IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Spartanburg County

Court of Common Pleas
Gordon G. Cooper, Master-in-Equity for Spartanburg County

Case No. : 2006-CP-42-3378

JAMES MOORE ..... **Respondent**

v.

JEANNETTE M. BENSON and
THOMAS LEE BENSON ..... **Appellants**

FINAL BRIEF OF RESPONDENT

Original:
June 3, 2009

With Redactions:
June 15, 2009

Edwin C. Haskell III (S.C. Bar No. 2810)
Smith & Haskell Law Firm, L.L.P.
218 East Henry Street
Spartanburg, SC 29306
Telephone: (864) 582-6727
Facsimile: (864) 585-8358

Chadwick D. Pye (S.C. Bar No. 15834)
Post Office Box 6346
Spartanburg, SC 29304
Telephone: (864) 583-0997
Facsimile: (864) 583-5672

Attorneys for Respondent

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Facsimile: (864) 583-5672

Attorneys for Respondent

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STATEMENT OF THE ISSUES

I. Whether the Trial Court erred in denying Appellants' Motion to Dismiss on the ground that Respondent filed his complaint in excess of the applicable statute of limitations.

II. Whether the Trial Court erred in finding that Appellants converted Respondent's retirement funds totaling $29,433.46 to their own use and breached their fiduciary duty to the Respondent when they purchased the property at [redacted].

III. Whether the issue that the Respondent had actual damages is preserved for appellate review.

IV. Whether the issue that the Respondent should reimburse the taxes and insurance paid for [redacted] for the past seven years is preserved for appellate review.

V. Whether the issue that the Respondent should reimburse Appellants $27,350.45 is preserved for appellate review.

VI. Whether the issue challenging the award of punitive damages to the Respondent is preserved for appellate review.

STATEMENT OF THE CASE

Respondent (hereinafter "Mr. Moore"), at the time of the trial, was 88 years old. Mr. Moore is the father of Appellant Jeannette Benson (hereinafter "Mrs.

Benson") and the father-in-law of Appellant Thomas Lee Benson (hereinafter "Mr. Benson").

Mr. Moore is illiterate, having only sporadically attended school until the fifth grade. (R. p. 49, lines 8-12; p. 81, lines 4-13; p. 143, lines 10-23; p. 111, lines 16-20) Throughout his marriage, his wife took care of all of the bills because Mr. Moore could neither read nor understand the bill paying process. (R. p. 49, lines 13-19; p. 143, lines 3-9) During the divorce period, Mrs. Benson assisted Mr. Moore with his finances. On February 16, 1999, Mr. Moore executed a Durable Power of Attorney, making Mrs. Benson his attorney in fact. (R. pp. 374-380)(Durable Power of Attorney, Trial Exhibit, Plaintiff No. 1) Mrs. Benson then took on the duties that Mr. Moore's wife had overseen during the marriage. (R. p. 50, line 23-p.51, line 4)

On January 14, 1999, Mr. Moore withdrew all of the funds from his retirement account, which totaled $29,433.46. A cashier's check in the amount of $29,433.46 was issued to Mr. Moore in the same amount. (R. p. 99, line 7-p. 100, line 9; p. 389) (Cashier's Check, Trial Exhibit, Defendants No. 7) On the same day, a certificate of deposit was opened at the BB&T bank in the amount of $29,433.46, in the sole name of Mrs. Benson. (R. p. 396)(Certificate of Deposit Receipt, Trial Exhibit, Defendants No. 8) It was an individual account and was owned by Mrs. Benson. (R. p. 100, line 13-p. 102, line 13) Mr. Moore had no idea that the funds had been transferred to a CD in Mrs. Benson's name alone. (R. p. 60, lines 15-20)

On November 3, 2000, Mr. Moore and his wife, Allean Moore, were divorced by Decree of Divorce in the Family Court of the Seventh Judicial Circuit. (R. pp. 397-404) (Decree of Divorce, Trial Exhibit, Defendants No. 1) The primary marital asset was a piece of real estate located at [redacted] in Lyman, South Carolina, upon which the marital residence stood. Mr. Moore owned the land at the time of the marriage. (R. p. 73, lines 13-16) Some years later the house was built. This home was the only home Mr. Moore had known for most of his adult life. (R. p. 48, line 25-p. 49, line7) At the time of the divorce, the property was valued at $154,000. (R. pp. 397-404)(Decree of Divorce, Trial Exhibit, Defendants No. 1)

The Decree of Divorce ordered that Mr. Moore pay Mrs. Moore the sum of $42,613 as and for her share of the marital property. However, on January 8, 2001, the Family Court issued an Order on Defendant's Motion to Alter or Amend (the "Amended Order"), in which the amount Mr. Moore was required to pay Mrs. Moore was amended to $52,851. (R. pp. 405-413)(Am. Order, Jan. 8, 2001, Trial Exhibit, Defendants No. 2)

The Amended Order further stated:

> Because the net gain to the Wife is $10,238.00, the Husband should make an election, within forty-five (45) days from the date of this Order, if he desires to buy out the Wife's interest. If he is able, or elects to do so, the Husband should pay the Wife $52,851.00 within ninety (90) days from the date of this Order. In the alternative, if the Husband is unable or unwilling to buy out the Wife's interest, then within forty-five days from the date of this Order, the marital residence should be place[d] on the market for sale, under the control of the Husband; upon

> the sale of the residence, the Wife's interest should be paid forthwith; and if the residence is not under contract for sale within six (6) months from the date of this Order, the Wife may petition the Court for a judicial sale.

(R. p. 411)(Am. Order, Jan. 8, 2001, at 7, Trial Exhibit, Defendants No. 2)

By the time of the Amended Order in 2001, Mr. Moore was in his early 80s. He could not read the Amended Order and Mrs. Benson did not explain it to him or have a discussion with him that he had to pay his wife some money as a result of the divorce. (R. p. 62, lines 1-5)

On March 19, 2001, Mrs. Benson took Mr. Moore to the offices of Attorney John Henry Heckman III. While Mrs. Benson met with Mr. Heckman, Mr. Moore remained seated in the hallway. (R. p. 55, line 19-p. 56, line 6) Mrs. Benson brought papers out to Mr. Moore to sign. Mr. Moore could not and did not read the papers. Mrs. Benson did not explain the papers. She simply told Mr. Moore to sign them. (R. p. 55, lines 15-18; p. 62, lines 1-5)

What Mr. Moore did not know was that Mrs. Benson had taken the funds from the CD, added additional funds of her own, and purchased the [redacted] property from Mr. Moore for the amount of $56,783.91. (R. p. 60, lines 15-20; pp. 387-388) (HUD Settlement Statement, Trial Exhibit, Plaintiff No. 4) In essence, Mrs. Benson used Mr. Moore's own funds to purchase the property from him for approximately one-third of the property's value. At that point in time, Mr. Moore no longer had any retirement funds nor did he own the home in which he had lived for

most of his life. Mrs. Benson and her husband now owned the property. All of this had taken place without Mr. Moore's knowledge or consent. (R. p. 56, lines 7-9)

It was not until January of 2006 that Mr. Moore discovered what had taken place. He became suspicious in December of 2005 when Mr. Benson became overly concerned about an old truck that was parked on what had been Mr. Moore's property. Mr. Moore could not understand why Mr. Benson was so concerned about this old truck. It was, after all, on Mr. Moore's property. (R. pp. 56, line 10-p. 57, line 6)

After giving the matter some thought, Mr. Moore contacted his grandson, Marcus Moore. (R. p. 57, lines 9-13) He requested that Marcus look into the matter for him. (R. p. 57, lines 11-17; p. 112, lines 7-9) In January of 2006, after a diligent search of the property and bank records, Marcus Moore discovered that the retirement funds had been withdrawn from Mr. Moore's account and that Mr. Moore, no longer owned the home in which he was living. (R. p. 113, lines 7-16; p. 115, line 15-p. 116, line 18)

Mr. Moore did not realize that Mrs. Benson would have treated him in such a manner. (R. p. 51, lines 11-14) The relationship between the parties deteriorated and Mr. Moore hired counsel to regain his funds and home. Mrs. Benson's attitude toward Mr. Moore became nasty in tone and tenor. At one point in time, Mrs. Benson attempted to have Mr. Moore's son evicted from Mr. Moore's home. (R. p. 163, line 11-p. 164, line 3) On another occasion, upset with her father's confrontations

regarding the matter, Mrs. Benson told her father that if he kept messing with her she would sell everything and would put his black ass out. (R. p. 162, lines 16-19) Mrs. Benson maintained that she had done nothing wrong by acquiring the property from Mr. Moore and, during trial stated that she would not give the house back to him. (R. p. 294, lines 10-17)

The Respondent filed a Complaint against the Appellants on October 13, 2006, alleging causes of action against the Appellants for fraud, civil conspiracy, conversion, estoppel, negligent representation, breach of fiduciary duty and injunctive relief. (R. pp. 9-16) The Appellants served the Respondent with their Answer and Counterclaim on December 13, 2006. (R. pp. 17-25) In their Answer, the Appellants alleged the defenses of bad faith, unclean hands, failure to mitigate, statute of limitations, waiver and estoppel and ratification. The Appellants' Counterclaim against the Respondent contained causes of action for fraud, constructive fraud, intentional misrepresentation, promissory estoppel and declaratory relief. The Respondent filed his reply to the Appellants' Counterclaim on December 29, 2006, denying all of the allegations contained therein. The case was referred to Gordon G. Cooper, Master in Equity for Spartanburg County, pursuant to an Order of Reference dated April 23, 2008, for the issuance of a final order in accordance with Rule 53, SCRCP. The final hearing in the case was held on August 19, 2008, August 25, 2008 and October 21, 2008. Judge Cooper issued his final order in case on October 28,

2008, which ordered the Appellants to reconvey the subject property to the Respondent by warranty deed with no encumbrances except for the current year's taxes within thirty days of the date of the order, awarded the Respondent $3,770.26 in actual damages and awarded the Respondent $25,000.00 in punitive damages. (R. pp. 4-8) The Appellants did not file a motion to alter or amend pursuant to Rule 59(e), SCRCP. The Appellants served the Respondent with the Notice of Appeal on November 7, 2008.

STANDARD OF REVIEW

South Carolina law clearly states that in an action at law, tried before the court without a jury, the trial court's findings are conclusive. The court of appeals may review the evidence only to see if there is any evidence to support the trial court's findings:

> As this is an action at law tried by the judge without a jury, the findings of fact by the trial judge have the force and effect of a jury verdict and are conclusive on appeal unless they are found to be without evidentiary support, or are controlled by an error of law. We may review the evidence, not to determine the preponderance thereof, but to determine whether there is any evidence that reasonably supports the factual findings by the judge. We are not at liberty to decide the appeal on the basis of our view of the preponderance of the evidence. *Townes Assoc. Ltd. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976).

Snell v. Parlette, 273 S.C. 317, 322, 256 S.E.2d 410, 412 (1979).

ARGUMENT

I. THE TRIAL COURT CORRECTLY DENIED APPELLANTS' MOTION TO DISMISS AS THE

RESPONDENT FILED THIS ACTION PRIOR TO THE EXPIRATION OF THE APPLICABLE STATUTE OF LIMITATIONS.

Mr. Moore's Complaint was filed on October 13, 2006. Mr. Moore discovered the conversion of his property in January of 2006. The applicable statute of limitations for fraud, negligent misrepresentation, conversion, civil conspiracy and breach of fiduciary duty is three years. S.C. Code Ann. §15-3-530. Statutes of limitations do not bar the equitable relief of injunction. *Richland County v. Kaiser*, 351 S.C. 89, 567 S.E.2d 260 (Ct. App. 2002). See also *Silvester v. Spring Valley Country Club*, 344 S.C. 280, 543 S.E.2d 563 (Ct. App. 2001).

Mr. Moore discovered the conversion and fraud in January of 2006. (R. p. 57, lines 20-25; p. 113, 10-p. 114, line 11) South Carolina applies the "discovery rule":

> The important date under the discovery rule is the date that a plaintiff discovers the injury, not the date of the discovery of the identity of another alleged wrongdoer. If, on the date of injury, a plaintiff knows or should know that she had some claim against someone else, the statute of limitations begins to run for all claims based on that injury.

Little v. Brown & Williamson Tobacco Corp., 243 F. Supp. 2d 480, 486 (D.S.C. 2001). Therefore, pursuant to South Carolina law, Mr. Moore was well within the statute of limitations when he filed the action on October 13, 2006.

The evidence presented at the trial was that Mr. Moore is illiterate, despite the self-serving claim of Mrs. Benson that her father could read. When handed various documents at trial, Mr. Moore could not identify them, stating that he could not read. (R. p. 52, line 19-p. 54, line 16)

Mr. Moore's ex-wife, who had no interest in the case, testified that Mr. Moore could not read and had difficulty understanding:

> Q. Okay. How would you describe Mr. Moore's ability to read and write and understand?
>
> A. He don't understand. He can write a little bit and count money, you know pretty good, but as far as understanding when I done explained it to him he still couldn't understand.
>
> Q. Okay. Would you say that he has difficulty reading?
>
> A. Oh, I know that. And understanding he can't. He just can't.

(R. p. 143, lines 10-14)

Mr. Moore's son, James Luther Moore Jr., and his grandson, Marcus Moore, both testified that Mr. Moore could not read and had difficulty understanding even when documents were read to him. (R. p. 111, lines 16-20; p. 160, line 24-p. 161, line 10) It is therefore not difficult to understand how Mrs. Benson brought her father to a bank and told him to sign documents that transferred all of his retirement funds to her. Indeed, Mrs. Benson testified that these funds, all that Mr. Moore had in the world, were a gift to her. The trial court found Mrs. Benson's testimony self-serving:

> There is no question that the funds from the Plaintiff's personal retirement account were placed in an individual account of the Defendant Jeannette M. Benson. The court is not swayed from this finding by the self-serving testimony of the Defendant Jeannette M. Benson that the Plaintiff had given her this money based on her taking care of him.

(R. pp. 4-8)(Order, filed Oct. 28, 2008)

Mr. Moore testified that he did not give his retirement money to Mrs. Benson, nor to anyone else as a gift. (R. p. 60, lines 15-20) Mr. Moore also testified that he had no conversation with Jeanette Benson about selling his house to her and that it was not his intention to sell it to Jeanette and Thomas Benson. (R. p. 54, lines 23-p. 55, line 3) It was not until Mr. Moore became suspicious of Mr. Benson's behavior and requested that his grandson, Marcus Moore, do some investigating for him, that Mr. Moore discovered that he no longer had any retirement funds and that he did he own his home. (R. p. 57, line 9-p. 58, line 9) Mr. Moore believed that Jeanette Benson was "taking care of me" when he signed the documents at the attorney's office. She did not explain anything to Mr. Moore at the time she asked him to sign the documents and he did know that he had signed papers transferring his house to Jeanette and Thomas Benson. (R. p. 55, line 20-p. 56, line 9)

The Appellants argue that "a reasonable person would have known or should have known that on March 19, 2001, when Mr. Heckman explained that the transaction in which Mr. Moore was engaging in was sale of his real estate located at [redacted] to his daughter Jeannette, for the price listed on the HUD-1 Settlement Statement that it was in fact a transfer of his real property." However, the trial court found that "the Defendants, through their intentional actions and representations made to the Plaintiff concealed the truth of the transaction from the

Plaintiff." (R. pp. 4-8)(Order, filed October 28, 2008) The previously cited evidence more than reasonably supports this factual finding by Judge Cooper.

Furthermore, the evidence does not support the Appellants' claim that Mr. Moore, as a man of common knowledge and experience, would have known or should have known that he might have a claim against Appellants. Mr. Moore, although a "salt of the earth" man who worked hard all of his life to provide for his family, was unable to read or to comprehend complex financial and real estate transactions. (R. p. 48, lines 9-10; p. 49, lines 8-12; p. 49, lines 18-19; p. 111, lines 11-20; p. 143, lines 3-23; p. 160, line 24-p.161, line 10; p.175, lines 18-21) Mr. Moore is not a man of common knowledge and experience.

However, Mr. Moore did make a diligent effort to discover the wrong that had been done to him when he became suspicious in 2005. He requested the assistance of his grandson, Marcus Moore, who finally discovered that Mr. Moore's own daughter had taken his money and his home without his knowledge and consent. (R. p. 57, lines 5-25)

There is ample evidence that reasonably supports the factual finding of Judge Cooper that Mr. Moore did not know that Jeannette Benson took his retirement funds and that he had signed a deed conveying his property to Jeanette and Thomas Benson until December 2005 and that the statute of limitations did not begin to run until that

time. Therefore, the trial court did not err when it refused to grant the Appellants' Motion to Dismiss.

II. THE TRIAL COURT CORRECTLY DETERMINED THAT APPELLANTS CONVERTED RESPONDENT'S RETIREMENT FUNDS TOTALING $29,433.46 TO THEIR OWN USE AND BREACHED THEIR FIDUCIARY DUTY TO THE RESPONDENT WHEN THEY PURCHASED THE PROPERTY AT [redacted].

The findings of fact of the trial court are conclusive on appeal values they are found to be without evidentiary support, or are controlled by an error of law. This Court may review the evidence not to determine if there is a preponderance of the evidence to support the Trial Court's findings, but to determine if there is any evidence to support the trial court's findings. *Townes Assoc. Ltd. V. City of Greenville*, supra. In this case, there is significant evidence to support the trial court's findings.

Appellants do not correctly bring to this Court's attention the testimony of Mr. Moore regarding the withdrawal of his retirement funds. When asked what happened to his funds, Mr. Moore testified:

Q. Did Marcus come back and tell you what he found out?

A. Yes sir.

Q. What did he tell you?

A. He said that Jeannette and them had done drawn it out.

Q. Okay.

A. Made two draw-ments. Drawn it all out.

Q. At any time did you ever tell Jeannette Benson that you were giving her that retirement money as a gift?

A. I have never heard no discussion about giving her no money.

Q. Did you give that money to anybody? Did you make a gift of that retirement money to anybody?

A. No. Me and my wife was the only two that was supposed to draw that money.

(R. p. 60, lines 9-20)

Conversion is defined as "the unauthorized assumption in the exercise of the right of ownership over goods or personal chattels belonging to another to the exclusion of the owner's rights." *Moseley v. Oswald*, 376 S.C. 251, 656 S.E.2d 380 (2008). Based upon the evidence, that is what occurred in the present case and the trial court so found.

Mr. Moore did not testify that he could not remember gifting the money to Mrs. Benson. He clearly stated that he never told her that he was giving her the money. Appellants' version of the transcript is inconsistent with the actual testimony of Mr. Moore.

Mrs. Benson argues that there is no evidence to dispute the fact that she paid Mr. Moore's legal fees for his divorce. However, there was no documentary evidence presented at trial that she did in fact pay those bills from her own funds or from the

retirement moneys. Mrs. Benson presented no copies of checks or attorney's bills. The only evidence was Mrs. Benson's own testimony, to which the trial court is exclusively entitled to find credible or not, as well as to determine the testimony's weight:

> In a law case tried without a jury, questions regarding the credibility and the weight of evidence are exclusively for the trial judge. *See Wayne Smith Constr. Co. v. Wolman, Duberstein, & Thompson,* 294 S.C. 140, 363 S.E.2d 115 (Ct. App.1987).

Golini v. Bolton, 326 S.C. 333, 342, 482 S.E.2d 784, 789 (Ct. App. 1997).

Much is made by Appellants that Mr. Moore cannot remember the events in question. It is of little consequence that Mr. Moore cannot remember specific incidents. Rather, it is more important that Mr. Moore is confident regarding what he owns or should own.

Appellants assert that the trial court ignored the uncontroverted evidence that Mr. Moore was required to pay his ex-wife $52,851.00 within a specified period of time. The trial court did not ignore this evidence. Even more importantly, the trial court did not neglect to find that, as Mr. Moore's attorney-in-fact, Mrs. Benson had a fiduciary duty to act in her father's best financial interest. Converting his funds and then using those funds to purchase her father's home for two-thirds less the market value was not in Mr. Moore's best financial interest. Appellants argue that Mr. Moore could not remember discussions with his daughter regarding the obligation to pay his ex-wife or how that debt would be paid. Mrs. Benson had her father's Power of

Attorney for a good reason. Her father could not read and understand matters of finance. Thus, it was Mrs. Benson's obligation to find the best financial solution for her father, not for her. Clearly, this she did not do.

Appellants place too much emphasis on what Mr. Moore could or could not remember. To do so is an attempt to lessen the responsibility Mrs. Benson accepted when she became Mr. Moore's attorney in fact.

Therefore, this Court should affirm the Trial Court's Order.

III. THE APPELLANTS' ARGUMENT THAT THE TRIAL COURT ERRED IN FINDING RESPONDENT HAD ACTUAL DAMAGES IS NOT PRESERVED FOR APPELLATE REVIEW.

The Appellants assert that the finding by the trial court that Mr. Moore had actual damages in the amount of $3,770.26 was error.

> "An issue cannot be raised for the first time on appeal but must have been raised and ruled upon by the trial judge to be preserved for appellate review...When a trial judge makes a general ruling on an issue, but does not address the specific argument raised by the appellate and the appellant does not make a motion to alter or amend pursuant to Rule 59(e), SCRCP, to obtain a ruling on the argument, the appellate court cannot consider the argument on appeal."

Floyd v. Floyd, 365 S.C. 56, 615 S.E.2d 465 (Ct. App. 2005). See also *Noisette v. Ismail*, 304 S.C. 56, 58, 403 S.E.2d 122, 124 (1991).

Judge Cooper ruled in his final order that Mr. Moore had actual damages in the amount of $3,770.26. (R. pp. 4-8)(Order, filed October 28, 2008) On appeal, the

Appellants assert for the first time that Judge Cooper committed error in his computation of Mr. Moore's actual damages. The Appellants should have raised their specific argument in a motion to alter or amend pursuant to Rule 59(e), SCRCP. This they did not do. Since the Appellants' specific argument related to the computation of actual damages was not raised and ruled upon by the trial judge, the issue is not preserved for appellate review. As a result, the appellate court cannot consider this argument on appeal and the trial court's order should be affirmed.

IV. THE APPELLANTS' ARGUMENT THAT THE TRIAL COURT ERRED IN FAILING TO ORDER THE RESPONDENT TO REIMBURSE APPELLANTS THE TAXES AND INSURANCE PAID FOR [redacted] FOR THE PAST SEVEN YEARS IS NOT PRESERVED FOR APPELLATE REVIEW.

The Appellants assert that the trial court erred in failing to order Mr. Moore to reimburse Appellants the taxes and insurance paid for [redacted] for the past seven years.

This issue is also being raised by the Appellants for the first time on appeal. Judge Cooper's order does not address this specific argument and the Appellants did not raise it in a motion to alter or amend pursuant to Rule 59(e), SCRCP. The applicable law on this issue is set out in previous Argument III and to restate it here would be redundant.

Since the Appellants' specific argument related to the reimbursement of taxes and insurance paid by the Appellants for [redacted] was not raised and ruled upon by the trial judge, the issue is not preserved for appellate review. As a result, the appellate court cannot consider this argument on appeal and the trial court's order should be affirmed.

V. THE APPELLANTS' ARGUMENT THAT THE TRIAL COURT ERRED IN FAILING TO ORDER RESPONDENT TO REIMBURSE APPELLANTS $27,350.45 IS NOT PRESERVED FOR APPELLATE REVIEW.

The Appellants assert that the trial court erred in failing to order Respondent to reimburse Appellants $27,350.45.

Once again, this issue is being raised by the Appellants for the first time on appeal. Judge Cooper's order does not address this specific issue and the Appellants did not raise it in a motion to alter or amend pursuant to Rule 59(e), SCRCP. The applicable law on this issue is set out in previous Argument III and to restate it here would be redundant.

Since the Appellants' specific argument related to the reimbursement of $27,350.45 paid by the Appellants for [redacted] was not raised and ruled upon by the trial judge, the issue is not preserved for appellate review. As a result, the appellate court cannot consider this argument on appeal and the trial court's order should be affirmed.

VI. THE APPELLANTS' ARGUMENT THAT THE TRIAL COURT'S AWARD OF PUNITIVE DAMAGES SHOULD BE REVERSED.

The Appellants assert that the trial court's award of punitive damages should be reversed because the Respondent had no actual damages and punitive damages may be awarded only upon a finding of actual damages.

Lastly, and once again, this specific issue is being raised by the Appellants for the first time on appeal. Judge Cooper's order awards actual and punitive damages but does not address the specific issue of the Appellants that Mr. Moore had no actual damages, thus precluding the award of punitive damages, and the Appellants did not address this specific issue in an motion to alter or amend pursuant to Rule 59(e), SCRCP. The applicable law on this issue is discussed in previous Argument III and to restate it here would be redundant.

Since the Appellants' specific argument that it was error to award punitive damages due to the fact that there were no actual damages was not raised and ruled upon by the trial judge, the issue is not preserved for appellate review. As a result, the appellate court cannot consider this argument on appeal and the trial judge order should be affirmed.

CONCLUSION

For the reasons set forth above, the Respondent, James Moore, respectfully requests that this Court affirm the Order of the Trial Court in all respects.

Dated: June 15, 2009

Respectfully submitted,

Edwin C. Haskell, III (S.C. Bar No. 2810)
Smith & Haskell Law Firm, L.L.P.
218 East Henry Street
Spartanburg, SC 29306
Telephone: (864) 582-6727
Facsimile: (864) 585-8358

Chadwick D. Pye (S.C. Bar No. 15834)
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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief complies with Rule 211(b), SCACR.

June 15, 2009

SMITH & HASKELL LAW FIRM, L.L.P.

By: _____

Edwin C. Haskell, III (S.C. Bar No. 2810)
218 East Henry Street
Spartanburg, S.C. 29306
Telephone: (864) 582-6727
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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief complies with the Supreme Court's order of August 13, 2007.

June 15, 2009

SMITH & HASKELL LAW FIRM, L.L.P.

By: _____

Edwin C. Haskell, III (S.C. Bar No. 2810)
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CERTIFICATE OF SERVICE

I certify that I have served three copies of the resubmitted Respondent's Final Brief by depositing them in the United States Mail, postage prepaid, on June 16, 2009, addressed to Jessica Salvini, Esquire, Salvini & Bennett, LLC, 101 West Park Avenue, Greenville, South Carolina 29601.

Edwin C. Haskell III (S.C. Bar No. 2810)
Smith & Haskell Law Firm, L.L.P.
218 East Henry Street
Spartanburg, SC 29306
Telephone: (864) 582-6727
Facsimile: (864) 585-8358
Attorney for Respondent