

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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**Mar 11 2024**

**SC Court of Appeals**

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

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The Honorable Mikell R. Scarborough, Master-In-Equity

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Case No. 2021-CP-10-3609  
Appellate Case No. 2023-001334

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Jason M. Aryeh, .....Respondent,

v.

Olivia R. Aryeh.....Appellant.

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**INITIAL BRIEF OF RESPONDENT**

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HAYNSWORTH SINKLER BOYD, P.A.

Stafford J McQuillin, III, S.C. Bar No. 78203

[mmcquillin@hsblawfirm.com](mailto:mmcquillin@hsblawfirm.com)

Elliot Condon, S.C. Bar No. 103795

[econdon@hsblawfirm.com](mailto:econdon@hsblawfirm.com)

P.O. Box 340

Charleston, SC 29402

Telephone: 843.722.3366

Sarah P. Spruill, S.C. Bar No. 68337

[sspruill@hsblawfirm.com](mailto:sspruill@hsblawfirm.com)

P.O. Box 2048

Greenville, SC 29602

Telephone: 864.240.3200

*Attorneys for Respondent Jason M. Aryeh*

**TABLE OF CONTENTS**

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ..... ii

STATEMENT OF ISSUE ON APPEAL..... 1

STATEMENT OF THE CASE..... 2

STANDARD OF REVIEW ..... 4

ARGUMENT ..... 5

CONCLUSION..... 6

**TABLE OF AUTHORITIES**

**Cases**

*Baron Data Sys., Inc. v. Loter*,  
297 S.C. 382, 377 S.E.2d 296 (1989) ..... 4

*Blumberg v. Nealco, Inc.*,  
310 S.C. 492, 427 S.E.2d 659 (1993) ..... 4, 5

*EFCO Corp. v. Renaissance on Charleston Harbor, LLC*,  
370 S.C. 612, 635 S.E.2d 922 (Ct. App. 2006)..... 4

*Glasscock v. Glasscock*,  
304 S.C. 158, 403 S.E.2d 313 (1991) ..... 4

*Glasscock, Inc. v. U.S. Fid. & Guar. Co.*,  
348 S.C. 76, 557 S.E.2d 689 (Ct. App. 2001)..... 5

*Harwood v. Am. Airlines, Inc.*,  
37 F.4th 954 (4th Cir. 2022) ..... 5

*ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche*,  
327 S.C. 238, 489 S.E.2d 470 (1997) ..... 5

*Plyler v. Evatt*,  
902 F.2d 273 (4th Cir. 1990) ..... 5

*Shealy v. Doe*,  
370 S.C. 194, 634 S.E.2d 45 (Ct. App. 2006)..... 5

*Wilder Corp. v. Wilke*,  
330 S.C. 71, 497 S.E.2d 731 (1998) ..... 5

*Williamson v. Middleton*,  
374 S.C. 419, 649 S.E.2d 57 (Ct. App. 2007)..... 4

**Statutes**

S.C. Code Ann. § 15-53-100..... 3

**Rules**

Rule 11, SCRCP..... 2, 3

Rule 210, SCACR..... 2, 5

**STATEMENT OF ISSUE ON APPEAL**

1. Has the Appellant presented any arguments that the Master committed an abuse of discretion in awarding \$120,391.73 in attorney's fees to the Respondent in this action where the Appellant willfully abused process by refusing to remove an invalid lis pendens on Respondent's property?

## STATEMENT OF THE CASE<sup>1</sup>

This is an appeal from the amount of attorney’s fees awarded to Jason Aryeh for “having to pursue this Declaratory Judgment Action” for removal of a lis pendens and as compensatory damages for abuse of process. (8/15/2023 Order, R. at \_\_\_\_). By way of background, Olivia Aryeh instituted divorce proceedings against Jason in Connecticut on August 22, 2019. (Pl. Ex. 9 ¶12, R. at \_\_\_\_). On May 5, 2021, Olivia filed a lis pendens in the Court of Common Pleas for Charleston County that attached to Jason’s property located at 1651 Atlantic Avenue, Sullivan’s Island. (Lis Pendens, R. at \_\_\_\_). She filed an amended lis pendens two days later on May 7, 2021.<sup>2</sup> (Amended Lis Pendens, R. at \_\_\_\_). Olivia has not pursued any litigation in South Carolina. (Final Order at 2-3, R. at \_\_\_\_).

After sending a Rule 11, SCRPC letter to Olivia’s counsel setting forth the reasons why the lis pendens was invalid (Pl. Ex. 14, R. at \_\_\_\_), Jason filed this action on August 5, 2021 seeking a declaratory judgment that the lis pendens was void because there was no pending litigation in South Carolina and seeking an award of attorney’s fees. (Complaint, R. at \_\_\_\_). Olivia answered on September 8, 2021. (Answer, R. at \_\_\_\_).

Following a consent motion, the matter was referred to the Master in Equity for Charleston County. (Motion and Order of Reference, R. at \_\_\_\_). The Master scheduled a status conference for April 11, 2022. (6/1/2022 Order, R. at \_\_\_\_). At the status conference, Olivia indicated that she would be removing the lis pendens because she had been ordered to do so by a Connecticut

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<sup>1</sup> Olivia has conflated a Statement of the Case and a Statement of Facts in her brief. Although not relevant to the issues on appeal, Jason would like to clarify that he was not held in contempt by any court with respect to the Sullivan’s Island property as reflected in the record. (Tr. 102:19-22, 126:15-16, 3/21/23 Order at 25-26, R. at \_\_\_\_). Moreover, and as acknowledged by Olivia, any orders post-dating August 15, 2023 are not part of the record in this case. *See* Rule 210, SCACR.

<sup>2</sup> The lis pendens and amended lis pendens are referred to in the collective as “lis pendens.”

court. (*Id.*, R. at \_\_\_\_). In response, Jason made an oral motion to amend his complaint to assert an additional claim for abuse of process, which was granted by the Master. (*Id.*, R. at \_\_\_\_). Olivia released the lis pendens on April 12, 2022. (Cancellation and Release Lis Pendens, R. at \_\_\_\_). Before Jason filed his amended complaint, Olivia moved to dismiss. (Motion, R. at \_\_\_\_). Jason filed an amended complaint on May 16, 2022, asserting a claim for damages incurred as a result of the wrongfully filed lis pendens. (Amended Complaint, R. at \_\_\_\_).

The Master held a hearing on May 16, 2022. (Transcript, R. at \_\_\_\_). Following the hearing, the Master issued an order granting the motion to dismiss to the extent the complaint sought the cancellation of the lis pendens, but finding that there was a justiciable controversy, that the lis pendens had been wrongfully filed, and that the matter should proceed on the merits. (6/1/2022 Order, R. at \_\_\_\_).

A trial followed on March 29, 2023. (Final Order, R. at \_\_\_\_). At trial, Olivia admitted that she willfully maintained the lis pendens for nearly a year despite requests that it be removed. (Tr. 82:14-20, Final Order at 8, R. at \_\_\_\_). This was despite Jason's efforts to convince her to remove it, including through a detailed Rule 11 letter to her counsel. (Final Order at 2-3, Pl. Ex. 14, R. at \_\_\_\_). In addition, Olivia admitted that she filed the lis pendens as leverage to make monetary demands in the couple's pending divorce action. (Tr. 79:5-80:11, Final Order at 9, *see* Pl. Ex. 15, R. at \_\_\_\_). Based on these admissions and findings, the Master ruled in an order dated June 21, 2023 ("June 21 Order") that Olivia abused process. (Final Order at 8-12, R. at \_\_\_\_). The Master then found that Jason's claim for actual damages was too speculative, but he awarded attorney's fees as a measure of damages for abuse of process and pursuant to S.C. Code Ann. § 15-53-100. (Final Order at 13-17, R. at \_\_\_\_). The Master then directed Jason to provide an

affidavit of attorney's fees within ten days and provided that Olivia would have ten days to object to the claimed attorney's fees. (Final Order at 17, R. at \_\_\_\_).

As directed, Jason's counsel submitted an affidavit seeking \$127,069.73 in fees and costs incurred in litigating this matter. (Fee Affidavit, R. at \_\_\_\_). Olivia submitted a one-page memorandum in response, arguing only that the fees were excessive because they exceeded those charged by her counsel and that fees should not be awarded after April 21, 2022, the date she released the lis pendens. (Memo, R. at \_\_\_\_). The Master considered each of the required factors:

- (1) the nature, extent, and difficulty of the case;
- (2) the time necessarily devoted to the case;
- (3) professional standing of counsel;
- (4) contingency of compensation;
- (5) beneficial results obtained; [and]
- (6) customary legal fees for similar services.

*Glasscock v. Glasscock*, 304 S.C. 158, 161, 403 S.E.2d 313, 315 (1991); *Baron Data Sys., Inc. v. Loter*, 297 S.C. 382, 377 S.E.2d 296 (1989). Based on that analysis, the Master awarded Jason his attorney's fees of \$120,391.73 in an order dated August 15, 2023 ("August 15 Order"). (8/15/2023 Order, R. at \_\_\_\_). It is this order that Olivia appeals.

### **STANDARD OF REVIEW**

The determination of the amount of attorney's fees is addressed to the sound discretion of the trial court and will not be reversed absent an abuse of that discretion. *EFCO Corp. v. Renaissance on Charleston Harbor, LLC*, 370 S.C. 612, 621, 635 S.E.2d 922, 926 (Ct. App. 2006); *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 493, 427 S.E.2d 659, 660 (1993). "[A]n appellate court will not reverse an award [of attorney's fees] unless it is based on an error of law or is without *any evidentiary support*." *Williamson v. Middleton*, 374 S.C. 419, 427, 649 S.E.2d 57, 61 (Ct. App. 2007) (emphasis in original), *rev'd on other grounds*, 383 S.C. 490, 681 S.E.2d. 867 (2009). Moreover, "[b]ecause a [trial court] has close and intimate knowledge of the efforts

expended and the value of the services rendered, the fee award must not be overturned unless it is clearly wrong.” *Harwood v. Am. Airlines, Inc.*, 37 F.4th 954, 960 (4th Cir. 2022) (quoting *Plyler v. Evatt*, 902 F.2d 273, 278 (4th Cir. 1990) (cleaned up)).

### **ARGUMENT**

Olivia’s appeal is focused solely on the amount of attorney’s fees awarded and not on any other ruling by the Master. Olivia did not appeal the June 21 Order. As a result, the rulings that Olivia committed a willful abuse of process and that Jason was entitled to fees are the law of the case. *ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche*, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997) (holding unappealed ruling is law of the case).

Olivia has not argued that the Master committed any error of law in making the award. Nor has she argued that the award was not supported by any evidence. That should end the inquiry given this Court’s standard of review. *See Blumberg*, 310 S.C. at 493, 427 S.E.2d at 660.

Moreover, Olivia cites no legal authority and makes no legal arguments in her brief. As such she has not presented any arguments for this Court’s review. *Shealy v. Doe*, 370 S.C. 194, 205–06, 634 S.E.2d 45, 51 (Ct. App. 2006) (“[W]hen an appellant fails to cite any supporting authority for his position and makes conclusory arguments, the appellant abandons the issue on appeal.”). She cannot correct these deficiencies in a reply brief. *Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 692 (Ct. App. 2001) (“Additionally, even though [Appellant] more fully addressed the issue in its reply brief, an argument made in a reply brief cannot present an issue to the appellate court if it was not addressed in the initial brief.”).

Rather than addressing the Master’s order and the analysis applied, Olivia raises general concerns about fairness and her ability to pay. Even assuming that these concerns rise to the level of legal arguments, they do not present any basis for reversal. This appeal and the record are limited to those matters presented to and ruled on by the Master. Rule 210, SCACR; *Wilder Corp.*

*v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 734 (1998) (holding that an argument must have been raised to and ruled on by the circuit court to be preserved for appellate review). There is no evidence in the record relating to Jason's later real estate dealings, any rulings by Connecticut courts on August 22, 2023, or any other matters after August 15, 2023. With respect to Olivia's employment, the record shows only that Olivia is a substitute teacher notwithstanding her educational pedigree (3/31/23 Order at 2, 29, R. at \_\_\_\_). In addition, Olivia did not make any arguments about ability to pay or potential bankruptcy in response to Jason's fee affidavit. As such, these concerns fall outside the record, are not preserved for this Court's review, and do not present any basis for overturning the Master's award in light of the record presented to the Master and the analysis included in the August 15 Order.

### **CONCLUSION**

Olivia has not presented any preserved arguments that the Master committed any error of law or that the award of attorney's fees was not supported by any evidence in the record. As such, the Master's order must be affirmed.

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.

*s/ Sarah P. Spruill*

Stafford J McQuillin, III, S.C. Bar No. 78203

[mmcquillin@hsblawfirm.com](mailto:mmcquillin@hsblawfirm.com)

Elliot Condon, S.C. Bar No. 103795

[econdon@hsblawfirm.com](mailto:econdon@hsblawfirm.com)

P.O. Box 340

Charleston, SC 29402

Telephone: 843.722.3366

Sarah P. Spruill, S.C. Bar No. 68337

[sspruill@hsblawfirm.com](mailto:sspruill@hsblawfirm.com)

P.O. Box 2048

Greenville, SC 29602

Telephone: 864.240.3200

*Attorneys for Respondent Jason M. Aryeh*

March 11, 2024

Greenville, South Carolina