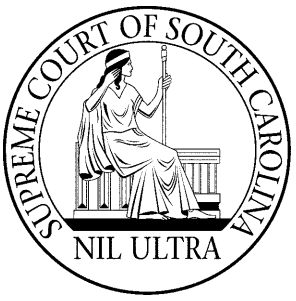

OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 14
April 4, 2018
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

CONTENTS

THE SUPREME COURT OF SOUTH CAROLINA

PUBLISHED OPINIONS AND ORDERS

UNPUBLISHED OPINIONS

PETITIONS - UNITED STATES SUPREME COURT

PETITIONS FOR REHEARING

27764 - Stephen Smalls v. State	Denied 3/29/2018
27765 - Betty Fisher v. Bessie Huckabee	Pending
27768 - The State v. Lamont A. Samuel	Pending
27771 - Jacklyn Donevant v. Town of Surfside Beach	Pending
2019-MO-0009 - Onrae Williams v. State	Pending

EXTENSION OF TIME TO FILE A PETITION FOR REHEARING

27775 - Richland County v. The SCDR	until April 6, 2018

The South Carolina Court of Appeals

PUBLISHED OPINIONS

UNPUBLISHED OPINIONS

PETITIONS FOR REHEARING

5540-State v. Gerald R. Williams	Pending	
5541-Camille Hodge, Jr. v. UniHealth	Pending	
5543-State v. Hank Eric Hawes	Pending	
2017-UP-450-State v. Lindell Davis	Pending	
2017-UP-455-State v. Arthur M. Field	Denied	04/04/18
2018-UP-010-Ard Trucking Company v. Travelers Property Casualty	Pending	
2018-UP-062-Vivian Cromwell v. Alberta Brisbane	Pending	
2018-UP-063-Carolina Chloride, Inc. v. SCDOT	Pending	
2018-UP-068-State v. Jason Gourdine	Pending	
2018-UP-070-Cynthia J. Jackson Mills v. Janet L. Hudson	Pending	
2018-UP-074-Edward Miller v. SCPEBA	Pending	
2018-UP-075-U. S. Bank v. Alyce Ott	Pending	
2018-UP-078-David Wilson v. John Gandis	Pending	
2018-UP-080-Kay Paschal v. Leon Lott	Pending	
2018-UP-081-State v. Billy Phillips	Pending	
2018-UP-084-Terrell McCoy v. North Charleston Police Dep't	Pending	
2018-UP-085-Danny B. Crane v. Raber's Discount Tire Rack	Pending	
2018-UP-087-David Rose v. SCDPPPS	Pending	
2018-UP-092-State v. Dalonte Green	Pending	
2018-UP-096-MidFirst Bank v. Mahasin K. Bowen	Pending	
2018-UP-099-Shaul Levy v. Carolinian, LLC	Pending	

2018-UP-107-State v. Terrance L. Galloway Pending

2018-UP-111-State v. Mark Lorenzo Blake Jr. Pending

PETITIONS-SOUTH CAROLINA SUPREME COURT

5387-Richard Wilson v. Laura B. Willis Granted 03/28/18

5419-Arkay, LLC v. City of Charleston Pending

5442-Otha Delaney v. First Financial Pending

5473-State v. Alexander Carmichael Huckabee, III Pending

5475-Sara Y. Wilson v. Charleston Co. School District Pending

5476-State v. Clyde B. Davis Pending

5477-Otis Nero v. SCDOT Pending

5485-State v. Courtney Shante Thompson Denied 03/28/18

5490-Anderson County v. Joey Preston Pending

5503-State v. Wallace Steve Perry Pending

5504-John Doe 2 v. The Citadel Pending

5506-State v. Marvin R. Brown Pending

5510-State v. Stanley L. Wrapp Pending

5511-State v. Lance L. Miles Pending

5512-State v. Robert L. Moore Granted 03/28/18

5515-Lisa McKaughan v. Upstate Lung and Critical Care Denied 03/28/18

5516-Charleston County v. University Ventures Pending

5524-Wadette Cothran v. State Farm Pending

2016-UP-402-Coves Darden v. Francisco Ibanez Pending

2016-UP-528-Betty Fisher v. Bessie Huckabee and Lisa Fisher v. Betty Huckabee	Pending
2017-UP-013-Amisub of South Carolina, Inc. v. SCDHEC	Pending
2017-UP-046-Wells Fargo v. Delores Prescott	Denied 03/28/18
2017-UP-054-Bernard McFadden v. SCDC	Pending
2017-UP-228-Arrowpoint Capital v. SC Second Injury Fund	Pending
2017-UP-229-Arrowpoint Capital v. SC Second Injury Fund	Pending
2017-UP-262-In the matter of Carl M. Asquith	Pending
2017-UP-272-State v. Wayland Purnell	Granted 03/28/18
2017-UP-279-Jose Jimenez v. Kohler Company	Pending
2017-UP-282-Mother Doe A v. The Citadel	Pending
2017-UP-296-Rivergate Homeowners' v. WW & LB	Granted 03/28/18
2017-UP-324-State v. Mario Valerio Gonzalez Hernandez	Pending
2017-UP-336-Clarence Winfrey v. Archway Services, Inc.	Denied 03/29/18
2017-UP-338-Clarence Winfrey v. Archway Services, Inc. (3)	Pending
2017-UP-339-State v. John H. Dial, Jr.	Pending
2017-UP-342-State v. Bryant Gurley	Pending
2017-UP-344-Brent E. Bentrim v. Wells Fargo	Pending
2017-UP-354-Adrian Duclos v. Karen Duclos	Pending
2017-UP-355-George Hood v. Jasper County	Pending
2017-UP-356-State v. Damyon Cotton	Pending
2017-UP-358- Jeffrey D. Allen v. SCBCB	Pending

2017-UP-379-Johnny Tucker v. SCDOT	Pending
2017-UP-378-Ronald Coulter v. State of South Carolina	Pending
2017-UP-383-State v. Vincent Missouri	Pending
2017-UP-385-Antonio Gordon v. State	Pending
2017-UP-387-In the matter of Keith F. Burris	Pending
2017-UP-391-State v. Sean Robert Kelly	Granted 03/28/18
2017-UP-403-Preservation Society of Charleston v. SCDHEC	Pending
2017-UP-406-State v. Jerry McKnight, Sr.	Denied 03/28/18
2017-UP-412-United Auto Ins. v. Willie Freeman	Denied 03/28/18
2017-UP-417-State v. Christopher Wells	Pending
2017-UP-425-State v. Esaiveus F. Booker	Pending
2017-UP-426-State v. Raymond L. Young	Pending
2017-UP-427-State v. Michael A. Williams	Pending
2017-UP-438-Harvey Campbell v. Lee Lyerly	Pending
2017-UP-440-State v, Richard A, Capell	Pending
2017-UP-443-Lettie Spencer v. NHC Parklane	Pending
2017-UP-458-State v. Tami Baker Sisler	Pending
2018-UP-006-Jim Washington v. Trident Medical Center	Pending
2018-UP-007-State v. Gregory Felder	Pending
2018-UP-011-Charles Hobbs v. Fairway Oaks	Pending
2018-UP-014-State v. Gerome Smith	Pending

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Francis M. Deslauriers, Respondent.

Appellate Case No. 2017-002562

Opinion No. 27788
Submitted March 7, 2018 – Filed April 4, 2018

PUBLIC REPRIMAND

John S. Nichols, Disciplinary Counsel, of Columbia, for Office of Disciplinary Counsel.

Francis M. Deslauriers, of Memphis, Tennessee, pro se

PER CURIAM: By order of the Board of Professional Responsibility of the Supreme Court of Tennessee dated April 20, 2017, respondent was censured for violating the Rules of Professional Conduct.[1] The order was forwarded to this Court by the Office of Disciplinary Counsel (ODC) on December 19, 2017. Thereafter, pursuant to Rule 29(b) of the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR, ODC and respondent were notified by letter of

[1] The order states that in August 2012, respondent was retained to represent a client in a lawsuit against an insurance company for a property damage claim, but filed nothing in the case and did not communicate with his client despite the client's numerous requests for updates. Eventually, respondent filed a complaint in January 2015; however, in March 2016, after another year of taking no action and failing to communicate with his client, respondent informed his client that he had failed to serve the defendants or take their depositions, resulting in his client's case being dismissed. The order concluded respondent violated Rules 1.1 (competence), 1.3 (diligence), 1.4 (communication), 3.2 (expediting litigation), and 8.4 (misconduct) of the Tennessee Rules of Professional Conduct. Respondent was publicly censured for the violations.

the Clerk of this Court that they had thirty days to inform the Court of any claim that imposition of the identical discipline in South Carolina is not warranted and the reasons for any such claim.[2] Respondent did not respond to the Clerk's letter.

We find a public reprimand is the appropriate sanction to impose as reciprocal discipline, as none of the reasons set forth in Rule 29(d) of the Rules for Lawyer Disciplinary Enforcement for the imposition of different discipline exists in this matter.

PUBLIC REPRIMAND.

BEATTY, C.J., KITTREDGE, HEARN, FEW and JAMES, JJ., concur.

[2] This letter was mailed to the most recent address respondent provided in the Attorney Information System (AIS).

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Otis Nero, Respondent,

v.

South Carolina Department of Transportation, Employer, and State Accident Fund, Carrier, Petitioners.

Appellate Case No. 2017-001970

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from The Workers' Compensation Commission

Opinion No. 27789
Submitted March 7, 2018 – Filed April 4, 2018

REVERSED AND REMANDED

John Gabriel Coggiola, of Willson, Jones, Carter & Baxley, P.A., of Columbia, for Petitioners.

Stephen J. Wukela, of Wukela Law Firm, of Florence, for Respondent.

PER CURIAM: Petitioners seek a writ of certiorari to review the court of appeals' decision in *Nero v. South Carolina Department of Transportation*, 420 S.C. 523, 804 S.E.2d 269 (Ct. App. 2017). We grant the petition, dispense with further briefing,

reverse, and remand the case to the court of appeals to issue a ruling applying the substantial evidence standard of review.

Respondent filed a workers' compensation claim alleging he sustained injuries to his back and shoulder while on the job. The single commissioner found respondent suffered an injury by accident arising out of and in the course of respondent's employment, and awarded benefits. The appellate panel reversed the decision of the single commissioner, finding respondent failed to provide timely notice of the injury. *See* S.C. Code Ann. § 42-15-20 (2015) (setting forth the requirement of timely notice).

On appeal from the commission's decision, the court of appeals employed the de novo standard of review applicable to jurisdictional questions, 420 S.C. at 529, 804 S.E.2d at 272, and reversed the commission, 420 S.C. at 535, 804 S.E.2d at 276. In finding the question of timely notice was a jurisdictional question subject to de novo review, the court of appeals relied on *Shatto v. McLeod Regional Medical Center*, 406 S.C. 470, 753 S.E.2d 416 (2013) and *Mintz v. Fiske-Carter Construction Co.*, 218 S.C. 409, 63 S.E.2d 50 (1951). However, neither *Shatto* nor *Mintz* supports the court of appeals' use of the de novo standard. *Shatto* involved "the question of whether [the claimant] was . . . an employee . . . or an independent contractor," and thus is inapplicable to this case. 406 S.C. at 475, 753 S.E.2d at 419. *Mintz* did involve what we called "the jurisdictional defense of no timely notice," 218 S.C. at 413, 63 S.E.2d at 52, but in that case we did not review a finding of the commission. Rather, after the commission neglected to rule on the question, we made our own finding of fact. 218 S.C. at 415, 63 S.E.2d at 52-53. Our casual use of the word "jurisdictional" was not necessary to our decision, and thus dictum.

Until this case, the court of appeals has consistently applied the substantial evidence standard when reviewing decisions of the commission on the question of timely notice. *See, e.g.*, *King v. Int'l Knife & Saw-Florence*, 395 S.C. 437, 443, 718 S.E.2d 227, 230 (Ct. App. 2011) ("The Appellate Panel's findings concerning notice are subject to the substantial evidence standard."); *Murphy v. Owens Corning*, 393 S.C. 77, 82, 710 S.E.2d 454, 457 (Ct. App. 2011) ("The Commission's findings of fact regarding notice and the statute of limitations are reviewed under the substantial evidence standard of review."); *Watt v. Piedmont Auto.*, 384 S.C. 203, 212, 681 S.E.2d 615, 620 (Ct. App. 2009) (holding the commission's ruling that a claimant failed to provide the required notice was supported by substantial evidence); *Lizee v. S.C. Dept. of Mental Health*, 367 S.C. 122, 127, 623 S.E.2d 860, 863 (Ct. App. 2005) (holding substantial evidence did not support the commission's finding that a claimant provided timely notice); *Bass v. Isochem*, 365 S.C. 454, 461, 617 S.E.2d

369, 372 (Ct. App. 2005) (holding substantial evidence did not support the commission's decision to deny benefits because claimant failed to give timely notice); *Etheredge v. Monsanto Co.*, 349 S.C. 451, 459, 562 S.E.2d 679, 683 (Ct. App. 2002) (holding the commission's findings regarding notice were supported by substantial evidence); *Muir v. C.R. Bard*, 336 S.C. 266, 300, 519 S.E.2d 583, 601 (Ct. App. 1999) (holding substantial evidence supported the commission's finding that a claimant gave timely notice of his claim); *Hanks v. Blair Mills, Inc.*, 286 S.C. 378, 382, 335 S.E.2d 91, 93 (Ct. App. 1985) (substantial evidence supported the finding that employer was notified of worker's job-related injury within ninety days).

In *Hartzell v. Palmetto Collision, LLC*, 406 S.C. 233, 750 S.E.2d 97 (Ct. App. 2013), *rev'd*, 415 S.C. 617, 785 S.E.2d 194 (2016), the employer raised the jurisdictional question of whether "it regularly employed four or more employees." 406 S.C. at 241, 750 S.E.2d at 101. The court of appeals reviewed the commission's decision on this question de novo, stating "'an appellate court reviews jurisdictional issues by making its own findings of fact without regard to the findings and conclusions of the Appellate Panel.'" *Id.* (quoting *Hernandez-Zuniga v. Tickle*, 374 S.C. 235, 244, 647 S.E.2d 691, 695 (Ct. App. 2007)). The employer also raised the question of timely notice. 406 S.C. at 246, 750 S.E.2d at 103-04. The court of appeals reviewed the commission's decision on the notice question, however, using the substantial evidence standard. 406 S.C. at 246, 750 S.E.2d at 104. The court of appeals stated, "We find the Appellate Panel's determination that Claimant provided Employer with adequate notice he had suffered a work-related injury is not supported by substantial evidence in the record . . . ." 406 S.C. at 247, 750 S.E.2d at 104. We reversed the court of appeals, also applying the substantial evidence standard of review to the question of timely notice, stating,

> While reasonable minds could have reached a different conclusion based on the record, we must not engage in fact-finding that would disregard the Commission's factual findings on these issues. . . . We find the Commission's findings are supported by substantial evidence.

Hartzell v. Palmetto Collision, LLC, 415 S.C. 617, 623, 785 S.E.2d 194, 197 (2016).

Thus, the court of appeals erred in applying the de novo standard. Under well-settled law, the commission's determination of whether a claimant gave timely notice under section 42-15-20 is not a jurisdictional determination, and must be reviewed on appeal under the substantial evidence standard. We reverse the court of appeals and remand for a decision under the proper standard of review.

REVERSED AND REMANDED.

BEATTY, C.J., KITTREDGE, HEARN, FEW and JAMES, JJ., concur.

The Supreme Court of South Carolina

In the Matter of Joenathan S. Chaplin, Petitioner.

Appellate Case No. 2016-002072

ORDER

By opinion dated August 24, 2016, this Court suspended petitioner from the practice of law for one year, retroactive to the date of interim suspension.[1] *In the Matter of Chaplin*, 417 S.C. 413, 790 S.E.2d 386 (2016). Petitioner filed a Petition for Reinstatement pursuant to Rule 33 of the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR). After referral to the Committee on Character and Fitness (Committee), the Committee has filed a Report and Recommendation recommending the Court reinstate petitioner to the practice of law. We find petitioner has met the requirements of Rule 33(f), and, therefore, grant the petition for reinstatement.

s/ Donald W. Beatty C.J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

s/ John Cannon Few J.

s/ George C. James, Jr. J.

[1] Petitioner was placed on interim suspension on May 23, 2014. *In the Matter of Chaplin*, 408 S.C. 184, 758 S.E.2d 708 (2014).

Columbia, South Carolina
March 29, 2018

The Supreme Court of South Carolina

In the Matter of K. Douglas Thornton, Respondent.

Appellate Case No. 2018-000559

ORDER

The Office of Disciplinary Counsel asks this Court to place Respondent on interim suspension pursuant to Rule 17(b) of the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR). The petition also seeks appointment of the Receiver pursuant to Rule 31, RLDE, Rule 413, SCACR.

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

IT IS FURTHER ORDERED that Peyre Thomas Lumpkin, Esquire, Receiver, is hereby appointed to assume responsibility for Respondent's client files, trust account(s), escrow account(s), operating account(s), and any other law office accounts Respondent may maintain. Mr. Lumpkin shall take action as required by Rule 31, RLDE, to protect the interests of Respondent's clients. Mr. Lumpkin may make disbursements from Respondent's trust account(s), escrow account(s), operating account(s), and any other law office accounts Respondent may maintain that are necessary to effectuate this appointment.

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

Finally, this Order, when served on any office of the United States Postal Service, shall serve as notice that Peyre Thomas Lumpkin, Esquire, Receiver, has been duly

appointed by this Court and has the authority to receive Respondent's mail and the authority to direct that Respondent's mail be delivered to Mr. Lumpkin's office.

Mr. Lumpkin's appointment shall be for a period of no longer than nine months unless an extension of the period of appointment is requested.

Within fifteen days of the date of this order, Respondent shall serve and file the affidavit required by Rule 30, RLDE. Should Respondent fail to timely file the required affidavit, he may be held in civil and/or criminal contempt of this Court as provided by Rule 30, RLDE.

s/ Donald W. Beatty C.J.
FOR THE COURT

Columbia, South Carolina

March 30, 2018

The Supreme Court of South Carolina

Re: Annual License Fee

Appellate Case No. 2018-000120

ORDER

The South Carolina Bar has filed a petition seeking to amend Rule 410(j) of the South Carolina Appellate Court Rules (SCACR) to increase the Annual License Fee by $15. The Bar reports the increase is necessary based on a recent five-year fiscal projection, and the proposed increase was approved by the House of Delegates.

Pursuant to Article V, § 4 of the South Carolina Constitution, we grant the Bar's request to amend Rule 410(j), SCACR. The amendments, which are effective immediately, provide as follows:

> **(j) License Fees.** The membership year shall be the calendar year. By January 1st, each member who is in good standing (other than deceased members) shall pay the South Carolina Bar the fees specified in this section and in section (k) below. All income and assets shall be handled separately by the South Carolina Bar, as prescribed in its Constitution and Bylaws. For the purpose of this rule, the term "license fee" shall include any assessment under Rule 411, SCACR.
>
> > **(1) Regular Member.** The license fee for a regular member who has been admitted to practice law in this State or any other jurisdiction for less than three years shall be $190. The license fee for all other regular members shall be $275. In addition, the license fee of a regular member shall include the Lawyer's Fund for Client Protection assessment specified by Rule 411, SCACR. Finally, each regular member shall pay $30 which

shall be designated for meeting the civil legal needs of indigents as directed by the Board of Governors of the Bar, but any member may deduct this fee before remitting payment.

(2) Inactive Member. The license fee shall be $205.

(3) Judicial Member. The license fee shall be $205. If, however, the member is or will be age sixty-five or older during the license year, and is either a retired judge meeting the requirements of (h)(1)(C)(ii) above or a judge of a federal court in senior status, no license fee is required.

(4) Judicial Staff Member. The license fee for a judicial staff member who has been admitted to practice law in this State or any other jurisdiction for less than three years shall be $190. The license fee for all other judicial staff members shall be $205.

(5) Military Member. The license fee for a military member shall be $205. This fee shall be waived during a time of war declared by the Congress of the United States and, upon written request, shall be waived when the member is serving on active duty in an area designated as a combat zone by the President of the United States.

(6) Administrative Law Judge Member. The license fee shall be $205.

(7) Retired Member. No fee is required.

(8) Limited Member. No fee shall be required for a person holding a limited certificate under Rule 415 (Limited Certificate of Admission for Retired and Inactive Attorney Pro Bono Participation Program), SCACR, or Rule 427 (Limited Certificate of Admission for Judge Advocates), SCACR. The license fee for all other persons holding a limited certificate shall be $275.

s/ Donald W. Beatty C.J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

s/ John Cannon Few J.

s/ George C. James, Jr. J.

Columbia, South Carolina
April 4, 2018

The Supreme Court of South Carolina

Re: Expansion of Electronic Filing Pilot Program - Court of Common Pleas

Appellate Case No. 2015-002439

ORDER

Pursuant to the provisions of Article V, Section 4 of the South Carolina Constitution,

IT IS ORDERED that the Pilot Program for the Electronic Filing (E-Filing) of documents in the Court of Common Pleas, which was established by Order dated December 1, 2015, is expanded to include Chester and Fairfield Counties. Effective April 24, 2018, all filings in all common pleas cases commenced or pending in Chester and Fairfield Counties must be E-Filed if the party is represented by an attorney, unless the type of case or the type of filing is excluded from the Pilot Program. The counties currently designated for mandatory E-Filing are as follows:

Aiken	Allendale	Anderson	Bamberg
Barnwell	Beaufort	Cherokee	Clarendon
Colleton	Edgefield	Georgetown	Greenville
Greenwood	Hampton	Horry	Jasper
Kershaw	Laurens	Lee	Lexington
McCormick	Newberry	Oconee	Pickens
Richland	Saluda	Spartanburg	Sumter
Union	Williamsburg	York	

Chester and Fairfield—Effective April 24, 2018

Attorneys should refer to the South Carolina Electronic Filing Policies and Guidelines, which were adopted by the Supreme Court on October 28, 2015, and the training materials available on the E-Filing Portal page at http://www.sccourts.org/efiling/ to determine whether any specific filings are exempted from the requirement that they be E-Filed. Attorneys who have cases pending in Pilot Counties are strongly encouraged to review, and to instruct their staff to review, the training materials available on the E-Filing Portal page.

s/Donald W. Beatty
Donald W. Beatty
Chief Justice of South Carolina

Columbia, South Carolina
April 4, 2018

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Winrose Homeowners' Association, Inc. and Regime Solutions LLC, Respondents,

v.

Devery A. Hale and Tina T. Hale, Appellants.

Appellate Case No. 2015-001807

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

Opinion No. 5549
Heard May 3, 2017 – Filed April 4, 2018

AFFIRMED

Phillip Anthony Curiale and Brian L. Boger, both of The Law Office of Brian L. Boger, of Columbia, for Appellants.

Stephanie Carol Trotter, of McCabe, Trotter & Beverly, P.C., of Columbia, for Respondent Winrose Homeowners' Association, Inc.; Eric Christopher Hale, of Clarkson Law Firm, LLC, of Columbia, for Respondent Regime Solutions, LLC.

THOMAS, J.: Appellants Devery A. Hale and Tina T. Hale filed this appeal following the denial of their motion to set aside a foreclosure sale. Appellants

claim the successful bid at the foreclosure sale shocked the conscience and violated equitable principles. We affirm.

FACTS/PROCEDURAL HISTORY

In February 2014, Respondent Winrose Homeowners' Association, Inc. (Winrose) filed a foreclosure action alleging Appellants failed to pay their association dues. In July 2014, the master filed a judgment of foreclosure ordering the property sold to satisfy the debt. The judgment of foreclosure stated the sale "shall be subject to . . . senior encumbrances" and specifically subject to a senior mortgage but did not disclose the outstanding balance of the mortgage. Regime Solutions, LLC (Regime) was the successful bidder at the foreclosure sale, which took place in August 2014. Regime's successful bid was for $3,036.

In November 2014, Appellants filed a motion to vacate the foreclosure sale. Appellants claimed the property's fair market value as of October 31, 2014, was $128,000 and the mortgage balance for the property was $66,004. During the hearing on Appellants' motion to vacate, Appellants claimed the master should compare Regime's successful bid of $3,036 to the amount of equity Appellants had in the property, which they calculated to be $61,996. Comparing the successful bid to their equity, Appellants concluded the bid was for less than 10% of the fair market value and, thus, shocked the conscience. Appellants also asserted the master had "the ability in [his] gavel to do equity where perhaps equity should be done." Appellants went on to contend they were "hard working people" and "deserve[d]" the property. Appellants failed, however, to argue any irregularities with the foreclosure sale process. They failed to participate in any of the proceedings until filing the motion to set aside the sale despite admittedly receiving notices of the proceedings. They simply "put the papers in a drawer and forgot about them."

In response, Respondents argued the outstanding mortgage balance must be added to the successful bid to calculate an effective bid price for consideration under the "shocks-the-conscience" standard. Regime concurred with Appellants' assertion the property's fair market value was $128,000. The master issued his ruling in April 2015. The master noted Regime purchased the property subject to the mortgage balance of $66,004. The master agreed with Respondents that the appropriate calculation was to combine the successful bid amount with the mortgage balance to create an "effective sale price." Under this calculation, the

master concluded Regime effectively bid $69,040 for the property, which constituted 54% of the fair market value. The master determined a bid of 54% of the fair market value did not shock the conscience, and he denied Appellants' motion to vacate the foreclosure sale. The master further explained "the practice of homeowners' association foreclosures would effectively be eradicated if [Appellants]' position came to bear." This appeal followed.

ISSUES ON APPEAL

1. Whether the master erred by denying Appellants' motion to vacate the foreclosure sale because the successful bid shocked the conscience.

2. Whether the master erred by denying Appellants' motion to vacate the foreclosure sale because equitable circumstances of the foreclosure demanded the sale be vacated.

STANDARD OF REVIEW

A foreclosure action is an equitable action. *Wachovia Bank, Nat'l Ass'n v. Blackburn*, 407 S.C. 321, 328, 755 S.E.2d 437, 440–41 (2014). Thus, our standard of review is de novo. *Stoney v. Stoney*, 421 S.C. 528, 530, 809 S.E.2d 59, 59 (2017); *see* S.C. Const. art. V, § 5 (stating in equity cases, the supreme court "shall review the findings of fact as well as the law, except in cases where the facts are settled by a jury and the verdict not set aside"). Under de novo review, we may consider two principles long recognized by our courts "(1) a trial [court] is in a superior position to assess witness credibility, and (2) an appellant has the burden of showing the appellate court that the preponderance of the evidence is against the finding of the trial [court]." *Stoney*, 421 S.C. at 530, 809 S.E.2d at 59. De novo review allows us to take our own view of the evidence and make our own findings of fact. *Id*.

WHETHER THE SALE SHOCKED THE CONSCIENCE

Appellants argue the master erred by employing an improper calculation when deciding whether Regime's successful bid shocked the conscience. Appellants advocate for the Equity Method, which involves comparing the successful bid to the amount of equity in the property. The Equity Method consists of subtracting the amount of the senior encumbrance from the property's fair market value. The

resulting number is the amount of equity in the property. The equity is then compared to the successful bid. According to Appellants, the successful bid must be greater than 10% of the equity or South Carolina courts should set aside the judicial sale because such a sale would shock the conscience. In this case, under the Equity Method, the successful bid was 4.89% of the equity. Appellants claim the Equity Method is proper because, although the property remained subject to the mortgage, Regime was not required to personally assume the mortgage.

Respondents argue the master correctly analyzed whether Regime's successful bid shocked the conscience because senior mortgages must be included with the bid. Respondents note Regime must satisfy the mortgage in full to obtain clear title to the property. Finally, Respondents assert following Appellants' method of comparing the successful bid to the equity would create a chilling effect at foreclosure sales. Respondents claim potential bidders would be unable to determine the amount of equity in a property because there "are a host of statutes prohibiting" disclosure of a mortgagee's balance information. Respondents argue the Debt Method, which the master applied, is the proper method. The Debt Method consists of combining the amount of the successful bid with the amount of the senior encumbrance, which creates an effective bid price. The effective bid price is then compared to the fair market value. Respondents claim as long as the effective bid price is greater than 10% of the fair market value our courts should uphold the judicial sale. In this case, under the Debt Method, the effective bid price was 53.94% of the fair market value. We agree with Respondents that the Debt Method is the proper method for considering a senior encumbrance.

This Court will not set aside a judicial sale "except for cogent reasons." *E. Sav. Bank, FSB v. Sanders*, 373 S.C. 349, 355, 644 S.E.2d 802, 805 (Ct. App. 2007). Our policy is to uphold judicial sales "when regularly made, and when it can be done without violating principle or doing injustice." *Id*. We "zealously insure judicial sales be openly and freely conducted and nothing be allowed to chill the bidding." *Id*. at 355, 644 S.E.2d at 805–06.

When "unfair means have not been employed to prevent competition at a judicial sale, mere inadequacy of price is no ground for setting the sale aside." *Id*. at 356, 644 S.E.2d at 806 (brackets removed). However, our courts have set aside judicial sales under certain circumstances. "A judicial sale will be set aside when either: (1) the sale price 'is so gross as to shock the conscience[;]' or (2) the sale 'is accompanied by other circumstances warranting the interference of the court.'"

Bloody Point Prop. Owners Ass'n, Inc. v. Ashton, 410 S.C. 62, 70, 762 S.E.2d 729, 733 (Ct. App. 2014) (quoting *Wells Fargo Bank, NA v. Turner*, 378 S.C. 147, 150, 662 S.E.2d 424, 425 (Ct. App. 2008)).

Determining whether a judicial sale shocks the conscience involves comparing the successful bid during the sale to the property's fair market value at the time of the foreclosure sale. *Id*. at 70, 762 S.E.2d at 734. Our courts have "not established a bright line rule for what percentage the sale value must be with respect to the [fair market] value in order to shock the conscience of the court." *Id*. "However, a search of South Carolina jurisprudence reveals only when judicial sales are for less than ten percent of a property's [fair market] value, have our courts consistently held the discrepancy to shock the conscience of the court." *Id*. (quoting *Sanders*, 373 S.C. at 359, 644 S.E.2d at 807).

We found no South Carolina case, and the parties point to none, expressly weighing the Equity and Debt Methods and declaring the preferred method when accounting for a senior encumbrance. However, in *Arrow Bonding*, our supreme court considered whether to set aside a judicial sale based on the shock the conscience standard when a senior encumbrance remained on the property. *Arrow Bonding Co. v. Warren*, 399 S.C. 603, 606–08, 732 S.E.2d 622, 623–24 (2012).[1] The successful bid during the judicial sale was $2,500, and the property had senior encumbrances totaling $100,000. *Id*. at 605–06, 732 S.E.2d at 623–24. The master utilized the Debt Method and determined the effective bid price was $102,500. *Id*. at 606, 732 S.E.2d at 624. The master then determined the effective bid price constituted 39% of the fair market value and upheld the judicial sale. *Id*. Our supreme court explained the distinction between a judicial sale to foreclose a mortgage, which leaves the property unencumbered, and a different type of judicial sale, which may leave the property still encumbered after the sale. *Id*. at 607, 732 S.E.2d at 624. The court noted the master "properly considered the amount of the [senior encumbrances] in determining the true value of the properties to the buyer" at a judicial sale. *Id*. However, the court expressly noted the parties had not questioned the propriety of using the Debt Method calculation. *Id*. at 606 n.5, 732 S.E.2d at 624 n.5. The court ultimately found the appellant failed to meet his

[1] The primary opinion in *Arrow Bonding* was a plurality opinion with two justices concurring, one justice concurring in result only, and two justices dissenting. 399 S.C. at 609, 732 S.E.2d at 625. The dissent was based not on the Debt or Equity Method but on an unrelated point of law. *Id*. at 609–10, 732 S.E.2d at 625.

burden of showing the master erred because he failed to provide sufficient evidence of the property's true fair market value. *Id*. at 607–08, 732 S.E.2d at 624.

The take away from *Arrow Bonding*, as it relates to this case, is that we should consider the senior mortgage on this property when determining whether Regime's bid shocked the conscience. However, *Arrow Bonding* does not conclusively establish whether the Debt or Equity Method is the law in South Carolina. *Id*. at 606 n.5, 732 S.E.2d at 624 n.5.

Prior to *Arrow Bonding*, this Court considered a similar factual situation. In *Brooks*, the holder of a second mortgage foreclosed on a property, and the successful bid during the judicial sale was $875. *Fed. Nat'l Mortgage Ass'n v. Brooks*, 304 S.C. 506, 508, 405 S.E.2d 604, 605 (Ct. App. 1991) (per curiam). The property remained subject to a senior mortgage with a balance of $24,720, and the special referee found the property's fair market value was $52,500. *Id*. at 508, 509 n.1, 405 S.E.2d at 605, 606 n.1. On appeal, the successful bidder argued for application of the Debt Method. *Id*. at 509, 405 S.E.2d at 605–06. However, without any discussion regarding the competing methods, this Court appeared to utilize the Equity Method and declared, "It cannot be gainsaid that the payment by [the successful bidder] of $875 for equity of over $27,000 was adequate, albeit, it [was] not so grossly inadequate as to shock the conscience of the court." *Id*. at 510, 405 S.E.2d at 606. Thus, the *Brooks* court appears to have applied the Equity Method for deciding whether the successful bid shocked the conscience. We also note the *Brooks* court found the successful bid of $875 for equity of over $27,000 did not shock the conscience even though the bid represented only 3.15% of the equity. *Id*. The *Brooks* court went on to invalidate the judicial sale based on other circumstances surrounding the sale. *Id*. at 511–12, 405 S.E.2d at 607.

In this case, we find the Debt Method is the more reasonable method for determining whether a successful bid shocks the conscience because the successful bidder is required to satisfy the senior encumbrance dollar for dollar prior to obtaining clear title to the property. Also, it is reasonable to assume any bidder at a foreclosure sale is aware of the existence of a senior encumbrance and adjusts its bid accordingly. *See Cypress on Sunland Homeowners Ass'n v. Orlandini*, 257 P.3d 1168, 1181 n.8 (Ariz. Ct. App. 2011) (explaining the purchaser at a junior lien foreclosure sale must satisfy the senior lien to avoid foreclosure by the senior lienholder and "[t]herefore, the land becomes the primary fund for the senior debt, and the purchaser is presumed to have deducted the amount of the senior liens

from the amount he bids for the land"). Because the successful bidder must satisfy the senior encumbrance dollar for dollar in order to obtain clear title, it is reasonable to give the successful bidder credit for satisfying the senior encumbrance as if satisfaction of the encumbrance were a part of the bid.

Further, application of the Debt Method is consistent with our general policy of upholding properly conducted judicial sales because the Debt Method will result in fewer set asides. *See Sanders*, 373 S.C. at 355, 644 S.E.2d at 805 (noting our general policy of upholding judicial sales when there are no irregularities with the sale process). Moreover, to the extent Appellants argue the Equity Method is preferable because Regime is obtaining equity without having to assume personal liability for the senior encumbrance, we disagree. Regime cannot truly access the equity in the property without satisfying the senior encumbrance because any future sale of the property would be subject to the senior encumbrance. Moreover, there is no evidence in the record to dispute or contradict Regime's assertion to the master that it would satisfy the senior encumbrance once the foreclosure sale was finalized. Accordingly, we find the Debt Method is the proper method for taking into account a senior encumbrance when deciding whether a successful bid shocks the conscience.[2] Thus, we affirm the master's application of the Debt Method.

Additionally, we agree with the master that Regime's bid did not shock the conscience under the Debt Method analysis. Combining the successful bid of $3,036 with the senior mortgage balance of $66,004 rendered an effective bid of $69,040. Comparing the effective bid with the fair market value of $128,000, the master correctly concluded the effective bid was approximately 54% of the property's fair market value. We believe the master properly determined an effective bid constituting 54% of the fair market value did not shock the conscience.

Next, we address a concern from the dissent. The dissent suggests applying the Debt Method could lead judicial sale buyers to purchase properties and rent them for income without ever satisfying the senior encumbrance. First, we believe this is a solution in search of a problem because Appellants presented no evidence or arguments to the master to suggest Regime, or any other entity, was engaging in

---

[2] We are not bound by *Brooks*'s application of the Equity Method because the issue of the competing methods was not before the *Brooks* court and, as noted by the dissent, was dicta.

this kind of scheme. Thus, it is unclear whether the dissent's concern has ever materialized. Second, we question whether such a scheme would be profitable considering the timelines involved with purchasing a property at a judicial sale, evicting the prior owner, and finding a tenant versus the senior mortgage holder foreclosing the property and cutting off the flow of rental income. However, we acknowledge this is largely speculation because Appellants presented no evidence or arguments to the master regarding this hypothesis. Third, this concern is overestimated because the circumstances surrounding this type of sale are rare. Appellants willingly failed to participate in any proceedings until filing this motion to set aside the sale despite receiving notices of the proceedings and having the financial ability to timely satisfy the association dues or bid at the sale. *See Eldridge v. Eldridge*, 398 S.C. 113, 121, 728 S.E.2d 24, 28 (2012) ("Equity aids the vigilant, not those who slumber on their rights."). We believe it is rare for a homeowner to forego satisfying a "de minimis" junior encumbrance for several years, despite having the ability to pay, while continuing to pay the monthly mortgage payment. Finally, with regard to the idea that the law should redress the alleged injustice that may result from judicial sale buyers employing this rental scheme, we believe the legislature is better suited to address the concern.[3]

Finally, to the extent Appellants argue the master should have set aside the sale because other circumstances warranted the court's interference, the argument is unpreserved. *See Bloody Point*, 410 S.C. at 70, 762 S.E.2d at 733 (noting the court may set aside a judicial sale if the sale "is accompanied by other circumstances

---

[3] Whether we apply the Debt or Equity Method under these circumstances, the underlying issue of judicial sales taking place to satisfy junior encumbrances while leaving the property burdened by senior encumbrances will continue. The legislature may wish to consider remedying this issue by treating judicial sales to satisfy junior encumbrances similarly to tax sales, which extinguish mortgages and other liens provided the lienholders receive notice prior to the sale. *See Fed. Fin. Co. v. Hartley*, 380 S.C. 65, 70, 668 S.E.2d 410, 413 (2008) (recognizing a tax sale extinguishes a mortgage on real property); S.C. Code Ann. § 12-49-1180(A) (2014) (explaining the rights of a mortgagee, as long as the mortgagee complies with certain conditions, "are not affected by a tax sale and a deed of conveyance, unless" the tax collector provides the mortgagee with notice pursuant to section 12-49-1120 of the South Carolina Code (2014)).

warranting the interference of the court"). The master's order included a ruling only on whether to apply the Debt or Equity Method and whether the resulting percentage shocked the conscience. The master never ruled on whether other circumstances warranted the court's interference, and Appellants did not file a Rule 59(e) motion to alter or amend. As a result, this argument is unpreserved. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial [court] to be preserved for appellate review."). Thus, we affirm the master's ruling that Regime's bid did not shock the conscience.

WHETHER EQUITY DEMANDED THE MASTER SET ASIDE THE SALE

Appellants argue the master erred by failing to weigh the equitable maxims and principles that were essential to ruling on their motion to vacate the foreclosure sale. Specifically, Appellants assert they made an equitable argument during the hearing but "there [was] no record of an equitable consideration by the [master] or mention of the principles that the court considered in the [o]rder." Appellants further claim "there is no evidence" the master considered their equitable argument.

We find Appellants' arguments regarding equitable maxims unpreserved because they did not properly raise them to the master and the master did not rule on them. "It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial [court] to be preserved for appellate review." *Id*. Appellants failed to properly raise their equitable arguments to the master. During the hearing, Appellants asserted the master had "the ability in [his] gavel to do equity where perhaps equity should be done." Appellants failed to state any specific equitable maxims during the hearing. Appellants merely contended they were "hard working people" and "deserve[d]" the property. Appellants' arguments during the hearing were insufficient to properly raise the equitable arguments they now raise on appeal.

Additionally, the master failed to rule on any equitable argument in his order. The order addressed only whether the master should set aside the sale due to Regime's bid shocking the conscience. The master did not rule on any equitable argument. Indeed, Appellants admit as much in their brief by arguing "there is no evidence" the master considered their equitable argument. Based on Appellants' failure to

properly raise their equitable arguments and the master's failure to rule on them, we find Appellants' equitable arguments unpreserved.

CONCLUSION

Based on the foregoing, we affirm the master's ruling that the Debt Method is the proper method to account for a senior encumbrance and that Regime's bid did not shock the conscience. Finally, Appellants' equitable arguments are unpreserved.

AFFIRMED.

HUFF, J., concurs.

LOCKEMY, C.J., dissenting: I respectfully dissent. I agree with the majority that the mortgage should be taken into account when determining whether a bid at a judicial sale is so grossly inadequate it shocks the conscience. I would utilize the Equity Method as a better vehicle to determine whether a bid shocks the conscience.

As the majority concedes, this court has previously approved the use of the Equity Method to determine the adequacy of a successful bid during a judicial sale. *See Fed. Nat. Morg. Ass'n v. Brooks*, 304 S.C. 506, 510, 405 S.E.2d 604, 606 (Ct. App. 1991). While the majority correctly indicates the court in *Brooks* did not face the issue of which method to use to determine adequacy of the bid, the court based its analysis on the equity purchased at the foreclosure sale and the bid price for that equity. I believe the best course would be to continue to utilize this method, which seeks to encourage judicial sales while also being fair to property owners.

Furthermore, I believe this court's decision to analyze judicial sales utilizing the Equity Method is sound. A buyer at a judicial sale in which a senior lienholder is not a party takes the property subject to that lien, but the buyer is not responsible for its payment. The evidence in this case shows Appellants have continued to pay the mortgage for a home for which they have no title because they will suffer the severe consequences of default if they do not. The buyer has paid nothing. I do not believe it proper to give a judicial sale buyer credit for assuming a debt which it is not legally required to pay. *See* Restatement (Third) of Property (Mortgages) § 8.3 cmt. b (Am. Law Inst. 1997) ("Where the foreclosure is subject to senior liens, the amount of those liens must be subtracted from the unencumbered fair

market value of the real estate in determining the fair market value of the tittle being transferred by the foreclosure sale."). Such a rule could create a perverse circumstance where a judicial sale bidder purchases a property for a *de minimis* amount simply to capitalize on rental revenue until the senior lienholder forecloses its mortgage. The majority asserts this concern is overestimated and the circumstances of this case are rare. Whether rare or the impetus to create a business of judicial buyers seeking a windfall profit, in my view, the result is unjust. The law should provide an avenue of redress for this injustice. Adopting the Equity Method at least opens up that avenue for consideration by the courts.

The majority reasons the Debt Method is consistent with this state's policy of upholding judicial sales because "the Debt Method will result in fewer set asides." I agree with the majority that fewer sales will be set aside–in fact, I suggest virtually no sales will be set aside under these circumstances. Buyers need only bid a minimal amount and if a property is encumbered by a mortgage of at least 10% of the home's value, the bid is not subject to attack for being grossly inadequate. Our supreme court has determined that judicial sales must produce bids that are not grossly inadequate. *See e.g., Arrow Bonding Co. v. Warren*, 399 S.C. 603, 607-08, 732 S.E.2d 622, 624 (2012). The Debt Method threatens to swallow this rule for the sake of upholding judicial sales.

Finally, using the Equity Method, and recognizing our de novo standard of review, I would find the price paid was so inadequate as to shock the conscience. *See Stoney v. Stoney*, 421 S.C. 528, 530, 809 S.E.2d 59, 59 (2017) (reiterating the de novo standard of review of decisions by courts sitting in equity). I recognize the *Brooks* court found the 3.15% paid for the property in that case was "not so grossly inadequate as to shock the conscience." *Brooks*, 304 S.C. at 510, 405 S.E.2d at 606. This dicta from *Brooks* must be considered with holdings from recent cases of this court which have routinely held when a property is sold at a judicial sale for less than 10% of a property's actual value, the sales price shocks the court's conscience.[4] *See Bloody Point Prop. Owners Ass'n, Inc. v. Ashton*, 410 S.C. 62, 70, 762 S.E.2d 729, 734 (Ct. App. 2014); *E. Savings Bank, FSB v. Sanders*, 373

[4] While I applaud the majority in its attempt to uphold judicial sales, I cannot agree that any bid on a property which will remain subject to a senior encumbrance will be deemed not grossly inadequate. Under the majority's analysis, a bid for $1, combined with a mortgage of at least 3.24% of the value of the property would not be grossly inadequate. I simply cannot agree.

S.C. 349, 359, 644 S.E.2d 802, 807 (Ct. App. 2007). I believe the judicial sale buyer's winning bid, which amounts to 4.89% of the property's value, is so grossly inadequate, the judicial sale should be set aside. Therefore, I respectfully dissent.