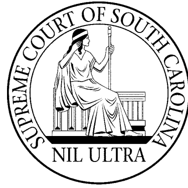

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499

N O T I C E

IN THE MATTER OF JOHN L. DRENNAN, PETITIONER

John L. Drennan, who was definitely suspended from the practice of law for nine (9) months, has petitioned for readmission as a member of the Bar pursuant to the provisions of Rule 33 of the Rules for Lawyer Disciplinary Enforcement contained in Rule 413, SCACR.

The Committee on Character and Fitness has scheduled a hearing in this regard on Friday, January 22, 2010, beginning at 2:00 p.m., in the Court Room of the Supreme Court Building, 1231 Gervais Street, Columbia, South Carolina.[1]

Any individual may appear before the Committee in support of, or in opposition to, the petition.

Richard B. Ness, Chairman
Committee on Character and Fitness
P. O. Box 11330
Columbia, South Carolina 29211

Columbia, South Carolina

December 30, 2009

[1] The date and time for the hearing are subject to change. Please contact the Bar Admissions Office at the Supreme Court to confirm the scheduled time and date.

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
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COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499

N O T I C E

IN THE MATTER OF JORDAN DELAINE WHITE, PETITIONER

Jordan Delaine White, who was definitely suspended from the practice of law for eighteen (18) months, has petitioned for readmission as a member of the Bar pursuant to the provisions of Rule 33 of the Rules for Lawyer Disciplinary Enforcement contained in Rule 413, SCACR.

The Committee on Character and Fitness has scheduled a hearing in this regard on Friday, January 22, 2010, beginning at 3:30 p.m., in the Court Room of the Supreme Court Building, 1231 Gervais Street, Columbia, South Carolina.[1]

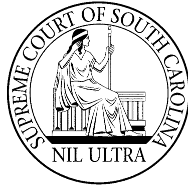
Any individual may appear before the Committee in support of, or in opposition to, the petition.

Richard B. Ness, Chairman
Committee on Character and Fitness
P. O. Box 11330
Columbia, South Carolina 29211

Columbia, South Carolina

December 30, 2009

[1] The date and time for the hearing are subject to change. Please contact the Bar Admissions Office at the Supreme Court to confirm the scheduled time and date.



The Supreme Court of South Carolina

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COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499

N O T I C E

IN THE MATTER OF JAMES STONE CRAVEN, PETITIONER

James Stone Craven, who was definitely suspended from the practice of law for two (2) years, has petitioned for readmission as a member of the Bar pursuant to the provisions of Rule 33 of the Rules for Lawyer Disciplinary Enforcement contained in Rule 413, SCACR.

The Committee on Character and Fitness has scheduled a hearing in this regard on Friday, January 29, 2010, beginning at 2:00 p.m., in the Court Room of the Supreme Court Building, 1231 Gervais Street, Columbia, South Carolina.[1]

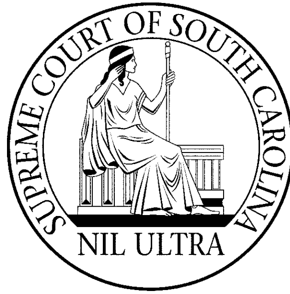
Any individual may appear before the Committee in support of, or in opposition to, the petition.

Richard B. Ness, Chairman
Committee on Character and Fitness
P. O. Box 11330
Columbia, South Carolina 29211

Columbia, South Carolina

December 30, 2009

[1] The date and time for the hearing are subject to change. Please contact the Bar Admissions Office at the Supreme Court to confirm the scheduled time and date.



OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 1
January 4, 2010
Daniel E. Shearouse, Clerk
Columbia, South Carolina
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THE STATE OF SOUTH CAROLINA
In The Supreme Court

Alice Dawkins, Petitioner,

v.

Steve Dawkins, Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Cherokee County
Georgia V. Anderson, Family Court Judge

Opinion No. 26756
Heard October 6, 2009 – Filed January 4, 2010

REVERSED

Usha Jefferies Bridges, of Gaffney, and William G. Rhoden, of Winter & Rhoden, of Gaffney, for Petitioner.

Richard H. Rhodes, of Burts, Turner, Rhodes & Thompson, of Spartanburg, for Respondent.

PER CURIAM: We granted a writ of certiorari to review the court of appeals opinion in *Dawkins v. Dawkins*, Op. No. 2007-UP-460 (S.C. Ct. App. filed Oct. 11, 2007). We reverse and reinstate the judgment of the family court.

The family court ordered an equitable division of the marital estate 60% to Alice Dawkins (Wife) and 40% to Steve Dawkins (Husband), although the actual division was 56% - 44% due to a mathematical calculation error. On appeal, the court of appeals reversed and held an equal division of the marital estate to be "appropriate." In addition, the court of appeals awarded Husband $25,000 as a "special equity" in the marital residence. We have carefully reviewed the record and applicable law and reverse the court of appeals pursuant to Rule 220, SCACR. *See Craig v. Craig*, 365 S.C. 285, 290, 617 S.E.2d 359, 361 (2005) (division of marital property is within family court's discretion and will not be disturbed on appeal absent an abuse of discretion).

I.

We address two matters for the benefit of the bench and bar: the apparent trend at the appellate level to find an abuse of discretion when an equitable division award in a long-term marriage deviates from an equal division, and our view that the manner of accounting for a spouse's "special equity" in marital property should follow the approach approved in *Toler v. Toler*, 292 S.C. 374, 356 S.E.2d 429 (Ct. App. 1987).

A.

Husband and Wife were married for twenty-two years. As noted, the family court attempted to divide the marital property 60% to wife and 40% to husband, although the actual division was 56% - 44%. The court of appeals found the division to be an abuse of discretion. According to the court of appeals, "[w]hile there is no bright line rule, this Court suggests an equal 50% - 50% split of marital assets as an appropriate beginning point for

dividing the estate of a long-term marriage." *Dawkins v. Dawkins*, Op. No. 2007-UP-460 (S.C. Ct. App. filed October 11, 2007). The court of appeals held a 50% - 50% division was "appropriate" due in part to "the trend in case law for an equal apportionment of [marital] property." *Id*.

We take no issue with the proposition that an equal division of marital property will often be "appropriate." We further agree that a 50% - 50% division would be appropriate here. But that does not make the attempted 60% - 40% division inappropriate or an abuse of discretion. The purpose behind case law's imprimatur of a 50% - 50% division was to foster amicable resolutions in family court matters and provide guidance on what would in effect be a safe harbor in most cases in the division of marital property in a long-term marriage. Yet what was intended as guidance on an "appropriate" division has seemingly mutated into a mandatory division. It is well-settled that the apportionment of marital property is within the discretion of the family court. *Wooten v. Wooten*, 364 S.C. 532, 542, 615 S.E.2d 98, 103 (2005).

An appellate court should approach an equitable division award with a presumption that the family court acted within its broad discretion. The family court's award should be reversed only when the appellant demonstrates an abuse of discretion. The family court here acted within its discretion in attempting to apportion the marital estate 60% - 40%. *Roberson v. Roberson*, 359 S.C. 384, 389, 597 S.E.2d 840, 842 (Ct. App. 2004) (recognizing that when reviewing the family court's equitable apportionment, an appellate court looks to the fairness of the overall apportionment, and if the end result is equitable, it is irrelevant that the appellate court might have weighed specific factors differently than the family court).

B.

Next, we address the issue of how to account for a spouse's "special equity" in marital property.[1] Here, the parties' marital residence was a gift to

[1] We recognize the concept of a special equity can also refer to an interest in any increase in value of nonmarital property resulting from the

Husband by his mother. It is undisputed that the home was transmuted into marital property. Husband believed the family court failed to give him proper consideration for his contribution to the marital home. The court of appeals agreed and relied on *Cooksey v. Cooksey*, 280 S.C. 347, 312 S.E.2d 581 (Ct. App. 1984) in awarding Husband a separate award of $25,000. The $25,000 special equity award would have been in addition to Husband's 50% share of the balance of the marital property.

Cooksey preceded our equitable apportionment statute. We agree with the principle, as stated by the court of appeals, that "a transmutation of inherited nonmarital property into marital property [does] not extinguish the inheritor's right for special consideration upon divorce." *Dawkins v. Dawkins*, Op. No. 2007-UP-460 (S.C. Ct. App. filed October 11, 2007). We, however, overrule *Cooksey* to the extent it may be read to allow a family court to separate and subtract the inheritance amount from the marital estate and then award this "special equity" to the inheritor in addition to his or her portion of the court-ordered division of the marital estate. We approve of the approach announced in *Toler*, decided after adoption of the equitable apportionment statute, as the sole method in accounting for a spouse's special equity in marital property and hold that "the correct way to treat [an] inheritance is as a contribution by [the inheriting party] to the acquisition of marital property [and that] [t]his contribution should be taken into account in determining the percentage of the marital estate to which [the inheriting party] is equitably entitled upon distribution." *Toler*, 292 S.C. at 380 n.1, 356 S.E.2d at 432 n.1.

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non-owner spouse's material contribution. *Arnal v. Arnal*, 363 S.C. 268, 294, 609 S.E.2d 821, 835 (Ct. App. 2005). Accounting for a spouse's contribution to a nonmarital asset presents a different situation. Our holding is limited to a family court's consideration of a special equity in a marital asset.

II.

We reverse the court of appeals and reinstate the judgment of the family court.

REVERSED.

TOAL, C.J., WALLER, PLEICONES, BEATTY and KITTREDGE, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Florence Evans, Appellant.

Appeal From Chesterfield County
James E. Lockemy, Circuit Court Judge

Opinion No. 4641
Heard October 21, 2009 – Filed December 30, 2009

AFFIRMED

Acting Chief Appellate Defender Robert M. Dudek, of Columbia, for Appellant.

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, of Columbia; and Solicitor Jay E. Hodge, Jr., of Cheraw, for Respondent.

SHORT, J.: Florence Evans appeals her convictions for three counts of involuntary manslaughter, arguing the trial court erred in denying her motion to dismiss the charges against her because her constitutional right to a speedy trial was violated by the twelve-year delay in bringing her case to trial. We affirm.

FACTS

On March 4, 1994, Evans' trailer caught fire, killing her three small children. Evans was not in the home at the time of the fire. An initial test of the site revealed the presence of a flammable substance in the debris. When police first questioned Evans on March 14, 1994, she told them she had lit a kerosene heater in the home while her children were sleeping and had gone next door to visit her sister. She said that minutes after arriving at her sister's house, she saw her trailer in flames and ran home in an attempt to save her children. However, after several hours of questioning, Evans gave a written statement to the police that she intentionally "dropped a lit piece of paper on the floor," went to her sister's house, and "waited about two hours until someone saw the fire." The officers immediately placed Evans under arrest, and on April 18, 1994, she was indicted on three counts of murder.

Public Defender Jay Hodge was assigned to Evans' case; however, in 1994 or 1996 he was elected Solicitor and was conflicted from the case. The case was transferred to the Attorney General's Office as a conflict case, and Attorney General David Avant was assigned to represent the State. On March 25, 1998, Burnie Ballard was appointed as Evans' counsel, and on April 29, 1998, Evans filed a motion for speedy trial.

On May 4, 1998, the trial court held a Jackson v. Denno, 378 U.S. 368 (1964), hearing to determine the admissibility of Evans' oral and written statements to police on March 14, 1994. The trial court suppressed Evans' statements after finding there was the "functional equivalent of interrogation"

and Evans was "tantamount to being in custody."[1] The trial judge granted the State permission to take an interlocutory appeal of its order suppressing Evans' statements. On June 12, 2000, the Court of Appeals filed an opinion affirming the order suppressing Evans' statements; however, the State filed a petition for rehearing, which was granted. As a result, on January 2, 2001, the Court of Appeals withdrew its previous opinion and filed a new opinion, reversing the trial court's suppression order and remanding the case to the trial court for entry of a more definite suppression ruling as to whether Evans was in custody. The Supreme Court granted a petition for certiorari to review the Court of Appeals' decision on September 27, 2001. On June 9, 2003, the Supreme Court reversed the Court of Appeals, finding the trial court properly suppressed Evans' statements because she gave them in a custodial interrogation, and she should have been given Miranda warnings.[2] The State filed a petition for rehearing, which was denied by the court, and the remittitur was sent to the trial court on July 15, 2003.

On June 18, 2003, the Attorney General's Office transferred the case to the Fifth Circuit Solicitor's Office, and Assistant Solicitor David Pascoe was assigned to the case. However, Pascoe was elected as First Circuit Solicitor in 2004, and although he took the case with him, he never personally appeared in court. On March 29, 2005, Judge Lockemy heard and denied Evans' motion for speedy trial. That same day, Evans was indicted on three counts of homicide by child abuse. Evans filed a motion to reconsider on April 8, 2005. On January 13, 2006, Evans' case was transferred from the Fifth Circuit Solicitor's Office to the Eleventh Circuit Solicitor's Office. Judge Lockemy heard Evans' motion for reconsideration of the speedy trial motion on October 16, 2006, and again denied the motion. That same month, on October 31, 2006, Evans was indicted on three counts of homicide by child abuse and three counts of involuntary manslaughter.

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[1] Judge Floyd did not rule on Evans' motion for speedy trial.

[2] Miranda v. Arizona, 384 U.S. 436 (1966).

Evans' trial was held on December 11, 2006. That morning, before trial, Evans filed a motion for violation of due process based on delay for the indictments for involuntary manslaughter and homicide by child abuse. At the trial, Evans also requested Judge Lockemy reconsider his denial of her motion for speedy trial. Judge Lockemy denied both motions. Judge Lockemy granted Evans' motion for directed verdict on three counts of homicide by child abuse, and the jury found Evans guilty of three counts of involuntary manslaughter. He sentenced Evans to two concurrent five-year terms for two counts of involuntary manslaughter, and one consecutive five-year term for the third count of involuntary manslaughter. This appeal followed.

STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). The court is bound by the findings of the trial court unless they are unsupported by the evidence, clearly wrong, or controlled by an error of law. State v. Williams, 326 S.C. 130, 135, 485 S.E.2d 99, 102 (1997). The reviewing "[c]ourt does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial judge's ruling is supported by any evidence." Wilson, 345 S.C. at 6, 545 S.E.2d at 829.

LAW/ANALYSIS

Evans argues the trial court erred in denying her motion to dismiss the charges because her constitutional right to a speedy trial was violated by the twelve-year delay in bringing her case to trial. We disagree.

A criminal defendant is guaranteed the right to a speedy trial. U.S. Const. amend. VI; S.C. Const. art. I, § 14; State v. Pittman, 373 S.C. 527, 548, 647 S.E.2d 144, 155 (2007). "This right 'is designed to minimize the possibility of lengthy incarceration prior to trial, to reduce the lesser, but nevertheless substantial, impairment of liberty imposed on an accused while released on bail, and to shorten the disruption of life caused by arrest and the

presence of unresolved criminal charges.'" Id. (quoting U.S. v. MacDonald, 456 U.S. 1, 8 (1982)). There is no universal test to determine whether a defendant's right to a speedy trial has been violated. State v. Waites, 270 S.C. 104, 107, 240 S.E.2d 651, 653 (1978).

A reviewing court should consider four factors when determining whether a defendant has been deprived of his or her right to a speedy trial: 1) length of the delay; 2) reason for the delay; 3) defendant's assertion of the right; and 4) prejudice to the defendant. Barker v. Wingo, 407 U.S. 514, 530 (1972); see also State v. Brazell, 325 S.C. 65, 75, 480 S.E.2d 64, 70 (1997). These four factors are related and must be considered together with any other relevant circumstances. Barker, 407 U.S. at 533. "Accordingly, the determination that a defendant has been deprived of this right is not based on the passage of a specific period of time, but instead is analyzed in terms of the circumstances of each case, balancing the conduct of the prosecution and the defense." Pittman, 373 S.C. at 549, 647 S.E.2d at 155. However, in Doggett v. U.S., 505 U.S. 647, 652 n.1 (1992), the United States Supreme Court suggested in dicta that a delay of more than a year is "presumptively prejudicial." Also, in State v. Waites, our supreme court found a two-year and four-month delay was sufficient to trigger further review. Waites, 270 S.C. at 108, 240 S.E.2d at 653. Therefore, "a delay may be so lengthy as to require a finding of presumptive prejudice, and thus trigger the analysis of the other factors." Pittman, 373 S.C. at 549, 647 S.E.2d at 155.

Evans asserts the twelve-year delay in bringing her case to trial was unreasonable and violated her right to a speedy trial. She claims she was prejudiced by the delay in the loss of four of her witnesses: Alberta Tillman, Dickie Allen, Inez Robinson, and Clay Wilson. Tillman had been diagnosed with Alzheimer's disease in 2003 and was not competent to testify. Allen had passed away in February 2006, and Robinson had died in August 1998. Evans also was unable to locate Wilson. She alleges the delays by the State in prosecuting the case were arbitrary and unreasonable because "placing running for solicitor over one's present duties is not an acceptable excuse, and it does not trump [Evans'] rights to a speedy trial." She also asserts that under

the totality of the circumstances, it should be taken into account that the State's appeal of the suppression order was unsuccessful.

Evans filed her first motion for speedy trial on April 29, 1998; however, the motion was not ruled upon until March 29, 2005. At the March 29, 2005 hearing, the State asserted the reason for the delay in 1994 after Hodge was conflicted from the case was the result of the Attorney General's office having problems scheduling the trial with the Fourth Circuit Solicitor's Office. Regarding the delay in 2003, the State asserted that then Assistant Solicitor Pascoe was running for Solicitor of the First Circuit, and he had a "pretty hefty caseload" at the time. During the hearing, Judge Lockemy considered the Barker factors in making his decision. He noted that the case had been delayed for a long time, but he did not "find any neglectful delay prejudicial to the defense to any great degree other than the fact in and of itself [it has] been [twelve] years."[3] Judge Lockemy noted the reasons for the delay included that: (1) the case was transferred from Public Defender Hodge to the Attorney General's office due to Hodge's election as Solicitor; (2) Evans' statement was suppressed; (3) the suppression order was appealed; (4) five years was taken in appeals; (5) after the appeal, the case was transferred from the Attorney General's office to Assistant Solicitor Pascoe; and (6) Pascoe was elected as Solicitor of another circuit. Judge Lockemy also discussed the prejudice to Evans involving witnesses and evidence. He noted that Tillman "may have said [something] from someone else," which "may or may not be admissible" and Ballard did not know if she was "dead or alive." He also stated that as to the evidence, no one had "introduced to me yet anything . . . that is going to be prejudicial specifically to the defendant." He also clarified that his ruling did not include the indictments served in 2005, and he requested that another hearing be set up to address those indictments.

Evans filed a motion to reconsider Judge Lockemy's denial of her motion for speedy trial on April 8, 2005. Judge Lockemy heard the motion to reconsider on October 16, 2006. At the October 16, 2006 hearing, Ballard asserted it had been twelve years and seven months from the date of the

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[3] We note the twelve-year delay in bringing Evans' case to trial is troubling; however, in this case, we find it was justifiable.

offense; however, he stated that it "is probably the correct manner" to "deduct from that period of time the entire period of time on which this case was on appeal." Ballard also admitted that Hodge's conflict in 1994 due to his election as Solicitor was justified. Judge Lockemy again considered the Barker factors. As to the length of delay in bringing the case to trial, Judge Lockemy noted that "a lot of [the delay] has been due to matters that are going on just as the inherent problem when you have a solicitor's office who cannot prosecute something and you have to go from place to place . . . ." See Waites, 270 S.C. at 108, 240 S.E.2d at 653 (holding that the "constitutional guarantee of a speedy trial is protection only against delay which is arbitrary or unreasonable"). In consideration of the fourth and most important factor, prejudice, Judge Lockemy found Evans "has not met certain prejudices as stated in the [Barker] case and restated in the standard there by incarceration, she's not been incarcerated." He further stated, "[t]here has been no real strong assertion that there has been a strong prejudice." See Brazell, 325 S.C. at 76, 480 S.E.2d at 70-71 (noting the three-year and five-month delay was negated by the lack of prejudice to the defense).

During the December 11, 2006 trial, Evans again asked Judge Lockemy to reconsider his denial of her motion for speedy trial. After hearing Evans' argument and testimony from Tillman's granddaughter, Debra Lewis, that Tillman had been diagnosed with Alzheimer's in 2003, Judge Lockemy again denied the motion. Judge Lockemy stated he made his decision to deny her motion after "consideration of the entire record, a totality of all the circumstances, the consideration of any prejudice regarding the death of Mr. Allen, the incompetency to testify of Mrs. Tillman, the unavailability of Mr. Wilson apparently." Therefore, we find Judge Lockemy's denial of Evans' 1998 motion to dismiss based on a violation of her right to a speedy trial was supported by the evidence.[4]

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[4] At the October 16, 2006 hearing, Judge Lockemy informed Ballard he could only decide Evans' motion for speedy trial as it related to the indictments for murder because the indictments for involuntary manslaughter and homicide by child abuse were served on her during the October 2006 hearing. Ballard responded, "[P]erhaps I will of necessity have to revisit that issue as a delay in indictment case and due process violation rather than a

CONCLUSION

Accordingly, the trial court's order is

AFFIRMED.

WILLIAMS and GEATHERS, JJ., concur.

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speedy trial." Evans then filed a subsequent motion based on the later-filed indictments on December 11, 2006. This motion was not based on a speedy trial violation, but stated the delay of more than twelve years in issuing the indictments violated Evans' constitutional due process rights. At the December 11, 2006 trial, Ballard told the court that the motion he filed that day did not pertain to the murder indictments because he did not "think it would be appropriate for [him] to argue that there was a delay in the murder indictments, because they were issued in 1994. That was a long time ago." Therefore, we do not address the December 11, 2006 motion based on the later-filed indictments.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

S.C. Department of Social Services on behalf of Natlynn D. Jimmerson, Respondent

v.

Eric F. Johnson, Appellant.

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

Opinion No. 4642
Heard October 13, 2009 – Filed December 30, 2009

AFFIRMED

Laree Anne Hensley, of North Charleston, for Appellant.

John M. Magera, S.C. Department of Social Services, of North Charleston, for Respondent.

WILLIAMS, J.: In this child support action, Eric Johnson (Johnson) argues he was not properly notified of the registration of his foreign child

support order and was improperly found in contempt for violation of the child support order. We affirm.

FACTS

On March 20, 1998, Johnson was personally served with a summons and complaint concerning a child support matter from the North Carolina Department of Social Services (NCDSS) on behalf of Natlynn Jimmerson, the mother of Johnson's biological child. At the time, Johnson resided in North Carolina. NCDSS mailed the notice for the child support hearing to Johnson's last known address. A hearing to establish child support was held on June 5, 1998, but Johnson failed to appear. An order for child support in the amount of $421 per month was then entered against him on July 17, 1998. The order also required Johnson to keep NCDSS "informed of his current residence and mailing address." Johnson did not make the full monthly child support payments, although portions of his wages were withheld and applied towards his obligations.

Johnson later moved to South Carolina. NCDSS requested verification of his last known address from the United States Postal Service in January 2005. The United States Postal Service verified Johnson's address as 7986 Shadow Oak Drive, North Charleston, South Carolina. On February 28, 2005, NCDSS sent the case to the South Carolina Department of Social Services (SCDSS), seeking enforcement of the order and $19,085.68 in arrears. The child support order was subsequently filed and registered in South Carolina on January 3, 2007.[1] On May 3, 2007, notice of the registration was sent to Johnson at his last known address on Shadow Oak Drive in North Charleston, South Carolina.

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[1] The 2007 order was the second child support order registered against Johnson in South Carolina. The first order was issued in North Carolina in 1996 and registered in South Carolina in 2003. Johnson was also held in contempt for failure to pay $26,786.57 in child support pursuant to the 2003 order; however, Johnson does not contest the court's contempt finding for that order in this appeal.

Johnson's arrearages continued to increase due to his failure to obey the 2007 child support order, and by July 2007, $32,859.41 in arrears had accumulated. The clerk of court issued a rule to show cause ordering Johnson to appear before the family court in September 2007 and show cause why he should not be found in contempt of court for failing to pay child support. The rule to show cause was sent by first-class mail to Johnson's Shadow Oak Drive address.

Johnson did not appear at the September 2007 hearing. The family court issued a bench warrant for failure to pay child support, and Johnson was arrested. At the contempt hearing, Johnson admitted he knew about both of his child support cases and acknowledged that although he was currently employed, he had failed to pay the requisite child support payments. Johnson was then found to be in civil contempt for failure to pay his child support as ordered. Johnson was sentenced to one year imprisonment, with the ability to purge the confinement upon the payment of $150 in court fees and $34,627.61 in arrearages.

Johnson filed a motion to reconsider, which was denied. This appeal followed.

ISSUES ON APPEAL

On appeal, Johnson sets forth two main arguments:

1. The family court erred in finding Johnson received proper notice of the registration of the child support order.

2. The family court erred in finding Johnson in contempt for violation of the child support order because the procedure by which Johnson was found in contempt violated the requirements of fundamental due process.

STANDARD OF REVIEW

"In appeals from the family court, an appellate court has the authority to find the facts in accordance with its own view of the preponderance of the evidence." Carpenter v. Burr, 381 S.C. 494, 501, 673 S.E.2d 818, 822 (Ct. App. 2009). However, this broad scope of review does not require this court to disregard the family court's findings. Lacke v. Lacke, 362 S.C. 302, 307, 608 S.E.2d 147, 149-50 (Ct. App. 2005). Nor must we ignore the fact that the family court judge, who saw and heard the witnesses, was in a better position to evaluate their credibility and assign comparative weight to their testimony. Mazloom v. Mazloom, 382 S.C. 307, 317, 675 S.E.2d 746, 751 (Ct. App. 2009).

LAW/ANALYSIS

1. Notice of Registration

Johnson argues he did not receive proper notice of the registration of the foreign support order, and this lack of notice divested the family court of jurisdiction to enforce the order. We disagree.

A. Section 20-7-1140(A) & UIFSA

Johnson first contends SCDSS failed to comply with section 20-7-1140(A)[2] of the South Carolina Code as well as the Uniform Interstate

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[2] In support of his argument, Johnson references provisions from Title 20, Chapter 7, which govern paternity and child support. See S.C. Code Ann. §§ 20-7-952 to -1166 (Supp. 2007). These code sections are now designated as Chapter 17 in Title 63 due to the Legislature's restructuring of the Children's Code. See S.C. Code Ann. §§ 63-17-10 to -4040 (Supp. 2008). Because this case arose prior to the recodification, the former statutory citations are referenced when applicable.

Family Support Act (UIFSA) when it registered the foreign support order. We disagree.

At the time notice was sent to Johnson in May 2007, the South Carolina statute controlling registration and notice of a foreign support order read:

> The registering tribunal shall notify the nonregistering party of the registration of a support order or income withholding order issued in another state. *Notice must be given by first-class, certified, or registered mail or by any means or personal service authorized by the law of this State.* The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

S.C. Code Ann. § 20-7-1140(A) (Supp. 2006) (emphasis added).

The notice of filing and the certificate of mailing for the registration order indicate SCDSS complied with these statutory requirements. The notice of filing directing SCDSS to notify Johnson stated, "The Child Support Enforcement Legal Division shall send by *first class mail* to the obligor at the address given above a Notice of Registration with a copy of the registered support order." (emphasis added). Furthermore, the certificate of mailing verified a Child Support Specialist for SCDSS "mailed in a sealed envelope, postage prepaid, a copy of the Notice of Filing of Registration" to Johnson at his Shadow Oak Drive address. Although Johnson argues there is no evidence in the record to indicate the Notice of Registration was sent by first-class mail, the certificate of mailing reflects otherwise.

Johnson additionally argues even though NCDSS verified his address in 2005, the notification of the child support registration was not sent by SCDSS to his Shadow Oak address until 2007. He contends that he was no longer living at this address when the notification was mailed; thus, it is

inherently unfair to allow SCDSS's two-year delay in notifying him to work to his detriment.

Despite Johnson's contention, the North Carolina child support order at issue explicitly stated that Johnson was required to keep NCDSS informed of his current residence and mailing address. Johnson failed to establish at the contempt hearing or the Rule 59(e) hearing that he ever updated his address with NCDSS as required by both court order and state statute.[3] Furthermore, Johnson was already statutorily required to notify SCDSS of any change in his address for purposes of another child support order that was registered against him in May 2003.

South Carolina Code section 20-7-854 (Supp. 2007) (currently § 63-17-450 (Supp. 2008)) sets forth which information an obligor is required to maintain with SCDSS for child support purposes. Among other information, the obligor must provide his or her residence and mailing address and must notify SCDSS of any changes to this information within ten days of the effective date of change. § 20-7-854(A)(1), (2).

Despite his responsibility to update this information, Johnson never notified SCDSS of any changes in his address as he was statutorily required to do by virtue of the 2003 child support order. Further, Johnson openly acknowledged at his contempt hearing that he was aware of and was in arrearages on both the 2003 and 2007 child support obligations. Notwithstanding his acknowledgment of the two child support cases, Johnson failed to properly notify either SCDSS or NCDSS of his change in address.

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[3] N.C. Code Ann. Section 50-13.9(c) (Supp. 2008) states, "In an IV-D case, the parties affected by the order shall inform the designated child support enforcement agency of any change of address or other condition that may affect the administration of the order. The court may provide in the order that a party failing to inform the court or, as appropriate, the designated child support enforcement agency, of a change of address within a reasonable period of time may be held in civil contempt." (notification language in effect when original child support order registered in 1998).

Johnson's claim regarding UIFSA is also without merit. Section 605 of UIFSA, entitled "Notice of Registration of Order," states that a "registering tribunal shall notify the nonregistering party" when a support order is registered in another state. Unif. Interstate Family Support Act § 605(a) (2001). Johnson argues that the mailing of the registration failed to comport with the requirements of section 605 because he did not receive actual notice of the filing. However, our statute, not UIFSA, is controlling on the manner of notification. See Unif. Interstate Family Support Act § 305 cmt. (2001) ("[UIFSA] also directs that the individual or entity requesting the filing be notified, but leaves the means of that notification to local law."); S.C. Code Ann. § 20-7-1035 (Supp. 2007) (currently § 63-17-3230 (Supp. 2008)) ("Except as otherwise provided in this article, a responding tribunal of this State shall . . . apply the procedural and substantive law generally applicable to similar proceedings originating in this State . . .").

Further, nothing in the plain language of section 605 or in the official comments mandates that the registering tribunal provide *actual notice* of the registration to the obligor. Rather, the comments indicate that because of a variety of notification methods, such as telephone facsimile or electronic mail, the method of notifying a nonregistering party should be governed by local law. See Unif. Interstate Family Support Act § 305 cmt. (2001). As such, the mailing of the Notice of Registration to his last known address by first-class mail was sufficient to notify Johnson of the child support order.

B. South Carolina Rules of Civil Procedure

Johnson avers section 20-7-1140(A) allows for personal service of the Notice of Registration, which proves the Legislature intended the Notice of Registration to be personally served in compliance with Rule 4 of the South Carolina Rules of Civil Procedure. We disagree.

Rule 4(d)(1), SCRCP, governs service of a summons and complaint upon a defendant and mandates service upon an individual "by delivering a copy of the summons and complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person of

suitable age and discretion then residing therein, or by delivering a copy to an agent authorized by appointment or by law to receive service of process." Indeed, Rule 4 mandates personal service of a summons and complaint when an action at law is instituted. However, Johnson's argument overlooks that the notice of registration for an existing child support order is separate and distinct from the service of a summons and complaint. Johnson was already personally served with a summons and complaint in 1998 when the mother instituted this child support action; therefore, Rule 4, SCRCP, is inapplicable in this context.

For purposes of section 20-7-1140(A), Rule 5 of the South Carolina Rules of Civil Procedure governs how the Notice of Registration should be served. Rule 5 states that all "pleadings subsequent to the original summons and complaint" and "written notices" must be served upon a party by "delivering a copy to [the party] *or* by mailing it to [the party] at his last known address." Rule 5, SCRCP (emphasis added). While both section 20-7-1140(A) and Rule 5 permit personal service of a written notice upon a party, the Legislature's choice of the term "or" illustrates its intent to grant the registering tribunal the option of how to effectuate service. See SCDSS v. Lisa C., 380 S.C. 406, 414, 669 S.E.2d 647, 651 (Ct. App. 2008) ("If a statute's language is plain, unambiguous, and conveys a clear and definite meaning, rules of statutory interpretation are not necessary, and the court has no right to look for or impose another meaning."). As a result, SCDSS's decision to mail the Notice of Registration to Johnson's last known address comported with the South Carolina Rules of Civil Procedure.

2. Civil Contempt

Johnson claims the family court erred in finding him in contempt for violation of the child support order because the procedure by which he was found in contempt violated the requirements of fundamental due process. We disagree.

Contempt results from the willful disobedience of a court order. Moseley v. Mosier, 279 S.C. 348, 351, 306 S.E.2d 624, 626 (1983). Before a

court may find a person in contempt, the record must clearly and specifically reflect the contemptuous conduct. Curlee v. Howle, 277 S.C. 377, 382, 287 S.E.2d 915, 918 (1982). Once a moving party makes out a prima facie case of contempt by pleading the order and showing its noncompliance, the burden shifts to the respondent to establish his defense and inability to comply. Means v. Means, 277 S.C. 428, 430, 288 S.E.2d 811, 812 (1982). A finding of contempt rests within the sound discretion of the trial judge. Haselwood v. Sullivan, 283 S.C. 29, 32, 320 S.E.2d 499, 501 (Ct. App. 1984).

Prior to the family court finding Johnson in contempt, the clerk of court issued a rule to show cause, requiring Johnson to appear in court for his failure to pay child support. The rule to show cause contained an affidavit and properly identified the parties to the action, the child support order at issue, and the amount of arrearages that had accumulated as of that date. Subsequently, the family court ordered that a bench warrant be issued for Johnson's refusal to obey the court's order to pay child support pursuant to South Carolina Code section 20-7-870 (Supp. 2007) (currently § 63-17-390 (Supp. 2008)). Johnson was arrested and then brought before the family court, at which time the family court conducted a hearing and found he had the ability to pay child support, but failed to do so. As a result, the family court found Johnson in civil contempt and sentenced him to one year in jail with the ability to purge his confinement by payment of the arrearages and $150 in court costs.

The Code contemplates an instance in which an alleged contemnor can be imprisoned for failure to obey a support order. In this situation, section 20-7-870 permits the family court to issue a bench warrant to hale an alleged contemnor into court without prior notice. Section 20-7-870 states, "Where a respondent shall neglect or refuse to obey an order for support or upon agreement signed by the respondent and approved by the court, and the court is satisfied thereof by competent proof, it may, with or *without notice*, issue a warrant to commit the respondent to jail until the order is obeyed or until the respondent is discharged by law." (emphasis added).

While this court is not bound by the opinions of the Attorney General, we find it instructive to reference an opinion specifically discussing section 20-7-870[4] and its application in an indirect contempt proceeding. See Price v. Watt, 280 S.C. 510, 513 n.1, 313 S.E.2d 58, 60 n.1 (Ct. App. 1984) ("While this Court is not bound by an opinion of our Attorney General, it should not be disregarded without cogent reason."). Noting the Code was silent on the issue of proper service of a rule to show cause for contempt, the Attorney General opined:

> [T]he Court must be presented with proof that the party was personally served before it may issue a bench warrant which is based solely on respondent's failure to appear. When presented with satisfactory proof of personal service, the Court may, in its discretion, issue a warrant for the arrest of a person who fails to respond to a rule to show cause.

See Op. S.C. Att'y Gen., 1979 WL 29077, at *2 (June 5, 1979).

If, however, an alleged contemnor is *not* personally served with the rule to show cause, the family court may, pursuant to the provisions of section 20-7-870, use the scheduled court time to conduct a hearing to determine whether there is "competent proof" of disobedience of the court order. Id. If there is such proof, the family court may issue a warrant for the contemnor's arrest, which would be based on section 20-7-870, rather than the failure to respond to the rule to show cause. Id.

The record must demonstrate that there was competent proof of Johnson's failure to obey the order of support. Here, the record clearly reflects Johnson failed to comply with the prior support order, of which he was properly notified. The clerk of court's records, along with Johnson's

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[4] The Attorney General's opinion references S.C. Code section 14-21-70 (1976), which was repealed in 1981 and recodified as section 20-7-870. Section 20-7-870 is now designated as section 63-17-890 pursuant to the Legislature's restructuring of the Children's Code in 2008.

admission of noncompliance despite his ability to pay, provide clear and convincing evidence of noncompliance. See Durlach v. Durlach, 359 S.C. 64, 71, 596 S.E.2d 908, 912 (2004) ("Civil contempt must be proved by clear and convincing evidence."). In light of section 20-7-870 and Johnson's disobedience of the prior support order, the family court's issuance of a bench warrant and decision to sentence Johnson to one year in jail with the ability to purge his confinement by payment of the arrearages was not in error.

CONCLUSION

Thus, the family court's decision is

AFFIRMED.

SHORT and GEATHERS, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Wendy McDaniel, formerly known as Wendy Sue Kendrick, Respondent,

v.

Carolyn Kendrick, Appellant.

Appeal From Lexington County
William P. Keesley, Circuit Court Judge

Opinion No. 4643
Heard October 6, 2009 – Filed December 31, 2009

AFFIRMED

Patrick John Frawley, of Lexington, for Appellant.

James Poag, Jr., of West Columbia, for Respondent.

KONDUROS, J.: Carolyn Kendrick appeals the trial court's finding she failed to establish the requisite elements of adverse possession or a constructive trust. We affirm.

PROCEDURAL BACKGROUND/FACTS

Robert Kendrick and Carolyn married in 1986, and each party brought children from their former marriages into the family. Prior to the marriage, Robert owned a five-acre parcel of land in Lexington County (the property) titled solely in his name.[1] Carolyn purchased a double-wide trailer to place on the property and this served as the marital home for the couple and their children. Robert and Carolyn made monthly mortgage payments on the property from marital funds and eventually satisfied the mortgage on the land with proceeds from the sale of Carolyn's previous home.

In the fall of 1988, Robert and Carolyn separated. Robert and his children moved out of the marital residence and into a home in West Columbia. His daughter, Wendy, a junior at Pelion High School, was informed she could no longer participate in sports or attend school there because of her relocation. In response, Robert deeded the property to Wendy in 1989 for five dollars, love, and affection. Wendy continued at Pelion High School and graduated in 1990.

In 1990, after a heart-related health scare, Robert created a document that appears to have testamentary intent but does not meet the formalities required to create a will.[2] The document states:

> On the 26th day of November, 1990, as I make these request [sic] of the persons I love to be carried out upon my death, I am of sound mind and fully capable of making these decisions.

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[1] Robert gained sole title to the property by paying his first wife $2,500 to buy her interest in the property as part of their divorce settlement. Robert and his first wife had purchased the land in 1979.

[2] The parties do not appeal the admissibility of this document into evidence.

> Concerning a parcel of land which I owned until January of 1989 and at that time sold the land to my daughter, Wendy Sue Kendrick[,] for the sum of $5.00 and love and consideration, I want my wife, Carolyn J. Kendrick[,] to be able to live on the land in her present dwelling without rent or any monetary consideration for as long as she wants to. If she leaves that land to live some place else, she will give up all future rights to live there. The land is to remain in Wendy Sue Kendrick's name. There is to be no other dwelling, either temporary or permanent[,] put on the land. My daughter fully understands this and has agreed to abide by my wishes.

Robert and Carolyn continued to live separate and apart but remained married and involved in each other's lives. Around 2002, Robert developed Alzheimer's disease and his sister began managing his affairs and caring for him. In March 2005, Wendy, who had little to no contact with Carolyn through the years, requested Carolyn vacate the property or buy it from her. Carolyn refused and filed a divorce action apparently seeking to assert a claim to the property through the apportionment of marital assets. However, Carolyn abandoned that action when Wendy filed a suit in circuit court and asserted her interest through counterclaims. Wendy's complaint sought to remove Carolyn from the property or in the alternative requested reasonable rental payments. Carolyn answered and alleged ownership in the property by adverse possession and constructive trust. She further requested the value of improvements to the property in the event she was required to vacate.[3]

The trial court ruled Carolyn failed to prove adverse possession of the property because she had not demonstrated the required element of hostility. The trial court further found Carolyn did not establish a constructive trust because she presented no evidence of fraud. Additionally, Carolyn's request

[3] Robert died in January 2007, prior to the trial of this case.

for the value of improvements to the property was denied. This appeal followed.

STANDARD OF REVIEW

An adverse possession claim is an action at law. Miller v. Leaird, 307 S.C. 56, 61, 413 S.E.2d 841, 843 (1992). In an action at law tried without a jury, this court will not disturb the trial court's findings unless they are wholly unsupported by the record or controlled by an error of law. Coakley v. Horace Mann Ins. Co., 376 S.C. 2, 6, 656 S.E.2d 17, 19 (2007). An action to declare a constructive trust is an action in equity. Macauley v. Wachovia Bank of S.C., 351 S.C. 287, 294, 569 S.E.2d 371, 375 (Ct. App. 2002). In actions at equity, the appellate court may find facts in accordance with its own view of the evidence. Id. at 294, 569 S.E.2d at 375. 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. Wright v. Craft, 372 S.C. 1, 17-18, 640 S.E.2d 486, 495 (Ct. App. 2006).

LAW/ANALYSIS

I. Adverse Possession

Carolyn contends the trial court erred in finding she was required to establish the element of hostility when claiming adverse possession of an entire tract of land. She maintains the trial court further erred in concluding her possession was not sufficiently hostile. We disagree.

In order to establish a claim of adverse possession, the claimant must prove by clear and convincing evidence his possession of the subject property was continuous, hostile, actual, open, notorious, and exclusive for the statutory period. All Saints Parish, Waccamaw v. Protestant Episcopal Church in the Diocese of S.C., 358 S.C. 209, 229, 595 S.E.2d 253, 265 (Ct.

App. 2004). In Knox v. Bogan, 322 S.C. 64, 66, 472 S.E.2d 43, 45 (1996), Knox claimed ownership of property designated as the southern tract through adverse possession. An old fence separated the southern tract from Bogan's property. Id. at 69, 472 S.E.2d at 47. Testimony showed the Knox family had occupied the southern tract up to the fence line for more than seventy years under the belief the fence line was the boundary between their land and Bogan's. Id. at 69, 472 S.E.2d at 46-47. The supreme court, addressing the requirement of hostility, stated:

> The only issue is whether the Knoxes' possession was sufficiently hostile. As we read Perry v. Heirs at Law and Wigfall v. Fobbs, either there is no longer a hostility requirement where the claim is to an entire tract, or South Carolina does in fact follow the majority view that the mental attitude of the possessor of land is immaterial. Under the majority view an actual, exclusive, open and notorious possession without the consent of the title owner is both wrongful and adverse and will ripen into perfect title in the usual way when the statute of limitations has run. The majority view represents the most practical approach to the hostility requirement of adverse possession and is in keeping with the national trend of authority.

Id. at 70-71, 472 S.E.2d at 47 (emphasis added) (citations omitted).

The supreme court did not, as Carolyn argues, eliminate the hostility requirement when a party claims adverse possession of an entire tract of land. The court simply explained the hostility requirement is not necessarily predicated upon the claimant's conscience intention to possess the property against the true owner's wishes. A claimant may establish adverse possession if he occupies the property under the mistaken belief that it belongs to him. In any case, Knox makes clear the claimant must be on the property without the consent of the title owner.

Turning to the case before us, Carolyn testified "my understanding was that it was my home and there was nothing that I needed to do." When asked why she did not seek Wendy's permission to cut down some trees on the property she responded, "I didn't consider her the owner or the actual occupant of [the property]. I wouldn't have thought to ask her." This testimony suggests Carolyn believed she had some right of ownership in the property. However, she also testified she knew the property was titled solely in Robert's name when they married and was titled solely in Wendy's name upon the conveyance in 1989. Furthermore, Carolyn testified she never paid taxes on the property, although she did pay taxes on the mobile home.

Additionally, Wendy testified she did not really object to allowing Carolyn to live on the property while Robert was alive although she never gave Carolyn express permission to stay there. Moreover, Wendy was aware of Carolyn's presence on the property from the time of the conveyance and did not request Carolyn vacate the premises until March of 2005.

At best, the evidence conflicts as to any mistaken belief Carolyn may have had that the property belonged to her. The record contains ample evidence to support finding Wendy gave her tacit permission for Carolyn to occupy the property at least until October of 2005. We agree with the trial court such evidence does not satisfy the requirement of hostility by clear and convincing evidence.

Instead, this case is more analogous to those wherein a party entered land with permission of the owner and then claimed adverse possession at a later point. See Davis v. Monteith, 289 S.C. 176, 180, 345 S.E.2d 724, 726 (1986) (finding occupation of property with owner's tacit permission was not hostile although such possession may have become hostile when claimant remained on property after being told to vacate); Frady v. Ivester, 118 S.C. 195, 205, 110 S.E. 135, 138 (1921) ("The defendant's entry into possession was permissive, and, as she had a duty to perform, she could not hold adversely to the rights of the mortgagors until she either surrendered the possession or gave notice of an adverse possession."); Young v. Nix, 286

S.C. 134, 136, 332 S.E.2d 773, 774 (Ct. App. 1985) (holding claimant who had farmed tract of land for more than forty years with permission of property owner's widower did not establish claim of adverse possession without a "clear and positive disclaimer of the title under which entry was made"). While a party cannot adversely possess property used with permission, a party may begin to satisfy the requirement of hostility upon a clear disclaimer of the owner's title. All Saints Parish, Waccamaw, 358 S.C. at 233, 595 S.E.2d at 266-67.

In this case, Carolyn entered the property with Robert's permission and remained there for the next nineteen years with Wendy's tacit permission. Not until 2005 did Wendy request Carolyn vacate or purchase the property. Carolyn's refusal at that time may have made her subsequent occupation hostile. However, Carolyn clearly had not satisfied the statutory period for adverse possession when Wendy commenced her lawsuit just a few months later. Accordingly, the trial court did not err in finding Carolyn was required to establish the element of hostility and that she failed to do so by clear and convincing evidence.

II. Constructive Trust

Carolyn argues the trial court erred in finding she failed to establish the required element of fraud to prove her entitlement to a constructive trust. We disagree.

The law may impose a constructive trust when a party obtains a benefit that "does not equitably belong to him and which he cannot in good conscience retain or withhold from another who is beneficially entitled to it." SSI Med. Servs., Inc. v. Cox, 301 S.C. 493, 500, 392 S.E.2d 789, 793-94 (1990). "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. Fraud is an essential element, although it need not be actual fraud." Dye v. Gainey, 320 S.C. 65, 68, 463 S.E.2d 97, 99 (Ct. App. 1995) (citing Lollis v. Lollis, 291 S.C. 525, 529, 354 S.E.2d 559, 561 (1987)). The evidence necessary to support the imposition of a constructive

trust must be clear and convincing. SSI Med. Servs., Inc., 301 S.C. at 500, 392 S.E.2d at 794.

The trial court found Carolyn presented no clear and convincing evidence to demonstrate the transfer from Robert to Wendy was fraudulent. Carolyn seems to base her fraud argument on the belief she acquired an interest in the property because it served as the marital home for a period of time and she made monetary contributions toward its purchase. Carolyn's contention invites us to consider whether she gained an interest in the property through transmutation or some equitable means during the parties' marriage. However, she abandoned her divorce action in which any transmutation or special equity issues could have been directly determined. See S.C. Code Ann. § 20-3-610 (Supp. 2008) (special equity or ownership rights in property are subject to apportionment between spouses by the family courts of this State upon the commencement of marital litigation). Therefore, we will not address those issues in the case presented on appeal.

The record reveals no other evidence the transfer from Robert to Wendy was fraudulent. Although Carolyn is left in an unfortunate position, we cannot conclude she established by clear and convincing evidence the imposition of a constructive trust was warranted.[4]

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[4] A constructive trust may also be established based on the violation of a fiduciary duty. See Chapman v. Citizens & So. Nat'l Bank of S.C., 302 S.C. 469, 478-79, 395 S.E.2d 446, 452 (Ct. App. 1990) (finding a constructive trust in favor of C when A makes a will leaving property to B in reliance on B's promise to hold the property for C's benefit). According to his 1990 letter, Robert wished for Carolyn to live on the property. However, the record contains no clear and convincing evidence to demonstrate Robert's conveyance was made in reliance on representations by Wendy to hold the property for Carolyn's benefit. The 1990 letter and the fee simple conveyance were not contemporaneous. Any wishes Robert expressed or agreement he believed Wendy made after the transfer do not directly bear on his reliance because the transfer had already been made.

CONCLUSION

Because we find Carolyn failed to meet the burdens of proof required to establish adverse possession or entitlement to a constructive trust, the ruling of the trial court is

AFFIRMED.

HEARN, C.J., and LOCKEMY, J., concur.