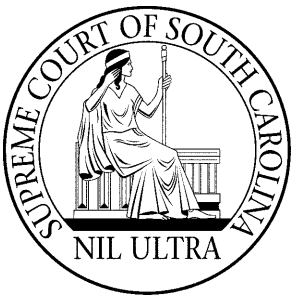

OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 6
February 3, 2009
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

CONTENTS

THE SUPREME COURT OF SOUTH CAROLINA

PUBLISHED OPINIONS AND ORDERS

UNPUBLISHED OPINIONS

None

PETITIONS – UNITED STATES SUPREME COURT

PETITIONS FOR REHEARING

The South Carolina Court of Appeals

PUBLISHED OPINIONS

UNPUBLISHED OPINIONS

PETITIONS FOR REHEARING

4455-Gauld v. O'Shaugnessy Realty	Denied 01/27/09
4457-Pelzer v. State	Pending
4458-McClurg v. Deaton	Denied 01/27/09
4459-Timmons v. Starkey	Denied 01/27/09
4460-Pocisk v. Sea Coast	Denied 01/27/09
4462-Carolina Chloride v. Richland County	Pending
4463-In the matter of Canupp	Denied 01/27/09
4464-Crusader Servicing v. Cnty. of Laurens	Pending
4465-Gowdy v. Gibson	Pending
4467-Pee Dee Stores v. Doyle	Denied 01/29/09
4469-Hartfield v. McDonald	Denied 01/27/09
4472-Eadie v. Krause	Denied 01/27/09
4473-Hollins v. Wal-Mart Stores	Pending
4474-Stringer v. State Farm	Pending
4476-Bartley v. Allendale County	Pending
4480-Moore v. The Barony House	Pending
4483-Carpenter v. Burr	Pending
2008-UP-531-State v. Collier	Pending
2008-UP-534-State v. Woody	Denied 12/19/08
2008-UP-536-State v. A. Woods	Denied 01/12/09
2008-UP-543-O'Berry v. Carthens	Denied 12/19/08

2008-UP-604-State v. J. Davis	Denied 01/27/09
2008-UP-609-State v. Thompson	Denied 01/26/09
2008-UP-639-Overnite Transport v. SC Second Injury Fund	Denied 01/26/09
2008-UP-643-Howard v. Marvin Pittman	Denied 01/27/09
2008-UP-645-Lewis v. Lewis	Denied 01/27/09
2008-UP-646-Robinson v. Est. of Harris	Denied 01/27/09
2008-UP-647-Robinson v. Est. of Harris	Denied 01/27/09
2008-UP-648-Robinson v. Est. of Harris	Denied 01/27/09
2008-UP-649-Robinson v. Est. of Harris	Denied 01/27/09
2008-UP-651-Lawyers Title Ins. v. Pegasus LLC	Denied 01/27/09
2008-UP-664-State v. P. Davis	Denied 01/27/09
2008-UP-673-State v. R. Smith	Denied 01/27/09
2008-UP-679-Hankins v. SCDC	Denied 01/27/09
2008-UP-702-Hankins v. State	Denied 01/27/09
2008-UP-705-Robinson v. Est. of Harris	Denied 01/27/09
2008-UP-712-First South Bank v. Clifton Corp.	Denied 01/27/09
2009-UP-001-Camper v. Santiago	Pending
2009-UP-007-Miles v. Miles	Pending
2009-UP-008-Fuller v. Fuller	Pending
2009-UP-009-State v. Mills	Pending
2009-UP-010-State v. Cottrell	Pending
2009-UP-029-Demetre v. Beckmann	Pending

2009-UP-035-State v. Gunnells Pending

2009-UP-040-State v. Sowell Pending

PETITIONS – SOUTH CAROLINA SUPREME COURT

4279-Linda Mc Co. Inc. v. Shore Pending

4285-State v. Danny Whitten Pending

4314-McGriff v. Worsley Pending

4316-Lubya Lynch v. Toys "R" Us, Inc Pending

4320-State v. D. Paige Pending

4325-Dixie Belle v. Redd Pending

4338-Friends of McLeod v. City of Charleston Pending

4339-Thompson v. Cisson Construction Pending

4342-State v. N. Ferguson Pending

4344-Green Tree v. Williams Pending

4353-Turner v. SCDHEC Pending

4354-Mellen v. Lane Pending

4355-Grinnell Corp. v. Wood Pending

4369-Mr. T. v. Ms. T. Pending

4370-Spence v. Wingate Pending

4371-State v. K. Sims Pending

4372-Robinson v. Est. of Harris Pending

4373-Partain v. Upstate Automotive Pending

4374-Wieters v. Bon-Secours	Pending
4375-RRR, Inc. v. Toggas	Pending
4376-Wells Fargo v. Turner	Pending
4377-Hoard v. Roper Hospital	Pending
4382-Zurich American v. Tolbert	Pending
4383-Camp v. Camp	Pending
4384-Murrells Inlet v. Ward	Pending
4385-Collins v. Frasier	Pending
4386-State v. R. Anderson	Pending
4387-Blanding v. Long Beach	Pending
4388-Horry County v. Parbel	Pending
4389-Charles Ward v. West Oil Co.	Pending
4391-State v. L. Evans	Pending
4392-State v. W. Caldwell	Pending
4394-Platt v. SCDOT	Pending
4395-State v. H. Mitchell	Pending
4396-Jones (Est. of C. Jones) v. L. Lott	Pending
4397-T. Brown v. G. Brown	Pending
4401-Doe v. Roe	Pending
4402-State v. Tindall	Pending
4403-Wiesart v. Stewart	Pending

4405-Swicegood v. Lott	Pending
4406-State v. L. Lyles	Pending
4407-Quail Hill, LLC v Cnty of Richland	Pending
4409-State v. Sweat & Bryant	Pending
4411-Tobia v. Rice	Pending
4412-State v. C. Williams	Pending
4413-Snavely v. AMISUB	Pending
4414-Johnson v. Beauty Unlimited	Pending
4417-Power Products v. Kozma	Pending
4419-Sanders v. SCDC	Pending
4420-Mauricio v. The State	Pending
4422-Fowler v. Hunter	Pending
4426-Mozingo & Wallace v. Patricia Grand	Pending
4428-The State v. Ricky Brannon	Pending
4437-Youmans v. SCDOT	Pending
4440-Corbett v. Weaver	Pending
4444-Enos v. Doe	Pending
4450-SC Coastal v. SCDHEC	Pending
4451-State v. J. Dickey	Pending
4454-Paschal v. Price	Pending
2007-UP-151-Lamar Florida v. Li'l Cricket	Pending
2007-UP-272-Mortgage Electronic v. Suite	Pending

2007-UP-364-Alexander Land Co. v. M&M&K Pending

2007-UP-498-Gore v. Beneficial Mortgage Pending

2007-UP-544-State v. C. Pride Pending

2008-UP-047-State v. Dozier Pending

2008-UP-060-BP Staff, Inc. v. Capital City Ins. Pending

2008-UP-081-State v. R. Hill Pending

2008-UP-082-White Hat v. Town of Hilton Head Pending

2008-UP-084-First Bank v. Wright Pending

2008-UP-116-Miller v. Ferrellgas Pending

2008-UP-126-Massey v. Werner Enterprises Pending

2008-UP-131-State v. Jimmy Owens Pending

2008-UP-151-Wright v. Hiester Constr. Pending

2008-UP-173-Professional Wiring v. Sims Pending

2008-UP-187-State v. Rivera Pending

2008-UP-194-State v. D. Smith Pending

2008-UP-200-City of Newberry v. Newberry Electric Pending

2008-UP-204-White's Mill Colony v. Williams Pending

2008-UP-205-MBNA America v. Baumie Pending

2008-UP-207-Plowden Const. v. Richland-Lexington Pending

2008-UP-209-Hoard v. Roper Hospital Pending

2008-UP-223-State v. C. Lyles Pending

2008-UP-240-Weston v. Margaret Weston Medical	Pending
2008-UP-244-Magaha v. Greenwood Mills	Pending
2008-UP-247-Babb v. Est. Of Watson	Pending
2008-UP-251-Pye v. Holmes	Pending
2008-UP-252-Historic Charleston v. City of Charleston	Pending
2008-UP-256-State v. T. Hatcher	Pending
2008-UP-261-In the matter of McCoy	Pending
2008-UP-271-Hunt v. State	Pending
2008-UP-277-Holland v. Holland	Pending
2008-UP-278-State v. C. Grove	Pending
2008-UP-279-Davideit v. Scansource	Pending
2008-UP-289-Mortgage Electronic v. Fordham	Pending
2008-UP-296-Osborne Electric v. KCC Contr.	Pending
2008-UP-297-Sinkler v. County of Charleston	Pending
2008-UP-310-Ex parte:SCBCB (Sheffield v. State)	Pending
2008-UP-320-Estate of India Hendricks (3)	Pending
2008-UP-330-Hospital Land Partners v. SCDHEC	Pending
2008-UP-331-Holt v. Holloway	Pending
2008-UP-332-BillBob's Marina v. Blakeslee	Pending
2008-UP-336-Premier Holdings v. Barefoot Resort	Pending
2008-UP-340-SCDSS v. R. Jones	Pending

2008-UP-424-State v. D. Jones	Pending
2008-UP-431-Silver Bay v. Mann	Pending
2008-UP-432-Jeffrey R. Hart v. SCDOT	Pending
2008-UP-485-State v. Cooley	Pending
2008-UP-502-Johnson v. Jackson	Pending
2008-UP-512-State v. M. Kirk	Pending
2008-UP-523-Lindsey #67021 v. SCDC	Pending
2008-UP-526-State v. A. Allen	Pending
2008-UP-552-Bartell v. Francis Marion	Pending
2008-UP-559-SCDSS v. Katrina P.	Pending
2008-UP-591-Mungin v. REA Construction	Pending
2008-UP-606-SCDSS v. Serena B and Gerald B.	Pending
2008-UP-607-DeWitt v. Charleston Gas Light	Pending
2008-UP-612-Rock Hill v. Garga-Richardson	Pending

THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State, Petitioner/Respondent,

v.

Danny Orlando Wharton, Respondent/Petitioner.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Greenville County
C. Victor Pyle, Jr., Circuit Court Judge

Opinion No. 26591
Heard December 3, 2008 – Filed February 2, 2009

AFFIRMED IN PART; VACATED IN PART

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Salley W. Elliott, Senior Assistant Attorney General Norman Mark Rapoport, for Petitioner/Respondent.

Chief Appellate Defender Joseph L. Savitz, III, of South Carolina Commission on Indigent Defense, Division of Appellate Defense, of Columbia, for Respondent/Petitioner.

CHIEF JUSTICE TOAL: Danny Orlando Wharton was charged with murder and possession of a weapon during a violent crime following the shooting death of Chris Luster (Victim). The trial court charged the jury on the law of murder and voluntary manslaughter, but refused to charge the jury on involuntary manslaughter and accident. The jury found Wharton guilty of voluntary manslaughter and weapons possession. The court of appeals held that the trial court erred in giving a voluntary manslaughter charge and reversed Wharton's conviction. *State v. Wharton*, 366 S.C. 56, 620 S.E.2d 83 (Ct. App. 2005). This Court granted a writ of certiorari to review the court of appeals' decision. We affirm in part and vacate in part.

FACTUAL/PROCEDURAL BACKGROUND

On the evening of the shooting, Wharton and a group of friends were at a house playing cards and drinking. Pamela Suber, Wharton's ex-girlfriend, arrived at the house and began arguing with Wharton over Wharton's new girlfriend. After Suber left, Wharton became extremely angry and resisted his friends' attempts to calm him. He then made a call to another person, in which he stated that "I ain't going to be punked out no more" and instructed the person to bring a weapon to the house.

At trial, Chraius Geter testified that after Wharton made the call, a car arrived at the house. Wharton retrieved a gun from inside the car and began walking in the street, swinging the gun. Wharton then "bumped" Clifton Shaw, another friend at the house and again said "I ain't going to be punked." Geter testified that Shaw stated that he did not want to fight Wharton, but Wharton "swung the gun like was pointing to shoot in the air" and the gun fired, fatally hitting Victim.

Edward Morris Wharton (Edward) testified that after Suber left, Wharton went into a rage and that when Wharton and Shaw began arguing, Victim attempted to prevent the two men from fighting. Edward testified that Shaw placed his chain necklace down his shirt as if they were about to fight.

Wharton then retrieved the gun from the car and pulled it out meaning to fire a shot into the air, but fatally shot Victim instead.

Shaw's testimony was consistent with both Edward's and Geter's testimonies. However, Shaw added that when Wharton retrieved the gun from the car, the gun was wrapped in a shirt and that Wharton pulled it out from the shirt into the air when it discharged.

The trial court charged the jury on possession of a weapon during the commission of a violent crime, murder, and, over Wharton's objection, voluntary manslaughter. He denied Wharton's request for an involuntary manslaughter and accident charge. The jury found Wharton guilty of voluntary manslaughter and weapons possession. The court of appeals reversed and held that the trial court erred in charging voluntary manslaughter because there was no evidence of sufficient legal provocation on behalf of Victim and that transferred intent does not apply to voluntary manslaughter. The court went on to hold that even if transferred intent applied, there was no evidence of sufficient legal provocation on the part of Shaw.

This Court granted the State's petition for a writ of certiorari, and the State presents the following issues for review:

I. Did the court of appeals err holding there was no evidence of sufficient legal provocation?

II. Did the court of appeals err in holding the doctrine of transferred intent does not apply to voluntary manslaughter?

Wharton also filed a petition for a writ of certiorari. We granted Wharton's petition, and Wharton presents the following issues for review:

I. Did the trial court err in refusing to charge the jury on involuntary manslaughter?

II. Did the trial court err in refusing to charge the jury on accident?

STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). A trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied. *State v. Rye*, 375 S.C. 119, 123, 651 S.E.2d 321, 323 (2007).

LAW/ANALYSIS

State's Issues

I. Sufficient Legal Provocation

The State argues that the court of appeals erred in holding that there was no evidence of sufficient legal provocation warranting a voluntary manslaughter charge. We disagree.

Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation. *State v. Pittman*, 373 S.C. 527, 572, 647 S.E.2d 144, 167 (2007). The sudden heat of passion, upon sufficient legal provocation, while it need not dethrone reason entirely, or shut out knowledge and volition, must be such as would naturally disturb the sway of reason, and render the mind of an ordinary person incapable of cool reflection, and produce what, according to human experience, may be called an uncontrollable impulse to do violence. *Id*. To warrant the court in eliminating the offense of manslaughter it should very clearly appear that there is no evidence whatsoever tending to reduce the crime from murder to manslaughter. *Id.* at 572, 647 S.E.2d at 168.

In our view, there is no evidence in the record of sufficient legal provocation. Testimony showed that Wharton was in a rage after his argument with Suber and that several people were trying to calm him. After

attempts to calm him failed, Wharton deliberately instructed someone to bring him a gun, despite there being no threat of another person with a weapon. There was no evidence showing Victim provoked Wharton, and although there was evidence that Wharton and Shaw argued and exchanged words, there was no evidence Shaw posed a threat to Wharton either by possessing a weapon or through hostile acts. *See State v. Byrd*, 323 S.C. 319, 322, 474 S.E.2d 430, 432 (1996) (holding that where death is caused by the use of a deadly weapon, words alone, however opprobrious, are not sufficient to constitute a legal provocation, but words accompanied by hostile acts may, according to the circumstances, reduce a charge from murder to voluntary manslaughter).

While Wharton may have been in a rage and acting under a sudden heat of passion, there is no evidence of sufficient legal provocation. *See Pittman*, 373 S.C. at 573, 647 S.E.2d at 168 (recognizing that both heat of passion and sufficient legal provocation must be present at the time of the killing). Accordingly, we hold that the trial court erred in charging the jury on voluntary manslaughter.

II. Transferred Intent

The State argues that the court of appeals erred in holding that the doctrine of transferred intent was inapplicable to voluntary manslaughter. We decline to address this issue.

In *State v. Childers*, 373 S.C. 367, 645 S.E.2d 233 (2007), the plurality of this Court held that the doctrine of transferred intent was not applicable to voluntary manslaughter cases because the overt act that produces the sudden heat of passion must come from the victim. However, the dissent would have held that if a defendant kills an unintentional victim upon sufficient legal provocation committed by a third party, the doctrine of transferred intent applies, entitling the defendant to a voluntary manslaughter charge.

In this case, the court of appeals held that the trial court erred in charging the jury on voluntary manslaughter because there was no evidence of sufficient legal provocation and because transferred intent does not apply

to voluntary manslaughter. We find, however, that *Childers* was not a majority opinion, and the applicability of the doctrine of transferred intent to voluntary manslaughter cases where the defendant kills an unintended victim upon sufficient legal provocation committed by a third party remains an unsettled question in South Carolina. However, because we find no evidence of sufficient legal provocation by a third party in this case, we need not address this issue. We therefore vacate the portion of the court of appeals' opinion addressing this issue.

Wharton's Issues

I. Involuntary Manslaughter

Petitioner argues the trial judge erred in refusing to charge the jury on involuntary manslaughter. We disagree.

Involuntary manslaughter is (1) the unintentional killing of another without malice, but while engaged in an unlawful activity not naturally tending to cause death or great bodily harm; or (2) the unintentional killing of another without malice, while engaged in a lawful activity with reckless disregard for the safety of others. *State v. Chatman*, 336 S.C. 149, 152, 519 S.E.2d 100, 101 (1999). If there is any evidence warranting a charge on involuntary manslaughter, then the charge must be given. *State v. Reese*, 370 S.C. 31, 36, 633 S.E.2d 898, 900 (2006).

In our view, there is no evidence supporting an involuntary manslaughter charge. Even assuming Wharton did not intentionally fire the gun at Shaw, by pointing the gun and waiving it in the air, Wharton committed an unlawful act that would naturally tend to cause death or great bodily harm. Accordingly, we hold the trial court properly denied his request for an involuntary manslaughter charge.

II. Accident

Wharton argues the trial court erred in refusing to charge the jury on the law of accident. We disagree.

For a homicide to be excusable on the ground of accident, it must be shown that the killing was unintentional, the defendant was acting lawfully, and due care was exercised in the handling of the weapon. *State v. Burriss*, 334 S.C. 256, 259, 513 S.E.2d 104, 106 (1999). Evidence of an accidental discharge of a gun will support a charge of accident where the defendant lawfully arms himself in self-defense. *Tisdale v. State*, 378 S.C. 122, 126, 662 S.E.2d 410, 412 (2008).

There is no evidence in the record to support an accident charge. Specifically, Wharton was not acting lawfully in waiving the gun in the air, nor did he exercise due care in handling the weapon. Furthermore, there is no evidence he was lawfully armed in self-defense. Accordingly, we hold that the trial court properly denied Wharton's request for a charge on the law of accident.

CONCLUSION

For the foregoing reasons, we hold that the trial court properly denied Wharton's request to charge the jury on involuntary manslaughter and accident, but that the trial court erred in charging the jury on voluntary manslaughter. Furthermore, we vacate the portion of the court of appeals opinion regarding the doctrine of transferred intent in regard to voluntary manslaughter. Accordingly, we affirm in part and vacate in part the court of appeals' decision.

WALLER, PLEICONES, JJ., and Acting Justices James E. Moore and Dorothy Mobley Jones, concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Jack Edward Earl Parker, Appellant.

Appeal From Greenville County
John C. Few, Circuit Court Judge

Opinion No. 4492
Heard November 6, 2008 – Filed January 28, 2009

AFFIRMED

Chief Appellate Defender Joseph L. Savitz, III, of Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Donald J. Zelenka, and Assistant Attorney General S. Creighton Waters, all of Columbia; and Solicitor Robert Mills Ariail, of Greenville, for Respondent.

SHORT, J.: In October of 2003, Parker stood trial for murder before Judge Hayes. The jury twice reported to Judge Hayes its inability to reach a unanimous verdict. Judge Hayes granted Parker's motion for a mistrial. When Parker was tried again in 2005 before Judge Few, he moved to dismiss based on double jeopardy. Judge Few denied the motion and the jury convicted Parker of murder. Parker appeals his murder conviction arguing Judge Few erred in denying his motion to dismiss based on double jeopardy. We affirm.

FACTS

Parker shot and killed Robert Lee Stewart. Stewart had an extensive violent criminal background and a history of abusive behavior toward Parker's sister, Angela. The police and emergency medical technicians responded to a call to Angela's mother's house after Angela was beaten by Stewart. The following day, Stewart and four or five others arrived at Angela's mother's house. Parker lived next door to Angela's mother. Parker shot Stewart multiple times in the driveway. At trial, Parker claimed self-defense, testifying he feared for his life as Stewart was pulling something from his back pocket and from the back of the truck. Police officer Wayne Campbell testified an open knife was found in the victim's back pocket at the scene.

During the first trial, there was a significant amount of animosity between the solicitor and defense counsel, appearing in the record as early as pre-trial motions and continuing throughout the proceedings. Prior to questioning the first police witness, the solicitor explained to the court that there was a videotape made of the crime scene that included graphic footage of the victim's body. The solicitor redacted that footage and presented defense counsel with the redacted copy on the day of trial. The original videotape, however, was shown to the jury. The solicitor claimed it was unintentional. Defense counsel moved for a mistrial and dismissal with prejudice based on prosecutorial misconduct. He argued the solicitor's case was not going well and the State was now privy to his defense tactics. The solicitor argued she did not know how the tapes were switched and there was no

intention on her part to force a mistrial. The court admonished the solicitor, but denied the motion for a mistrial.

At the end of the State's case, Parker moved for a directed verdict. The court denied the motion finding that although the State's case had many lapses in evidence, there was sufficient evidence to present the case to the jury. Parker testified he acted in self-defense. The trial court denied Parker's renewed motions for directed verdict and mistrial. The court also prohibited the State from sending the videotape and a diagram of the body depicting the victim's wounds to the jury room.

After the solicitor's closing argument, Parker again moved for a mistrial. The court charged the jury and then heard arguments on the motion. Parker's counsel argued that many times during the trial, the solicitor accused him of unethical conduct, badgered witnesses to concede they were merely testifying as directed to by Parker's counsel, and stated several times in closing arguments that Parker's counsel had coached the defense witnesses. He further argued the solicitor improperly relied on numerous facts that were not in the record and implied to the jury it was their community duty to convict Parker of murder. He finally argued the cumulative effect of the prosecutorial misconduct warranted a mistrial.

Prior to a ruling on the motion, the jury reported to the judge it was deadlocked. The judge gave an Allen charge. After further deliberation, the jury again reported it was deadlocked. The judge considered the motion for a mistrial. The judge stated he had reviewed the motion for a mistrial, the solicitor's closing argument, and his notes from the testimony. The judge found the solicitor's comments during closing argument were improper, constituted prosecutorial misconduct, and were alone sufficient to warrant a mistrial. The judge also found the attacks on Parker's counsel, the imposition of the burden on the jury to convict in order to protect the community, and the videotape warranted a mistrial. The court stated: "In my readings of those opinions it's almost as if . . . this court can infer that the defendant was almost goaded into the position of asking for the mistrial. So based on

the totality of the circumstances that [have] occurred in this trial . . . I will declare a mistrial."

The court ultimately based the mistrial on the cumulative effects of the misconduct. The State moved for a clarification of Judge Hayes' order, requesting a finding as to whether the mistrial was granted based on prosecutorial misconduct that was intended to: "(a) subvert the protections afforded by the Double Jeopardy Clause, (b) goad or provoke the defense into moving for a mistrial or (c) terminate the trial." By letter, Judge Hayes responded he had reviewed the transcript and his notes and concluded: "Nowhere do I find that this Court was ever asked to rule on the granting of a new trial nor asked about the issue of jeopardy." The State appealed and this court dismissed it as not immediately appealable.

The State tried Parker again. Parker moved to dismiss based on double jeopardy arguing the solicitor at the first trial intentionally goaded him into moving for a mistrial. Judge Few denied the motion to dismiss stating: "[R]egardless of my analysis of what happened in the first trial, this motion to dismiss is denied because it was the jury's being deadlocked that [led] to the manifest necessity that [led] to the mistrial." Judge Few then stated he had analyzed the case and reviewed the transcript. Judge Few concluded the solicitor had not intentionally goaded the defense into moving for a mistrial. The second trial proceeded and the jury convicted Parker of murder. This appeal followed.

LAW/ANALYSIS

Parker argues the trial court in the second trial erred in denying his motion to dismiss based on double jeopardy. Parker argues the solicitor's conduct, including showing the jury the videotape of the victim's body and implying the defense counsel coached the witnesses during her closing arguments, was intended to goad him into moving for a mistrial. We find no reversible error.

The Double Jeopardy Clauses of the United States and South Carolina Constitutions protect citizens from being twice placed in jeopardy of life or liberty. See U.S. Const. amend. V ("No person shall be . . . subject for the same offen[s]e to be twice put in jeopardy of life or limb . . . ."); S.C. Const. art. I, § 12 ("No person shall be subject for the same offense to be twice put in jeopardy of life or liberty . . . ."). "Under the law of double jeopardy, a defendant may not be prosecuted for the same offense after an acquittal, a conviction, or an improvidently granted mistrial." State v. Coleman, 365 S.C. 258, 262-63, 616 S.E.2d 444, 446-47 (Ct. App. 2005).

A defendant who has moved for and been granted a mistrial based on prosecutorial misconduct may successfully invoke the Double Jeopardy Clause to prevent a second prosecution when the prosecutor's conduct giving rise to the mistrial was intended to "goad" or provoke the defendant into moving for the mistrial. Oregon v. Kennedy, 456 U.S. 667, 676 (1982); State v. Mathis, 359 S.C. 450, 460, 597 S.E.2d 872, 877 (Ct. App. 2004) (applying same standard in South Carolina).

Thus, the determination of whether double jeopardy attaches depends upon whether the prosecutorial misconduct was undertaken with the intent to subvert the rights protected by the Double Jeopardy Clause. Coleman, 365 S.C. at 263, 616 S.E.2d at 447. "The trial court's finding concerning the prosecutor's intent is a factual one and will not be disturbed on appeal unless clearly erroneous." Id.; see also Mathis, 359 S.C. at 460-61, 597 S.E.2d at 877-78 (stating deference should be given to the trial court's determination of the existence of the prosecutor's intent).

We first must pay deference to Judge Hayes' letter indicating he did not rule on the jeopardy issue in granting the motion for a mistrial at the end of the first trial. At the second trial, Judge Few first denied the motion to dismiss based on the jury deadlock. We need not address this issue as we are restricted in our review of his further factual finding that the solicitor had not intentionally goaded the defense into moving for a mistrial. We find support in the record to affirm the finding that the solicitor did not intentionally goad Parker into moving for a

mistrial. Accordingly, the trial court did not err in denying the motion to dismiss based on double jeopardy.

CONCLUSION

For the foregoing reasons, the conviction is

AFFIRMED.

HEARN, C.J., and KONDUROS, J., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Iraj Mazloom, Respondent,

v.

Manoochehr Mazloom, Albolfazl Mazloom and AMA, LLC, Appellants.

Appeal From Richland County
Joseph M. Strickland, Master-in-Equity

Opinion No. 4493
Heard December 2, 2008 – Filed January 28, 2009

AFFIRMED AS MODIFIED

Deborah Harrison Sheffield and Paul L. Reeves, both of Columbia, for Appellants.

Tobias G. Ward, Jr. and J. Derrick Jackson, both of Columbia, for Respondent.

WILLIAMS, J.: Manoochehr Mazloom (Manooch) and Albolfazl Mazloom (Aboli) appeal the Master-in-Equity's finding that Iraj Mazloom (Iraj) owned a 25% interest in AMA, LLC (AMA). Manooch and Aboli also

appeal the actual and punitive damages awarded to Iraj. We affirm as modified.

FACTS/PROCEDURAL HISTORY

In January 1983, four of the Mazloom brothers, Iraj, Ahmad, Manooch, and Aboli, incorporated a business known as AMBI, Inc. (AMBI). AMBI owned certain real property in Richland County on which the four brothers operated a Mini Mart, an ABC liquor store, and a one-bedroom apartment. The four brothers were equal shareholders in AMBI, each holding a 25% interest, although no stock certificates were ever delivered. Ahmad was named president of the corporation, and Iraj was named Secretary-Treasurer.[1]

Iraj worked as an employee of AMBI from 1980 until 1996. In October 1996, Ahmad sent a letter to Iraj informing him of an upcoming corporate meeting. During the meeting, a majority of the shareholders voted to remove Iraj from his position as Secretary-Treasurer of AMBI. His employment was also terminated immediately. Iraj was thereafter excluded from participating in the business.

On July 13, 2000, Articles of Dissolution were filed for AMBI. Iraj did not know about or participate in the vote for dissolution, and only the names of Ahmad, Manooch, and Aboli appeared on the papers as directors and officers of AMBI. On this same day, Ahmad, Manooch, and Aboli filed Articles of Organization for AMA. AMBI's real estate was eventually transferred to AMA for the sum of five dollars. Iraj, likewise, did not know about or participate in this transfer.

In September 2002, Iraj contacted an attorney, Franchot Brown (Brown), to help him clarify his interest in AMA. Brown prepared Articles of Amendment for AMA, which were signed by Manooch and Aboli and

[1] It is unclear exactly what position Iraj held. While Iraj is named Secretary on many of AMBI's documents, a corporate letter from 1996 states Iraj's position was Secretary-Treasurer. This distinction, however, does not change our analysis.

filed with the Secretary of State in November 2002.[2] The Articles of Amendment stated that upon AMBI's dissolution, AMA received all of AMBI's assets and good will and that AMBI shareholders were to retain their respective shares of stock in AMA as they had in AMBI. The Articles went on to state:

> That in the organization of AMA, LLC through inadvertence or mistake, Iraj Mazloom was not transferred over as a shareholder of stock from AMBI, Inc. to AMA, LLC which would have been correct, proper and was the intent of the original shareholders.
>
> That this amendment is to correct this error and respectfully acknowledge that Iraj Mazloom owns 25% (or 1/4) shares of stock in AMA, LLC. That Iraj Mazloom shall be acknowledged by [AMA] as a 25% holder of shares in [AMA] and that this amendment shall be filed with the South Carolina Secretary of State as evidence that Iraj Mazloom . . . owns 25% of all shares issued by AMA, LLC.

In January 2003, after the Articles of Amendment were filed, Ahmad sold his interest in AMA to Manooch and Aboli for $120,000. The bill of sale stated Ahmad held a 1/3 interest in AMA while Manooch and Aboli owned equal parts of the remaining 2/3 interest. Iraj was not given notice of this sale or an opportunity to participate and purchase any of Ahmad's interest.

In May 2003, Manooch and Aboli, on behalf of AMA, entered into a contract with Ganesh Mini Mart, LLC (Ganesh) to sell all of AMA's assets, including the Mini Mart, the ABC liquor store, and the one-bedroom apartment, as well as any inventory, furniture, fixtures, and equipment located therein. The purchase price was $345,000. Again, Iraj did not know

[2] Manooch and Aboli signed the Articles of Amendment twice because the first draft was defective in form.

about or participate in this transfer, and he did not receive any share of the sale proceeds.

Iraj originally filed a summons and complaint against Manooch and Aboli (hereinafter collectively referred to as "the brothers") in July 2004. The complaint was subsequently amended and filed in August 2005, asserting claims for an accounting, judicial dissolution or repurchase due to oppression, breach of fiduciary duty of care and loyalty, and breach of good faith and fair dealing. The brothers answered the complaint with defenses and counterclaims. As part of their defense of equitable estoppel, the brothers alleged that at the time AMBI transferred its assets to AMA, Iraj did not have any shares in AMBI because he had assigned his shares and interest to a third party nearly twenty years prior.

The matter was referred to the Master-in-Equity in January 2006 and came to trial in September of that year. The master found Iraj owned a 25% interest in AMA and awarded him $91,031.28 from the sale of AMA's assets and $70,200.75 from unpaid cash distributions. Additionally, the master awarded Iraj punitive damages of $25,000 against each brother, for a total of $50,000. A motion to alter, amend, and reconsider was filed by the brothers, but the master denied the motion. This appeal follows.

STANDARD OF REVIEW

"When legal and equitable actions are maintained in one suit, each retains its own identity as legal or equitable for purposes of the applicable standard of review on appeal." Corley v. Ott, 326 S.C. 89, 92 n.1, 485 S.E.2d 97, 99 n.1 (1997). The reviewing court should "view the actions separately for the purpose of determining the appropriate standard of review." Jordan v. Holt, 362 S.C. 201, 205, 608 S.E.2d 129, 131 (2005). In an action in equity, tried by the judge alone, without a reference, the appellate court has jurisdiction to find facts in accordance with its view of the preponderance of the evidence. Townes Assocs., Ltd. v. City of Greenville, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976). On the other hand, when reviewing an action at law, on appeal of a case tried without a jury, the appellate court's jurisdiction is limited to correction of errors at law, and the appellate court will not disturb the judge's findings of fact as long as they are reasonably supported

by the evidence. Epworth Children's Home v. Beasley, 365 S.C. 157, 164, 616 S.E.2d 710, 714 (2005).

LAW/ANALYSIS

I. Actions for Corporate Dissolution and an Accounting

The brothers first argue the master erred in finding Iraj held a 25% ownership interest in AMA. Specifically, the brothers argue all the probative evidence of record establishes Iraj transferred his 25% interest in AMBI to Shahin Mazloom (Niece), a niece of Iraj, Ahmad, Manooch, and Aboli, in 1985, and therefore, he had no claim to any ownership interest in AMA, the successor in interest to AMBI. We disagree, finding the preponderance of the evidence demonstrates Iraj retained his 25% ownership interest in AMBI.

An action for corporate dissolution is an action in equity, as is an action for an accounting. Keane v. Lowcountry Pediatrics, P.A., 372 S.C. 136, 142, 641 S.E.2d 53, 57 (Ct. App. 2007); see Lee v. Lee, 251 S.C. 533, 535, 164 S.E.2d 308, 308-09 (1968) (holding an action for an accounting is equitable). This Court may, therefore, find facts in accordance with its own view of the preponderance of the evidence. Keane, 372 S.C. at 143, 641 S.E.2d at 57. We need not, however, "disregard the findings of the master who saw and heard the witnesses and was in a better position to evaluate their credibility." Peoples Fed. Sav. & Loan Ass'n v. Myrtle Beach Golf & Yacht Club, 310 S.C. 132, 140, 425 S.E.2d 764, 769 (Ct. App. 1992).

It is undisputed that when AMBI was incorporated, Iraj held a 25% ownership interest in the corporation. The brothers alleged, however, that in October 1985, Iraj conveyed his interest in AMBI to Niece in order to protect his interests prior to his upcoming marriage. The brothers claimed Niece later transferred this interest to Aboli. While Iraj acknowledged that his intention at the time was to transfer his interest to Niece,[3] he testified that he did not believe he ever signed the papers to make that transfer.

[3] In lieu of a prenuptial agreement, Iraj testified that he planned to transfer "everything in [his] name" to members of his family. This included his interest in his mother's home and the surrounding land as well as his interest

No document purporting to transfer any ownership interest was entered into evidence with Iraj's signature on it. In fact, the only document involving Niece transferring an interest in AMBI states, "[Niece] . . . conveys, transfers, and assigns unto [Aboli] any and all of the interest [Niece] previously acquired from [Aboli] in AMBI . . . ." Moreover, AMBI's tax returns continued to list Iraj as late as 1997.

Additionally, in October 1996, Iraj received a letter from Ahmad informing him a corporate meeting was being called. Following that meeting, Iraj received another letter confirming what had been decided at the meeting. The letter stated, "It was decided that [Iraj], by majority of the vote, should be and was removed from his position as Secretary-Treasurer of AMBI, Inc. It was also decided that his employment with AMBI, Inc., be terminated effective immediately."

While we acknowledge there is a conflict between the two parties' accounts as to whether Iraj actually transferred his 25% ownership interest in AMBI to Niece, we find the preponderance of the evidence demonstrates Iraj retained his interest in AMBI and, therefore, also held a 25% ownership interest in the successor business, AMA. As further support that Iraj held a 25% ownership interest in the business, in October 2002, the brothers signed a document recognizing Iraj's 25% ownership interest in AMA. The document, which was filed with the Secretary of State, acknowledged that Iraj always held a 25% ownership interest in AMA and that it was merely through inadvertence or mistake that Iraj was not transferred over as a shareholder of stock from AMBI to AMA. Although the document was titled "Amendments to the Articles of Organization for AMA, LLC," the document was merely a confirmation of Iraj's ownership interest.[4]

---

in AMBI. Iraj testified that while he did transfer his interest in the home and land, his attorney told him it was unnecessary to transfer his interest in the corporation, so those documents were never signed.

[4] We additionally note that it is a crime for a person to "sign[] a document he knows is false in any material respect . . . with intent that the document be delivered to the Secretary of State for filing." S.C. Code Ann. § 33-1-290(a) (2006).

Further, we find the brothers are estopped from denying the facts set forth in the document. "The doctrine of estoppel applies if a person, by his actions, conduct, words, or silence which amounts to a representation, or a 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). As to the party being estopped, the essential elements are (1) conduct amounting to a false representation or concealment of material facts, or conduct calculated to convey the impression that the facts are different or inconsistent with those that the party subsequently attempts to assert; (2) intention or expectation that the conduct will be acted upon by the other party; and (3) knowledge, actual or constructive, of the real facts. Brading v. County of Georgetown, 327 S.C. 107, 114, 490 S.E.2d 4, 7 (1997). As to the party claiming 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 114, 490 S.E.2d at 7-8.

These elements have been met in the present case. By signing the document, the brothers represented to Iraj that he held an undisputed 25% ownership interest in AMA. The brothers made this representation with knowledge that Iraj would rely on it and, therefore, not seek the help of an attorney to secure his interest in the business. Iraj did in fact rely on this representation and took no further legal actions. Thus, the brothers are estopped to deny Iraj held a 25% ownership interest in AMA.

II. Timeliness of the Actions

Finding Iraj owned a 25% interest in AMA, we must address the timeliness of this action. The brothers claim Iraj's actions for corporate dissolution and an accounting are barred as untimely by the equitable doctrine of laches. The brothers also argue the action for breach of fiduciary duty is untimely due to the statute of limitations. We disagree that the equitable actions are untimely, and we will address the timeliness of the legal action in a subsequent section.

This action involves both equitable and legal causes of action. As stated earlier, actions seeking corporate dissolution or an accounting are both actions in equity. Keane, 372 S.C. at 142, 641 S.E.2d at 57; see Lee, 251 S.C. at 535, 164 S.E.2d at 308-09 (holding an action for an accounting is equitable). "[The South Carolina Supreme Court] has held that the statute of limitations does not apply to actions in equity." Dixon v. Dixon, 362 S.C. 388, 400, 608 S.E.2d 849, 855 (2005). Equitable causes of action may be barred as untimely, however, by the doctrine of laches. Chambers of S.C., Inc. v. County Council for Lee County, 315 S.C. 418, 421, 434 S.E.2d 279, 280 (1993).

"Under the doctrine of laches, if a party, knowing his rights, does not seasonably assert them, but by unreasonable delay causes his adversary to incur expenses or to enter into obligations or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce those rights." Id. "The party asserting laches has the burden of showing negligence, the opportunity to act sooner, and material prejudice." Richey v. Dickinson, 359 S.C. 609, 612, 598 S.E.2d 307, 309 (Ct. App. 2004). This Court has wide discretion to determine what constitutes an unreasonable delay. Chambers of S.C., Inc., 315 S.C. at 421, 434 S.E.2d at 280. However, "[d]elay alone in the assertion of a right, without injury to the adversary, does not constitute laches." Gibbs v. Kimbrell, 311 S.C. 261, 269, 428 S.E.2d 725, 730 (Ct. App. 1993).

As noted above, we find Iraj always held a 25% ownership interest in AMA. Thus, there was no need for him to bring an action against the brothers seeking an accounting or a corporate dissolution until all of the assets of AMA were transferred to a third party without his knowledge or consent, which occurred in May 2003. Iraj initially filed his claim in July 2004, and following further discovery, an amended complaint was filed in August 2005. While we do not find this time period demonstrates an unreasonable delay by Iraj, we further note the brothers have failed to demonstrate how they have been prejudiced by any delay on Iraj's behalf. Consequently, the doctrine of laches is inapplicable. We find the equitable actions seeking an accounting and dissolution were not barred by the doctrine of laches.

III. Damages

a. Actual Damages

The brothers argue the master erred in its award of actual damages. Specifically, the brothers argue (1) the evidence does not support a finding that Iraj is entitled to $91,031.28 for his 25% interest in the proceeds of the sale of AMA; and (2) the evidence does not support an award of lost cash distributions to Iraj. We agree in part.

The master has considerable discretion regarding the amount of damages, both actual and punitive. Collins Entm't Corp. v. Coats & Coats Rental Amusement, 355 S.C. 125, 138, 584 S.E.2d 120, 127 (Ct. App. 2003). If evidence in the record supports the award for actual damages, this Court will only review the award for errors of law. Austin v. Specialty Transp. Servs., Inc., 358 S.C. 298, 310-11, 594 S.E.2d 867, 873 (Ct. App. 2004).

A business should be valued at its fair market value as a going business. Brandi v. Brandi, 302 S.C. 353, 357, 396 S.E.2d 124, 126 (Ct. App. 1990). "Determination of fair market value is a question of fact." Payne v. Holiday Towers, Inc., 283 S.C. 210, 215, 321 S.E.2d 179, 182 (Ct. App. 1984). Each case must be decided on its own facts and circumstances; thus, the court is not restricted to one method of valuation. Belk of Spartanburg, S.C., Inc. v. Thompson, 337 S.C. 109, 116, 522 S.E.2d 357, 360 (Ct. App. 1999).

Fair market value has been defined as "[t]he price that a seller is willing to accept and a buyer is willing to pay on the open market and in an arm's[]length transaction." Black's Law Dictionary 1256 (7th ed. 2000); see Hous. Auth. of Charleston v. Olasov, 282 S.C. 603, 608, 320 S.E.2d 478, 481 (Ct. App. 1984) ("Fair market value is the price which a willing buyer will pay a willing seller, neither being under compulsion to buy or sell . . . ."); Reid v. Reid, 280 S.C. 367, 373, 312 S.E.2d 724, 727 (Ct. App. 1984) (stating the generally accepted definition of fair market value is the amount a willing but not obligated buyer would pay to a willing but not obligated seller). As to a business interest, "[t]he fair market value . . . can often be determined simply by examining its market price." Estate of Godley v.

C.I.R., 286 F.3d 210, 214 (4th Cir. 2002). When a business does not have a ready market for its shares or a sale has yet to take place, courts will generally consider and weigh multiple factors such as "inventory, accounts payable and receivable, and other legitimate assets or liabilities." Brandi, 302 S.C. at 357, 396 S.E.2d at 126. In the current case, however, the business has already been sold in an arm's length transaction.

At trial, different values of AMA were presented. It was shown that the brothers purchased a 1/3 interest in AMA from Ahmad for $120,000. Prior to selling AMA's assets to Ganesh, the property was listed for $447,500. Ganesh later purchased the property for $345,000. From these various values, the master determined AMA's fair market value to be $396,250, which was the average between the listing price and the sale price. We find this valuation improper.

Wayne Corley, a certified public accountant, testified the sale of AMA to Ganesh appeared to be an arm's length transaction. Corley further stated $345,000 represented the fair market value of the business. Additionally, the master made no findings that the sale was not an arm's length transaction.

Finding the business was sold to a third party in an arm's length transaction, we find AMA's fair market value is reflected by the sales price, which was $345,000. Cf. Rutledge v. St. Paul Fire & Marine Ins. Co., 286 S.C. 360, 368, 334 S.E.2d 131, 136 (Ct. App. 1985) ("The price paid for property at an actual, voluntary, and *bona fide* sale thereof is presumptive evidence of the property's value.") (emphasis in original). Iraj's 25% interest, therefore, amounts to $86,250. This value, however, is subject to a deduction.

At trial, Iraj admitted to a deduction that should be taken from AMA's valuation because of a loan payoff. The master found the value of this loan to be $32,124.89. While the brothers argue their personal loans and contributions to AMA should also be deducted from the business' value, there was insubstantial evidence presented to support this claim. In fact, the master noted that there were no promissory notes, receipts, or cancelled checks showing loans by the brothers to AMA. Therefore, the master found the only deduction to be taken amounted to $32,124.89, of which $8,031.22 was

allocated to Iraj for his 25% interest in the business. This deduction brings Iraj's interest to $78,218.78. Because we find only the master's valuation of AMA to be improper, we affirm the master's award of damages but modify the amount to reflect the fair market value of Iraj's ownership interest as $78,218.78.

Additionally, the brothers argue the evidence does not support the master's award of lost cash distributions. We disagree.

"Any distributions made by a limited liability company before its dissolution and winding up must be in equal shares." S.C. Code Ann. § 33-44-405(a) (2006). Further, a member who assents to an unlawful distribution will be held personally liable for the unlawful distribution. S.C. Code Ann. § 33-44-407(a) (2006).

At trial, William Rawl, a certified public accountant, testified that after reviewing AMA's tax returns he noticed substantial increases, ranging from $10,000 to $20,000, in inventory year after year. From this, he concluded AMA's sales were underreported while purchases were reported at full value, resulting in unreported sales of roughly $280,000. Rawl supported this argument by comparing an independent inventory of AMA's assets as of September 30, 2002, with the inventory figure listed on AMA's tax return. The independent inventory showed assets worth $34,257, while the tax returns showed assets worth $225,268. Based on these two figures, Rawl calculated AMA's unreported sales to be $280,803. The master then found Iraj was entitled to 25% of these unreported sales, which amounted to $70,200.75.

Additionally, Iraj testified it had been the business practice of AMBI for each shareholder to take approximately $180 per day from the business as "pick-up" money. To support the contention that this practice continued with AMA, Rawl examined AMA's sales and expense summaries from 2003. Rawl noted that while sales and purchases were similar to past years, in 2003 AMA had an increase of over $10,000 in cash deposits. Iraj stated this increase in cash was due to the brothers not taking their usual "pick-up" money from the business, because they were grooming the business for sale.

Based on the foregoing, we find substantial evidence in the record supports an award for lost cash distributions and, thus, affirm the master's award.

b. Punitive Damages

The brothers also argue the master erred in awarding Iraj punitive damages based on the brothers' alleged breach of fiduciary duties. We disagree.

Initially, we must address the timeliness of this action. Iraj's claim for breach of fiduciary duty is subject to a three-year statute of limitations. S.C. Code Ann. § 15-3-530 (2005); S.C. Code Ann. § 33-44-410(b) (2006). The brothers sold AMA to a third party without Iraj's knowledge or consent in May 2003. Iraj then filed his initial complaint in July 2004 and his amended complaint in August 2005. Because the act of selling the business to a third party was the main basis for the master's finding of a breach of fiduciary duty, we find the claim was filed in a timely manner.

An action for breach of fiduciary duty is an action at law. Jordan, 362 S.C. at 205, 608 S.E.2d at 131. Consequently, this Court must uphold the master's findings unless they are without evidentiary support. Id. An award of punitive damages is left almost completely to the discretion of the jury and trial judge because the trial judge was able to hear all of the evidence and was more familiar with the evidentiary atmosphere at trial. Id. at 207, 608 S.E.2d at 132 (citations omitted). An award of punitive damages can serve two purposes: (1) punishing the wrongdoers and deterring them and others from engaging in similar reckless, willful, wanton, or malicious conduct; and (2) vindicating a private right of the injured party by requiring the wrongdoers to pay money to that party. Clark v. Cantrell, 339 S.C. 369, 378-79, 529 S.E.2d 528, 533 (2000).

If punitive damages are awarded, the master should review the amount awarded by considering the factors set forth in Gamble v. Stevenson, 305 S.C. 104, 111-12, 406 S.E.2d 350, 354 (1991). These factors include the following:

> (1) defendant's degree of culpability; (2) duration of the conduct; (3) defendant's awareness or concealment; (4) the existence of similar past conduct; (5) likelihood the award will deter the defendant or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7) defendant's ability to pay; and finally, (8) . . . other factors deemed appropriate.

Id. (internal quotations and citations omitted). The master's findings on these factors must be set forth in the record. Id. at 112, 406 S.E.2d at 354.

We find the master's award of punitive damages for breach of fiduciary duty is supported by the evidence in the record. The master found the misconduct of the brothers warranted an award of punitive damages to Iraj. This conduct included selling all of AMA's assets to a third party without Iraj's knowledge or consent, filing an official document stating Iraj held a 25% interest in AMA and then taking an opposite position after the business' assets were sold,[5] failing to hold the sales proceeds in trust and to provide Iraj with his share, and filing Articles of Termination for AMA without Iraj's knowledge or consent.

Additionally, the master properly considered the Gamble factors when determining the appropriate amount to be awarded, and the master set forth the findings in the record. The master found the brothers were completely culpable for the misconduct leading to the award of punitive damages and that the brothers were fully aware of this misconduct which they engaged in repeatedly. The master also found the award was likely to deter the brothers from similar conduct in the future, the brothers had the ability to pay the

[5] We additionally note a party may be personally liable for false statements made in filed records pursuant to S.C. Code Ann. § 33-44-209 (2006) which states: "If a record authorized . . . to be filed under this chapter contains a false statement, one who suffers loss by reliance on the statement may recover damages for the loss from a person who signed the record . . . and knew the statement to be false at the time the record was signed."

award "based on their note with Ganesh and ownership interests in houses in Lexington County," and the award was reasonably related to the harm.

There is ample evidence in the record to support the master's findings. For example, Iraj testified he was not told about the sale of AMA's assets and was not given any of the proceeds. Iraj stated that after the sale he repeatedly asked the brothers to provide him with his 25% share which they had acknowledged he owned in the document signed and filed in November 2002, but the brothers refused to acknowledge his interest. Iraj also testified he was not consulted or included in the filing of the Articles of Termination for AMA.

We find the master's findings are supported by evidence in the record, and therefore, we find no abuse of discretion in the master's award of punitive damages.

In light of our decision on these issues, we need not address the remaining arguments on appeal. See Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (finding when a decision of one issue is dispositive, it is not necessary to decide remaining issues on appeal).

CONCLUSION

Based on the foregoing, the master's order is

AFFIRMED AS MODIFIED.

PIEPER and GEATHERS, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Ex Parte: Janice S. Wheeler, Respondent,

v.

In re: Estate of Dorothy Fillius Green, Carlette Reynolds, Edward Scott Reynolds, Dawn Flack Reynolds, Thomas A. & Betty H. Considine, Lucy Ann Strickland, Maxine Green Thomas, John G. & Lois M. Considine, Susan C. Considine, James R. Considine, Carol Evans Fastnaught, Roberta Sodaro, Elizabeth Sodaro Wolters, Karen Sodaro Little, Douglas Wheeler, Janice S. Wheeler, Claire (Pat) Kelly Derickson, Heather Parkinson Webb, Treva Joyce Wilson, Susan P. Stowe, Frances O'Donnell Nevin, Adelina D'Aliosio, St. Andrews Catholic Church, North Myrtle Beach/Horry County Library, Briarcliffe Acres Association, Jennifer D. Powers, Kenneth S. & Laura F. Corbett,
Defendants,

Of whom Kenneth S. & Laura F. Corbett are Respondents,

And Edward Scott Reynolds, Thomas A. & Betty H. Considine, Lois M. Considine, Briarcliffe Acres Association, and Jennifer D. Powers, are Appellants.

Appeal From Horry County
J. Michael Baxley, Circuit Court Judge

Opinion No. 4494
Heard December 11, 2008 – Filed January 30, 2009

AFFIRMED

J. Charles Ormond, Jr. and Anthony R. Plante, both of Columbia, for Appellant.

Charles Bernhart Jordan and John M. Leiter, both of Myrtle Beach, for Respondents.

HEARN, C.J.: Edward Reynolds, Thomas and Betty Considine, Lois Considine, and Briarcliffe Acres Association (collectively Beneficiaries), as well as Jennifer Powers (collectively hereinafter referred to as Appellants) contend the circuit court erred in reversing the probate court's finding that Janice Wheeler breached her fiduciary duty to Beneficiaries by failing to consider other offers to purchase property under her control as personal representative (PR). We affirm.

FACTS

In March of 2004, Dorothy Green died testate, and her Last Will and Testament named John Considine as her PR; however, Considine pre-deceased Green. Wheeler, Green's friend and devisee under the will, applied for and was appointed PR. The will required the disposition of Green's primary residence in the following fashion:

> THIRD. I direct my Personal Representative hereinafter named to sell my real property at 38 Birch Lane, Briarcliffe Acres, Horry County, South Carolina, and any other real property I may hereafter acquire, at such time as, in his sole discretion, the sale would be most advantageous financially to my estate, regardless of whether it takes a year or more to do so, and to distribute the proceeds from such sales in accordance with the provisions of this Will.

Powers, having heard of Green's passing and also of Wheeler's impending appointment as PR, contacted Wheeler in April of 2004 to express interest in purchasing the Birch Lane property. Several weeks later, Powers and Wheeler met to discuss the property. Powers once again affirmed her interest in making an offer, and Wheeler indicated she would forward an appraisal of the property to Powers as soon as one had been obtained. In the weeks following their initial meeting, Powers continued to make phone calls to Wheeler in order to inquire as to the property's status and the forthcoming appraisal. Wheeler neither responded to Powers' calls, nor forwarded the appraisal, which was completed in early June 2004.

The appraisal was conducted by Jayroe Appraisal Company, and assigned a market value of $320,000 to the property. In July, Kenneth and Laura Corbett approached Wheeler about purchasing the property, submitting a written offer for $325,000, which Wheeler ultimately accepted. The

Corbetts' contract also contained a clause stating the contract was subject to the approval of the probate court.

On August 25, in a letter from her attorney to Wheeler's attorney, Powers represented that she would be willing to pay $350,000 for the property; however, she did not include or submit a formal offer to purchase. Wheeler did not respond to Powers' offer, instead, she filed a Petition for Approval of Contract of Sale of Real Estate on October 7 with the probate court, seeking its approval of the Corbetts' contract to purchase the property. Wheeler's petition also stated she was aware Powers objected to the sale, but that she had not received an offer from Powers prior to accepting the Corbetts' offer.

Upon learning of Wheeler's petition, Powers tendered a written offer and formal contract to Wheeler's attorney for $385,000. Beneficiaries, in addition to would-be purchaser Powers, answered Wheeler's petition, alleging Wheeler had breached her fiduciary duties as PR by failing to consider Powers' substantially higher offer to purchase the residence. The probate court held a hearing on the petition and ultimately denied approval of the contract of sale to the Corbetts; however, the court went on to find Wheeler had breached her fiduciary duty to the estate, and approved the sale of the residence to Powers. Respondents filed a motion to reconsider, which was denied. On appeal, the circuit court reversed the probate court and approved the petition for Corbetts' contract. Appellants appeal the circuit court's reversal.

STANDARD OF REVIEW

Appeals from the probate court are governed by the provisions of the Probate Code. Matter of Howard, 315 S.C. 356, 360, 434 S.E.2d 254, 256 (1993). The circuit court must hear and determine an appeal from the probate court "according to the rules of law." Id. (citing S.C. Code Ann. § 62-1-308(d) (Supp. 2008)). "As used in [section 62-1-308], the phrase 'according to the rules of law' means according to the rules governing appeals." Id. On appeal from the final order of the probate court, the circuit court must apply the same rules of law as an appellate court would apply on

appeal. In re Estate of Pallister, 363 S.C. 437, 447, 611 S.E.2d 250, 256 (2005). Consequently, if the proceeding in the probate court is in the nature of an action at law, "the circuit court and the appellate court may not disturb the probate court's findings of fact unless a review of the record discloses there is no evidence to support them." Neely v. Thomasson, 365 S.C. 345, 349-50, 618 S.E.2d 884, 886 (2005). "On the other hand, if the probate proceeding is equitable in nature, [an appellate court] may make factual findings according to its own view of the preponderance of the evidence." Matter of Howard, 315 S.C. 356, 361-62, 434 S.E.2d 254, 257-58 (1993).

"To determine whether this suit is legal or equitable, we must look to the 'main purpose' of the action as reflected by the nature of the pleadings and proof, and the character of relief sought under them." Gordon v. Drews, 358 S.C. 598, 604, 595 S.E.2d 864, 867 (Ct. App. 2004). A claim of breach of fiduciary duty is an action at law and the trial judge's findings will be upheld unless without evidentiary support. Jordan v. Holt, 362 S.C. 201, 205, 608 S.E.2d 129, 131 (2005). However, a "breach of fiduciary duty [claim] may sound in equity if the relief sought is equitable." Bivens v. Watkins, 313 S.C. 228, 230 n.3, 437 S.E.2d 132, 133 n.3 (Ct. App. 1993).

LAW/ANALYSIS

I. Wheeler's Alleged Breach of Her Fiduciary Duty as PR

Appellants contend the circuit court erred in reversing the probate court's finding that Wheeler breached her fiduciary duty to Beneficiaries by failing to consider other offers for the purchase of the property. Appellants maintain Wheeler failed to act in the best interest of the estate by not inquiring into or entertaining an offer from Powers that Wheeler knew to be forthcoming as soon as an appraisal had been conducted. We disagree.

Assuming without deciding that Wheeler's petition to consummate the Corbetts' contract to purchase the property sounded in equity, a claim of breach of fiduciary duty is an action at law. Clearwater Trust v. Bunting, 367 S.C. 340, 351 n.4, 626 S.E.2d 334, 340 n.4 (2006). Additionally, the circuit

court stated it was reviewing the decision of the probate court under the more stringent standard at law. A case may involve both equitable and legal issues. See Blackmon v. Weaver, 366 S.C. 245, 248-49, 621 S.E.2d 42, 43-44 (Ct. App. 2005). However, an appellate court must look to the main purpose of the proceeding in order to determine the standard of review to exact. Gordon v. Drews, 358 S.C. 598, 604, 595 S.E.2d 864, 867 (Ct. App. 2004).

Although this action was filed by Wheeler solely in an attempt to approve the contract she had accepted from the Corbetts as PR of Green's estate, Appellants' answer and allegation of a breach of fiduciary duty in Wheeler's handling of the sale of the property became the determinative issue in the hearing before the probate court. Nevertheless, the relief requested in the claim for breach of fiduciary duty was for the Corbetts' contract to be set aside, and the Powers' proffered contract to be approved. See Bivens v. Watkins, 313 S.C. 228, 230 n.3, 437 S.E.2d 132, 133 n.3 (Ct. App. 1993) (noting a breach of fiduciary duty claim may sound in equity if the relief sought is equitable).

In essence, Appellants' counterclaim and request to accept Powers' contract can be construed as requesting two kinds of relief: first, it took the form of a motion for injunctive relief to disapprove the Corbetts' contract; and second, it was accompanied by a request for specific performance of a separate contract. Because there was no acceptance of Powers' offer, a contract between the estate and Powers never existed; therefore, specific performance on Powers' offer could not be granted. See Rushing v. McKinney, 370 S.C. 280, 290, 633 S.E.2d 917, 922 (Ct. App. 2006) (holding for a contract to exist, there must be a meeting of the minds consisting of an offer and an acceptance) (citation omitted); Ingram v. Kasey's Assocs, 340 S.C. 98, 106, 531 S.E.2d 287, 291 (2000) ("In order to compel specific performance, a court of equity must find: (1) there is clear evidence of a valid agreement . . . ."). However, the power of the court to grant an injunction is in equity. Strategic Res. Co. v. BCS Life Ins. Co., 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). As decided by the circuit court, had the probate court not found Wheeler breached her duties as a fiduciary to the estate, then the approval of the sale to the Corbetts would presumably have followed accordingly. Because the injunctive relief requested in Appellants' breach of

fiduciary duty claim took an equitable form, it follows that the circuit court should have applied an equitable standard of review, as will this court, and made factual findings according to its own view of the preponderance of the evidence.

A personal representative is a fiduciary under this state's probate code. S.C. Code Ann. § 62-3-703 (Supp. 2008); S.C. Code Ann. § 62-1-201 (Supp. 2008). "That a fiduciary relationship exists between each heir or beneficiary of an estate and the administratrix thereof is fundamental." Witherspoon v. Stogner, 182 S.C. 413, 414, 189 S.E. 758, 759 (1937). "A fiduciary relationship exists when one reposes special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one reposing confidence." O'Shea v. Lesser, 308 S.C. 10, 15, 416 S.E.2d 629, 631 (1992). "One standing in a fiduciary relationship with another is subject to liability to the other for harm resulting from a breach of duty imposed by the relation." Moore v. Moore, 360 S.C. 241, 253, 599 S.E.2d 467, 473 (Ct. App. 2004).

According to the will, the PR of Green's estate was to sell any property Green owned at her death in a manner that was "most advantageous financially to [Green's] estate, regardless of whether it takes a year or more to do so." The probate court found, and Wheeler even admitted, that she was aware of Powers' interest in purchasing the property before she was even appointed at PR of the estate. Wheeler met with Powers, at which time Powers expressed her interest in the property, and Wheeler indicated she would forward a forthcoming appraisal to her when it became available. However, despite Powers' repeated phone calls, letters, and obvious interest in the status of the property, Powers did not make a formal offer on the property in the four-plus months following Green's death.

Faced with the prospect of waiting on a speculative written offer to materialize, or accepting an in-hand, written offer that was for more than the estate's own appraisal, Wheeler decided it was in the best interest of the Beneficiaries to accept the Corbetts' contract. Moreover, when Powers did finally present a written offer as a part of her answer and counterclaim, the offer contained several contingencies that were not present in the Corbetts'

offer, namely: it required the estate to issue a general warranty deed on the property; an inspection clause to determine if the property would be suitable for Powers' use; and the offer required Wheeler to warrant there was no litigation pending that involved the property.

The circuit court found that Wheeler, as a fiduciary of the estate, had to conform to the prudent investor rule, codified under section 62-7-933 of the South Carolina Code (Supp. 2008). Specifically, the court concluded "compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight." S.C. Code Ann. § 62-7-933(G) (Supp. 2008). We agree. At the time Wheeler petitioned the probate court for approval, she knew of Powers' interest, but had only received an offer from the Corbetts that was for more than the appraisal and contained no unreasonable contingencies. Given the circumstances, Wheeler would have most likely breached her fiduciary duties had she not accepted the Corbetts' offer.

CONCLUSION[1]

In our view under the preponderance of the evidence, Wheeler did not breach her fiduciary duty in accepting the sole written contract the estate had received. Consequently, the circuit court did not err in reversing the probate court and approving the Corbetts' contract. The decision of the circuit court is therefore

---

[1] Wheeler and the Corbetts also contend Appellants have not preserved our review any argument suggesting the standard for approval of the Corbetts' contract to purchase the property, analyzed separately from any alleged breach of fiduciary duty by Wheeler, is whether the contract is in the best interests of the beneficiaries. Because we find the circuit court did not err in its analysis of the preponderance of the evidence, we need not view the disapproval of the Corbetts' contract separate and apart from an allegation of Wheeler's breach. See Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (ruling an appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal).

AFFIRMED.

SHORT, J., and KONDUROS, J., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

James W. Bodenstedt, Jr., Appellant.

Appeal From Pickens County
J. Michael Baxley, Circuit Court Judge

Opinion No. 4495
Submitted January 6, 2009 – Filed January 28, 2009

REVERSED AND REMANDED

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Salley W. Elliott, Assistant Attorney General Julie M. Thames, all of Columbia; and Solicitor Robert M. Ariail, of Greenville, for Respondent.

Chief Appellate Defender Joseph L. Savitz, III, South Carolina Commission on Indigent Defense, Division of Appellate Defense, of Columbia, for Appellant.

PER CURIAM: In this case, James W. Bodenstedt, Jr., appeals the plea judge's decision to increase his sentence from six to eight years' imprisonment. Bodenstedt contends the plea judge erred by increasing his sentence, instead of finding him in contempt of court for his disruptive behavior after sentencing. We reverse.[1]

Bodenstedt worked for a traveling carnival based out of Florida. In October 2005, he telephoned the victim, Donald McCarter, the father of a fellow carnival worker, at his home in Easley, South Carolina, and made false representations to him. Specifically, Bodenstedt informed McCarter that his son was in the hospital and he needed money to pay his son's medical bills. Based upon these false representations, McCarter sent more than $2,000 to Bodenstedt.

Upon indictment, Bodenstedt pled guilty to obtaining money by false pretenses. The State recommended a sentence of "one year active time with a probationary sentence to follow" and restitution. Bodenstedt informed the plea judge that he contrived to deceive McCarter because he and his wife, who was diagnosed with terminal cancer, were in financial trouble. Thereafter, the plea judge sentenced Bodenstedt to six years' imprisonment and required him to pay restitution of $2,383.11. The plea judge informed Bodenstedt that he had ten days after imposing a sentence to reconsider the matter, and if full restitution was made within ten days, the sentence would be reconsidered.

Following sentencing, the plea judge realized that Bodenstedt was being disruptive outside of the courtroom and requested that an officer return Bodenstedt to the courtroom. The plea judge again stated to Bodenstedt that he had "the authority to amend this sentence within ten days at any time it's given." Subsequently, the plea judge increased Bodenstedt's sentence to seven years' imprisonment. Bodenstedt left the courtroom and again became disruptive. The plea judge requested that an officer return Bodenstedt to the courtroom for a second time, and the plea judge increased Bodenstedt's sentence to eight years.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

As to whether it was proper for the plea judge to increase Bodenstedt's sentence instead of punishing him for contempt of court, we find that the contempt power was the proper mechanism for punishing disruptive behavior that occurred after sentencing. See Miller v.Miller, 375 S.C. 443, 453-54, 652 S.E.2d 754, 759-60 (Ct. App. 2007) (internal citations omitted) (stating that courts have inherent power to punish for contemptuous conduct, to preserve order in judicial proceedings, and to enforce judgments and orders). 'Contemptuous behavior' is conduct which tends to bring the authority and the administration of the law into disrespect. Burns v. Universal Health Servs. Inc., 340 S.C. 509, 515, 532 S.E.2d 6, 10 (Ct. App. 2000) (citing Stone v. Reddix-Smalls, 295 S.C. 514, 516, 369 S.E.2d 840, 840 (1988)). In addition, direct contempt involves contemptuous conduct in the presence of the court. State v. Kennerly, 337 S.C. 617, 620, 524 S.E.2d 837, 838 (1999). A person may be found guilty of direct contempt if the conduct interferes with judicial proceedings, exhibits disrespect for the court, or hampers the parties or witnesses. State v. Havelka, 285 S.C. 388, 389, 330 S.E.2d 288, 288 (1985). Direct contempt that occurs in the court's presence may be immediately adjudged and sanctioned summarily. Int'l Union, United Mine Workers of Am. v. Bagwell, 512 U.S. 821, 827 (1994).

In the instant case, the plea judge had already imposed Bodenstedt's sentence prior to his disrespectful and contemptuous behavior in the presence of the court. While it is certainly within the plea judge's power to punish a defendant for disruptive behavior, the plea judge should have held Bodenstedt in contempt of court, as is authorized by law. Therefore, we reverse the plea judge's two-year increase of appellant's sentence and remand to the trial court for reinstatement of the original sentence of six years' imprisonment.

REVERSED AND REMANDED.

WILLIAMS, J., PIEPER, J., and GEATHERS, J. concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Kent Blackburn and Allison R. Minnich, Appellants,

v.

TKT and Associates, Inc., Martha C. Carver, and Raymond T. Windham, Respondents.

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

Opinion No. 4496
Submitted December 1, 2008 – Filed January 28, 2009

AFFIRMED

Louis D. Nettles, of Florence, for Appellants.

C. Pierce Campbell and J. Rene Josey, both of Florence, for Respondents.

HEARN, C.J.: Minority shareholders, Kent Blackburn and Allison Minnich, appeal an order denying their objections to a court-ordered

appraisal of common stock of Respondent, TKT and Associates, Inc., (TKT) for the purpose of a shareholder buyout. We affirm.

FACTS

In late 2002, TKT was formed by Blackburn, Tina Carver, and Tony Windham to sell durable medical equipment (DME).[1] The corporation was funded by a loan for $50,000, which each incorporator co-signed. Upon receiving the necessary authorization to provide DME through Medicaid, the business began operations under the name Carolina Mobility. Shortly thereafter, Carolina Mobility hired Minnich, a sales representative with experience in the DME field. Under the terms of Minnich's employment, she received ten percent of the shares of TKT.[2]

Both Blackburn and Minnich worked for Carolina Mobility full-time from its inception; Blackburn working closely with Minnich in order to learn the DME business. While Minnich received a salary, Blackburn was only paid when distributions were made to the other majority shareholders. Consequently, in August of 2003, Blackburn left Carolina Mobility to work with Darlington EMS so he could receive a regular paycheck.

After Blackburn left, Minnich assumed nearly all the responsibilities of running the company. In early 2004, both Carver and Windham announced their intention to work for the company on a full-time basis and receive a salary from Carolina Mobility in the amount of $60,000 a year, respectively. Additionally, Minnich's salary was raised to $60,000. Despite Carver and Windham's promise to work for Carolina Mobility on a full-time basis, both split time working for Carolina Mobility and another corporation they owned.

---

[1] DME includes walkers, wheelchairs, medical beds, canes, shower seats, bed pans, sponges, sock aides, and other adaptive equipment.

[2] Blackburn, Carver, and Windham collectively retained ninety percent ownership interest in the corporation, with each party holding a thirty percent ownership interest.

In July 2004, Carolina Mobility began experiencing cash flow issues, which resulted in Minnich receiving only seven of the twelve pay checks due to her for the months of July to December. Thus, in spite of Carver and Windham's promise to pay Minnich a $60,000 salary, Minnich received only $39,000 of actual compensation in 2004, while Carver and Windham each received approximately $34,000.

In January of 2005, Minnich's salary was lowered to $40,000, while Carver and Windham each lowered their salary to $30,000. Minnich, who believed Carver and Windham's salaries were still too high, called Blackburn and set up a shareholders meeting to discuss the matter with Carver and Windham. Shortly after the meeting, Minnich left Carolina Mobility, and, in July of 2005, both Blackburn and Minnich sought judicial dissolution of the corporation.

Following a one-day bench trial, the trial court issued an order stating Carver and Windham engaged in self-dealing, which deprived Blackburn and Minnich of "the economic benefit of the value of the [c]orporation's stock by excluding the minority shareholder from the profits of the corporation." Furthermore, the trial court found: (1) Carver and Windham paid themselves in excess of their respective contributions to the corporation; (2) Carver and Windham improperly drained the corporations assets through claims of services as employees of the corporation; and (3) the corporation was devalued by paying Minnich her salary and then splitting the remaining earnings as individual salaries rather than profit.

Despite finding for Blackburn and Minnich, the trial court declined to dissolve the corporation. Instead, it ordered Carver and Windham to purchase Blackburn and Minnich's shares at their fair market value pursuant to section 33-14-310(d)(4) of the South Carolina Code (2006).[3] In its order,

[3] Section 33-14-310(d) provides: "In any action filed by a shareholder to dissolve the corporation on the grounds enumerated in Section 33-14-300, the court may make such order or grant such relief, other than dissolution, as in its discretion is appropriate, including, without limitation, an order: . . . (4)

the trial court sought to determine fair market value of the corporation's stock by having an appraiser, agreed upon by both parties, determine the value of Blackburn's and Minnich's respective shares. Once chosen, the appraiser was given access to the documents introduced at trial by Blackburn and Minnich regarding the value of the services performed by Carver and Windham, in order to make any adjustments to their respective salaries and to the value of the corporation. The appraiser also asked the parties to agree upon an adjustment figure regarding Carver and Windham's salaries, but no agreement was made.

Upon receiving the appraisal, Blackburn and Minnich filed an objection to the report arguing the appraiser failed to comply with the trial court's order by not adjusting Carver and Windham's salaries. Blackburn and Minnich's motion was denied and judgment was entered. This appeal follows.

STANDARD OF REVIEW

"The admission of evidence is within the trial court's discretion." R & G Constr., Inc. v. Lowcountry Reg'l Transp. Auth., 343 S.C. 424, 439, 540 S.E.2d 113, 121 (Ct. App. 2000). "The court's ruling to admit or exclude evidence will only be reversed if it constitutes an abuse of discretion amounting to an error of law." R & G Constr., 343 S.C. at 439, 540 S.E.2d at 121.

LAW/ANALYSIS

On appeal, Blackburn and Minnich argue the trial court erred in admitting the appraiser's report because the appraiser failed to adjust the salaries of Carver and Windham as required by the trial court's order. We disagree.

Simply put, the trial court's order commands Carver and Windham to buy Blackburn's and Minnich's individual shares at fair market value.

---

providing for the purchase at their fair value of shares of any shareholder, either by the corporation or by other shareholders."

Specifically, the trial court ordered, "the parties are to agree upon an impartial corporate appraiser . . .who will compute the [c]orporation's value, and assign a dollar value per share of the corporate stock." While Blackburn and Minnich argue the trial court's order implies an adjustment must be made in determining fair market value of the corporation, the order does not expressly require such an adjustment. Assuming arguendo that this was the implication of the trial court's order, there was neither a finding regarding the amount of any adjustment, nor did Blackburn and Minnich make a post-trial motion requesting the trial court issue such a finding.

Furthermore, as stated in the trial court's second order denying Blackburn and Minnich's objections to the appraisal, no evidence or information was proffered showing the report was prepared improperly. This was also the case at trial, where Blackburn and Minnich offered minimal evidence to the trial court regarding the actual value of the services Carver and Windham provided to the corporation. With respect to this issue, the only evidence of note came from Minnich's testimony and deposition. Minnich testified to the hourly rate she paid her own employees in her current job in the DME field. Moreover in her deposition, Minnich speculated about the going rate for technicians and secretaries, positions with duties similar to those services provided by Carver and Windham. Yet despite Minnich's estimates concerning the comparable hourly rate of the services provided by Carver and Windham, Minnich agreed she could not determine, or create a formula for determining, the amount Carver and Windham were overpaid.

Therefore, Blackburn and Minnich failed to present evidence indicating the appraisal was conducted in an improper manner, or contrary to the trial court's order. Consequently, the trial court did not abuse its discretion in denying Blackburn and Minnich's objections to the admission of the appraisal. The decision of the trial court is

AFFIRMED.

SHORT, J., and KONDUROS, J., concur.