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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge
Case No. 2021-CP-26=06975

Appellate Case No. 2024-000562

Justin Shayne Fulmer ..... Appellant,

v.

Melissa Emery Buckhannon, Esq., Frazier Law Firm, P.C., SC House Calls, Inc., Anna Coggeshall, Bryan Coggeshall, Katherine Coggeshall, Lauren Trent Fulmer, and Thomas Buckhannon ..... Defendants,

Of Whom Anna Coggeshall .....Respondent.

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COUNTERSTATEMENT OF THE CASE

Appellant Justin Fulmer's ("Fulmer") Statement of the Case is largely incorrect or incomplete and, therefore, is misleading. To correct these errors, Respondent Anna Coggeshall ("Coggeshall") provides the following Counterstatement of the Case.

Fulmer and Coggeshall are the parents of a minor daughter named Sophia. They initially litigated domestic issues involving paternity, child support, and custody. This litigation concluded in October 2020 when the parties entered into a Settlement Agreement and sought the Court's approval of the Settlement Agreement. The approval was granted, and the Settlement Agreement was then incorporated and made part of the Final Order. The parties acted under the Final Order; however, Fulmer put their co-parenting relationship into jeopardy when he took Coggeshall's iWatch without Coggeshall's permission a year later. Even though there was no pending action involving the parties and their minor child at that time, Fulmer, without Coggeshall's permission or knowledge, intercepted, used, and disclosed Coggeshall's text messages that were synched to her cell phone. Fulmer used and disclosed Coggeshall's text messages in the underlying civil action against Coggeshall and several Co-Defendants, and said electronic interceptions were the sole basis for his alleged causes of action in the civil matter.

On October 21, 2021, Fulmer filed a Complaint with the Horry County Court of Common Pleas alleging that Coggeshall and several Co-Defendants "engaged in a scheme of collecting and spreading false information about [Fulmer's] purported ability to raise and interact with his young daughter", Sophia. (R. p. 14). The Complaint alleged causes of action against Coggeshall for (1) civil conspiracy with Co-Defendants to engage in a scheme to defame Fulmer by disseminating his private and confidential patient information to members of the community, (2) civil conspiracy with Co-Defendants to engage in a scheme of collecting and spreading false information about

Fulmer's ability to raise and interact with Sophia, (3) defamation, (4) intentional and negligent infliction of emotional distress, and (5) negligence. (R. pp. 29-36).

On December 1, 2021, Coggeshall filed an Answer and Counterclaim. The Answer preserved her rights under Rule 12(b)(6), SCRCP. Coggeshall's Counterclaim contained the following causes of action against Fulmer: (1) violation of the South Carolina Homeland Security Act, S.C. Code Ann. §§ 17-30-10, et seq., based on Fulmer's alleged intentional interception, use, and disclosure of Coggeshall's electronic communications; (2) violation of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030; (3) violation of the Stored Electronic Communication Privacy Act, 18 U.S.C. §§ 2701, et seq.; (4) invasion of privacy – publicizing of private affairs; (5) invasion of privacy – wrongful intrusion and outrage; and (6) trespass to chattels. (R. pp. 63-71).

Fulmer filed an Answer to the Counterclaim that generally denied all allegations on December 9, 2021. On February 3, 2022, Coggeshall filed a Motion to Dismiss Fulmer's action against her pursuant to Rule 12(b)(1), (3), and (6), SCRCP.

Before Coggeshall's Motion to Dismiss was heard by the trial court, Coggeshall filed an action in the South Carolina Court of Appeals requesting an Order suppressing the text messages that Fulmer allegedly intercepted from her iWatch. The South Carolina Court of Appeals reviewed Coggeshall's action and issued an Order granting the requested relief on September 2, 2022 (R. p. 1).

In the September 2, 2022, Appellate Order, the Court of Appeals reasoned: "Based on the affidavits provided by the parties, we find the preponderance of the evidence indicates Coggeshall was the rightful owner of the iWatch. Accordingly, Fulmer's repeated use of the device to view her text messages amounted to interceptions under the [South Carolina] Homeland Security Act." (R. p. 1). Based on this finding, the Court of Appeals granted Coggeshall's motion to suppress and

prohibited Fulmer from using the text messages he intercepted from Coggeshall's iWatch "in the Civil Case . . . and any potential future litigation." *Id.* Finally, the Court of Appeals denied Coggeshall's request for attorney's fees but noted that she "may still pursue attorney's fees and damages in a civil action." *Id.*

Based on the September 2, 2022, Appellate Order, Coggeshall filed a Motion to Strike, or in the Alternative, Motion for Summary Judgment with the trial court on September 27, 2022, alleging that Fulmer had no facts to support a cause of action against her. On the same date, Coggeshall also filed a Motion for Judgment on the Pleadings.

On December 12, 2022, the trial court held a hearing on all pending motions. During the hearing, Fulmer "conceded that he is unable to present evidence to support the allegations of the Complaint as pled." (R. p. 9).

On February 14, 2023, the trial court issued an Order granting the Coggeshall's Motion to Dismiss the case under Rule 12(b), SCRCP. (R. p. 8). The trial court noted that Coggeshall's Counterclaim "is not affected by this Order." (R. p. 10). As a result of the February 14, 2023, Order, all of Fulmer's causes of action still pending at that time were dismissed. Therefore, the only matter that went before a jury for trial was Coggeshall's Counterclaim.

Coggeshall's Counterclaim was tried before a jury over four days from November 27-30, 2023. The Honorable William H. Seals, Jr. presided over the trial.

Coggeshall offered brief testimony during the trial regarding the costs and fees she incurred as a result of Fulmer's act of bringing the underlying civil suit against her. She testified that she had to hire lawyers to defend herself and gave a general estimate of the extent of the legal bills she accrued. (R. pp. 294-295, lines 2-9). Fulmer's counsel, William Bertram von Herrmann

("Attorney von Herrmann"), did not object to this line of questioning or to any responses made by Coggeshall. (R. pp. 295-296, lines 10-17).

Further, Attorney von Herrmann did not ask Coggeshall any questions on cross-examination concerning her legal bills or challenge her testimony regarding the fees and costs incurred in any way. (R. pp. 298-355, lines 18-25). Attorney von Herrmann did not submit any Jury Charge Request seeking a directive to the jury to not consider the amount of attorney's fees and costs Coggeshall incurred in calculating Coggeshall's damage award. Instead, Attorney von Herrmann accepted without objection the jury charge on damages that the trial court put together. (R. p. 361, lines 9-15, R. pp. 362-363, lines 25-11). The trial court's charges did not include an instruction directing the jury to not consider Coggeshall's attorney's fees and costs in calculating a damages award. (R. pp. 368-380, lines 20-14). After the trial court concluded its instructions to the jury, Attorney von Herrmann did not raise any objections to the charges made. (R. p. 380, lines 16-20). Instead, Attorney von Herrmann stated that he had no objection to the trial court's charges. (R. p. 380, lines 19-20).

Using standard Form 4, the jury rendered a verdict in favor of Coggeshall and against Fulmer. The "Order Information" states:

> We, the Jury, unanimously, find that Justin Shane Fulmer violated the Homeland Security At, and this happened on 28 number of days.
>
> As to the Intrusion of Privacy and Trespass to Chattel claim, we, the Jury, unanimously find for the Plaintiff Anna Coggeshall.
>
> We, the Jury, unanimously find for the Plaintiff Anna Coggeshall in the amount of $25,214.79 actual/nominal damages and $50,000.00 punitive damages for a total of $75,214.79.

(R. p. 271).

The Homeland Security Act provides that a plaintiff who prevails on a civil claim for violation of the Homeland Security Act may recover liquidated damages computed at the rate of $500 a day for each day the violation occurred, or $25,000, whichever is greater, plus punitive damages. S.C. Code Ann. § 17-30-135(A)(2), (3).

In reaching its verdict, the jury found that Fulmer violated the Homeland Security Act over a total of 28 days. (R. p. 271). Liquidated damages computed at the rate of $500 per day over 28 days yields damages of $14,000.00. Because this figure is less than $25,000,000, the jury determined that Coggeshall was entitled to damages in the minimum statutory amount of $25,000.00. *See* S.C. Code Ann. § 17-30-135(A)(2). The jury also awarded Coggeshall an additional $214.79 to cover the price of her stolen iWatch. (R. p. 297, lines 1-15). In addition, the jury awarded $50,000.00 in punitive damages to Coggeshall. (R. p. 271). Thus, the jury's total damages award was $75,214.79.

Following the jury's award, Coggeshall's attorneys, Steven Marc Abrams ("Attorney Abrams") and Richard G. Whiting ("Attorney Whiting") submitted to the trial court Affidavits and supporting documentation concerning their attorney's fees. (R. p. 284). Fulmer's counsel did not object to the presentation of this documentation to the trial court. *Id.*

Attorney Abrams' Attorney Fee Affidavit dated November 25, 2023, states that Coggeshall agreed to pay him $425.00 per hour for his professional services and agreed to reimburse him for all court costs and expenses, and that his total fee for services related to this matter was $56,818.05. (R. pp. 117-118). Attorney Whiting's Attorney Fee Affidavit, dated November 22, 2023, likewise states that Coggeshall agreed to pay him $425.00 per hour for his professional services and agreed to reimburse him for all court costs and expenses, and that he believed a reasonable award of attorney's fees to be $106,307.04. (R. pp. 88-89). Both attorneys also submitted detailed, monthly

billing statements to the trial court to substantiate their fee requests. (R. p. 285, R. p. 117, R. p. 88).

On February 16, 2024, the trial court entered an Award of Attorney's Fees ("Attorney's Fee Award"). In issuing the Attorney's Fee Award, the trial court stated that "[p]ursuant to the Homeland Security Act, attorney's fees are recoverable and shall be awarded in this case." (R. p. 273). The trial court then set forth the eight factors of consideration in determining the reasonableness of attorney's fees. *Id.* The court stated that Mr. Abrams' Affidavit of attorney's fees reflected that he spent 67 hours preparing and working on the case, and Mr. Whiting's Affidavit indicated that 224 hours were spent preparing and working on the case. (R. p. 274). Based on a reasonable hourly rate in the Fifteenth Circuit of $250 and the hours spent working on the case, the trial court determined that Attorney Abrams was entitled to attorney's fees in the amount of $16,750.00 ($250 x 67 hours), and Attorney Whiting was entitled to an award in the amount of $56,000.00 ($250 x 224 hours), for a total fee award of $72,750.00. *Id.*

On February 29, 2024, Fulmer filed a Motion to Reconsider the Award of Attorney Fees. Coggeshall filed a Return to this motion on March 7, 2024. On April 1, 2024, the trial court entered a standard Form 4 Order denying Fulmer's Motion to Reconsider Award of Attorney Fees. Fulmer filed his Notice of Appeal of the trial court's Order of Attorney's Fees issued on February 16, 2024, and the Form 4 Order issued on April 1, 2024.

STANDARD OF REVIEW[1]

"The decision to award or deny attorneys' fees and costs will not be disturbed on appeal absent an abuse of discretion." *Maybank v. BB&T Corp.*, 416 S.C. 541, 579-80, 787 S.E.2d 498,

[1] Fulmer's Initial Brief is not in compliance with Rule 207(b)(1)(D), SCACR. The Brief does not contain a separate section with the heading "Standard of Review" that sets forth the standard of review applicable to the issue on appeal.

518 (2016); *see also Hueble v. S.C. Dep't of Nat. Res.*, 416 S.C. 220, 231, 785 S.E.2d 461, 467 (2016). "Similarly, the specific amount of attorneys' fees awarded pursuant to a statute authorizing reasonable attorneys' fees is left to the discretion of the trial judge and will not be disturbed absent an abuse of discretion." *Kiriakides v. Sch. Dist.*, 382 S.C. 8, 20, 675 S.E.2d 439, 445 (2009) (internal quotation marks omitted); *see also Hueble*, 416 S.C. at 231, 785 S.E.2d at 467. An abuse of discretion occurs "when the conclusions of the trial court are either controlled by an error of law or are based on unsupported factual conclusions." *Kiriakides*, 382 S.C. at 20, 675 S.E.2d at 445 (internal quotation marks omitted).

ARGUMENT

As a threshold matter, it should be recognized that Fulmer has **not** appealed the underlying jury verdict or jury's damages award issued against him. Thus, Fulmer has conceded the issue of his liability to Coggeshall on Coggeshall's Counterclaim. *See Taylor by Taylor v. Medenica*, 331 S.C. 575, 582 n.7, 503 S.E.2d 458, 462 n.7 (1998) ("an issue which is not argued in the brief is deemed abandoned and precludes consideration on appeal"); *First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (stating that issue not raised is deemed abandoned). The only issue raised on appeal is whether and to what extent the trial court's grant of attorney's fees to Coggeshall in the amount of $72,750.00 should be upheld. *See Taylor by Taylor*, 331 S.C. at 582 n.7, 503 S.E.2d at, 462 n.7.

I. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION OR ERR AS A MATTER OF LAW IN AWARDING ATTORNEY'S FEES TO COGGESHALL IN THE AMOUNT OF $72,750.00

Attorneys' fees and costs may be recovered if authorized by contract or statute. *Maybank*, 416 S.C. at 580, 787 S.E.2d at 518. Here, the jury found that Fulmer violated the South Carolina Homeland Security Act, S.C. Code Ann. § 17-30-20, by intentionally intercepting, using, and

disclosing Coggeshall's electronic text messages that Fulmer obtained from her iWatch. A person whose electronic communications have been intercepted, used, or disclosed in violation of the Homeland Security Act has a civil cause of action against the person who violated the Act. S.C. Code Ann § 17-30-135(A). In that civil action, the injured party may recover "a reasonable attorney's fee and other litigation costs reasonably incurred." S.C. Code Ann. § 17-30-135(A)(4).

Here, a South Carolina statute clearly authorizes Coggeshall to recover reasonable attorney's fees. For the reasons detailed below, Fulmer has not met his burden of proving that the trial court abused its discretion in awarding attorney's fees in the amount of $72,750.00 to Coggeshall. In fact, the trial court made every effort to ensure the fees awarded were reasonable, as the hourly rate for both attorneys was discounted to a reasonable hourly rate as found in the Fifteenth Circuit, where the case was brought, as opposed to the normal hourly rate the attorneys charged in their home circuits, which was a higher rate.

A. Fulmer Waived Any Objection He May Have Had to Coggeshall's Trial Testimony Regarding Her Legal Bills

For the first time, Fulmer raises the objection that the jury must have wrongly considered and included the amount of Coggeshall's attorney's fees in calculating the Coggeshall's monetary damages award. The only "evidence" that Fulmer offers to substantiate this theory is that Coggeshall briefly testified that she had to hire lawyers to defend herself against the civil action that Fulmer filed against her and her estimate of the extent of the legal bills she accrued. (R. pp. 294-295, lines 10-17).

Notably, Fulmer's counsel, Attorney von Herrmann, did not object to this line of questioning during the trial. (R. pp. 295-296, lines 10-17). Also, Attorney von Herrmann did not ask Coggeshall any questions on cross-examination concerning her legal bills. (R. pp. 298-355, lines 18-25). In addition, Attorney von Herrmann did not submit any Jury Charge Request seeking

a directive to the jury to not consider the amount of attorney's fees and costs Coggeshall incurred in calculating Coggeshall's damages award. Instead, Attorney von Herrmann accepted without objection the jury charge on damages that the trial court put together. (R. p. 361, lines 9-15, R. pp. 362-363, lines 25-11). The charges did not include an instruction directing the jury to not consider Coggeshall's attorney's fees and costs in calculating a damages award. (R. pp. 368-380, lines 20-14). Nevertheless, upon the conclusion of the trial court's instructions to the jury, Attorney von Herrmann did not raise any objections to the charges made. (R. p. 380, lines 16-20). Instead, Attorney von Herrmann stated that he had no objection to the court's charges. (R. p. 380, lines 19-20).

"An appellant must make a specific objection to the admission of evidence to preserve the issue for appeal." *Abba Equip., Inc. v. Thomason*, 335 S.C. 477, 486, 517 S.E.2d 235, 240 (Ct. App. 1999). "As a general rule, an issue may not be raised for the first time on appeal." *McKissick v. J.F. Cleckley & Co.*, 325 S.C. 327, 343, 479 S.E.2d 67, 75 (Ct. App. 1996).

"To preserve an issue regarding the admissibility of evidence, a contemporaneous objection must be made. . . . Failure to object when the evidence is offered constitutes a waiver of the right to have the issue considered on appeal." *Id.* (internal citation omitted); *see also State v. Burton*, 326 S.C. 605, 609, 486 S.E.2d 762, 764 (Ct. App. 1997).

In addition, "[t]he same ground argued on appeal must have been argued to the trial judge. . . . An appellate court may not address an issue that is not preserved." *Abba Equip.*, 335 S.C. at 486, 517 S.E.2d at 240 (internal citation omitted).

Here, Fulmer waived any objection he may have had to the admission of Coggeshall's testimony regarding her accrued legal bills by failing to raise any objection whatsoever to this testimony at trial. *See Burton*, 326 S.C. at 609, 486 S.E.2d at 764; *McKissick*, 325 S.C. at 343,

479 S.E.2d at 75. Because he failed to raise this objection to the trial court, Fulmer is precluded from raising the issue for the first time in this appeal. *See McKissick*, 325 S.C. at 343, 479 S.E.2d at 75. Hence Coggeshall's trial testimony wherein she mentioned accrued attorney's fees does not provide a legitimate basis for the reversal or reduction of the attorney's fees the trial court awarded to her.

B. Fulmer Has Failed to Meet His Burden of Proving that the Jury Awarded Attorney's Fees to Coggeshall as Part of Her Monetary Damages

Even if Fulmer's claim that the jury must have awarded attorney's fees to Coggeshall as part of her monetary damages is considered on the merits, it still fails. Fulmer has not met his burden of proof on this issue.

The damages that a prevailing plaintiff may recover if the jury finds that the defendant violated the Homeland Security Act by deliberately intercepting, using, or disclosing her electronic communications are set out in the Act itself. Specifically, S.C. Code Ann. § 17-30-135(A)(2) provides that the prevailing plaintiff is entitled to recover "actual damages, but not less than liquidated damages computed at the rate of five hundred dollars a day for each day of violation or twenty-five thousand dollars, whichever is greater[.]" In addition, the plaintiff may recover punitive damages. S.C. Code Ann. § 17-30-135(A)(3).

In closing arguments, Attorney Abrams, as counsel for Coggeshall, clearly explained to the jury the statutory damages recoverable for a defendant's violation of the Homeland Security Act:

> **[Attorney Abrams:]** And so if you agree with me and you find that those were interceptions, those 500 or 962 times that he captured [Coggeshall's] electronic communications by photographing her watch, then you get to the damages. **So on damages in this case you get a break because the [Homeland Security] Act tells you that if someone is a victim of the interception, disclosure, or use of their communications in violation of the Act, meaning the interception, then the damages are actually written out in the Act.** You don't have to prove what their damages are, they are actually what are called statutory or liquidated damages in the Act. And those liquidated damages are computed on the

number of days that the violation occurred. It happens to be $500 per day in South Carolina, or $25,000 whichever is greater. . . .

And you also have the option that if you think that it was willful or wanton of [Fulmer] to -- and the Judge will explain what those mean -- of him to take those pictures, and to use [Coggeshall's] communications without consent, then you're also entitled to award punitive damages. Punitive damages, again, are punishment for basically the conduct in violating the statute. But it also is to set an example for other people not to do the same thing.

[emphasis added] (R. pp. 364-365, lines 7-19).

Attorney Abrams' explanation of the damages an injured plaintiff may recover for a defendant's violation of the Homeland Security Act properly correlates with the terms of S.C. Code Ann. § 17-30-135(A)(2) and (3). *See McCourt by & Through McCourt v. Abernathy*, 318 S.C. 301, 308, 457 S.E.2d 603, 607 (1995) ("In order for a plaintiff to recover punitive damages, there must be evidence the defendant's conduct was wilful, wanton, or in reckless disregard of the plaintiff's rights. . . . A conscious failure to exercise due care constitutes wilfulness") (internal citation omitted); *Dockins v. Ingles Mkts.*, 306 S.C. 496, 498, 413 S.E.2d 18, 19 (1992) ("When a statute creates a substantive right and provides a remedy for infringement of that right, the plaintiff is limited to that statutory remedy").

Similarly, the trial court properly instructed the jury on how to calculate Coggeshall's monetary damages:

[The Court:] If you find there was an intentional interception of a wire, oral, or electronic communication or an attempt to disclose to any other person the contents of any electronic communication in which [Fulmer] knew or had reason to know was obtained in violation of the Homeland Security Act, then you may find [Fulmer] liable to [Coggeshall] for damages.

In determining damages in this case, you must first determine the number of days in which an interception or attempted interception occurred. Damages shall be computed at a rate of five hundred dollars a day for each day of violation or twenty-five thousand dollars, whichever is greater. An occurrence is the frequency of which something happens. In other words, on how many days did a violation happen.

If you determine that the plaintiff is entitled to damages, you may also consider an award of punitive damages.

. . . .

Punitive damages are intended to punish the defendant for extraordinary and outrageous misconduct, and to prevent the defendant and others from committing similar acts in the future. Punitive damages can only be awarded when the conduct of the defendant has been something more than mere negligence.

The plaintiff must establish by clear and convincing evidence that the defendant's acts were reckless, willful, and wanton, meaning that there was a conscious failure to exercise due care or a conscious indifference to the rights and safety of others, or a reckless disregard thereof. A person who is negligent acts carelessly. However, a person who acts recklessly, willfully, and wantonly is not only careless, but is also aware that they are being careless. In determining whether the defendant was reckless, you may consider not only acts but also omissions of conduct.

If you find by clear and convincing evidence that the defendant's conduct was willful, wanton, or reckless you may award the plaintiff punitive damages. Clear and convincing is more than just a preponderance, or greater weight of the evidence. Clear and convincing evidence is proof that leaves no substantial doubt in your mind. It means that the evidence is not ambiguous, doubtful, or contradictory. Clear and convincing proof establishes in your mind, not only that the fact is probable, but that it is highly probable.

Before awarding punitive damages, you must first consider the relationship between any punitive damage award and the harm caused. Any penalty imposed should consider the blameworthiness of the conduct, the harm caused, the defendant's awareness of the conduct's wrongfulness, the duration of the conduct, and any concealment. Thus, any penalty imposed should bear a relationship to the nature and extent of the conduct and the harm caused, including the compensatory damage award made by you.

Finally, any award of punitive damages must be limited to punishment and thus may not affect economic bankruptcy. To this end, the defendant's ability to pay any punitive damage award should be considered. However, the economic bankruptcy factor is not an absolute bar to an award of punitive damages.

(R. p. 373, lines 6-21, R. pp. 377-378, lines 10-22). Attorney von Herrmann, as Fulmer's counsel, did not raise any objections to these charges to the jury. (R. p. 380, lines 16-20).

In accordance with the explanation from Attorney Abrams, the trial court's jury instructions, and the dictates of S.C. Code Ann. § 17-30-135(A)(2), the jury properly awarded Coggeshall monetary damages in the amount of $25,214.79. (R. p. 271). Toward this end, the jury found that Fulmer violated the Homeland Security Act over a total of 28 days. *Id.* Liquidated damages computed at the statutory rate of $500 a day for the 28 days in which a violation of the Act occurred yields a figure of $14,000.00. *See* S.C. Code Ann. § 17-30-135(A)(2). Because $25,000.00 is greater than 14,000.00, the jury properly determined that Coggeshall was entitled to statutory damages in the amount of $25,000.00 as compensation for Fulmer's violation of the Homeland Security Act. *See id.*; *Dockins*, 306 S.C. at 498, 413 S.E.2d at 19. The jury also awarded Coggeshall an additional $214.79 to cover the price of her stolen iWatch. (R. p. 297, lines 1-15).

Finally, the jury found that Fulmer's conduct was willful and wanton and deserving of punishment in the form of punitive damages in the amount of $50,000.00. (R. p. 271). These punitive damages award was authorized by S.C. Code Ann. § 17-30-135(A)(3) and was rendered after the jury received detailed instructions from the trial court. (R. p. 373, lines 6-21, R. pp. 377-378, lines 10-22). The amount of punitive damages awarded was warranted under South Carolina law. *See McCourt*, 318 S.C. at 308, 457 S.E.2d at 607. The ratio of punitive damages to compensatory damages was approximately 2:1. This single-digit ratio is fair and comports with due process. *See Mitchell v. Fortis Ins. Co.*, 385 S.C. 570, 588, 686 S.E.2d 176, 185 (2009).

Importantly, the jury properly fulfilled its obligation to award Coggeshall compensatory and punitive damages that accorded with the dictates of the Homeland Security Act. *See Dockins*, 306 S.C. at 498, 413 S.E.2d at 19. There is absolutely no evidence to support Fulmer's theory that this statutory damages award wrongly incorporated Coggeshall's attorney's fees.

In arguing otherwise, Fulmer incorrectly asserts that the fact the jury's total damages award of $75,214.79 correlates closely with the $72,750.00 attorney's fee award must mean that the jury mistakenly awarded attorney's fees as part of Coggeshall's damages. As shown above, the record evidence proves otherwise. Moreover, the trial court set out the calculation in its order of attorney's fees to include a downward deviation of the hourly rate charged by Coggeshall's attorneys. (R. p. 274).

Moreover, South Carolina law is clear that "there is no requirement that an attorney's fee be less than or comparable to a party's monetary judgment." *Taylor by Taylor*, 331 S.C. at 582, 503 S.E.2d at 462. The South Carolina Supreme Court "has approved an award of attorney's fees where the fee substantially exceeded the actual recovery." *Id.* The fact that the amount of Coggeshall's monetary judgment is comparable with the amount of the attorney's fee award is wholly irrelevant and has no bearing on the legitimacy of the fee award. *See id.*

Indeed, to the extent that undue attention may have been raised at trial to the issue of Coggeshall's attorney's fees, this occurred through the statements of Attorney von Herrmann, Fulmer's own counsel. In his closing argument to the jury, Attorney von Herrmann stated:

> **[Attorney von Herrmann:]** Ms. Coggeshall says she owes $100,000, but somehow she was able to go to Columbia and Charleston to get two lawyers who were nice enough to finance it. Now, I submit to you that the most disingenuous thing that has ever been said in this courtroom probably is that that money is going to Sophia. Because I can promise you if there are lawyers owed $100,000 and y'all were to come back and y'all were to say we're going to give you $100,000, Sophia's college is still not going to be paid and she's not going to have a 529. But two lawyers are going to be paid for and they're going to be in Columbia and Charleston and be happy as they can be and brag about it and do podcasts. That's what's going to happen. So let's please be realistic about what's happening here and why.

(R. pp. 366-367, lines 25-12).

If anything, it was Fulmer himself, through Attorney von Herrmann, who improperly placed the issue of Coggeshall's attorney's fees at the forefront of the jury members' minds. It is

axiomatic that a non-prevailing party such as Fulmer is precluded from raising his own unsuccessful trial tactics as a reason for the subsequent reversal of the jury's verdict and award against him. *See Cartwright v. Herald Pub. Co.*, 220 S.C. 492, 506, 68 S.E.2d 415, 420 (1951) (stating that public official who becomes a plaintiff in an action for libel cannot withhold from the jury his relevant official acts; it "hardly becomes him to allege prejudice by reason of the admission in evidence of his own official conduct, and by his own testimony").

Moreover, it should be recognized that the jury's compensatory damages award to Coggeshall in the amount of $25,000.00 was the **minimum** amount of damages payable for a defendant's violation of the Homeland Security Act. S.C. Code Ann. § 17-30-135(A)(2). In effect, the statute sets a damages floor of $25,000.00, and a jury cannot legitimately award damages to an aggrieved plaintiff in a lower amount. If the jury in this case had intended to award Coggeshall her attorney's fees as part of her damages claim, it certainly would have entered damages in a higher amount than the minimum available under the Homeland Security Act. Indeed, it is reasonable to conclude that such a damages award would have been closer to the $100,000.00 figure referenced by Attorney von Herrmann in his closing remarks than the minimum figure of $25,000.00 that was actually awarded.

Finally, it may be noted that, during the trial, Attorney von Herrmann evinced some confusion regarding the concept that Coggeshall's accrued attorney's fees had no bearing on the monetary damages recoverable for Fulmer's alleged violation of the Homeland Security Act. Upon the conclusion of Coggeshall's trial testimony, Attorney von Herrmann brought a motion for summary judgment or directed verdict[2] on Coggeshall's Homeland Security Act claim, arguing in

[2] This motion was made outside the presence of the jury.

part that he did not believe there was sufficient evidence of damages. (T. 215:19-23, 218:16-18.) The following exchange then occurred between Attorney von Herrmann and the trial court:

> **[Attorney von Herrmann:]** Your Honor, I just don't think there's sufficient evidence [to support Coggeshall's Homeland Security Act claim]. I don't think there's sufficient evidence of damages. I don't think that the fact that you have to defend yourself in a lawsuit with regards to, you know, much you pay in attorneys fees as damages. I mean –
>
> **THE COURT:** Attorney's fees are to be considered by me after the jury award, if the jury awards.
>
> **MR. VON HERRMAN:** Correct, Your Honor. So that's obviously not part and parcel of this. So she has not put forth any damage that –
>
> **THE COURT:** Well the Homeland Security Act does have a mechanism for damages in the statute itself should the jury decide in her favor.

(R. pp. 360-361, lines 16-3).

The trial court here correctly recognized that attorney's fees are not part of the monetary damages awarded for a defendant's violation of the Homeland Security Act. Instead, as the trial court explained, the judge considers the appropriateness of a fee award after the jury enters its verdict and damages award, if any. This is exactly what occurred here. Fulmer offers no evidence to substantiate his unfounded claim that Coggeshall's damages award must have included attorney's fees. Hence, the fee award should be affirmed.

C. Coggeshall's Attorneys Were Not Required to Submit Copies of Their Fee Agreements with Coggeshall to the Trial Court

Without citing any legal authority to support his argument, Fulmer contends that the trial court's award of attorney's fees in this matter must be negated or reduced because no written fee agreement between Coggeshall and her counsel was submitted to the court. Fulmer utterly fails to meet his burden of proving that the absence of a fee agreement requires a reduction in the amount of attorney's fees awarded to Coggeshall.

In this regard, the trial court's Award of Attorney's Fees correctly references Rule 1.5, Rules of Professional Conduct (Rule 407, SCACR), which addresses the topic of attorney's fees in South Carolina. Rule 1.5(a) states that the factors to be considered in determining the reasonableness of an attorney's fee include the following:

> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
>
> (2) the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;
>
> (3) the fee customarily charged in the locality for similar legal services;
>
> (4) the amount involved and the results obtained;
>
> (5) the time limitations imposed by the client or by the circumstances;
>
> (6) the nature and length of the professional relationship with the client;
>
> (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
>
> (8) whether the fee is fixed or contingent.

Rule 1.5(a), RPC; Rule 407, SCACR.

None of the factors of consideration for attorney's fees requires the submission or consideration of the written fee agreement between the attorney and client. Rather, as the third factor of consideration makes clear, an award of reasonable attorney's fees is based on the "fee customarily charged in the locality for similar legal services" and not on the fee set forth in the fee agreement between the attorney and client. Rule 1.5(a)(3), RPC; Rule 407, SCACR.

This point has been explained by the South Carolina Supreme Court as follows:

> A fee contract is a matter between the client and the attorney. **The amount due under that contract may not serve as a basis for computing an attorney's fee award against the unsuccessful party**. It merely reflects the value of those services to the parties bound by that agreement inter se. **It is not binding on the court in awarding an appropriate attorney's fee.**

S.C. DOT v. Revels, 411 S.C. 1, 11-12, 766 S.E.2d 700, 705 (2014) (emphasis added and internal quotation marks omitted).

Because the trial court's award of attorney's fees to Coggeshall was not based on the terms of the fee agreement between Coggeshall and her attorneys, there was no valid reason for Coggeshall or her counsel to submit said fee agreements into evidence. The absence of the fee agreements does not provide any legitimate basis for the reversal or reduction of the fee award.

Relatedly, Fulmer suggests the trial court could not discern the true nature of all the charges, such as travel time, that Attorneys Abrams and Whiting billed to Coggeshall. However, any validity this objection may have had is severely undercut by the simple fact that the trial court significantly reduced the hourly rate and the total amount of attorney's fees awarded to Coggeshall from the amounts requested by her counsel. (R. p. 274).

In this regard, Attorneys Abrams and Whiting both stated that Coggeshall agreed to pay them an hourly rate of $425.00. Attorney Abrams requested total fees in the amount of $56,818.05. (R. pp. 78-79). Attorney Whiting requested attorney's fees of $106,307.04. (R. pp. 88-89). The trial court reduced the hourly rate for all billed work by both attorneys to $250. (R. p. 274). The trial court ultimately awarded Attorney Abrams fees in the amount of $16,750.00 – a reduction of $40,068.05 or 70 percent of the amount requested. *Id.* The trial court awarded Attorney Whiting fees in the amount of $56,000.00, which represented a reduction $50,307.04 or 47 percent of the amount requested. *Id.*

Certainly, the amount of the attorney's fee award the trial court granted to Coggeshall corresponds with the eight lodestar factors of consideration set forth above. Consequently, Fulmer has failed to meet his burden of proving that the trial court abused its discretion in granting attorney's fees to Coggeshall in the total amount of $72,750.00.

D. The Attorney's Fee Affidavits Submitted by Attorneys Abrams and Whiting Are Sufficiently Specific

Fulmer incorrectly contends that the Attorney's Fee Affidavits submitted by Attorneys Abrams and Whiting are too vague to withstand a challenge to the trial court's Attorney's Fee Award largely because the Affidavits do not specifically allocate the time each attorney spent on each cause of action. Fulmer also wrongly asserts that Attorney Abrams' time is overstated in that he also functioned as an expert in this case. Finally, Fulmer briefly suggests that the Attorney's Fee Affidavits are insufficient because they do not address all the lodestar factors of consideration. None of these arguments is unmeritorious.

1. No Allocation of Time Was Required Because All Counterclaims Were Closely Related

Fulmer's contention that the Attorneys Abrams and Whiting were required to specifically allocate the time they spent in working on each cause of action is contrary to established South Carolina case law. In *Taylor v. Nix*, 307 S.C. 551, 557, 416 S.E.2d 619, 622 (1992), the South Carolina Supreme Court held that "**when an action in which attorney fees are recoverable by statute is joined with alternative theories of recovery based on the same transaction, no allocation of attorney's services need be made**" (emphasis added). *Accord Austin v. Stokes-Craven Holding Corp.*, 406 S.C. 187, 199, 750 S.E.2d 78, 84 (2013); *Encore Tech. Grp., LLC v. Keone Trask & Clear Touch Interactive, Inc.*, 436 S.C. 289, 308, 871 S.E.2d 608, 619 (Ct. App. 2021), *pet. for rehearing granted, Encore Tech. Grp., LLC v. Trask*, No. 5871, 2023 S.C. LEXIS 16 (Jan. 12, 2023). The only exceptions to this rule occur when "counsel admits that a portion of the services was totally unrelated to the statutory claim or it is shown that the services related to issues which were clearly beyond the scope of the statutory claim proceeding." *Taylor*, 307 S.C. at 557, 416 S.E.2d at 622.

Under *Taylor*, "the party asserting the right to attorney fees [must] . . . produce an itemized affidavit of their fees that they believe are related to the statutory claim. The opposing party then has the burden of showing which of the fees are clearly unrelated." *Id.*

Here, Coggeshall's non-statutory Counterclaims (*i.e.* intrusion of privacy and trespass to chattels) were directly related to her statutory Counterclaim for violation of the Homeland Security Act. All three causes of action were based on common facts. (R. p. 293, lines 18-25, R. pp. 62-65, R. pp. 69-71). The burden was on Fulmer to show which of the fees listed by Attorneys Abrams and Whiting were clearly unrelated to the Homeland Security Act Counterclaim. *Taylor*, 307 S.C. at 557, 416 S.E.2d at 622. Fulmer failed to make any such showing here.

In *Maybank*, the South Carolina Supreme Court rejected the same argument that Fulmer raises here. In that case, Maybank prevailed on five of eleven causes of action, including a claim for violation of the South Carolina Unfair Trade Practice Act ("UTPA"). Like the Homeland Security Act, the UTPA "permits a successful plaintiff to recover reasonable attorneys' fees and costs." *Maybank*, 416 S.C. at 580, 787 S.E.2d at 518. Appellants argued that "the affidavit of attorneys' fees and costs submitted by Maybank's counsel was inadequate and lacked the necessary detail that would enable Appellants to respond. They suggest Maybank failed to provide detailed billing statements to identify how the billed hours correlated to the claims alleged, especially since Maybank prevailed on only five of his eleven claims[.]" *Id.* In addition, Appellants alleged that "the insufficiency in the billing statements ma[de] it difficult to ascertain and delineate the work completed in furtherance of the UTPA claim -- which [was] the only claim upon which attorneys' fees and costs may be awarded." *Id.*

In rejecting Appellants' argument, the court found that "all of Maybank's claims shared the same common facts and required combined efforts throughout the litigation process." *Id.* Even

so, the trial court reduced the amount of attorney's fees by 20 percent. The supreme court found this reduction of fees to be a "reasonable estimation" of the amount of time Maybank's counsel spent "in the claims and the time allotted to defend claims unrelated to the UTPA." *Id.*

Under *Maybank*, Coggeshall may recover attorney's fees for the time her counsel spent on tasks associated with claims that "share[ ] the same common facts and required combined efforts throughout the litigation process" with the Homeland Security Act Counterclaim. *Id.* As discussed above, Coggeshall's Counterclaims for intrusion of privacy and trespass to chattels arise from the same common facts as her Counterclaim for violation of the Homeland Security Act, to wit, Fulmer's unauthorized and deliberate interception, use, and disclosure of her private text messages on her iWatch. (R. p. 293, lines 18-25, R. pp. 62-65, R. pp. 69-71).

The work that Attorneys Abrams and Whiting did in preparing and working on Coggeshall's Homeland Security Act Counterclaim was synonymous with their preparation and work on the intrusion of privacy and trespass to chattel Counterclaims. As a result, no reduction in the fee award should be made to account for the time spent on the intrusion of privacy and trespass to chattel Counterclaims. Even if some reduction was called for, the trial court's reduction of over 50 percent of the requested amount of attorney's fees was more than sufficient to account for the amount of time that Attorneys Abrams and Whiting spent on the intrusion of privacy and trespass to chattel Counterclaims. Fulmer's arguments to the contrary are unavailing.

2. Attorney Abrams Did Not Serve as an Expert

With regard to Fulmer's incorrect contention that Attorney Abrams may be claiming attorney's fees for time he spent as an expert in the case, Fulmer has failed to point to any evidence in the record to support the factual basis of this accusation. Thus, he has not met his burden of proof on this issue.

At all times, Attorney Abrams functioned only as Coggeshall's legal counsel and was never retained as, nor did he function as, an expert. (R. p. 356, lines 19-23). In an Affidavit filed with the trial court on September 5, 2023, Attorney Abrams stated that prior to being retained by Coggeshall as her legal counsel in October 2021, he "had never met or performed any previous work of any nature for Anna Coggeshall[.]" (R. p. 82). Attorney Abrams also stated that "[s]ince being retained in this matter I have performed various legal services" for Coggeshall. *Id.*

In his Affidavit, Attorney Abrams further explained that it was crucial to Coggeshall's case that the serial number of the iWatch that Coggeshall had be verified to establish that it was the watch Coggeshall had purchased. *Id.* At that time, "the interface technology for forensically reading data from an iWatch was new. I had the interface and cable needed for that job and [Coggeshall's] expert did not." *Id.* Consequently, Attorney Abrams "offered to help [Coggeshall's] expert with my equipment to get the data that we both needed from the watch." *Id.* Attorney Abrams then stated: "I did this as due diligence in my role of Ms. Coggeshall's attorney. I was not acting as an expert then or anytime during the case. My intention was that [Coggeshall's] expert could testify, if necessary, as to what was found on the watch." *Id.*

On May 4, 2022, Attorney Whiting's office mistakenly listed Attorney Abrams as an expert in their Answers to Plaintiff's First Interrogatories. (R. p. 84). Attorney Abrams was unaware of this mistake until Attorney von Herrmann brought it to his attention. *Id.* On October 13, 2022, Attorney Whiting's office filed Amended Answers to Plaintiff's First Interrogatories that corrected the mistake and removed Attorney Abrams' name from the expert list. *Id.*

Subsequently, Attorneys Whiting and Abrams repeatedly explained to Attorney von Herrmann that Attorney Abrams was an attorney representing Coggeshall in this matter and not an

expert. *Id.* However, Attorney von Herrmann continued to assert without any credible basis that Attorney Abrams served as an expert in the case. *Id.*

In a bench conference at trial, the following exchange took place:

> **MR. VON HERRMANN:** There's obviously been a dispute about Mr. Abrams being an expert in the past and I just want to make sure that none of that is going to come out because he's said he's not an expert.
>
> **MR. ABRAMS:** I'm not an expert.

(R. p. 234, lines 19-23).

Clearly, Attorney von Herrmann had knowledge that Attorney Abrams did not, in fact, function as an expert for Coggeshall. Attorney von Herrmann was given repeated notice that the inclusion of Attorney Abrams' name on the list of experts set out in Coggeshall's original Answers to Interrogatories was an error.

Moreover, there is no evidence that Attorney von Herrmann pursued the issue by attempting to qualify Attorney Abrams as an expert under S.C. Code Ann. § 15-36-100. There is no evidence in the record that Attorney Abrams "has scientific, technical, or other specialized knowledge" concerning interface technology for forensically reading data from an iWatch "which may assist the trier of fact in understanding the evidence and determining a fact or issue in the case, by reason of the individual's study, experience, or both." S.C. Code Ann. § 15-36-100(A)(3). Hence, no reduction in attorney's fees should be made to account for Mr. Abrams' time in allegedly functioning as an expert in the case.

3. Sufficient Reference Is Made to the Required Factors of Consideration

Fulmer incorrectly cites *Johnson v. Johnson*, 288 S.C. 270, 277, 341 S.E.2d 811, 816 (Ct. App. 1986), for the principle that the Attorney's Fee Affidavits presented by Attorneys Abrams and Whiting had to specifically cover all lodestar factors of consideration for determining a reasonable

attorney's fee. *Johnson,* however, does not address the submission of evidence by attorneys to support their request for attorney's fees. Instead, *Johnson* states that when a **trial court** issues an order awarding attorney's fees, that order "must set forth specific findings of fact concerning: 1) the nature, extent, and difficulty of legal services rendered, 2) the time and labor necessarily devoted to the case, 3) the professional standing of counsel, 4) the contingency of compensation, 5) the beneficial results accomplished, and 6) the fee customarily charged in the locality for similar legal services."

Here, the trial court's Attorney's Fee Award meets this requirement because it specifically addresses all eight factors of consideration set forth in Rule 1.5(a), RPC; Rule 407, SCACR. (R. pp. 273-275). This is all that the law requires. *See Johnson*, 288 S.C. at 277, 341 S.E.2d at 816.

Notably, Attorneys Abrams and Whiting submitted sufficiently detailed evidence to support their fee requests. These attorneys provided very detailed monthly billings to the trial court for inspection. (R. p. 285, R. p. 79, R. p. 88). Their Attorney's Fee Affidavits with attached monthly billing statements to Coggeshall set out "what time was billed and for what activity." *Id.*

It is well-established that "[o]n appeal an award of attorney's fees will be affirmed so long as sufficient evidence in the record supports each factor." *Seabrook Island Prop. Owners' Ass'n v. Berger*, 365 S.C. 234, 240, 616 S.E.2d 431, 435 (Ct. App. 2005); *see also Hardaway Concrete Co. v. Hall Contr. Corp.*, 374 S.C. 216, 232, 647 S.E.2d 488, 496 (Ct. App. 2007). Here, the trial court's Attorney's Fee Award references evidence in the record that supports its determination concerning the various factors of consideration. Fulmer has failed to provide any evidence that the trial court's findings are incorrect or not supported by evidence in the record. Hence, the attorney's fee award issued in Coggeshall's favor should be affirmed in its entirety.

E. The Court of Appeals' Order of September 2, 2022, Has No Bearing on the Trial Court's Attorney's Fee Award

Fulmer wrongly contends that the Court of Appeals' Order of September 2, 2022, mandates the reduction of the attorney's fee award issued by the trial court. This contention is belied by the express language of September 2, 2022, Appellate Order itself.

In the September 2, 2022, Appellate Order, the Court of Appeals found "the preponderance of the evidence indicates Coggeshall was the rightful owner of the iWatch. Accordingly, Fulmer's repeated use of the device to view her text messages amounted to interceptions under the [South Carolina] Homeland Security Act." (R. p. 1). Based on this finding, the Court of Appeals granted Coggeshall's motion to suppress and prohibited Fulmer from using the text messages he intercepted from Coggeshall's iWatch "in the Civil Case . . . and any potential future litigation." (*Id.*) As a final point, the Court of Appeals denied Coggeshall's request for attorney's fees at that time but noted that she "may still pursue attorney's fees and damages in a civil action." *Id.*

By its express language, the September 2, 2022, Appellate Order remanded the matter to the trial court and authorized Coggeshall to pursue a claim for the full amount of her attorney's fees and damages in the remanded action. *Id.* It is well-established that "once the remittitur is issued from an appellate court, the circuit court acquires jurisdiction to enforce the judgment and take any action consistent with the appellate court's ruling." *Martin v. Paradise Cove Marina, Inc.*, 348 S.C. 379, 385, 559 S.E.2d 348, 351-52 (Ct. App. 2001). In addition, "circuit courts are vested with jurisdiction to hear motions for statutory attorney fees and trial costs after the remittitur has been issued." *Id.* at 385, 559 S.E.2d at 352.

Upon remittitur of the September 2, 2022, Appellate Order, the trial court was vested with jurisdiction to hear and decide the issue of Coggeshall's entitlement to statutory attorney's fees based on Fulmer's violation of the Homeland Security Act. *See id.* Once the jury decided that

Fulmer did, in fact, violate the Homeland Security Act by intentionally intercepting, using, and disclosing Coggeshall's electronic text messages, Coggeshall had the right to seek the full amount of attorney's fees she incurred in defending against this violation. *See id.*; *see also* S.C. Code Ann. § 17-30-135(A)(4).

The trial court did not abuse its discretion in declining to reduce Coggeshall's fee award by the amount of time her counsel spent in preparing and arguing the motion to suppress before the Court of Appeals. Indeed, the attorney's fees that Coggeshall incurred in preparing and arguing that motion to the Court of Appeals are recoverable under the terms of S.C. Code Ann. § 17-30-135(A)(4). In that appellate motion, Coggeshall sought to prevent evidence of the text messages that Fulmer intercepted from her iWatch in violation of the Homeland Security Act from reaching the jury at trial. Hence, the motion concerned the statute under which attorney's fees are recoverable and not any unrelated matter.

F. The Trial Court Did Not Abuse Its Discretion in Determining the Amount of Attorney's Fees Awarded to Coggeshall

Fulmer incorrectly contends that Coggeshall's attorney's fee award must be reduced because Attorneys Abrams and Whiting billed too much time for the depositions of Fulmer and Coggeshall and the mediation. This argument is largely premised on the erroneous assumption that the trial court awarded the full amount of attorney's fees that Attorneys Abrams and Whiting requested on behalf of Coggeshall. As explained throughout this Brief, the trial court awarded less than 50 percent of the total amount of fees requested by Attorneys Abrams and Whiting. This reduction is significant enough to account for any overcharges associated with travel time or time devoted to the preparation and taking of depositions or participating in the mediation.

Next, Fulmer again wrongly asserts --- without pointing to any record evidence -- that Attorney Abrams acted as an expert in the case. As explained in Argument Part I(D)(2), above, at

all times, Attorney Abrams functioned only as Coggeshall's legal counsel and was never retained as nor functioned as an expert. (R. p. 234, lines 19-23, R. p. 83, R. p. 85). Fulmer has utterly failed to prove otherwise.

Notably, Attorney von Herrmann never took any steps to qualify Attorney Abrams as an expert. He never attempted to show that Attorney Abrams had the required "scientific, technical, or other specialized knowledge" of interface technology for forensically reading data from an iWatch which may have assisted the jury in "understanding the evidence and determining a fact or issue in the case, by reason of the individual's study, experience, or both." S.C. Code Ann. § 15-36-100(A)(3).

In summary, Fulmer has failed to show that the trial court abused its discretion in awarding attorney's fees that corresponded to less than half of the total amount requested by Attorneys Abrams and Whiting. Even if Fulmer is correct that some amounts in the Attorney's Fee Affidavits were overstated (which they were not), the trial court clearly took such a possibility into account when it significantly reduced the total amount of attorney's fees granted to Coggeshall. Fulmer can legitimately ask for nothing more.

G. The Attorney's Fee Award Should Not Be Reduced to Account for the Time that Coggeshall's Counsel Spent on Tasks Associated with the Intrusion to Privacy and Trespass to Chattel Counterclaims

As detailed in Argument Part I(C), above, a prevailing party may recover attorney's fees for time her counsel spent on tasks associated with additional claims for which no statute or contract authorizes fees if those additional claims share common facts with the claim for which fees are authorized and the pursuit of all claims required counsel's combined efforts throughout the litigation. *Maybank*, 416 S.C. at 580, 787 S.E.2d at 518; *see Taylor*, 307 S.C. at 557, 416 S.E.2d at 622 (holding that "when an action in which attorney fees are recoverable by statute is

joined with alternative theories of recovery based on the same transaction, no allocation of attorney's services need be made").

This is exactly what occurred here. The Homeland Security Act authorizes the recovery of reasonable attorney's fees. *See* S.C. Code Ann. § 17-30-135(A)(4). Because the jury determined that Fulmer violated the Homeland Security Act by intentionally intercepting, using, and disclosing Coggeshall's text messages that Fulmer obtained from her iWatch, Coggeshall is entitled to recover reasonable attorney's fees. *See id.* Coggeshall's common-law Counterclaims for intrusion of privacy and trespass to chattels are based on the same transaction or set of facts as her statutory Counterclaim for violation of the Homeland Security Act. Hence, the trial court properly exercised its authority to decline to reduce Coggeshall's attorney's fee award to account for time that Attorneys Abrams and Whiting worked on the closely related Counterclaims for intrusion to privacy and trespass to chattels. *See Maybank*, 416 S.C. at 580, 787 S.E.2d at 518; *Austin*, 406 S.C. at 199, 750 S.E.2d at 84; *Taylor*, 307 S.C. at 557, 416 S.E.2d at 622; *Encore Tech.*, 436 S.C. at 308, 871 S.E.2d at 619. Fulmer's arguments to the contrary should be rejected as unmeritorious.

CONCLUSION

For the foregoing reasons, the Attorney's Fee Award issued by the trial court in Coggeshall's favor should be affirmed in its entirety.

Respectfully submitted,

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