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**May 02 2025**

**SC Court of Appeals**

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

Appeal from Charleston County  
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

Case No. 2016-CP-10-02955  
Appellate Case No. 2021-000272

TCC of Charleston, Inc.,

Appellant/Respondent,

v.

Concord and Cumberland, LLC, Concord & Cumberland HPR, Leo Hall, Diane Hall, Bea H. Smith, Margaret C. Pope, William D. Foster, Jr., Gene G. Foster, Mattison J. MacGillivray, Teresa MacGillivray, Pamela L. Vaughn, Nelia A. Patricio, Trustee of the Nelia A. Patricio Revocable Trust Agreement, Stuart D. Reeves, Edward T. Strom, Barbara K. Henderson, James R. Clarke, Paul A. Brim, Robert K. Seidl, Jennifer M. Seidl, Robert Kenneth Seidl, II, M. Bert Storey, Thomas R. Mather, Edward T. Strom, 304 Concord & Cumberland, LLC, Marion M. Simpson f/k/a Marion Moore McDonald Simpson, Kathy Gardner, Gregory J. Gardner, Freeman Waterfront Properties, LLC, Jo-Ann Cooper, Betty Y. Segal, Robert M. Levin, and Bonita K. Levin, Donald D. Leonard, Betty L. Beatty, Mattellen, LLC, and Thomas R. Debnam, Trustee of the Trust Agreement of Thomas R. Debnam,

Respondents,

Of which Concord & Cumberland HPR is the

Respondent/Appellant.

**RESPONDENT BETTY L. BEATTY'S  
PETITION FOR REHEARING**

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*Attorneys for Respondent Betty L. Beatty*

By and through her undersigned counsel, pursuant to Rule 221(a), SCACR, Respondent Betty L. Beatty (“Mrs. Beatty”) petitions this Honorable Court for rehearing of this matter, which it decided via Opinion No. 6106 (S.C. Ct. App. filed March 19, 2025) (the “Subject Opinion”), contending most respectfully that, with respect to its reversal of the master’s award of attorney’s fees to Mrs. Beatty,<sup>1</sup> the Court misapprehended or overlooked a number of material points, as explained below.

1. **The Court erred in reversing the master’s award of attorney’s fees to Mrs. Beatty.**
  - (a) **The Court erred in not finding that TCC had failed to preserve for review any issue as to the amount of the master’s award of attorney’s fees to Mrs. Beatty.**

Although duly raised by Mrs. Beatty,<sup>2</sup> the Subject Opinion fails to address her arguments regarding TCC’s failure to preserve any issues for review regarding the master’s award of attorney’s fees. *See* Rule 220(b), SCACR (“In every decision rendered by an appellate court, every point distinctly stated in the case which is necessary to the decision of the appeal and fairly arising upon the record of the court must be stated in writing and must, with the reason for the court’s decision, be preserved in the record of the case.”)<sup>3</sup> The Court should address these arguments now and, upon doing so, find that the master’s award of attorney’s fees to Mrs. Beatty should be affirmed.

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<sup>1</sup> This petition does not seek rehearing with respect to the Court’s affirmance of the master’s grant of partial summary judgment to Mrs. Beatty, only with respect to the Court’s reversal of the master’s award of attorney’s fees to Mrs. Beatty.

<sup>2</sup> (Mrs. Beatty’s Br. pp. 33–37.)

<sup>3</sup> In matters before this Court, the only exception to this rule is that the Court “need not address a point which is manifestly without merit.” Rule 220(b)(2), SCACR. Mrs. Beatty submits that, as duly shown in her appellate brief and reiterated here, the substance of her arguments is self-proving of the fact that they are not manifestly without merit.

The master issued an oral ruling granting summary judgment to Mrs. Beatty on November 5, 2020, and requested a proposed order along with affidavits of attorney’s fees and supporting documentation. (R. pp. 2575:14–2587:13). On November 18, 2020, counsel for Mrs. Beatty submitted an initial proposed order granting summary judgment to Mrs. Beatty along with an affidavit of attorney’s fees and supporting documents. Thereafter, TCC filed its “Omnibus” response and objections to Mrs. Beatty’s submissions, wherein it noted that the master had not heard argument on Mrs. Beatty’s fees and challenged the contents of Mrs. Beatty’s fee submissions. (R. pp. 2132–2141.) On January 27, 2021, the master heard argument on TCC’s objections to not only Mrs. Beatty’s proposed order but also a separate proposed order that the HPR had submitted. (R. pp. 2496–2531.) At that hearing, TCC failed to address any of its objections to the fee affidavit submitted by Mrs. Beatty’s counsel and never even raised the issue of Mrs. Beatty’s fees. (R. pp. 2496–2531.) Thus, there was never a *ruling* on TCC’s objections. At the conclusion of the hearing, the master again requested proposed orders and attorney’s fee affidavits. (R. pp. 2528:15–2530:9.)

On February 10, 2021, counsel for Mrs. Beatty submitted a *new* proposed order and a *second* affidavit of attorney’s fees with revised backup documentation. TCC did not raise any objections to Mrs. Beatty’s new proposed order and attorney’s fees affidavit. The master’s order granting partial summary judgment to Mrs. Beatty and awarding her attorney’s fees and costs in the amount of \$76,000 was filed on February 16, 2021. (R. pp. 64–82.)<sup>4</sup> Ten days later, on February 26, 2021, counsel for TCC emailed the master and expressly declined to request a hearing on the quantum of fees to be awarded. (R. p. 2673.) On March 11, 2021, TCC filed its notice of

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<sup>4</sup> The Subject Opinion refers to the master as having awarded Mrs. Beatty “\$76,000 in attorney’s fees.” In fact, the \$76,000 amount awarded to Mrs. Beatty comprised attorney’s fees in the amount of \$75,000 and costs in the amount of \$1,000. (R. p. 80.)

appeal. (R. pp. 2739–2740.) The next day—and 24 days after the master’s February 16, 2021, order granting partial summary judgment to Mrs. Beatty and awarding her attorney’s fees and costs—TCC filed its Motion for Reconsideration and/or Clarification pursuant to Rules 59 and 60, SCRCF. (R. pp. 2240–2247.) By order filed March 26, 2021, the master correctly denied TCC’s motion, expressly finding that TCC’s Rule 59(e) motion was untimely as to Mrs. Beatty. (R. p. 116).<sup>5</sup>

**(i) TCC never requested to be heard regarding the fees submitted to the master by Mrs. Beatty’s counsel on February 10, 2021.**

The Court’s reversal of the master’s award of attorney’s fees concerns only the amount of the award, not the threshold question of Mrs. Beatty’s entitlement to an award of attorney’s fees. (Subject Opinion (“[W]e hold the evidence in the record does not support the award of \$76,000 in attorney’s fees to Beatty.”); *see also id.* (“We hold the master did not err in granting partial summary judgment to Beatty . . . .”)).) But any issue related to the reasonableness of the master’s attorney’s fee award to Mrs. Beatty was not preserved for review by this Court, because TCC failed to properly raise the issue before the master. At the January 27, 2021, hearing, TCC made no mention of Mrs. Beatty’s fees. The master instructed counsel for Mrs. Beatty and the HPR to submit attorney’s fee affidavits reflecting time they devoted to defending TCC’s mechanic’s lien claim through February 1, 2021. (R. p. 2530.) Thereafter, counsel for Mrs. Beatty submitted its affidavit for attorney’s fees to the master along with the supporting time records. (R. p. 78.)

TCC never asked to be heard in response to Mrs. Beatty’s submitted attorney’s fees. Only after the master’s February 16, 2021, order granting partial summary judgment and awarding attorney’s fees and costs to Mrs. Beatty did TCC mention a hearing on the “quantum of fees,” and

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<sup>5</sup> Rule 59(e) (“A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order.”).

it did so in expressly advising the master that it was declining to request a hearing thereon. (R. p. 2673.) The first time TCC challenged the amount of fees awarded to Mrs. Beatty was in its motion for reconsideration filed March 12, 2021, which (a) was an untimely motion, as the master correctly found, and (b), in any event, was too late to complain for the first time about the amount of attorney’s fees awarded to Mrs. Beatty. *Repko v. County of Georgetown*, 424 S.C. 494, 502, 818 S.E.2d 743, 748 (2018) (“It is settled that ‘[a]n issue may not be raised for the first time in a motion to reconsider.’”) (quoting *Johnson v. Sonoco Prods. Co.*, 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009).); *see also Commercial Credit Loans, Inc. v. Riddle*, 334 S.C. 176, 186, 512 S.E.2d 123, 129 (Ct. App. 1999) (“Further, because the transcript of the proceedings below is omitted from the record, it appears the first time Commercial Credit made this argument was in its Rule 59(e) motion for reconsideration. Accordingly, this issue is not properly preserved for our review.”).

“It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been [timely] raised to and ruled upon by the trial judge to be preserved for appellate review.” *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998); *Repko*, 424 S.C. at 502, 818 S.E.2d at 748; *Johnson*, 381 S.C. at 177, 672 S.E.2d at 570; *see also Riddle*, 334 S.C. at 186, 512 S.E.2d at 129. Here, TCC failed to preserve any issue related to the amount of the master’s award of attorney’s fees to Mrs. Beatty, because it did not properly raise the issue prior to the master’s order granting attorney’s fees to Mrs. Beatty, but rather only raised the issue for the first time in an untimely Rule 59(e) Motion.

**(ii) TCC failed to preserve any issue related to the reasonableness of the master’s attorney’s fee award to Mrs. Beatty because it cannot raise the issue for the first time in a Rule 59(e) motion.**

TCC failed to raise any challenge to Mrs. Beatty’s February 10, 2021, attorney’s fee affidavit to the master before he ruled and could not raise it for the first time in an untimely post-trial motion. On March 12, 2021, several weeks after the master entered his order awarding Mrs. Beatty attorney’s fees on February 16, 2021, TCC filed an untimely Rule 59(e) motion raising for the first time the issue of the amount of the master’s attorney’s fee award to Mrs. Beatty. (R. pp. 2240–2247.) Notwithstanding the fact that TCC’s motion was untimely and thus invalid, TCC has not preserved for review its objection to the master’s fee award, because, again, an issue cannot be raised for the first time in a motion to reconsider. *Repko*, 424 S.C. at 502, 818 S.E.2d at 748; *Johnson*, 381 S.C. at 177, 672 S.E.2d at 570; *see also Riddle*, 334 S.C. at 186, 512 S.E.2d at 129.

In *Kitchen Planners, LLC v. Friedman*, 432 S.C. 267, 857 S.E.2d 724 (Ct. App. 2020), this Court addressed an analogous scenario. In that case, the appellant, like TCC here, “failed to challenge the [respondent]’s submission of the fee affidavit during the summary judgment hearing and challenged the contents of the fee affidavit for the first time in its Rule 59(e), SCRPC, motion.” *Id.* at 286, 851 S.E.2d at 735. This Court properly ruled that the appellant’s challenge to “the sufficiency and contents of the fee affidavit” was not preserved and affirmed the circuit court’s award of attorney’s fees. *Id.* Like the appellant in *Kitchen Planners*, TCC failed to preserve any issue related to the reasonableness of the master’s attorney’s fee award to Mrs. Beatty. As such, this Court must affirm the master’s award, as TCC has not preserved this issue for this Court’s review.

**(iii) TCC’s Rule 59(e) motion for reconsideration on the issue of attorney’s fees was untimely.**

Assuming, *arguendo*, that TCC had properly raised any issue related to the reasonableness of the master’s attorney’s fee award to Mrs. Beatty, it failed to preserve the issue for review by this court, because its Rule 59(e) motion was dismissed as untimely and not substantively ruled on. Thus, any issue raised in that untimely motion was not preserved for appeal.

TCC filed its notice of appeal of the master’s February 16, 2021, order on March 11, 2021. (R. pp. 2739–2740.) The next day, apparently realizing that it failed to preserve the issue related to the master’s award to Mrs. Beatty, TCC filed a Motion for Reconsideration and/or Clarification pursuant to Rules 59(e), 60(a), and 60(b), SCRPC. (R. pp. 2240–2247.) This post-trial motion came 24 days after the master’s February 16, 2021, order and 14 days after TCC’s counsel expressly declined to request a hearing on reasonableness of the master’s attorney’s fees award. TCC failed to seek leave of this Court to proceed with that motion as required under Rules 60(a) & (b)(5), SCRPC, and does not enjoy the benefit of the Supreme Court’s holding in *Hudson v. Hudson*, 290 S.C. 215, 349 S.E.2d 341 (1986), since its Rule 59(e) motion was untimely.

If the losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellate review. *I’On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) (citing Rule 59(e)). This motion must be timely served “not later than 10 days after receipt of written notice of the entry of the order.” Rule 59(e). Issues presented in untimely post-trial motions are not preserved for appeal, because they were not timely raised and thus not ruled upon. *Nelson v. Nelson*, 428 S.C. 152, 178 n.4, 833 S.E.2d 432, 446 n.4 (Ct. App. 2019). After all, “there must be finality, a time when the case in the trial court is really over and the loser must appeal or

give up[.]” *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 20, 602 S.E.2d 772, 778 (2004) (citations omitted).

- (b) **Assuming, *arguendo*, that TCC preserved the issue of attorney’s fees for appeal, (i) TCC did not meet its burden to show that the master abused his discretion with respect to the amount of fees awarded to Mrs. Beatty and (ii) the Court’s reversal of the master’s award of attorney’s fees to Mrs. Beatty erroneously shifts burdens that belong to TCC as appellant to respondent Mrs. Beatty.**

The Court misapprehended or overlooked the principle that an appealed order comes to the appellate court with a presumption of correctness, with the burden on the appellant to demonstrate reversible error,<sup>6</sup> and that, along with the burden to demonstrate reversible error, “[t]he [a]ppellant bears the burden of providing a sufficient record on appeal from which [the appellate court] can make an intelligent review.” *Matter of Est. of Moore*, 435 S.C. 706, 715, 869 S.E.2d 868, 872–73 (Ct. App. 2022); *see also I’On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 421–22, 526 S.E.2d 716, 724 (2000) (“An appellate court may not, of course, *reverse* for any reason appearing in the record.”) (emphasis in original).

TCC did not show that the master abused his discretion in the amount of fees awarded to Mrs. Beatty. The master reviewed the fee affidavit and corresponding unredacted time entries submitted by counsel for Mrs. Beatty *in camera* and thoroughly evaluated both under the six reasonableness factors articulated in *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 650 (1997): (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the beneficial results obtained; and (6) the customary legal fees for similar services. As noted in the fee affidavit and counsel for Mrs. Beatty’s December 3, 2020, letter to the master, counsel focused solely on TCC’s

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<sup>6</sup> *McCall v. IKON*, 380 S.C. 649, 659–60, 670 S.E.2d 695, 701 (Ct. App. 2008).

mechanic's lien claim and "intentionally did not move for summary judgment on TCC's breach of contract or 'Equity' causes of action, so there would be no argument that fees incurred in seeking dismissal of those claims should be excluded." (R. pp. 2799–2802.) The master, in his reasoned discretion and after clearly explaining the basis for his award, awarded Mrs. Beatty fees of \$75,000.00 and costs of \$1,000.00 in his February 16, 2021, order. (R. pp. 64–82.)

The master did not simply rubber stamp counsel for Mrs. Beatty's attorney's fee request. Rather, the master, using his reasoned discretion, *reduced* Mrs. Beatty's fees by 4.5%. (R. pp. 64–82, 98-103.) In fact, the master did not award fees for the entire period while the foreclosure action was stayed. The master clearly states in his March 26, 2021, order denying TCC's untimely Rule 59(e) motion, "I would note that almost all the attorney's fees awarded to Betty Beatty were incurred after the claim for attorneys [sic] fees was filed by Plaintiff. I have given her credit for filing the answer to the initial complaint and *awarded no fees while the matter was stayed during the arbitration proceeding.*" (R. pp. 115–119 (emphasis added)).

While recognizing that "the master made specific findings of fact as to the *Jackson* factors when awarding the attorney's fees Beatty," the Court "h[e]ld the evidence in the record does not support the award of \$76,000 in attorney's fees to [Mrs.] Beatty." (Subject Opinion.) The particular evidence that the Court cited as being lacking are the "itemized records of the hours each attorney and legal staff member spent on the case" that were presented to the master for in camera review but "are not included in the record on appeal." (*Id.*) Due to the absence of these records, the Court "h[e]ld that the record on appeal does not include evidence to support the master's award of attorney's fees to Beatty based on factors such as the nature, extent, and difficulty of the case and the time necessarily devoted to the case," and "[a]ccordingly, . . . reverse[d] and remand[ed]

the master’s award of \$76,000 in attorney’s fees to Beatty for a hearing regarding the issue of attorney’s fees with the unredacted attorney’s fees affidavits provided to TCC.” (*Id.*)

TCC, however, never actually asked the master to require Mrs. Beatty to produce to it the records that it provided the master for *in camera* review. Review of TCC’s untimely motion to reconsider filed March 12, 2021, shows that, while TCC states, “TCC of course has had no opportunity to review these time entries [submitted to the master for *in camera* review],”<sup>7</sup> TCC never actually asks the master to require Mrs. Beatty to produce these materials for it to review. (R. p. 2240 (not asking the master to require production of the materials reviewed *in camera*, but “request[ing] that the [master] set forth how it exercised its discretion to award fees . . . .”; R. pp. 2243 (not asking the master to require Mrs. Beatty to produce these materials for it to review, but citing its lack of an opportunity to review and challenge the materials submitted for *in camera* review as a basis for *other* relief (again, not in the form of production of the materials) in the form more information from the master as to how he exercised his discretion). And again, in its reply to Mrs. Beatty’s response in opposition to its motion to reconsider, TCC accepts that it is unable to review Mrs. Beatty’s attorneys’ unredacted time entries and thus asks that the master require Mrs. Beatty’s attorney’s to certify that the invoices provided for *in camera* review are the invoices as recorded contemporaneously and that they have not been altered in any way for purposes of these applications for fees—but does not ask for production of the records themselves. (R. p. 2269.)

The master’s order awarding attorney’s fees to Mrs. Beatty comes to this Court with a presumption of correctness, and it is TCC’s burden as appellant to affirmatively disprove this presumption, and this burden includes the burden of presenting a sufficient record for review.

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<sup>7</sup> (R. p. 2240.)

*McCall*, 380 S.C. at 659–60, 670 S.E.2d at 701; *Moore*, 435 S.C. at 715, 869 S.E.2d at 872–73.

The basis for the Court’s reversal of the master’s award of attorney’s fees to Mrs. Beatty is the absence in the record of the itemized records that the master reviewed *in camera*. TCC never actually sought to obtain these records so that they could be included in the record on appeal. TCC did not meet its burden to demonstrate reversal error and provide the Court with a record sufficient to do so. Rather, the Court’s reversal of the master’s award of attorney’s fees to Mrs. Beatty erroneously removes these burdens from TCC and imposes them upon Mrs. Beatty.

### **CONCLUSION**

For the foregoing reasons, along with any other or further reason(s) set forth in her appellate brief already on file, the entirety of which she hereby adopts and incorporates herein by reference and reiterates/reasserts in support hereof, together with any other or further reasons set forth in the HPR’s petition for rehearing, which are adopted and incorporated herein to the extent they are supportive of and not inconsistent with or contrary to her position, Mrs. Beatty asks this Honorable Court to grant the instant petition, to rehear this matter with respect to the issue of the attorney’s fees that the master awarded her, and (via an amended, supplemental, or substituted opinion, or such other means as may be procedurally proper—provided the Court’s affirmance of the master’s summary judgment in her favor remains), affirm the master’s award of attorney’s fees to Mrs. Beatty.

**<SIGNED ON THE FOLLOWING PAGE>**

Respectfully Submitted,  
CLEMENT RIVERS, LLP

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Respondents,

Of which Concord & Cumberland HPR is the

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**PROOF OF SERVICE**

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*Attorneys for Respondent Betty L. Beatty*

I, Russell G. Hines, of Clement Rivers, LLP, counsel for Respondent Betty L. Beatty, certify that **RESPONDENT BETTY L. BEATTY'S PETITION FOR REHEARING** was served on all other parties to this matter on May 2, 2025, via email (see attached) to their counsel of record:

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Charleston, South Carolina

May 2, 2025

## Hines, Russell

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**Subject:** TCC v. Concord and Cumberland (21-000272) -- Respondent Betty L. Beatty's Petition for Rehearing  
**Attachments:** TCC v. Concord (21-000272) -- Respondent Betty L. Beatty's Petition for Rehearing.pdf

Attached for service in the above-referenced matter please find **Respondent Betty L. Beatty's Petition for Rehearing**.

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