the record and whether the [Appellate P]anel's decision is affected by an error of law." Baxter v. Martin Bros., Inc., 368 S.C. 510, 513, 630 S.E.2d 42, 43 (2006) (citations omitted); see also S.C. Code Ann. § 1-23-380(5) (Supp. 2009) (establishing the standard for judicial review of agency decisions). Substantial evidence is not a mere scintilla of evidence, nor is it evidence viewed blindly from one side of the case; rather, it is "evidence

[2] See S.C. Code Ann. § 42-9-400(j) (Supp. 2009) (authorizing the Fund to enter into settlement agreements "at the discretion of the director with approval of a majority of the Workers' Compensation Commission").

which, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached in order to justify its action." Liberty Mut., 363 S.C. at 620, 611 S.E.2d at 300. "The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence." Id. at 620, 611 S.E.2d at 301. Where conflicts in the evidence exist over a factual issue, the findings of the Appellate Panel are conclusive. Id. at 620, 611 S.E.2d at 301.

LAW/ANALYSIS

I. Coverage of Stroke under the Agreement

Carrier asserts the circuit court erred in affirming the Appellate Panel's finding the Agreement did not cover Gaskins's stroke as a consequence flowing from the back injury. We disagree.

The Fund was established by statute and reimburses employers and insurance carriers after they pay certain claims. S.C. Code Ann. § 42-7-310 (Supp. 2009). To qualify for reimbursement, an employer or carrier must timely provide the Fund with certain information. S.C. Code Ann. § 42-9-400(a), (c), (f), & (l) (Supp. 2009). When a permanently disabled employee:

> [I]ncurs a subsequent disability from injury by accident arising out of and in the course of his employment, resulting in compensation and medical payments liability or either, for disability that is substantially greater and is caused by aggravation of the preexisting impairment than that which would have resulted from the subsequent injury alone, the employer or his insurance carrier shall pay all awards of compensation and medical benefits provided by this title; but such employer or his insurance carrier shall be reimbursed from the Second Injury Fund . . . .

§ 42-9-400(a). "Permanent physical impairment" refers to "any permanent condition, whether congenital or due to injury or disease, of such seriousness as to constitute a hindrance or obstacle to obtaining employment or to obtaining reemployment if the employee should become unemployed." S.C. Code Ann. § 42-9-400(d) (Supp. 2009). If a claimant suffering from a permanent physical impairment most probably would not have suffered the subsequent injury "'but for' the presence of the prior impairment," the Fund must reimburse an employer or carrier for properly requested compensation and medical benefits without regard to whether the liability is "substantially greater than that which would have resulted from the subsequent injury alone." S.C. Code Ann. § 42-9-400(g) (Supp. 2009).

The Fund "shall not be bound as to any question of law or fact" determined in an agreement, award, or adjudication to which it was not a party or of which it had less than twenty days' notice. S.C. Code Ann. § 42-9-400(e) (Supp. 2009). The Fund "can enter into compromise settlements at the discretion of the director with approval of a majority of the Workers' Compensation Commission, provided a bona fide dispute exists." S.C. Code Ann. § 42-9-400(j) (Supp. 2009).

Section 42-9-400(a) mandates that Carrier "shall" pay for Gaskins's subsequent injuries and that the Fund "shall" reimburse Carrier for those payments. However, subsection (j) of the same statute enables the Fund to enter into compromise agreements with carriers limiting the Fund's obligations. Here, Carrier and the Fund entered into just such a compromise agreement as to the payments Carrier made related to Gaskins's back injury. The terms of the Agreement clearly indicate the parties did not contemplate extending its coverage to any causally connected injuries that might have followed. Moreover, the record indicates at the time the Agreement was made, Carrier still disputed its liability for Gaskins's stroke. Although Carrier knew Gaskins was seeking coverage for the stroke, the single commissioner did not find Carrier liable for medical benefits related to the stroke until a month after the Agreement was made. At the time of the Agreement, Carrier knew the issue of its liability for the stroke remained

unresolved. Had Carrier intended to seek reimbursement for stroke expenses from the Fund under the subject Agreement, it had ample opportunity to negotiate this issue with the Fund. However, the record does not indicate Carrier proposed adding to the Agreement any language addressing this issue or otherwise sought reimbursement from the Fund until two years later. Consequently, the circuit court did not err in affirming the Appellate Panel's exclusion of stroke-related expenses from the Agreement.[3]

II. Voidness

Next, Carrier asserts the circuit court erred in failing to find the Agreement is void because no meeting of the minds occurred at the Agreement's inception. We disagree.

Whether the language of a contract is ambiguous is a question of law to be determined by the court from the terms of the contract as a whole. Silver v. Aabstract Pools & Spas, Inc., 376 S.C. 585, 591, 658 S.E.2d 539, 542 (Ct. App. 2008). In making this determination, the court must examine the entire contract and not merely whether certain phrases taken in isolation could be interpreted in more than one way. Id. "'[O]ne may not, by pointing out a single sentence or clause, create an ambiguity.'" Id. (quoting Yarborough v. Phoenix Mut. Life Ins. Co., 266 S.C. 584, 592, 225 S.E.2d 344, 348 (1976)).

> "In construing and determining the effect of a written contract, the intention of the parties and the meaning

[3] We do not base this ruling upon the Fund's argument that this Agreement was a "clincher." By definition, a clincher agreement is a final release between the employer and employee. 25A S.C. Code Ann. Reg. 67-801(E) (Supp. 2009). A court is without jurisdiction to review a clincher agreement that includes language precluding judicial review and that has been duly approved by the Commission. Spivey ex rel. Spivey v. Carolina Crawler, 367 S.C. 154, 159, 624 S.E.2d 435, 437 (Ct. App. 2005). This Agreement, made between Carrier and the Fund, neither fits the definition of a clincher nor includes the necessary language depriving the court of jurisdiction.

> are gathered primarily from the contents of the writing itself, or, as otherwise stated, from the four corners of the instrument, and when such contract is clear and unequivocal, its meaning must be determined by its contents alone; and a meaning cannot be given it other than that expressed. Hence words cannot be read into a contract which import an intent wholly unexpressed when the contract was executed."

Id. (quoting McPherson v. J.E. Sirrine & Co., 206 S.C. 183, 204, 33 S.E.2d 501, 509 (1945)).

Carrier's argument is essentially that the Agreement should be void because the coverage language within it contains an ambiguity. Carrier avers it understood the coverage included both the lumbar spine and other causally related injuries because it believed the Fund covered other claimants' causally related injuries. The Fund argues the coverage was limited to the lumbar spine, only. The alleged ambiguity springs not from the terms of the Agreement itself, but from Carrier's observations of Fund behavior in matters unrelated to Gaskins's claims. According to Carrier, the Fund agreed to pay causally related expenses of other claimants after executing agreements similar to this one.[4] However, no evidence indicates that Carrier was a party to any of these other agreements or that the Fund represented to Carrier it would pay for Gaskins's stroke. Therefore, the circuit court did not err in refusing to declare the Agreement void.

III. Estoppel

Carrier asserts the circuit court erred in failing to find the Fund is estopped from denying reimbursement for Gaskins's stroke. We disagree.

Courts apply the doctrine of equitable estoppel when one party, "by his actions, conduct, words or silence which amounts to a representation, or a

[4] This argument appears to be more in the nature of an estoppel argument.

concealment of material facts, causes another to alter his position to his prejudice or injury." Rushing v. McKinney, 370 S.C. 280, 293, 633 S.E.2d 917, 924 (Ct. App. 2006) (quoting Hubbard v. Beverly, 197 S.C. 476, 480, 15 S.E.2d 740, 741 (1941)). For equitable estoppel to apply, each party must meet certain criteria:

> With regard to the party estopped, the elements of equitable estoppel are: (1) conduct amounting to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) the intention or expectation that such conduct shall be acted upon by the other party; and (3) actual or constructive knowledge of the real facts. As related to the party claiming the estoppel, the essential elements are: (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question, (2) reliance upon the conduct of the party estopped, and (3) prejudicial change in position.

Id. at 293-94, 633 S.E.2d at 924 (internal citations and quotations omitted). However, a court will not rescind a contract solely on the basis of unilateral mistake unless the party opposing rescission induced the mistake "by fraud, deceit, misrepresentation, concealment, or imposition . . . , without negligence on the part of the party claiming rescission, or where mistake is accompanied by very strong and extraordinary circumstances which would make it a great wrong to enforce the agreement." Truck South, Inc. v. Patel, 339 S.C. 40, 49, 528 S.E.2d 424, 429 (2000).

Equitable estoppel applies when each party meets three conditions. Rushing, 370 S.C. at 293-94, 633 S.E.2d at 924. One of those conditions requires that the party to be estopped must have exhibited misleading conduct during formation of the agreement with the intent or expectation the

complaining party would rely on it. Id. Here, Carrier argues the Fund should be estopped from limiting reimbursement to monies paid for Gaskins's back injury because the Fund did not notify Carrier that it ceased its practice of reimbursing for causally related injuries. However, Carrier failed to establish the Fund made any representations with regard to reimbursement for Gaskins's injuries other than those reflected in the Agreement. Carrier bases its estoppel argument on the Fund's payment of other, unrelated claims. The details of these claims and of the Fund's reasoning in paying them are unknown. Furthermore, even if the Fund did suddenly change its policy, which it denies,[5] no evidence indicates the Fund did so with the intention of inducing Carrier to rely on its past behavior in making the subject Agreement. Rather, in this case, Carrier appears to have made a unilateral mistake in assuming the Fund would agree to cover benefits paid for the stroke under the current Agreement. See Truck South, 339 S.C. at 49, 528 S.E.2d at 429. Despite Carrier's argument to the contrary, strong and extraordinary circumstances militating in favor of rescission do not exist here. As a result, Carrier failed to establish the Fund's actions merited equitable estoppel, and the circuit court did not err.

CONCLUSION

We find Carrier and the Fund executed an Agreement that clearly set forth the contours of their compromise agreement. Furthermore, we find that, despite having knowledge of the expenses and ample opportunity to request their inclusion, Carrier failed to seek inclusion of the stroke expenses in the terms of the Agreement. Therefore, we affirm the circuit court's decision that the Agreement did not cover Carrier's expenses flowing from Gaskins's stroke.

Next, we find the terms of the Agreement are clear and unequivocal. An ambiguity originating not in the terms of this Agreement but in Carrier's

[5] On appeal, the Fund asserts it does not have a custom or practice of reimbursing employers and carriers for expenses not indicated in its settlement agreements. However, the Fund admits that it agreed to amend some settlement agreements under certain circumstances.

observations of Fund behavior in other, unrelated matters is not a legal basis for declaring the Agreement void. Accordingly, we affirm the circuit court's determination that the Agreement is not void.

Finally, we find Carrier failed to prove all necessary elements of its claim for estoppel. Consequently, we affirm the circuit court's refusal to apply equitable estoppel to this matter. For the foregoing reasons, the order of the circuit court is

AFFIRMED.

PIEPER and GEATHERS, JJ., and CURETON, A.J., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Wachovia Bank, N.A., Appellant,

v.

Ann T. Coffey and
Bank of America, N.A., Respondents.

Appeal From Beaufort County
Marvin H. Dukes, III, Master-in-Equity

Opinion No. 4685
Heard February 9, 2010 – Filed May 6, 2010

AFFIRMED

James Y. Becker and R. David Proffitt, of Columbia, for Appellant.

Gregory M. Alford, of Hilton Head Island, for Respondent Ann. T. Coffey.

Steven R. Anderson, of Columbia, for Respondent Bank of America, N.A.

GEATHERS, J.: Appellant Wachovia Bank, N.A. (Wachovia), brought this mortgage foreclosure action against Respondents Ann T. Coffey (Mrs. Coffey) and Bank of America, N.A., seeking relief from Mrs. Coffey's default on a home equity loan made to her late husband for the purchase of a sailboat. The master-in-equity granted Mrs. Coffey's summary judgment motion and denied Wachovia's summary judgment motion. Wachovia challenges both the grant of summary judgment to Mrs. Coffey and the denial of its summary judgment motion on its unjust enrichment, equitable lien, and prejudgment interest causes of action on the ground that it proved the required elements of these causes of action. Wachovia also challenges the grant of summary judgment to Mrs. Coffey on its ratification and foreclosure causes of action on the ground that there were material factual issues preventing summary judgment. We affirm.

FACTS/PROCEDURAL HISTORY

On January 27, 2001, Dr. Michael D. Coffey (Dr. Coffey), a Hilton Head obstetrician, was diagnosed with terminal lung cancer and was told that he had six months to live. On July 23, 2001, Dr. Coffey took out a $125,000 home equity line of credit with Wachovia. Mrs. Coffey was not aware of the transaction, and Wachovia's employees failed to verify Dr. Coffey's authority to mortgage the couple's home. Dr. Coffey signed a mortgage document purporting to secure the loan with the couple's home, which was titled in Mrs. Coffey's name only. On July 30, 2001, at Dr. Coffey's request, Wachovia wired the loan proceeds to the Hilton Head branch of Carolina First Bank to be deposited in the account of Hilton Head Yachts, Ltd., a business that had sold to Dr. Coffey a thirty-six-foot Beneteau sailboat (the boat). The boat was then titled in the name of A&M Partners, Inc., a Delaware corporation in which Dr. Coffey and Mrs. Coffey were the only shareholders. Dr. Coffey told Mrs. Coffey that the boat was "paid for." Dr. Coffey, who handled virtually all of the couple's financial transactions, used the couple's joint

checking account to make payments on the loan until his death in March 2005.

Soon after Dr. Coffey's death, Mrs. Coffey began a months-long effort to sell the boat. She continued the payments on the loan from Wachovia, but for several months she was unaware that the loan was for the boat purchase. She testified that by the fall of 2005, she realized that these payments related to Dr. Coffey's boat purchase but that she was under the impression that the loan was secured by a lien on the boat, rather than a mortgage on their home, and that the amount of the loan was much smaller than it actually was.

In September 2005, Mrs. Coffey hired a broker to locate a buyer for the boat. By late November 2005, the broker located a buyer, and on January 5, 2006, the broker prepared an initial seller's disbursement summary showing the balance of Wachovia's boat loan to Dr. Coffey. However, the final seller's disbursement summary did not reflect the debt owed to Wachovia. According to Mrs. Coffey, she had given the boat loan information to the broker, but the broker contacted Wachovia and learned that there was "no lien" on the boat and that the sale proceeds could be transferred to A&M Partners, Inc., the corporation in which she and Dr. Coffey held stock. Ultimately, Mrs. Coffey received the net proceeds of the sale, and she deposited them into one of her bank accounts.

Mrs. Coffey also stated that shortly after the closing of the boat sale in January 2006, she realized that Dr. Coffey had purchased the boat with loan proceeds from a home equity line of credit and that he had signed a mortgage purportedly securing the debt with their home. Mrs. Coffey indicated that she became angry at Wachovia's employees about the transaction taking place without her knowledge and refused to make any further payments on the loan.

Wachovia later filed this mortgage foreclosure action against Mrs. Coffey. In its initial complaint filed on June 30, 2006, Wachovia originally named as defendants Dr. Coffey's estate, Mrs. Coffey, both individually and as personal representative of Dr. Coffey's estate, and three of the couple's five

children. Wachovia filed an amended complaint on May 9, 2008, to name as defendants only Mrs. Coffey and Bank of America, N.A. In the meantime, Mrs. Coffey had filed with the Beaufort County Probate Court an inventory and appraisement of Dr. Coffey's estate in September 2006. The inventory and appraisement acknowledged Dr. Coffey's and Mrs. Coffey's joint ownership of the boat. The inventory and appraisement also indicated that Dr. Coffey's probate estate had a negative value. Mrs. Coffey admitted that most of Dr. Coffey's assets had been transferred to her and other family members outside the probate estate through a marital trust.

In its amended complaint, Wachovia sought to foreclose on the mortgage signed by Dr. Coffey and asserted additional causes of action for ratification, prejudgment interest, unjust enrichment, equitable lien, and equitable mortgage. Wachovia filed a motion for summary judgment on the unjust enrichment, equitable lien, and prejudgment interest causes of action, and Mrs. Coffey filed a cross-motion for summary judgment on all of Wachovia's causes of action. The master granted Mrs. Coffey’s summary judgment motion and denied Wachovia’s summary judgment motion. This appeal followed.

ISSUE ON APPEAL

Is Wachovia barred from seeking relief in the courts due to its unauthorized practice of law in the loan transaction with Dr. Coffey ?

STANDARD OF REVIEW

On appeal from the grant of a summary judgment motion, this Court applies the same standard as that required for the circuit court under Rule 56(c), SCRCP. Brockbank v. Best Capital Corp., 341 S.C. 372, 379, 534 S.E.2d 688, 692 (2000). "'Summary judgment is proper where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.'" Adamson v. Richland County Sch. Dist. One, 332 S.C. 121, 124, 503 S.E.2d 752, 753 (Ct. App. 1998) (quoting Tupper v. Dorchester County, 326 S.C. 318, 487 S.E.2d 187 (1997)).

LAW/ANALYSIS

Wachovia assigns error to the master's granting of summary judgment to Mrs. Coffey on the claim that she ratified the note and mortgage signed by Dr. Coffey. Wachovia argues that there was a genuine dispute about the inferences to be drawn from the evidence pertaining to this claim. Wachovia also assigns error to the master's grant of Mrs. Coffey's summary judgment motion and denial of its summary judgment motion on its causes of action for unjust enrichment, equitable lien, and prejudgment interest.

However, Mrs. Coffey asserts that the doctrine of unclean hands bars Wachovia from seeking equitable relief from our courts.[1] She argues that Wachovia committed the unauthorized practice of law, and, therefore, Wachovia came into court with unclean hands. We agree.[2]

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[1] One of Wachovia's grounds for challenging the master's reliance on the unclean hands doctrine is that Coffey was barred from raising this affirmative defense because she failed to raise it in her answer. The master did not address this procedural issue when he ruled that Wachovia had unclean hands, and Wachovia failed to file a motion to alter or amend pursuant to Rule 59(e), SCRCP. Therefore, the issue is not preserved for our review. See Hancock v. Wal-Mart Stores, Inc., 355 S.C. 168, 171, 584 S.E.2d 398, 399 (Ct. App. 2003) (holding that an argument raised to the trial judge but not addressed in the final order is not preserved for appellate review when the appellant fails to file a motion to alter or amend). Further, Wachovia did not include Coffey's answer in the Record on Appeal. Because we are unable to review the answer to determine whether the defense of unclean hands was adequately pled, we will not consider this procedural challenge to the master's order. See Rule 210(h), SCACR (the appellate court will not consider any fact which does not appear in the Record on Appeal); Germain v. Nichol, 278 S.C. 508, 509, 299 S.E.2d 335 (1983) ("Appellant has the burden of providing this Court with a sufficient record upon which this Court can make its decision.").

[2] In no way do we purport to regulate the practice of law by addressing the

"The doctrine of unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant." First Union Nat'l Bank of S.C. v. Soden, 333 S.C. 554, 568, 511 S.E.2d 372, 379 (Ct. App. 1998). "The expression 'clean hands' means a clean record with respect to the transaction with the defendants themselves and not with respect to others." Arnold v. City of Spartanburg, 201 S.C. 523, 532, 23 S.E.2d 735, 738 (1943). The rule must be understood to refer to some misconduct concerning the matter in litigation of which the opposing party can, in good conscience, complain in a court of equity. Id.

As early as 1987, lending institutions doing business in South Carolina were on notice that they could not prepare legal documents in connection with a mortgage loan without review by an independent attorney and that the loan closing had to be supervised by an attorney. See State v. Buyers Serv. Co., 292 S.C. 426, 431-434, 357 S.E.2d 15, 18-19 (1987) (holding that a commercial title company's employment of attorneys to review mortgage loan closing documents did not save the company's preparation of those documents from constituting the unauthorized practice of law and that the closings should be conducted only under an attorney's supervision), modified by Doe v. McMaster, 355 S.C. 306, 585 S.E.2d 773 (2003); see also Doe Law Firm v. Richardson, 371 S.C. 14, 17, 636 S.E.2d 866, 868 (2006) (citing Buyers and McMaster) (clarifying that a lender may prepare legal documents for use in financing or refinancing a real property loan as long as an

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unauthorized practice of law in this opinion. The regulation of the practice of law is within the exclusive province of our supreme court. See S.C. Const. art. V, § 4 ("The Supreme Court shall have jurisdiction over the admission to the practice of law and the discipline of persons admitted."); S.C. Code Ann. § 40-5-10 (2001) ("The inherent power of the Supreme Court with respect to regulating the practice of law, determining the qualifications for admission to the bar and disciplining, suspending and disbarring attorneys at law is hereby recognized and declared."). Rather, we address Wachovia's unauthorized practice of law as it affects the merits of this action against Mrs. Coffey.

independent attorney reviews them and makes any corrections necessary to ensure their compliance with the law and reaffirming that mortgage loan closings should be conducted only under an attorney's supervision).[3]

Here, on July 23, 2001, Wachovia's employees processed the home equity loan to Dr. Coffey without the supervision of an attorney. Their unauthorized practice of law resulted in prejudice to Mrs. Coffey when the mortgage signed by Dr. Coffey was recorded and when Wachovia filed this foreclosure action against Mrs. Coffey. While Mrs. Coffey could have applied the proceeds from the sale of the boat to the balance due on the boat loan, we cannot allow her failure to do so to obscure the misconduct of Wachovia's employees. The unauthorized practice of law is inherently prejudicial to not only the parties involved in the instant transaction but also to the public at large for the reason so cogently stated in Buyers:

> The reason preparation of instruments by lay persons must be held to constitute the unauthorized practice of law is not for the economic protection of the legal profession. Rather, it is for the protection of the public from the potentially severe economic and emotional consequences which may flow from erroneous advice given by persons untrained in the law.

Buyers, 292 S.C. at 431, 357 S.E.2d at 18. We therefore reach the inescapable conclusion that Wachovia has come to court with unclean hands and is barred from seeking equitable relief.

Wachovia's legal causes of action are barred as well. In Linder v. Ins. Claims Consultants, Inc., 348 S.C. 477, 560 S.E.2d 612 (2002), our supreme court refused to allow a public insurance-adjusting business to be

[3] The attorney supervising the loan closing may represent both the lender and the borrower after full disclosure and with each party's consent. Richardson, 371 S.C. at 17, 636 S.E.2d at 868.

compensated for the value of its performance attributable to the unauthorized practice of law. Linder, 348 S.C. at 496, 560 S.E.2d at 622. This is consistent with South Carolina precedent asserting that no person be permitted to acquire a right of action from their own unlawful act and that one who participates in an unlawful act cannot recover damages for the consequence of that act. See Jackson v. Bi-Lo Stores, Inc., 313 S.C. 272, 276-77, 437 S.E.2d 168, 170-71 (Ct. App. 1993) (applying this policy to a contract secured and maintained by bribery). "This rule applies at both law and in equity and whether the cause of action is in contract or in tort." Jackson, 313 S.C. at 276, 437 S.E.2d at 170.

Based on the foregoing, Mrs. Coffey was entitled to judgment as a matter of law. Therefore, the master properly granted her summary judgment motion. In no way do we condone the actions of either Dr. Coffey or Mrs. Coffey in relation to this loan. However, we are bound by precedent and must therefore deny Wachovia's request for relief. In view of our disposition of this issue, we need not address Wachovia's remaining arguments. See Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating that the appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal).

CONCLUSION

Accordingly, the order of the master-in-equity is

AFFIRMED.

PIEPER, J., and CURETON, A.J., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

In The Interest of Richard D., A Juvenile Under The Age Of Seventeen, Appellant.

Appeal From Charleston County
Judy C. McMahon, Family Court Judge
Paul W. Garfinkel, Family Court Judge

Opinion No. 4686
Heard March 2, 2010 – Filed May 6, 2010

AFFIRMED

Appellate Defender M. Celia Robinson, of Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Salley W. Elliott, and Assistant Attorney General Michelle Parsons Kelley, all of Columbia; Solicitor Scarlett Anne Wilson, of Charleston, for Respondent.

KONDUROS, J.: Richard D. (Minor) was tried and convicted in the family court of first-degree burglary, grand larceny, and malicious injury to personal property. Minor appeals from the family court's denial of his directed verdict motion, arguing the State's case was based on inadmissible evidence or evidence admitted for reasons other than to substantively prove his guilt. We affirm.

FACTS

Minor was accused of robbing Wanda Izzard's home on the evening of December 14, 2005. At trial, Izzard testified that when she returned home from work a little after 10 p.m., she notice broken glass from one of her windows. She called 911 and went to her neighbor's house to wait for police to arrive. Izzard indicated that a heavy gun cabinet containing three shotguns was missing along with piggy banks containing some change and a cigar box holding some two dollar bills and rare coins. Izzard further stated she had reported to the police information she had learned from her neighbors regarding who may have been involved in the robbery and told police they could obtain a copy of a videotape from a local convenience store where money taken from her house may have been spent.

Detective Charles Lawrence testified he became involved with the investigation and an anonymous informant from the neighborhood told him he had seen Minor and Eric,[1] another boy implicated in the crime, with the guns, and the guns were hidden in the woods. Minor objected to this testimony arguing it constituted hearsay and violated the confrontation clause. The State maintained the information was offered only to show the course of the police investigation, not to prove the truth of the matter asserted. Minor's objection was overruled.

Detective Lawrence testified he spoke with a cashier at a local convenience store and the cashier told him two boys had come in the night of the robbery and spent some two dollar bills. Minor also objected to this statement on hearsay and confrontation clause grounds and was overruled.

[1] We omit Eric's last name to protect his identity as he is also a minor.

Detective Lawrence stated he then reviewed surveillance video from that night and pulled still photographs showing Eric and Minor at the store. Minor objected to the admission of the photographs arguing the State did not offer a sufficient foundation for their admission, they were more prejudicial than probative, and they violated the best evidence rule. Minor's objection was overruled.

Detective Lawrence testified he interviewed Eric at his school. According to Detective Lawrence, Eric indicated he was at Izzard's home at around 8:30 p.m. the night of the robbery and served as lookout for Minor and possibly another boy, Shawn, who went inside and took three guns.[2] Eric further stated he and Minor went to the store and he spent one of the two dollar bills taken from Izzard's residence.

The State called Eric as a witness, who was antagonistic and contrary during his testimony. The State eventually treated him as a hostile witness. Eric testified that when first interviewed by Detective Lawrence at school, he drew a grid pattern on a piece of paper and Detective Lawrence threw the paper in the trash.[3] Eric further testified Detective Lawrence then put a piece of paper in front of him and told him to sign it. He denied Minor was involved in the robbery. Eric also testified he had never told Detective Lawrence Minor was involved.[4] The State offered Eric's prior inconsistent statement to impeach his in-court testimony. Over Minor's objection, the statement was admitted.

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[2] Eric's statement is not included in the record on appeal. However, we are able to review Detective Lawrence's testimony regarding the statement to discern its contents.

[3] Detective Lawrence testified he advised Eric of his Miranda rights prior to questioning him. That point is not raised in this appeal.

[4] Eric admitted telling a Deputy Sheppard some facts the day before that were included in the statement made to Detective Lawrence. Those facts included that he had given the guns to his uncle, he had known Izzard for a few months, and she lived at the address where the robbery occurred.

Minor moved for directed verdict at the close of the State's case, arguing the State's case hinged on evidence that could not be considered to substantively establish Minor's guilt. The family court denied the motion, relying on Eric's statement, his credibility on the witness stand, and the photographs from the convenience store. Minor was convicted of all charges and this appeal followed.

STANDARD OF REVIEW

When considering the grant or denial of a motion for directed verdict, the trial court is concerned with the existence of evidence as opposed to the weight of the evidence. State v. Hernandez, 382 S.C. 620, 624, 677 S.E.2d 603, 605 (2009). "A defendant is entitled to a directed verdict when the [S]tate fails to produce evidence of the offense charged." Id. When reviewing the denial of a directed verdict motion, an appellate court views the evidence and all reasonable inferences that can be drawn therefrom in the light most favorable to the State. Id.

LAW/ANALYSIS

Minor contends the family court erred in denying his motion for directed verdict. He argues Eric's prior inconsistent statement was admitted

only for impeachment purposes and should not have been considered by the family court as substantive evidence in a directed verdict motion analysis.[5] We disagree.

In State v. Copeland, 278 S.C. 572, 300 S.E.2d 63 (1982), the South Carolina Supreme Court adopted the position that prior inconsistent statements, previously only used for impeachment, could be considered as substantive evidence.

> Heretofore, South Carolina has followed the traditional rule that testimony of inconsistent statements is admissible only to impeach the credibility of the witness. Henceforth from today, we will allow testimony of prior inconsistent statements to be used as substantive evidence when the declarant testifies at trial and is subject to cross examination.

Id. at 581, 300 S.E.2d at 69 (emphasis added).

Since its adoption, this rule has been applied in a myriad of cases. See State v. Smith, 309 S.C. 442, 447-48, 424 S.E.2d 496, 499 (1992) (holding exclusion of defendant's nephew's prior inconsistent statement constituted

[5] The family court denied Minor's directed verdict motion based on the photographs from the convenience store and Eric's prior inconsistent statement and credibility on the witness stand. Minor argues on appeal the convenience store photographs and "hearsay" statements by Detective Lawrence were inadmissible. However, at oral argument Minor withdrew any request for a new trial that might result from a finding such evidence was erroneously admitted. Therefore, we limit our review to whether there was sufficient evidence properly admitted to overcome Minor's directed verdict motion. Because we find Eric's prior inconsistent statement and trial testimony to be sufficient, we need not address whether the admission of the "hearsay" statements and photographs was error. See Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding the court need not rule on remaining issues when the disposition of prior issues is dispositive).

reversible error); State v. Ferguson, 300 S.C. 408, 411, 388 S.E.2d 642, 644 (1990) (finding exclusion of victim's prior inconsistent statement as substantive evidence was harmless error when other evidence was cumulative of statement); State v. Crawford, 362 S.C. 627, 634, 608 S.E.2d 886, 890 (Ct. App. 2005) (holding co-conspirator's later testimony did not obviate the efficacy of the first statement made closer in time to the event in question); State v. Caulder, 287 S.C. 507, 513, 339 S.E.2d 876, 880 (Ct. App. 1986) (finding court erred in instructing jury to disregard witness's prior inconsistent statement for substantive purposes).

Also informing our decision is State v. Stokes, 381 S.C. 390, 673 S.E.2d 434 (2009). In Stokes, the South Carolina Supreme Court concluded the rule set forth in Copeland was not offended because at trial the witness denied making the prior statement. Stokes, 381 S.C. at 403-04, 673 S.E.2d at 440-41. The court concluded the opportunity to cross-examine the witness was the protection afforded by the Sixth Amendment and that opportunity was provided to Stokes even though he elected not to cross-examine the witness as part of his trial strategy. Id. at 401-02, 673 S.E.2d at 439-40.

In this case, we agree with Minor the State offered the statement only to impeach Eric's credibility. However, the family court never actually stated any limitation on the admission of the evidence. Even if the family court had limited the admissibility of the statement, that does not negate the fact that consideration of the statement as substantive evidence in a directed verdict analysis would have been proper under Copeland and Stokes.

Additionally, Minor argues the family court erred in allowing the State to call Eric as a witness at trial. Minor contends the State sought solely to elicit unfavorable testimony so it could impeach Eric with the prior statement. A bench conference was held off the record after the State began inquiring of Eric if he planned to testify truthfully. This issue may have been discussed at that time, but we cannot review issues not contained in the record. See State v. Hamilton, 344 S.C. 344, 361, 543 S.E.2d 586, 595 (Ct. App. 2001) ("An objection made during an off-the-record conference which is not made part of the record does not preserve the question for review."), overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). Because the issue was never raised to and ruled upon by the family

court on the record, it is unpreserved for our review. See Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (holding issues not raised to and ruled upon by the trial court are not preserved for appellate review).

Finally, Minor argues the family court erred in failing to grant its directed verdict motion as to grand larceny when the State failed to present evidence the items stolen from Izzard were worth more than one thousand dollars. This issue is not preserved for our review because it was not raised at trial. See Guider v. Churpeyes, Inc., 370 S.C. 424, 430 n.2, 635 S.E.2d 562, 566 n.2 (Ct. App. 2006) (finding defendant did not preserve argument regarding malice and damages in malicious prosecution claim when failure to meet those elements was not argued in directed verdict motion); see also Scoggins v. McClellion, 321 S.C. 264, 267, 468 S.E.2d 12, 14 (Ct. App. 2006) (holding defendant did not preserve argument regarding element of negligence in tort claim when only causation and punitive damages were raised in directed verdict motion); Hendrix v. E. Distribution, Inc., 316 S.C. 34, 44, 446 S.E.2d 440, 446 (Ct. App. 1994) ("It was incumbent upon [Appellant] to argue specifically which element of breach of contract accompanied by a fraudulent act was not established to give the trial court the opportunity to rule on the point.").

CONCLUSION

Eric's prior inconsistent statement could have been considered as substantive evidence by the family court pursuant to the holdings in Copeland and Stokes. That statement coupled with an evaluation of Eric's credibility at trial provided sufficient evidence to withstand Minor's directed verdict motion. His specific motion regarding the grand larceny charge is not preserved for our review. Accordingly, the family court's denial of Minor's directed verdict motion is

AFFIRMED.

HUFF and THOMAS, JJ., concur.