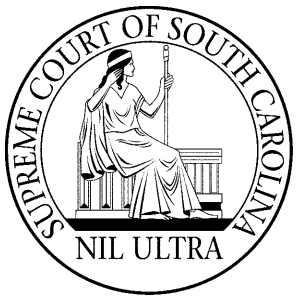

OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 12
April 4, 2011
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UNPUBLISHED OPINIONS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

26938 – Ex Parte: State of SC ex rel. Alan Wilson
In re: Christopher Ward Campbell v. Town of Yemassee — Pending

26940 – State v. Jack Edward Earl Parker — Pending

26941 – State v. Robert A. Boswell — Pending

The South Carolina Court of Appeals

PUBLISHED OPINIONS

UNPUBLISHED OPINIONS

PETITIONS FOR REHEARING

4705-Hudson v. Lancaster Convalescent	Pending
4773-Consignment Sales v. Tucker Oil	Pending
4789-Harris v. USC	Pending
4790-Holly Woods Assoc. v. Hiller	Pending
4792-Curtis v. Blake	Pending
4794-Beaufort Cty. Schl. v. United	Pending
4795-Richland Horizontal v. Sky Green	Pending
4798-State v. J. Orozco	Pending
4799-Trask v. Beaufort County	Pending
4800-State v. T. Wallace	Pending
4804-State v. I. Warren	Pending
4806-Kase v. Michael Ebert	Pending
2010-UP-391-State v. J. Frazier	Pending
2010-UP-495-Sowell v. Todd	Pending
2011-UP-007-Barrett v. Flowers	Pending
2011-UP-039-Chevrolet v. Azalea Motors	Pending
2011-UP-059-State v. R. Campbell	Pending
2011-UP-061-Mountain View Baptist Church	Pending
2011-UP-080-State v. S. Harmon	Pending

2011-UP-084-Greenwood Beach v. Charleston	Pending
2011-UP-091-State v. R. Watkins	Pending
2011-UP-109-Dippel v. Fowler	Pending

PETITIONS-SOUTH CAROLINA SUPREME COURT

4367-State v. J. Page	Pending
4474-Stringer v. State Farm	Pending
4510-State v. Hoss Hicks	Pending
4526-State v. B. Cope	Pending
4529-State v. J. Tapp	Pending
4548-Jones v. Enterprise	Pending
4588-Springs and Davenport v. AAG Inc.	Pending
4592-Weston v. Kim's Dollar Store	Pending
4597-Lexington County Health v. SCDOR	Pending
4599-Fredrick v. Wellman	Pending
4605-Auto-Owners v. Rhodes	Pending
4609-State v. Holland	Pending
4610-Milliken & Company v. Morin	Pending
4614-US Bank v. Bell	Pending
4616-Too Tacky v. SCDHEC	Pending
4617-Poch v. Bayshore	Pending

4619-State v. Blackwill-Selim	Pending
4631-Stringer v. State Farm	Pending
4633-State v. G. Cooper	Pending
4635-State v. C. Liverman	Pending
4637-Shirley's Iron Works v. City of Union	Pending
4641-State v. F. Evans	Pending
4654-Sierra Club v. SCDHEC	Pending
4659-Nationwide Mut. V. Rhoden	Pending
4661-SCDOR v. Blue Moon	Pending
4670-SCDC v. B. Cartrette	Pending
4673-Bailey, James v. SCDPPPS	Pending
4675-Middleton v. Eubank	Pending
4680-State v. L. Garner	Pending
4682-Farmer v. Farmer	Pending
4687-State v. D. Syllester	Pending
4688-State v. Carmack	Pending
4691-State v. C. Brown	Pending
4692-In the Matter of Manigo	Pending
4697-State v. D. Cortez	Pending
4698-State v. M. Baker	Pending

4699-Manios v. Nelson Mullins	Pending
4700-Wallace v. Day	Pending
4702-Peterson v. Porter	Pending
4706-Pitts v. Fink	Pending
4708-State v. Webb	Pending
4711-Jennings v. Jennings	Pending
4714-State v. P. Strickland	Pending
4716-Johnson v. Horry County	Pending
4721-Rutland (Est. of Rutland) v. SCDOT	Pending
4725-Ashenfelder v. City of Georgetown	Pending
4728-State v. Lattimore	Pending
4732-Fletcher v. MUSC	Pending
4737-Hutson v. SC Ports Authority	Pending
4738-SC Farm Bureau v. Kennedy	Pending
4742-State v. Theodore Wills	Pending
4746-Crisp v. SouthCo	Pending
4747-State v. A. Gibson	Pending
4752-Farmer v. Florence Cty.	Pending
4753-Ware v. Ware	Pending
4755-Williams v. Smalls	Pending

4756-Neeltec Enterprises v. Long	Pending
4770-Pridgen v. Ward	Pending
4781-Banks v. St. Matthews Baptist Church	Pending
2009-UP-266-State v. McKenzie	Pending
2009-UP-322-State v. Kromah	Pending
2009-UP-336-Sharp v. State Ports Authority	Pending
2009-UP-403-SCDOT v. Pratt	Pending
2009-UP-564-Hall v. Rodriquez	Pending
2010-UP-080-State v. R. Sims	Pending
2010-UP-090-F. Freeman v. SCDC (4)	Pending
2010-UP-138-State v. B. Johnson	Pending
2010-UP-140-Chisholm v. Chisholm	Pending
2010-UP-141-State v. M. Hudson	Pending
2010-UP-182-SCDHEC v. Przyborowski	Pending
2010-UP-196-Black v. Black	Pending
2010-UP-228-State v. J. Campbell	Pending
2010-UP-232-Alltel Communications v. SCDOR	Pending
2010-UP-251-SCDC v. I. James	Pending
2010-UP-253-State v. M. Green	Pending

2010-UP-256-State v. G. Senior	Pending
2010-UP-273-Epps v. Epps	Pending
2010-UP-281-State v. J. Moore	Pending
2010-UP-287-Kelly, Kathleen v. Rachels, James	Pending
2010-UP-289-DiMarco v. DiMarco	Pending
2010-UP-302-McGauvran v. Dorchester County	Pending
2010-UP-303-State v. N. Patrick	Pending
2010-UP-308-State v. W. Jenkins	Pending
2010-UP-317-State v. C. Lawrimore	Pending
2010-UP-330-Blackwell v. Birket	Pending
2010-UP-331-State v. Rocquemore	Pending
2010-UP-339-Goins v. State	Pending
2010-UP-340-Blackwell v. Birket (2)	Pending
2010-UP-352-State v. D. McKown	Pending
2010-UP-355-Nash v. Tara Plantation	Pending
2010-UP-356-State v. Robinson	Pending
2010-UP-362-State v. Sanders	Pending
2010-UP-369-Island Preservation v. The State & DNR	Pending
2010-UP-370-State v. J. Black	Pending

2010-UP-372-State v. Z. Fowler	Pending
2010-UP-378-State v. Parker	Pending
2010-UP-406-State v. Larry Brent	Pending
2010-UP-425-Cartee v. Countryman	Pending
2010-UP-440-Bon Secours v. Barton Marlow	Pending
2010-UP-448-State v. Pearlie Mae Sherald	Pending
2010-UP-449-Sherald v. City of Myrtle Beach	Pending
2010-UP-450-Riley v. Osmose Holding	Pending
2010-UP-461-In the Interest of Kaleem S.	Pending
2010-UP-464-State v. J. Evans	Pending
2010-UP-504-Paul v. SCDOT	Pending

THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State, Respondent,

v.

Ferris Geiger Singley, Petitioner.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From Charleston County
R. Knox McMahon, Circuit Court Judge

Opinion No. 26954
Heard February 15, 2011 – Filed April 4, 2011

AFFIRMED

Chief Appellate Defender Robert M. Dudek, Senior Appellate Defender Joseph L. Savitz, III, South Carolina Commission on Indigent Defense, both of Columbia, for Petitioner.

Attorney General Alan Wilson, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Salley W. Elliott, Assistant Attorney General Deborah R. J. Shupe, Office of the Attorney General, all of Columbia, Solicitor Scarlett Anne Wilson, of Charleston, for Respondent.

JUSTICE HEARN: Ferris Geiger Singley was convicted of burglary and armed robbery in an incident involving a home which he jointly owned with his mother and brother. On appeal, Singley argues his first degree burglary conviction must be reversed because of his ownership interest in the house. We granted certiorari to review the decision of the court of appeals, which affirmed Singley's conviction. We likewise affirm and find ownership does not preclude a burglary conviction as a matter of law, and we take this opportunity to expand upon the reasoning of the court of appeals.

FACTUAL/PROCEDURAL BACKGROUND

By virtue of intestate succession, Singley inherited a 12.5 percent interest in his childhood home from his father in August 2001. His brother owns an additional 12.5 percent, and his mother owns the remaining 75 percent. Singley remained in the house until his early twenties, and then returned again in April 2005. He resided there for three weeks, until his mother "put him out" of the house. He did not return his key to his mother, telling her that he had lost it. As between Singley and his mother, Singley did not have permission to return to the house. It was not until one night in early October 2005, some six months later, that he did so.

On that night, Singley's mother was at a bar with friends, returning home at approximately 2:30 am. While she was out of the house, Singley entered through a back window after climbing a small stepladder. When she returned, Singley jumped out from behind her and put a knife to her throat. He threatened to kill her if she screamed, and then demanded money from her. After she complied with his requests, he forced her into her bedroom

and tied her to the bed using jogging pants, medical tape, and pajamas. He threw her telephone out the window and ordered her to wait twenty minutes before attempting to find help. Once she was sure Singley had left and would not return, his mother freed herself from her restraints and went to a neighbor's house to call the police. Police arrested Singley at his residence, which was around the corner from his mother's house.

Singley was indicted for first degree burglary, armed robbery, and kidnapping. Singley moved for a directed verdict on all charges. As to the burglary charge, Singley argued that because he is a part owner of the house and there was no order of protection or similar legal instrument divesting him of his right to enter it, the State failed to prove that he entered the house without the consent of a person in lawful possession. In essence, he argued that because he was a person in lawful possession, he could enter freely without his mother's consent. The circuit court denied Singley's motion. The jury found Singley guilty of burglary and armed robbery, but it acquitted him of kidnapping. The circuit court sentenced Singley to consecutive sentences of life without parole. On appeal to the court of appeals, Singley challenged only his burglary conviction. *State v. Singley*, 383 S.C. 441, 441, 679 S.E.2d 538, 539 (Ct. App. 2009). He repeated the arguments he made at the directed verdict stage that one cannot commit burglary by breaking into one's own dwelling. *Id.* The court of appeals affirmed, holding that Singley's mother was the sole possessor of the dwelling when the burglary occurred, and therefore her consent was needed to enter. *Id*. at 447, 679 S.E.2d at 542.

ISSUE PRESENTED

Singley raises one issue on appeal: does his ownership interest in the home preclude a conviction of burglary as a matter of law?

STANDARD OF REVIEW

The trial court must grant a motion for directed verdict of acquittal when the State fails to produce any evidence of the crime charged. *State v. Parris*, 363 S.C. 477, 481, 611 S.E.2d 501, 502 (2005). At that juncture, the

court is concerned only with the existence of evidence, not its weight. *Id.* at 481, 611 S.E.2d at 502-03. "If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the Court must find the case properly submitted to the jury." *Id.* at 481, 611 S.E.2d at 503. We will view all evidence in the light most favorable to the State. *Id.*

LAW/ANALYSIS

Singley argues that because he has an ownership interest in the house without any legal impediment to his right to possess, he cannot be guilty of burglary as a matter of law. We disagree.

The statute for first degree burglary provides, in pertinent part, "A person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to commit a crime in the dwelling, and . . . the entering or remaining occurs in the nighttime." S.C. Code Ann. § 16-11-311(A)(3) (2003). It goes on to define entering without consent in part as, "[t]o enter a building without the consent of the person in lawful possession." *Id.* § 16-11-310(3)(a). The code provides no further guidance. Singley only challenges the possession element of burglary. More specifically, he only argues his ownership interest insulates him from a conviction of burglary; he does not contend he had consent from his mother to enter the home, and he does not allege his mother did not have a possessory interest in it.

We have maintained consistently for well over one hundred years that burglary is a crime against possession and habitation, not a crime against ownership. *State v. Clamp*, 225 S.C. 89, 102, 80 S.E.2d 918, 924 (1954); *State v. Alford*, 142 S.C. 43, 45, 140 S.E. 261, 262 (1927); *State v. Trapp*, 17 S.C. 467, 471 (1882). In those cases, we held that the victim listed in the indictment need not be the owner of the dwelling burglarized; it is sufficient that the alleged victim was the occupant and possessor of the dwelling. *See Clamp*, 225 S.C. at 102, 80 S.E.2d at 924; *Alford*, 142 S.C. at 45, 140 S.E. at

262; *Trapp* 17 S.C. at 472.[1] The focus accordingly was on the victim's possessory interest, and the defendant's ownership or possession of the dwelling was not an issue. The same is true for the cases from other jurisdictions relied upon by the court of appeals in its decision. *See Murphy v. State*, 234 S.E.2d 911, 914 (Ga. 1977) ("The defendant contends that the state failed to prove that the dwelling was entered 'without authority' of the owner. The state proved that the dwelling was entered without authority from the victim, the lawful occupant. This was sufficient to allow the case to go to the jury for decision . . . ."); *State v. Harold*, 325 S.E.2d 219, 222 (N.C. 1985) (finding that although the state did not prove the victim owned the house in question, it did show she lived there for five months prior to the incident and she was occupying it on the night of the incident).

We have had only one previous opportunity to address the *defendant's* interest in the burglarized premises under section 16-11-310(3)(a). In *State v. Coffin*, 331 S.C. 129, 502 S.E.2d 98 (1998), the defendant moved into his girlfriend's mobile home; in accordance with her lease, he was approved as a visitor, and the landlord affixed a copy of his driver's license to the lease with the notation that he was "a legal qualified person living in that mobile home." *Id.* at 130-31, 502 S.E.2d at 98-99. The defendant did not sign the lease himself, although he did pay rent on occasion. *Id.* at 131, 502 S.E.2d at 99. According to the Court, the defendant's girlfriend "threw him out" of the house and refused to let him back in following an argument. *Id.* He later returned, pried open the front door, murdered his girlfriend, and stabbed her companion. *Id.* On appeal of his conviction of burglary, the defendant alleged that he was a person in lawful possession of the mobile home and

[1] *Trapp* is very much a product of its time. There, the issue was whether a woman could have a sufficient possessory interest in a dwelling. *Trapp*, 17 S.C. at 468-69. It was actually conceded that the woman was the legal owner of the property in question, *id.* at 172, and her name was listed in the indictment as the victim, *id.* at 469. The argument on appeal was that the husband was the "domiciliary proprietor," and therefore only he could have a sufficient possessory interest to support a conviction of burglary. *Id.* at 468-69. The Court rejected this argument. *Id.* at 472.

therefore did not need his girlfriend's consent to enter. *Id.* We rejected that argument:

> This evidence supports the inference [defendant] was a guest in [his girlfriend's] home and she was entitled to terminate [defendant's] lawful possession by evicting him as she did before the stabbings occurred. Accordingly, this evidence presents a jury issue whether appellant was in lawful possession of the mobile home at the time of the stabbings.

Id. at 132, 502 S.E.2d at 99.

In *Coffin*, the facts demonstrated that the defendant did not have an absolute right to possess the property. Instead, his rights were dependent solely on his girlfriend's good graces. Here, it appears Singley did have an undivided right to possess the home equal to that of his mother by virtue of his ownership interest in it. *See Watson v. Little*, 224 S.C. 359, 365, 79 S.E.2d 384, 387 (1953) (holding tenants in common have equal rights to possess the whole of the property, regardless of their fractional ownership shares); *see also* S.C. Juris. Cotenancy § 9 (citing *Rabb v. Aiken*, 7 S.C. Eq. (2 McCord) 118 (1827)) (stating when two or more beneficiaries inherit the property of an intestate, they take as tenants in common). However, we believe that the mere holding of title to property is not dispositive of whether the owner can be convicted of burglarizing it.

It is axiomatic that "one cannot commit the offence of burglary by breaking into his own home." *Trapp*, 17 S.C. at 470. However, the concept of what is one's "own home" must be examined in light of the very purpose behind the law of burglary. "The law of burglary is primarily designed to secure the sanctity of one's home, especially at nighttime, when peace, solitude and safety are most desired and expected. . . . To preserve this security and this sanctity the law has created safeguards and imposed severe penalties on their infringement." *State v. Brooks*, 277 S.C. 111, 112-13, 283 S.E.2d 830, 831 (1981). Therefore, our burglary laws protect an interest separate and apart from ownership: the right to be safe and secure in one's

home. *See also People v. Smith*, 48 Cal. Rptr. 3d 378, 384 (Ct. App. 2006) (noting the difference between possessory right under the burglary statute and family law); *State v. McMillan*, 973 A.2d 287, 292 (N.H. 2009) ("[W]hile the defendant had some proprietary interest in the apartment as a co-lessee, this fact did not automatically give him license to enter under [the burglary statute]. . . . [T]he entry here interfered with the security and safety of the occupant, thus implicating the very interests the burglary statute was designed to protect."); *State v. Lilly*, 717 N.E.2d 322, 327 (Ohio 1999) ("Because the purpose of burglary law is to protect the dweller, we hold that custody and control, rather than legal title, is dispositive. Thus, in Ohio, one can commit a trespass and burglary against property of which one is the legal owner if another has control or custody of that property."). Thus the core of a dwelling constituting one's home for burglary purposes is the expectation of peace and security therein. Mere ownership does not automatically confer this status on a person. That ownership interest must be examined in light of who possesses that expectation of sanctity in the dwelling.

Therefore, the proper test is whether, under the totality of the circumstances, a burglary defendant had custody and control of, and the right and expectation to be safe and secure in, the dwelling burglarized. *See McMillan*, 973 A.2d at 292 ("We . . . conclude that holding a legal interest in property . . . is not dispositive on the issue of license or privilege. Consistent with the majority of jurisdictions that have confronted this issue, we believe that the fact finder must look beyond legal title and evaluate the totality of the circumstances in determining whether a defendant had license or privilege to enter."). If so, he is a person in lawful possession and cannot be convicted of burglary. If not, the jury must then determine whether the alleged victim had this interest and whether the defendant invaded it. We wish to emphasize that this is an inherently fact-intensive inquiry. In the end, while an ownership interest is probative of whether the defendant was a person in lawful possession, it is not dispositive.[2] It is instructive that our statutes do

[2] For example, a defendant may not have a sufficient possessory interest where he is the lessor of certain property he owns or a court has issued an order of protection preventing the defendant from entering a dwelling in which he has an ownership interest. In both of those situations, there is some

not define burglary in terms of who owns the property, but rather in light of who possesses it. If section 16-11-310(3)(a) defined "without consent" as "to enter a building without consent of the lawful owner," our inquiry would be very different. Instead, the General Assembly specifically couched burglary in terms of possession.

In this case, we are concerned only with whether Singley had the requisite interest in the home. Viewed in the light most favorable to the State, the facts of this case warranted the submission of the case to the jury. A reasonable jury could conclude that Singley did not have any expectation of peace and security in the dwelling at issue nor custody and control of it, despite his ownership interest. He left with little protest when his mother requested he leave, took up residence elsewhere, and did not return until six months later when he was required to enter through a back window. Therefore, the jury could find that the home was not Singley's "own home" for burglary purposes. Accordingly, the court of appeals correctly held the circuit court did not err in denying Singley's motion for a directed verdict of acquittal.

CONCLUSION

For the foregoing reasons, we affirm the decision of the court of appeals. Once again, we wish to emphasize that the inquiry into whether a defendant has a sufficient possessory interest in the dwelling burglarized is highly factual. A defendant's ownership interest in the dwelling will not preclude a conviction of burglary *as a matter of law*. Rather, the jury must determine whether, under the totality of the circumstances, the defendant used the dwelling in such a manner that it could be said to be his own home, therefore making him a person in lawful possession.

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legal impediment that prevents the defendant from exercising his right to possess the property in question. In the situation before us, the defendant retained his legal right to enter the property, but he may have acceded his right to possess it as a *home*—with the attendant safety, security, peace, and privacy—to another individual.

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

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Neal Berberich, Appellant,

v.

Naomi M. Jack, Respondent.

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

Opinion No. 26955
Heard December 2, 2010 – Filed April 4, 2011

REVERSED AND REMANDED

Edward L. Graham, of Graham Law Firm, of Florence, for Appellant.

Ronald P. Diegel and William H. Frye, both of Murphy & Grantland, of Columbia, for Respondent.

JUSTICE BEATTY: Neal Berberich brought this negligence action against Naomi M. Jack after he slipped and fell from a wet ladder while working at her home. Berberich alleged Jack engaged in reckless, willful, and wanton conduct that proximately caused his injuries because she refused to turn off a lawn sprinkler system while he was working. Berberich appeals

from a jury verdict in favor of Jack, arguing, in a case of first impression, that the trial court abused its discretion in denying his request to charge the jury on the definitions of recklessness, willfulness, and wantonness and to instruct the jury that heightened forms of wrongdoing could not be compared to ordinary negligence under comparative negligence. Berberich alternatively asserts the jury should have been instructed that heightened degrees of wrongdoing are entitled to greater weight than ordinary negligence. He also asserts error in the denial of his new trial motion. We reverse and remand.

I. FACTS

On July 1, 2002, Berberich entered into a contract with Jack to perform work on her home in Florence, South Carolina. During the course of the project, a controversy arose regarding Jack's use of an automatic sprinkler system, which came on in various zones in the yard to water the lawn. According to Berberich, he told Jack that he and his crew were having difficulty working with the sprinklers on and asked that they be shut off. Jack refused and told him to "make the best of the situation and work around it." Jack became upset when Berberich turned the sprinklers off on several occasions and threatened to lock the controls if they were turned off again.

Jack maintained she never received a complaint about the system or a request to turn it off, and she never threatened to lock the controls. However, she stated when the system was turned off a second time, she instructed one of the crew members that her sprinkler system was not to be shut off again.

On August 9, 2002, Berberich was working alone on a punch list of items to finish the project when he observed the sprinklers come on in one area of the yard. Berberich noticed the controls had been locked so he could not turn the system off. Berberich moved to the front of the house, away from the sprinklers, to work on the windows. He then ascended an eight-foot ladder to reach the top of a tall bay window to clean some caulking. As he was working, the sprinklers came on in the zone where his ladder was located.

While coming back down the ladder, Berberich slipped on a wet rung and fell to the ground, injuring himself. Berberich told Jack he had fallen and asked her to call for an ambulance, but she ignored his request. As he walked away from Jack's home, Berberich collapsed in her driveway. Berberich used his cell phone to call for an ambulance, which arrived shortly after his call. Berberich received medical treatment for his injuries, which included a lumbar strain and contusion, abrasions on his back and his left shoulder, and a swollen right ankle.

Jack, in contrast, asserts Berberich came to her door to talk about the payment due. She denies Berberich told her he had fallen and that he had asked her to call an ambulance. She maintains Berberich did not fall at her house and that she is unaware an ambulance came to her home.

On April 29, 2004, Berberich brought this negligence action against Jack, alleging his injuries "were directly and proximately caused by the negligence, wil[l]fulness, wantonness and recklessness of" Jack. Berberich sought recovery for medical expenses, lost wages, and other actual damages. He also sought an award of punitive damages.

At trial, Berberich contended Jack's actions in locking the controls and refusing to turn off the sprinklers constituted reckless, willful, and wanton conduct. He withdrew his request for punitive damages before the case was submitted to the jury, but he asked the trial court to charge the jury on the definitions of recklessness, willfulness, and wantonness and to instruct the jury that ordinary negligence is not a defense to a heightened degree of wrongdoing, so that his ordinary negligence could not be compared to Jack's allegedly reckless, willful, and wanton conduct. He also sought a verdict form with special interrogatories in accordance with these proposed charges. The trial court denied the requests, stating it believed the definitions Berberich sought were relevant only if punitive damages were at issue, and the charge requested by Berberich was not the law in South Carolina.

The trial court charged the jury on comparative negligence. The jury returned a verdict for the defense. The jury found Berberich was 75%

negligent and Jack was 25% negligent in causing the accident, resulting in no recovery for Berberich. Berberich's motions for a judgment notwithstanding the verdict (JNOV) and a new trial (based on the allegedly erroneous jury charge and verdict form, as well as juror bias) were denied. Berberich appeals.

II. STANDARD OF REVIEW

In an action at law, on appeal of a case tried by a jury, this Court may correct only errors of law. Watson v. Ford Motor Co., 389 S.C. 434, 699 S.E.2d 169 (2010); Townes Assocs. v. City of Greenville, 266 S.C. 81, 221 S.E.2d 773 (1976). The factual findings of the jury will not be disturbed unless no evidence reasonably supports the jury's findings. Townes Assocs., 266 S.C. at 85, 221 S.E.2d at 775.

III. LAW/ANALYSIS

A. Comparative Negligence Charge

Berberich first argues the trial court abused its discretion in denying his request to charge the jury on the definitions of recklessness, willfulness, and wantonness and to further instruct the jury that a plaintiff's ordinary negligence is not a defense to a defendant's conduct that is reckless, willful, and wanton. Berberich contends reckless, willful, and wanton conduct constitutes a heightened degree of wrongdoing that cannot properly be compared to ordinary negligence. In the alternative, Berberich argues the trial court abused its discretion in failing to instruct the jury that it should give more weight to conduct that is reckless, willful, and wanton. Berberich asserts this case presents a novel issue regarding tort law since the adoption of comparative negligence in this state.

"An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court committed an abuse of discretion." Cole v. Raut, 378 S.C. 398, 404, 663 S.E.2d 30, 33 (2008). "An abuse of

discretion occurs when the trial court's ruling is based on an error of law or is not supported by the evidence." Id.

An erroneous jury instruction will not result in reversal unless it causes prejudice to the appealing party. Id. at 405, 663 S.E.2d at 33; see also Clark v. Cantrell, 339 S.C. 369, 390, 529 S.E.2d 528, 539 (2000) ("When instructing the jury, the trial court is required to charge only principles of law that apply to the issues raised in the pleadings and developed by the evidence in support of those issues."). "A jury charge consisting of irrelevant and inapplicable principles may confuse the jury and constitutes reversible error where the jury's confusion affects the outcome of the trial." Cole, 378 S.C. at 404, 663 S.E.2d at 33.

(1) Contributory Negligence versus Comparative Negligence

Prior to the adoption of comparative negligence in 1991, the doctrine of contributory negligence was the long-prevailing standard for tort recovery in South Carolina. "Contributory negligence is a want of ordinary care upon the part of a person injured by the actionable negligence of another, combining and concurring with that negligence, and contributing to the injury as a proximate cause thereof, without which the injury would not have occurred." Gladden v. S. Ry. Co., 142 S.C. 492, 522-23, 141 S.E. 90, 99 (1928) (citation omitted).

Under contributory negligence, if a plaintiff was negligent to any extent in contributing to his own injury, the plaintiff was completely barred from recovering damages from a negligent defendant. Gladden, 142 S.C. at 523, 141 S.E. at 100; S.C. Ins. Co. v. James C. Greene & Co., 290 S.C. 171, 348 S.E.2d 617 (Ct. App. 1986).

To ameliorate the harsh results that could occur under this general rule, an exception developed that a defendant could not assert the contributory negligence of a plaintiff as a total defense in cases where the defendant's conduct was reckless, willful, or wanton; under such circumstances, the plaintiff's own contributory negligence would not bar the plaintiff's recovery.

Dawson v. S.C. Power Co., 220 S.C. 26, 66 S.E.2d 322 (1951); Orangeburg Sausage Co. v. Cincinnati Ins. Co., 316 S.C. 331, 450 S.E.2d 66 (Ct. App. 1994). However, if the plaintiff was also contributorily reckless, the plaintiff could not recover for the defendant's similarly reckless conduct. Ardis v. Griffin, 239 S.C. 529, 123 S.E.2d 876 (1962).

In 1991, South Carolina abolished the doctrine of contributory negligence and adopted comparative negligence as its tort standard in Nelson v. Concrete Supply Co., 303 S.C. 243, 399 S.E.2d 783 (1991). In Nelson, this Court stated that, under comparative negligence "a plaintiff in a negligence action may recover damages if his or her negligence is not greater than that of the defendant." Id. at 245, 399 S.E.2d at 784. "The amount of the plaintiff's recovery shall be reduced in proportion to the amount of his or her negligence." Id.

The Court adopted a modified version of comparative negligence known as the "less than or equal to" approach, by which the plaintiff in a negligence action could recover damages if his or her negligence is 50% or less or, stated another way, if the plaintiff's negligence does not exceed 50%. Singleton v. Sherer, 377 S.C. 185, 205, 659 S.E.2d 196, 206 (Ct. App. 2008). "The determination of respective degrees of negligence attributable to the plaintiff and the defendant presents a question of fact for the jury, at least where conflicting inferences may be drawn." Hurd v. Williamsburg County, 363 S.C. 421, 429, 611 S.E.2d 488, 492 (2005).

(2) Negligence versus Recklessness, Willfulness, and Wantonness

This Court has long noted the "troublesome question of the distinction to be made in the degrees of negligence." Hicks v. McCandlish, 221 S.C. 410, 414, 70 S.E.2d 629, 631 (1952). An examination of these distinctions will be helpful in considering Berberich's arguments.

"[N]egligence is the failure to use due care," i.e., "that degree of care which a person of ordinary prudence and reason would exercise under the same circumstances." Hart v. Doe, 261 S.C. 116, 122, 198 S.E.2d 526,

529 (1973). It is often referred to as either ordinary negligence or simple negligence.

"Recklessness implies the doing of a negligent act knowingly"; it is a "conscious failure to exercise due care." Yaun v. Baldridge, 243 S.C. 414, 419, 134 S.E.2d 248, 251 (1964) (citation omitted). If a person of ordinary reason and prudence would have been conscious of the probability of resulting injury, the law says the person is reckless or willful and wanton, all of which have the same meaning—the conscious failure to exercise due care. Id.; see also Rogers v. Florence Printing Co., 233 S.C. 567, 577, 106 S.E.2d 258, 263 (1958) ("The test by which a tort is to be characterized as reckless, wil[l]ful or wanton is whether it has been committed in such a manner or under such circumstances that a person of ordinary reason or prudence would then have been conscious of it as an invasion of the plaintiff's rights."). The element distinguishing actionable negligence from willful tort is inadvertence. Rogers, 233 S.C. at 578, 106 S.E.2d at 264.

"It is well settled 'that negligence may be so gross as to amount to recklessness, and when it does, it ceases to be mere negligence and assumes very much the nature of willfulness.'" Jeffers v. Hardeman, 231 S.C. 578, 582-83, 99 S.E.2d 402, 404 (1957) (quoting Hicks v. McCandlish, 221 S.C. 410, 415, 70 S.E.2d 629, 631 (1952)).[1]

"[T]he terms 'willful' and 'wanton' when pled in a negligence case are synonymous with 'reckless,' and import a greater degree of culpability than mere negligence." Marcum v. Bowden, 372 S.C. 452, 458 n.5, 643 S.E.2d 85, 88 n.5 (2007). "Evidence that the defendant's conduct breached this higher standard entitles the plaintiff to a charge on punitive damages." Id.

[1] "Gross negligence is defined as 'the failure to exercise slight care.'" Doe v. Greenville County Sch. Dist., 375 S.C. 63, 71, 651 S.E.2d 305, 309 (2007) (quoting Steinke v. South Carolina Dep't of Labor, Licensing & Reg., 336 S.C. 373, 395, 520 S.E.2d 142, 153 (1999)). "It has also been defined as 'the intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do.'" Id. "Gross negligence 'is a relative term, and means the absence of care that is necessary under the circumstances.'" Id.

Punitive damages are appropriate where there is evidence the tortfeasor's conduct was reckless, willful, or wanton. Cartee v. Lesley, 290 S.C. 333, 350 S.E.2d 388 (1986). "Ordinarily, the test is whether the tort has been committed in such a manner or under circumstances that a person of ordinary reason or prudence would have been conscious of it as an invasion of the plaintiff's rights." Id. at 337, 350 S.E.2d at 390.

(3) South Carolina Historical Perspective and Other Authorities

Although there is no South Carolina case specifically addressing whether reckless, willful, and wanton conduct can be compared to ordinary or simple negligence after the adoption of comparative negligence in this state, there is a trio of cases from our appellate courts that are instructive in this regard.

In Stockman v. Marlowe, 271 S.C. 334, 247 S.E.2d 340 (1978), this Court considered whether reckless, willful, and wanton conduct could be compared to ordinary negligence in a case interpreting former section 15-1-300 of the South Carolina Code.[2] This statute created an exception applying comparative negligence in cases involving motor vehicle accidents, although contributory negligence was then still the general rule in tort cases. The appellant argued that, since the statute refers only to "negligence," conduct that was reckless, willful, and wanton could not be compared to ordinary negligence.

We rejected that contention, holding although recklessness, willfulness, and wantonness are technically distinct from ordinary negligence, they are so

[2] Section 15-1-300 then provided: "In any motor vehicle accident, contributory negligence shall not bar recovery in any action by any person or legal representative to recover damages for negligence resulting in death or in injury to person or property, if such contributory negligence was equal to or less than the negligence which must be established in order to recover from the party against whom recovery is sought." S.C. Code Ann. § 15-1-300 (1976).

"inextricably connected and interwoven to the extent that 'negligence' in its broadest sense is often said to encompass conduct of the former variety." Id. at 338, 247 S.E.2d at 342. We observed that recklessness, willfulness, and wantonness "are extensions of the law of negligence" and that the term "negligence" necessarily embodies all of these "kindred concepts." Id. We found the legislative purpose of the "comparative negligence" scheme for automobile cases could not be achieved unless the broad spectrum of conduct was considered so that a jury could evaluate the overall culpability of each party and bar the plaintiff's recovery only if the plaintiff's "fault" is greater than that of the defendant. Id.

Section 15-1-300 was later declared unconstitutional in Marley v. Kirby, 271 S.C. 122, 245 S.E.2d 604 (1978) for violating equal protection since it applied comparative negligence only to individuals involved in automobile accidents. However, the discussion in Stockman regarding the broad spectrum of conduct that is embodied under "comparative negligence" and its reasoning regarding the function of comparative negligence is instructive now that comparative negligence is the general rule in tort cases.

In a later case arising after South Carolina's adoption of a general comparative negligence scheme, Weaver v. Lentz, 348 S.C. 672, 561 S.E.2d 360 (Ct. App. 2002), the Court of Appeals found "no error" where the trial court reduced the plaintiff's award for actual damages in a wrongful death action based on the decedent's percentage of negligence, even though the plaintiff had been awarded punitive damages. Id. at 684, 561 S.E.2d at 366. The plaintiff argued the award of punitive damages necessarily meant the jury had found the defendant had acted recklessly; therefore, the decedent's ordinary negligence should not have been compared to the defendant's recklessness under our system of comparative negligence. Id.

The Court of Appeals rejected the plaintiff's argument, holding the award for actual damages was properly reduced by 50% for the amount of the decedent's negligence. Id. at 684-85, 561 S.E.2d at 367. The court reasoned that the rule that the plaintiff's ordinary negligence could not be compared to a defendant's reckless conduct served "a valid purpose under the very

different contributory negligence scheme; however, the validity of this rationale is undercut by the offset inherent in the comparative negligence framework." Id. at 684, 561 S.E.2d at 367. These comments must be viewed as dicta, however, because there was no objection to the jury charge at issue and, therefore, no issue was preserved in this regard.

In another case, Clark v. Cantrell, 339 S.C. 369, 529 S.E.2d 528 (2000), this Court considered whether punitive damages should be reduced based on a plaintiff's negligence. The Court held the award of punitive damages should not be proportionally reduced because to do so would nullify the punishment and deterrence goals underlying punitive damages. Id. at 379-80, 529 S.E.2d at 534. Reduction of the actual damages, however, was deemed appropriate. Id. at 381, 529 S.E.2d at 534. We observed that "the overwhelming majority of other jurisdictions considering this issue have concluded that an award of punitive damages is not reduced under comparative negligence." Id. at 380, 529 S.E.2d at 534.

Thus, in Clark, the plaintiff's ordinary negligence was compared to a defendant's reckless conduct in assessing actual damages. However, in Clark we noted: "The parties agree that *Nelson* [Nelson v. Concrete Supply Co., 303 S.C. 243, 399 S.E.2d 783 (1991)] requires the reduction of [the] plaintiff's actual damages." Id. at 378, 529 S.E.2d at 533. Thus, we were not asked to specifically address the issue presented in the current appeal—whether a plaintiff's ordinary negligence may be compared to a defendant's recklessness under our comparative negligence scheme. However, we now expressly answer this question in the affirmative.

Since the ruling in Nelson, the trial courts of this state have, as a matter of course, permitted juries to compare the conduct of the parties to determine each party's culpability and, where the defendant's conduct was found to be reckless, willful, or wanton, the plaintiff has been additionally deemed entitled to punitive damages for this heightened level of misconduct. See, e.g., Fairchild v. South Carolina Dep't of Transp., 385 S.C. 344, 683 S.E.2d 818 (Ct. App. 2009).

In the current appeal, Berberich argues a question arises whether South Carolina's version of comparative negligence is a comparative "negligence" doctrine or a comparative "fault" scheme and argues ordinary "negligence" and recklessness differ in kind and should not be compared. In contrast, Jack asserts Berberich expressly consented to the case going to the jury on actual damages alone. Consequently, there was no need to instruct the jury on legal terms relevant only to an award of punitive damages.

A review of cases from other jurisdictions, as well as South Carolina, indicates the terms "comparative negligence" and "comparative fault" are frequently used interchangeably, with no discernable difference in application. In one case a court made an interesting distinction in these terms based on which party was at "fault," but this did not fundamentally alter the general concepts as suggested by Berberich. See Veazey v. Elmwood Plantation Assocs., 650 So. 2d 712, 715 (La. 1994) ("These provisions of the comparative fault law all share a common characteristic; '[they all] use the term 'fault' when referring to tortfeasor conduct and 'negligence' when referring to victim conduct.'" (alteration in original) (citation omitted)).

Prosser and Keeton have noted that the use of the terms "negligence" and "fault" can cause confusion. See W. Page Keeton, et al., Prosser and Keeton on the Law of Torts § 65, at 453 (5th ed. 1984) ("It is perhaps unfortunate that contributory negligence is called negligence at all. 'Contributory fault' would be a more descriptive term. Negligence as it is commonly understood is conduct which creates an undue risk of harm to others. Contributory negligence is conduct which involves an undue risk of harm to the actor himself. Negligence requires a duty, an obligation of conduct to another person. Contributory negligence involves no duty, unless we are to so ingenious as to say that the plaintiff is under an obligation to protect the defendant against liability for the consequences of the plaintiff's own negligence." (footnotes omitted)).

South Carolina's system is essentially a comparative fault system, but comparative negligence is the term most often used in this state, and we recognize the terms as equivalent. Further, although there is a divergence of

opinion in courts that have considered the question, we hold the sounder reasoning supports the determination that comparative negligence encompasses the comparison of ordinary negligence with heightened forms of misconduct such as recklessness, willfulness, and wantonness. See Annotation, Application of Comparative Negligence in Action Based on Gross Negligence, Recklessness, or the Like, 10 A.L.R.4th 946 (1981 & Supp. 2010); 57A Am. Jur. 2d Negligence § 243 (2004) (stating reckless, willful, or wanton conduct "constitute merely a higher level of negligence" and, although the concepts are technically distinct, they "can be thought of as extensions of the law of negligence" (citing Stockman v. Marlowe, 271 S.C. 334, 247 S.E.2d 340 (1978)); see also Rickner v. Haller, 116 N.E.2d 525, 530 (Ind. App. 1954) (stating "'negligence' is generally, if loosely, used to describe numerous kinds of misconduct, including wil[l]fulness and wantonness" and observing "in common parlance, 'wil[l]ful and wanton misconduct' are considered a kind of 'negligence' and are so treated under the title of 'Negligence' in our most reputable texts (citing American Jurisprudence and Corpus Juris Secundum)).

In a case that is the subject of the American Law Reports annotation cited above, the California Court of Appeal held the doctrine of comparative negligence should apply even when one party's conduct is willful and wanton:

> [W]e conclude that no defensible reason exists for categorizing willful and wanton misconduct as a different kind of negligence not suitable for comparison with any other kind of negligence. The adoption of comparative negligence in Li [Li v. Yellow Cab Co., 532 P.2d 1226 (1975)] rendered such a separate category unnecessary since contributory negligence on the part of a plaintiff was no longer a total bar to recovery for a tortious injury. We apply an old axiom, "when the need for a rule ceases the rule ceases."

Sorensen v. Allred, 169 Cal. Rptr. 441, 446 (Ct. App. 1980).

In Martel v. Montana Power Co., 752 P.2d 140 (Mont. 1988), the Supreme Court of Montana overruled a prior decision that held willful and wanton conduct was distinguishable from "mere negligence" and that comparative negligence was not applicable when the defendant's conduct was willful and wanton. The court stated this distinction was based on "faulty" reasoning as it was applicable only under the prior rule that contributory negligence by the plaintiff constituted a total bar to tort recovery as the distinction served to ameliorate the harshness of the contributory negligence rule. Id. at 142-43. The court observed, "Fortunately, we now operate under a scheme of comparative negligence where there is no danger of a plaintiff's slight negligence barring all recovery against a willful and wanton or grossly negligent defendant." Id. at 143. Consequently, "[t]he rationale for the rule . . . no longer exists" and "all forms of conduct amounting to negligence in any form . . . are to be compared with any conduct that falls short of conduct intended to cause injury or damage." Id.

We agree that the former rule that a plaintiff's ordinary negligence is not a defense to reckless conduct was meant to ameliorate the harshness of the "all or nothing" result under contributory negligence. Since the abandonment of contributory negligence in this state and the adoption of comparative negligence, the need for this concept has been eliminated.

We hold that, under our comparative negligence system, all forms of conduct amounting to negligence in any form, including, but not limited to, ordinary negligence, gross negligence, and reckless, willful, or wanton conduct, may be compared to and offset by any conduct that falls short of conduct intended to cause injury or damage.[3] By this method, each party's relative fault in causing the plaintiff's injury will be given due consideration. A trial court should instruct the jury on the definitions of these various terms,

[3] Conduct that is not comparable includes intentional torts, such as assault, battery, and false imprisonment, as well as any other conduct intended to cause injury or damage. See, e.g., Longshore v. Saber Sec. Servs., Inc., 365 S.C. 554, 561, 619 S.E.2d 5 (Ct. App. 2005) ("Assault and battery is generally classified as an intentional tort, as contrasted with a tort based in negligence.").

in addition to ordinary negligence, when so requested by a party, even if punitive damages are not at issue.

In the case now before us, the trial court declined Berberich's request to define the concepts of ordinary negligence versus recklessness, willfulness, and wantonness, but did instruct the jury on assumption of the risk[4] and other concepts. We find this had the potential to confuse the jury and skew the apportionment of fault in a manner that favored the defendant. For this reason, we reverse and remand for a new trial.

We reject, however, Berberich's contention that the jury should have been instructed that any negligence on his part could not be a defense to reckless conduct. For the reasons outlined above, a jury may compare all forms of negligence as part of its assessment of fault. We likewise reject Berberich's alternative argument that the jury should have been instructed that heightened degrees of wrongdoing should be accorded greater weight than ordinary negligence.[5] The relative significance of each party's conduct and its overall contribution to the plaintiff's injury are accounted for in the offsets inherent in our comparative negligence system.

B. New Trial Motion

Berberich contends the trial court erred in denying his new trial motion based on (1) the jury charge and verdict form and (2) his claim of juror bias. Due to our reversal and remand on other grounds, we need not address Berberich's remaining issues.

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[4] Assumption of the risk as a complete bar to recovery was effectively abolished by this Court in Davenport v. Cotton Hope Plantation Horizontal Prop. Regime, 333 S.C. 71, 508 S.E.2d 565 (1998), in which we held assumption of the risk had been largely subsumed by the adoption of comparative negligence. "Although assumption of the risk is no longer recognized as a complete defense in a negligence action, it remains a facet of comparative negligence which may be charged to the jury." Howard v. South Carolina Dep't of Highways, 343 S.C. 149, 156 n.4, 538 S.E.2d 291, 294 n.4 (Ct. App. 2000).

[5] To the extent Berberich further argues the trial court should have prepared a verdict form with special interrogatories in accordance with these requests, we find no error.

IV. CONCLUSION

We conclude that, under South Carolina's comparative negligence system, all forms of conduct amounting to negligence in any form, including, but not limited to, ordinary negligence, gross negligence, and reckless, willful, or wanton conduct, may be compared to and offset by any conduct that falls short of conduct intended to cause injury or damage. A trial court should instruct the jury on the definitions of these various forms of negligence whenever requested by a party. Because the jury instructions in this case had the potential to confuse the jury, we reverse and remand for a new trial in accordance with this decision.

REVERSED AND REMANDED.

TOAL, C.J., PLEICONES, KITTREDGE and HEARN, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Harvey L. Foster, Respondent,

v.

Gary Foster, Jean F. Burbage, Mike Foster and Jean Burbage as Trustee, Petitioners.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Laurens County
D. Garrison Hill, Circuit Court Judge

Opinion No. 26956
Heard March 1, 2011 – Filed April 4, 2011

AFFIRMED

J. Falkner Wilkes, of Greenville, for Petitioner.

Rhett D. Burney, of Turner & Burney, of Laurens, for Respondent.

JUSTICE PLEICONES: We granted certiorari to review the Court of Appeals' decision in this constructive trust case brought by respondent against his three children (petitioners) seeking title to his home and the return of certain funds. Foster v. Foster, 384 S.C. 380, 682 S.E.2d 312 (Ct. App. 2009). We affirm.

FACTS

In 2004, respondent purported to deed his home to petitioner Burbage. In the deed, he conveyed the house to "JEAN F. BURBAGE, AS TRUSTEE" while reserving for himself a life estate. On the same day the deed was signed, respondent's attorney executed an affidavit to the effect that the property transfer was exempt from the recording fee because the deed "Transferr[ed] realty to member(s) of the family and retain[ed] a life estate interest."

Burbage also wrote checks on respondent's joint checking account, from which she paid his expenses and into which funds were occasionally deposited. Burbage opened a money market account in her own name, and deposited in it $73,800 of funds from the joint account. Among the funds deposited first in the joint account and then into the money market account were the proceeds from a $45,000 certificate of deposit (CD).

The circuit court judge granted respondent's motion for summary judgment. He voided the deed, finding there was no trust and thus the purported conveyance to Burbage as trustee of a nonexistent trust was a nullity, and concluded the property belonged to respondent. The circuit court judge also ordered petitioners to return $73,800, the amount petitioner Burbage had removed from the joint account and divided among herself and her brothers, the other petitioners, finding respondent had established a constructive trust as to this amount.

On appeal, the Court of Appeals affirmed in part and reversed in part. It found there was a genuine issue of material fact whether $45,000 of the $73,800, that is, the amount derived from the CD's proceeds, constituted a

gift. Therefore, the court affirmed summary judgment only as to $28,800 of the $73,800. The court also affirmed the voiding of the purported trust deed, and held that petitioners' claim that they were entitled to an offset of at least $6,800 against the $28,800 for funds spent to pay respondent's assisted care expenses was not preserved for appeal.

ISSUES

1) Did the Court of Appeals err in affirming the circuit court judge's decision to set aside the deed?

2) Did the Court of Appeals err in holding that petitioners must return $28,800?

ANALYSIS

I. Deed

At the time this deed was executed, the South Carolina Probate Code required that a trust which includes real property be proved by a writing. See S.C. Code Ann. § 62-7-401 (1986). A trust in land may be proved by more than one writing, so long as each writing is signed by the settlor and the writings indicate they relate to the same transaction. Ramage v. Ramage, 283 S.C. 239, 322 S.E.2d 22 (Ct. App. 1984). Moreover, one who appears to hold title to property in her own name can be shown to have acknowledged that she in fact holds title as trustee under the terms of the grantor's will. Rutledge v. Smith, 6 S.C. Eq. (1 McCord Eq.) 119 (1825).

Petitioners' reliance on Rutledge is misplaced, as this is not a situation where a party is seeking to impose a trust, but rather one where the purported settlor denies the existence of a trust in land. Moreover, there is no written evidence of the purported trust's terms or its beneficiaries in document(s) signed by respondent.

We agree with the Court of Appeals that the circuit court correctly found no evidence of a proper trust in land as there are no documents signed by respondent referring to a trust other than the deed.

B. Return of Money

In their brief before this Court, petitioners maintain that the trial court and the Court of Appeals erred in requiring them to return the entire $28,800 to respondent because this result does not give them credit for bills paid on respondent's behalf out of these funds. We disagree.

The trial court found that petitioner Burbage removed $73,800 from a joint account at Carolina First in five separate transactions between October 24, 2006, and January 4, 2007, depositing all monies into her own account. Viewed in the light most favorable to petitioners, there is a passage in Ms. Burbage's deposition where she stated that the two transfers in December 2006 totaling $4,800 into her money market account "would have been paid to" the nursing facility where respondent lived until December 2006. However, the only evidence of the nursing home bill was respondent's testimony that it was around $2,000 per month. A review of the partial bank records in the Appendix suggests that the December 2006 nursing home charge was paid from the joint checking account on November 14, 2006. There is no evidence that any January 2007 nursing home bill was paid at all, much less that it was paid from Burbage's money market account, especially as respondent had left the facility before January 1, 2007.

The trial court's order is silent on the issue whether petitioners were entitled to an offset against the funds admittedly moved out of respondent's account for monies spent for respondent's care. In their appellate brief, however, petitioners argued that "[t]he [circuit] court erred in ordering the return of any funds which had been expended in support of [respondent]." Then, as now, petitioners are unable to specify evidence of any such payments in the appellate record.

The Court of Appeals held that petitioners' claim for a credit against the money Burbage took from the Carolina First account was not preserved for direct appeal since the petitioners never argued to the circuit court that any of these funds were used for respondent's care. On certiorari, petitioners contend the Court of Appeals erred in finding this claim not preserved. We disagree.

In order to preserve an issue for appellate review, a party must both raise that issue to the trial court and obtain a ruling. E.g., Linda Mc Co., Inc. v. Shore, 390 S.C. 543, 703 S.E.2d 499 (2010). Here, petitioners did neither, and the Court of Appeals properly declined to address this claim. Moreover, a careful review of the record discloses no evidence that any of the monies transferred to petitioner Burbage's account and then to her siblings was actually expended on their father's care.

CONCLUSION

The Court of Appeals properly affirmed the circuit court's ruling on the deed issue, and properly declined to address the credit/offset claim raised for the first time on appeal.

AFFIRMED.

TOAL, C.J., BEATTY, KITTREDGE and HEARN, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State, Respondent,

v.

Glenn Ireland Corley, Petitioner.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Greenwood County
J. C. Nicholson, Jr., Circuit Court Judge

Opinion No. 26957
Heard January 19, 2011 – Filed April 4, 2011

AFFIRMED AS MODIFIED

C. Rauch Wise, of Greenwood, for Petitioner.

Attorney General Alan Wilson, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Salley W. Elliott, Senior Assistant Attorney General Harold M. Coombs, Jr., all of Columbia, and Solicitor Jerry W. Peace, of Greenwood, for Respondent.

JUSTICE KITTREDGE: We granted a writ of certiorari to review the court of appeals' decision in State v. Corley, 383 S.C. 232, 679 S.E.2d 187 (Ct. App. 2009). We affirm as modified.

I.

At approximately 2:50 in the morning, Greenwood City police officer Nicholas Futch saw Petitioner Glenn Ireland Corley drive up to a known drug house,[1] get out of his vehicle, walk to the back of the house, stay for less than two minutes, return to his vehicle and leave. Officer Futch briefly followed Corley's vehicle, then stopped Corley when Corley failed to use a turn signal. While Futch requested Corley's license, insurance, and registration documents, he noticed Corley was nervous, "fidgety," short of breath and avoiding eye contact. As a result, Futch asked Corley to step out of his vehicle.

Officer Futch asked Corley about his presence in the neighborhood so early in the morning. Corley informed Futch that he had just left a particular home, but not the residence he had actually visited. Futch confronted Corley with the false information, which soon resulted in Corley's admission that he purchased crack cocaine from the drug house he visited immediately prior to the stop. The traffic stop lasted approximately five to seven minutes. Corley was arrested and charged with possession of crack cocaine.

Following Corley's unsuccessful motion to suppress his statements during the traffic stop and the drugs that were recovered, he was convicted. The court of appeals affirmed.

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[1] The residence was known by law enforcement as a place with a "high amount of drug activity." Moreover, Futch had personal knowledge that "several cases were made" at the home and "[a] number of search warrants had been executed" there. Corley has not disputed Futch's characterization of the home as a known drug house.

II.

We affirm the court of appeals' excellent opinion, with one modification. The court of appeals affirmed the trial court's determination that Officer Futch had probable cause to stop Corley and investigate for possible drug activity. This was error. Nevertheless, the vehicle stop was justified based on the presence of reasonable suspicion.[2] See State v. Foster, 269 S.C. 373, 378, 237 S.E.2d 589, 591 (1977) ("It is recognized that the police may briefly detain and question a person upon a reasonable suspicion, short of probable cause for arrest, that he is involved in criminal activity."); State v. Woodruff, 344 S.C. 537, 546, 544 S.E.2d 290, 295 (Ct. App. 2001) ("The term 'reasonable suspicion' requires a particularized and objective basis that would lead one to suspect another of criminal activity. In determining whether reasonable suspicion exists, the whole picture must be considered. If the officer's suspicions are confirmed or are further aroused, the stop may be prolonged and the scope enlarged as required by the circumstances." (citations omitted)); see also U.S. v. Mason, 628 F.3d 123, 128-30 (4th Cir. 2010) (providing a thorough discussion of how a motorist's behavior during a traffic stop, including his nervousness and his inconsistent statements regarding the purpose of his trip, created a reasonable suspicion that the motorist was engaged in illegal activity).

AFFIRMED AS MODIFIED.

TOAL, C.J., PLEICONES, BEATTY and HEARN, JJ., concur.

[2] The traffic violation served as an independent basis for the vehicle stop.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Ernest Lee Paschal,

Respondent,

v.

Richard A. Price, d/b/a RAP Financial Services, Employer, and S.C. Uninsured Employer's Fund,

Petitioners.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From Aiken County
Doyet A. Early, III, Circuit Court Judge

Opinion No. 26958
Heard January 7, 2011 – Filed April 4, 2011

AFFIRMED

Clark W. McCants, III, and Amy Shumpert, both of Nance, McCants & Massey, of Aiken; and Stanford E. Lacy and Kristian M. Cross, both of Collins & Lacy, of Columbia, for Petitioners.

Ann Mickle, of Mickle & Bass, of Rock Hill, and Tom Young, Jr., of Whetstone, Myers, Perkins & Young, of Aiken, for Respondent.

JUSTICE KITTREDGE: In this workers' compensation case, we granted a petition for a writ of certiorari to review the decision of the court of appeals in Paschal v. Price, 380 S.C. 419, 670 S.E.2d 374 (Ct. App. 2008), which held the claimant was an employee rather than an independent contractor. After applying the common law standard reinstated in Wilkinson ex rel. Wilkinson v. Palmetto State Transportation Co., 382 S.C. 295, 676 S.E.2d 700 (2009) to consider the jurisdictional question of employment status, we affirm.

I.

RAP Financial Services is a business owned by Richard A. Price that specializes in the recovery of collateral, primarily automobiles, for banks and other lienholders. The claimant, Ernest Lee Paschal, was hired by RAP in January 1999 as a "repo driver" to repossess vehicles for RAP's clients. Paschal also worked for RAP briefly in 1998.

On October 25, 2000, Paschal was severely injured while repossessing a vehicle for RAP. A tire blew out on the repossessed vehicle he was towing, causing him to lose control of the vehicle he was driving. Paschal was rendered a paraplegic as a result of the accident.

Paschal filed a workers' compensation claim on June 5, 2002, asserting he was an employee of RAP and that he was entitled to lifetime benefits for a total and permanent disability. RAP admitted Paschal was injured, but asserted he was an independent contractor, not an employee.

On February 17, 2005, a commissioner of the South Carolina Workers' Compensation Commission concluded Paschal was an employee of RAP, that

he sustained a compensable injury rendering him a paraplegic, and that he was entitled to lifetime benefits for a total and permanent disability. The commissioner specifically found "Richard Price's testimony was inconsistent, evasive, often unresponsive, [and] untruthful," and that "Paschal was credible and believable even though he had a lack of memory in his initial testimony."

The Appellate Panel of the Commission unanimously adopted the order of the commissioner, and both the circuit court and the court of appeals affirmed.

II.

The Administrative Procedures Act ("APA") provides the standard for judicial review of workers' compensation decisions. Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981). Under the APA, this Court can reverse or modify the decision of the Commission if the substantial rights of the appellant have been prejudiced because the decision is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Transp. Ins. Co. v. South Carolina Second Injury Fund, 389 S.C. 422, 427, 699 S.E.2d 687, 689-90 (2010) (citing S.C. Code Ann. § 1-23-380(5)(d), (e) (Supp. 2009)).

Because the question presented is one of jurisdiction, this Court may take its own view of the facts upon which jurisdiction is dependent. Wilkinson, 382 S.C. at 299, 676 S.E.2d 702; Wilson v. Georgetown County, 316 S.C. 92, 447 S.E.2d 841 (1994). The question whether a claimant is an employee or an independent contractor is a jurisdictional matter subject to our own view of the preponderance of the evidence. Wilkinson, 382 S.C. at 299, 676 S.E.2d 702.

III.

RAP contends the determination of the court of appeals that Paschal was an employee of RAP should be reversed because that court relied upon the now erroneous legal standard set forth in Dawkins v. Jordan, 341 S.C. 434, 534 S.E.2d 700 (2000).

Under South Carolina law, the primary consideration in determining whether an employer/employee relationship exists is whether the alleged employer has the right to control the employee in the performance of the work and the manner in which it is done. Kilgore Group, Inc. v. South Carolina Employment Sec. Comm'n, 313 S.C. 65, 68, 437 S.E.2d 48, 49 (1993) (citing Felts v. Richland County, 303 S.C. 354, 400 S.E.2d 781 (1991)). "The test is not the actual control exercised, but whether there exists the right and authority to control and direct the particular work or undertaking." Id.

The four principal factors indicating the right of control are (1) direct evidence of the right to, or exercise of, control; (2) the method of payment; (3) the furnishing of equipment; and (4) the right to fire. South Carolina Workers' Comp. Comm'n v. Ray Covington Realtors, Inc., 318 S.C. 546, 459 S.E.2d 302 (1995); Tharpe v. G.E. Moore Co., 254 S.C. 196, 174 S.E.2d 397 (1970).

In Dawkins v. Jordan, 341 S.C. 434, 534 S.E.2d 700 (2000), this Court, citing the treatise of Professor Larson, departed from our traditional common law approach and opted for the following approach:

> [F]or the most part, any single factor is not merely indicative of, but, in practice, virtually proof of, the employment relation; while, in the opposite direction, contrary evidence is as to any one factor at best only mildly persuasive evidence of contractorship, and sometimes is of almost no such force at all.

Id. at 439, 534 S.E.2d at 703 (alteration in original) (quoting 3 Arthur Larson & Lex K. Larson, Larson's Workers' Compensation Law, § 61.04 (2000)).

We granted certiorari in this case because in Wilkinson ex rel. Wilkinson v. Palmetto State Transportation Co. we recently overruled the Dawkins approach. In Wilkinson, we "return[ed] to our jurisprudence that

evaluates the four factors with equal force in both directions." 382 S.C. at 300, 676 S.E.2d at 702.

Although we may take our own view of the preponderance of the evidence on matters affecting jurisdiction, to the extent these four factors turn on credibility, this broader scope of review does not require this Court to ignore the findings of the Commission, which was in a superior position to evaluate witness credibility. See Shealy v. Aiken County, 341 S.C. 448, 535 S.E.2d 438 (2000) (stating the final determination of witness credibility is reserved to the Commission); cf. Wallace v. Milliken & Co., 300 S.C. 553, 389 S.E.2d 448 (Ct. App. 1990) (observing in matters where this Court may take its own view of the preponderance of the evidence, an appellate court need not disregard the findings of the hearing tribunal, which occupies a much better position to evaluate the credibility of witnesses). It is clear from the commissioner's observations that he found Paschal to be more credible than Price, and this finding was adopted by the Appellate Panel.

In evaluating this case, we rely not only on the thorough and well-reasoned opinion of the court of appeals, but also upon our own review of the record using the common law approach reinstated by Wilkinson. After this review, we are firmly convinced that the factors manifestly preponderate in favor of finding an employment relationship, especially as to the factors of direct evidence of the right of control, the furnishing of equipment, and the right to fire. Our view of the evidence is entirely consistent with that of the court of appeals.

Admittedly, a close question is presented as to the remaining factor, the method of payment. In this regard, there are some facts that indicate the presence of an independent contractor relationship, while other facts indicate Paschal was an employee, as properly analyzed by the court of appeals. However, after viewing all four factors in a balanced and equally-weighted approach as required by Wilkinson, we are persuaded that the factors preponderate in a finding that Paschal was an employee of RAP and that he is, therefore, entitled to workers' compensation benefits.

IV.

We affirm and commend the court of appeals, which held Paschal was an employee of RAP and that he is entitled to lifetime workers' compensation benefits for a total and permanent disability.[1]

AFFIRMED.

TOAL, C.J., PLEICONES, HEARN, JJ., and Acting Justice G. Thomas Cooper, Jr., concur.

[1] Although we granted certiorari to consider the ruling of the court of appeals that Paschal was entitled to lifetime workers' compensation benefits pursuant to S.C. Code Ann. § 42-9-10 based on his paraplegia, we now dismiss certiorari on this question on the basis it was improvidently granted.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Janet Miller, Petitioner,

v.

FerrellGas, L.P., Inc., and
Kenneth W. Ellis, Respondents.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Beaufort County
R. Markley Dennis, Jr., Circuit Court Judge

Opinion No. 26959
Heard January 7, 2011 – Filed April 4, 2011

REVERSED

Charles E. Carpenter, Jr., Carmen V. Ganjehsani, both of Columbia, and James H. Moss, of Moss, Kuhn & Fleming, of Beaufort, for Petitioner.

E. Mitchell Griffith, of Griffith, Sadler & Sharp, of Beaufort, Stephen L. Brown, Jeffrey J. Wiseman, and Russell G. Hines, all of Charleston, for Respondents.

JUSTICE KITTREDGE: We granted a writ of certiorari to review the court of appeals' decision in Miller v. FerrellGas L.P., Inc., Op. No. 2008-UP-116 (S.C. Ct. App. filed Feb. 13, 2008). We reverse.

I.

Petitioner Janet Miller brought this negligence action against Respondents FerrellGas and its driver, Kenneth Ellis, arising from a motor vehicle accident. Ellis properly stopped at a stop sign and then attempted a left turn onto the favored highway. Ellis entered the intersection although his view was obstructed by a temporary construction sign, and he could not see if there was oncoming traffic. FerrellGas's vehicle, driven by Ellis, collided with a vehicle in the intersection on the favored highway. Miller, a passenger in the vehicle on the favored highway, was seriously injured in the collision. It is conceded that the vehicle in which Miller was traveling was within the speed limit and free from any negligence.

At the close of Respondents' case, the trial court directed a verdict in favor of Miller, finding Ellis[1] was negligent as a matter of law when he blindly pulled into the intersection. Following a plaintiff's verdict, Respondents appealed, contending that the directed verdict was in error because a question of fact was presented on the issue of negligence. The court of appeals agreed with Respondents and reversed the grant of the directed verdict. We reverse the court of appeals and reinstate the jury verdict in favor of Miller.

II.

[1] The case was tried and verdict rendered against driver Ellis and his vicariously liable employer, FerrellGas.

In an appeal from the grant of a directed verdict, we must, like the trial court and court of appeals, view the evidence in a light most favorable to the non-movant, Ellis. Baggerly v. CSX Transp. Inc., 370 S.C. 362, 368, 635 S.E.2d 97, 100 (2006) ("[T]he evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the party against whom the verdict was directed." (emphasis omitted)). When viewed in that light, if there is any evidence that may be reasonably construed as creating a question of fact, the motion must be denied and the matter submitted to the jury. Id., 635 S.E.2d at 100 – 01 ("If the evidence is susceptible to more than one reasonable inference, the case should be submitted to the jury.").

III.

We view the statutory and common law as clear in this area. South Carolina law speaks to a driver's duty when approaching a stop sign:

> Except when directed to proceed by a police officer, every driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line but, if none, before entering the crosswalk on the near side of the intersection or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering it. After having stopped, the driver shall yield the right-of-way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time when such driver is moving across or within the intersection or junction of roadways.

S.C. Code Ann. § 56-5-2330(b) (2006); see also § 56-5-2320 ("The driver of a vehicle intending to turn to the left within an intersection or into an alley, private road or driveway shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard."); Warren v. Watkins Motor Lines, 242 S.C. 331, 340, 130 S.E.2d 896, 901 (1963) ("When a

motorist on an unfavored highway approaches a through highway he must bring his car to a stop for such a time and in such a position as to be able to observe the traffic conditions on the favored highway and govern his conduct accordingly.").

It is Respondents' position that evidence of due care on Ellis's part exists "because what otherwise would have been in his plain view was, unbeknownst to him, obscured" by the temporary road sign. (Br. of Respondents 7.) Ellis further presents a series of rhetorical questions—in essence, what is a reasonable driver to do under these circumstances? Miller's response answers the question and accurately states the law: "If a motorist cannot see what may be approaching from the left while [he is] stopped at a stop sign, the one thing a reasonable person does not do is take a chance and pull out to an area of potential danger . . . in which [he] cannot see." (Reply Br. of Petitioner 12).

There may be motor vehicle accident cases in which a question of fact is presented when a driver pulls from the unfavored highway to the favored highway. But this is not one of those cases. Where, as here, a driver enters the favored highway, knowing his view is obstructed and he cannot see if there is oncoming traffic, we find such a driver negligent as a matter of law. See Crosby v. Sawyer, 291 S.C. 474, 354 S.E.2d 387 (1987) (finding directed verdict appropriate on the issue of negligence when driver properly stopped before pulling into intersection but nonetheless collided with another vehicle); Lufkin v. Kyle, 275 S.C. 90, 267 S.E.2d 533 (1980) (finding a directed verdict appropriate where motorist blinded by the sun caused an accident); Odom v. Steigerwald, 260 S.C. 422, 196 S.E.2d 635 (1973) (finding a directed verdict appropriate when driver approaching favored highway properly stopped, looked both ways, and entered the intersection but collided with a vehicle approaching the intersection on the favored highway); Edwards v. Bloom, 246 S.C. 346, 143 S.E.2d 614 (1965) (finding a directed verdict appropriate when motorist blinded by the sun caused an accident); Horton v Greyhound Corp., 241 S.C. 430, 128 S.E.2d 776 (1962) (finding the driver on the unfavored highway negligent for turning into path of oncoming

vehicle); Epps v. S.C. State Hwy. Dep't, 209 S.C. 125, 39 S.E.2d 198 (1946) (finding negligence where driver's view obscured by fog).

IV.

Ellis raised additional issues to the court of appeals, which were not reached. We elect to review those additional issues. We find these remaining issues manifestly without merit and affirm pursuant to Rule 220(b), SCACR, and the following authorities: Gamble v. Int'l Paper Realty Corp of S.C., 323 S.C. 367, 474 S.E.2d 438 (1996) (finding the admission of evidence is within the sound discretion of the trial court and will not be reversed absent a clear abuse of discretion); Cock-N-Bull Steak House, Inc. v. Generali Ins. Co., 321 S.C. 1, 466 S.E.2d 727 (1996) (finding the denial of a new trial motion is within the discretion of the trial court and will not be disturbed absent an abuse of discretion).

V.

We reverse the court of appeals and reinstate the jury verdict.

REVERSED.

TOAL, C.J., PLEICONES, HEARN, JJ., and Acting Justice G. Thomas Cooper, Jr., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Sheri Denise Brown, Appellant,

v.

Phillip Ray Brown, Respondent.

Appeal From Charleston County
Jocelyn B. Cate, Family Court Judge

Opinion No. 4814
Heard February 9, 2011 – Filed March 30, 2011

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED

Cynthia Barrier Patterson, of Columbia, and Stephen Gordon Dey, of Charleston, for Appellant.

Joseph Francis Runey, of Charleston, for Respondent.

PER CURIAM: Sheri Denise Brown (Wife) and Phillip Ray Brown (Husband) were divorced in 2006. Wife appeals the family court's 2008 post-

divorce order establishing terms for the sale of the marital home, arguing the family court erred in (1) assuming jurisdiction over matters previously reserved to another judge; (2) clarifying the divorce decree in general; (3) clarifying the divorce decree although its terms were clear; (4) clarifying the divorce decree under Rule 60(a), SCRCP; (5) establishing a pricing scheme and requiring automatic reductions in the selling price of the marital home; and (6) awarding Husband a "monetary judgment" with post-judgment interest. We reverse the family court's imposition of post-judgment interest, remand for continued supervision of the home sale, and affirm as to the remaining issues.

FACTS

On June 9, 2006, Judge Jocelyn B. Cate entered an order granting Wife a divorce from Husband. This order incorporated the parties' agreements on the issues of custody and visitation and decided the remaining contested issues by equitably dividing marital property, awarding alimony and child support, and ordering Husband to pay a portion of Wife's attorney's fees.

With respect to the home the parties shared, the family court found that although Wife owned it prior to the marriage, the parties transmuted it into marital property. Consequently, the family court determined Husband owned a share of the equity in the home. In its order, the family court recited that Wife submitted an appraisal valuing the home at $225,300 and seven months later, Husband submitted another appraisal valuing the home at $250,000. Subtracting the outstanding $38,000 mortgage from the lower appraised value, the family court valued the marital home at $187,300. In distributing the marital property, the family court stated:

> [Wife] should be given the option of purchasing [Husband]'s remaining equity in the amount of $60,191.02 either by refinancing the marital residence, taking out an equity line, or by other independent means within ninety (90) days from the date of the entry of this Final Order. If she is

> unwilling or unable to buy out [Husband]'s equitable share, the marital residence shall be placed on the market with an agreed upon realtor for the sale price of at least $225,300[.] [Wife] will continue to remain in the home until it is sold and be responsible for all expenses associated therewith. Once it is sold, the parties shall divide the net proceeds so that [Husband] receives 32.14% of the net proceeds but shall not exceed $60,191.02[.]

The order was silent as to how the parties should proceed if the home were placed on the market but did not sell.

Post-divorce relations between the parties were acrimonious. In October 2006, Husband filed a rule to show cause against Wife for various reasons, including her refusal to allow Husband's input into the selection of a realtor or determination of a listing price for the marital home. In December 2006, Wife filed a rule to show cause against Husband for several reasons, including his failure to cooperate with the realtor listing the marital home for sale.

On April 18, 2007, the parties tried their respective rules to show cause before Judge Frances P. Segars-Andrews. Following the presentation of evidence, the parties submitted an agreement in which they fully settled the issues pertaining to the rules to show cause. The resulting order of the family court recited and approved this agreement. With regard to the marital home, the family court agreed to select a realtor to list and sell the home. Furthermore, according to the agreement:

> The listing Agent shall have the authority to determine the listing price, provided however, the house shall be sold at the highest and best price attainable . . . and upon the best terms attainable under current market conditions in a timely fashion and as soon as practicable. . . . If the house is not sold

> or under contract within [a] ninety (90) day period, the parties may agree to continue with said agent, may mutually agree on an alternative agent or if they are unable to agree, may return to this Court for further Order in connection with the sale of the family residence.

Judge Segars-Andrews selected a realtor who listed the home for sale, and Wife executed a listing agreement setting the sale price at $274,000. The home did not sell.

In January 2008, some nine months later, Husband filed a motion for relief seeking an order requiring Wife to purchase his equity in the marital home, refinance the home or reduce its selling price, pay him post-judgment interest on the amount of his equity in the home, and pay his attorney's fees related to the motion. Following a hearing, Judge Cate entered an order purportedly clarifying the divorce decree to award Husband post-judgment interest at 11.25% per annum on the amount of his equity in the marital home, renewing the requirement that the home be listed for sale and establishing a plan for determining the listing price, and denying attorney's fees to either party. Judge Cate based her decision to award Husband post-judgment interest on the court's authority to correct clerical errors under Rule 60(a), SCRCP, and upon a finding the terms of the divorce decree addressing Husband's equity in the marital home were ambiguous and required further construction. Judge Cate imposed new requirements for sale of the home pursuant to the contempt order entered by Judge Segars-Andrews. Specifically, she ordered both parties to enter a six-month listing agreement with a realtor of the family court's selection, set the home's initial listing price at $255,550, and required the listing price to be reduced by five percent every sixty-day period the home remained unsold. She further required the parties to accept an offer within three percent of the listing price of the property at the time of the offer and authorized both Husband and Wife to receive "any and all information pertaining to the marketing of the home and potential buyers."

Wife moved for reconsideration, arguing all the issues she now raises on appeal except jurisdiction. The family court summarily denied her motion. This appeal followed.

STANDARD OF REVIEW

Matters concerning interpretation and enforcement of the family court's orders are within the family court's discretion. Arnal v. Fraser, 371 S.C. 512, 520, 641 S.E.2d 419, 423 (2007). An abuse of discretion occurs when the conclusions of the family court either lack evidentiary support or are controlled by an error of law. Bryson v. Bryson, 347 S.C. 221, 224, 553 S.E.2d 493, 495 (Ct. App. 2001). When reviewing a decision by the family court, the appellate court has the authority to find the facts in accordance with its own view of the preponderance of the evidence. Ex parte Morris, 367 S.C. 56, 61, 624 S.E.2d 649, 652 (2006). This broad scope of review does not require the appellate court to disregard the findings of the family court. Id. at 61-62, 624 S.E.2d at 652.

LAW/ANALYSIS

I. Jurisdiction

Wife first argues Judge Cate erred in ruling on Husband's motion for relief because Judge Segars-Andrews had specifically reserved jurisdiction over matters dealing with the sale of the house. We decline to address this issue as unpreserved. An issue not raised to the family court is not preserved for appellate review. Chastain v. Chastain, 381 S.C. 295, 306, 672 S.E.2d 108, 114 (Ct. App. 2009). Wife did not raise this issue prior to or during the hearing on Husband's motion for relief, nor did she raise it in her motion to reconsider. Furthermore, Wife does not argue on appeal that this issue implicates subject matter jurisdiction.[1] Consequently, this issue is not properly before this court.

[1] This issue concerns jurisdiction, generally, which is bound by preservation rules, and not subject matter jurisdiction, which may be raised at any time. Subject matter jurisdiction refers to the court's "power to hear and determine

II. Rule 60(a), SCRCP

Next, Wife asserts the family court erred in clarifying the divorce decree under Rule 60(a), SCRCP. We agree.

"The [family] court's order as it affects distribution of marital property shall be a final order not subject to modification except by appeal or remand following proper appeal." S.C. Code Ann. § 20-3-620(C) (Supp. 2010). However, an order of the family court may be modified if "jurisdiction was specifically reserved in the decree or if allowed by statute." Hayes v. Hayes, 312 S.C. 141, 144, 439 S.E.2d 305, 307 (Ct. App. 1993). In addition, Rule 60(a), SCRCP, permits trial courts to correct clerical errors at any time:

> Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, leave to correct the mistake must be obtained from the appellate court. The ending of a term of court or departure from the circuit shall not operate to deprive the trial judge of jurisdiction to correct such mistakes. A party filing a written motion under this rule shall provide a copy of the motion to the judge within ten (10) days after the filing of the motion.

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cases of the general class to which the proceedings in question belong." Dove v. Gold Kist, Inc., 314 S.C. 235, 237-38, 442 S.E.2d 598, 600 (1994). "Numerous cases have held that subject matter jurisdiction is not implicated when the court possesses the power to hear and determine cases of the general class to which the proceedings in question belong." Gainey v. Gainey, 382 S.C. 414, 424, 675 S.E.2d 792, 797 (Ct. App. 2009).

The family court's correction of clerical errors may not extend to "chang[ing] the scope of the judgment." Michel v. Michel, 289 S.C. 187, 190, 345 S.E.2d 730, 732 (Ct. App. 1986). "Except for those matters over which a court retains continuing jurisdiction, terms of a final property settlement agreement, once approved, are binding on the parties and the court." Price v. Price, 325 S.C. 379, 382, 480 S.E.2d 92, 93 (Ct. App. 1996); accord Doran v. Doran, 288 S.C. 477, 478, 343 S.E.2d 618, 619 (1986) ("A trial judge loses jurisdiction to modify an order after the term at which it is issued, except for the correction of clerical [errors]. Once the term ends, the order is no longer subject to any amendment or modification which involves the exercise of judgment or discretion on the merits of the action.").

We reverse the family court's determination that Rule 60(a), SCRCP, authorized "clarification" of the divorce decree to reclassify Husband's equitable share of the marital home as an interest-accruing money judgment. Judge Cate's clarification did not amount to correction of a clerical error such as a misspelling, a misplaced decimal, or a miscalculation. Instead, it recharacterized a portion of Husband's award and imposed additional terms upon the parties that did not exist at the time the divorce decree was entered. Under the divorce decree, Wife's pre-sale purchase of Husband's equity in the home was optional. In the event Wife did not exercise this option, both the amount and timing of Husband's recovery of this equity were contingent upon the sale of the home. In short, both the date Husband's equitable share was due and the amount he would receive, up to $60,191.02, remained undetermined and contingent upon the sale of the home.

Judge Cate's April 2008 order significantly changed these terms, thereby altering the substance and scope of the judgment. See Michel, 289 S.C. at 190, 345 S.E.2d at 732 (excluding from Rule 60(a) coverage changes that affect "the scope of the judgment"). Instead of Husband receiving 32.14% of the home's sale value not to exceed $60,191.02, the April 2008 order establishes a sum certain of $60,191.02. Instead of Husband receiving his payment upon sale of the marital home, the April 2008 order made payment to Husband due as of June 9, 2006, with interest accruing thereafter. Because Judge Cate's ruling modified the substance of the judgment reflected

in the divorce decree, the family court erred in finding Rule 60(a) authorized its modifications.

III. Pricing Scheme for Marital Home

Additionally, Wife argues the family court erred in clarifying the divorce decree to require automatic reductions in the selling price of the marital home. We disagree.

The family court should attempt to end the controversy between the parties by finally severing all entangling legal relationships and placing the parties in a position to begin anew. Roe v. Roe, 311 S.C. 471, 482 n.7, 429 S.E.2d 830, 837 n.7 (Ct. App. 1993). In equitably apportioning marital property, the family court "may order the public or private sale of all or any portion of the marital property upon terms it determines." S.C. Code Ann. § 20-3-660(A) (Supp. 2010) (emphasis added). Furthermore, the family court is authorized to construe and enforce contracts relating to property involved in a divorce action. S.C. Code Ann. § 20-3-690 (Supp. 2010). "A court approved divorce settlement must be viewed in accordance with principles of equity and there is implied in every such agreement a requirement of reasonableness." Ebert v. Ebert, 320 S.C. 331, 340, 465 S.E.2d 121, 126 (Ct. App. 1995). When the terms of an agreement omit a necessary provision such as the time for performance, a court will imply a reasonable term. Id.

We affirm the family court's requirement that the parties sell the home and adhere to a predetermined pricing scheme. Contrary to Wife's argument, establishing the terms of the sale is well within the family court's statutory authority. See § 20-3-660(A) (authorizing the family court to establish terms for the sale of marital property). In this case, Judge Cate's order establishing a pricing scheme for the marital home merely enforced the terms of both the divorce decree and the parties' prior agreement reflected in the order entered by Judge Segars-Andrews. In that agreement, the parties concurred that "the house shall be sold at the highest and best price attainable . . . and upon the best terms attainable under current market conditions in a timely fashion and as soon as practicable." In the event the house failed to sell and they differed

on how to proceed, the parties agreed to seek further guidance from the family court. Husband sought that guidance, and Judge Cate provided it. The pricing scheme Judge Cate established did not conflict with the minimum listing price of $225,300 set by the divorce decree[2] and complied with the goals set out in the parties' subsequent agreement. In light of Wife's failed attempt to sell the home for $274,000, a lower initial listing price with small periodic reductions is a reasonable approach to severing this remaining tie between Husband and Wife. Accordingly, the family court did not err.

To the extent Wife requests "reimbursement for maintaining the marital property," this issue is unpreserved because she failed to raise it to the family court. See Chastain, 381 S.C. at 306, 672 S.E.2d at 114 (holding an issue not raised to the family court is not preserved for appellate review).

IV. Remaining Issues

Wife further argues the family court erred in clarifying the divorce decree because neither party requested such clarification and because the language of the decree was clear and unambiguous. We decline to address these issues because Wife failed to support her arguments with legal authority. See Eaddy v. Smurfit-Stone Container Corp., 355 S.C. 154, 164, 584 S.E.2d 390, 396 (Ct. App. 2003) ("[S]hort, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not preserved for our review.").

Finally, Wife argues the family court erred in clarifying the divorce decree to award a "monetary judgment" entitling Husband to post-judgment interest. Our reversal of the family court's decision on the basis of Rule 60(a), SCRCP, renders consideration of this issue unnecessary. See Futch v.

[2] Under Judge Cate's pricing scheme, the listing price would be reduced by five percent every sixty days the home remained unsold. With an initial listing price of $255,550, if the home did not sell before the end of the six-month agreement, it would undergo two such price reductions, resulting in a final listing price of $230,634.

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).

CONCLUSION

We find the family court's reclassification of Husband's equity in the marital home as a monetary judgment and the attendant imposition thereon of post-judgment interest did not constitute the correction of a clerical error under Rule 60(a), SCRCP. Accordingly, we reverse the family court's purported clarification of the divorce decree as it relates to the monetary judgment and the imposition of post-judgment interest.

We find Judge Cate's instructions for selling the marital home were within the family court's discretion and are reasonable. Therefore, we remand this matter to the family court for continued supervision of the sale of the marital home.

We do not reach Wife's remaining issues. We find the issue of Judge Segars-Andrews's reservation of jurisdiction is unpreserved because it was neither raised to nor ruled upon by the family court. We further find Wife abandoned her remaining issues on appeal by failing to cite to relevant legal authority in her brief.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

FEW, C.J., KONDUROS, J., and CURETON, A.J., concur.