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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable Heath P. Taylor, Circuit Court Judge

Civil Action Nos.: 2006-CP-18-01310, -01311, -01636

Appellate Case No.: 2023-000720

John Doe #53, John Doe 66, John Doe 66A, John Doe 67, Jane Doe 1 and Jane Doe 2 and Rachel Roe, individually and as representatives of a class of people similarly situated, ... Plaintiffs,

Of whom class members Julie McDonald and Richard McDonald are . . . . .Appellants,

v.

The Biship of Charleston, a Corporation Sole; The Bishop of the Diocese of Charleston, in his official capacity, ...Respondents,

And David K. Haller, Lawrence E. Richter, Jr., and Richter & Haller, LLC . . . . Intervenors.

JOINT BRIEF OF DAVID K. HALLER, LAWRENCE E. RICHTER, JR., AND RICHTER & HALLER, LLC

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TABLE OF CONTENTS

Table of Authorities iii

Statement of the Issues on Appeal 1

Statement of the Case 1

Standard of Review 7

Argument 8

I. Appellants Failed to Preserve the Issue They Present for Appellate Review 8

II. The Lower Court Correctly Exercised its Discretion in Denying the Appellants' Motion for a Post-Award Fairness Hearing Over Fifteen Years after the Class Settlement 9

III. The Lower Court's Administration of the Class Action Settlement Exceeded the Requirements of Rule 23, SCRCP, to Ensure Fairness to Class Members, and the Lower Court had no Duty or Compelling Reason to Review the Fairness of the Class Settlement Fifteen Years Later 12

IV. The Lower Court Properly Declined to Overrule Judge Goodstein's Findings 15

V. Additional Grounds in the Record to Affirm 17

Conclusion 18

TABLE OF AUTHORITIES

CASES

BB & T v. Taylor, 369 S.C. 548, 633 S.E.2d 501 (2006). 11-12

Bowers v. Bowers, 304 S.C. 65, 403 S.E.2d 127 (Ct. App. 1991) 11-12

Charleston Cnty. Dep't of Soc. Servs. v. Father, Stepmother, & Mother,
317 S.C. 283, 454 S.E.2d 307 (1995) 16

Dinkins v. Robbins, 203 S.C. 199, 26 S.E.2d 689 (1943) 16

Doe v. Bishop of Charleston, Op. No. 26984 (S.C. Sup. Ct., June 13, 2011). 4, 5

Doe v. Bishop of Charleston, 407 S.C. 128, 754 S.E.2d 494 (2013). 5

Gardner v. S.C. Dep't of Revenue, 353 S.C. 1, 577 S.E.2d 190 (2003) .7-8

Gleaton v. Orangeburg Cnty., 440 S.C. 350, 891 S.E.2d 390 (Ct. App. 2023) 8-9

Holman v. S.C. Educ. Lottery Comm'n, 441 S.C. 18, 891 S.E.2d 701 (Ct. App. 2023) 7-8

I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000) 9

Parker v. Parker, 313 S.C. 482, 443 S.E.2d 388 (1994) 17

Pres. Soc'y of Charleston v. S.C. Dep't of Health & Env't Control,
430 S.C. 200, 845 S.E.2d 481 (2020) 17

Rummage v. BGF Indus., 434 S.C. 441, 865 S.E.2d 380 (Ct. App. 2021) 8

S.C. Dept. of Transp. v. First Carolina Corp. of S.C., 372 S.C. 295, 641 S.E.2d 903 (2007) 8

Salmonsen v. CGD, Inc., 377 S.C. 442, 661 S.E.2d 81 (2008) 12, 13-14

Stanton v. Town of Pawleys Island, 309 S.C. 126, 420 S.E.2d 502 (1992)) 8

State v. Cervantes-Pavon, 426 S.C. 442, 827 S.E.2d 564 (2019) 11-12

State v. Hawes, 411 S.C. 188, 767 S.E.2d 707 (2015) 9-10

Tisdale v. Amer. Life Ins. Co., 216 S.C. 10, 56 S.E.2d 580 (1950) 16

Wilder Corp. v. Wilke, 330 S.C. 71, 497 S.E.2d 731 (1998) 8-9

OTHER AUTHORITY

Rule 208(b)(1)(c), SCACR. 1

Rule 220(c), SCACR. 17

Rule 23, SCRCP. 7-8, 11, 12-14, 15

Rule 59(e), SCRCP. 13

Jean Hoefer Toal, et al., Appellate Practice in South Carolina (2d ed. 2002)) 8

STATEMENT OF THE ISSUES ON APPEAL

I. Did the Appellants preserve the sole issue they raise on appeal for appellate review?

II. Did the Lower Court abuse its discretion in denying Appellants' motion for a post-award hearing fifteen years after the approval and administration of the class action settlement?

STATEMENT OF THE CASE

This appeal relates to a 2007 class action settlement between the victims of clerical sexual abuse and the Catholic Church in South Carolina.[1] Julie McDonald and Richard McDonald ("Appellants") alleged they were part of the consortium class comprised of family members of the abused individuals. In this appeal, the Appellants seek reversal of an order denying their motion for a "post-award fairness hearing." Appellants contend such a hearing is necessary over fifteen years after the class action settlement to allow them to litigate issues pertaining to class counsel's fees, including the fees awarded in 2007 by the prior class action judge, The Honorable Diane Goodstein, and the fees the Appellants allege they were improperly charged in February of 2008 for the arbitration of their damages conducted pursuant to the court-approved class settlement terms. The complexity of the issues involved in this appeal requires a review of the procedural history of the class action cases and the measures the class action court took to ensure the settlement fairly and adequately protected the class members.

On August 16, 2006, Lawrence E. Richter, Jr., David K. Haller, and their former law firm (collectively, "Richter & Haller") and three other attorneys representing the plaintiff classes filed class actions in Dorchester County. (R. pp. 213-38.) They filed one case on behalf of family members of sex abuse victims and a second case on behalf of the victims themselves. Id. On

[1] Because Appellants' Statement of the Case contains contested matters and few of the details required by Rule 208(b)(1)(c), SCACR, Richter & Haller provide the following Statement of the Case.

October 6, 2006, Richter & Haller filed a third class action complaint on behalf of John Doe #53. (R. pp. 239-253.) The same day, Richter & Haller also filed a Motion to Certify Classes and for Preliminary Approval of Class Settlement. (R. pp. 254-58.)

Pursuant to the Supreme Court's Administrative Order of July 26, 2006 (2006-07-26-01), the Chief Administrative Judge of the First Judicial Circuit, the Honorable Diane S. Goodstein, designated the Dorchester County cases as complex and assigned them to herself to administer and oversee. (R. p. 1.) The Supreme Court's operative order gave the Chief Administrative Judge of each circuit wide discretion to determine whether a case was complex and warranted assignment to a single judge. The only requirement was that the Chief Administrative Judge determine that the case "justified special handling." (R. pp. 1197-98.) It is not surprising that Judge Goodstein determined that working through, finalizing, and implementing the first-of-its-kind class action settlement of sexual abuse claims against the Diocese of Charleston justified special handling and assignment to a single judge who could develop familiarity with the matter and assist in bringing it to final resolution. She reached that conclusion after multiple conferences with counsel. (R. p. 1160; R. pp. 294.)

Under Judge Goodstein's oversight, the parties reached a final settlement. The settlement Richter & Haller secured enabled victims of sexual abuse and their spouses and parents to participate in a non-adversarial and confidential process by which they would present their claims to a neutral arbitrator, who would then award a recovery within an agreed matrix based upon the type, duration, and severity of abuse. (R. pp. 14-34.) Victims of sexual abuse could receive up to $200,000, and spouses and parents of victims could receive $20,000.[2] The process was truly

[2] The settlement amounts took into account the risks posed by the Diocese's legal defenses, including lack of notice, charitable immunity, statute of limitations, and other grounds. Claims of parents and spouses in particular were difficult because spouses married the victims long after the

non-adversarial, as the Diocese was not allowed to question or cross-examine the victims, nor could the Diocese have a representative present at the arbitration hearing without the claimant's consent. The Diocese also agreed not to raise legal defenses such as lack of notice of an employee's proclivities, lack of negligence, comparative fault, statute of limitations, or charitable immunity. The Diocese was only permitted to submit written evidence challenging whether a claim was *bona fide* when, for example, a claim appeared to be based upon inaccurate facts or alleged abuse by a priest who was never at the alleged location. Id.

On January 12, 2007, the Diocese finally signed the settlement agreement. (R. p. 30.) On January 17, 2007, Richter & Haller filed an amended motion for certification and preliminary approval. (R. p. 259.) On January 19, 2007, the class action court concluded the requirements of Rule 23, SCRCP, were satisfied (including the adequacy of class representation by Richter & Haller and the class representatives), certified the two classes, and gave preliminary approval to the settlement. (R. pp. 5-34.) The court also directed a notice plan, established a deadline for objections, and set a date for the first of several fairness hearings. Under the settlement, Richter & Haller had secured a $12 Million class settlement from Diocese of Charleston for the benefit of victims of priest sex abuse in South Carolina and their parents and spouses. Id.

The class action court took its role seriously and was heavily engaged throughout the process. At a March 9, 2007, hearing, Judge Goodstein expressed her "grave concern" that reports of priest sex abuse were hidden somewhere "or undisclosed or secret." (R. pp. 810-11.) As a result, she ordered First Circuit Solicitor David Pascoe to conduct an investigation, which the court required to be concluded before the settlement would be approved. Id. "Because if it is true that

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abuse occurred and a parent's right to recover for loss of consortium or loss of services in South Carolina was unclear.

which has been argued that there are children who have been abused and been undisclosed, and their only remedy is to receive newspaper publication and then to come forward, that is insufficient in my mind because those would be names that would be known and they are entitled to more attention than that." (R. p. 812.) The class action court also directed Mr. Pascoe "to conduct an investigation into a document entitled, 'INSTRUCTION' which plaintiffs claim was the basis for how sexual abuse allegations were to be handled by the Diocese."[3] (R. p. 39.)

The class action was unusual insofar as no one knew or could know the number of potential class members, their identities, or where or how to find them. The Diocese reported—and the Solicitor agreed—that the Diocesan records contained only 20 reported victims. Id. It was suspected that there existed many more victims, but there was no obvious or practical way to know how many Diocesan priests had sexually abused children through the years or how many children they had abused.

On July 30, 2007, after Mr. Pascoe completed his investigation and reported to the court, and after an investigator hired by Richter & Haller had also performed an investigation, and after the settlement was noticed as required, and after holding a second fairness hearing, and after the various objections to the settlement had been resolved or decided, only then did the class action court approve the settlement as fair and reasonable. Id.

Appellants' Counsel, Mr. Meyers, filed an objection to the final Order Approving Settlement. (R. pp. 483-90.) The class action court received that objection, as well as Mr. Meyers'

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[3] At the March 9, 2009 hearing, the class action court also heard multiple objections to the proposed settlement filed by Appellants' Counsel. Each objection was discussed at length and overruled in the Order approving the settlement. (R. pp. 42-48.) After settling the objectors' claims, Appellants' Counsel nonetheless filed an appeal related to those claims complaining about the administration of the class action. The Supreme Court of South Carolina dismissed that appeal on June 13, 2011. Doe v. Bishop of Charleston, Op. No. 26984 (S.C. Sup. Ct., June 13, 2011).

subsequent Motion to Alter or Amend. (R. pp. 491-510.) The class action court gave final approval to the class action settlement on August 31, 2007. (R. pp. 78-80.)

The settlement enabled 121 victims, spouses, and parents to recover $7,615,000 for their injuries. (R. pp. 38-77; R. pp. 78-80; R. pp. 1167-74.) The settlement was praised at the time as a "good thing," even by Appellants' Counsel:

> Your Honor, I do want to start by acknowledging the positive development by both the diocese and class counsel in even bringing the resolution this far. I do have concerns about it, but I really want to commend both the diocese and class counsel for generating what has brought us here today. It's a good thing. It's a good thing for the organization, it's a good thing for the people they have served and the interest they attempted to serve in the first place.

(R. p. 668, lines 4 through 15.)

Subsequently, however, Appellants' Counsel has repeatedly attacked the class action settlement. Those attacks included multiple appeals, retaliatory grievances against attorneys and a well-respected judge, sworn statements and petitions to the South Carolina Supreme Court, and numerous other filings. In each tribunal, the allegations of judge-shopping, collusion, fraud, and other unlawful conduct have been dismissed. (R. pp. 84-104; R. pp. 1329-1332; see also Doe v. Bishop of Charleston, Op. No. 26984 (S.C. Sup. Ct., June 13, 2011); Doe v. Bishop of Charleston, 407 S.C. 128, 754 S.E.2d 494 (2013); see also Doe v. Richter, et al., C/A No. 2009-CP-10-07751 (alleging claims against class counsel, counsel for the Diocese, and the Diocese, all of which were dismissed).) This appeal is the latest chapter in those attacks.

This appeal stems from a pro se motion filed in 2016 by Allen Sires ("Mr. Sires") for a "post-award fairness hearing." Counsel for Richter & Haller notified the Clerk of Court that The Honorable J.C. Nicholson, Jr.—the judge assigned to these cases at the time—had jurisdiction of the class action cases. (R. pp. 1191-93.) However, the matter was never scheduled for a hearing, and Mr. Sires never followed up.

In August of 2017, Judge Nicholson granted summary judgment to Richter & Haller in eight cases alleging legal malpractice claims against Richter & Haller, all filed by Appellants' Counsel, stemming from these same class action cases. (R. pp. 1207-27.) The Court of Appeals affirmed that order on appeal. (R. pp. 1329-32.) While that appeal was pending, Appellants' Counsel filed additional legal malpractice cases against Richter & Haller on behalf of others. (Chimento v. Richter, et al., C/A No. 2018-CP-10-05802; Jane Doe 304 v. Richter, et al., C/A No. 2019-CP-10-05892.)

On August 29, 2022, Appellants moved to intervene in the class action cases, moved to join in Mr. Sires' motion for a post-award fairness hearing, and moved for the court to appoint new class counsel. (R. pp. 531-45.)[4] Prior to these motions, Appellants had unsuccessfully petitioned the Supreme Court of South Carolina in its original jurisdiction. (R. pp. 1228-1328; R. p. 1333.) Immediately after those motions, Appellants also filed a separate civil action against Richter & Haller in the Court of Common Pleas for Charleston County. (R. pp. 1343-1377.) That action was removed to federal court, remanded, and is now the subject of a motion to dismiss. (See R. p. 1388.)

On November 10, 2022, the Chief Justice appointed Judge Taylor to the class action cases because Judge Nicholson had retired from the Bench. (R. p. 116.) Judge Taylor held a status conference on November 23, 2022. (R. p. 1072-92.) After the circuit court had time to locate and

[4] Richter & Haller's initial brief cited to the documents located at the indicated part of the record on appeal, as well as to the Appellants' Motion to Intervene filed August 29, 2022. The Motion to Intervene was included in the designation of matter filed by the Diocese Respondents on August 23, 2023; however, Appellants did not include the Motion to Intervene in the record on appeal. As far as Richter & Haller are aware, there is no dispute that the Appellants also moved to intervene on August 29, 2022. To the extent there is such a dispute, Richter & Haller asks that the Court take judicial notice of the Motion to Intervene filed August 29, 2022 in C/A No. 2006-CP-10-001310 as a public record.

gather the case files and the parties had time to brief the issues asserted by Appellants, Judge Taylor held a hearing on the motions on January 27, 2023. (R. pp. 1094-1147.) Following the hearing, Appellants filed additional materials for the lower court to consider.

On March 24, 2023, Judge Taylor entered an order denying the Appellants' request for a post-award fairness hearing.[5] (R. pp. 117-22.) Judge Taylor concluded that "a thorough and complete fairness hearing was held by Judge Goodstein which addressed certain objections." (R. p. 120.) Those objections included fees to class counsel which the objectors, represented by Appellants' Counsel, argued were excessive. (R. p. 486 ("If the settlement is treated as a $12 million settlement for purposes of calculating the class counsel's fee, then the court should order that all $12 million be paid to the victims."); R. pp. 487-88 (objecting to class counsel fee being paid from the class settlement fund and to "clear sailing" provision in class settlement); R. pp. 496; R. pp. 501-503; R. pp. 509-10.) Judge Taylor also held the Appellants had failed to cite authority for their request that he conduct a "post-award fairness hearing" regarding the fairness of the terms of a class action settlement that had been court-approved and administered over fifteen years earlier. (R. p. 120.) Judge Taylor denied the motions for a post-award fairness hearing and dismissed the matter with prejudice, concluding the class action cases. (R. p. 121.) Appellants filed a motion to alter or amend on April 3, 2023, and Judge Taylor denied that motion on April 5, 2023. (R. pp. 616-24; R. p. 123; R. p. 123.) On May 1, 2023, this Court received Appellants' notice of appeal. On September 6, 2023, this Court entered an order allowing Richter & Haller to join the appeal as intervenors. This brief follows.

[5] Notably, the rulings as to Mr. Sires' motion are not before the Court in this appeal.

STANDARD OF REVIEW

A trial court's decision to grant or deny a motion for a fairness hearing in a class action is reviewed under an abuse of discretion standard. See Rule 23(d), SCRCP ("The court may at any time impose such terms as shall fairly and adequately protect the interest of the persons on whose behalf the action is brought or defended.") (emphasis added); see also Gardner v. S.C. Dep't of Revenue, 353 S.C. 1, 21, 577 S.E.2d 190, 200 (2003) (applying abuse of discretion standard); and Holman v. S.C. Educ. Lottery Comm'n, 441 S.C. 18, 29, 891 S.E.2d 701, 707 (Ct. App. 2023), reh'g denied (Sept. 22, 2023) (same). "An abuse of discretion occurs where the [circuit court] was controlled by an error of law or where [the circuit court's] order is based on factual conclusions that are without evidentiary support." Holman, 891 S.E.2d at 707 (quoting Stanton v. Town of Pawleys Island, 309 S.C. 126, 128, 420 S.E.2d 502, 503 (1992)).

ARGUMENT

I. Appellants Failed to Preserve the Issue They Present for Appellate Review.

The issue Appellants present in this appeal is whether the lower court abused its discretion by declining to exercise its discretion in regard to Appellants' motion for a post-award fairness hearing. (App's Br. at 1 ("Specifically, the issue on appeal is whether the circuit court in 2023 abused discretion by failing to exercise its discretion in overseeing a class action settlement in light of allegations of class action abuse by colluding parties?"). Prior to submitting their brief in this appeal, Appellants never raised this issue.

To successfully preserve an issue for appellate review, the issue must be: "(1) raised and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity." Rummage v. BGF Indus., 434 S.C. 441, 455–56, 865 S.E.2d 380, 388 (Ct. App. 2021), reh'g denied (Sept. 22, 2021), reh'g denied (Dec. 2, 2021), cert. granted (Sept. 7, 2022), cert. dismissed as improvidently granted, 440 S.C. 307, 891 S.E.2d

374 (2023) (quoting S.C. Dep't of Transp. v. First Carolina Corp. of S.C., 372 S.C. 295, 302, 641 S.E.2d 903, 907 (2007) (quoting Jean Hoefer Toal, et al., Appellate Practice in South Carolina 57 (2d ed. 2002)). "A bedrock part of error preservation is that an issue must have been ruled upon in the trial court in order for it to be preserved for appellate review." Gleaton v. Orangeburg Cnty., 440 S.C. 350, 359, 891 S.E.2d 390, 395 (Ct. App. 2023) (citing Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). "Without a ruling, there is nothing for [the appellate court] to review." Id. "If the losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellate review." I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000). "Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments . . . The requirement also serves as a keen incentive for a party to prepare a case thoroughly. It prevents a party from keeping an ace card up his sleeve—intentionally or by chance—in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case." Id. at 422, 526 S.E.2d at 724-25 (internal citations omitted).

In this case, the Appellants never raised the issue they now present in this appeal—that the lower court erroneously declined to exercise discretion—in their motion or in their Rule 59(e) motion. Consequently, the lower court never had an opportunity to rule on the issue, and it is not preserved for appellate review.

II. The Lower Court Correctly Exercised its Discretion in Denying the Appellants' Motion for a Post-Award Fairness Hearing Over Fifteen Years after the Class Settlement.

Contrary to the Appellants' arguments, the lower court did in fact properly exercise its discretion in denying the motion for a post-award fairness hearing, and the lower court's order was not controlled by any error of law or based on any factual conclusion without evidentiary support.

Appellants contend the lower court failed to exercise discretion by "refusing to review evidence that class counsel (a) charged class members fees and costs which no order authorized, or (b) failed to make proper disclosures to class members (if any charge was authorized), given (c) the class action abuse in this record." (Apps.' Br. at 25.) In support, they cite a criminal case, State v. Hawes, 411 S.C. 188, 767 S.E.2d 707 (2015). In Hawes, the trial court did not exercise discretion but rather "believed its discretion was constrained by the 'shall be' language" in the applicable statute regarding early parole eligibility. 411 S.C. at 191, 767 S.E.2d at 708. In contrast, the lower court in this case did not summarily deny the Appellants' motion for a post-award fairness hearing or decline to exercise its discretion. Rather, the lower court carefully examined the voluminous record and the submissions and arguments of counsel, ultimately concluding,

> The motions filed by Mr. Sires and the McDonalds urge this court to conduct a post-award fairness hearing. Mr. Sires and the McDonalds both participated in the claims process and received their settlement proceeds. Although various grievances were aired during the hearing, the principal reason cited by Mr. Sires and the McDonalds for a post-award fairness hearing centers around fees charged by class counsel to individual class members upon resolution of the individual claims through the court approved claims process.
>
> It appears a thorough and complete fairness hearing was held by Judge Goodstein which addressed certain objections. An order was issued on July 30, 2007 formally approving the settlement. Judge Goodstein's order also made the parties' Settlement and Arbitration Agreement filed January 17, 2007 an order of the court. A series of motions followed Judge Goodstein's July 30, 2007 order which she addressed in a subsequent order filed March 23, 2009. An appeal of the March 23, 2009 order was dismissed by the South Carolina Supreme Court.

(R. pp. 120-21.) (emphasis added).

The lower court recognized not only that the Appellants ostensibly sought to object to the 2007 class action settlement fifteen years after the fact but also that Judge Goodstein had already conducted a "thorough and complete fairness hearing" addressing the very concerns Appellants raise here. Id. Indeed, Judge Goodstein conducted not one but *multiple* fairness hearings and, in addition, commissioned a solicitor's investigation into Diocesan records to ensure the fairness of

the settlement terms. The Appellants and their counsel were not strangers to the process; they received notice of it and participated in it, from the initial fairness hearing on March 9, 2007, through the claims arbitration process following final approval of the settlement. (R. p. 119 ("Mr. Sires and the McDonalds both participated in the claims process and received their settlement proceeds."). At no time have the Appellants disputed that they participated in the class settlement process. The findings of fact upon which the lower court's conclusions are based are firmly supported by the extensive record from the class settlement approval. (R. pp. 5-34; R. pp. 287-467; R. pp. 38-77; R. pp. 78-83; R. pp. 637-820; R. pp. 822-854; R. pp. 855-914; R. pp. 928-1070; R. pp. 590-614.)

Furthermore, the lower court denied the motion on several grounds. First, on the merit of Appellants' arguments the lower court held Judge Goodstein's administration of the class action was "thorough and complete" in full compliance with Rule 23, SCRCP. Given the extensive effort Judge Goodstein dedicated to ensuring fairness of the class action settlement, the lower court was understandably hesitant to conduct a "post-award fairness hearing," especially over fifteen years after the fact. Thus, as alternate sustaining grounds, the lower court also held: (i) that the Appellants cited no authority for a "post-award fairness hearing"—let alone for such a hearing fifteen years after the fact; (ii) that Judge Goodstein's orders were the law of the case; and (iii) that one circuit judge may not overrule another. Contrary to the Appellants' arguments, therefore, the lower court did not decline to exercise its discretion in deciding the Appellants' motion or fail to consider the submissions and evidence presented; rather, the lower court carefully considered all those submissions, including the evidence Appellants presented. What the Appellants frame as the lower court's refusal to hear evidence is in fact the court's refusal to reopen the class action settlement under the guise of a "post-award fairness hearing" to allow the Appellants to litigate their legal malpractice and excessive fee claim, a claim the statute of limitations barred long ago.

It was incumbent on the Appellants to present the authority and the evidence to prove the facts essential to their motion—especially one that threatened the finality of a fifteen-year-old class action settlement—and the Appellants failed to carry that burden of proof. See State v. Cervantes-Pavon, 426 S.C. 442, 451, 827 S.E.2d 564, 568–69 (2019); BB & T v. Taylor, 369 S.C. 548, 552, 633 S.E.2d 501, 503 (2006); Bowers v. Bowers, 304 S.C. 65, 67–68, 403 S.E.2d 127, 129 (Ct. App. 1991).

For these reasons, Appellants inaccurately argue the lower court failed to exercise its discretion. Rather, the lower court in fact did exercise its discretion in finding "a thorough and complete fairness hearing was held by Judge Goodstein" and in denying the Appellants' motion. The lower court's order was proper and was not controlled by any error of law or based upon any fact unsupported by the evidence. Therefore, this Court should affirm.

III. The Lower Court's Administration of the Class Action Settlement Exceeded the Requirements of Rule 23, SCRCP, to Ensure Fairness to Class Members, and the Lower Court had no Duty or Compelling Reason to Review the Fairness of the Class Settlement Fifteen Years Later.

Appellants argue the lower court had an affirmative obligation under Rule 23, SCRCP, to allow them the opportunity to litigate their excessive fee claim through a "post-award fairness hearing."

The relevant provision of Rule 23, SCRCP, provides,

> In the conduct of actions to which this rule applies, the court may make appropriate orders . . . (2) The court may at any time impose such terms as shall fairly and adequately protect the interest of the persons on whose behalf the action is brought or defended.

Rule 23(d), SCRCP (emphasis added). See also Salmonsen v. CGD, Inc., 377 S.C. 442, 455, 661 S.E.2d 81, 89 (2008) (noting Rule 23(d)(2), SCRCP, gives state courts broader discretion than the federal rule). In this class action case, Judge Goodstein issued orders to ensure the fair and adequate protection of the class members. The Order Designating the Case Complex entered

October 17, 2006, ensured the disputed issues in the cases would receive the attention they required. (R. p. 1.) The nine-page Order Certifying Classes and Giving Preliminary Approval to Settlement entered January 19, 2007, explicitly analyzed the factors required for class certification, including adequacy of representation, established a notice plan, established a procedure for objections to the class settlement, and set a fairness hearing for March 9, 2007. (R. pp. 5-34.) Including exhibits, that order was thirty-two pages long.[6] Id. On March 9, 2007, Judge Goodstein conducted the first fairness hearing. (R. pp. 637-821.) The transcript of that hearing is 185 pages long. Id. Among the objectors were Does A though N, who were represented by Appellants' Counsel and who raised, among other things, concerns about class counsel's fee. Following that initial fairness hearing, Judge Goodstein commissioned an investigation by the solicitor to ensure the fairness of the settlement terms. (R. pp. 810-11; R. pp. 39-40.) On July 13, 2007, Judge Goodstein held yet another fairness hearing to address that concern and others. (R. pp. 822-54.) On July 30, 2007, the Court issued an Order Approving Settlement which established the notice plan, discussed the solicitor's investigation, and decided objections to the class settlement.[7] (R. pp. 38-53.) Following final approval, Appellants' Counsel filed an objection and a Rule 59(e), SCRCP, motion on behalf of objectors. (R. pp. 483-90; R. pp. 491-510.) Judge Goodstein then held yet another hearing on August 9, 2007. (R. pp. 855-914.) Following that last hearing, the objectors settled their issues, including their concern about class counsel's fee request and allegedly fraudulent billing records, and the class settlement was finally approved on August 31, 2007. (R. pp. 78-83.) These hearings were in addition to the countless conference and telephone calls in which the class action court engaged during the pendency of the case, and they demonstrate that Judge Taylor was astute and accurate when he found that Judge Goodstein had conducted a

[6] Appellants failed to include Exhibit B to this Order in the record on appeal.
[7] Appellants' Counsel represented the Objectors, Does A through N.

thorough and complete fairness hearing. The class settlement was then administered pursuant to the terms of that final order. (R. pp. 1167-74, 1179-87, 1199-1203.) Nothing in Rule 23, SCRCP, requires the extensive measures taken to ensure the fairness of the settlement. Judge Goodstein went above and beyond the requirements of the Rule due to the nature of the case and the significance of the landmark settlement to ensure she issued orders that "fairly and adequately protect[ed] the interest[s] of the persons on whose behalf the action [was] brought or defended." Rule 23(d)(2), SCRCP; Salmonsen, 377 S.C. at 459, 661 S.E.2d at 91. Even Appellants' Counsel praised the settlement at the time. (R. p. 668, lines 4 through 15.) Nonetheless, he pursued objections on behalf of Does A through N, and he has continued objecting to the settlement in one form or another ever since.

What the Appellants desire in this case is not a fairness hearing or due process. The Appellants and their counsel were present at the March 2007 fairness hearing. They participated in the claims process, submitted their claims to arbitration pursuant to the court-approved settlement terms, and they received their money in February 2008. Instead, what the Appellants desire is to litigate objections they could have raised in 2007 but did not. They freely allege judge shopping, collusion, and "class action abuses" by both class counsel and the class action judge—even likening this case to the double murder trial of Alex Murdaugh—in a shameless attempt to sell their hyperbole. (See Apps.' Br. at 1-11, 17, 24, 30-36 and 40.) In truth, the class settlement that was reached in this case was a landmark victory for abuse victims. Perhaps not so much for attorneys representing objectors, but for the victims themselves, it was a landmark victory. Judge Goodstein's administration of the class action case not only met but far exceeded the requirements of Rule 23, SCRCP. The lower court held that following final approval, the settlement was administered as contemplated by the court's order. (R. pp. 118, 120.) Notice was provided to class members, their claims were submitted to arbitration, the claimants, including the Appellants,

received their checks, and the surplus was refunded to the Diocese. The time for the Appellants to object to the settlement terms was in 2007, not in 2022.

At the January 27, 2023, hearing, Appellants' Counsel conceded that the crux of the Appellants' complaint is they were charged a contingency fee during the arbitration phase, a fee which they contend was improper because it was not authorized. Notably, Appellants' Counsel admitted during the hearing that they are not challenging fees charged by attorneys other than Richter & Haller. (R. p. 1105, line 19 to p. 1106, line 9, and p. 1107, lines 9 to 16.) According to Appellants, only Richter & Haller charged the improper fees; the other attorneys' fees were proper. Id. The truth is Judge Goodstein fully appreciated the terms of the settlement, including the fact that following approval of the class settlement some claimants may proceed in the arbitration phase *pro se*, others may be represented by counsel, and the latter would pay fees out of any award from the arbitrator. (R. pp. 750, line 8 to p. 751, line 9 (discussing claimants hiring counsel during claims process and paying attorneys' fees from their awards).) The fees were not concealed or hidden from the class action judge. Appellants' argument that fees paid to other attorneys were proper while the same fees paid to Richter & Haller were improper is meritless, and it highlights the animosity fueling this fifteen-year-long crusade to attack the finality of the class action settlement.

Therefore, Judge Taylor's order correctly held that Judge Goodstein had already conducted a thorough and complete fairness hearing and that there was no compelling reason to exhume the class action settlement under the guise of a post-award fairness hearing. The order should be affirmed.

IV. The Lower Court Properly Declined to Overrule Judge Goodstein's Findings.

Appellants also argue the lower court committed an error of law by declining to overrule Judge Goodstein's orders. As noted above, however, the lower court held that Judge Goodstein

conducted "a thorough and complete fairness hearing" and that the "claims of the class members were administered pursuant to the terms of the court-approved settlement through the court-appointed escrow agent and the court-appointed arbitrator." (R. pp. 118, 120.) Those conclusions are all supported by the extensive record in this case and not controlled by any error of law. Judge Goodstein held, "The Court took its own notice of the arms-length advocacy of counsel for their respective clients in the case." (R. p. 50.) Appellants urged Judge Taylor to overrule this finding of arms' length advocacy, something which based on the record, and in his discretion, he declined to do. Judge Goodstein also held, "In rendering this decision [to award fees in the amount of $2.5 million dollars], I find that the matter before me is monumental in both its scope and result." (R. p. 51.) Appellants urged Judge Taylor to overrule this finding of a monumental accomplishment by class counsel. He exercised his discretion and declined to do so. Judge Goodstein held, "All of the counsel in this case are known to the Court to have had exemplary legal and professional success and this fact has not been contested." Id. Appellants urged Judge Taylor to overrule this finding, too, but he declined.

Indeed, as Judge Taylor noted, "There is a long-standing rule in this State that one judge of the same court cannot overrule another." Charleston Cnty. Dep't of Soc. Servs. v. Father, Stepmother, & Mother, 317 S.C. 283, 288, 454 S.E.2d 307, 310 (1995) (citing Tisdale v. Amer. Life Ins. Co., 216 S.C. 10, 56 S.E.2d 580 (1950); and Dinkins v. Robbins, 203 S.C. 199, 26 S.E.2d 689 (1943). "Accordingly," our supreme court has held, "a successor judge may not substitute his own judgment for that of the trial judge." Id. One purpose for this rule is deference to a trial judge's credibility determinations and judgment calls, for the trial judge is in a better position to make those calls compared to a subsequent judge who may only have the benefit of a transcript. In this case, Judge Goodstein was the trial judge and made decisions on the merits regarding the fairness of the class action settlement, including class counsel's fees, only after her considerable

effort and tireless involvement in the multiple hearings, the solicitor's investigation, and conferences with counsel, both before and after approval of the class settlement. Even with the benefit of the filings and transcripts, a successor like Judge Taylor cannot know all that Judge Goodstein knew or have the full benefit of the information Judge Goodstein had. Appellants and their counsel presented no new evidence warranting post-judgment relief or an order overruling Judge Goodstein's credibility determinations and explicit, discretionary rulings on the issues Appellants raise now regarding attorneys' fees.

The lower court heard extensive arguments on the Appellants' motion and then, in addition, took nearly one month following the hearing to consider the record and the arguments and submissions of counsel, including the supplemental materials Appellants submitted following the hearing. Therefore, the lower court did not abuse its discretion or err in declining to overrule Judge Goodstein's orders, and the order should be affirmed.

V. Additional Grounds in the Record to Affirm.

Pursuant to Rule 220(c), SCACR, Richter & Haller also contend the Appellants have compromised, released, and waived any claim as well as any right to dispute or contest the fairness of the court-approved settlement terms and have no standing to attack the class action settlement because they: (i) did not appeal the final order approving settlement entered August 31, 2007, (ii) did not opt out of the settlement, (iii) submitted their claims to arbitration pursuant to the court-approved settlement terms, (iv) accepted the funds they received from the arbitration of their claim. See Parker v. Parker, 313 S.C. 482, 487, 443 S.E.2d 388, 391 (1994) ("Waiver is a voluntary and intentional abandonment or relinquishment of a known right."); and Pres. Soc'y of Charleston v. S.C. Dep't of Health & Env't Control, 430 S.C. 200, 209–11, 845 S.E.2d 481, 485–87 (2020) (discussing requirements for standing).

Furthermore, with regard to the arguments in Sections C and D that the lower court had authority to grant their motion, the Appellants have abandoned those issues because they failed to preserve those issues for appeal and they failed to identify those issues in the Statement of Issues on Appeal. Moreover, the record demonstrates the lower court denied the Appellants' motion on its merit based on the "thorough and complete" process Judge Goodstein followed to ensure the fair and adequate protection of the class members. (R. p. 120.)

CONCLUSION

For the reasons set forth above, as well as any others that appear in the record, Richter & Haller would show the lower court's order denying the Appellants' motion for a post-award fairness hearing in this class action case, the settlement for which was finally approved on August 31, 2007, and which was administered by March of 2008, should be affirmed.

Respectfully submitted,

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April 3, 2024
Columbia, South Carolina

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable Heath P. Taylor, Circuit Court Judge

Civil Action Nos.: 2006-CP-18-01310, -01311, -01636

Appellate Case No.: 2023-000720

John Doe #53, John Doe 66, John Doe 66A, John Doe 67, Jane Doe 1 and Jane Doe 2 and Rachel Roe, individually and as representatives of a class of people similarly situated, ... Plaintiffs,

Of whom class members Julie McDonald and Richard McDonald are . . . . .Appellants,

v.

The Biship of Charleston, a Corporation Sole; The Bishop of the Diocese of Charleston, in his official capacity, ...Respondents,

And David K. Haller, Lawrence E. Richter, Jr., and Richter & Haller, LLC . . . . Intervenors.

CERTIFICATION OF COUNSEL

The undersigned certifies that the foregoing Joint Brief of David K. Haller, Lawrence E. Richter, Jr., and Richter & Haller, LLC complies with Rule 211(b), SCACR.

/s/ *Benjamin C. Bruner*
Benjamin C. Bruner