

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Hon. Perry H. Gravely, Circuit Court Judge
Common Pleas Case No. 2019-CP-23-02032

Opinion No. 2024-UP-253 (Rehearing Denied Aug. 16, 2024)
Court of Appeals Case No. 2021-001177

Supreme Court Case Appellate Case No. 2024-001548

JULIA SIBLEY-JONES,
as Personal Representative of the
Estate of William A.L. Sibley, Jr.

Respondent,

v.

DECIDE4ACTION, INC.,

Petitioner.

Reply

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Decide4Action, Inc., respectfully replies to Julia Sibley-Jones' Return as follows:

I. This Court Should Grant the Petition as to the Claim for Prejudgment Interest.

While Ms. Sibley-Jones claims that no confusion exists as to the standard of review, she has been unable to cite a case specifically holding that the standard is *de novo*, as she contends and as the Court of Appeals applied. By contrast, she does not dispute that this Court has previously used the word “discretion” in connection with claims for prejudgment interest. *Jacobs v. Am. Mut. Fire Ins. Co.*, 287 S.C. 541, 544 (1986) (“Where interest is not expressly excluded by contract, a court may exercise discretion to award it as an element of damage.”). *See also Historic Charleston Holdings, LLC v. Mallon*, 381 S.C. 417, 435 (2009) (“The award of prejudgment interest will not be disturbed on appeal unless the trial court committed an abuse of discretion.” (citing *Jacobs*, 287 S.C. 541)). Insofar as she claims that *de novo* review should apply to denials of interest while abuse of discretion apply to awards, she has identified no case from this Court ever specifically so holding.

Indeed, the *de novo* standard that Ms. Sibley-Jones advocates would invite practical problems. Decide4Action maintains that the parties intended the interest mechanism in the escrow account to substitute for the statutory interest scheme, as they are permitted to do. *See, e.g., EllisDon Constr., Inc. v. Clemson Univ.*, 391 S.C. 552,

555 (2011) (“[T]he general interest statute does not apply when the parties have contracted for a different interest rate.” (citation omitted)). If *de novo* review applies to such questions, the appellate courts would be tasked with making their own factual findings as to contractual intent without themselves hearing witness testimony.

Decide4Action also respectfully submits that when, as here, the disputed issue is whether the parties did or did not agree to a different rate, that issue is one for the jury. *See, e.g., Wheeler v. Globe & Rutgers Fire Ins. Co.*, 125 S.C. 320, 325 (1923) (“[W]here a contract is not clear, or is ambiguous and capable of one or more constructions, what the parties really intended, as a matter of fact, should be submitted to a jury.”). Had Ms. Sibley-Jones even hinted to the circuit judge as to the arguments that she made on appeal, the circuit judge could have asked the jury—which had heard all the evidence about the parties’ contract—to determine the parties’ intentions. Insofar as she contends that it would have been somehow futile to do so, Decide4Action respectfully submits that nothing in the record suggests that the circuit judge would have refused to consider additional arguments.

Even assuming that the issue is a pure question of law that was timely preserved, prejudgment interest would not be appropriate. “A judgment debtor is required to pay interest on his debt as compensation for his *continued retention and use of the creditor’s money beyond the date payment was due.*” *Butler Contr., Inc. v. Court St.*,

LLC, 369 S.C. 121, 134 (2006) (citation omitted) (emphasis added). But Ms. Sibley-Jones does not dispute that Decide4Action paid the \$440,000 into a third-party escrow account at closing, meaning that Decide4Action neither retained nor had use of the funds for which she seeks prejudgment interest. By contrast, Ms. Sibley-Jones received the benefit of all the funds in the account. In the event of a successful claim, all interest in the account would be applied as an offset to a judgment against her, and if no claim were successful (as, ultimately, here), then she would keep the interest on the funds—which she already had to report as income for tax purposes.

Finally, Ms. Sibley-Jones does not dispute that, under the plain terms of the escrow agreement, she was not entitled to the escrow funds during the pendency of litigation. As she concedes, prejudgment interest only ever applies once money is due. *See* [Return at 9]. While she claims that allowing a lawsuit’s existence to delay the start date for prejudgment interest would “defeat the plain purpose” of the prejudgment interest statute, [*id.*], such an argument essentially asks this Court to re-write the contract that the parties reached. But this Court does not re-write contracts.

Certiorari on Issue One is appropriate to clarify the standard of review and the law applicable to prejudgment interest.

II. This Court Should Grant the Petition as to the Claim for Costs.

Ms. Sibley-Jones’ arguments as to Issue Two are similarly unavailing.

First, Ms. Sibley-Jones does not and cannot dispute that while she complained on appeal that the circuit judge did not explicitly explain the reasons for denying costs, Ms. Sibley-Jones never complained *to the circuit judge* as to the form of his ruling. Error-preservation rules forbid losing parties from raising new arguments on appeal. *See, e.g., I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422 (2000) (“The losing party must first try to convince the lower court it is has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred.... [T]he losing party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments.”). While Ms. Sibley-Jones is correct that a party need not pursue futile acts, nothing in the record suggests that the circuit judge would not have explained his ruling—if asked. But she never did. As it stands now, the parties face another appeal over the reasoning once it is reduced to writing. Had Ms. Sibley-Jones filed a motion to alter or amend originally, years of future appellate delay could have been spared.

Second, Ms. Sibley-Jones does not dispute that she did not comply with the procedure for costs spelled out in in the Rules of Civil Procedure, through which the state treasury receives two motion fees. R. 54(d), SCRCP (“A motion for costs, supported by an affidavit that the costs are correct and were necessarily incurred in the action, may be filed by the prevailing party within 10 days of the receipt of written

notice of the entry of final judgment.... On motion served within 10 days after receipt of notice [of the clerk’s taxation of costs decision], the action of the clerk may be reviewed by the court.”). Given that costs are in the nature of penalties, thus necessitating “strict” compliance, *S.C. Pub. Serv. Auth. v. Spearwant Liquidating Co.*, 201 S.C. 207, 209 (1942) (quotation omitted), Decide4Action submits that the burden is on Ms. Sibley-Jones to demonstrate authorization to request costs in a manner other than that specified in the rules. She, however, has not done so.

Third, insofar as she claims that no affidavit was required, Decide4Action respectfully submits that the plain text of R. 54(d), SCRCP requires one.¹ And even if it did not require one, the General Assembly does. *See* S.C. Code § 15-37-40 (“The disbursements [for costs] shall be stated in detail and verified by affidavit.”).

Fourth, while judicial notice may be appropriate for costs that have been paid to the clerk, Ms. Sibley-Jones does not cite any authority allowing judicial notice of the accuracy of a private court reporter’s deposition bill.

Whether to provide guidance to the bench and bar about the method of preserving a challenge to the form of an order or about whether costs can be obtained in a

¹ Ms. Sibley-Jones is correct that she eventually filed an affidavit—but only after the ten-day window specified in the rules and after Decide4Action had objected to her failure to provide an affidavit within the required 10-day window, *see* [R. 188].

manner other than that specified in R. 54(d), SCRCP, the Court should grant certiorari on Issue Two.

CONCLUSION

This Court should grant this Petition and reverse the decision of the Court of Appeals.

Dated this 24th day of October, 2024.

DECIDE4ACTION, INC.

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s/ Devon M. Puriefoy
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s/Howard W. Anderson III
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