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THE STATE OF SOUTH CAROLINA  
In the Supreme Court

**Apr 17 2024**

S.C. SUPREME COURT

ON PETITION FOR WRIT OF CERTIORARI TO COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

Walton J. McLeod, Circuit Judge

Appellate Case No. 2024-000253

Elisa Montgomery Edwards and Emily Cecile Edwards,.....Respondents,

v.

David C. Bryan, III,.....Petitioner.

REPLY TO RESPONDENTS' RETURN  
TO PETITION FOR WRIT OF CERTIORARI

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## ARGUMENT IN REPLY

Petitioner submits this reply to the Respondents' return to his petition for a writ of certiorari to review the Court of Appeals' opinion in Edwards v. Bryan, Unpub. Op. No. 2023-UP-329. Respondents are incorrect about the one point they argue in their return. Perhaps more tellingly, they do not address the substance of the Court of Appeals' decision or the trial court's. They make no attempt to reason that the trial court's decision was right or that the Court of Appeals' was right.

### **I. Petitioner's direct verdict motion was at least minimally sufficient.**

Now that certiorari has been sought, the Respondents contend that Petitioner's directed verdict motion was not specific enough to preserve for review an argument about whether evidence of each element of fraud was presented. Respondents are wrong.

This Court has noted that the specificity requirements for motions serve the purposes of notifying the opposing party and the court of the basis of the motion, so that "when a motion is challenged for a lack of particularity, the court should ask whether any party is prejudiced by a lack of particularity or whether the court can comprehend the basis for the motion and deal with it fairly." Camp v. Camp, 386 S.C. 571, 575, 689 S.E.2d 634, 636 (2010) (internal quotation marks omitted).

Here is the portion of the trial transcript containing the motion for directed verdict:

THE COURT: Okay. And just to save the jury an extra break, we're going to go ahead and just let defense counsel put his directed verdict motions on the record now since we know what the testimony that is about to be presented says. He can make those arguments and Mr. Belding can reply. And then, when we do finish the defendant's case in chief, he can just reassert his previous

motions, which I will reassert that ruling, and we'll go straight into closing arguments after the defense closes their case. Are we all on the same page?

MR. BELDING: It works for me.

THE COURT: All right. Mr. –

MR. HEMLEPP: Your Honor, the defense would move for directed verdict on the cause of action for fraud in this case. There's been a failure of evidence by the plaintiff to put forth to -- for the jury to the standard of clear and convincing that a fraud occurred. It was denied by the defendant. I'd move for a directed verdict.

THE COURT: Okay.

MR. BELDING: Thank you, Your Honor. May it please the Court? I very carefully went through every element of fraud that is required by the State of South Carolina. In the plaintiff, Ms. Elisa Edwards', testimony as to representation, falsity, reliance, materiality, everything was in there and she answered it all. And I would say that it's a jury question for them to take up.

THE COURT: Okay. Well, based on where we are now, we can -- you want me to hold the ruling in abeyance?

MR. HEMLEPP: Yeah.

THE COURT: I'll hold it in abeyance until you make your formal motion.

MR. HEMLEPP: And in front of the jury, I'm simply going to renew my motion.

THE COURT: All right.

MR. HEMLEPP: Not get –

THE COURT: Understood. All right. I'm with you. Are we ready to bring them in?

(R. p. 230 ln. 3 through p. 231 ln. 21.)

Respondents now contend that “Petitioner failed to challenge the sufficiency of the evidence of damage with respect to any of the nine elements of fraud and deceit. The Petitioner only challenged the *quality* of the evidence as insufficiently clear and convincing.” (Return to Petition for Certiorari p. 4, emphasis in original.) But an examination of the transcript excerpt above reveals this is not correct. Look at the Respondents’ counterargument. Respondents’ counsel understood that the directed verdict motion addressed whether there was some evidence of each element of fraud. His argument in response was that there was some evidence of each element: “I very carefully went through every element of fraud that is required by the State of South Carolina. In the plaintiff, Ms. Elisa Edwards’, testimony as to representation, falsity, reliance, materiality, everything was in there and she answered it all.” (R. p. 231 ln. 2-7.) Respondents’ counsel never complained that the argument was unclear. His words at the time show that he understood the argument to be what it has always been on appeal: an argument that the Respondents failed to present evidence of each element of their fraud claim. (R. p. 231 ln. 2-7.)

Petitioner’s attorney interrupted himself during the directed verdict motion. (R. p. 230 ln. 17-23.) Before he did so, however, he pointed out the “failure of evidence” of the fraud claim. (R. p. 230 ln. 19-20.) This was a contention that the record lacked evidence of all of the nine elements of fraud. Mutual Savings and Loan Ass’n. v. McKenzie, 274 S.C. 630, 632, 266 S.E.2d 423 (1980) (listing nine elements of fraud). This necessarily included the grounds that there was no evidence of damages proximately caused by some misrepresentation of Petitioner’s – one of the grounds of Petitioner’s motion for judgment notwithstanding the verdict or for a new trial and the issue that is at the heart of this appeal. (R. pp. 43, 49-50.) Petitioner’s counsel was

of course also noting that the directed verdict analysis is more stringent when the standard of proof is by clear and convincing evidence. See, e.g., Erickson v. Jones Street Publishers, LLC, 368 S.C. 444, 464 629 S.E.2d 653 (2006).

The Court of Appeals has held the following directed verdict motion insufficient to meet the minimum specificity requirement of Rule 50(a), SCRPC:

Your Honor, for the record I'd make a motion for a directed verdict as to the second cause of action, which I think would be characterized as abuse of process, but I gather from a comment you made that you would deny that motion . . . I would not then argue that any further.

Sierra v. Skelton, 307 S.C. 217, 220, 414 S.E.2d 169, 172 (Ct. App. 1992).

That is not the situation here. Counsel in Sierra argued *no* grounds for the motion. Id. Here, Petitioner argued the “failure of evidence” of the fraud claim, which he argued in his motion for judgment notwithstanding the verdict or for a new trial and which he argues in this appeal. (R. p. 230 ln. 19-20.) Just because he argues with *more* specificity now does not mean that the directed verdict did not meet the minimum threshold.

In Gordon v. Busbee, the Court of Appeals reversed the denial of a directed verdict that the court described being made as follows:

At the close of all evidence, the Gordons moved for directed verdict against George's estate, arguing the money transferred by George should be returned to Clara's estate because he had transferred the funds without Clara's permission. That motion was denied, apparently based on the argument that George and Clara had made an oral contractual arrangement for the execution of these transfers.

397 S.C. 119, 129, 723 S.E.2d 822, 828 (Ct. App. 2012).

The Court of Appeals held that was sufficient as a directed verdict motion on the basis of a specific rule in the specific case of Fender v. Fender, 285 S.C. 260, 329

S.E.2d 430 (1985), that bars an attorney-in-fact from making transfers of his principal's property to himself or a third party absent a writing evidencing clear intent to allow such transfers. Gordon, 397 S.C. at 130-31. The court held this "was sufficiently specific to operate as a directed verdict motion for breach of fiduciary duty." Id. at 131. If that was specific enough, the directed verdict motion in the instant case was specific enough as well.

**II. Respondents do not make much of a substantive defense of the trial court's or the Court of Appeals' decision.**

The Respondents have put all their eggs in the issue preservation basket, it seems. They do not argue that the Petitioner is wrong to say that the jury fashioned its verdict by grafting unrelated damages onto the fraud cause of action.

The thrust of Petitioner's post-trial appeal to the Court of Appeals was that Respondents offered a case at trial that revealed that the damages they sought and obtained a verdict for could only have resulted from the acts subject of dismissed claims for estate mismanagement and conversion.

The backbone of Petitioner's argument on appeal was that all the evidence that Respondents adduced tended to show, when viewed in the light most favorable to them, that their losses were caused by Petitioner's failure to distribute the estate assets properly, not as the result of some misrepresentation and reliance on the misrepresentation. Since summary judgment had been granted against the Respondents on their claims concerning the way in which Petitioner administered the estate, Evidence of damage flowing from *those* acts, acts done in the way the estate was administered, had been taken off the table. Respondents did not make any showing of damages that were proximately caused by a *misrepresentation* by Petitioner, as opposed to caused by maladministration of the estate, and that they had thus failed to

adduce evidence of damages having been proximately caused by fraud committed by Petitioner.

The Petitioner is right, which is why the Respondents do not address the substance of the case.

They say hard cases make bad law, but what is maybe more accurate is that hard cases sometimes make it uncomfortable to apply the law. This may be such a case. Respondents may have been damaged by the way that Petitioner managed the estate, including what he did with their portion of the estate funds. It may well have been a strategic error for Respondents to consent to summary judgment being granted against them on their estate mismanagement and conversion claims. But, even in the light most favorable to the Respondents, it is inescapable that the most Respondent-favorable conclusion that may be drawn from the record is that Petitioner's mismanagement and conversion, not any fraudulent representation he may have made, that caused their damages.

### **CONCLUSION**

WHEREFORE, Petitioner prays for this Court to issue a writ of certiorari to review the Court of Appeals' opinion and decision in this case.

Respectfully submitted,

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