

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

THE HONORABLE MIKELL R. SCARBOROUGH, MASTER-IN-EQUITY

Case No. 2023-001334
Appellate Case No. 2023-001334

RECEIVED

Mar 10 2025

SC Court of Appeals

Jason Aryeh, Respondent

v.

Olivia Aryeh, Appellant

Appellant's Final Reply Brief

Olivia Aryeh
Appellant, Self-Represented Party
March 10, 2025

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TABLE OF AUTHORITIES

Cases

- **Linen v. Rushton**, 303 S.C. 318, 400 S.E.2d 132 (1991)
- **E.D.M. v. T.A.M.**, 307 S.C. 471, 415 S.E.2d 812 (1992)
- **Glasscock v. Glasscock**, 304 S.C. 158, 403 S.E.2d 313 (1991)
- **Stevenson v. Stevenson**, 295 S.C. 412, 368 S.E.2d 901 (1988)

A Word About Case Law

The Appellate wishes to apologize to this Court for forgetting to include the case law portion of her initial brief. The Appellate has never conducted an appeal before this one and realized her error after recently reading the Respondent's initial brief. The Appellate has recently learned that she could have possibly filed a motion to correct the initial brief, but did not realize it lacked case laws until now. The Appellate will take all possible measures to correct her mistake.

The future quality of life for the Appellant and her ability to provide for her minor children, rests on the outcome of this appeal.

The Appellate understands that forgetting to include case law in an appeal to the South Carolina Court of Appeals can significantly undermine the effectiveness of the appeal, potentially leading to adverse outcomes. It is crucial to meticulously prepare appellate briefs with comprehensive legal support to ensure that the arguments are persuasive and meet the court's standards.

Through Rule 234 of the South Carolina Appellate Court Rule, the Appellant respectfully asks this Court to please accept the case law in this reply brief so that no errors in the Court's ruling arise from oversight or omission. This rule ensures that the appellate record is accurate and reflects the true intentions of the court and the parties. Rule 234 helps uphold the fairness and integrity of the judicial process.

STATEMENT OF ISSUE ON APPEAL

1. Did the Master of Equity for Charleston County properly consider all the relevant factors necessary to determine the appropriateness and reasonableness of the \$127,391.73 in attorney's fees awarded to the Respondent in this action?

STATEMENT OF THE CASE

The Appellant offers the following corrections to the Initial Brief of Respondent:

1. The respondent on page 2 states that the Appellant “*indicated that she would be removing the lis pendens because she had been ordered to do so by a Connecticut judge.*”

The statement is misleading. The Respondent for approximately three years of the divorce refused to pay the Connecticut Family Court’s order for alimony and legal fees. At a divorce pretrial conference in 2023, the Respondent stated he would only pay the Appellant’s court-ordered funds if she removed the lis pendens. The judge issued the order after the Appellant agreed to the Respondent’s conditions, which she was forced to do in order to be able to afford an attorney for the divorce trial.

2. The respondent on page 2 states, “*Olivia admitted that she filed the lis pendens as leverage to make monetary demands in the couple’s pending divorce action.*”

The statement is false. The trial Court in this matter heard testimony from the Appellant (on pages 84 and 85 of the trial transcript) in which she stated that the lis pendens was filed out of financial desperation to protect potential marital assets due to the Respondent’s continued violations of automatic orders (for which he was found in contempt of Court three separate times in the 8/22/23 Connecticut divorce decree).

3. The Respondent’s footnote on page 2 of his appeal states that the Appellant has “*conflated a Statement of the Case and a Statement of Facts in her brief.*”

The Appellant stated the facts: that the Respondent was held in contempt three times (for three separate court order violations) in the divorce case. One of those times was for violating automatic divorce court orders by selling the marital residence and purchasing the house at 1651 Atlantic Avenue, Sullivan’s Island with the proceeds from the sale of the marital residence that he shared with the Appellant and their children. The other violations were for refusal to pay alimony and for entering into a finance agreement against court orders.

3. The respondent on page 4 states, “*The Appellate is arguing only that the fees were excessive because they exceeded those charged by her counsel and that fees should not be awarded after April 21, 2022, the date she released the lis pendens.*”

This appeal centers on the trial Court’s disregard of the disparity in the parties’ financial circumstances in its decision to award the Respondent \$127,391.73 in legal fees. The ability of each party to pay is a significant factor in determining the appropriateness of the fee award. The trial Court’s fee award disproportionately impacts the Appellant’s ability to comply with court

orders, thus mandating the Appellate Court to intervene to ensure fairness and equity. It is for this reason the appeal was filed.

Out of his total \$127,391.73 in legal fees, the Respondent accrued only \$17,402 litigating the lis pendens during the 11 months it was intact and ruled improper by the trial Court. The remaining \$109,989.73 was accrued after the lis pendens was removed, in the Respondent's efforts to prove several million dollars in damages that did not exist.

Therefore, the Appellant reasonably contends that she should only be liable for a maximum of \$17,402 in fee awards that were accrued.

STANDARD OF REVIEW

The trial judge must make specific findings of fact on the record to support the award of attorney's fees. *Linen v. Rushton*, 303 S.C. 318, 400 S.E.2d 132 (1991). The trial court must consider equitable factors such as the ability of the parties to pay their own fees, beneficial results obtained, and the financial conditions of the parties before awarding attorney's fees. *Glasscock v. Glasscock*, 304 S.C. 158, 403 S.E.2d 313 (1991). In determining an award of attorney's fees, the court should consider each party's ability to pay, the beneficial results obtained, the financial conditions of the parties, and the effect on the financial condition of each party. *E.D.M. v. T.A.M.*, 307 S.C. 471, 415 S.E.2d 812 (1992). The trial court must ensure that an award of attorney's fees does not impose an undue financial burden on either party, considering their respective financial circumstances. *Stevenson v. Stevenson*, 295 S.C. 412, 368 S.E.2d 901 (1988).

The Respondent states that that the trial Court considered the following factors: extent and difficulty of the case, time devoted to the case, professional standing of counsel, contingency of compensation, beneficial results obtained, and customary legal fees for similar services.

However, when reviewing decisions regarding attorney's fees, the trial Court must also weigh the specific circumstances of each case, balancing factors including:

1. **Financial Impact on Each Party:** The Court must consider the financial circumstances of the parties involved and how the award of attorney's fees will financially impact each party. The factor helps in balancing the fairness of the fee award against the financial circumstances of the parties involved to avoid awarding fees that would unfairly burden a party with limited financial resources.

2. **Equitable Grounds:** The Appellate court must consider equitable grounds when reviewing fee awards. This includes assessing the fairness and justice of the fee award based on the specific circumstances of the case, such as bad faith conduct, undue hardship, or other equitable considerations.
3. **Abuse of Discretion:** When reviewing fee awards, the Appellate Court must ensure that the trial court considered all relevant factors and did not abuse its discretion in making the award. An abuse of discretion may occur if the trial court's decision lacks proper factual basis, disregards relevant factors, or reaches a decision that is clearly unreasonable.
4. **Beneficial Results Obtained:** When reviewing legal fees, the Appellate Court must evaluate positive legal outcomes and the extent to which the attorneys' efforts have met the Respondent's specific objectives in the case.

ARGUMENT

The Respondent argues that the trial Court considered some required factors that support the award of \$127,391.73 in legal fees.

The Appellate argues that the trial Court did not consider the following required factors to ensure the fees are reasonable and appropriate:

Financial Impact on Each Party

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.

1. The trial Court had sufficient knowledge of the Appellant's abysmal financial circumstances before and during trial.

A. The Appellant filed paperwork to legally represent herself prior to this March 2023 trial in South Carolina Court of Common Pleas, after her attorney sought to drop her due to her inability to pay his already outstanding fees. Judge Scarborough before trial ruled that this Appellant's attorney had to stay on the case against his will, 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.

B. The trial Court heard testimony from the Appellant (on pages 84 and 85 of the trial transcript) in which she stated that the *lis pendens* was filed out of financial desperation during the divorce to be able to continue fighting for custody of her children. The Respondent sought full custody of the children. *“I was advised to file this lis pendens because the divorce essentially became a war of attrition meaning whoever can afford to ride it out for as long as possible was to going to have the upper hand. I needed to make sure that there was something set a side there were funds set a side so that I could continue to fight for custody of my kids”* (page 83, lines 12-19).

C. The trial Court heard testimony from the Appellant regarding her income: that she is a substitute school teacher making on average of \$300/week, who is having trouble securing higher-paying employment due to outdated skills after being a stay-at-home-mom for almost a decade. She also qualified for, was (and still is) receiving Connecticut state-sponsored health insurance (HUSKY).

2. The trial Court had sufficient knowledge of the Respondent’s financial circumstances and his employment as a hedge fund manager and luxury real estate developer.

A. During this trial, the Appellant testified and referenced divorce court documents indicating the divorce Court’s calculation of the Respondent’s annual income of at least \$900,000 (trial transcript, page 95 line 22 to page 96, line 1).

B. In his trial testimony, the Respondent stated that he has *“developed luxury high end real estate, single family homes from Greenwich Connecticut to Placitas, New Mexico to Tucson, Arizona to Malibu, California to West Hollywood, California and now in Sullivan's Island South Carolina,”* (trial transcript, page 101 line 22 to page 102 line 4).

C. In his trial testimony, the Respondent stated, *“I run my own money in a hedged manner. Hedge just being long and short to balance out market risk. Most people who run money long and short are heavily long. I run my portfolio usually 80 or 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. It is my money, a little bit of my mom and sister's. And I have run that since 1997* (trial transcript, page 172, lines 13 - 22).

In its decision to award legal fees, the trial Court did not consider or address the disparity in financial circumstances between the Appellate and the Respondent. It did not balance the all the relevant factors necessary to determine the appropriateness and reasonableness of the \$127,391.73 in attorney’s fees awarded to the Respondent in this action. The Appellate Court must evaluate the fairness of the fee award against the financial circumstances of the parties involved to avoid awarding fees that would unfairly burden the Appellant with limited financial resources. The trial court must ensure that an award of attorney’s fees does not impose an undue

financial burden on either party, considering their respective financial circumstances. *Stevenson v. Stevenson*, 295 S.C. 412, 368 S.E.2d 901 (1988).

Awarding the Respondent \$127,391.73 in legal fees will force the Appellant into bankruptcy, severely affecting her ability to provide for her two children, ages 6 and 8, she shares with the Respondent.

Equitable Grounds

The trial Court did not consider or address whether the fee award was made on equitable grounds because it did not assess the fairness and justice of the fee award based on the financial circumstances of the case.

In *Stevenson v. Stevenson*, 295 S.C. 412, 368 S.E.2d 901 (1988), the South Carolina Court of Appeals reversed an attorney's fee award because the trial court did not sufficiently consider the financial disparity between the parties and the overall fairness of the fee award. The appellate court stressed that attorney's fees should not impose an undue financial burden on one party.

The trial court must ensure that an award of attorney's fees does not impose an undue financial burden on either party, considering their respective financial circumstances.

Unjustly awarding the Respondent \$127,391.73 in legal fees will force the Appellant into bankruptcy, severely affecting her ability to provide for her two children, ages 6 and 8, she shares with the Respondent.

Abuse of Discretion

In South Carolina, the "abuse of discretion" standard applies when appellate courts review the fairness of legal fees, particularly in cases where there is a significant financial disparity between the parties. If a trial court's award of attorney's fees does not appropriately consider the financial circumstances of the parties, it can be considered an abuse of discretion.

In this case, the trial court issued an unconscionable and unjust award of legal fees due to its disregard of the financial disparity between the parties. The trial Court's decision has resulted in unjust financial hardship for the Appellant.

Beneficial Results Obtained

When reviewing fee awards, the Appellate Court must evaluate positive legal outcomes and the extent to which the attorneys' efforts have met the Respondent's specific objectives in the case.

The Respondent was successful in his objective to have the South Carolina Court rule that the lis pendens was improper, for which he accrued \$17,402 in legal fees.

However, the Respondent was unsuccessful in his objective to prove millions in damages resulting from an improper lis pendens, for which he accrued \$102,989.73 in legal fees.

Therefore, the Appellant reasonably contends that she should only be liable for a maximum of \$17,402 in fee awards that were accrued.

CONCLUSION

The Appellant has presented valid arguments in her appeal and has addressed the Respondent's criticisms in this response.

This appeal centers on the trial Court's disregard of the disparity in the parties' financial circumstances in its decision to award the Respondent \$127,391.73 in legal fees. The ability of each party to pay is a significant factor in determining the appropriateness of the fee award. The trial Court's fee award disproportionately impacts the Appellant's ability to comply with court orders, thus mandating the Appellate Court to intervene to ensure fairness and equity. It is for this reason the appeal was filed.

Out of his total \$127,391.73 in legal fees, the Respondent accrued only \$17,402 litigating the lis pendens during the 11 months it was intact and ruled improper by the trial Court. The remaining \$102,989.73 was accrued after the lis pendens was removed, in the Respondent's efforts to prove several million dollars in damages that did not exist.

Therefore, the Appellant reasonably contends that she should only be liable for a maximum of \$17,402 in fee awards that were accrued.

Respectfully Submitted,

Olivia Aryeh
Appellant, Self-Represented Party
March 10, 2025