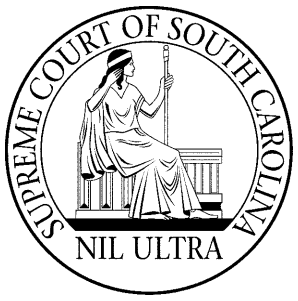

OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 40
November 14, 2011
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Julie G. Landry, Appellant,

v.

Carolinas Healthcare Systems, Self-Insured Employer, Respondent.

Appeal From York County
S. Jackson Kimball, Special Circuit Court Judge

Opinion No. 4905
Heard September 15, 2011 – Filed November 9, 2011

AFFIRMED

Richard C. Detwiler, of Columbia, for Appellant.

Edwin Pruitt Martin, Jr., of Columbia, for Respondent.

LOCKEMY, J.: In this workers' compensation case, Julie Landry appeals the circuit court's affirmation of the Appellate Panel of the South Carolina Workers' Compensation Commission's (Appellate Panel) finding that she did not suffer an injury by accident arising out of and in the course of her employment because the worsening of her pre-existing foot condition was not an unexpected occurrence. We affirm.

FACTS

Landry was employed by Carolinas Healthcare System (Carolinas Healthcare) in Rock Hill, South Carolina as a radiation therapist. She worked as a radiation therapist for twenty-four years and began her employment with Carolinas Healthcare in July 2002. Landry worked approximately 40 hours a week and spent a majority of the work day standing on her feet. Her job involved helping patients up onto a table, moving to a control room where she would administer radiation, and helping patients off the table. Landry worked primarily on hard surfaces with the exception of rubber mats in the control room. According to Landry, after the rubber mats were removed from the control room, she began experiencing significant pain in her feet.[1]

In August 2004, Landry sought treatment from Dr. Robert van Brederode. Dr. van Brederode noted at Landry's initial visit that she suffered from bunions, which had "bothered her" since she was thirteen years old. Dr. van Brederode diagnosed Landry with hallux valgus deformity and hallux abductus interphalangeus deformity and casted her for custom foot orthotics. In December 2005, Dr. van Brederode performed a bunionectomy with screw fixation on Landry's left foot. Landry was out of work from December 5, 2005, until February 6, 2006, following surgery. In January 2007, Dr. van Brederode performed the same surgery on Landry's right foot. Upon returning to work, Landry was informed by Carolinas Healthcare that her employment had been terminated. Landry was unemployed until she found another radiation therapist position in July 2007.

In June 2007, Landry filed a Workers' Compensation Commission Form 50 reporting an accidental injury to her feet caused by repetitive trauma and resulting in stress fractures. Dr. van Brederode noted the conditions in Landry's feet were structural deformities which "were more likely than not aggravated by her being on her feet for long periods of time at work, including standing and walking." He assigned Landry a two percent whole

[1] Victoria Reich, the Administrative Director of the Carolinas Healthcare cancer treatment facility where Landry worked, testified the rubber pads in the control room were never removed.

person impairment rating with regard to both her left and right foot. In an amended Form 50 filed in March 2008, Landry reported the injury to her feet was a result of the aggravation of a pre-existing condition and was the result of spending long periods of time standing on her feet. Thereafter, in April 2008, Landry was examined by Dr. James Sebold. Dr. Sebold opined that Landry's bunions were not caused or aggravated by standing on her feet all day at work. He noted that bunions are caused by an anatomical variation and that they can cause pain when standing on them or in a shoe, "but that would be with virtually any job." Dr. Sebold determined Landry's bunions were "in no way related to her job."

A hearing was held before the single commissioner on July 15, 2008. At the hearing, Landry testified she was diagnosed with bunions at age thirteen. Landry further testified that although she had pre-existing foot problems, she had never experienced problems with either foot that kept her out of work until she began working for Carolinas Healthcare. According to Landry, she never experienced any pain in her feet until she went to work for Carolinas Healthcare. On cross-examination, portions of Landry's deposition testimony were read into the record. In her deposition, Landry testified she began having pain in her feet at age thirteen. At the hearing, Landry also denied having foot pain when she started working. Again, Landry was read her deposition testimony wherein she testified she suffered pain when standing on her feet when she worked as an x-ray technician. Landry testified she thought having pain in her feet was just part of doing her job. She admitted she was still experiencing pain in her feet when she began working for Carolinas Healthcare. Landry also testified at the hearing that she was treated by a podiatrist in Florida in 2001 for foot pain. According to Landry, the podiatrist advised her that her condition would only get worse if she continued to stand on her feet for long periods of time. Landry further testified she knew that if she continued to stand on her feet for prolonged periods of time her condition would worsen.

On July 23, 2008, the single commissioner determined Landry suffered repetitive injuries to both feet arising out of and in the course of her employment. The single commissioner noted that although Landry had foot problems as a child and had seen a podiatrist in 2001, she never missed work or had surgery due to her condition. The single commissioner determined

Landry sustained a five percent permanent partial disability to each foot and awarded her $9,043.16. The single commissioner also awarded Landry temporary total disability benefits from December 5, 2006, to February 6, 2006, and January 8, 2007, to July 19, 2007, for a total of $21,685.13. The single commissioner ordered Carolinas Healthcare to pay for Landry's past causally-related medical expenses as well as for orthotics as needed for the remainder of her life.

Carolinas Healthcare appealed the single commissioner's order to the Appellate Panel. The Appellate Panel reversed the single commissioner, finding Landry suffered from bunion deformities in both feet since the age of thirteen which required treatment prior to her employment with Carolinas Healthcare. The Appellate Panel determined Landry had knowledge, through her previous doctor, that prolonged standing would worsen the condition in her feet, yet she continued to work in a job that required her to stand for long periods of time. Relying on Capers v. Flautt, 305 S.C. 254, 407 S.E.2d 660 (Ct. App. 1991) and Havird v. Columbia YMCA, 308 S.C. 397, 418 S.E.2d 329 (Ct. App. 1992), the Appellate Panel concluded Landry "did not suffer an injury by accident arising out of and in the course of her employment . . . because the worsening of her foot condition was not an unlooked for or untoward occurrence." The Appellate Panel further found Carolinas Healthcare was not responsible for Landry's past and future medical expenses or for any temporary total disability or permanent partial disability benefits.

Landry appealed the Appellate Panel's order to the circuit court. The circuit court affirmed the Appellate Panel, holding substantial evidence supported the Appellate Panel's findings. The circuit court, citing Capers and Havird, found Landry's foot condition was a pre-existing condition and its aggravation was a "by-product of the normal requirements of performing [her] job." The circuit court determined the impairment rating assigned by Dr. van Brederode "is not an impairment caused by [Landry's] work, but rather is based on the nature of her pre-existing condition." This appeal followed.

STANDARD OF REVIEW

The substantial evidence rule of the Administrative Procedures Act governs the standard of review in a workers' compensation decision. Liberty Mut. Ins. Co. v. S.C. Second Injury Fund, 363 S.C. 612, 619, 611 S.E.2d 297, 300 (Ct. App. 2005). "In an appeal from the Commission, neither this court nor the circuit court may substitute its judgment for that of the Commission as to the weight of the evidence on questions of fact, but may reverse where the decision is affected by an error of law." Stone v. Traylor Bros., 360 S.C. 271, 274, 600 S.E.2d 551, 552 (Ct. App. 2004). "Any review of the [C]ommission's factual findings is governed by the substantial evidence standard." Id. "Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached in order to justify its action." Liberty Mut. Ins., 363 S.C. at 620, 611 S.E.2d at 300. "The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence." Id. at 620, 611 S.E.2d at 301.

LAW/ANALYSIS

Landry argues the circuit court erred in affirming the Appellate Panel's determination that she was not entitled to workers' compensation benefits because she was aware that standing for long periods of time could worsen her pre-existing foot condition. We disagree.

Pursuant to section 42-1-160 of the South Carolina Workers' Compensation Act, a claimant is entitled to benefits for an "injury by accident arising out of and in the course of employment." S.C. Code Ann. § 42-1-160 (Supp. 2010). "[I]n determining whether something constitutes an injury by accident the focus is not on some specific event, but rather on the injury itself." Pee v. AVM, Inc., 352 S.C. 167, 171, 573 S.E.2d 785, 787 (2002). "[A]n injury is unexpected, bringing it within the category of accident, if the *worker* did not intend it or expect it would result from what he was doing." Id. "Therefore, if an injury is unexpected from the worker's point of view, it qualifies as an injury by accident." Id.

Landry contends the circuit court erred in relying on Capers v. Flautt, 305 S.C. 254, 407 S.E.2d 660 (Ct. App. 1991) and Havird v. Columbia YMCA, 308 S.C. 397, 418 S.E.2d 329 (Ct. App. 1992) in affirming the Appellate Panel. In Capers, this court held Capers' outbreak of contact dermatitis was not an unlooked for event that he did not expect, and therefore, it was not accidental. 305 S.C. at 257, 407 S.E.2d at 662. The court noted Capers, a dishwasher, was aware of his condition and had previously left a job due to the same problem caused by exposure to detergents and water. Id. at 257, 407 S.E.2d at 661. This court found Capers' outbreak of dermatitis was an event he could anticipate given his past experience. Id. at 257, 407 S.E.2d at 662.

The Capers decision was followed by this court in Havird. Havird suffered from varicose veins which were exacerbated by standing in a stationary position during his job as a masseuse. Havird, 308 S.C. at 398, 418 S.E.2d at 330. Havird experienced painful swelling in his feet and underwent surgery. Id. Havird's surgeon warned him that standing in one place without much movement was bad for people with varicose veins and that he needed to stay off his feet as much as possible. Id. After surgery, Havird returned to work and later filed a workers' compensation claim when his varicose veins condition worsened. Id. This court determined Havird did not suffer an injury by accident. Id. at 400, 418 S.E.2d at 331. Specifically, this court found Havird's "vascular disease was not aggravated by unexpected or excessive exertion in the performance of his duties or by unusual and extraordinary conditions in his employment," but rather "the worsening of his varicose veins was the natural and expected result of working in a job that was performed while standing." Id. This court noted that it is "well known that prolonged standing is bad for people with varicose veins," and that the aggravation of varicose veins is the "natural and expected result" of standing in one place without much movement. Id. The court further noted that Havird knew standing would worsen his condition over time. Id.

We disagree with Landry's assertion that the Appellate Panel and the circuit court erred in relying on Capers and Havird. While Landry argues these decisions are "relatively old," they have not been overruled and we believe they are applicable regarding the issue of whether Landry suffered an

injury by accident. Landry, like Capers and Havird, was aware of her physical condition and knew which activities would worsen her symptoms. In the course of her treatment, Landry was warned by her doctor that standing on her feet for prolonged periods of time would worsen her bunion condition. Landry testified she was aware that the amount of standing in her occupation was hazardous to the condition of her feet, yet she continued to work in a job that required her to stand for long periods of time. Accordingly, we find substantial evidence in the record supports the Appellate Panel's finding that the worsening of Landry's bunion condition was not unexpected.

Citing Pee, Landry also argues the Appellate Panel and the circuit court erroneously based their decisions on the cause of her injury and not the injury itself. In Pee, Employer argued Worker's repetitive trauma injury was not compensable as an injury by accident because the repetitive event which caused the injury was part of Worker's normal work activity and was not unexpected. 352 S.C. at 170, 573 S.E.2d at 787. Our supreme court disagreed with Employer and determined a repetitive trauma injury met the definition of injury by accident. Id. at 170, 573 S.E.2d at 787-88. The court held that in determining whether something constitutes an injury by accident, the focus should not be on the specific event causing the injury, but rather on the injury itself. Id. at 170, 573 S.E.2d at 787. The court found "an injury is unexpected, bringing it within the category of accident, if the *worker* did not intend it or expect it would result from what he was doing." Id. Therefore, the court determined that "[i]f an injury is unexpected from the workers' point of view, it qualifies as an injury by accident." Id. Landry maintains the Appellate Panel and the circuit court failed to consider whether she intended or expected the injury would result from her actions. She contends that here, as in Pee, there is no evidence she reasonably intended or expected to be injured as a result of her repetitive work activity. Landry notes her doctor only warned her that her condition would get worse if she continued to stand on her feet, and he did not specifically advise her to change occupations or stay off her feet.

We disagree with Landry's assertion that the Appellate Panel and the circuit court erroneously focused on the cause of her injury and not the injury itself. A review of the orders in the record shows both the Appellate Panel and the circuit court looked to whether Landry's injury, the worsening of her

bunion condition, was an expected result of her work activities. Pursuant to Pee, an injury is unexpected, and thus an accident, if the worker did not expect the injury would result from her actions. Here, the substantial evidence in the record supports the finding that Landry's injury was not unexpected. Landry testified she had a bunion condition before she went to work for Carolinas Healthcare, and that her doctor in Florida warned her that her condition would worsen if she continued to stand on her feet for long periods of time. Landry also testified that she knew prolonged standing would worsen her bunion condition. Accordingly, we find the circuit court did not err in affirming the Appellate Panel on the issue of compensability.[2]

CONCLUSION

Based on the foregoing, the circuit court's decision is

AFFIMRED.

HUFF and PIEPER, JJ., concur.

[2] Landry also argues the circuit court's decision to affirm the Appellate Panel was punitive. We disagree. This issue was addressed in Havird. There, this court stated that due to health problems, "many people have little choice but to work in pain and fatigue or else bring their working lives to a close." Havird, 308 S.C. at 400, 418 S.E.2d at 331. The court noted that while it is "unfortunate" that "continuing to work often worsens their health," the "Workers' Compensation Law was not intended to remedy this problem." Id.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Scott G. Roesler, Respondent,

v.

Sara A. Roesler, Appellant.

Appeal From Greenville County
Rochelle Y. Conits, Family Court Judge

Opinion No. 4906
Heard June 7, 2011 – Filed November 9, 2011

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED

J. Falkner Wilkes, of Greenville, for Appellant.

Joseph M. Ramseur, Jr., of Greenville, for Respondent.

LOCKEMY, J.: In this action for divorce, Sara A. Roesler (Wife) argues the family court erred in finding it had jurisdiction over her marriage to Scott G. Roesler (Husband), proceeding with trial when she was not represented by an attorney, failing to make an inquiry or award of alimony, and waiving mandatory mediation. We affirm in part, reverse in part, and remand.

FACTS

Husband and Wife were married on March 26, 1994, and one child (Child) was born as a result of the marriage. At the beginning of the marriage, Husband was employed by the United States Army and the couple lived in Fort Knox, Kentucky, with Wife's two children from a previous marriage.[1] In 1996, Husband voluntarily separated from the Army, and the family moved to Dallas, Texas, where husband remained employed for the next seven years. In 2003, Husband's Texas Army National Guard unit was deployed to Iraq for a year. In 2004, Husband resumed his previous employment, but left shortly thereafter to accept a position with Kellogg, Brown, and Root (KBR), a civilian contractor that provided logistical support to the military in Iraq. Husband worked for KBR in Iraq for approximately a year-and-a-half earning between $15,000 and $17,000 per month. After returning from Iraq, Husband remained employed with KBR earning approximately one-third of what he earned while in Iraq.

Four months later, Husband's employment with KBR was terminated. Husband explained Wife's unhappiness with him working in Iraq and Child's struggles with school caused him to miss a substantial amount of work. Afterwards, Husband worked for a short time as an insurance salesman, but was soon hired by Fluor Corporation in Greenville, South Carolina. Fluor Corporation also provides the military with logistical support in Iraq. On September 24, 2007, Husband and Child moved into an extended stay hotel in Greenville, South Carolina, provided by Fluor. Husband's parents, who lived in Bluffton, South Carolina, temporarily relocated to Greenville to help Husband homeschool Child. Husband explained that Wife was unhappy with this arrangement and moved into the extended stay hotel with Husband and Child during the first week of October 2007.

In October 2007, the family returned to Texas to pack up their household goods. According to Husband, Wife was upset about leaving "anything behind in the house." Wife insisted the pool slide, pool heater, light fixtures, door handles, two French doors, and built-in cabinets be

[1] Wife did not work outside the home during the parties' marriage.

packed.[2] Husband explained the house was in or about to enter foreclosure and "the expectation was . . . we were not going to be able to afford to stay in that house anyhow." As part of a corporate relocation program, Fluor paid a moving company to move the family's household goods from Texas to South Carolina and store the goods in South Carolina.

In November, Wife visited her foster parents in Pennsylvania for Thanksgiving and returned to Greenville after the holiday. During this period, Husband and Wife looked for more permanent housing. The couple looked at a house for rent in Cowpens, South Carolina, and also looked at a house for sale in Greer, South Carolina.

Shortly thereafter, a dispute arose between Husband and Wife over money and whether they were able to afford the Greer house. Wife began hitting and slapping Husband. Husband left the hotel and Wife followed. As Husband attempted to leave the parking lot in his car, Wife used her car to push Husband's car approximately six feet onto the curb to prevent him from leaving. Wife exited her vehicle and began tossing items from Husband's trunk. Afterwards, Husband and Wife talked for approximately thirty minutes before Wife began hitting Husband. Husband attempted to leave a second time; however, Wife jumped onto the hood of his car and forcibly removed a windshield wiper blade which she used to strike Husband several times. Thereafter, Husband requested the hotel's front desk staff call the police. Wife was arrested, and Husband bailed Wife out of jail the next morning.

Husband and Wife attempted to reconcile, and the family went bowling on New Year's Eve 2007. Upon returning home, Husband and Wife became involved in an argument in front of Child. Wife attempted to hit Husband's head against the wall. Husband explained Wife did not attempt to "physically damage" his head, but was "very, very physical – demonstrative of making a point." The argument dissipated, and although Husband considered leaving Wife, he remained in the home because of Child.

[2] The pool slide, approximately ten feet tall, had to be unbolted from its footing. The pool heater is approximately six feet by eight feet and four feet tall.

However, shortly thereafter another argument occurred and Husband left the home.

Husband initiated this action for divorce on grounds of physical cruelty on January 17, 2008. Wife was served in Greenville on January 28, 2008. However, Wife failed to answer and thereafter the family court waived mediation because Wife's whereabouts were unknown and she was in default. Wife failed to appear at the preliminary hearing held on February 28, 2008. The family court found jurisdiction in South Carolina was proper because Husband and Wife resided in South Carolina more than three months prior to Husband's filing of this action, which satisfied the requirements of section 20-3-30 of the South Carolina Code (Supp. 2010). The family court awarded Wife temporary custody of Child with visitation, and ordered Husband to pay Wife $1,700 per month in unallocated family support. Husband was also ordered to pay rent for Wife on a house in Simpsonville, South Carolina, make Wife's car payment, and maintain insurance for Wife and Child.

Prior to the final hearing, Wife moved to dismiss the action arguing the family court lacked jurisdiction to adjudicate the divorce because she was a resident of Texas at the time she was served. After hearing evidence on the issue, the family court denied Wife's motion to dismiss, finding it had personal jurisdiction and subject matter jurisdiction to adjudicate the divorce. The family court's final order granted Husband a divorce on the grounds of physical cruelty, awarded Wife custody of Child, allowed Husband two weeks visitation per year, ordered Husband to pay $4,000 per month in child support, and equitably divided the parties' marital property. No alimony was awarded. This appeal followed.

STANDARD OF REVIEW

"In appeals from the family court, this Court reviews factual and legal issues de novo." Simmons v. Simmons, 392 S.C. 412, 414, 709 S.E.2d 666, 667 (2011). Accordingly, this court has the authority to find facts in accordance with its own view of the preponderance of the evidence. Lewis v. Lewis, 392 S.C. 381, 391-92, 709 S.E.2d 650, 655 (2011). However, we recognize that the family court is in a superior position to determine the credibility of the witnesses and the weight of the evidence. See id. at 392,

709 S.E.2d at 655. The appellant has the burden to demonstrate the family court's findings are against the preponderance of the evidence. Id.

LAW/ANALYSIS

I. Jurisdiction

Wife argues the family court erred in finding it had personal jurisdiction over her. Wife maintains her appearance at the final hearing constituted a limited appearance to contest jurisdiction. Wife also argues the family court lacked subject matter jurisdiction to adjudicate the divorce because both she and Husband never intended to reside in South Carolina. We disagree.

The family court has exclusive jurisdiction to hear and determine actions for divorce. S.C. Code Ann. § 63-3-530(A)(2) (2010). Before the family court can exercise subject matter jurisdiction over a marriage and grant a divorce, the plaintiff or defendant must have been a domiciliary of South Carolina. See S.C. Code Ann. § 20-3-30 (Supp. 2010). Section 20-3-30 provides:

> In order to institute an action for divorce from the bonds of matrimony the plaintiff must have resided in this State at least one year prior to the commencement of the action or, if the plaintiff is a nonresident, the defendant must have so resided in this State for this period; provided, that when both parties are residents of the State when the action is commenced, the plaintiff must have resided in this State only three months prior to commencement of the action. . . .

The term "reside" as used in this section is "equivalent in substance to 'domicile.'" Gasque v. Gasque, 246 S.C. 423, 426, 143 S.E.2d 811, 812 (1965). Domicile "means the place where a person has his true, fixed and permanent home and principal establishment, to which he has, whenever

he is absent, an intention of returning." Id. "The true basis and foundation of domicile is the intention, the quo animo, of residence." Id.

Initially, Wife was personally served with the summons and complaint in this action in Greenville, South Carolina. Accordingly, the family court properly determined it had personal jurisdiction over Wife. See Whaley v. CSX Transp., Inc., 362 S.C. 456, 474, 609 S.E.2d 286, 295 (2005) ("Proper service of process on a defendant . . . confers personal jurisdiction over the defendant."). Therefore, the issue before us is whether Husband and Wife intended to reside in South Carolina.

Here, Husband secured employment at Fluor Corporation in Greenville. Husband explained he and Wife agreed that he would move to Greenville first and then Wife and Child would move shortly thereafter. However, the night before Husband was to leave, Wife decided Husband should bring Child and Child's homeschool materials to South Carolina with him. Upon arriving in Greenville, Husband and Child moved into an extended stay hotel provided by Fluor. Husband's parents came to Greenville to help homeschool Child. Wife was unhappy with Husband's parents assisting with Child's homeschooling and moved into the extended stay hotel with Husband and Child in early October 2007.

Later that month, Wife, Husband, and Child returned to Texas to pack the family's household goods and move them to South Carolina. Fluor provided a moving company to move the family's household goods from Texas to South Carolina. The moving company placed the family's household goods into storage in South Carolina until Husband and Wife secured more permanent housing. Husband and Wife searched for more permanent housing in Cowpens and Greer, South Carolina.

Based on the foregoing, and especially considering Wife sent Child with Husband to South Carolina, moved all her household goods to South Carolina, and proceeded to look for permanent housing in South Carolina, we conclude Husband and Wife moved to South Carolina with the intention of making it their home. In making this determination, we are mindful that the family court specifically found Husband's testimony on this issue was

credible. Accordingly, we believe the family court properly determined it had subject matter jurisdiction over the parties' marriage.

II. Appointment of Counsel

Wife argues the family court erred in proceeding with trial when she had no attorney, could not afford an attorney, and requested an attorney. We disagree.

Generally, a litigant has a statutory right to proceed pro se in South Carolina. See S.C Code Ann. § 40-5-80 (2011). A separation proceeding in family court does not involve the deprivation of a liberty interest that mandates a state or federal due process right to an attorney. Washington v. Washington, 308 S.C. 549, 551, 419 S.E.2d 779, 780 (1992).

Here, at the beginning of trial, the family court questioned Wife about her self-representation. Wife responded, indicating she felt competent to represent herself, understood the nature of the proceedings, and could not afford to pay $5,000 for an attorney. After questioning Wife, the court proceeded with Wife's motion to dismiss for lack of jurisdiction. During trial, Wife cross-examined Husband, presented evidence, and testified on her own behalf. However, at several points during trial Wife requested a court-appointed attorney. Although the court inquired whether Wife requested a court-appointed attorney before the day of the final hearing, the court did not appoint an attorney.

The family court had no obligation to appoint Wife an attorney in a divorce proceeding where she chose to represent herself at the outset. See id. at 551, 419 S.E.2d at 780 ("A separation proceeding, where one or both of the parties has invoked the State's assistance in determining marital equities, simply does not involve a deprivation that mandates a due process right to an attorney."). Accordingly, we see no error in the family court's decision to continue with trial after Wife requested a court-appointed attorney.

III. Alimony

Wife argues the family court erred in summarily refusing to consider the issue of alimony in response to her oral request at the final hearing. We agree.

Section 20-3-120 of the South Carolina Code (1985) provides "[i]n every divorce action from the bonds of matrimony either party may in his or her complaint or answer or by petition pray for the allowance to him or her of alimony and suit money and for the allowance of such alimony and suit money pendente lite." Generally, the family court cannot award alimony unless a plaintiff or defendant participating in a domestic relations action requests it in the complaint or answer. See Bass v. Bass, 272 S.C. 177, 180, 249 S.E.2d 905, 906 (1978) ("While it is true that pleadings in the family court must be liberally construed, this rule cannot be stretched so as to permit the judge to award relief not contemplated by the pleadings. Due process requires that a litigant be placed on notice of the issues which the court is to consider.") (footnote omitted).

Conversely, when a defendant fails to answer, the South Carolina Rules of Family Court are unclear. On the one hand, Rule 2, SCRFC, specifies that Rule 55 of the South Carolina Rules of Civil Procedure is not applicable in family court. See Rule 2(a), SCRFC ("The following SCRCP, however, shall be inapplicable: . . . 55 . . . ."). However, Rule 17(b), SCRFC, suggests that at some point, Rule 55, SCRCP, is incorporated into the final order. See Rule 17(b), SCRFC ("In domestic relations matters, the provisions of Rule 55, SCRCP, regarding orders of default shall be made in the final order issued by the family court.").

This discrepancy has caused uncertainty in the bar as to handling the issue of default in family court. If Rule 55, SCRCP, is not applicable, then there is no need for our family court judges and family court practitioners to deal with unnecessary default proceedings and paperwork. If Rule 55, SCRCP, is applicable, then perhaps Rule 2, SCRFC, should be amended to clarify such application and to eliminate any potential conflict. Family court

practitioners and judges need guidance on how to proceed when default is involved; however, any amendment to the rules must come from the supreme court.

Notwithstanding, Stamey v. Stamey is instructive regarding the issue on appeal. See 289 S.C. 507, 347 S.E.2d 112 (Ct. App. 1986). There, although wife was in default prior to the final hearing, the family court ruled on the issues of alimony, support, and counsel fees. Id. at 511, 347 S.E.2d at 114-15. Husband appealed. Relying on a prior version of the family court rules which stated "[e]ven though the respondent does not file an answer, he may, with permission of the court, be heard on issues of custody of children, alimony, support and counsel fees," this court found wife's default was immaterial because the family court rules allowed those issues to be raised at the final hearing by a defendant who did not answer. Id.

Turning to the instant case, Rule 17(a), SCRFC, vests the family court with discretion to determine whether to allow a non-answering defendant to raise the issue of alimony. Here, Wife requested alimony at the conclusion of the merits hearing; however, the family court denied her request based upon her failure to answer: "Alimony is not before me. There's been no pleading filed by [Wife] for alimony. That issue is not before me." In the subsequent colloquy with Husband's counsel, the court focused on the facts that Wife failed to answer and that Husband's counsel filed an affidavit of default. The record lacks any indication the family court considered whether Wife should be allowed to raise the issue of alimony despite her failure to answer; therefore, we conclude the family court erred in failing to exercise its discretion. See Fontaine v. Peitz, 291 S.C. 536, 538, 354 S.E.2d 565, 566 (1987) ("When the trial judge is vested with discretion, but his ruling reveals no discretion was, in fact, exercised, an error of law has occurred."). Although we note the discrepancy regarding the application of Rule 55, SCRCP, in family court, the result herein would not change because of our application of Rule 17(a), SCRFC. Accordingly, we remand the issue of alimony to the family court with the authority to exercise the same discretion it had at the time of the final hearing. See Callen v. Callen, 365 S.C. 618, 627, 620 S.E.2d 59, 64 (2005) (citing Fontaine and finding the family court's failure to exercise its discretion to determine whether the testimony of three

of wife's witnesses should be excluded because she failed to supplement her interrogatory answers in a timely fashion required a new hearing).

IV. Mandatory Mediation

Wife argues the family court erred in exempting this action from mandatory mediation. Specifically, Wife maintains the family court was not informed of correspondence between Husband's counsel and Wife's Texas counsel "around the same time" he filed the request to exempt this case from mediation. We disagree.

In Greenville County, civil suits and domestic relations actions are subject to a mandatory alternative dispute resolution process. RE: Circuit Court Arbitration & Mediation & Family Court Mediation, S.C. Sup. Ct. Order dated June 21, 2006. South Carolina Rule of Alternative Dispute Resolution 3(a) provides:

> All civil actions filed in the circuit court, all cases in which a Notice of Intent to File Suit is filed pursuant to the provisions of S.C. Code § 15-79-125(A), and all contested issues in domestic relations actions filed in family court, except for cases set forth in Rule 3(b) or (c), are subject to court-ordered mediation under these rules unless the parties agree to conduct an arbitration.

However, a party can request a case be exempted from mandatory mediation for "case specific reasons." Rule 5(e), SCRADR. The chief administrative judge is vested with the discretion to grant a motion to exempt for good cause. Id.

Here, the chief administrative judge for the Greenville County Family Court exempted this case from mandatory mediation because Wife was in default and her whereabouts were unknown. We find Wife's default and unknown whereabouts constituted good cause for exempting this action from mandatory mediation. Furthermore, Wife offers no support in the record for her suggestion Husband's counsel knew of her whereabouts at the time he

requested the case be exempted from mediation. In fact, Husband's counsel represented the communication with Wife's Texas counsel occurred after he requested the exemption. Accordingly, we find the family court properly exempted this case from mediation.

CONCLUSION

In sum, we affirm the family court's decision regarding (1) subject matter jurisdiction, (2) appointment of counsel, and (3) exemption from mandatory mediation. However, we reverse the trial court's decision regarding alimony and remand the alimony issue to the family court to exercise all the discretion it had at the time of the final hearing.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

FEW, C.J., and PIEPER, J., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Donald Newton, Jean Flagg-Newton and James C. Hudson, Plaintiffs,

Of whom Donald Newton and Jean Flagg-Newton are Appellants,

v.

Zoning Board of Appeals for Beaufort County, Respondent.

Appeal From Beaufort County
Marvin H. Dukes III, Master-in-Equity

Opinion No. 4907
Heard September 13, 2011 – Filed November 9, 2011

AFFIRMED AS MODIFIED

Arthur C. McFarland, and Veronica G. Small, both of Charleston, for Appellants.

Robert W. Achurch, III, Jason Franklin Ward, and Mary Bass Lohr, all of Beaufort, for Respondent.

PER CURIAM: After the Zoning Board of Appeals for Beaufort County (Board) issued a special use permit for additional construction on the site of an existing convenience center[1] (the DOC) on Daufuskie Island, Donald Newton and Jean Flagg-Newton (collectively the Newtons) appealed the Board's decision to the circuit court. The matter was referred to a master-in-equity, who affirmed the Board's decision. The Newtons appeal, arguing the master erred in affirming the Board's decision not to require a Community Impact Statement (CIS).[2] They contend the master erred in finding: (1) a CIS was not required; (2) the Beaufort County (County) ordinance governing convenience centers (section 106-1362) does not apply to uses within the Daufuskie Community Preservation District; (3) the Board knew the impact of the existing DOC and, therefore, did not need to consider a CIS; and (4) section 106-552 of the Beaufort County Code of Ordinances (Code) controlled the consideration for approval of the special use permit in this case. We affirm and modify the master's decision as discussed below.

FACTS

In 2009, a contractor acting on behalf of Beaufort County applied to the Board for a special use permit to perform additional construction on the site of the DOC, which is located within the Daufuskie Island Community Preservation District. The County proposed to bring the DOC into greater compliance with County requirements by installing a fence, a swale for

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[1] A "convenience center" is any location authorized by the County as a collection point for residential solid waste. Beaufort Cnty. Code of Ord. § 62-3 (Art. I) (1982).

[2] A CIS is a report assessing the proposed change's impact on the area, the environment, traffic, and archaeological sites. Beaufort Cnty. Code of Ord. § 106-367(g)(1) (Art. III, Div. 2, Subdiv. II) (2004). "The purpose of the CIS is to (i) determine if alternatives would avoid the adverse impacts, (ii) determine that the plan selected minimizes the impact, and (iii) identify mitigation measures that would offset the impacts." Id.

stormwater runoff, and three trash compactors, thereby reducing the cost of hauling away the collected trash and making the site safer and cleaner.

On December 10, 2009, the Board held a public hearing at which the Newtons and others spoke. According to the County, the improvements required a special use permit because the DOC predated the County's zoning ordinances and did not conform to them. The Newtons opposed the issuance of a special use permit, arguing such a permit would constitute "spot-zoning," did not comport with the County's comprehensive plan for development, and would conflict with the development of adjacent recreational property. Moreover, the Newtons expressed concern that the proposed construction would expand the DOC, making it a waste processing site for housing developments that had been handling their own waste disposal. In response to the Newtons' concerns, David Coleman of the County's Building and Engineering Department explained the proposed improvements would not expand the DOC but instead would utilize previously cleared land to surround the DOC with buffer zones as required by ordinance. In addition, the installation of compactors would enable the DOC to process the same amount of trash as before but would reduce the need for hauling by fifty to sixty percent. According to Coleman, an existing restriction against commercial dumping at the DOC would continue to prevent the dumping of waste collected within the island's housing developments.

The Board unanimously approved the request for a special use permit. On January 28, 2010, it issued the permit, subject to certain conditions, in accordance with "Article III, Subdivision IV, Special Uses, Section 106-554, of the Zoning and Development Standards Ordinance."[3] Shortly thereafter, the Newtons appealed the Board's decision to the circuit court.

On May 19, 2010, the master heard arguments on the issues briefed by the parties. A month later, the master issued an order "deny[ing] the appeal,"

[3] Section 106-554 of the Code (1999) allows the Board to amend, extend, vary, or alter an existing special use permit "only pursuant to the standards and procedures for the approval of the original use."

in which he effectively affirmed the Board's decision. Specifically, the master found the ordinance governing convenience centers does not apply within Community Preservation districts. Rather, he determined the Board "only needed to consider the criteria for approval of a special use permit under [section] 106-552" and was not required to order a CIS because the impact of the existing DOC was already known. This appeal followed.

STANDARD OF REVIEW

Generally, appeal from a final order of the circuit court following its review of the zoning board's decision is to the court of appeals. S.C. Code Ann. § 6-29-850 (2004); Rule 203(d), SCACR. Appellate courts regard appeals from zoning decisions in the same manner as appeals from other circuit court judgments in law cases. Petersen v. City of Clemson, 312 S.C. 162, 169-70, 439 S.E.2d 317, 322 (Ct. App. 1993) (citing Bishop v. Hightower, 292 S.C. 358, 360, 356 S.E.2d 420, 421 (Ct. App. 1987)). Even if a court disagrees with a zoning board's decision, the court will refrain from substituting its judgment for that of the zoning board unless the decision "is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the [zoning] board has abused its discretion." Rest. Row Assocs. v. Horry Cnty., 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999). "An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law." Cnty. of Richland v. Simpkins, 348 S.C. 664, 668, 560 S.E.2d 902, 904 (Ct. App. 2002).

LAW/ANALYSIS

I. Preservation

As a threshold issue, the Board contends the Newtons' arguments on appeal are unpreserved because the Newtons failed to raise these arguments to the Board during the administrative process. We disagree.

The Board's argument overlooks the issue identification requirements of the statute governing appeals from decisions by zoning boards, as well as

the non-adversarial nature of administrative proceedings. Appeal from a decision by a zoning board of appeals is to the circuit court. S.C. Code Ann. § 6-29-820 (Supp. 2010). Any "person who may have a substantial interest in any decision" by the Board may initiate an appeal of that decision by filing with the circuit court a "petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law." Id. The circuit court may not take additional evidence and "must determine only whether the decision of the board is correct as a matter of law." S.C. Code Ann. § 6-29-840(A) (Supp. 2010).

This procedure does not allow for issue identification,[4] or even party identification, prior to the filing of a petition with the circuit court. The statute does not require the appellant to attend a public hearing on the Board's decision or even to communicate his concerns to the Board prior to filing his petition with the circuit court. Thus, the sole preservation requirement for a first-level appeal of a zoning board's decision is that an appellant must set forth his issues on appeal in a written petition and file that petition with the circuit court before the thirty-day filing period expires. Here, the Board rendered its decision on January 28, 2010. The Newtons filed their petition outlining the grounds for their appeal on February 26, 2010, which was within the thirty-day filing period. The Board does not contend that this petition failed to identify the grounds for appeal. Therefore, the grounds for appeal identified in the Newtons' petition were properly before the master.

II. Convenience Center Ordinance (Section 106-1362)

The Newtons assert the master erred in finding the requirements of the County ordinance governing convenience centers (section 106-1362, Article

[4] See Austin v. Bd. of Zoning Appeals, 362 S.C. 29, 37-38, 606 S.E.2d 209, 213-14 (Ct. App. 2004) (describing differences between adversarial trial proceedings and administrative proceedings in which circuit court acts in appellate capacity and finding statutory scheme does not permit amendment of grounds for appeal after thirty-day filing period expires).

V, Division 2) do not apply to uses in the Daufuskie Community Preservation District. We disagree.

The standards governing limited and special uses in Article V, Division 2, cover uses "designated in the general land use table 106-1098. These standards are in addition to other standards required elsewhere in this chapter, as well as building code requirements, and further supersede certain standards in [A]rticle VI of this chapter." Beaufort Cnty. Code of Ord. § 106-1126 (Art. V, Div. 2, Subdiv. I) (1999). The ordinance governing convenience centers appears in Article V, Division 2. See Beaufort Cnty. Code of Ord. § 106-1362 (Art. V, Div. 2, Subdiv. VIII) (2003) (describing limited and special use standards for convenience centers in "all applicable districts," including types of waste accepted, buffer zones, lighting, and CIS requirement).

The general land use table in section 106-1098 (the Table) details standards for eleven distinct types of land use districts, each of which the Table classifies as either a Priority area or a Rural area. Beaufort Cnty. Code of Ord. § 106-1098 (Art. V, Div. 1) (2009). The Table does not describe standards for Community Preservation districts, Transitional Investment areas, or special districts. Id. A note following the Table indicates Community Preservation standards are located in one of the appendices to Chapter 106.[5]

We affirm the master's determination that the standards described in the Table, and consequently the provisions of section 106-1362, do not govern Community Preservation districts. Although the Newtons accurately assert

[5] The note refers to Appendix E, which appears to be a scrivener's error. Appendix D contains Community Preservation standards, while Appendix E lists trees and plants recommended for use in landscaping. Furthermore, while Appendix D applied to the Daufuskie Community Preservation District at the time of the Board's and master's decisions, its applicability ceased in February 2011. Standards for Daufuskie Island now appear in the Daufuskie Island Code (Chapter 106, Appendix S, of the Code).

the Code indicates in several places the coverage of its provisions is layered, we find no indication the coverage of Article V, Division 2, or of section 106-1362 specifically, extends to Community Preservation districts. As the master observed, section 106-1126 states that Article V, Division 2, applies to the land uses designated in the Table. However, no mention of Community Preservation standards appears within the body of the Table. Instead, a note appearing below the Table offers a reference for where a reader may locate those standards. § 106-1098. Because the Table itself does not include the standards for Community Preservation districts, the master correctly reasoned that section 106-1362 does not apply to Community Preservation districts.

III. Known Impact

Next, the Newtons assert the master erred in finding that because a convenience center already existed on the parcel at issue and the reviewing staff did not determine a CIS was required, the center's impact was known and the Board did not need to consider a CIS. We disagree.

The division entitled "Discretionary Reviews" authorizes the County's staff to determine whether an applicant must submit a CIS as part of his application for a special use permit. Beaufort Cnty. Code of Ord. § 106-552 (Art. III, Div. 3, Subdiv. IV) (2004). The procedure for such a review requires that the DRT examine the applicant's special use development plan and recommend whether the Board should approve the permit. Id. The special use development plan must address whether the proposed use is consistent with the "purposes, goals, objectives, and policies" of the County's comprehensive development plan, is compatible with the character of nearby land, and minimizes any adverse effects. Id. The Board may require submission of a CIS or traffic impact analysis if its staff determines those reports are needed. Id.

We affirm the master's determination that section 106-552 permitted the Board to use information already in its possession to decide whether a CIS was necessary. The Board had to consider the impact of the

improvements, not merely of the DOC itself. The prior existence of the DOC was less crucial to this determination than the information about the proposed improvements that the reviewing staff had in hand. Section 106-552 required the County to submit with its permit application a special use development plan addressing how the improvements to the DOC would affect the character of nearby land and how the County intended to minimize any adverse effects. We find such a document,[6] as described in section 106-552, would provide the DRT and the Board with information useful in determining the proposed improvements' compatibility with the County's comprehensive development plan and projected impact on nearby property. In addition, the County's application materials suggest any adverse effects of the proposed improvements on the area would be minimal. According to the application, the improvements would affect the manner of handling solid waste at the existing site by providing a "more efficient, cleaner facility" and would "enhance the aesthetic quality of the island." Consequently, the DRT and the Board could decide, based upon the information already in hand, whether to order a CIS.

Furthermore, the evidence in the record does not support the Newtons' contention that the proposed improvements would result in a "more intensive use" of the DOC. The Newtons appear particularly concerned that the Board lacked information that the DOC's compaction capability would invite a greater volume of waste. At the public hearing, Coleman indicated the installation of trash compactors was intended to reduce hauling costs. Coleman stated the improvements were aimed at making the DOC "much safer, much cleaner, much more sanitary, and presentable." Neither Coleman nor Bobby Lee of Thomas & Hutton Engineering Company, who also spoke, advised the Board that any proposed improvement was intended to prepare the DOC to handle an increased volume of waste. Moreover, no evidence indicated the improved DOC would begin accepting additional types of waste

[6] Neither the record nor the parties' arguments on appeal reflect a challenge to the completeness of the application as it relates to compliance with section 106-552. In particular, we note the Newtons never raised the issue of whether the County's application included a special use development plan.

or waste from different sources.[7] Thus, the Newtons' concerns are speculative. In view of these facts, the master did not err in finding section 106-552 did not require the Board to order a CIS.

IV. Discretionary Review under Section 106-552

The Newtons also assert the master erred in finding that only section 106-552 controlled the Board's consideration of the special use permit in this case because the preceding section, which outlines the scope of the entire subdivision, invokes the Table from section 106-1098. We disagree but modify the language of the master's order as discussed below.

Article III, Division 3, Subdivision IV, governs the discretionary review of applications for special use permits:

> Certain land uses and developments present unique problems with respect to their property location. Such land uses and developments are identified as special uses in each particular zoning district (see table 106-1098). Analysis and judgment of the consequences of each use and development is necessary to preserve and promote the public health, safety, and welfare.

Beaufort Cnty. Code of Ord. § 106-551 (Art. III, Div. 3, Subdiv. IV) (1999).

To the extent the Newtons argue section 106-551 invoked the Table, and therefore section 106-1362, this issue is unpreserved.[8] The Newtons did

[7] We note the DOC predates the implementation of Appendix D, and Coleman informed the Board the DOC was restricted from accepting commercially collected waste. He further stated that restriction would remain in effect.

[8] It is also a less compelling rehash of their similar argument under section 106-1126, discussed in Section II, above.

not identify this argument as a ground for their appeal of the Board's decision. See § 6-29-820 (requiring appeal from the Board's decision to be in the form of a "petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law"). In addition, the record does not reflect that they sought a ruling on it from the master. See First Union Nat'l Bank of S.C. v. Soden, 333 S.C. 554, 568, 511 S.E.2d 372, 379 (Ct. App. 1998) (holding an issue is unpreserved for appellate review even if it was raised to the master, if he did not rule upon it and appellant failed to seek a ruling through a motion pursuant to Rule 59(e), SCRCP). Accordingly, any connection between section 106-551 and the Table or section 106-1362 is not properly before this court.

To the extent the Newtons challenge the master's finding the Board "only needed to consider the criteria for approval of a special use permit under [section] 106-552," we affirm the master's decision but modify the language of the order. In his order, the master examined the Newtons' arguments concerning Article V, Division 2, and determined they did not apply to the situation at hand. Specifically, he found both the Table and section 106-1362 were inapplicable. Nonetheless, the master recognized that Community Preservation districts "are governed by specific standards which are outlined in Appendix D." Although he did not examine Appendix D's provisions,[9] the master clearly was aware the standards enunciated in Appendix D applied to Community Preservation Districts. The master's statement that the Board "only needed to consider the criteria for approval of a special use permit under [section] 106-552" is incongruous with his finding concerning Appendix D. Accordingly, we affirm the master's decision to the extent he found the Board needed to consider the criteria for approval of a special use permit under §106-552, and not the provisions of Article V, Division 2.

[9] The record does not reflect that the Newtons presented any arguments under Appendix D to the master, nor did they advance an argument under Appendix D to this court prior to submission of their Reply Brief.

V. Failure to Require a CIS (Section 106-9(b)(2) and (3))

The Newtons assert the master erred in finding the Board did not abuse its discretion by not requiring a CIS before it issued a permit for the construction of a convenience center on Daufuskie Island. In support, they argue because the Board did not have the studies and assessments required by section 106-9(b)(2) of the Beaufort County Code of Ordinances, it "lacked the legal evidence to support its decision." We decline to reach this argument because it is unpreserved for this court's review. Although the Newtons raised it to the master, he did not rule on it in his final order, and the record does not reflect that the Newtons moved the master to alter or amend the judgment. See Soden, 333 S.C. at 568, 511 S.E.2d at 379 (holding an issue is unpreserved for appellate review if it was raised to the master but he did not rule upon it and the appellant failed to seek a ruling through a motion pursuant to Rule 59(e), SCRCP).[10]

CONCLUSION

We find the statute governing appeal from a decision by a zoning board of appeals did not require the Newtons to raise their issues on appeal to the Board in order to preserve them for review by the master. However, we find the Newtons failed to seek a ruling from the master on the issue of whether section 106-9(b) required submission of a CIS for our review. Accordingly, this issue is not preserved for our review.

[10] At oral argument, the Newtons pointed this court to the decision of the Board, which they claim required a CIS to be developed after the Board made its decision. We do not read the order in that fashion. Section 106-57 of the Code, (Art. II, Div. 1) (2004), sets forth the responsibilities of the Board vis-à-vis the DRT and states for grants of special use permits, the Board makes the final decision and the DRT only makes recommendations to the Board.

For the reasons discussed above, we affirm the master's decisions that the standards described in the Table do not govern Community Preservation districts and that section 106-552 did not require the Board to order a CIS.

Furthermore, we find the master's statement that the Board "only needed to consider the criteria for approval of a special use permit under [section] 106-552" apparently conflicts with his recognition that the standards contained in Appendix D to the Code applied to Community Preservation districts such as the one on Daufuskie Island. Consequently, we affirm the master's finding that the Board properly considered the criteria for approval of a special use permit, but we modify his order to hold the Board needed to consider the criteria for approval of a special use permit under §106-552, and not the provisions of Article V, Division 2.

AFFIRMED AS MODIFIED.

SHORT and GEATHERS, JJ., and CURETON, A.J., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Sharon L. Brunson, Appellant,

v.

American Koyo Bearings, Employer, and Tokio Marine and Fire Ins. Co., Carrier, Respondents.

Appeal From Orangeburg County
James C. Williams, Jr., Circuit Court Judge

Opinion No. 4908
Heard September 12, 2011 – Filed November 9, 2011

AFFIRMED

Vernon F. Dunbar, of Greenville, for Appellant.

Dwana Flynn Looper and Adrianne L. Turner, both of Columbia, for Respondents.

WILLIAMS, J.: In this workers' compensation appeal, Sharon Brunson (Brunson) appeals the circuit court's order affirming the Appellate

Panel of the Workers' Compensation Commission's (Appellate Panel) determination that Brunson did not suffer a compensable work-related injury. We affirm.

FACTS/PROCEDURAL HISTORY

Brunson began working for her employer, American Koyo Bearings (Koyo), in March 1999 and claimed she began experiencing skin and respiratory problems in September 2001. Brunson filed a workers' compensation claim against Koyo on April 16, 2002. Brunson alleged she sustained injuries to her lungs, skin, throat, voice box, and nasal passages as a result of exposure to certain chemicals and petroleum products while working on an assembly line at one of Koyo's manufacturing plants. As a result of this exposure, Brunson claimed she suffered from contact dermatitis, asthma, and vocal problems. In her Form 50, Brunson requested a finding on compensability, additional medical treatment, and payment of permanent and total disability benefits. In response, Koyo admitted Brunson suffered from contact dermatitis but denied she suffered any permanent impairment to other body parts and maintained she was not entitled to temporary total disability benefits.

After reporting her symptoms, Koyo referred her to one of its treating physicians, Dr. W. H. Whitley, who prescribed Brunson two topical ointments for her contact dermatitis and Darvocet for her pain. Dr. Whitley advised Brunson to wear gloves to avoid contact with the petroleum products and chemicals used by Koyo in its manufacturing process. While Dr. Whitley concluded the contact dermatitis was caused by exposure to chemicals, he did not believe Brunson's symptoms of chest congestion, hoarseness, and shortness of breath resulted from inhaling chemicals at Koyo. Dr. Whitley believed Brunson had "secondary gain objectives" and while contact dermatitis was a common problem at Koyo, Brunson was the only employee who had been sent to him complaining of chest congestion and hoarseness.

Soon thereafter, Brunson sought an independent evaluation from Dr. Douglas Markham, an allergy and asthma specialist. Dr. Markham diagnosed Brunson as having rhinitis and post-nasal drainage. In Dr. Markham's medical report, he concluded Brunson's health problems were related to her chemical exposure at Koyo based in part on the medical history she gave him, specifically her statement that she improved when she was out of work. Dr. Markham referred Brunson to Dr. Richard Sterling, an ear, nose, and throat specialist, for an evaluation. Dr. Sterling found no congenital basis or physical abnormalities for Brunson's ailments and did not treat Brunson for any problems related to her ear, nose, or throat.

Following a hearing on October 8, 2002, the single commissioner issued an order dated January 29, 2003, finding Brunson had proven by a preponderance of the evidence that she sustained compensable injuries to her lungs, nasal passage, vocal cords, and skin. The single commissioner awarded Brunson medical benefits and payment of temporary total disability benefits. Koyo appealed the single commissioner's order but did not challenge the compensability of the contact dermatitis. Upon review, the Appellate Panel vacated the single commissioner's order and remanded the case for a de novo hearing. Brunson appealed to the circuit court, which found her appeal was interlocutory because a substantial right had not been violated. The circuit court dismissed Brunson's appeal, whereupon she appealed to this court. This court agreed with the circuit court, dismissed Brunson's appeal, and remanded her case to the single commissioner.[1]

On February 7, 2007, the single commissioner conducted a de novo hearing on Brunson's claims. In her order, the commissioner found Brunson failed to establish she suffered a compensable work-related injury or a compensable occupational disease. To support her finding, the commissioner stated she did not find Brunson's testimony to be credible. Specifically, she found Brunson to be "extremely evasive on cross examination as to previous respiratory problems, answering most questions with the response that she

[1] Brunson v. Am. Koyo Bearings, 367 S.C. 161, 623 S.E.2d 870 (Ct. App. 2005).

could not 'remember' or that she could not 'recall.'" When Brunson was asked whether she had been exposed to chemicals in her previous employment at a wood laminate plant, Brunson stated that despite working for her prior employer for eight years, she could not recall whether she had been exposed to chemicals. The single commissioner noted Brunson had a family history of asthma and sinus problems and that she had been treated for respiratory problems prior to her employment with Koyo.

In reaching her decision, the single commissioner noted the testimony from several co-workers in her order. The witnesses testified on Brunson's behalf at the original hearing, and while two of the four witnesses did not testify at the de novo hearing, the parties stipulated their testimony from the prior hearing would be substantially the same. All of Brunson's witnesses testified they noticed Brunson had a rash on her skin and had hoarseness and apparent breathing problems while working. After reviewing their testimony, the single commissioner found their testimony was not persuasive because each admitted they were friends with Brunson outside of work.

Based on medical evidence and other testimony adduced at the original and de novo hearing, the single commissioner concluded any respiratory problems were not causally related to her employment with Koyo. Furthermore, while Brunson's contact dermatitis was compensable through the date of the February 2007 hearing, the single commissioner concluded she failed to establish she developed a compensable work-related injury or occupational disease as a result of her employment. Brunson appealed to the Appellate Panel, which affirmed the single commissioner. The circuit court affirmed the Appellate Panel, and this appeal followed.

STANDARD OF REVIEW

The Administrative Procedures Act (APA) establishes the standard for judicial review of workers' compensation decisions. Pierre v. Seaside Farms, Inc., 386 S.C. 534, 540, 689 S.E.2d 615, 618 (2010). Under the APA, this court can reverse or modify the decision of the Commission when the substantial rights of the appellant have been prejudiced because the decision

is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence considering the record as a whole. Transp. Ins. Co. & Flagstar Corp. v. S.C. Second Injury Fund, 389 S.C. 422, 427, 699 S.E.2d 687, 689-90 (2010).

When the evidence is conflicting over a factual issue, the findings of the Appellate Panel are conclusive. Hargrove v. Titan Textile Co., 360 S.C. 276, 290, 599 S.E.2d 604, 611 (Ct. App. 2004). In workers' compensation cases, the Appellate Panel is the ultimate finder of fact. Shealy v. Aiken Cnty., 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000). "The final determination of witness credibility and the weight to be accorded evidence is reserved to the Appellate Panel." Frame v. Resort Servs. Inc., 357 S.C. 520, 528, 593 S.E.2d 491, 495 (Ct. App. 2004) (internal citation omitted).

LAW/ANALYSIS

Brunson claims the circuit court erred in affirming the Appellate Panel's finding that Brunson's injuries to her lungs, bronchi, and nasal passages were not sustained during the course and scope of her employment. Specifically, Brunson asserts substantial evidence was presented in the form of expert medical testimony, medical evidence, and lay testimony to support the compensability of her claim. We disagree.

"The South Carolina Workers' Compensation Act requires that, to be compensable, an injury by accident must be one 'arising out of and in the course of employment.'" Osteen v. Greenville Cnty. Sch. Dist., 333 S.C. 43, 49, 508 S.E.2d 21, 24 (1998); see also S.C. Code Ann. § 42-1-160(A) (Supp. 2010). "[A]ll occupational diseases are treated as 'injuries by accident.'" State Workers' Comp. Fund v. S.C. Second Injury Fund, 313 S.C. 536, 538, 443 S.E.2d 546, 548 (1994). An occupational disease is one which develops over a period of time as opposed to an injury that is attributable to a one-time event. See State Workers' Comp. Fund v. S.C. Second Injury Fund, 310 S.C. 187, 189, 426 S.E.2d 112, 113 (Ct. App. 1992), rev'd on other grounds by State Workers' Comp. Fund v. S.C. Second Injury Fund, 313 S.C. 536, 443 S.E.2d 546 (1994). Because Brunson claimed she developed respiratory

problems as a result of continued exposure to chemicals at Koyo, she was required to establish the following six elements to recover benefits:

> (1) A disease; (2) the disease must arise out of and in the course of the claimant's employment; (3) the disease must be due to hazards in excess of those hazards that are ordinarily incident to employment; (4) the disease must be peculiar to the occupation in which the claimant was engaged; (5) the hazard causing the disease must be one recognized as peculiar to a particular trade, process, occupation, or employment; and (6) the disease must directly result from the claimant's continuous exposure to the normal working conditions of the particular trade, process, occupation, or employment.

Muir v. C.R. Bard, Inc., 336 S.C. 266, 283, 519 S.E.2d 583, 591-92 (Ct. App. 1999).

The circuit court found Brunson did not suffer a work-related injury to her lungs, bronchi, and nasal passages. In making this conclusion, the circuit court held that Brunson did not establish her asthma or the chemicals causing her asthma were peculiar to her occupation. Furthermore, the circuit court found Brunson did not prove her asthma was a direct result of her exposure to normal working conditions at Koyo.

Despite the circuit court's conclusion, Brunson contends she presented credible medical testimony to prove she suffered a compensable work-related injury. Brunson highlights Dr. Markham's medical reports and material data safety sheets that linked her asthma to her employment with Koyo; however, other competent evidence and testimony was presented to the contrary. See Ballenger v. S. Worsted Corp., 209 S.C. 463, 467, 40 S.E.2d 681, 682-83 (1946) (finding that while medical testimony is entitled to great respect, the fact finder may disregard it if there is other competent evidence in the record). Dr. Markham explicitly based his opinion on Brunson's statements

that she improved while out of work and that she had no prior history of asthma or breathing problems. However, Brunson's claim that she never suffered from respiratory issues was directly refuted by medical records documenting her respiratory complaints prior to her employment with Koyo. Although Dr. Markham reasonably relied on Brunson's statements in forming his opinion on the source of her asthma, we find his opinion is not conclusive, particularly when the single commissioner found Brunson was not credible and evaded questions regarding prior respiratory issues and corresponding treatment throughout her testimony.

Moreover, Dr. Whitley stated in his medical report that while the contact dermatitis was a common problem at Koyo, Brunson is the only patient he treated who complained of chest congestion and hoarseness from inhaling chemical fumes at Koyo. Unlike Dr. Markham, Dr. Whitley believed she had ulterior motives in pursuing her disability claim against Koyo and stated her health issues were strictly limited to "simple contact dermatitis."[2] When conflicting medical evidence is presented, this court must not substitute its judgment for that of the fact finder, which in this case is the Appellate Panel. See Mullinax v. Winn-Dixie Stores, Inc., 318 S.C. 431, 435, 458 S.E.2d 76, 78 (Ct. App. 1995) ("Where the medical evidence conflicts, the findings of fact of the Commission are conclusive."); see also Lockridge v. Santens of Am., Inc., 344 S.C. 511, 518, 544 S.E.2d 842, 846 (Ct. App. 2001) (finding when one doctor attributed employment to injury and another doctor could not testify unequivocally about the source of employee's injury, the Appellate Panel had the discretion to weigh the testimony and deny the employee's claim). Because of the conflicting evidence regarding the source of Brunson's respiratory problems and our limited standard of review, we decline to find the circuit court abused its

[2] In reviewing Dr. Whitley's testimony, we do not condone his unprofessional remarks in Brunson's medical treatment reports. However, we find his professionalism goes to the weight of his testimony and to his credibility. Tiller v. Nat'l Health Care Ctr. of Sumter, 334 S.C. 333, 340, 513 S.E.2d 843, 846 (1999) ("Expert medical testimony is designed to aid the Commission in coming to the correct conclusion; therefore, the Commission determines the weight and credit to be given to the expert testimony.").

discretion in affirming the Appellate Panel on this issue. See Ballenger, 209 S.C. at 466-67, 40 S.E.2d at 682 (finding the Appellate Panel is given discretion to weigh and consider all the evidence, both lay and expert, when deciding whether causation has been established and while medical testimony is entitled to great respect, the fact finder may disregard it if there is other competent evidence in the record); see also Jones v. Harold Arnold's Sentry Buick, Pontiac, 376 S.C. 375, 378, 656 S.E.2d 772, 774 (2008) (internal citation omitted) ("The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence.").

Brunson also contends she presented credible lay testimony to substantiate her claims. At the de novo hearing, the single commissioner discredited Brunson's testimony. The commissioner stated:

> Claimant's testimony before this Commissioner was not credible. I base this finding on my observations of the Claimant and on the delivery of her testimony. Claimant was extremely evasive on cross examination as to previous respiratory problems, answering most questions with the response that she could not "remember" or that she could not "recall."

Because the single commissioner had the benefit of observing Brunson before reaching her decision, we cannot say the Appellate Panel and the circuit court erred in adopting the single commissioner's finding on this issue. See Fishburne v. ATI Sys. Int'l, 384 S.C. 76, 90, 681 S.E.2d 595, 602 (Ct. App. 2009) (internal citation omitted) ("It is logical for the [Appellate Panel], which did not have the benefit of observing the witnesses, to give weight to the Hearing Commissioner's opinion.").

Moreover, while Brunson claims it was error to disregard the testimony of certain lay witnesses who testified on her behalf, it was again within the single commissioner's discretion, and ultimately that of the Appellate Panel, to assess the witnesses' credibility and weigh their testimony in reaching a

decision.[3] See Resort Servs. Inc., 357 S.C. at 528, 593 S.E.2d at 495 (internal citation omitted) ("The final determination of witness credibility and the weight to be accorded evidence is reserved to the Appellate Panel."). Although Brunson's supervisor and co-workers testified Brunson's respiratory problems improved when she did not work in areas where she was exposed to chemicals, each admitted they socialized with Brunson outside of work. In addition, Brunson's supervisor stated he did not know what caused her respiratory problems. After hearing their testimony, the single commissioner found their testimony unpersuasive, and the Appellate Panel agreed with this conclusion. See Stone v. Traylor Bros., 360 S.C. 271, 274, 600 S.E.2d 551, 552 (Ct. App. 2004) ("In an appeal from the [Appellate Panel], neither this court nor the circuit court may substitute its judgment for that of the [Appellate Panel] as to the weight of the evidence on questions of fact, but may reverse where the decision is affected by an error of law."). While this court may have weighed the evidence differently, we are cognizant that this court is not the ultimate fact-finder. See Sharpe v. Case Produce, Inc., 336 S.C. 154, 160-61, 519 S.E.2d 102, 105-06 (1999) (finding this court erred in substituting our judgment for that of the Appellate Panel because it was within the Appellate Panel's discretion, as the ultimate fact-finder, to discount medical evidence and choose between conflicting lay testimony in denying the compensability of an employee's claim). Despite evidence in the record that would have permitted the single commissioner to find Brunson suffered a

[3] Brunson also claims the single commissioner lacked the jurisdiction on remand to make any credibility findings by virtue of Koyo's failure to challenge these witnesses' credibility and testimony in its initial appeal to the Appellate Panel. While Brunson is not required to relitigate unchallenged findings, the compensability and source of Brunson's respiratory issues were at issue in the de novo hearing, which necessarily includes any evidence and testimony pertaining to that issue. See Brunson, 367 S.C. at 165, 623 S.E.2d at 872 ("Brunson, however, is not required to relitigate unchallenged findings - which are law of the case - including Employer's admission in connection with the contact dermatitis injury."); see also Green v. City of Columbia, 311 S.C. 78, 80, 427 S.E.2d 685, 687 (Ct. App. 1993) ("The findings of fact and law by the hearing commissioner become and are the law of the case, unless within the scope of the appellant's exception to the full commission . . . .").

compensable work-related injury, there is also evidence which would allow reasonable minds to reach the conclusion she reached. Id. at 161, 519 S.E.2d at 106 ("Although there was evidence from which the Commissioner could have gone the other way, there is also clearly evidence which would allow reasonable minds to reach the conclusion he reached.").

CONCLUSION

Accordingly, the circuit court's decision is

AFFIRMED.

SHORT and GEATHERS, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

North American Rescue Products, Inc., Appellant/Respondent,

v.

P. J. Richardson, Respondent/Appellant.

Appeal From Greenville County
Steven H. John, Circuit Court Judge

Opinion No. 4909
Heard September 12, 2011 – Filed November 9, 2011

AFFIRMED

Bernie Wellington Ellis, of Greenville and Robert L. Widener, of Columbia, for Appellant-Respondent.

C. Mitchell Brown, William C. Wood, Jr., and A. Mattison Bogan, all of Columbia and Rivers S. Stilwell, of Greenville, for Respondent-Appellant.

WILLIAMS, J.: In this cross-appeal, North American Rescue Products, Inc. (NARP) argues the circuit court erred in denying its motion for a directed verdict because no evidence existed that P.J. Richardson (Richardson) had an ownership interest in NARP or had a contractual right to purchase an ownership interest in NARP. Richardson cross-appeals, contending the circuit court erred in upholding the jury verdict ordering specific performance of the contract with a fair market valuation of the stock. We affirm.

FACTS/PROCEDURAL HISTORY

On January 1, 2000, Bob Castellani (Castellani), on behalf of NARP, and Richardson, on behalf of Reeves Manufacturing, Inc. (Reeves), entered into an agreement (the 2000 Agreement), in which the parties agreed to pay each other commissions equal to twenty-five percent of the taxable income of their companies for cross-selling each other's respective products. Moreover, the parties agreed to issue twenty-five percent of their companies' respective capital stock to each other. After several years of each company operating under this agreement, it is undisputed the parties orally modified the 2000 Agreement by reducing the percentages of stock from twenty-five percent to seven and one-half percent at a meeting in Charleston, South Carolina (the Charleston Agreement). At trial, the parties testified the percentages were reduced, in part, because Richardson began negotiating with a third party for the sale of Reeves. Although the parties agree that the Charleston Agreement modified the percentages of stock from twenty-five percent to seven and one-half percent, the parties dispute the method of payment. Richardson contends the parties agreed that Richardson could acquire seven and one-half percent ownership interest in NARP in exchange for the monetary value of seven and one-half percent of the proceeds from the pending sale of Reeves. NARP argues there was never an agreement where it would accept a cash payment from Richardson in exchange for seven and one-half percent of NARP's stock, but insisted instead that the Charleston Agreement was a "like for like" exchange in each other's companies. In short, there is conflicting testimony as to the method of payment, and the Charleston Agreement is silent on this term.

Several months after the Charleston Agreement, Richardson's attorney drafted an "Agreement of Termination, Settlement, and Release" (the Termination Agreement). Richardson signed the Termination Agreement on behalf of Reeves on November 4, 2004, and Castellani signed the same agreement on behalf of NARP several days later. The Termination Agreement provided, in pertinent part:

> 1. Termination of the 2000 Outline. The parties agree that the 2000 Outline and any and all agreements, understandings, undertakings, or arrangements that in any way arose or may have arisen out of or relate in any manner to the 2000 Outline, are terminated.
>
> 2. Settlement. All claims and potential claims of any nature whatsoever that have been, could have been, or in the future could be asserted by the parties arising out of or relating in any manner to the 2000 Outline are hereby settled, compromised and released for and in consideration of the payment by [Reeves/Richardson] of the sum of $100.00 in lawful money of the United States of America to NARP and [Castellani].
>
> 3. [Reeves and Richardson] Release. NARP and [Castellani] hereby remise, release and forever discharge each [other], along with their respective directors, officers, stockholders, controlling persons, employees, agents, predecessors, successors and assigns, and agents, of and from all, and all manner of, actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, covenants, contracts, controversies, agreements, promises, variances,

trespasses, damages, judgments, executions, claims and demands whatsoever, whether in law or equity, which NARP and/or [Castellani] had, now have or which any personal representative, heir, predecessor, successor or assign of NARP and/or [Castellani] can, shall or may have against [Reeves or Richardson] or their respective directors, officers, stockholders, controlling persons, employees, agents, predecessors, successors and assigns, arising out of or relating to the 2000 Outline from and beginning of time to the date of this Settlement Agreement. It is specifically agreed and understood by the parties that the foregoing release is not intended to, and shall not, release any of the parties from that certain, separate Option Agreement dated [15 Dec], 2004 pursuant to which NARP and [Castellani] have granted [Richardson] an option to purchase 7.5% of the capital stock of NARP.

4. NARP and [Castellani] Release. [Reeves] and [Richardson] hereby remise, release and forever discharge each [other], along with their respective directors, officers, stockholders, controlling persons, employees, agents, predecessors, successors and assigns, and agents, of and from all, and all manner of, actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, whether in law or equity, which [Reeves] and/or [Richardson] had, now have or which any personal representative, heir, predecessor, successor or

assign of [Reeves] and/or [Richardson] can, shall or may have against [NARP or Castellani] or their respective directors, officers, stockholders, controlling persons, employees, agents, predecessors, successors and assigns, arising out of or relating to the 2000 Outline from and beginning of time to the date of this Settlement Agreement. It is specifically agreed and understood by the parties that the foregoing release is not intended to, and shall not, release any of the parties from that certain, separate Option Agreement dated [15 Dec], 2004 pursuant to which NARP and [Castellani] have granted [Richardson] an option to purchase 7.5% of the capital stock of NARP.

5. Entire Agreement. This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter contained herein, and merges all prior discussions and agreements, both oral and written, between the parties.

(emphasis added). To complicate matters further, the parties concede that no written option agreement dated December 15, 2004 existed at the time of the Termination Agreement. Moreover, the parties never entered into an option agreement dated December 15, 2004.

In January 2005, Richardson sold one-hundred percent of Reeves to a third party. The parties continued to discuss the terms of a potential agreement, including the exchange of several proposals, but NARP and Richardson never reached an agreement. On April 17, 2007, Richardson sent NARP a demand letter, advising NARP that Richardson "now desires to exercise his option to purchase" seven and one-half percent of NARP's stock

"under the terms of the October 4, 2004 Option Agreement."[1] NARP responded to the demand letter by instituting this suit seeking a declaratory judgment on the matter. Richardson filed an answer and counterclaim, alleging breach of contract and demanded specific performance. Richardson also asserted relief under the doctrine of promissory estoppel. During the course of the litigation, Richardson filed multiple amended answers and counterclaims. In addition, the circuit court granted Richardson's motion to amend the pleadings to conform to the evidence presented at trial under Rule 15(b), SCRCP.

As a result of the conflicting testimony throughout the trial, the circuit court refused NARP's multiple requests for a directed verdict. Without objection, the circuit court submitted the case to the jury under a special verdict form to answer the fundamental question of whether Richardson had the right to acquire seven and one-half percent of NARP's stock and, if so, at what price. The jury returned a verdict finding Richardson was entitled to receive seven and one-half percent of NARP's stock, but Richardson should pay $2,936,300 for the stock. Following the verdict, the circuit court denied NARP's post-trial motions for directed verdict, new trial absolute, judgment notwithstanding the verdict, and for a new trial under the thirteenth juror doctrine. In addition, Richardson unsuccessfully moved for the circuit court to "reform the verdict" on the basis that the "number is something that [Richardson] can't see already in evidence." The circuit court confirmed the jury verdict in favor of Richardson and granted specific performance as found by the jury.

NARP appeals, contending the circuit court erred in denying its directed verdict motion on all contract claims and on promissory estoppel. Richardson cross-appeals, arguing the judgment amount for specific performance should be $415,988, not $2,936,300 as provided in the jury verdict.

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[1] Richardson conceded at trial that the option agreement dated October 4, 2004 was never finally agreed to by both parties.

STANDARD OF REVIEW

When considering a directed verdict motion, the circuit court should view the evidence and all reasonable inferences in the light most favorable to the non-moving party. Sabb v. S.C. State Univ., 350 S.C. 416, 427, 567 S.E.2d 231, 236 (2002) (citing Steinke v. S.C. Dep't of Labor, Licensing & Regulation, 336 S.C. 373, 386, 520 S.E.2d 142, 148 (1999)). "If more than one reasonable inference can be drawn . . . the case should be submitted to the jury." Chaney v. Burgess, 246 S.C. 261, 266, 143 S.E.2d 521, 523 (1965) (citing Mahon v. Spartanburg Cnty., 205 S.C. 441, 449, 32 S.E.2d 368, 371 (1944)). The circuit court should be "concerned only with the existence or nonexistence of evidence," not its credibility or weight. Jones v. Gen. Elec. Co., 331 S.C. 351, 356, 503 S.E.2d 173, 176 (1998) (citing Garrett v. Locke, 309 S.C. 94, 99, 419 S.E.2d 842, 845 (Ct. App. 1992)). An appellate court will only reverse the circuit court's ruling when no evidence supports the ruling or when the ruling is controlled by an error of law. Steinke, 336 S.C. at 386, 520 S.E.2d at 148.

An action for specific performance is one in equity. Campbell v. Carr, 361 S.C. 258, 262, 603 S.E.2d 625, 627 (Ct. App. 2004). "In reviewing a proceeding in equity, this court may find facts based on its own view of the preponderance of the evidence." Greer v. Spartanburg Technical Coll., 338 S.C. 76, 79, 524 S.E.2d 856, 858 (Ct. App. 1999). "This broad scope of review does not require this court to ignore the findings below when the circuit court was in a better position to evaluate the credibility of the witnesses." Id. "Moreover, the appellant is not relieved of his burden of convincing the appellate court the [circuit court] committed error in its findings." Pinckney v. Warren, 344 S.C. 382, 387-88, 544 S.E.2d 620, 623 (2001).

Additionally, "[a] legal question in an equity case receives review as in law." Sloan v. Greenville Cnty., 356 S.C. 531, 546, 590 S.E.2d 338, 346 (Ct. App. 2003). Because questions of law may be decided with no particular deference to the circuit court, this court may correct errors of law in both

legal and equitable actions. See I'On, LLC v. Town of Mt. Pleasant, 338 S.C. 406, 411, 526 S.E.2d 716, 719 (2000) (citing S.C. Code Ann. § 14-8-200 (Supp. 1998)).

LAW/ANALYSIS

I. NARP's Appeal

NARP argues the circuit court erred in denying its directed verdict motion on Richardson's contract and promissory estoppel claims on the grounds that the Termination Agreement unambiguously and unequivocally terminated all rights and promises under the 2000 agreement. We disagree.

In ruling on motions for directed verdict, "the [circuit] court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions and to deny the motions whe[n] either the evidence yields more than one inference or its inference is in doubt." Law v. S.C. Dep't of Corr., 368 S.C. 424, 434, 629 S.E.2d 642, 648 (2006). This court will reverse the circuit court's rulings on directed verdict motions only when there is no evidence to support the rulings or when the rulings are controlled by an error of law. See Hinkle v. Nat'l Cas. Ins. Co., 354 S.C. 92, 96, 579 S.E.2d 616, 618 (2003) (internal citation omitted). After viewing the evidence in a light most favorable to Richardson, as our standard of review requires, we find the circuit court properly denied NARP's directed verdict motion.

NARP maintains the merger clause of the Termination Agreement between the parties ended any and all rights that Richardson had or may have to own or purchase any NARP stock. However, considered in the light most favorable to Richardson, there is evidence from which the jury could find the document containing the termination provision was only a single portion of an overarching, three-step agreement between the parties. At trial, Richardson presented evidence that a tripartite agreement was never fully executed and, as a result, the parties continued to be bound by the Charleston Agreement. Richardson and his wife both testified the Termination Agreement was only one part of a tripartite agreement, which also included

Richardson's right to purchase seven and one-half percent of NARP's stock in exchange for a charitable donation to Dobson Ministries in the amount equivalent to seven and one-half percent of the sale of Reeves. In addition, Richardson's former attorney, Rod Manning (Manning), offered similar testimony consistent with the position that the Termination Agreement was part of a larger, tripartite agreement.

In denying NARP's multiple motions for directed verdict, the circuit court properly considered the existence of this conflicting evidence. See Garrett, 309 S.C. at 99, 419 S.E.2d at 845 (stating that the circuit court should not be concerned with the credibility or weight of evidence, only its existence). The circuit court stated,

> Y'all might be certain that you entered into that November 8, 2004 termination agreement but I don't think the evidence shows that. I don't know if you did or not. Number one. And the terms of the contract are absolutely ambigious [sic]. Read as a whole, it borders on being completely un-understandable. So all these matters barring some change from the evidence presented by the defense and all these issues are going to go to the jury.

In denying NARP's motion for a directed verdict again at the close of the evidence, the circuit court stated "the testimony is conflicting" and NARP's position "certainly is a possible conclusion that the jury can come to[, b]ut there is more than one."

There may be a basis for the fact-finder to reject the testimony of Richardson, his wife, and Manning, but that credibility determination lies with the jury, not the court, at the directed verdict stage. See Sabb, 350 S.C. at 427, 567 S.E.2d at 236 (noting a circuit court must deny a directed verdict motion when the evidence yields more than one inference or its inference is in doubt). We hold the evidence under the proper standard of review presented a question of fact as to whether a contract existed between the

parties. Accordingly, we affirm the circuit court's denial of NARP's directed verdict motions. Id. (stating an appellate court will reverse the circuit court's decision to deny a directed verdict motion only when no evidence supports the ruling below).

II. Richardson's Cross-Appeal

A. Standing

As an initial matter, NARP contends Richardson does not have standing to appeal because Richardson is not an aggrieved party and, therefore, does not have the right to appeal. See Rule 201, SCACR; S.C. Code Ann. § 18-1-30 (1976). We find this position without merit.

Rule 201(b) limits the ability to appeal to "[o]nly a party aggrieved by an order, judgment . . . or decision . . . ." Rule 201(b), SCACR. This court has previously explained that under Rule 201(b), "[t]he word 'aggrieved' refers to a substantial grievance, a denial of some personal or property right, or the imposition on a party of a burden or obligation." Beaufort Realty Co. v. Beaufort Cnty., 346 S.C. 298, 301, 551 S.E.2d 588, 589 (Ct. App. 2001). "A party is aggrieved by a judgment or decree when it operates on his or her rights of property or bears directly on his or her interest." Id.

In the instant case, Richardson contends he entered into a contract requiring him to pay seven and one-half percent of the sale of Reeves in exchange for seven and one-half percent of stock in NARP. The jury's verdict granted specific performance in favor of Richardson, but the judgment required Richardson pay $2,936,000, instead of $415,988, which is the equivalent to seven and one-half percent of the proceeds from the sale of Reeves. The law recognizes that despite having been a "winning" party below, a party can still be aggrieved by a judgment of the court. See Cobb v. Benjamin, 325 S.C. 573, 580, 482 S.E.2d 589, 592-93 (Ct. App. 1997) (holding party was aggrieved and appeal was proper despite judgment essentially granting relief the party requested); Cisson v. McWhorter, 255 S.C. 174, 178, 177 S.E.2d 603, 605 (1970) (stating an aggrieved party is

defined as a person who is aggrieved by a judgment or decree "when it operates on his rights of property or bears directly upon his interest, the word aggrieved referring to a substantial grievance, a denial of some personal or property right or the imposition on a party of a burden or obligation"). Accordingly, we find Richardson is an aggrieved party in a legal sense and, therefore, has standing to appeal.

B. Preservation

NARP also asserts Richardson's argument on cross-appeal is not preserved for our review because Richardson failed to challenge the circuit court's ruling at trial and does not specifically raise the issue on appeal. We disagree.

It is well settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the circuit court to be preserved. See generally Holy Loch Distribs., Inc. v. Hitchcock, 340 S.C. 20, 24, 531 S.E.2d 282, 284 (2000); Staubes v. City of Folly Beach, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000). Moreover, our courts have adhered to the rule that when an issue has not been ruled upon by the circuit court or raised in a post-trial motion, such issue may not be considered on appeal. See SSI Med. Servs., Inc. v. Cox, 301 S.C. 493, 499, 392 S.E.2d 789, 793 (1990) (finding an issue never ruled on by the circuit court or raised in an appropriate post-trial motion is not preserved for review).

After the jury granted specific performance in favor of Richardson and found that he was entitled to receive seven and one-half percent of NARP's stock upon paying $2,936,300, Richardson made the following motion:

> [W]e'd ask for JNOV based on the 13th jury doctrine for the Court to reform the verdict in that the basis for the number [i.e. $2,936,300] is something that I can't see already in evidence.[2]

[2] Although Richardson's counsel has confused the language of the post-trial motion he wished to employ, as we interpret the record, it is entirely clear to

It is evident that Richardson made a post-trial motion objecting to the amount the jury determined NARP was entitled to receive in exchange for seven and one-half percent of its stock. In response, the circuit court denied Richardson's post-trial motion stating, "there is sufficient evidence in the record which would support the jury's verdicts in the amount set forth based upon the evidence presented." As a result, this issue was raised and ruled upon by the circuit court. Richardson properly appeals this issue, arguing the circuit court's grant of specific performance should be for $415,988, the contract amount Richardson alleges was agreed to by the parties in the Charleston Agreement. Accordingly, we find Richardson properly preserved and raised this issue on appeal.

C. Specific Performance

In his cross-appeal, Richardson contends the circuit court properly entered a judgment of specific performance based upon the jury's answers to the interrogatories on the special verdict form, but erred in determining the amount Richardson must pay for seven and one-half percent of NARP's stock. We disagree.

Although an action for specific performance is one in equity, the record indicates the parties and the court treated this case as one in law, submitting issues of fact to a jury. See Horn v. Davis Elec. Constructors, Inc., 302 S.C. 484, 487, 395 S.E.2d 724, 725-26 (Ct. App. 1990) (holding parties implicitly

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this court that Richardson's counsel moved for a new trial nisi remittitur based upon counsel's desire to "reform the verdict" and his statement that the jury's "number is something that [he] can't see already in evidence." Counsel's statements, coupled with the circuit court's ruling, support this interpretation. See James v. Horace Mann Ins. Co., 371 S.C. 187, 193, 638 S.E.2d 667, 670 (2006) ("A motion for a new trial nisi remittitur asks the [circuit] court to reduce the verdict because the [jury's] verdict is merely excessive."). Accordingly, we treat Richardson's post-trial motion as a new trial nisi remittitur.

agreed to trial by consent in equity action for retaliatory discharge when parties and court treated case as law case with submission of issues of fact to jury and court did not consider jury as advisory only). Moreover, the record conclusively demonstrates the circuit court intended that the jury would decide all questions of fact in this case, including the price for the stock, as evidenced by the special verdict form submitted to the jury without objection.[3] Accordingly, the circuit court had the responsibility to enter an

[3] The circuit court submitted the case to the jury under a special verdict form that asked numerous contract questions, which the jury answered as follows:

1. Did [NARP] and [Richardson] give each other the right to acquire 7.5% of each other's stock?

a. YES.

2. Do you find that [NARP] agreed to let [Richardson] acquire 7.5% of [NARP's] stock in exchange for money rather than the issuance of 7.5% of capital stock?

a. YES.

3. Can both parties perform under the 2000 Agreement as amended in Charleston?

a. YES.

4. Did the parties [NARP and Richardson] enter into a contract, that is the November 2004 [Termination Agreement]?

a. YES.

5. If the [Termination Agreement] is a contract, does it end both parties' rights to acquire 7.5% of the capital stock of each other?

a. NO.

. . .

8. Is [Richardson] entitled to receive 7.5% of the outstanding capital stock of [NARP]?

a. YES.

order consistent with the jury's findings if there was any evidence to support such findings. See Johnstone v. Matthews, 183 S.C. 360, 366, 191 S.E. 223, 225 (1937) (holding when issues of fact in equity cases are tried to a jury and findings of fact are made, if there is any evidence to support them, the findings are conclusive of the issues submitted).

Here, the circuit court did not err in granting specific performance in the amount the jury determined because it is an appropriate remedy under the evidence presented in this case. At trial, Richardson presented the testimony of Mike Melinger (Melinger), an expert witness qualified in the field of business evaluations, to detail the fair market value of NARP's stock. Over NARP's objections, the circuit court ruled the expert witness could testify and informed the parties that the jury would have to decide the amount Richardson would have to pay for the stock if Richardson was entitled to it. Melinger testified he applied the industry standard lack of control discount and a lack of marketability discount to the two estimated values of $150,000,000 and $80,000,000 placed on NARP's company. Melinger further testified that "[a]t 150 million dollars, the [seven and one-half percent] interest would be worth $5,750,000. At 80 million dollars, [seven and one-half percent] interest would be worth $3,000,120."

Once in deliberations, the jury submitted a question to the court concerning number eight on the verdict form. The jury inquired: "If we [find Richardson is entitled to NARP's stock], will P.J. Richardson be required to purchase 7.5% of NARP common stock at current market value[?]" (emphasis in original). The circuit court advised the jury that it "must assign some value for the stock if" the jury answered question number eight in the affirmative. Utilizing the fair market value of $80,000,000, the jury's determination that Richardson must pay $2,936,300 for seven and one-half percent of NARP's stock is within the range of the expert witness' testimony. See Buzhardt v. Cromer, 272 S.C. 159, 163, 249 S.E.2d 898, 900 (1978)

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b. [If so], what should [Richardson] pay to [NARP] for 7.5% of the common capital stock?
    i. $2,936,300.

(holding when the amount of the verdict falls within the range of amounts testified to, the verdict cannot be disturbed on the ground of excessiveness). Furthermore, in denying Richardson's post-trial motion, the circuit court stated:

> I do find that there is sufficient evidence in the record which would support the jury's verdict in the amount set forth based upon the evidence presented [including] the different dates as far as the evaluation over a period of years that the jury could have used in this particular matter to arrive at that verdict. And I find it's well within their discretion and the facts and evidence in this case.

As a result, we find ample evidence in the record to support the jury's verdict. Moreover, Richardson has not presented, and we do not find, any compelling reasons to invade the jury's province and alter the amount in the verdict. See Bailey v. Peacock, 318 S.C. 13, 14, 455 S.E.2d 690, 691 (1995) (stating compelling reasons must be given to justify invading the jury's province).

In granting Richardson seven and one-half percent of NARP's stock in exchange for $2,936,300, the jury's verdict is supported by the evidence in the record. See Johnstone, 183 S.C. at 366, 191 S.E. at 225 (holding when issues of fact in equity cases are tried to a jury and findings of fact are made, if there is any evidence to support them, the findings are conclusive of the issues submitted). Accordingly, we affirm the circuit court's entry of specific performance and hold Richardson must pay $2,936,300 for seven and one-half percent of NARP's stock.

CONCLUSION

Accordingly, the circuit court's order is

AFFIRMED.

SHORT and GEATHERS, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Glenda Wilder, Respondent,

v.

Blue Ribbon Taxicab Corp. and Freddie Pryor, Jointly, Severally, or in the Alternative, Defendants,

Of Whom Blue Ribbon Taxicab Corp. is Appellant.

Appeal From Richland County
Thomas W. Cooper, Jr., Circuit Court Judge

Opinion No. 4910
Heard October 3, 2011 – Filed November 9, 2011

AFFIRMED

James Mixon Griffin, of Columbia, for Appellant.

J. Carlisle Oxner and Robert Daniel Dodson, of Columbia, for Respondent.

PER CURIAM: Blue Ribbon Taxicab Corp. (Blue Ribbon) appeals in this default negligence action. We affirm.

FACTS

Glenda Wilder filed this action against Blue Ribbon and Freddie W. Pryor, which alleged negligence arising from an automobile accident.[1] Wilder provided an affidavit of service on Blue Ribbon, alleging service was made on May 12, 2006, to Barbara Dotson, Blue Ribbon's president and person authorized to accept service. In April 2007, Wilder moved for entry of default. The Honorable Alison R. Lee granted the motion.

Blue Ribbon moved to set aside the entry of default and provided Dotson's affidavit stating she did "not recall ever personally receiving a copy" of the summons and complaint. At a hearing before the Honorable James R. Barber, Wilder argued Blue Ribbon did not have a meritorious defense because it was a "clear liability case" due to the taxi rear-ending Wilder. Judge Barber asked Blue Ribbon's counsel: "You all acknowledge that it's a clear negligence?" Counsel conceded, stating "I think that's the case, Your Honor." Counsel also stated: "[W]e're fine having a non-jury [trial] . . . ." Judge Barber denied the motion to set aside the entry of default, finding Blue Ribbon's explanation insufficient and stating that "[s]imply because Ms. Dotson does 'not recall' being personally served is not 'good cause' as required by Rule 55(c), SCRCP." Furthermore, he found Blue Ribbon failed to show other reasons why it should be relieved from default: (1) Blue Ribbon lacked a meritorious defense; (2) the timing of the motion to set aside entry of default was late at nearly a year after service; and (3) Wilder would be prejudiced if the matter was further delayed while Blue Ribbon conducted discovery on issues not truly in dispute, such as liability. Blue Ribbon requested additional time for discovery, and Judge Barber allowed sixty additional days for discovery related to damages.

[1] A taxi, owned by Blue Ribbon and driven by Pryor, rear-ended Wilder's vehicle.

The Honorable G. Thomas Cooper, Jr., presided over the damages hearing. Wilder testified she was rear-ended by the Blue Ribbon taxi on August 27, 2005, injuring her neck, shoulder, and lower back. She was treated at Providence Hospital, by her family doctor, and in physical therapy. Wilder missed forty hours of work at $27.70 per hour.[2] Wilder testified she suffered "a lot of pain due to the accident." At the time of the hearing, nearly three years after the accident, Wilder still suffered pain when standing or sitting for long periods of time. Wilder introduced total economic damages of $5,682.56, including lost wages of $1,108, property damage of $808, and medical expenses of $3,766.56.

Judge Cooper awarded damages of $20,682.56, including the $5,682.56 in economic damages and $15,000 for "pain, suffering, loss of enjoyment of life, emotional distress, and mental anguish (past, present and future)." Judge Cooper denied Blue Ribbon's post-trial motion. This appeal follows.

STANDARD OF REVIEW

In an action at law, when a case is tried without a jury, the trial court's findings of fact will be upheld on appeal when they are reasonably supported by the evidence. Townes Assocs., Ltd. v. City of Greenville, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976). The trial court's findings of fact will not be disturbed on appeal unless wholly unsupported by the evidence or unless it clearly appears the findings were influenced or controlled by an error of law. Butler Contracting, Inc. v. Court Street, LLC, 369 S.C. 121, 127-28, 631 S.E.2d 252, 255-56 (2006). The trial court's findings in such a case are equivalent to a jury's findings in a law action. Id.

LAW/ANALYSIS

I. Motion to Set Aside Entry of Default

Blue Ribbon first argues Judge Barber erred in failing to set aside the entry of default. We disagree.

[2] Wilder testified she is a cardiovascular stenographer at Providence Hospital.

The standard for granting relief from an entry of default is "good cause" as prescribed by the South Carolina Rules of Civil Procedure. Rule 55(c), SCRCP ("For good cause shown the court may set aside an entry of default . . . ."); see Wham v. Shearson Lehman Bros., Inc., 298 S.C. 462, 465, 381 S.E.2d 499, 501 (Ct. App. 1989) (explaining the standard for granting relief under Rule 55(c) is "good cause"). "This standard requires a party seeking relief from an entry of default . . . to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice." Sundown Operating Co. v. Intedge Indus., Inc., 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009). "Once a party has put forth a satisfactory explanation . . . the trial court must also consider [the Wham factors]: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted." Id. at 607-08, 681 S.E.2d at 888 (citing Wham, 298 S.C. at 465, 381 S.E.2d at 501-02). A trial court is not required to make specific findings of fact for each factor if there is sufficient evidence in the record to support the trial court's decision. Sundown, 383 S.C. at 608, 681 S.E.2d at 888. The decision whether to set aside an entry of default is within the sound discretion of the trial court. Williams v. Vanvolkenburg, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct. App. 1994).

Blue Ribbon initially argues the trial court erred in finding it was served. We find there was evidence in the record to support the trial court's finding of service. Judge Barber considered the affidavits of the process server and Dotson. Wilder argued Dotson's affidavit did not state Blue Ribbon was not served; rather, just that she did not recall ever personally receiving a copy of the summons and complaint. Based on the affidavits, Judge Barber concluded, "In a situation like this, when it comes down to just he says/she says, I'm going with the process server." We discern no reversible error by Judge Barber in his finding that Blue Ribbon was served. See id. (stating a trial court's decision on whether to set aside an entry of default will not be disturbed on appeal unless it is without evidentiary support or controlled by an error of law).

Under the Wham factors, we likewise find no abuse of discretion in Judge Barber's finding that Blue Ribbon did not show good cause sufficient to relieve it from the entry of default. As to the first factor, the timing of the motion for relief, more than a year elapsed between the time Blue Ribbon was served with the summons and complaint and when it moved for relief. Regarding a meritorious defense, the second factor, Judge Barber accepted Blue Ribbon's acknowledgment that it had no meritorious defense to liability. Finally, as to the degree of prejudice to Wilder, Judge Barber recognized Wilder's argument that she would be prejudiced if the matter was further delayed while Blue Ribbon conducted discovery on an issue such as liability, which was not in dispute. We find evidence to support Judge Barber's decision and affirm the denial of the motion to set aside entry of default. See Stark Truss Co. v. Superior Constr. Corp., 360 S.C. 503, 512, 602 S.E.2d 99, 104 (Ct. App. 2004) (affirming the trial court's refusal to set aside the entry of default where there was evidence to support the trial court's decision).

II. Medical Expenses

Blue Ribbon next argues Judge Cooper erred by including medical expenses as an element of damages because there was no expert testimony, and the only evidence that Wilder's "medical bills were a result of injuries she sustained in the accident" was her own testimony. We find no reversible error.

At the damages hearing, Wilder testified she was injured as a result of the accident. She felt numbness, "like a rush to [her] head, kind of dizziness and throbbing pain in [her] lower back." She went to the Providence Hospital emergency room, was x-rayed, and was given pain medication. A couple of days later, she was again treated at Providence Hospital for follow-up care and was sent to physical therapy for evaluation. Wilder testified the hospital personnel at her second visit recommended she consult her family physician. Wilder followed up with her family physician, who prescribed medication and physical therapy. Wilder had three follow-up visits with her physician, and physical therapy at Providence Hospital and First Choice Rehabilitation. Wilder missed five days of work after the accident.

The admission of evidence is a matter addressed to the sound discretion of the trial court. Gamble v. Int'l Paper Realty Corp. of S.C., 323 S.C. 367, 373, 474 S.E.2d 438, 441 (1996). On appeal, this court will not disturb a trial court's evidentiary rulings absent a clear abuse of discretion. Hofer v. St. Clair, 298 S.C. 503, 513, 381 S.E.2d 736, 742 (1989).

"An action in tort for damages is an action at law." Judy v. Judy, 383 S.C. 1, 6, 677 S.E.2d 213, 216 (Ct. App. 2009). "In a law case, the credibility and weight to be accorded evidence is solely for the fact finder to determine." Hanna v. Palmetto Homes, Inc., 300 S.C. 535, 537, 389 S.E.2d 164, 165 (Ct. App. 1990); see Parsons v. Georgetown Steel, 318 S.C. 63, 67, 456 S.E.2d 366, 368 (1995) (stating the credibility and weight of testimony is for the trier of fact). "Expert testimony is not required to prove proximate cause if the common knowledge or experience of a layperson is extensive enough." O'Leary-Payne v. R.R. Hilton Head, II, Inc., 371 S.C. 340, 349, 638 S.E.2d 96, 101 (Ct. App. 2006). "[W]here physical injury is coincident with or immediately follows an accident and is naturally and directly connected with it lay testimony may be sufficient to carry to the triers of the facts the issue of whether or not the accident proximately caused it . . . ." Roscoe v. Grubb, 237 S.C. 590, 596, 118 S.E.2d 337, 340 (1961); see Armstrong v. Weiland, 267 S.C. 12, 16, 225 S.E.2d 851, 853 (1976) ("When the testimony of an expert witness is not relied upon to establish proximate cause, it is sufficient for plaintiff to put forth some evidence which rises above mere speculation or conjecture . . . .").

We find Judge Cooper did not err in admitting Wilder's own testimony of her injuries and the medical bills. See Pearson v. Bridges, 337 S.C. 524, 530, 524 S.E.2d 108, 111 (Ct. App. 1999) ("In personal injury actions, great latitude is allowed in the introduction of evidence to aid in determining the extent of damages; . . . [A]ny evidence which tends to establish the nature, character, and extent of injuries which are the natural and proximate consequences of defendant's acts is admissible . . . .").

III. Damages for Permanent Injury and the Future[3]

Blue Ribbon argues the trial court erred in awarding damages for permanent injury and future pain and suffering. We disagree.

Wilder testified she continues to suffer pain from the accident and has trouble standing or sitting for long periods of time. She described the pain as "dull because it just feels like my back is going to give out." Wilder testified she had not suffered any similar symptoms before the accident. Judge Cooper concluded in his written order: "[Wilder] is entitled to recover $15,000.00 to compensate her for her pain, suffering, loss of enjoyment of life, emotional distress, and mental anguish (past, present and future)."

The amount of damages suffered in a personal injury action is a question for the fact-finder. See Hicks v. Herring, 246 S.C. 429, 436, 144 S.E.2d 151, 154 (1965) (finding the amount of damages awarded in a personal injury action is a question for the jury). Future damages are generally recoverable in personal injury actions as long as the damages are reasonably certain to result in the future from the injury. Haltiwanger v. Barr, 258 S.C. 27, 32, 186 S.E.2d 819, 821 (1972). "Future damages in personal injury cases need not be proved to a mathematical certainty. Oftentimes a verdict involving future damages must be approximated. A wide latitude is allowed the jury." Id. at 32-33, 186 S.E.2d at 821. "The fact that difficulty may be involved in determining future damages[] does not prevent the granting of such relief where damages with reasonable certainty and probability will follow." Doremus v. Atl. Coast Line R.R. Co., 242 S.C. 123, 148, 130 S.E.2d 370, 382 (1963).

Although sparse, Wilder presented some evidence of permanent injury and entitlement to damages for future pain and suffering by testifying she continued to experience pain nearly three years after the accident. We grant the trial court wide latitude in the review of an award of damages. Accordingly, we affirm.

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[3] We combine Blue Ribbon's third and fourth arguments.

CONCLUSION

For the foregoing reasons, the order on appeal is

AFFIRMED.

SHORT, WILLIAMS, and GEATHERS, JJ., concur.