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**Nov 19 2024**

**SC Court of Appeals**

**IN THE COURT OF APPEALS  
STATE OF SOUTH CAROLINA**

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**APPELLANT'S FINAL BRIEF**

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**Olivia Aryeh,**  
Appellant

v.

**Jason Aryeh,**  
Respondent

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Appeal from the Circuit Court of Charleston County  
Honorable Mikell Scarborough, Circuit Court Judge  
Case No.: 2023-001334

Submitted: November 19, 2024

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## **TABLE OF AUTHORITIES**

### **Cases:**

The following cases have established that South Carolina courts are required to consider the financial circumstances of the parties when awarding attorney fees. This principle ensures that awards are fair and appropriate, reflecting the realities of the parties involved, and to ensure that awards do not place an unfair financial burden on either party. Here are some key cases that highlight this principle:

#### **1. Barth v. Barth, 293 S.C. 305, 360 S.E.2d 309 (1987):**

In this family law case, the South Carolina Supreme Court emphasized that courts should consider each party's financial situation when awarding attorney fees. The court held that factors such as the ability to pay, the financial resources of each party, and the parties' respective income levels are relevant when assessing a fair and reasonable attorney fee award.

#### **2. E.D.M. v. T.A.M., 307 S.C. 471, 415 S.E.2d 812 (1992):**

In this case involving family law and child support, the court reiterated that financial circumstances must be considered when determining attorney fees. Specifically, the court emphasized that a party's financial condition should influence the decision to ensure fairness and equity.

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

Here, the South Carolina Supreme Court noted that financial circumstances and the ability to pay are key considerations in determining attorney fees. The decision recognized that awards should be based on what each party can reasonably afford, aiming to prevent undue financial hardship on the payor.

**4. Moser v. Mosier, 295 S.C. 97, 367 S.E.2d 25 (1988):**

The court held that attorney fees should be based on a thorough assessment of both parties' financial situations. The ruling clarified that South Carolina courts should avoid awarding fees that would create an undue financial burden and should aim to achieve fairness in light of each party's economic standing.

**5. Casey v. Casey, 311 S.C. 243, 428 S.E.2d 714 (1993):**

This case underscored that a party's financial circumstances are essential in determining reasonable attorney fees. The court stated that any award of attorney fees should consider the financial capabilities of both parties to maintain an equitable result.

## **STATEMENT OF ISSUE ON APPEAL**

1. Did the Circuit Court of Charleston County properly consider all the required factors necessary to determine the fairness, appropriateness and reasonableness of the \$127,069.73 in attorney's fees awarded to the Respondent in this action?

## STATEMENT OF THE CASE

This appeal arises from a damages lawsuit filed by Respondent Jason Aryeh against Appellant Olivia Aryeh in Charleston County Court of Common Pleas.

The trial in this real estate litigation between divorced husband and wife was held on March 29, 2023 before Judge Mikell Scarborough.

The Court ruled the Appellant had “abused the process” through the improper filing of a lis pendens on May 5, 2021 that was withdrawn nearly 11 months later on April 12, 2022 (R. 3). The Court then entered its Final Decree (R. 21) on June 21, 2023, finding the Respondent’s alleged \$45 million worth of damages too speculative to award, but ordered the Respondent was entitled to an award of \$127,069.73 in attorney’s fees and expenses incurred in presenting the case.

The Appellant timely filed a notice of appeal on August 21, 2023, challenging the trial court’s grant of \$127,069.73 in legal fees (R. 28).

The Appellant contends that the trial court erred in awarding the \$127,069.73 in legal fees by neglecting to consider equitable factors, including the ability of the parties to pay their own fees and the financial conditions of the parties before awarding attorney’s fees.

The trial Court's fee award disproportionately impacts the Appellant's ability to comply with court orders, thus mandating an intervention by the Appellate Court to ensure fairness, appropriateness and equity.

This appeal is now before the Court of Appeals.

## STANDARD OF REVIEW

In South Carolina, courts must consider the financial condition of the parties when determining whether to award attorney's fees. This principle was emphasized in *Glasscock v. Glasscock*, 304 S.C. 158, 403 S.E.2d 313 (1991), where the court outlined specific factors to evaluate attorney's fees. Among these, the respective financial conditions of the parties and the effect of the attorney's fees on each party's standard of living are crucial considerations. The court must also examine other factors like the ability to pay, the results obtained, and the overall fairness of the fee award.

In *E.D.M. v. T.A.M.*, 307 S.C. 471, 415 S.E.2d 812 (1992), the South Carolina Supreme Court emphasized the need to consider the financial condition of each party when awarding attorney fees. The court noted that the ability of each party to pay is a significant factor in determining the appropriateness of the fee award.

The **financial condition of the parties** factor ensures that the court takes into account each party's ability to pay and the potential impact of the fee award on their standard of living. This consideration is particularly important in cases such as this appeal, where the financial disparities between the parties are large. The court stressed that fee awards should not unduly burden a party with limited financial resources.

In awarding attorney's fees, the trial court must consider several factors, including: (1) the nature, extent, and difficulty of the case; (2) the time devoted to the case; (3) counsel's professional standing; (4) contingency of compensation; (5) the beneficial results obtained; and **(6) the financial conditions of the parties.**

The failure to address all relevant factors, including the financial circumstances of the parties, is an error of law that constitutes an abuse of discretion.

## ARGUMENT

In this case, the trial court awarded \$127,069.73 in attorney's fees without making specific findings on the financial conditions of the parties. As such, the court failed to comply with the mandate that all relevant factors, including the financial conditions of the parties, must be considered. This omission renders the fee award unsupported by the record and constitutes an abuse of discretion requiring reversal or remand.

The trial Court Judge had and took several opportunities during trial to ask all attorneys and witnesses questions of his choosing. Though His Honor had ample testimony that illustrated the Respondent's net worth and affluent lifestyle, His Honor did not inquire about the Appellant's financial circumstances — including her occupation, income, whether she was receiving government aid, and other relevant factors — before sentencing an economically unrecoverable sentence against the Appellant of \$127,069.73.

**1. Regardless, the trial Court possessed sufficient knowledge about the Appellant's poor financial condition but did not address it in its decision to award legal fees.**

**A.** On February 3, 2023, approximately six weeks before trial, the Appellant formally requested that the South Carolina Court of Common Pleas allow her to

legally represent herself (R. 25–27). The Appellant’s attorney at that time sought to withdraw his representation of the Appellant due to her inability to pay his trial fees and her unpaid debt. In his ruling made before trial, Judge Scarborough mandated the Appellant’s attorney to continue his representation of the Appellant through the conclusion of the trial, regardless of whether he was getting paid. While the Appellate was very appreciative for having legal representation at trial, she now owes in excess of \$50,000 in legal fees in this case thus far, which she is unable to pay.

**B.** The Appellant in her trial testimony stated that she was in the identical position during her divorce of not being able to afford an attorney shortly before trial began, due to the Respondent’s refusal to pay legal fees and alimony ordered by the Connecticut Family Court (and later by the Connecticut Supreme Court who denied the Respondent’s appeal of those fees).

**1.** “Unfortunately, this [lis pendens] was the only route I could take in order to survive this [divorce]. Otherwise, I would have lost my kids a long time ago or I would have gone into my divorce with no attorneys, the same boat that I was in coming into this case, having an attorney say, Olivia, look, I'm sorry. I can't continue. So my apologies to Attorney Henderson and my gratitude to you for allowing me to come in here with some kind of a -- with a wonderful attorney. And so it was the same position I was in in my divorce (Trial Tr. 42:16–25).”

**C.** The Appellant in her trial testimony stated that she was dependent on her family for financial support throughout the divorce due to the Respondent’s refusal to pay court-ordered legal fees and alimony.

1. “Should it fall on my parents to spend their life savings trying to protect me and my kids? No (Trial Tr. 42:13–15).”

**D.** The Appellant in her trial testimony stated that her dire financial circumstances during the divorce was one of the catalysts to file the lis pendens.

1. “So the combination of violation of automatic orders, the combination of refusing to pay what the Court says you have to pay that are Court ordered systematically. I had to make sure that whatever marital property existed was protected and that was the whole impetus to this lis pendens (Trial Tr. 40:18–23).”

**E.** The Appellant in her trial testimony (Trial Tr. 54:10–16) stated that the Respondent had not paid alimony in almost a year.

1. “Q. Okay. How many months do you think he's failed to pay alimony?”

A. Now, it's about 11.

Q. Okay.

THE COURT: And that's current? When you say 11 months, currently 11 months behind?

WITNESS: Yes.”

**2. The trial Court also had sufficient knowledge of the Respondent's net worth, business acumen, income sources, and current and future earnings potentials. From that knowledge, the Court should have determined that the impact of a \$127,069.73 fine would be inconsequential to the Respondent, but absolutely crippling to the Appellant, who couldn't even afford an attorney for trial.**

**A.** In his trial testimony, the Respondent stated that he is a private hedge fund manager of his own \$10 million fortune.

1. “I run my own money in a hedged manner. Hedged just being long and short to balance out market risk. Most people who run money long and short are generally heavily long. I run my portfolio usually 80, 90 percent long and 20 percent short in case you get a strong market downdraft and you don't want your portfolio to blow up essentially. So I have run that -- I call my fund JALAA Equities. (Trial Tr. 135:25, 136; 1-8).”

2. When asked the worth of JALAA Equities during trial, the Respondent testified, “Today, it's around \$10 million (Trial Tr. 136:19).”

**B.** In his trial testimony, the Respondent stated that he develops luxury, high-end single family homes in the cities of Malibu and West Hollywood, California; Greenwich, Connecticut; Placitas, New Mexico and Tucson, Arizona.

1. Of his real estate portfolio, the Respondent said, “I have more than my entire net worth -- as I have leverage on the two Los Angeles properties, more than my entire net worth wrapped up in real estate development projects currently (Trial Tr. 140:13-16).”

2. Of his future earnings potential, the Respondent said, “I'm developing two other properties I'm dying to sell in Los Angeles and get out of California. In 1568 Blue Jay Way in West Hollywood, which is currently on the market for rent and for sale, and 609 Murphy Way, which is I'm hoping to sell as well in Malibu (Trial Tr. 138:16-21).”

3. Of his interest in 1568 Blue Jay Way in West Hollywood, the Respondent in his trial testimony stated, “I have personally invested about \$10 million dollars, maybe 9 to 10 million dollars, and I have a bank loan which I personally guaranteed for 5.95 approximately almost 6 million dollars (Trial Tr. 140:20-24).”

**C.** In his trial testimony, the Respondent stated he works as an activist investor on Wall Street and that his high profile ventures have been covered by mainstream media outlets, including the Wall Street Journal.

1. “So I have had the great honor of serving on 13 boards of directors since 2006. And often going in via activism when companies are not operating in an ethical manner. That's my reputation. They send me in. Usually large owners of the stock will send me in when management teams and boards are not operating in an ethical manner. I get rid of the bad guys, put in a team of ethical people. A lot of it has been written up in the New York Post, Wall Street Journal, what I did with Martin Shkreli in getting him out of our industry (Trial Tr. 133: 1-12).”

**D.** In his trial testimony, the Respondent stated he works as a board of director on numerous private and/or publicly traded companies, for which he is paid a salary and/or receives stock options.

1. “So my other career has been serving on boards of directors of mostly public, bio tech and med tech companies, life sciences company as a catch-all (Trial Tr. 132: 18-20).”

2. The Respondent stated he earns \$60,000 plus stock options annually at his board position for Ligand (Trial Tr. 133: 20-24); \$50,000 annually plus stock options for his board position at Omniap, an antibody drug discovery company (Trial Tr. 133:25, 134:1-4); \$24,000 annually plus stock options for his board position at Orchestra Biomed (Trial Tr. 135: 1-5); and \$10,000 annually plus stock options for his board position at Nebula Biopharma (Trial Tr. 135: 18-22).

## CONCLUSION

In South Carolina, courts must consider the financial condition of the parties when determining whether to award attorney's fees. This principle was emphasized in *Glasscock v. Glasscock*, 304 S.C. 158, 403 S.E.2d 313 (1991), where the court outlined specific factors to evaluate attorney's fees. Among these, the respective financial conditions of the parties and the effect of the attorney's fees on each party's standard of living are crucial considerations. The court must also examine other factors like the ability to pay.

In *E.D.M. v. T.A.M.*, 307 S.C. 471, 415 S.E.2d 812 (1992), the South Carolina Supreme Court emphasized the need to consider the financial condition of each party when awarding attorney fees. The court noted that the ability of each party to pay is a significant factor in determining the appropriateness of the fee award.

The **financial condition of the parties** factor ensures that the court takes into account each party's ability to pay and the potential impact of the fee award on their standard of living. This consideration is particularly important in cases such as this appeal, where the financial disparities between the parties are large. The court stressed that fee awards should not unduly burden a party with limited financial resources. In this case, the trial Court had sufficient evidence of the financial conditions of the Appellant and the Respondent. It was clear that the Appellant is the party with limited financial resources.

In awarding attorney's fees, the trial court must consider several factors, including: (1) the nature, extent, and difficulty of the case; (2) the time devoted to the case; (3) counsel's professional standing; (4) contingency of compensation; (5) the beneficial results obtained; and **(6) the financial conditions of the parties.**

The failure to address all relevant factors, including the financial circumstances of the parties, is an error of law that constitutes an abuse of discretion.

In this case, the trial court awarded \$127,069.73 in attorney's fees without making specific findings on the financial conditions of the parties. As such, the court failed to comply with the mandate that all relevant factors, including the financial conditions of the parties, must be considered. This omission renders the fee award unsupported by the record and constitutes an abuse of discretion requiring reversal or remand.

The trial Court Judge had and took several opportunities during trial to ask all attorneys and witnesses questions of his choosing. Though His Honor heard ample testimony from the Respondent that illustrated his net worth and affluent lifestyle, His Honor did not inquire about the Appellant's financial circumstances — including her occupation, income, whether she was receiving government aid, and other relevant factors — before sentencing an economically unrecoverable sentence of \$127,069.73 against the Appellant.

Regardless, the following information was revealed during trial that illustrated the Appellant's poor financial circumstances before and at the time the attorney fees were awarded:

1. About six weeks before trial, the Appellant formally requested that the South Carolina Court of Common Pleas allow her to legally represent herself. The Appellant's attorney at that time sought to withdraw his representation of the Appellant due to her inability to pay his trial fees and pay off his existing debt.
2. The Appellant in her trial testimony stated that she was in the identical position during her divorce of not being able to afford an attorney shortly before trial began (back in the fall of 2022) due to the Respondent's refusal to pay legal fees and alimony ordered by the Connecticut Family Court (and later by the Connecticut Supreme Court who denied the Respondent's appeal of those fees).
3. The Appellant in her trial testimony stated that she was dependent on her family for financial support throughout the divorce due to the Respondent's refusal to pay court-ordered legal fees and alimony.
4. The Appellant in her trial testimony stated that her dire financial circumstances during the divorce was the reason she filed the lis pendens.
5. The Appellant in her trial testimony stated that the Respondent had not paid alimony in almost a year.

In stark contrast to the Appellant's financial condition, the trial Court also had sufficient knowledge of the Respondent's net worth, business acumen, income sources, and current and future earnings potentials. From that knowledge, the Court should have highlighted the disparity between the parties' financial conditions and determined that the impact of a \$127,069.73 fine would be inconsequential to the Respondent, but absolutely crippling to the Appellant, who couldn't even afford an attorney for trial.

The financial condition of the parties is a fundamental factor that courts must consider before awarding attorney's fees to ensure that such awards are equitable and just. As established in *Glasscock v. Glasscock*, 304 S.C. 158, 403 S.E.2d 313 (1991), the ability of each party to pay and the potential burden the fee award imposes on their standard of living are critical elements of fairness in judicial determinations. By failing to evaluate the financial circumstances of the parties, a court risks rendering an award that disproportionately penalizes one party or unjustly benefits the other, which constitutes an abuse of discretion under South Carolina law.

This principle has been consistently upheld in South Carolina appellate decisions, emphasizing that a trial court's failure to address the parties' financial conditions undermines the integrity of its findings and precludes meaningful appellate review. Therefore, this Court should reverse and remand the attorney's fee award

for proper consideration of the financial conditions of the parties, as required by longstanding precedent.

Respectfully Submitted,

Olivia Aryeh, Appellant

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**CERTIFICATE OF COUNSEL**

I, Olivia Aryeh, Appellant and self represented party, hereby certify that this brief complies with Rule 211(b) of the South Carolina Appellate Court Rules. The brief contains 3,123 words including the cover page, tables of contents and authorities, certificates, and any appendices. The word count has been calculated using the word count feature of Microsoft Word.

I further certify that this brief complies with the formatting requirements of Rules 208 and 267 of the South Carolina Appellate Court Rules, including the use of a 14-point font and appropriate margins.

Respectfully submitted this 19th day of November, 2024.

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