OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 26
August 8, 2011
Daniel E. Shearouse, Clerk
Columbia, South Carolina
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THE STATE OF SOUTH CAROLINA
In The Supreme Court

Matrix Financial Services Corporation, Respondent,

v.

Louis M. Frazer, Linda S. Frazer, Matthew Kundinger, and Parks Grove Homeowners Association, Inc., Defendants,

of whom Matthew Kundinger is the Appellant.

Appeal from Greenville County
Charles B. Simmons, Jr., Master-in-Equity

Opinion No. 26859
Heard April 21, 2009 – Re-filed August 8, 2011

REVERSED

David Alan Wilson, of Horton Drawdy Ward & Jenkins, of Greenville, and Edward Scott Sanders, of Greenville, for Appellant.

Earle G. Prevost and Michael J. Giese, both of Leatherwood Walker Todd & Mann, of Greenville, for Respondent.

CHIEF JUSTICE TOAL: Matthew Kundinger (Appellant) enrolled a default judgment against Louis and Linda Frazer (the Frazers) before the Frazers closed a refinance mortgage with Matrix Financial Services Corporation (Matrix). In Matrix's foreclosure action, the master-in-equity granted Matrix equitable subrogation, giving the refinance mortgage priority over Appellant's judgment lien. We certified the case pursuant to Rule 204(b), SCACR, and reversed in *Matrix Financial Services Corp. v. Frazer*, No. 26859, 2010 WL 3219472 (S.C. Sup. Ct. Aug. 16, 2010). This Court granted a petition for rehearing and we now withdraw that opinion and substitute this opinion, which also reverses the master-in-equity's grant of equitable subrogation.

FACTS/PROCEDURAL BACKGROUND

In 1998, Appellant brought suit against the Frazers in California. In 2000, the Frazers moved to South Carolina, and defaulted in Appellant's California lawsuit.

In January 2001, the Frazers purchased a home in Greenville County. That mortgage was assigned to Matrix in June 2001. In September 2001, Matrix and the Frazers entered into a loan commitment to refinance the January 2001 mortgage. A title search was conducted on September 18, 2001. The parties closed the refinance loan on November 26, 2001, but the new mortgage was not recorded until April 3, 2002.

Meanwhile, on September 4, 2001, Appellant obtained a default judgment against the Frazers in California, and enrolled that judgment in Greenville County on October 31, 2001.

The Frazers filed bankruptcy, and Matrix sought to foreclose its November 2001 refinance mortgage. Appellant counterclaimed, alleging his judgment had priority over Matrix's mortgage because it had been recorded first. Matrix, attempting to gain the primary priority position, then sought to have the refinance mortgage equitably subrogated to the rights of the January 2001 mortgage. The master-in-equity granted Matrix's request, and Appellant appeals that order.

ISSUES

I. Did the master-in-equity err in granting Matrix equitable subrogation to the rights of the January 2001 mortgage, giving Matrix priority over Appellant's judgment lien?

II. Does the doctrine of unclean hands prevent Matrix from receiving the remedy of equitable subrogation?

ANALYSIS

I. Equitable Subrogation

Appellant argues the master-in-equity erred in holding Matrix was entitled to equitable subrogation. We agree.

The requirements a mortgagee must meet to qualify for equitable subrogation are: (1) the party claiming subrogation has paid the debt; (2) the party was not a volunteer, but had a direct interest in the discharge of the debt or lien; (3) the party was secondarily liable for the debt or for the discharge of the lien; (4) no injustice will be done to the other party by the allowance of equitable subrogation; and (5) the party asserting the doctrine did not have actual notice of the prior mortgage. *Dedes v. Strickland*, 307 S.C. 155, 158, 414 S.E.2d 134, 136 (1992).

In *Dedes*, a bank refinanced its initial mortgage and sought to be equitably subrogated to the rights of that mortgage to gain priority over the

rights of an intervening mortgagee. The Court held that the bank could not meet the elements of equitable subrogation because it merely paid "itself [the] outstanding debt by refinancing the balance owed" and had no "direct interest necessitating discharge of the debt . . . ." *Id.* at 159, 414 S.E.2d at 136. The Court further stated, "The record is silent as to what secondary liability [the bank] could have had for [the mortgagor's] debt secured by its own first mortgage lien." *Id.* While the *Dedes* Court appears to have conflated the requirements of secondary liability and a direct interest in discharging the debt,[1] the heart of its reasoning was that the bank could not be subrogated to the rights of its own prior mortgage. This conclusion comports with the general view that equitable subrogation contemplates a third party satisfying the original mortgage, not the same party to whom the original debt is owed. *See* Restatement (Third) of Property (Mortgages) § 7.6 cmt. e (1995) ("Obviously subrogation cannot be involved unless the second loan is made by a different lender than the holder of the first mortgage; one cannot be subrogated to one's own previous mortgage."); Black's Law Dictionary (9th ed. 2009) ("Subrogation: The substitution of one party for another whose debt the party pays, entitling the paying party to rights, remedies, or securities that would otherwise belong to the debtor.").

Thus, equitable subrogation is simply not a remedy available to a lender that refinances the original debt owed to it. This seems to yield the

[1] The logic surrounding the elements of secondary liability and direct interest has been tortured in our case law because the current definition does not distinguish between a party who pays off the prior debt and a party who advances funds to the debtor for the purpose of paying off the prior debt. Judge Howard's concurrence in *Dodge City of Spartanburg, Inc. v. Jones*, 317 S.C. 491, 454 S.E.2d 918 (Ct. App. 1995), explains the difficulties our courts have encountered concerning this issue. While we disagree with Judge Howard's conclusion that the lender in *Dodge City* could receive equitable subrogation when it refinanced the debt already owed to it, we agree with his analysis that a lender who either pays the debt itself or provides the debtor funds with the understanding the debtor will satisfy the obligation may seek equitable subrogation.

proper result, as opposed to the mangled logic that comes about when reasoning that a lender refinancing the original debt owed to it cannot prove secondary liability or a direct interest in discharging the debt. Matrix is not asserting priority under a theory of replacement and modification. Matrix expressly pled equitable subrogation in its reply to Appellant's counterclaim. Both *Dedes*, controlling South Carolina precedent, and section 7.6 of the Restatement stand for the proposition that a lender that refinances its own debt is not entitled to equitable subrogation. We do not decide whether a lender that refinances its own debt could attain priority under the theory of replacement and modification illustrated in section 7.3 of the Restatement (Third) of Property (Mortgages).

II. Unclean Hands

Appellant also argues Matrix is not entitled to an equitable remedy because it closed the refinance loan unlawfully, and thus has unclean hands. We do not believe the doctrine of unclean hands is the appropriate basis for resolution of this case. However, we do agree that even if Matrix met the requirements for equitable subrogation, Matrix would be precluded from receiving that remedy because of its unauthorized practice of law.

All real estate and mortgage loan closings must be supervised by an attorney. *Doe v. McMaster*, 355 S.C. 306, 585 S.E.2d 773 (2003); *State v. Buyers Serv. Co.*, 292 S.C. 426, 357 S.E.2d 15 (1987). Performing a title search, preparing title and loan documents, and closing a loan without the supervision of an attorney constitutes the unauthorized practice of law. *Buyers Serv.*, 292 S.C. at 430–34, 357 S.E.2d at 17–19.

In *Wachovia Bank v. Coffey*, 398 S.C. 76, 698 S.E.2d 244 (Ct. App. 2010), Wachovia closed a home equity loan without the supervision of an attorney and later instituted foreclosure proceedings. Our court of appeals held that Wachovia, having committed the unauthorized practice of law in closing the loan without attorney supervision, came to the court with unclean hands and thus was barred from seeking equitable relief. In so holding, the court of appeals said:

> The unauthorized practice of law is inherently prejudicial to not only the parties involved in the instant transaction but also to the public at large for the reason so cogently stated in *Buyers*:
>
> > The reason preparation of instruments by lay persons must be held to constitute the unauthorized practice of law is not for the economic protection of the legal profession. Rather, it is for the protection of the public from the potentially severe economic and emotional consequences which may flow from erroneous advice given by persons untrained in the law.

Coffey, 389 S.C. at 76, 698 S.E.2d at 248 (*citing State v. Buyers Serv. Co.*, 292 S.C. 426, 431, 357 S.E.2d 15, 18 (1987)).

Similarly, in this case Matrix hired LandAmerica OneStop to perform the title search, prepare the documents, and close the refinance loan—all admittedly without the supervision of a licensed attorney. Thus, Matrix committed the unauthorized practice of law in closing the refinance mortgage, clearly violating South Carolina law.[2] Matrix now comes to this

[2] *Buyers Service* established in 1987 that attorney supervision is required for the four steps in the residential real estate loan and mortgage process: preparation of deeds, notes, and other instruments; preparation of title abstracts; the closing; and recording the instruments. 292 S.C. at 430–34, 357 S.E.2d at 17–19. No language, analysis, or discussion in *Buyers Service* indicates the Court intended to limit the holding to purchase money mortgages. In *Doe v. McMaster*, the petitioner suggested to the Court that *Buyers Service*'s holding did not apply because the buyer and lender were refinancing an existing mortgage rather than purchasing new property. 355 S.C. at 312, 585 S.E.2d at 776. The Court said, "This distinction is without significance" because "[i]n refinancing a real estate mortgage the four steps in the initial purchase still exist." *Id.* *Doe v. McMaster* did not change the landscape regarding refinance loans, but simply stated the existing law.

Court, seeking equitable relief, based upon a mortgage contract it entered into in violation of the laws of this state.

This Court has previously held the presence of attorneys in real estate loan closings is for the protection of the public and that "protection of the public is of paramount concern" in loan closings. *Buyers Serv.*, 292 S.C. at 433, 357 S.E.2d at 19. Enforcing this requirement will come as no surprise to any lender. Lenders cannot ignore established laws of this state and yet expect this Court to overlook their unlawful disregard. We take this opportunity to definitively state that a lender may not enjoy the benefit of equitable remedies when that lender failed to have attorney supervision during the loan process as required by our law. We apply this ruling to all filing dates after the issuance of this opinion.

CONCLUSION

For the above reasons, we hold Matrix is not entitled to equitable subrogation. The master-in-equity's order is

REVERSED.

BEATTY, J., and Acting Justice John H. Waller, Jr., concur. KITTREDGE, J., concurring in result in a separate opinion. PLEICONES, J., dissenting in a separate opinion.

JUSTICE KITTREDGE: I concur in result. I join Chief Justice Toal and vote to reverse due to Matrix's unauthorized practice of law. I would not reach the issue of whether Matrix otherwise satisfied the requirements of equitable subrogation. Concerning the majority's broader holding voiding a real estate mortgage secured through the unauthorized practice of law, I join today's result because of its prospective-only application.

JUSTICE PLEICONES: I respectfully dissent. I would affirm the master's order equitably subrogating Matrix's refinanced mortgage to its original mortgage, and would not impose the draconian remedy of denying equitable relief to lenders who "fail[…]to have attorney supervision during the loan process as required by law."

A. Equitable Subrogation

Equitable subrogation is a remedy favored by the courts, and it is to be liberally and expansively applied. So. Bank and Trust Co. v. Harrison Sales Co., Inc., 285 S.C. 50, 328 S.E.2d 60 (1985). The doctrine:

> is founded on the fictional premise that an obligation extinguished by a payment made by a third person is to be treated as still subsisting for the benefit of such third person, whereby he is substituted to the rights of the creditor when he has made such payment.
>
> St. Paul – Mercury Indem. Co. v. Donaldson, 225 S.C. 476, 83 S.E.2d 159 (1954) citing Aetna Life Ins. Co. of Hartford v. Town of Middleport, 124 U.S. 534 (1888).

"The purpose of subrogation is to prevent a junior lien holder from converting the mistake of the lender into a magical gift for himself." United States v. Baron, 996 F.2d. 25 (2nd Cir. 1993) (internal citation omitted).

It appears that the majority would agree with me that a refinancer has a right to lien priority, if that refinancer uses the theory of "replacement and modification" rather than equitable subrogation. Heretofore, South Carolina has used the doctrine of equitable subrogation to restore a refinancer's lien to priority, and I would not reverse this order because it used this theory rather than the newly announced "replacement and modification" rule.

In 1927, this Court held that a lender who pays the original mortgage itself, or furnishes money to the mortgagor to pay off an existing mortgage,

pursuant to an agreement by which the lender will give a new mortgage, has the equitable right to be subrogated to the paid-off mortgage. Enterprise Bank v. Fed. Land Bank, 139 S.C. 397, 138 S.E. 146 (1927). In this situation, the lender furnishing the money is not a volunteer, and becomes secondarily liable for the discharge of the first mortgage under the instruments creating the new mortgage which require the satisfaction of the first mortgage as a condition of the giving of the second. Id.;[3] see also James v. Martin, 150 S.C. 75, 147 S.E. 752 (1929) (applying Enterprise Bank and quoting: "One satisfying a lien note at the request of the property owner, upon the understanding that he is to have new security upon the property released, acting in ignorance of a second mortgage lien upon the property, although it is on record, is entitled to subrogation to the rights of the first lien holder").

As the Washington Supreme Court explained, several considerations support a rule that, absent material prejudice to a junior lienholder, equitable subrogation should be automatically available to a mortgage refinancer who can show it expected to have first priority:

1) Equitable subrogation preserves priorities by keeping mortgages and other liens in their proper recordation order;

2) Equitable subrogation accomplishes substantial justice and rests on the maxim that no one (here, the junior lienholder) should be enriched by another's loss;

3) Facilitating refinancing helps prevent foreclosures; and

[3] It appears that the lender in Dedes v. Strickland, 307 S.C. 155, 414 S.E.2d 134 (1992) was denied equitable subrogation because it failed to present evidence that its refinancing was conditioned upon the repayment of the first loan. Id. at 159, 414 S.E.2d at 136.

4) A liberal equitable subrogation policy reduces title insurance premiums.[4]

Bank of America v. Prestance Corp., 160 Wash. 2d 560, 160 P.3d 17 (2007).

The majority would punish the respondent in this case for failing to anticipate the majority's decision to alter the theory under which respondent pled, proved, and obtained the result it sought below. I would affirm the master's decision to equitably subrogate Matrix's second mortgage to its first, a result which is consistent with both our existing law and sound public policy. Cf. Rule 220(c), SCACR (court may affirm for any reason appearing in the record).

B. Unclean Hands

The majority also would expand the relief afforded by the Court of Appeals to a mortgagor who has been the "victim of the unauthorized practice of law" to all lienholders of that mortgagor. See Wachovia Bank v. Coffey, 398 S.C. 76, 698 S.E.2d 244 (Ct. App. 2010) *cert. pending* (mortgagee cannot foreclose mortgage where loan closed without attorney supervision); compare Hambrick v. GMAC Mort. Corp., 370 S.C. 118, 634 S.E.2d 5 (Ct. App. 2006) *cert. dismissed* April 5, 2007 (mortgagor has no private right of action against mortgagee for the unauthorized practice of law). The purpose of equitable subrogation/replacement and modification is to prevent a windfall to a junior lienholder. I cannot square the policy underlying this purpose with the Court's proclamation that refusing equitable relief to "bad" lenders will somehow protect the public at loan closings. I see only detriment to the borrowing public[5] and a windfall to junior lienholders in

[4] Citing Nelson & Whitman, *Adopting Restatement Mortgage Subrogation Principles: Saving Billions of Dollars for Refinancing Homeowners*, 2006 BYU L.Rev. 305.

[5] I suspect that many mortgagees, denied hope of equitable relief, including the ability to foreclose if an attorney should fail to supervise any of the acts required of him in a loan closing, will choose not to do business in South

this decision which would deny all equitable relief to any "lender who fail[s] to have attorney supervision during the loan process as required by our law…[in] all filing dates[6] after the issuance of this opinion."

CONCLUSION

I respectfully dissent and would affirm the Master's order.

Carolina, or choose to increase fees to cover potential unrecoverable liabilities.

[6] I am unsure what filing date the majority is referring to in this passage.

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Jody Vavra Bentley, Respondent.

Opinion No. 27019
Submitted July 12, 2011 – Filed August 8, 2011

DEFINITE SUSPENSION

Lesley M. Coggiola, Disciplinary Counsel, Sabrina C. Todd, Assistant Disciplinary Counsel, both of Columbia, for Office of Disciplinary Counsel.

Harvey MacLure Watson, III, of Ballard, Watson & Weissenstein, of West Columbia, for respondent.

PER CURIAM: In this attorney disciplinary matter, the Office of Disciplinary Counsel (ODC) and respondent have entered into an Agreement for Discipline by Consent (Agreement) pursuant to Rule 21, RLDE, Rule 413, SCACR. In the Agreement, respondent admits misconduct and consents to the imposition of a definite suspension not to exceed two (2) years. See Rule 7(b), RLDE, Rule 413, SCACR. She requests the suspension be made retroactive to the

date of her interim suspension.[1] We accept the Agreement and impose a definite suspension of two years, retroactive to the date of respondent's interim suspension. The facts, as set forth in the Agreement, are as follows.

FACTS

Respondent was admitted to the South Carolina Bar in 1989. For most of her career, respondent was a sole practitioner. In September 2008, respondent was diagnosed with breast cancer. She underwent treatment, including chemotherapy, surgery, and radiation.

Matter I

In May 2005, Complainant A hired respondent to pursue her claims arising from an automobile accident. Respondent did not keep Complainant A adequately informed about the status and progress of her case and failed to adequately respond to her reasonable requests for information.

In December 2008, Complainant A began trying to reach respondent by telephoning her office. At that time Complainant A had not heard from respondent since October 2008. As of February 2, 2009, the date of Complainant A's letter to ODC, respondent had not responded to any of Complainant A's telephone calls. Respondent had closed her office as a result of her health problems, but did not give proper notice to Complainant A or take steps to protect her interests.

Although respondent did respond to ODC's initial inquiry, she submitted her response more than one month after it was due. After her initial response, she did not respond to further inquiries from ODC regarding the complaint or otherwise cooperate with ODC's investigation. Her telephone number on file with the South Carolina

[1] Respondent was placed on interim suspension on September 18, 2009. In the Matter of Bentley, 384 S.C. 538, 683 S.E.2d 477 (2009).

Bar was disconnected. All of ODC's certified mail regarding this matter was returned unclaimed.

Matter II

Respondent represented several individuals injured in an automobile accident. She failed to keep her clients adequately informed of the status and progress of their case. In her initial response to the complaint in this matter, respondent indicated her clients' case was expected to be called for trial soon, but noted she was under an order of protection because of her medical condition. She indicated that, because of her medical problems, she intended to refer her clients to new counsel.

Sometime after her response in this matter, respondent closed her law office. However, she did not refer her clients to new counsel and stopped communicating with opposing counsel and the court. Further, respondent stopped communicating with ODC and stopped cooperating with its investigation into this matter.

Matter III

Respondent failed to maintain adequate and accurate records of the funds she held in her trust account. She also commingled her personal funds with those she was holding in trust by failing to timely remove earned fees and expended costs from the account.

Respondent represents she failed to timely remove these funds because of her mistaken belief that a minimum account balance was required to avoid monthly fees. Because of respondent's inadequate financial recordkeeping and her commingling of funds, she was unable to identify the owner(s) of more than $5,500 in her trust account at the time she was placed on interim suspension.

LAW

Respondent admits that her misconduct constitutes grounds for discipline under Rule 413, RLDE, specifically Rule 7(a)(1) (it shall be ground for discipline for lawyer to violate Rules of Professional Conduct or any other rules of this jurisdiction regarding professional conduct of lawyers) and Rule 7(a)(3) (it shall be ground for discipline for lawyer to knowingly fail to respond to a lawful demand for information from a disciplinary authority). In addition, respondent admits she has violated the following provisions of the Rules of Professional Conduct, Rule 407, SCACR: Rule 1.1 (lawyer shall provide competent representation to client); Rule 1.2 (lawyer shall consult with client about objectives of representation); Rule 1.3 (lawyer shall act with reasonable diligence and promptness in representing a client); Rule 1.4 (lawyer shall keep client reasonably informed about status of a matter, promptly comply with reasonable requests for information, and explain matter to extent reasonably necessary to permit client to make informed decisions regarding the representation); Rule 1.15(a) (lawyer shall hold client funds separately from lawyer's own funds); Rule 1.16 (upon termination of representation, lawyer shall take steps to the extent reasonably practicable to protect client's interests, including reasonable notice to client); Rule 8.1(b) (lawyer shall not knowingly fail to respond to lawful demand for information from disciplinary authority); and Rule 8.4(a) (it is professional misconduct for lawyer to violate the Rules of Professional Conduct). Respondent further admits she violated the recordkeeping provisions of Rule 417, SCACR.

CONCLUSION

We accept the Agreement for Discipline by Consent and impose a definite suspension of two years, retroactive to the date of respondent's interim suspension. Within fifteen days of the date of this opinion, respondent shall file an affidavit with the Clerk of Court showing that she has complied with Rule 30, RLDE, Rule 413, SCACR.

DEFINITE SUSPENSION.

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

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of L.A. "Smokey" Brown, Jr.,

Respondent.

Opinion No. 27020
Submitted July 11, 2011 – Filed August 8, 2011

PUBLIC REPRIMAND

Lesley M. Coggiola, Disciplinary Counsel, and Sabrina C. Todd, Assistant Disciplinary Counsel, both of Columbia, for Office of Disciplinary Counsel.

J. Preston Strom, Jr., of Strom Law Firm, LLC, of Columbia, for respondent.

PER CURIAM: The Office of Disciplinary Counsel (ODC) and respondent have entered into an Agreement for Discipline by Consent pursuant to Rule 21, RLDE, Rule 413, SCACR, in which respondent admits misconduct and agrees to the imposition of either an admonition or public reprimand. We accept the agreement and issue a public reprimand. The facts, as set forth in the agreement, are as follows.

FACTS

From December 2003 through early September 2004, respondent conducted numerous closings involving Johnny Hoy. On

more than twelve occasions Hoy purchased a parcel of land and, in a back-to-back transaction, sold the parcel and a mobile home on it to another purchaser. In these back-to-back transactions, Hoy financed his purchase of the parcel with the proceeds of his sale of the parcel and mobile home. The individuals who purchased the properties from Hoy secured financing though Branch Banking & Trust (BB&T).

Respondent's contact at BB&T was loan officer Robert Byron Green. Respondent used the instructions Green provided for completing the HUD-1 settlement statements. The settlement statements respondent submitted to BB&T failed to reflect that Hoy used the proceeds he received from his sale of each parcel and mobile home to fund his purchase of the parcel. Additionally, the settlement statements for Hoy's sale of the properties indicated the purchasers made substantial down payments to Hoy outside of closing. Respondent notes that Green advised him that BB&T would not review the HUD-1 settlement statements prior to closing and that BB&T was aware of the back-to-back transactions.

In June 2004, respondent had his office staff attend a South Carolina Bar seminar where they learned they should be on the lookout for closings like the Hoy back-to-back closings. On July 20, 2004, the Court issued In the Matter of Barbare, 360 S.C. 560, 602 S.E.2d 382 (2004), which addressed the importance of ensuring that HUD-1 statements submitted to lenders accurately reflect the transactions of the buyer, seller, and lender. After learning of the Barbare decision, respondent immediately changed all closings involving Hoy and began requiring Hoy to bring certified funds to the closings where he was purchasing properties. In early September 2004, Hoy stopped using respondent's services.

Hoy, Green, and several others were indicted by a federal grand jury for one count of conspiracy to commit bank fraud and thirty-nine counts of making (and aiding and abetting each other in making) false statements to BB&T, a federally insured financial institution. The superseding indictment explained that Hoy, Green and the other defendants conspired with each other to deceive BB&T as to the credit-

worthiness of certain mortgage loan applicants. Some of the properties on which respondent had conducted the back-to-back closings were identified in the superseding indictment.

LAW

Respondent admits that, by his misconduct, he has violated the Rules of Professional Conduct, Rule 407, SCACR, particularly Rule 1.16(a)(1) (lawyer shall not represent client where representation will result in violation of Rules of Professional Conduct or other law), Rule 4.1(a) (in course of representing client, lawyer shall not knowingly make false statement of material fact to third person), Rule 8.4(a) (it is professional misconduct for lawyer to violate the Rules of Professional Conduct), Rule 8.4(d) (it is professional misconduct for lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation), and Rule 8.4(e) (it is professional misconduct for lawyer to engage in conduct that is prejudicial to the administration of justice). Respondent acknowledges that his misconduct constitutes grounds for discipline under the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR, specifically Rule 7(a)(1) (it shall be ground for discipline for lawyer to violate Rules of Professional Conduct).

CONCLUSION

We find that respondent's misconduct warrants a public reprimand. Accordingly, we accept the Agreement for Discipline by Consent and publicly reprimand respondent for his misconduct.

PUBLIC REPRIMAND.

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

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Joseph P. Cerato,

Respondent.

Opinion No. 27021
Submitted July 11, 2011 – Filed August 8, 2011

PUBLIC REPRIMAND

Lesley M. Coggiola, Disciplinary Counsel, and Sabrina C. Todd, Assistant Disciplinary Counsel, both of Columbia, for Office of Disciplinary Counsel.

Harvey MacLure Watson, III, Ballard, Watson, & Weissenstein, of West Columbia, for respondent.

PER CURIAM: The Office of Disciplinary Counsel (ODC) and respondent have entered into an Agreement for Discipline by Consent pursuant to Rule 21, RLDE, Rule 413, SCACR, in which respondent admits misconduct and agrees to the imposition of either an admonition or public reprimand with the following conditions: 1) within twenty days of the imposition of discipline, respondent will read and require each of his employees to read the South Carolina Notary Public manual published by the South Carolina Secretary of State; 2) within one year of the imposition of discipline, respondent will complete the Ethics School portion of the South Carolina Bar's Legal Ethics and Practice Program at his own expense; and 3) within thirty days of imposition of discipline, respondent will pay the costs incurred

in the investigation and prosecution of this matter by ODC and the Commission on Lawyer Conduct (the Commission). We accept the agreement, issue a public reprimand, and impose the three conditions stated above. The facts, as set forth in the agreement, are as follows.

FACTS

Respondent submitted seven affidavits to the family court on behalf of a client at a temporary hearing and provided opposing counsel with copies of the documents. Respondent had notarized each statement, indicating the affiants had personally appeared before him. However, he had not personally witnessed any of the affiants sign or affirm the statements.

Respondent explains he asked his client to provide the names of possible witnesses on contested issues and his client responded by delivering numerous signed statements to respondent. None of the statements were notarized and respondent submits he believed he could notarize each statement if he verified its content as well as the authenticity of the signature with the witness. Further, respondent submits he believed it would be proper for him to do this over the telephone. Respondent maintains he spoke by telephone with the individual affiants for six of the seven statements, however, two of these individuals do not recall speaking with respondent about their statements.

The seventh statement, purportedly of the dentist who treated the couple's children, presented the client as an active participant in the children's dental care and appointments. Regarding this statement, respondent maintains he spoke with the dentist's assistant by telephone and she confirmed the dentist had signed the statement.

A few days after the temporary hearing, however, opposing counsel informed respondent that the dentist had not signed the statement. When respondent explained his notarization process, opposing counsel advised him that the procedure was improper.

Respondent immediately researched the matter and confirmed the procedure he used was improper. In a letter confirming the conversation with respondent, opposing counsel noted respondent's genuine surprise upon learning of the impropriety of the procedure he had used as well as respondent's reputation for honesty among the local bar.

In a letter to the family court, respondent withdrew the affidavits he submitted at the temporary hearing, explained the procedure he had used for notarizing the documents, and provided an affidavit that opposing counsel had secured from the dentist. In this affidavit, the dentist denied previously signing any affidavit in the case and stated he did not know or recall whether respondent's client had been present during his children's dental appointments. It has since been discovered that the dentist's assistant signed the statement originally attributed to the dentist. The dentist's assistant does not recall speaking with respondent about the statement.

LAW

Respondent admits that, by his misconduct, he has violated the Rules of Professional Conduct, Rule 407, SCACR, particularly Rule 3.3 (lawyer shall not knowingly make false statement of fact to tribunal), Rule 3.4 (lawyer shall act with fairness to opposing party and counsel), Rule 8.4(a) (it is professional misconduct for lawyer to violate Rules of Professional Conduct), and Rule 8.4(d) (it is professional misconduct for lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation). Respondent acknowledges that his misconduct constitutes grounds for discipline under the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR, specifically Rule 7(a)(1) (it shall be ground for discipline for lawyer to violate Rules of Professional Conduct).

CONCLUSION

We find that respondent’s misconduct warrants a public reprimand. In addition, respondent shall: 1) read and require each of

his employees to read the South Carolina Notary Public manual published by the South Carolina Secretary of State within twenty days of the date of this opinion and provide timely proof of completion of this requirement to the Commission; 2) complete the Ethics School portion of the South Carolina Bar's Legal Ethics and Practice Program at his own expense within one year of the imposition of discipline and provide timely proof of completion of this requirement to the Commission; and 3) pay the costs incurred in the investigation and prosecution of this matter by ODC and the Commission within thirty days of the date of this opinion. Accordingly, we accept the Agreement for Discipline by Consent and publicly reprimand respondent for his misconduct.

PUBLIC REPRIMAND.

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

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Tammie Lynn Hoffman, Respondent.

Opinion No. 27022
Submitted July 7, 2011 – Filed August 8, 2011

DEFINITE SUSPENSION

Lesley M. Coggiola, Disciplinary Counsel, and Sabrina C. Todd, Assistant Disciplinary Counsel, both of Columbia, for Office of Disciplinary Counsel.

Tammie Lynn Hoffman, of North Charleston, pro se.

PER CURIAM: In this attorney disciplinary matter, the Office of Disciplinary Counsel (ODC) and respondent have entered into an Agreement for Discipline by Consent (Agreement) pursuant to Rule 21, RLDE, Rule 413, SCACR. In the Agreement, respondent admits misconduct and consents to the imposition of a public reprimand or definite suspension not to exceed two (2) years. In addition, she agrees to complete the South Carolina Bar's Legal Ethics and Practice Program Ethics School and Trust Account School within one (1) year of the issuance of a sanction and before filing a Petition for Reinstatement, if a suspension is imposed. Respondent also agrees to pay the costs incurred by ODC and the Commission on Lawyer

Conduct (the Commission) in the investigation and prosecution of this matter. We accept the Agreement and impose a definite suspension of two (2) years, order respondent to complete the South Carolina Bar's Legal Ethics and Practice Program Ethics School and Trust Account School within one (1) year of the date of this opinion and before filing a Petition for Reinstatement, and direct respondent to pay the costs incurred by ODC and the Commission in the investigation and prosecution of this matter. The facts, as set forth in the Agreement, are as follows.

FACTS

Matter I

Respondent represented Client A, a veteran, in a disability appeal before the United States Court of Appeals for Veterans Claims. She failed to respond to three orders of the Court and, as a result, the appeal was dismissed.

Respondent maintains she had not heard from Client A for an extended period of time and he was not responding to her letters. She did not, however, move to be relieved or ask the Court to hold the appeal in abeyance.

Client A asserts he did not receive respondent's letters and, although he was in a coma during a portion of the representation, his family was available to respond to respondent. Respondent failed to notify Client A that his appeal had been dismissed.

Matter II

Respondent represented Client B, another veteran, in a disability appeal before the United States Court of Appeals for Veterans Claims. Respondent failed to comply with the Court's rules in several respects and, when she failed to correct these deficiencies, the Court dismissed the appeal.

Respondent asserts she failed to respond to some Court directives and orders because the Clerk's Office sent mail to her at an old address and, later, to an incomplete address. Respondent was aware of the communication problem and asserts she notified the Clerk's Office by telephone. However, when the problem continued, rather than notifying the Clerk's Office of the problem in writing, she relied on updates from Client B and sporadic reviews of the Court's docketing system to keep track of the progress of the appeal.

After learning of the dismissal, respondent moved to reinstate the appeal. The Court held respondent's motion in abeyance pending her compliance with Court rules. Respondent failed to fully comply with the Court's rules and the Court issued a final order dismissing the appeal. Thereafter, the Court received and rejected respondent's brief. Respondent failed to inform Client B that his appeal had been dismissed.

Additionally, although respondent advised the Court that she represented Client B pro bono, she admits Client B paid her $100.00. Respondent issued a refund check to Client B during ODC's investigation, but he declined to cash the check.

Matter III

Client C hired respondent to handle an estate. During the representation, the estate sold two residential rental properties. The first sale netted proceeds totaling $95,585.51 which the closing attorney disbursed to respondent as attorney for the estate. Rather than deposit the proceeds into her trust account as required by Rule 417(b)(1), SCACR, respondent deposited $88,585.51 into her trust account and took the remaining $7,000 in cash. She maintains she intended to use the cash to purchase certified funds to pay the estate's creditors. Instead, however, she issued checks on the trust account to pay the estate's creditors.

After paying the estate's creditors, respondent was holding $81,375.99 in her trust account and the $7,000 she had not deposited

into the trust account. Several months later, the balance in respondent's trust account was $47,858.59. Respondent explains that, in addition to paying the estate's creditors, she paid herself $17,000 in legal fees and an additional $12,000 in error. Respondent is unable to account for the remaining $4,517.40 missing from the trust account.

The estate's second property was sold for substantially less than the mortgage balance and, as a result, respondent was required to transfer $64,916.76 to the attorney who closed that transaction. In the ten days before the transfer, respondent deposited $25,500 into her trust account in four deposits. These funds were from personal sources and were not associated with any client or third party for whom respondent was holding money in trust.

When respondent issued her final billing statement to Client C, it did not reflect any payments she had made to herself, the $7,000 she failed to deposit, or a $400 payment Client C made to her at the onset of representation.

During the investigation of this matter, ODC issued a subpoena for respondent's financial records maintained pursuant to Rule 417, SCACR. Although respondent provided multiple responses to the subpoena, the records were incomplete. She was unable to produce a complete copy of her receipt and disbursement journal, copies of her check stubs, records of her deposits, client ledgers, or reconciliation reports for the period of time she held funds for the estate. Respondent also failed to retain copies of the invoices she contends she regularly provided to Client C in accordance with the fee agreement. Further, although Client C requested an accounting of the funds held by respondent, respondent was unable to demonstrate that she ever provided Client C an accounting of the funds held in trust.

Additionally, a review of available trust account records revealed that, on at least one occasion, respondent withdrew funds from her account for her fees in cash and without identifying the representation associated with the fees. Respondent also issued checks

in connection with real estate matters her office handled without identifying the specific property involved.

LAW

Respondent admits that her misconduct constitutes grounds for discipline under Rule 413, RLDE, specifically Rule 7(a)(1) (lawyer shall not violate Rules of Professional Conduct or any other rules of this jurisdiction regarding professional conduct of lawyers) and Rule 7(a)(5) (lawyer shall not engage in conduct tending to pollute the administration of justice or to bring the courts or the legal profession into disrepute or conduct demonstrating an unfitness to practice law). In addition, respondent admits she has violated the following provisions of the Rules of Professional Conduct, Rule 407, SCACR: Rule 1.1 (lawyer shall provide competent representation to client); Rule 1.3 (lawyer shall act with reasonable diligence and promptness in representing a client); Rule 1.4 (lawyer shall keep client reasonably informed about status of a matter, promptly comply with reasonable requests for information, and explain matter to extent reasonably necessary to permit client to make informed decisions regarding the representation); Rule 1.15 (a) (lawyer shall hold property of clients that is in lawyer's possession in connection with a representation separate from lawyer's own property; complete records of such account funds and other property shall be kept by lawyer and shall be preserved for a period of six years after termination of the representation; lawyer shall comply with Rule 417, SCACR); Rule 1.15(d) (upon request by client, lawyer shall promptly render a full accounting regarding funds held by lawyer for client); Rule 3.3 (lawyer shall not knowingly make false statement of fact to tribunal); Rule 8.4(d) (it is professional misconduct for lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation); and Rule 8.4(e) (it is professional misconduct for lawyer to engage in conduct that is prejudicial to the administration of justice). Respondent further admits she failed to comply with the financial recordkeeping, depository, and withdrawal requirements imposed by Rule 417, SCACR.

CONCLUSION

We accept the Agreement for Discipline by Consent and impose a definite suspension of two (2) years. Within one (1) year of the date of this opinion and before she files a Petition for Reinstatement, respondent shall complete the South Carolina Bar's Legal Ethics and Practice Program Ethics School and Trust Account School Within thirty (30) days of the date of this opinion, respondent shall pay the costs incurred by ODC and the Commission in the investigation and prosecution of this matter. Within fifteen (15) days of the date of this opinion, respondent shall file an affidavit with the Clerk of Court showing that she has complied with Rule 30, RLDE, Rule 413, SCACR.

DEFINITE SUSPENSION.

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

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Municipal Court
Judge Sheryl Polk McKinney, Respondent.

Opinion No. 27023
Submitted July 20, 2011 - Filed August 8, 2011

DEFINITE SUSPENSION

Lesley M. Coggiola, Disciplinary Counsel, and Joseph P. Turner, Jr., Assistant Attorney General, both of Columbia, for Office of Disciplinary Counsel.

Richard Alexander Murdaugh, of Hampton, for respondent.

PER CURIAM: In this judicial disciplinary matter, the Office of Disciplinary Counsel (ODC) and respondent have entered into an Agreement for Discipline by Consent pursuant to Rule 21, RJDE, Rule 502, SCACR. In the agreement, respondent admits misconduct and consents to the imposition of a public reprimand or a definite suspension not to exceed thirty (30) days pursuant to Rule 7(b), RJDE, Rule 502, SCACR. We accept the agreement and impose a thirty (30) day suspension. The facts as set forth in the agreement are as follows.

FACTS

Respondent's sister, who was the Clerk of the Town of Varnville, was arrested and charged with embezzlement of public funds, forgery, and misconduct in office. Respondent's sister was accused of issuing checks in respondent's name, forging respondent's name to the checks, and converting the money for her personal use over an eight year period.

The South Carolina Law Enforcement Division (SLED) determined that respondent was not involved in any of the alleged misconduct in office involving her sister. There is no allegation or evidence that respondent was even aware of the alleged conduct leading to her sister's charges.

In the course of its investigation, SLED discovered checks made payable to respondent from the Varnville Police Department Victim's Assistance Fund and endorsed by respondent. These checks were from the Varnville Police Department and approved by the Chief of Police who wanted to supplement respondent's salary for extra work she performed after hours.[1] ODC has confirmed that the Chief of Police had approved the checks.

Respondent reports that her sister gave her the checks at the Clerk's Office and that she, in turn, endorsed the checks, and thereafter, respondent's sister gave her cash from the Clerk's Office. Respondent submits she was unaware that the funds came from a Victim's Assistance Fund as she just endorsed the checks and received the cash. ODC found no evidence that respondent ever took possession of the checks and can confirm that she never deposited them into her personal account. Respondent acknowledges that she was aware that the funds were from the Varnville Police Department, but she believed they were

[1] Respondent is a part-time judge who initially was paid $100 per month and is now paid $250 per month.

being provided to the town so that the town was actually supplementing her salary.

From 2002 until 2006, respondent received 43 checks totaling $4,890.00. The checks ranged from $50.00 to $200.00. Respondent submits she was unaware it would be improper for her to receive supplemental payments from the police department who prosecuted cases before her. She submits that the checks from the police department never affected her judicial decisions, but she now realizes the payments could give the impression she was not impartial.

There is no allegation or evidence that respondent ever ruled a particular way due to the payments from the police department. There is no allegation or any evidence that the judge made any decision not fully supported by the evidence.

Respondent has cooperated in ODC's investigation. Further, she has been forthright and honest in answering all of ODC's questions.

LAW

By her misconduct, respondent has violated the following Canons of the Code of Judicial Conduct, Rule 501, SCACR: Canon 1 (judge shall uphold integrity and independence of the judiciary); Canon 1A (judge should maintain and enforce high standards of conduct and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved); Canon 2 (judge shall avoid impropriety and the appearance of impropriety in all activities); and Canon 2A (judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary).

In addition, respondent admits her misconduct constitutes a violation of Rule 7, RJDE, of Rule 502, SCACR, specifically Rule 7(a)(1) (it shall be ground for discipline for judge to violate Code of Judicial Conduct) and Rule 7(a)(9) (it shall be ground for discipline for

judge to violate Judge's Oath of Office contained in Rule 502.1, SCACR).

CONCLUSION

We find respondent's misconduct warrants a suspension from judicial duties. We therefore accept the Agreement for Discipline by Consent and suspend respondent for thirty (30) days.

DEFINITE SUSPENSION.

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

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Gloria Pittman, Respondent,

v.

Jetter Pittman and Pittman Professional Land Surveying, Inc., Defendants,

Of whom Jetter Pittman is, Appellant.

Appeal From York County
Brian M. Gibbons, Family Court Judge

Opinion No. 4858
Submitted June 1, 2011 – Filed August 3, 2011

AFFIRMED IN PART, REVERSED IN PART

Thomas F. McDow and Erin U. Fitzpatrick, both of Rock Hill, for Appellant.

Daniel Dominic D'Agostino, of York, for Respondent.

THOMAS, J.: In this divorce action, Jetter Pittman (Husband) appeals the award of alimony to Gloria Pittman (Wife), the identification and equitable division of the marital property, and the award of attorney's fees. We affirm in part and reverse in part.

FACTS AND PROCEDURAL HISTORY

The parties met in 1991 and married April 29, 2000. This was the second marriage for each. No children were born of the marriage. Wife was born in 1948, and Husband was born in 1962.

When the parties met, Husband was living and working in North Carolina. In 1993, Husband moved into Wife's house in Fort Mill. The parties pooled their funds and contributed equally to the household expenses. In addition to his regular employment, Husband also did surveying work on the side and trained Wife to help him in the field.

Since 1986, Wife has worked as a surgical nurse and kept her professional credentials current. In 1996, Husband stopped working at his job to open his own surveying business, Pittman Professional Land Surveying. He initially conducted the business from Wife's home, but later moved into a small office. Wife worked for the business, but also continued to work full-time as a nurse.

After the parties married, Wife started working only three days a week at her nursing job and made up the difference between what she would have earned had she continued full-time work as a nurse and what she was earning on the part-time schedule by working at Pittman Professional Land Surveying. Wife later reduced the time she spent at her nursing job to one day per week. Wife served as corporate secretary and handled financial matters for the business. Because Wife was older than Husband, the parties agreed to raise her salary instead of Husband's salary in order to increase her social security income so that they would have more money during their retirement. During the parties' marriage, the business prospered through their joint efforts, grossing over $800,000 in 2006. Wife's salary at Pittman

Professional Land Surveying was $4,200 per month when she left the company.

The parties separated in March 2007, and Wife commenced divorce proceedings soon after. In October 2007 Husband moved in with his paramour. The following month Husband terminated Wife's employment with the business by leaving her a voice message telling her not to come to work. Husband also hired his paramour to perform Wife's former duties at the business and paid her the same salary he paid Wife, even though the paramour had not worked outside the home for the past fifteen years. Wife filed for unemployment after Husband fired her, but Husband appealed her application to the Employment Security Commission. Wife began receiving unemployment compensation only after she and Husband appeared before the Commission.

In January 2008, following a temporary hearing in the matter, the family court issued an order (1) directing Husband to reimburse Wife $1,500 in private investigator fees, (2) granting discovery, (3) allowing both parties to hire their own appraisers to value the business and any other property that may be marital in nature and ordering both parties to cooperate in the appraisals, and (4) restraining both parties from disposing or encumbering marital assets. The court also ordered Husband to pay Wife temporary alimony of $2,500 per month, but reserved the right to offset this award against Wife's equitable distribution award if at the final hearing the court determined that an offset would be appropriate. In addition, the court declined to order Husband to rehire Wife and or to prohibit Husband from hiring his paramour for Wife's position at the company.

On May 7, 2008, the family court held a hearing pursuant to a motion by Wife to compel responses to discovery. By order dated June 18, 2008, the family court determined the issues raised in the motion would be resolved once Husband produced written verification regarding certain appraisals that Wife sought and stated that the issue of attorney's fees for the motion would be addressed during the final hearing.

A portion of the final hearing took place from January 20 through January 22, 2009. After a hearing on April 2, 2009, the court issued an order ordering the parties to engage Tracy Amos for the purpose of performing an evaluation of the business. Fees for the appraisal were to be paid by Pittman Professional Land Surveying without prejudice to have them apportioned between Husband and Wife during the final hearing. In addition, the parties agreed to provide information concerning property associated with the business and to allow Wife access to the business at a designated time to verify the information that Husband provided.

The final hearing resumed in Chester County on September 29, 2009, at which time the appraiser testified as to the value of the business, Husband presented his case, and Wife testified in reply. On October 21, 2009, the family court held another hearing in the matter to address contempt proceedings brought by Wife concerning Husband's temporary alimony payments.

By order dated and filed October 23, 2009, the family court granted Wife a divorce on the ground of adultery, awarded her permanent periodic alimony of $600 per month, ordered Husband to contribute $12,500 toward Wife's attorney's fees, denied Husband's request for a credit towards the equitable distribution for some or all of the alimony paid pursuant to the temporary order, and set a deadline for Husband to finish paying the alimony arrearage from the temporary order. The family court also identified, valued, and divided the marital property, specifically finding that Pittman Professional Land Surveying had been transmuted into a marital asset and including the business in Husband's share of the marital estate.

By order dated October 30, 2009, the family court found Husband had the ability to pay alimony but willfully failed to do so. Based on this finding, the court found Husband in civil contempt and ordered him to serve ninety days in jail unless he paid $5,000 of his total arrearage.

On November 2, 2009, Husband moved to alter or amend the judgment, challenging, among other issues, (1) the finding that Pittman Professional

Land Surveying had been transmuted into marital property, (2) the value of this asset that should have been deemed premarital, and (3) other findings relevant to alimony and equitable distribution. The family court declined to change its order, and Husband filed this appeal.

ISSUES

I. Did the family court err in refusing to make the requisite findings of fact on which to base its awards of alimony, equitable apportionment, and attorney's fees?

II. Is the alimony award of $600 per month supported by the evidence?

III. Did the family court err in declining to offset the temporary alimony award against Wife's share of the marital estate?

IV. Did the family court err in awarding Wife $12,500 in attorney's fees?

V. Did the family court err in valuing two vehicles at $8,000 each?

VI. Did the family court err in finding Pittman Professional Land Surveying had been transmuted?

VII. Did the family court err in failing to consider the premarital value of Pittman Professional Land Surveying or Husband's nonmarital contributions toward this asset?

VIII. Did the family court err in awarding Wife a laptop computer that was purchased with funds belonging to Pittman Professional Land Surveying?

STANDARD OF REVIEW

"'In appeals from the family court, the appellate court has jurisdiction to find facts in accordance with its view of the preponderance of the evidence. However, this broad scope of review does not require [an appellate

court] to disregard the findings of the family court.'" Lewis v. Lewis, 392 S.C. 381, 384, 709 S.E.2d 650, 651 (2011) (quoting Eason v. Eason, 384 S.C. 473, 479, 682 S.E.2d 804, 807 (2009)). The family court's equitable distribution award should be reversed only when the appellant shows the court abused its discretion. Lewis, 392 S.C. at 384-85, 709 S.E.2d at 651. Similarly, "[a]n award of alimony rests within the sound discretion of the family court and will not be disturbed absent an abuse of discretion." Allen v. Allen, 347 S.C. 177, 183-84, 554 S.E.2d 421, 424 (Ct. App. 2001).

LAW/ANALYSIS

I. Findings of Fact

Husband first claims the family court erred in refusing to find the incomes, earning potential, and expenses of the parties relating directly to issues of alimony, equitable apportionment of property, and attorney's fees. Husband is correct that a number of the findings in the appealed order are only qualitative in nature rather than quantitative; however, this deficiency is not necessarily reversible error. See Holcombe v. Hardee, 304 S.C. 522, 524, 405 S.E.2d 821, 822 (1991) (allowing the appellate court to make its own findings of fact if the record is sufficient, even though the family court may have failed to set forth specific findings of fact and conclusions of law to support its decision). We hold the record is sufficient to make our own findings of fact regarding most of the issues Husband has presented on appeal and hold the family court's failure to make them does not warrant a remand.[1]

II. Alimony Award

Husband next complains the family court erred in awarding Wife permanent alimony of $600 per month without making any findings about the income and expenses of either party. We disagree. The family court made

[1] Moreover, as explained below, we conclude from remarks during oral argument that where the record lacked the necessary information for this court to make a finding of fact on a particular issue, this absence resulted from the fact that the relevant evidence was not proffered to the family court.

sufficient findings of fact that, along with the evidence in the record, would support the alimony award. In particular, the family court noted the following: (1) the parties were married nine years, during which they enjoyed a comfortable standard of living; (2) at the time of the divorce, Wife was sixty-one years old and Husband was forty-seven; (3) Husband was at fault in the breakup of the marriage; (4) Husband fired Wife, hired his paramour for her job, and paid his paramour the same salary he paid Wife; (5) whereas Husband was in good health, Wife has been under the care of a counselor because of the stress of the divorce and Husband's adultery; (6) because of their ages, neither party would be able to increase his or her earning power through additional training or education; (7) although Wife was to receive several rental properties from the marital estate, one of them was vacant and there was a mortgage payment associated with another one of the properties; (8) Husband was to receive Pittman Professional Land Surveying in his share of the marital estate and could increase his income substantially through this asset; (9) the alimony would be taxable to Wife and deductible to Husband; and (10) Wife was close to retirement age, had worked in Pittman Professional Land Surveying during the entire course of the marriage, and is not underemployed given her age, experience, position, and job availability.

Furthermore, although the family court did not state findings concerning the parties' earnings, expenses, and needs in quantitative detail in its discussion concerning alimony factors, it made such findings elsewhere in the order. Earnings, for example, are referenced in the court's discussions on the parties' educational backgrounds, employment history and earning potential, and marital and nonmarital property. Similarly, the court discussed the parties' expenses and needs in its findings on standard of living and on the parties' physical and emotional health. Given these findings, we hold the family court acted within its discretion in awarding Wife permanent alimony of $600 per month. See Craig v. Craig, 365 S.C. 285, 292, 617 S.E.2d 359, 362 (2005) ("An award of alimony rests within the sound discretion of family court and will not be disturbed absent an abuse of discretion."); Myers v. Myers, 391 S.C. 308, 314, 705 S.E.2d 86, 90 (Ct. App. 2011) (stating that in

determining an appropriate alimony award, "[n]o one [statutory] factor is dispositive").[2]

III. Offset of Temporary Alimony

Husband next argues the family court erred in declining to award him an offset of the temporary alimony that he was ordered to pay against Wife's share of the marital property. To support his complaint, he asserts (1) the record lacks support for the temporary alimony award of $2,500 per month and (2) in view of the provision in the temporary order that the family court "reserves the right to offset temporary alimony against [Wife's] equitable distribution if the Court at the final hearing determines that such is appropriate," the family court's refusal to consider the possibility of an offset amounted to an abuse of discretion. On appeal, he suggests that this court determine a reasonable amount for permanent alimony and apply the remaining balance to Wife's share of the apportionment of the marital property. We find no reversible error.

Husband did not offer any arguments or supporting authority for his position that the temporary alimony award was excessive or otherwise unwarranted. We therefore hold he has abandoned the issue of whether the record supports the award of temporary alimony. See First Sav. Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (holding the appellant, in failing to provide arguments or supporting authority for one of his assertions, was deemed to have abandoned the corresponding issue).

In support of its decision to decline to treat any part of the temporary alimony as an advance on equitable distribution, the family court noted that both parties treated the payments as alimony for tax purposes. We agree with Husband that this alone would have been insufficient to support the family

[2] We further note that, contrary to Husband's assertion in his reply brief that Wife has the option of receiving her Social Security benefits and continuing to work, this option would be available only when she reached "full retirement age," which she had not done at the time the divorce decree was issued.

court's refusal to exercise the discretion it reserved in the temporary order to treat alimony paid during the pendency of the litigation as an advance on equitable distribution. The court also found, however, that the amount of alimony Husband paid before the final hearing was "an appropriate amount of alimony as temporary alimony," and we have found nothing in the record on appeal warranting reversal of this finding.

At the temporary hearing in November 2007, Wife revealed on her financial declaration she was earning $1,030.75 per month from her job as a surgical nurse. In addition, she noted two sources of rental income of $900 per month and $1,025 per month, as well as her monthly salary from Pittman Professional Land Surveying of $4,166.67. In the temporary order, the family court noted Husband had terminated Wife's employment with the business and found Wife was able to work but had not been employed full-time outside the business for several years. In directing Husband to pay temporary alimony of $2,500 per month, the court encouraged Wife to find employment and specifically "reserve[d] the right to offset temporary alimony against [Wife's] equitable distribution if the Court at the final hearing determines that such is appropriate." According to Wife's final financial declaration, dated January 20, 2009, she was earning $3,194 per month from her job.[3] The portions of the transcript included in the record on appeal, however, do not indicate when Wife's job earnings increased. During oral argument, counsel for Wife advised that no such information was presented during the hearing, and opposing counsel offered no opposition to this assertion during rebuttal. Neither party suggested any other variables that this court could consider in determining whether Husband could receive an offset of the temporary alimony that he paid against Wife's share of the marital property. We therefore hold the record is insufficient for this court to make findings of fact as to whether any part of the temporary alimony paid should be offset against Wife's share of the marital estate. See Medlock v. One 1985 Jeep Cherokee VIN 1JCWB7828FT129001, 322 S.C. 127, 132, 470 S.E.2d 373, 376 (1996) (stating the appellant has the burden of providing a sufficient record upon which the appellate court can make a decision).

[3] At this time, one of Wife's rental properties was vacant; therefore, she was receiving only $1,025 per month in rental income.

Moreover, given the Supreme Court's recent censure of allowing "a second bite at the apple," we decline to remand the matter to the family court for further proceedings on this issue. Lewis v. Lewis, 392 S.C. at ___ n.11, 709 S.E.2d at 656 n.11.

IV. Attorney's Fees

Husband next challenges the award of attorney's fees to Wife, arguing (1) the family court made insufficient findings of fact to support the award; (2) the family court appeared to have placed undue emphasis on his marital misconduct, noting further that he freely admitted his adultery; (3) the family court penalized him for refusing to concede the issue of transmutation; (4) the family court did not give due consideration to the consequences of the award on Husband's finances; (5) Wife made spurious claims during the proceedings regarding valuation of certain assets; and (6) Wife wasted money on unnecessary private investigator fees. We find no abuse of discretion. See O'Neill v. O'Neill, 293 S.C. 112, 119, 359 S.E.2d 68, 73 (Ct. App. 1987) ("It is elementary that an award of attorneys' fees is discretionary with the trial judge."). Here, the family court awarded Wife only fifty-six percent of her total fee; thus, we find the court gave sufficient consideration to any misconduct on Wife's part that prolonged the litigation unnecessarily. Furthermore, although we do not dispute that Husband has the right to advance a meritorious position on certain issues even if they are ultimately rejected by the family court, this right does not override the principle that beneficial results obtained by counsel remains a factor in determining a reasonable attorney's fee in a family court case. See Glasscock v. Glasscock, 304 S.C. 158, 160-61, 403 S.E.2d 313, 315 (1991) (rejecting the appellant's argument that an attorney's fee awarded by the family court was in effect a contingency fee, but nevertheless citing "beneficial results obtained" as one of the six factors in determining a reasonable attorney's fee).

V. Valuation of Vehicles

Husband next argues the family court erred in finding that a Volvo and a Volkswagen, both of which were awarded to Wife, were each worth

$8,000. He claims Wife did not offer testimony or other evidence about the value and that the values that he presented in his testimony were the only competent evidence on this issue. We disagree. In the marital assets addendum to Wife's financial declaration, she listed both vehicles with the corresponding values. Although, as Husband argues in his reply brief, he conceded to admitting the addendum only as a summary of Wife's testimony, there is nothing in the record indicating the family court admitted it for only this limited purpose. Moreover, the statement by Wife's counsel that the vehicles were "$8,000 each" was made during Wife's direct examination and was not a statement by counsel to the court. Though the inquiry was not artfully presented, common sense warrants interpreting it as a question. We hold Wife, in answering this question in the affirmative, presented evidence of the values of these items. See Reiss v. Reiss, 392 S.C. 198, 204, 708 S.E.2d 799, 802 (Ct. App. 2011) (stating the family court "has broad discretion in valuing marital property" and its valuation of marital assets "will not be disturbed absent an abuse of discretion").

VI. Transmutation of Pittman Professional Land Surveying

Husband next challenges the family court's finding that Pittman Professional Land Surveying had been transmuted into marital property. We find no error. Wife acknowledged Husband began the business before the parties married; however, it was initially only a side business. Husband was able to quit his job and devote himself to the business on a full-time basis in 1996 because he could fall back on Wife's income from her work as a nurse. After the parties married in 2000, Wife reduced her hours at her nursing job to work full-time in the business. Although the guaranty for the business on which Wife obligated herself had been discharged, she—with Husband's knowledge—subjected herself to liability to third parties associated with the business. Through the joint efforts of both parties, the annual gross income of the company increased from $100,000 in 2000 to over $800,000 in 2006. Furthermore, Husband's status as the sole shareholder of record is not dispositive. Given these circumstances, we hold that Husband, as the appealing party in this case, has not carried his burden to establish that the preponderance of the evidence regarding transmutation is against the family

court's finding on this matter. See Lewis, 392 S.C. at ___, 709 S.E.2d at 655("[T]he family court's factual findings will be affirmed unless 'appellant satisfies this court that the preponderance of the evidence is against the finding of the [family] court.'") (quoting Finley v. Cartwright, 55 S.C 198, 202, 33 S.E. 359, 360-61 (1899)).

VII. Equitable Apportionment of Pittman Professional Land Surveying

Husband further argues that if we uphold the family court's finding that Pittman Professional Land Surveying is a marital asset, Wife's interest in this asset should have been limited to a special equity. In the alternative, Husband contends he should have received credit for the premarital value of the business. We reject both arguments.

At the final hearing, objective evidence was presented to show that during the marriage, both parties regarded the business as the common property of the marriage. See Johnson v. Johnson, 296 S.C. 289, 295, 372 S.E.2d 107, 110-11 (Ct. App. 1988) ("The spouse claiming transmutation must produce objective evidence showing that, during the marriage, the parties themselves regarded the property as the common property of the marriage."). The parties pooled their earnings, and with Husband's approval the business paid Wife a higher salary with the objective of increasing her Social Security income and ultimately providing more money for both parties during their retirement. In addition, Wife relinquished retirement benefits that she could have earned through full-time nursing work in order to devote time to developing the business. She made this sacrifice with the expectation that the business would take care of both parties when they retired. We therefore uphold the family court's finding that the business was transmuted into marital property and further hold it is unnecessary to consider whether Wife should have received only a special equity in this asset.

In support of his position that he should have received some credit for the premarital value of the business, Husband argues "the trial judge certainly had no problem in 'backing out' the nonmarital portion of the wife's retirement savings plan." Whereas, however, the family court determined

that the entire business had been transmuted into a marital asset, there was no finding that the nonmarital portion of Wife's retirement account had been transmuted. The distribution of Wife's retirement account was based on a completely different premise from the distribution of Pittman Professional Land Surveying. In the case of the business, the premarital value of that asset was determined to have been transmuted into marital property.

VIII. Laptop Computer

Finally, Husband argues the family court should not have allowed Wife to retain possession of a laptop computer that she purchased with company funds after the filing of this action. We agree.

In allowing Wife to retain the computer, the court noted only that "no credible testimony was offered as to its value." It was undisputed, however, that Wife purchased the computer after the filing of this action with funds belonging to Pittman Professional Land Surveying, an asset awarded in its entirety to Husband as his portion of the marital estate. We agree with Husband that the award to him of the business, together with all its assets, should have included the laptop. Although the family court's remarks suggest Wife would have been ordered to reimburse Husband for the computer had evidence of its value been presented at trial, the absence of this information did not prevent the court from using a "reasonable means to achieve equity between the parties." S.C. Code Ann. § 20-3-660 (Supp. 2010). Full equity between the parties could easily have been attained by awarding the computer to Husband. We therefore reverse the award to Wife of the laptop computer and hold the family court should have awarded it to Husband.

CONCLUSION

We affirm the family court's decisions regarding alimony and attorney's fees. As to Husband's appeal of the equitable division award, we affirm the family court's valuation of the equitable division award, the court's inclusion of Pittman Professional Land Surveying in the marital estate, and the court's refusals to limit Wife's interest in the business to a special equity and to

award Husband credit for the premarital value of the business. We hold, however, the family court erred in allowing Wife to retain possession of the laptop computer and therefore reverse this provision of the appealed order.

AFFIRMED IN PART, REVERSED IN PART.

HUFF and WILLIAMS, JJ., concur.