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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable L. Casey Manning

Circuit Court Case No. 2015-CP-40-07268
Appellate Case No. 2021-00898

Jimmy Helms...Respondent,

v.

Debbie Willing, ...Appellant.

APPELLANT'S FINAL BRIEF

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ISSUES ON APPEAL

I. Did the trial court lack subject matter jurisdiction to divide property from a domestic partnership?

II. Did the trial court err as a matter of law in its title determinations?

III. Were the trial court's actions, by and through the forensic accountant, entirely improper and deeply prejudicial?

IV. Did the trial court fail to properly apply any legitimate theory in arriving at its incorrect conclusions?

V. Did Plaintiff fail to meet his burden of proof to demonstrate a business partnership?

STATEMENT OF THE CASE AND FACTS

This is a domestic dispute that was wrongly tried by the circuit court. The trial court's rulings are a cautionary tale of precisely why the Legislature set up the Family Court System in the first place, which has its own procedural rules and standards for deciding issues related to domestic relations and the equitable division of purported marital property.

Alternatively, even if the circuit court had jurisdiction, the trial court nonetheless failed to properly employ **any** applicable theory at law or in equity that would merit the relief that it awarded, which apparently included the spontaneous divestment of title to real property and the improper *sua sponte* post-trial appointment of a forensic accountant to conduct retroactive discovery, and to make credibility determinations and findings of disputed fact.

The trial court's errors spring from its well-intentioned but legally incorrect desire to "split the baby," because "the course of true love never runs smooth." (R. p. 100: 7-8; p.103: 11). This Court should reverse the trial court's legal errors, including as to real estate title, and find the order void for lack of subject matter jurisdiction.

Very Important Procedural History

The procedural history of this case is an extremely significant component of this appeal, and it reveals the faulty keystones on which the trial court's errors were built.

A. The Family Court Case

On September 22, 2015, Respondent Jimmy Helms filed a Summons and Complaint in the Fifth Circuit Family Court, alleging that he had a common-law marriage

with Appellant Debbie Willing (the "Family Court Case"). (R. p. 14). Mr. Helms sought "Separate Support and Maintenance" and "Post Dissolution Equitable Distribution." (R. p.14). In the Family Court Complaint, Mr. Helms alleged that the parties "cohabitated for approximately 13 years," and that they "did hold themselves out as husband and wife." (R. pp. 18-19). Mr. Helms sought an equitable division of the "marital property," which he identified as being located in Richland and Lexington counties and as including Ms. Willing's home, a business, "a parcel of real estate in Harbor Watch," "various parcels of income producing property," and "other items which were placed in [Ms. Willing]'s name." (R. pp. 18-19, ¶¶ 3, 4, 10, 12, 15, 16, 17). Ms. Willing answered the Complaint on October 27, 2015, denying that the parties had a common law marriage. (R. p. 21). The Family Court never adjudicated the question of whether a common law marriage existed.

B. The Circuit Court Case

A few months later, on December 4, 2015—while the Family Court Case was still pending and jurisdiction resided in that court—Mr. Helms filed a Summons and Complaint in the Court of Common Pleas for Richland County, pertaining to the same parties and property (the "Circuit Court Case"). (R. p. 25). In the Circuit Court Complaint, Mr. Helms unabashedly re-branded the same domestic claims from the Family Court Case: he first alleged that the parties "lived either as husband and wife or like husband and wife," and then he claimed that "[a]ssuming there was no common law marriage,[1] then the parties had a partnership." (R. p. 28, ¶ 6).

[1] But this issue was never adjudicated by the Family Court.

As his first cause of action in the Circuit Court Complaint, Mr. Helms requested "an accounting requiring the Defendant to appear and to account for **the marital assets**." (R. p. 29 , ¶ 8 (emphasis added)). Mr. Helms also brought causes of action for conversion and breach of fiduciary duty to an alleged partnership.

Ms. Willing timely answered the Circuit Court Complaint, denying Mr. Helms' allegations and raising the defense of lack of subject matter jurisdiction, *inter alia*. (R. pp. 31-33). She brought a counterclaim under the Frivolous Civil Proceedings Act. (R. pp. 32-33, ¶¶ 14-17).

Mr. Helms deliberately allowed the Family Court Case to languish, until it was administratively dismissed by the clerk of family court. (R. p. 91).

Meanwhile, in the Circuit Court Case, Mr. Helms did very little to prosecute his case. Ms. Willing sent Mr. Helms discovery requests in the beginning of 2016. (R. p. 460). Ms. Willing twice noticed Mr. Helms' deposition, which she took in 2016. (R. pp. 35-38). **Mr. Helms never moved to compel any depositions, documents, or discovery.**

And then, years passed: 2017. 2018. 2019.

The court held a scheduling conference, and it ordered discovery to be completed by April 1, 2019. (R. p. 1). A year later, a second Scheduling Order was entered, "for good cause shown of completing depositions, discovery, and mediation prior to trial." (R. p. 4).

On May 20, 2020, Ms. Willing filed a Motion for Summary Judgment. (R. p. 40). She argued that Mr. Helms had failed to produce even a scintilla of evidence that the parties had a business partnership, nor as to any other of Mr. Helms' causes of action.

(*See* Motion and Memorandum in Support, R. pp. 41-53). Mr. Helms filed a Memorandum in Opposition to the Motion for Summary Judgment, in which he set forth by rote the law, but he nonetheless failed to provide any evidence whatsoever[2] in support of his claims. (R. p. 54).[3] The circuit court heard and denied the summary judgment motion at the outset of trial.

C. The Trial

The trial of the Circuit Court Case was held on July 13-14, 2020, before the Honorable L. Casey Manning. At the outset of the trial, the following exchange took place between the trial judge, Mr. Helms' attorney (Mr. Moore), and Ms. Willing's attorney (Ms. Jeffries):

THE COURT: . . . just parenthetically, I read something somewhere. Was there an action filed in family court? . . . What happened to that action? I'm just curious.

….

ATTY. MOORE: Basically, what happened was we filed it in family court ***and*** in circuit court in an effort to try to determine whether ----

THE COURT: **A common-law marriage existed**. Was that it?

ATTY. MOORE: Yes, sir. When they, when they filed saying they denied it, we then allowed it to administratively die so we could try the matter in circuit court.

---

[2] (Aside from arguments of counsel, which are not evidence, Mr. Helms demonstrated zero evidence in support of his claims).

[3] As discussed herein, at the trial (which took place about five years after he had filed his Complaint) Mr. Helms complained to the Court that he could not prove his case because Ms. Willing had not produced the documents that he needed in order to do so. Notably, over the course of five years, Mr. Helms never filed a Motion to Compel any purportedly unproduced documents.

ATTY. JEFFRIES:	And, and that's correct, Your Honor, but I, I do have some concerns because . . . if there is—the argument is we were common-law husband and wife, I think that needs to get adjudicated in family court because family court would be the court of exclusive jurisdiction over whether or not there was a marriage. If there was a marriage, what are the assets of this marriage and how is to going to be equitably apportioned, so—
THE COURT:	Well, currently there's no matter pending in family court affecting this hearing here today.
ATTY. JEFFRIES:	It's not. No. No, Your Honor.
THE COURT:	Okay. All right. What happens later on, we'll worry about crossing that bridge when we come to it. **Right now, I have jurisdiction. Everybody agrees.** We're ready to proceed.
ATTY. MOORE:	Yes, sir.
THE COURT:	Fair enough. Okay.

(R. p. 90: 14 – p. 92: 4) (emphasis added).

Thus, knowing—and having confirmed—that the essence of the dispute between the parties was the question of common law marriage, the circuit court judge nonetheless proceeded to try the case.

". . . And how did *that* go?" this Court might wonder. Not at all like it might have gone, if it had been tried within the proper forum. The trial was like a Frankenstein case, with dismembered components of domestic and civil causes of action stitched together without regard to the authenticity of the end-product. Mr. Helms brought in witness after witness, to testify as to whether or not they perceived Mr. Helms and Ms. Willing to be *married*. (*See* R. pp. 82-83; *see also* R. p. 564, Witness List of "People that knew we carried ourselves as man and wife."). These witnesses included a former State Senator

and his wife, as well as Mr. Helms' children from a former marriage, each of whom testified that Mr. Helms and Ms. Willing lived together and behaved like husband and wife. (R. pp. 326-368). There were hours of testimony pertaining to how Mr. Helms and Ms. Willing had appeared to the public as married, and how they may have contributed to one another's households, and who had bought cars for whose children, and who paid for and used the swimming pool installed at Ms. Willing's home, and—tellingly—whether the parties themselves thought they had a marriage. (*See, e.g.*, R. pp. 190-192, 203-216, 226, 231, 249, 297-307, 321, 327-337, 357-358:11, 362, 365-369).

The trial itself lasted for less than two days. Allegedly at issue (as itemized in the order on appeal) were:

- a total of seven (7) parcels of real property;
- various alleged income from an incorporated convenience store and gas station business called L&D Enterprises, LLC, which Ms. Willing sold, through a business broker, to an unrelated entity in 2014;
- settlement funds from a 2012 Lawsuit, filed by Ms. Willing as the owner of L&D Enterprises, pertaining to leaking gas tanks on property owned by Ms. Willing (Complaint, R. p. __);
- additional funds totaling $86,620.48.

(Trial Order, R. p. 7). These items were purportedly at issue because they were acquired by the parties "during the period of co-habitation." (Trial Order, R. p. 9).

Mr. Helms' attorney cursorily argued that Mr. Helms was trying to prove that the parties had a business relationship (as opposed to the common law marriage that he had previously asserted). In order to prove a business partnership (as will be discussed, *infra*), Mr. Helms would have to demonstrate that he and Ms. Willing—as co-owners of an

alleged business—together owned and shared in the assets, profits, and liabilities of an alleged business partnership. *See* S.C. Code § 33-41-210, *et seq*. However, Mr. Helms' evidence was almost entirely testimonial and related to the domestic relations of Mr. Helms and Ms. Willing.

Mr. Helms introduced a total of ten trial exhibits: four of which were photographs of various houses and a gas station, and one of which was the Summons and Complaint. (R. pp. 85, 414-417, 454). Two other exhibits were letters exchanged between the attorneys to this case, indicating that Ms. Willing had served discovery requests on Mr. Helms in January of 2016. (R. pp. 460-461). **Those seven exhibits were in no way probative of an alleged business partnership**.

As actual, documentary "evidence" that the parties co-owned a business, and purportedly shared in its profits and losses, Mr. Helms produced three exhibits. The first was Plaintiff's Exhibit 5, which consisted of limited, incomplete statements from a single E-Trade account, in Mr. Helms' name, which indicated that Ms. Willing was JTWROS; the statements are dated in 2015/2016 and they demonstrate an account balance of about Five Hundred and Four Dollars ($504.90) at the time the Family Court lawsuit was filed. (R. p. 418). Ms. Willing testified that she did not know about that account at all. (R. p. 134: 10-11). Mr. Helms also introduced into evidence isolated, outdated statements from AT&T and SCE&G, showing that he had previously held accounts with those companies related to two of seven the properties at issue (*i.e.*, 1905 Oceola for AT&T, and 812 Meeting Street for SCE&G) (R. pp. 462, 464).

In contrast, Ms. Willing introduced into evidence the actual deeds to the properties in which Mr. Helms claimed an interest, and the purchase agreement for the convenience store entity. (R. pp. 475-504, 508). During the time that they were romantically involved, Mr. Helms and Ms. Willing each bought and sold several parcels of real property. The deeds in evidence by Ms. Willing show that the conveyances were for good consideration. None of the properties were owned jointly: each is either titled in Ms. Willing's name or in Mr. Helms'. Importantly, Mr. Helms did not file a cause of action that would warrant the relief of setting aside any one of the conveyances.[4] Nor did Mr. Helms bring a cause of action for betterment or for set-off.

For ease of reference, a table showing the evidence put forth on the seven properties, the lawsuit money, and the business entity which are the subject matter of the order on appeal is attached to this Brief as Exhibit 1 and incorporated herein.[5]

As this Court knows, a lawsuit to try ownership of even one parcel of real property, or one limited liability company, is a complicated endeavor. Eschewing legal arguments, Mr. Helms stuck to the largely emotional claim that he was in love with Ms. Willing, and that they lived together like husband and wife, and that by virtue of his

---

[4] For example, there was no cause of action for fraud, or constructive trust, or to try title, or for duress, or pursuant to the Statute of Elizabeth, or for partition.

[5] Notably, the trial of this case occurred in 2020. Included in this chart is information from the county records, indicating that at least two of the properties to which the trial judge purported to adjudge title had *actually been sold to non-parties long before the trial*. (*See* R. p. 8, finding Ms. Willing "owns" 185 Harbor Watch, which she sold in 2018 and that Mr. Helms "owns" 1905 Oceola, which he sold in 2017).

alleged contributions[6] to the purported household, he was entitled to a share of the property that she held in her own name.

ATTY. MOORE: Would you tell me how you and Debbie conducted your business affairs compared to a married couple?

MR. HELMS: I don't quite -- what do you mean by that?

ATTY. MOORE: Compared to ---

MR. HELMS: We were partners. We were partners in everything if that's what you're asking me. I mean, I -- we were partners, I mean.

ATTY. MOORE: That's what I want to get to.

MR. HELMS: If she wanted something, if she wanted something -- hell, I bought her a damn $10,000 Rolex watch. I mean, I must have liked her some, you know? I mean, I mean, I don't quite understand that question really, but we carried ourself as man and wife. If she says not, that's okay, too, but I thought we did.

ATTY. MOORE: When you say y'all were partners, what do you mean by that?

MR. HELMS: Well, Debbie, Debbie was really smart, like I told you before. So, when the store -- I wasn't -- the store wasn't doing very well. I went through this divorce with this young girl. I was, damn, just going backwards, and she came to my life at a good time. She helped get my ass straight. She sure did, so -- and we just fell in love, you know.

(*E.g.*, R. pp. 204: 18 - 206: 13).

---

6 All of Mr. Helm's alleged contributions were allegedly made in cash, and conveniently could not be verified. (*See* R. p. 204:1-21; 270:20 - 271: 23) (Q: "Okay. You've not produced any records or any documents supporting how you contributed to Debbie?" "A: Ma'am, I sure can't. Sure can't. Cash money.").

Intermittently throughout his case in chief, lacking any documentary evidence whatsoever to support his claims that he shared in the profits and losses of a purported business partnership, Mr. Helms blamed Ms. Willing for failing to produce in discovery documents **that he had never asked for and never moved to compel**. (R. pp. 137, 154, 162, 405). Two Scheduling Orders entered in this case required discovery to be completed prior to April, 2019, and prior to trial. (R. pp. 1-4). But, some time after Mr. Helms' attorney had rested his case (Trans. p. 369), the following conversation occurred with the trial judge:

THE COURT:	Let me get this straight. Both of y'all have accused each other—it's not personal—one side or the other not providing certain information that should've been provided before this case started.[7] Is that still the situation? [asking Mr. Moore] What have you received in discovery?
ATTY. MOORE:	I have seen this document.
THE COURT:	[asking Mr. Moore] What have you not seen in discovery?
ATTY. MOORE:	I haven't seen any checks. I haven't seen any financial statements. I haven't seen any tax returns. I haven't seen—
THE COURT:	All right, that's enough. **Just make a list** and after all this is over with [*i.e.*, **the trial**], I'm going to have to talk to both of y'all about getting this information to me and someone that I might pick to do a forensic accounting, all right? That's fair enough.

[7] This is wrong. Ms. Willing did not "accuse" Mr. Helms of "not providing information" in discovery. Instead, she argued that Mr. Helms had failed to produce even a scintilla of evidence to prove his case. (R. p. 40, , Trans. pp. 96-99:15).

(Trans. p. 392) (emphasis added). In other words, at trial Mr. Helms produced **no** documentary evidence to support his claims of a business partnership.

D. Predestination and a Forensic Accountant

Troublingly, the transcript reveals that from the outset of the trial—before the first testimony was even taken—the trial judge had predetermined that his function was to hear a domestic dispute, and to divide up domestic property. As the judge announced **before the first witness was called or the first evidence submitted:**

> I see exhibits 1 through 10 that list some property. I see in here both list some property, but I have no – I've got to sit as the trier of fact as well as law, and I have no idea what's the value of these properties. I've mentioned this to both lawyers, Ms. Jeffries and Mr. Moore. At some point in time, I'm going to have to appoint an appraiser to come back and report back to me: Judge Manning, this is what I think the different properties are worth. And ***then I might get to the point of being able to make some intelligent decision about who gets what, how do you split the baby and a watermelon,*** that sort of thing. But I've got to hear it all and I will hear it all, and I'll be as fair as I can to both sides involved.

(R. p. 103: 1-14) (emphasis added).

At the conclusion of the trial, after both sides had put up all of their evidence and long after Mr. Helms had rested his case, the judge announced that he was undecided but that (apparently) the court had made up its mind to hire a forensic accountant:

> And, of course, **I'm not going to make a decision in this matter**. I'm going to take this matter under advisement, as you all well know. I have the name of a gentleman named Marcus Hodge. He is a forensic accountant. . . I haven't spoken to him yet. That's the name *that was just given to me this morning*.[8] I need to contact him, give him an idea of what's involved in this

[8] Disturbingly, the "this morning" to which the Court was referring was the morning of July 14, which was the second day of trial, about mid-way through the plaintiff's case in chief, and long before Ms. Willing had even had an opportunity to put up her first witness. (R. p. 82). **In other words, the court had decided to hire a forensic accountant to divide the "disputed property" before Ms. Willing had even had a chance to defend against Mr. Helms' claims.**

> situation, then ask whether or not typically this is the type of thing he does or would be willing to do.

(R. p. 408). In other words, Mr. Helms had failed to prove his case, and so the trial court resolved to undertake to assist him in doing so.

The undersigned counsel is not aware of any statutory, procedural, or evidentiary provision in South Carolina authorizing a trial court to hire a forensic accountant—after conclusion of a trial—to engage in fact-finding on behalf of the court. Indeed, this action by the trial court was against the Rules Governing the Judiciary, and it was *per se* prejudicial. Rule 501, Canon 3, SCACR (Commentary: "A judge must not independently investigate facts in a case and must consider only the evidence presented.").

Nonetheless, the trial court engaged Mr. Hodges, the forensic accountant. On September 18, 2020, the judge filed an order stating:

> This case was recently tried before me . . .
>
> Prior to trial relevant documentation was requested but not produced. I have ordered both parties to produce relevant documents as needed and I have appointed Marcus B. Hodge with ASC Forensic as the Court forensic examiner.
>
> **Because of the lack of documents, the record is incomplete**. The Court needs a full record and report from the forensic examiner before rendering a Final Order as to an accounting and the appropriate division of property.
>
> AND IT IS SO ORDERED.

(Order, R. p. 6 (emphasis added)).

The forensic accountant was approached by the court, retained by the court, his instructions were given to him by the court, and much of this was accomplished off the record by the trial judge, including by communication to which counsel for Ms. Willing

was not a party.[9] However, the forensic accountant did keep billing records. Thus, we know from those records that the forensic accountant's very first task was to review a proposed order **drafted by Mr. Helms**, despite the trial judge's representation that "I'm not going to make a decision in this matter":

9/20/2020	1.00	150.00	150.00	BEGAN FIRST REVIEW OF HELMS' PROPOSED ORDER. BEGAN IDENTIFYING AND COMPILING LIST OF INFORMATION REQUESTS FROM EACH PARTY.

(Hodge's Statement, R. p. 626).[10] Ms. Willing never had the opportunity to comment on that proposed order or to discuss it with the forensic accountant.[11] It is unclear why the trial court gave the forensic accountant a proposed order drafted by Mr. Helms, only, and not one drafted by Ms. Willing. Given that the forensic accountant's first activity was to review whatever Mr. Helms might have claimed within his proposed order, we can assume that the forensic accountant embarked upon his assignment believing Mr. Helms' claims to be true.[12]

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[9] See Hodges' Invoices, indicating numerous communications with "Judge Manning's Office" on which Ms. Willing's attorney was not included. (R. pp. 626-633); *But see* Rule 501, Canon 3B(7), SCACR: "A judge shall not initiate, permit, or consider *ex parte* communications, or consider other communications made to the judge outside the presence of the parties . . .". (*see also* Commentary: "To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.")

[10] Presumably, this proposed order was given to the forensic accountant by the court when it hired him, but Ms. Willing does not know, because the court seems to have communicated with the forensic accountant off the record and *ex parte* (there are several billing entries for communications with Judge Manning and his law clerk) (R. pp. 626-633).

[11] *But see* Rule 501, Canon 3, SCACR (Commentary: "A judge may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions.").

[12] The accountant's records do not reflect that he spent any time at all reviewing any sort of proposed order from Ms. Willing. (R. pp. 626-633).

The forensic accountant's time-keeping records also reveal that he had at least six lengthy conversations (including by telephone) with Mr. Helms' attorney, Mr. Moore, for which he billed numerous hours. (Hodges Statements, R. pp. 626-633). In contrast, the accountant's records show that he briefly corresponded twice with Ms. Willing's attorney, Ms. Jeffries, billing a total of ½ of an hour. This patent disparity raises numerous questions, and none of the answers are of record, because the trial court did not copy counsel for Ms. Willing on its correspondence with the forensic accountant, and because the forensic accountant did not copy counsel for Ms. Willing on his correspondence (and phone calls) with counsel for Mr. Helms and/or the trial court.

Although the parties had been ordered to complete discovery by April 1, 2019, the forensic accountant, acting for the court, undertook to conduct post-trial discovery. (R. p. 1). The forensic accountant issued subpoenas to Ms. Willing's banks, but apparently[13] he did not seek any of Mr. Helms' banking records. The forensic accountant apparently submitted discovery requests to the parties, which Ms. Willing has no idea how Mr. Helms might have answered (because she was not copied on the responses), but which went to the substantive merits of the claims and defenses made by the parties, as well as to disputed facts. (R. pp. 577-625). Ms. Willing did not receive a copy of any of the written responses or documents produced in response to these post-trial subpoenas and discovery requests.

[13] Much of the forensic accountant's activity is cloaked in uncertainty, because it took place off the record, and neither Ms. Willing nor her attorney were included in conversations and document productions.

Again, all of this activity by the forensic accountant occurred long after the discovery period had ended, months after Mr. Helms had rested his case, months after the trial had taken place, and with no procedural or evidentiary mechanism whatsoever to adjudge the credibility, completeness, or authenticity of the answers provided.

Ultimately—in an order dated almost a year after the trial—the trial judge wrongly carried out his preconceived decision, made before trial commenced, to "split the baby and a watermelon." (R. p. 103). The order is extraordinarily unclear; it blurs the lines between domestic and business partnership, finding that there was a partnership "during the period of cohabitation." (R. p. 9). The court makes this finding without ever identifying the nature of the partnership, and without clearly defining the purported partnership assets and property, and while relying heavily on facts that are not in the record but which were "found" by the forensic accountant after numerous *ex parte* conversations to which counsel for Ms. Willing was not a part and did not even know about until long after the order was issued. (Order, R. pp. 7-9).

Troublingly, the trial court's order spontaneously divests Ms. Willing of title to several properties, and it vaguely discusses money without addressing which parties (if any) owe money to the other. (*Id*.). Ms. Willing filed a Motion Pursuant to Rule 59, seeking, among other things, clarification on how precisely the purported partnership might be wound up. (R. p. 76). The trial court sent an *ex parte* email to Mr. Helms' attorney, asking that he prepare an order denying the Motion to Reconsider. (R. p. 732) (The court's *ex parte* email was eventually forwarded to Ms. Willing's attorney by

opposing counsel, after opposing counsel called her up to tell her that her motion had been denied, and she asked him how he knew).[14] The circuit court denied Ms. Willing's Motion to Reconsider. (R. p. 11).

Ms. Willing timely served and filed her Notice of Appeal. Ms. Willing moved this Court to enforce the automatic stay, pending the appeal. This Court denied that Motion, and it denied her Motion for Rehearing En Banc. Mr. Helms filed a Motion to Remand, arguing that the circuit court's orders (which Mr. Helms' attorney drafted, at least in part) were unclear, and the case should be remanded to the trial court for "clarification."

Factual Background

Respondent Jimmy Helms and Appellant Debbie Willing had a romantic relationship, for more than a decade, running from approximately the years 2002 through 2015. (R. pp. 14-20). Mr. Helms claims that the parties had a common law marriage. (*Id*.). Ms. Willing denies that they were married, and she claims that the parties at all times during the relationship conducted their financial affairs separately. Ms. Willing never had a checking account with Mr. Helms, and the two of them never owned any real property together. They did live together, off and on, over the years.

While the parties were romantically involved, their relationship was tumultuous. By his own testimony, Mr. Helms abused drugs and alcohol, and he had a gambling problem whereby he lost thousands and thousands of dollars. (R. p. 42, Trans. p. 274: 16-277: 15). There are numerous judgments against him, and he operated in cash because

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[14] *But see* Rule 501, Canon 3, SCACR (Commentary: "A judge may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions.")

he "was hiding some of the money" so he didn't have to pay taxes on it. (R. p. 282). Mr. Helms also testified that he was engaged in criminal activity and had been arrested for operating gaming houses. (R. p. 278: 12- 281: 19). Ms. Willing loved Mr. Helms, but she recognized that he was a liability. She was careful to keep her assets separate from his. The only evidence of any sort of joint financial endeavor is an e-trading stock account that Mr. Helms apparently opened shortly before filing his lawsuit, which contained about $500 in assets, and on which he named Ms. Willing as JTWROS. Ms. Willing testified that she knew nothing of this account. (R. pp. 125-127).

Neither party ever filed a tax return indicating that they were married. Neither party ever filed a tax return indicating that they were business partners. (R. p. 285). There is no partnership agreement, no real property was owned in the name of any alleged business partnership, the alleged partnership never reported income to state or federal government, the alleged partnership never had insurance, and the alleged partnership never paid taxes.

During the time-period that the parties were romantically involved, each of them, separately, bought and sold real property. Each of them kept title to the various properties in their own name. They did not own any real property at all as tenants in common, or as joint tenants, or as common property of any sort. Each deed was either in the name of Ms. Willing or Mr. Helms. (*See* Exhibit 1).

The Convenience Store

On the 812 Meeting Street property is a convenience store. Importantly, the convenience store business is and was owned separately from the property itself. Mr. Helms' son-in-law and daughter, Michael and Christa Wilks (the "Wilks"), initially owned and operated the business at 812 Meeting Street, which was incorporated as L&D Enterprises, LLC. By written agreement in 2005, the Wilkses, as owners of one hundred percent (100%) interest in L&D Enterprises, LLC, sold their entire interest to Ms. Willing in exchange for her releasing them from their liability on a $20,000 promissory note. (R. pp. 508, 562).

In 2004, Ms. Willing bought the then-vacant lot adjacent to the convenience store, 820 Meeting Street, from a stranger to this lawsuit, for $84,000. (R. p. 482). In 2006, Ms. Willing had underground petroleum storage tanks installed at 820 Meeting Street.[15] (R. pp. 568-576). After securing licensing in her own name for the gasoline tanks, Ms. Willing transformed the convenience store into a Citgo gas station. (R. pp. 150-152, 306-307).

Years later, in 2014, Ms. Willing sold the convenience store business (*i.e.*, L&D Enterprises, LLC) to an entity called Chharvi & Bhavya LLC, of which a man named Viral Patel was a member. (R. p. 350). She retained title to the property on which the store is located. The sale of L&D Enterprises, LLC went through a business broker. (R. p. 351: 12- 353: 7; 355: 24 - 358). Chharvi & Bhavya LLC paid $150,000 for the business itself. (*Id.*). Chharvi & Bhavya LLC also entered into a long-term Lease Agreement <u>with Ms.</u>

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15 Installing underground storage tanks is an undertaking that is heavily regulated by DHEC, requiring regular inspection, maintenance, record keeping, insurance, and reporting. All of this was accomplished by Ms. Willing, in her own name. (R. p. 387).

Willing for the lease of the Meeting Street Properties. (*Id*.). Ms. Willing uses the rent payments to maintain the property and the underground storage tanks, to pay taxes, to obtain insurance, to attend the training required of her by DHEC, and also for her retirement.

Ms. Willing's and Mr. Helms' relationship ended in June of 2015. (R. pp. 297-300).

STANDARD OF REVIEW

There are several standards of review applicable to this appeal, which presents jurisdictional, legal, and equitable questions.

The questions of law involved in this appeal include the question of whether the circuit court lacked subject matter jurisdiction over an alleged common law marriage and the parties' alleged "marital assets," as well as the construction of unambiguous deeds and South Carolina's Uniform Partnership Act. This Court reviews questions of law de novo. *Sanders v. Savannah Highway Auto. Co.*, 432 S.C. 328, 852 S.E.2d 744 (Ct. App. 2020).

Additionally, the circuit court seems to have ruled on only Mr. Helms' first cause of action. That cause pertained to an alleged partnership and requested "an accounting requiring the Defendant to appear and account for the marital assets" and "the division of partnership property." (R. pp. 28-29). **If** this Court finds that the trial court had subject matter jurisdiction as to purported "marital assets," then it should review the trial court's "equitable division" in accordance with this Court's own view of the preponderance of evidence. *Townes Assoc., Ltd. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976) (noting standard of review for action in equity tried by a judge).

ARGUMENT

The trial of this case, and its aftermath, were so profoundly tainted by error that this Court should render the order void outright. In addition, because the circuit court lacked subject matter jurisdiction over this case, this Court should hold that the court's decisions were void *ab initio*. Even if this Court finds that jurisdiction was proper, it should nonetheless reverse the circuit court's legal errors—as to title to property and failure to apply current statutory and common law, as well as its error in finding that Mr. Helms met his burden of proof, and it should remand as to Ms. Willing's counterclaim.

I. The circuit court lacked subject matter jurisdiction to divide property from an alleged common law marriage.

The circuit court's order should be reversed and vacated because the circuit court did not have subject matter jurisdiction. As set forth in the Statement of the Case, Mr. Helms initially filed this case in family court and then later—while the case was pending in family court—filed it in circuit court. In the circuit court, Mr. Helms alleged (*inter alia*) that the parties "lived either as husband and wife or like husband and wife" and "This Court should order an accounting requiring the Defendant to appear and to account for the **marital assets**." (R. p. 28, ¶¶ 2, 8) (emphasis added). Mr. Helms' later filing in circuit court was improper, and the circuit court lacked subject matter jurisdiction *ab initio*, for at least two reasons. First, the subject matter of the lawsuit was within the exclusive jurisdiction of the Family Court; second, because the case was first filed in Family Court, jurisdiction remained in that court.

A. The Family Court has exclusive subject matter jurisdiction over the division of alleged "marital assets."

The Family Court has exclusive subject matter jurisdiction over the dispute between Mr. Helms and Ms. Willing, which involves an alleged common law marriage and purported marital property. S.C. Code § 63-3-530 specifies that:

> (A) The family court has exclusive jurisdiction: . . .
>
> (2) to hear and determine actions for divorce a vinculo matrimonii, separate support and maintenance, legal separation, and in other marital litigation between the parties, and for settlement of all legal and equitable rights of the parties in the actions in and to the real and personal property of the marriage and attorney's fees, if requested by either party in the pleadings; . . . .

(emphasis added); *see also Thomas v. McGriff*, 629 S.E.2d 359, 360 (2006) ("If the existence of a common-law marriage is itself the ultimate issue, then the family court has exclusive jurisdiction."); *Bell v. Progressive Direct Ins. Co.*, 757 S.E.2d 399, 407 n.9, 407 S.C. 565 (2014) ("We note that it was the exclusive province of the family court to determine the existence of a common-law marriage in this case. . . . Therefore, Petitioner should have sought a declaration of common-law marriage in the family court, and the trial court and court of appeals erred in addressing the issue."); *Hammer v. Hammer*, 399 S.C. 100, 109, 730 S.E.2d 874 (Ct. App. 2012) ("the family court has exclusive jurisdiction over contracts relating to property in a divorce proceeding . . . Accordingly, the circuit court did not err in finding it lacked subject matter jurisdiction to hear Appellant's complaint.").

When he filed his circuit court complaint, seeking an accounting and division of alleged "marital assets," Mr. Helms admitted the character of any alleged partnership was domestic, rather than business. (R. p. 28-29, ¶¶ 6, 8). As discussed in the Statement

of the Case, there is no question that the trial judge in circuit court was aware and understood that the dispute between the parties had its basis in Mr. Helms' claim to a common law marriage.

MR. MOORE: Basically, what happened was we filed it in family court ***and in circuit court*** in an effort to try to determine whether ----

THE COURT: A common-law marriage existed. Was that it?

MR. MOORE: Yes, sir.

(R. p. 91). Moreover, Mr. Helms' testimony, and that of his witnesses, primarily pertained to the domestic relations of the parties. *See, e.g.,* R. pp. 202-216; *see also* Witness List of "People that knew we carried ourselves as man and wife." (R. p. 564).

This Court should find that the circuit court lacked subject matter jurisdiction to hear the case. Importantly, Mr. Helms expressly acknowledged the proper forum by filing first in family court.

B. Once jurisdiction attached in Family Court, the later filing in Circuit Court was improper and did not oust the Family Court's jurisdiction.

Mr. Helms served the Summons and Complaint in family court on September 29, 2015. (R. p. 14). This act by Mr. Helms vested the family court with exclusive, continuing jurisdiction over the parties and their purported marital property. Family Court Rule 16 specifies that, once a case is filed in the family court, the family court has continuing jurisdiction and control of all subsequent proceedings:

RULE 16. CONTINUING JURISDICTION

The family court has jurisdiction of the parties and control of all subsequent proceedings from the time of service of the summons and complaint.

(emphasis added). The language of Rule 16 is unequivocal that this continuing jurisdiction attaches "from the time of service of the summons and complaint." R. 16, FCR. Therefore, Mr. Helms' subsequent filing of the case in circuit court—while the family court case was pending—was void *ab initio*, for lack of jurisdiction in that court.

Case law similarly indicates that, once a case is filed in a specific court, that court retains jurisdiction: "Our supreme court found that because the jurisdiction of a court attaches to the person and subject matter of the litigation, any subsequent happenings 'will not ordinarily operate to oust the jurisdiction already attached.' . . . ." *Meehan v. Meehan*, 407 S.C. 471, 756 S.E.2d 398, 402 (Ct. App. 2014); *cf. Gilley v. Gilley*, 327 S.C. 8, 11, 488 S.E.2d 310 (1996) ("The general rule is that jurisdiction of a court depends upon the state of affairs existing at the time it is invoked. If jurisdiction once attaches to the person and subject matter of the litigation the subsequent happening of events will not ordinarily operate to oust the jurisdiction already attached."). Here, because the case was pending in the family court, the later, over-lapping filing in the circuit court was invalid and without jurisdiction.

The legal principle of the "first-filed rule" enforces this conclusion: "[W]hen two courts have concurrent jurisdiction over a dispute involving the same parties and issues, as a general proposition, the forum in which the first-filed action is lodged has priority." 15 Charles Alan Wright *et al.*, *Federal Practice and Procedure* § 3854, Westlaw (database updated Apr. 2016); *Black's Law Dictionary* 780 (11th ed. 2019) ("first-to-file rule" "The principle that, when two suits are brought by the same parties, regarding the same issues, in two courts of proper jurisdiction, the court that first acquires jurisdiction usu. retains

the suit, to the exclusion of the other court."). On this point, the rule doubly applies here because the family court had "exclusive" jurisdiction, and the circuit court lacked "proper jurisdiction" over alleged common-law marriage and marital property matters. As such, the initially-filed family court matter precluded jurisdiction in the later-filed circuit court matter.

Ms. Willing repeatedly emphasized to the circuit court that it lacked jurisdiction. (R. pp. 22, 41, 91). That included because (a) the case was filed first in Family Court and was still pending in Family Court at the time that Mr. Helms re-filed in circuit court, and (b) the issues being litigated were within the exclusive jurisdiction of the Family Court—the alleged common law marriage and the alleged common property resulting from that alleged marriage. In the face of those objections, the circuit court incorrectly proceeded with the case and incorrectly issued rulings on issues that could only be heard and adjudicated in the family court. This Court should therefore reverse the circuit court and render its rulings void for lack of jurisdiction.

II. The trial court erred as a matter of law in certain of its title determinations.

At the outset of the trial court's order, the court explains that it intends to determine title to seven (7) parcels of property:

> This is an action which involves **title** . . . in the following real estate . . . : [1] 1900 Oceola Drive, [2] 1904 Oceola Drive, [3] 1905 Oceola Drive, [4] 812 Meeting Street, [5] 820 Meeting Street, [6] 809 Shull Street, and [7] 185 Harbor Watch . . .

(Order, R. p. 7) (emphasis added). The order goes on to make conclusions of law as to the title to those properties. However, the trial court erred as a matter of law as to title

and ownership of four of those parcels, and this Court should correct those errors (if it does not find that the trial court entirely lacked subject matter jurisdiction, as discussed above).

A. 185 Harbour Watch and 1905 Osceola are owned by nonparties.

The order on appeal states: "The court finds that [Ms. Willing] owns the disputed propert[y] of 185 Harbor Watch . . . and [Mr. Helms] owns the disputed property at 1905 Oceola Street." (Order, R. p. 8). These determinations would probably come as a surprise to the folks who actually own the property, according to deeds of record in the public index. (*See* Ex. 1, Chart). This Court should reverse the trial court's findings, which are utterly unsupported by the record.

i. Mr. Helms does not own 1905 Osceola.

At trial, Mr. Helms himself testified that he had formerly owned 1905 Osceola Street, but that he subsequently sold it for around $60,000. (R. pp. 233-234). He also testified that Ms. Willing was "absolutely" entitled to half of the sale proceeds. (*Id*.). And, that's it. That is the only evidence Mr. Helms put forth as to title and ownership of 1905 Osceola Street. (*See* Table, Ex. 1). However, the trial court entirely disregarded this testimony to find that "[Mr. Helms] ***owns*** the disputed property at 1905 Osceola." (R. p. 8) (emphasis added). Disconcertingly, despite Mr. Helms' own testimony that Ms. Willing should receive half the sale proceeds, the trial court also held: "There is no evidence from the Forensic Report or the parties' testimony that 1905 Oceola was claimed by the Defendant or that the Defendant shared in the profits or losses associated with the property." (R. p. 8). Because this holding is contrary to Mr. Helms' own testimony, and

based on evidence not properly before the court,[16] this Court should reverse and find (if the order is not void *ab initio*) that Ms. Willing is entitled to $30,000 from Mr. Helms.

ii. Ms. Willing does not own 185 Harbor Watch.

At trial, Ms. Willing testified that she had sold the property at 185 Harbor Watch in about 2018. Although opposing counsel did not probe into this statement during questioning, the public records reveal that the lot was sold in 2018, and again in 2020. (*See* Table, Ex. 1). In any event, Mr. Helms produced no evidence whatsoever that Ms. Willing "owns . . . 185 Harbor Watch." (Order, p. 2, R. p. 8).

Because the trial court's determinations as to ownership of 185 Harbor Watch and 1905 Osceola are unsupported by the record—and a troubling indication of how little the facts mattered at trial—this Court should reverse.

B. Ms. Willing holds title to 820 Meeting Street as a matter of law.

The trial court erred when it held that Mr. Helms "holds legal title to . . . 820 Meeting Street." (Order, R. p. 9). Troublingly, Mr. Helms introduced absolutely no evidence whatsoever to demonstrate that he holds title to the property at 820 Meeting Street.

Ms. Willing, however, introduced into evidence the valid, duly-recorded general warranty deed to the 820 Meeting Street property, which reflects that the property was conveyed to Ms. Willing on August 27, 2004, by Merrilyn Hall:

[16] The impropriety of the "Forensic Report" is discussed *infra*, as Issue III.

> **KNOW ALL MEN BY THESE PRESENTS,** That **Merrilyn Hall** (hereinafter called "Grantor"), for and in consideration of the sum of Eighty-two Thousand Five Hundred and No/100ths ($82,500.00) Dollars to the Grantor in hand paid at and before the sealing of these presents, by **Deborah R. Willing** of 820 Meeting Street, West Columbia, SC 29169 (hereinafter called "Grantee") (the receipt of which is hereby acknowledged) has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release, unto the Grantee, his heirs, successors and assigns:
>
> [property description of 820 Meeting Street]

(Def. Ex. 4, R. p. 482).[17] Ms. Willing testified that—as the deed indicates—she paid $82,500 for the lot. (R. p. 168: 19-21). Ms. Willing also testified that she took out a loan and mortgage in her name only, to pay for the property and the cost of installing underground storage tanks and gas pumps on the lot. (R. pp. 176: 13 - 178: 19; 374: 17 - 376). Mr. Helms himself testified that Ms. Willing borrowed the money to buy 820 Meeting Street. (R. pp. 224: 14-19; 263: 14-25; 271: 11-23).[18]

The legal title to 820 Meeting Street was never contested. Mr. Helms did not introduce any testimony or evidence whatsoever to dispute that Ms. Willing holds legal title to 820 Meeting Street. The deed states that Ms. Willing owns 820 Meeting Street.

The construction of a clear and unambiguous deed is a question of law for the court. *Gardner v. Mozinyo*, 293 S.C. 23, 25, 358 S.E.2d 390, 392 (1987); *Hammond v. Lindsay*, 277 S.C. 182, 184, 284 S.E.2d 581, 582 (1981). "To construe a deed, a court looks first at the

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[17] This Court may take judicial notice of the public records for Lexington County, pertaining to TMS. No. 004657-11-005, which indicate that Ms. Willing has owned and held title to 820 Meeting Street, and paid taxes on it, since 2004.

[18] Other witnesses testified that they did not know anything about who held title to 820 Meeting Street. (R. p. 337: 3-17 (B. Knotts); 368: 23-25 (Kaden Helms)).

language of the instrument because the court presumes it declares the intent of the parties." *Hunt v. Forestry Com'm*, 358 S.C. 564, 595 S.E.2d 846 (Ct. App. 2004) *quoting* 23 Am.Jur.2d Deeds § 192 (2002). "[I]f the language of the deed is unambiguous, then its interpretation is a question of law to be resolved by the reviewing court without resort to extrinsic evidence." *Id.*

Because the deed is unambiguous, the trial court erred when it looked to extrinsic, testimonial evidence at all. *Hunt v. Forestry Com'm*, 358 S.C. 564, 595 S.E.2d 846 (Ct. App. 2004) *quoting* 23 Am.Jur.2d Deeds § 192 (2002) ("When, and only when, the meaning of a deed is not clear, or is ambiguous or uncertain, will a court resort to established rules of construction to aid in the ascertainment of the grantor's intention by artificial means where such intention cannot otherwise be ascertained.").

The lower court's finding that Mr. Helms "holds legal title" to 820 Meeting Street is utterly without evidentiary support, and it is wrong as a matter of law. (Order, R. p. 9). A reviewing court is "free to decide questions of law with no particular deference" to the trial court. *Snow v. Smith*, 416 S.C. 72, 784 S.E.2d 242 (Ct. App. 2016). This Court should reverse the trial court's error of law in finding that Mr. Helms "holds legal title to 820 Meeting Street" and construe the deed according to its plain language to find that Ms. Willing holds legal title to the property at 820 Meeting Street. (R. p. 482).

C. Ms. Willing holds title to 812 Meeting Street as a matter of law.

The trial court erred when it held that Mr. Helms "holds legal title to . . . 812 Meeting Street." (Order, R. p. 9). Troublingly, Mr. Helms introduced absolutely no evidence whatsoever to demonstrate that he holds title to the property. Ms. Willing,

however, introduced into evidence the valid, duly recorded general warranty deed to 812 Meeting Street, which clearly demonstrates that Mr. Helms conveyed the property to Ms. Willing on January 6, 2006. (R. p. 484-486).

Mr. Helms never claimed, nor sought to prove, that the deed from himself to Ms. Willing was invalid for any reason.[19] Mr. Helms did not argue that the deed by which he conveyed 812 Meeting Street to Ms. Willing was ambiguous.

The deed itself unequivocally states (*inter alia*) that it vests: "TITLE TO REAL ESTATE" in Deborah R. Willing from James O. Helms, and that Mr. Helms did "grant, bargain, sell and release unto the said Grantee[], Deborah R. Willing, her heirs and assigns the following described property: [Exhibit A, property description of 812 Meeting Street]." (Deed, R. p. 484-486) (Ms. Willing incorporates the deed herein as if fully set forth). The deed is witnessed, sealed, and notarized, and it was signed by Mr. Helms. It was duly recorded with the Register of Deeds for Lexington County.[20]

The construction of a clear and unambiguous deed is a question of law for the court. *Gardner v. Mozinyo*, 293 S.C. 23, 25, 358 S.E.2d 390, 392 (1987); *Hammond v. Lindsay*, 277 S.C. 182, 184, 284 S.E.2d 581, 582 (1981). "To construe a deed, a court looks first at the language of the instrument because the court presumes it declares the intent of the

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[19] Mr. Helms did not file a cause of action for recovery of real property, or to set aside the deed, or to quiet title, or pursuant to the Statute of Elizabeth, or any other conventional method of establishing ownership to real property. These sorts of claims would have been necessary to invalidate the deed or prove that legal title allegedly remains vested in himself despite a recorded instrument conveying title.

[20] This Court may take judicial notice of the public records for Lexington County, pertaining to TMS. No. 004657-11-010, which indicate that Ms. Willing has owned and held title to 812 Meeting Street, and paid taxes on it, since 2006.

parties." *Hunt v. Forestry Com'm*, 358 S.C. 564, 595 S.E.2d 846 (Ct. App. 2004) *quoting* 23 Am.Jur.2d Deeds § 192 (2002). "[I]f the language of the deed is unambiguous, then its interpretation is a question of law to be resolved by the reviewing court without resort to extrinsic evidence." *Id*.

As a matter of law, the deed from Mr. Helms to Ms. Willing conveyed to Ms. Willing legal title to 812 Meeting Street. (R. p. 484). Because the deed is unambiguous, the trial court erred when it looked to extrinsic, testimonial evidence at all. *Hunt v. Forestry Com'm*, 358 S.C. 564, 595 S.E.2d 846 (Ct. App. 2004) *quoting* 23 Am.Jur.2d Deeds § 192 (2002) ("When, and only when, the meaning of a deed is not clear, or is ambiguous or uncertain, will a court resort to established rules of construction to aid in the ascertainment of the grantor's intention by artificial means where such intention cannot otherwise be ascertained.").[21]

This Court should reverse the trial court's error of law in finding that Mr. Helms "holds legal title to 812 Meeting Street." (Order, R. p. 9). A reviewing court is "free to decide questions of law with no particular deference" to the trial court. *Snow v. Smith*, 416 S.C. 72, 784 S.E.2d 242 (Ct. App. 2016). This Court should reverse the trial court's error of law in finding that Mr. Helms "holds legal title to 812 Meeting Street" and

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[21] Notably, however, the testimonial evidence does support a finding that Ms. Willing holds title to 812 Meeting Street. The evidence shows that Ms. Willing assumed a $115,000 loan on the property, which she eventually paid off. (R. pp. 112: 10- 113:5; 156-157:6; 376: 5 - 25; 378: 15 - 380: 15; 388: 14- 389). Mr. Helms agreed that Ms. Willing was solely financially liable for the debt associated with 812 Meeting Street. (R. p. 271: 11-23). Mr. Helms testified that there was no duress or coercion when he deeded the property to Ms. Willing. (R. p. 254: 20-23). Thus, the trial court's title determinations have no basis in the facts or the law.

construe the deed according to its plain language to find that Ms. Willing holds legal title to the property at 812 Meeting Street. (R. p. 484).

III. The trial court's actions, by and through the forensic accountant, were entirely improper and deeply prejudicial.

In addition to reversing the trial court's incorrect title determinations discussed in Issue II, this Court should reverse the remaining "Conclusions of Fact and Law" because they are improperly based on a "Forensic Report" that the trial judge had no authority to procure, over which there were no procedural or evidentiary controls, which was tainted by partiality and prejudice, which was not in evidence, and which is not properly in the record, at all.

As discussed in the Statement of the Case, *supra*, Mr. Helms arrived at trial without any documentary evidence whatsoever to prove his case. This Court should pause—although the trial court failed to do so—**to wonder why Mr. Helms was not able to come to trial with any evidence pertaining to a business that he claims to have co-owned.**

Throughout the trial, counsel for Mr. Helms complained that Ms. Willing had not produced documents in discovery. (*See, e.g.,* Trans. pp. 137, 143, 154: 20-22, 163: 4-14, 179). As an initial matter, there is no evidence in the record that Mr. Helms even served discovery requests on Ms. Willing. Interestingly, Mr. Helms did introduce as trial exhibits two letters pertaining to discovery: the first is a letter from Ms. Willing's attorney serving discovery requests on Mr. Helms. (Helms Ex. 7, R. p. 460). The second is a letter from Mr. Helms' attorney to Mr. Helms, letting him know that Ms. Willing had served discovery requests. (Pl. Ex. 8, R. p. 461). Both letters are dated in early 2016. There is no

reference in either letter to discovery requests going the other way—from Mr. Helms to Ms. Willing.

Moreover, there is no indication in the record that Ms. Willing did not produce whatever documents Mr. Helms might have requested in discovery (if he did). If, in the course of discovery, Mr. Helms had believed that Ms. Willing was somehow not cooperating in discovery, or that her responses were deficient, **then there is an entire rule within the South Carolina Rules of Civil Procedure dedicated to the proper mechanism for applying to the court for assistance.** *See generally* **Rule 37, SCRCP.** Nonetheless, Mr. Helms did not ever file a Motion to Compel pursuant to Rule 37, SCRCP. He did not serve any subpoenas. He did not search within the public records to procure corporate documents, tax documents, and deeds.[22]

After filing his two lawsuits in Family Court and Circuit Court in 2015, Mr. Helms simply let the years pass without making any real effort to conduct documentary discovery (2016. 2017. 2018. 2019). Two Scheduling Orders were entered by the court, requiring discovery to be completed by the parties. (R. pp. 1, 4).

Mr. Helms then showed up at trial in 2020 without the evidence necessary to meet his burden of proof.

Rather than recognizing failure of proof as a flaw fatal to Mr. Helms' claims, the trial court improperly took it upon itself to *help* Mr. Helms try to prove his case. The Court asked Attorney Moore:

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[22] Of course, if Mr. Helms was indeed a "partner" in an alleged "business partnership," it is extraordinarily odd that he did not himself have access to the business records.

THE COURT:	What have you received in discovery? . . . What have you <u>not</u> seen in discovery?
ATTY. MOORE:	I haven't seen any checks. I haven't seen any financial statements. I haven't seen any tax returns. I haven't seen—
THE COURT:	All right, that's enough. **Just make a list** and after all this is over with [*i.e.*, <u>the trial</u>], I'm going to have to talk to both of y'all about getting this information to me and someone that I might pick to do a forensic accounting, all right? *That's fair enough*.

(R. p. 392) (emphasis added). Actually, this remarkable decision by the trial court was not "fair enough"—it was not fair at all.

This exchange between the trial judge and Attorney Moore occurred <u>after</u> plaintiff had rested his case.[23] (R. p. 83, 369: 4-5) (Atty. Moore: "Nothing further, and that's our case, Your Honor."). There are no rules, or statutes, or evidentiary provisions that permit a judge or court to independently investigate the facts, after conclusion of trial (or at all). Certainly, there is no allowance for a court—in the midst of trial and after the plaintiff has rested—to instruct the plaintiff's attorney to "***Just make a list***" of evidence the attorney might have wanted, or wished that he'd had, in hindsight.

Yet, the circuit court (as discussed in the Statement of the Case), went on, after trial, to file an order stating that he was "appointing" a forensic accountant:

> I have appointed Marcus B. Hodge with ASC Forensic as a Court forensic examiner. Because of the lack of documents, the record is incomplete. The Court needs a full record and report from the forensic examiner before rendering a Final Order as to an accounting and the appropriate division of property.

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[23] Which is not to say that it would be any more acceptable if it had occurred at any other time in the trial.

(Order, R. p. 6). The circuit court apparently issued instructions to the forensic accountant, which were not filed and are not in the court's record, authorizing the accountant on behalf of the court to submit discovery requests to the parties, and to issue subpoenas, and to otherwise conduct post-trial discovery, *inter alia*.

These actions by the circuit court were unlawful, they were biased and partial, they were *per se* prejudicial to Ms. Willing, they were contrary to the law of the case established by two separate Scheduling Orders, and they constitute reversable error. Rule 501B, Canon 3, SCACR (Commentary: "A judge must perform judicial duties impartially and fairly . . . A judge must not independently investigate facts in a case and must consider only the evidence presented.").

Over the course of almost a year, both the judge and Mr. Helms' attorney had numerous conversations with the forensic accountant, in which Ms. Willing was not included. (Hodges Statements, R. pp. 626-633). The forensic accountant procured records from Ms. Willings' banks, using Attorney Moore's subpoena power, and Ms. Willing was never provided the subpoena responses. The forensic accountant sought and considered written statements and arguments from Attorney Moore and Mr. Helms ***which Ms. Willing and her attorney have never seen or heard***. The forensic accountant apparently reported to the court intermittently, without the court or the accountant copying Ms. Willing or her attorney. (*Id*.). Ms. Willing and her attorney literally have no idea what supports the forensic accountant's conclusions, because those documents are not in the record and not on file with the court. *See* Rule 501, Canon 3, SCACR (Commentary: "To the extent reasonably possible, all parties or their lawyers shall be included in

communications with a judge.”). The forensic accountant produced a report, which also was never filed with the court, and which Ms. Willing had no opportunity to contest, or to test its authenticity or credibility.

In other words, there were no evidentiary, procedural, or other legal restraints on this post-trial “forensic examination” of undisclosed records, which forms the basis of the trial court’s decisions.

The circuit court’s order, which this Court must reverse and should vacate, refers to the “Forensic Report” a total of eight times within its three pages. (R. pp. 7-9). Reliance by the circuit court on “facts” not in evidence, which were procured long after trial—by the trial judge himself—constitutes reversible error. This court should so hold, and it should find that Mr. Helms failed to prove his case.

IV. The trial court failed to properly apply *any* legitimate theory in arriving at its incorrect conclusions.

The circuit court’s order vaguely mentions the theoretical concept of a business partnership, but this Court should reverse for its failure to apply the law. The order entirely overlooks or disregards South Carolina’s Uniform Partnership Act (“Partnership Act”), which controls when alleged business partnerships are at issue, but is never once mentioned in the order. Instead, the circuit court cites to outdated cases which have been superseded by the Partnership Act (and by the establishment by the Legislature of the uniform statewide Family Court system, in 1976).

Assuming, *arguendo*, that it had subject matter jurisdiction, the Partnership Act should have controlled the circuit court in three respects. First, as to whether or not an alleged partnership existed. Second, if an alleged partnership was found to exist, then

the Act should have controlled as to the liabilities of the parties, to one another as well as to the partnership itself. Finally—if an alleged partnership existed—then the Act should have controlled as to that partnership's dissolution. Because the trial court failed to adhere to the Act in each, or any one, of these regards, this Court should reverse.

A. The trial court failed to apply the Partnership Act's test for determination of a partnership.

The Partnership Act is clear that it supersedes and replaces the common law. *See* S.C. Code §§ 33-41-40 (1) and (4). The Act's Article 3 is dedicated to the "Nature of Partnership," and it expressly defines a "Partnership" as "an association of two or more persons to carry on ***as co-owners*** a business for profit." S.C. Code § 22-41-210 (emphasis added). In addition to defining a partnership, the Act provides a particular test for "Determining the existence of a partnership." S.C. Code § 33-41-220. The Act's test is detailed, consisting of four provisions and their sub-parts.

What matters for the purpose of this appeal is not only *what* the Partnership Act's test is, but also that the trial court completely failed to apply it. Instead, the trial court referenced the common law, and it cited *to a dictionary* for the purported definition of a partnership:

> The court finds that the disputed property was held as partnership property. **Under the common law, a partnership is** a "voluntary contract between two or more competent persons to place their money, effects, labor and skill, or some or all of them, in lawful commerce or business, with the understanding that there shall be a proportional sharing of the profits and losses between them." ***Black's Law Dictionary* 1120 (6th ed. 1990). . . .**

(Order, R. p. 8) (emphasis added) (Black's Law Dictionary is not "the common law," and the Partnership Act's definition of a "partnership" controls).

Importantly, as one example of the trial court's error, the Partnership Act requires a showing of co-ownership of an alleged business. S.C. Code § 33-41-210. The trial court's order does not discuss this requirement, and nor does the order make any finding that Mr. Helms owned a business in common with Ms. Willing.

Because the trial court's finding of a "partnership" is contrary to the Partnership Act, this Court should reverse.

B. The trial court failed to apply the Partnership Act's provisions as to "the disputed property."

Throughout its order, the trial court refers to "disputed property," which apparently includes both real and personal property, as well as money. As discussed above, Mr. Helms had argued that he had a claim to that property since it was "marital property," thereby vesting the Family Court with exclusive jurisdiction. However, if *arguendo* the "disputed property" is the property of a business partnership, then this Court should reverse because the trial court failed to apply the Partnership Act's express provisions on partnership property.

The Partnership Act does not permit the willy-nilly allocation of property set forth in the order. The Act has precise mechanisms for defining the nature and extent of a partner's rights and obligations as to partnership property. Those controlling provisions, which were improperly disregarded by the trial court, include:

- § 33-41-230, which controls "Partnership property; acquisition and conveyance."
- § 33-41-710, which controls "Extent of property rights."
- § 33-41-720, which controls "Nature of right in specific partnership property."
- § 33-41-730, which controls "Nature of partner's interest in partnership."

Because the trial court's order ignores, and is contrary to, each of these statutory provisions, this Court should reverse.

C. The trial court failed to apply the Partnership Act's provisions as to dissolution and winding up.

Finally, having (incorrectly) found a business partnership, the trial court committed further reversible error by ignoring the Partnership Act's controlling law on dissolution and winding up. Of foremost concern, the trial court wrongly failed to recognize that a partnership "is an entity, separate and distinct from the persons who compose it." *South Carolina Tax Com'n v. Reeves*, 300 S.E.2d 916, 278 S.C. 658 (1983), *citing* the Partnership Act, S.C. Code § 33-41-10 *et seq.* (1976). Improperly disregarding this legal truth, the trial court "split the baby and a watermelon" by wrongly finding that the *individual parties* owned personal and real property, which properly belonged to the partnership itself (assuming *arguendo* that one existed). (*See* R. p. 103).

The circuit court's order, purportedly dissolving and winding up an alleged business partnership, is contrary to the Partnership Act's entire Article 11, which should have controlled as to "Dissolution or Winding Up." S.C. Code § 33-41-910 *et seq*. This court should reverse this error of law by the circuit court.

V. Plaintiff failed to meet his burden of proof to demonstrate a business partnership.

Finally, this court should reverse because Mr. Helms, as the plaintiff, failed to meet his burden of proof to demonstrate a business partnership, and the preponderance of the evidence is against the findings of the trial court.

As discussed above, Mr. Helms arrived on the day of trial with zero documentary evidence to prove that he was the co-owner of a business with Ms. Willing. Mr. Helms' trial exhibits, and their lack of probative value, are detailed above, in the Statement of the Case. As remarkable as the scant documentation that Mr. Helms *did* bring to trial—after the case had been pending for 5 years—were the items that he *did not* bring: he did not bring any of his *own* banking records, he did not bring his tax returns, he did not bring any deposit slips, he did not bring any insurance policies, he did not bring any deeds, or leases, or **any records of any sort** to demonstrate that he shared in the profits, losses, liabilities, and assets of a purported business partnership with Ms. Willing. Instead, Mr. Helms brought witnesses, identified as "People that knew we carried ourselves as man and wife." (R. p. 564).

The only evidence that Mr. Helms put forth as to his purported business partnership with Ms. Willing was his own testimony, in which he never defined the nature of the business, nor his ownership interest in it. *See* S.C. Code § 22-41-210 (a "partnership" is "an association of two or more persons to carry on ***as co-owners*** a business for profit." (emphasis added)). Since Mr. Helms also testified that he was committing tax fraud by operating in cash only, and that he suffered from a substance abuse problem, and that he had been cited on several occasions for illegal gambling, his credibility is doubtful. (R. pp. 41-42, 206-207, 274-282).

Critically, the circuit court was aware that Mr. Helms had failed to prove his case. We know this because the trial judge did not rule in Mr. Helms' favor at the conclusion of the trial. (R. p. 408: 7, "And, of course, **I'm not going to make a decision in this**

matter.") (emphasis added). Instead, in a deeply prejudicial error, the trial court decided to conduct its own discovery on behalf of Mr. Helms, and asked Mr. Helms' attorney to "**Just make a list**" of the documents he wished that he had, in hindsight. (R. p. 392) (emphasis added); (Order, R. p. 6: "Because of the lack of documents, the record is incomplete."). And then—after the trial was long over and the plaintiff had rested his case—the court improperly appointed a forensic accountant to conduct discovery that Mr. Helms had failed to do, and to improperly act as fact-finder in favor of Mr. Helms.

It goes almost without saying that the trial court does not carry any burden of proof at trial. But the plaintiff does. Mr. Helms, as the plaintiff in this case, failed to meet his burden of proof as to each of his causes of action—which the circuit court acknowledged by not ruling for him at the close of evidence at trial. Because there is no question that Mr. Helms did not meet his burden of proof, this Court should hold that he is the losing party in this case.

CONCLUSION

For each or any one of the reasons set forth above, this Court should reverse the lower court's errors of law, remand on Ms. Willing's counterclaim, and find the trial court's decisions to be invalid and void.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable L. Casey Manning

Circuit Court Case No. 2015-CP-40-07268
Appellate Case No. 2021-000898

Jimmy Helms...Respondent,

v.

Debbie Willing, ...Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Appellant's Final Brief and Final Reply Brief comply with Rule 211(b), SCACR.

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