

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable L. Casey Manning, Circuit Court Judge

Appellate Case No. 2021-00898
Opinion No. 2024-UP-277

Jimmy Helms Respondent,

v.

Debbie Willing..... Petitioner.

RESPONDENT'S RETURN TO PETITIONER'S PETITION FOR CERTIORARI

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INTRODUCTION

Respondent submits this Return in Opposition to the Petition for Certiorari. The Petition should be denied.

A Writ of Certiorari will only be granted where there are special and important reasons. *See, generally, Ellison v. State*, 382 S.C.189, 676 S.E.2d. 617 (2009). In determining whether these special reasons exist, the Court considers the following five criteria: (1) Where there are novel questions of law; (2) where there is dissent in the decision of the Court of Appeals; (3) where the decision of the Court is in conflict with a prior decision of the Supreme Court; (4) where substantial constitutional issues are directly involved; and (5) where a Federal question is included and the decision conflicts with a decision of the United States Supreme Court. *Huggins v. State*, 377 S.C. 135, 659 S.E. 2d. 170 (2008); Rule 242(b) SCACR.

Furthermore, the Supreme Court will only review errors of law and factual findings will not be reviewed unless wholly unsupported by the evidence. *Hollman v. Woolfson*, 384 S.C.571, 683 S.E.2d. 495 (2009).

None of these apply here. The Opinion of the Court of Appeals does not contain any errors of law nor include any unsupportable evidence. The Petition does not address a novel question of law. Furthermore, the Opinion of the Court did not contain a dissent, it did not conflict with a prior decision of this Court, and did not include a Federal Question. In short, this Court has not been presented with any ground that would justify a decision to grant the Petition.

COUNTER STATEMENT OF THE CASE

Respondent Jimmy Helms (“Respondent”) commenced an action against Petitioner Debbie Willing “(Petitioner)” in the Richland County Family Court in September of 2015. (R. pp. 14-20). In her Answer, Petitioner denied that there was any type of marital relationship between the parties

and also denied that the Family Court had any jurisdiction over the parties or the issues between them including any “equitable distribution of property.” (R. pp. 21-24).

After receiving Petitioner’s Family Court Answer, Respondent filed the present action in Circuit Court based on Petitioner’s position that there was no common law marriage and that the Family Court lacked jurisdiction over the parties or issues involved in the Family Court action. Respondent alleged in his Circuit Court Complaint that if, in fact, there were no issues or jurisdiction before the Family Court, a business partnership existed between the parties. (R. pp. 25-30). The Respondent’s Complaint prayed for actual and punitive damages; for an order declaring the rights of the parties to another; for an accounting; for a division of partnership properties; and for a winding up and termination of partnership affairs. (R. pp. 25-30).

The Petitioner answered Respondent’s Circuit Court Complaint, once again specifically denying the fact that the Family Court had any jurisdiction over the parties and alleging that the Circuit Court lacked jurisdiction **only** in the event that the Family Court retained jurisdiction over the Family Court action. (Emphasis Added). (R. pp. 31-34).

This matter was tried non-jury before the Honorable L. Casey Manning, Presiding Judge of the Fifth Judicial Circuit on July 13 and July 14, 2020. Prior to the first witness being called, Judge Manning appointed Marcus B. Hodge, CPA/ABV/CFF, MBA, CFE of ASC Forensic as the Court’s forensic accountant/expert. Neither party objected to the appointment of Mr. Hodge in this capacity. Judge Manning heard the case and took the matter under advisement. Mr. Hodge conducted discovery which included the discovery requests and the issuance of subpoenas to the parties. At no time did Petitioner object to any of the discovery undertaken by Mr. Hodge. Mr. Hodge then issued his report which was provided to the parties. Petitioner, through her trial counsel, accepted Mr. Hodge’s report as a Court’s exhibit without objection.

On July 21, 2021, Judge Manning issued his Order (R. pp. 11-13) finding that no partnership existed as to the disputed properties located at 1900 Osceola, 1904 Osceola, 809 Shull Street, 185 Harbor Watch (owned by Petitioner) and the 1905 Osceola Property (owned by the Respondent). The Court found that 812 Meeting Street and 820 Meeting Street and proceeds from the business located on it were held as partnership property. The Court held that Respondent holds the legal title to the property. The Court divided the proceeds from the sale of Jimmy's Mini Mart/Jimmy's Citgo as well as the proceeds from the lawsuit involving defective gasoline tanks. The Court divided the \$86,620.48 which constituted the balance of three deposit accounts controlled by Appellant as of July 1, 2015, that received proceeds from the sale of the parties' business (Jimmy's Mini Mart), rental income from 812 Meeting Street/820 Meeting Street, and installment payments from the sale and inventory of Jimmy's Mini Mart equally between the parties. (R. pp. 7-10).

Following Judge Manning's Order, the Petitioner moved for reconsideration or in the alternative for a new trial *solely* on the grounds that (1) the Circuit Court erred in finding that the Parties held the property at 812 and 820 Meeting Street in partnership and in awarding Plaintiff (Respondent) title to the property; (2) the Court erred in finding that ordering a sale of 812 and 820 Meeting Street was inequitable; (3) the Circuit Court failed to order a winding up of the affairs of the partnership to include division of liabilities connected with 812 and 820 Meeting Street when the Court found the parties held the property in partnership; and (4) the Circuit Court erred in dividing proceeds from the sale of the rights to Jimmy's Citgo, litigation proceeds and account balances. (R. pp. 76-80). Appellant's counsel raised no issue(s) concerning the Court's ruling on any of the properties at issue other than the 812 Meeting Street and 820 Meeting Street properties. *Id.* Appellant's Motion alleged error with the Court's division of monies arising out of the sale

and operation of the convenience store/gas station located on these two pieces of property. *Id.* Appellant's Motion alleged no other error on the part of the Trial Judge and sought no other relief from the Trial Court's Order. Appellant's Motion raised no issues as to the appointment of Mr. Hodge or the work that he performed in this case.

On July 19, 2021, Judge Manning issued his Order denying Petitioner's Motion. In denying Appellant's Motion, Judge Manning set forth that his original Order, issued in the case on June 21, 2021, "...held that a partnership existed and partnership property was equitably divided amongst the Plaintiff (Respondent) and Defendant (Appellant)." (R. pp. 11-13). Judge Manning concluded:

The analysis in the June 21, 2021 order of the existence of the partnership is reaffirmed and the winding up of the partnership affairs was accomplished by the equitable division of the partnership property. The equitable division of property in the June 21, 2021 order relied on the filings, and testimony of the parties at trial and a forensic accountant report prepared by Marcus Hodge that included extensive financial records of Plaintiff (Respondent) and Defendant (Appellant).

Id. This appeal followed. On July 24, 2024, the Court of Appeals issued its Order affirming the Trial Court's Order. The Court of Appeals' opinion is not contrary to the constitutional and statutory law, public policy, the Rules of Procedure, or the Record on Appeal. Petitioner's Petition for Certiorari should be denied.

COUNTER STATEMENT OF THE FACTS

Respondent and Petitioner began a relationship in December of 2003. (R. p. 106, l. 25 – p. 107, l. 6). They were never formally married in any type of religious or civil ceremony. (R. p. 106, ll. 6-9). Petitioner has continuously taken the position that the parties never married. (R. pp. 21-24; pp. 31-34; p. 106, ll. 10-12). They were "together" for approximately eleven (11) years. (R. p. 107, ll. 7-9). Their relationship ended in 2016. (R. p. 207, ll. 22-24).

At the time that the parties' relationship began, Petitioner was also operating a small convenience store at 812 Meeting Street in West Columbia, South Carolina, "owned" by L&D Enterprises ("L&D") doing business under the name of "Alice's Food and Beverage." ("Alice's"). (R. p. 111, ll. 18 - 23; p. 111, l. 21 – p. 112, l. 7; p. 144, l. 16 – p. 145, l. 4). Respondent was also the owner of the real property located at 812 Meeting Street in West Columbia on which the convenience store sat.

L&D was incorporated in the late 1990s. (R. p. 309, l. 25 – p. 310, l. 3). Initially L&D was in the name of Respondent's ex-wife. (R. p. 218, ll. 9-14). The business was later sold to one of Respondent's children. In 2000, Respondent purchased the business from his son-in-law for \$20,000.00. (R. p. 195, l. 24 – p. 196, l. 2; p. 310, ll. 4-8; p. 723). Respondent took over the day-to-day running of the convenience store. The store sold drinks, food items, cigarettes and lottery tickets. (R. p. 197, l. 25 – p. 198, l. 2). There were no gas pumps at the store at that time. (R. p. 310, ll. 9-10).

At the time that the Respondent took over operation of Alice's, the small lot on which it sat, 812 Meeting Street in West Columbia, South Carolina was owned by an individual named Al Landers. Respondent purchased the 812 Meeting Street Lot in return for a \$120,000.00 promissory note. (R. p. 113, ll. 14-15; p. 196, ll. 3-4; p. 728). Petitioner had no interest whatsoever in the operation of the convenience store or any ownership interest in the property on which it sat at the time the parties' relationship began. (R. p. 111, l. 5 – p. 112, l. 7; p. 111, ll. 18-20).

Sometime in 2003, Respondent asked Petitioner to assist him with the operation of the convenience store. Petitioner put \$20,000.00 of her own funds into the convenience store. She testified that she did this to keep the store solvent and operating. (R. p. 112, ll. 17-19). She testified that she put this money into the bank account of Alice's in exchange for a promissory note signed

by Christa and Michael Wilks which she did not negotiate. (R. p. 152, l. 21 – p. 153, l. 6; p. 724). While Petitioner claims that as a result of this transaction, L&D was transferred into her name, she has no documentary evidence establishing this fact. (R. p. 153, ll. 10-14; p. 154, l. 23 – p. 155, l. 6; p. 310, l. 23 – p. 311, l. 1).

In 2004, Petitioner purchased the adjacent property to the convenience store, located at 820 Meeting Street in West Columbia. (R. p. 168, ll. 11-13). In January of 2006, Respondent transferred title of the 812 Meeting Street Property to Petitioner for \$5.00. (R. p. 156, l. 13 – p. 157, l. 3; p. 728). Petitioner took over the loan to Al Landers. (R. p. 111, ll. 10-12). This was a mutual decision – to put properties held by the couple – in Appellant’s name due to her credit history and the fact that Respondent was engaged in a number of businesses whose legality was at issue/in question. These were the sole reasons for this arrangement(s). (R. p. 148, ll. 11-19; p. 196, ll. 10 – 15). Despite the titling of the properties, Respondent considered the parties to be partners in the running of the store and he did not intend to give up his interest in the store. (R. p. 225, l. 22 – p. 226, l. 5; p. 231, ll. 23-25; p. 254, ll. 1-8).

The parties changed the name of the business from “Alice’s” to Jimmy’s Mini Mart. (R. p. 198, ll. 3-9; p. 310, ll. 11-18). This was a mutual decision. (R. p. 310, ll. 13-18; p. 198, ll. 3-17). Respondent trusted Appellant and recognized her intelligence and business acumen. (R. p. 122, ll. 8-9; p. 122, l. 21 – p. 123, l. 17). Petitioner began working with Respondent at the convenience store. (R. p. 122, ll. 14-16; p. 195, ll. 2-5). The parties agreed that Respondent would maintain his interest in the store and in its operation. (R. p. 196, l. 16 – p. 197, l. 3).

Both parties derived income from the operation of the store. Petitioner represented Jimmy’s Mini Mart as her employer on a signature card for a personal deposit account at Wells Fargo. Petitioner reported the income from Jimmy’s Mini Mart on her income tax returns. (R. p. 725; p.

727). The parties both used income from the store to purchase properties and to pay off existing debts. (R. p. 273, ll. 11-13). The parties jointly controlled the day to day business operation of the convenience store. (R. p. 322, ll. 7-10). Petitioner managed the daily operation of the business which included management of personnel, tax compliance and the acquisition of assets of the business. (R. p. 199, ll. 8-13). Respondent also worked at Jimmy's. He ran the register and stocked boxes as well as mixing with potential customers. (R. p. 119, ll. 4-7; p. 373, ll. 19-22). Both parties hired and managed store employees. (R. p. 322, ll. 7-10). Both parties wrote and signed business checks. (R. p. 373, ll. 5-10). The parties paid personal and business related expenses and bills out of the proceeds of the business and out of their personal funds. (R. p. 145, l. 22 – p. 147, l. 3; p. 177, l. 24 – p. 178, l. 19).

The parties reached a mutual decision to “convert” the existing convenience store to a gas station and convenience store. They decided to add gas pumps in order to improve the profit of the convenience store. (R. p. 223, l. 15 – p. 224, l. 8; p. 201, ll. 3-8). Respondent testified that while this was Appellant's idea, the decision to put in the gas pumps was a mutual one. (R. p. 201, ll. 3-8; p. 223, l. 15 – p. 224, l. 8). The parties met with representatives of Mansfield Oil and negotiated the transaction together. (R. p. 224, ll. 9-13).

The existing lot at 812 Meeting Street was too small for the placement of underground pumps, necessary to operate a gas station and convenience store. The tanks needed for the placement of gas pumps were placed under the property which had been previously purchased in the Appellant's name at 820 Meeting Street. In addition to the underground storage tanks which were buried beneath 820 Meeting Street, the pumps and canopy over them were also placed on the 820 Meeting Street Property. (R. p. 168, l. 24 – p. 169, l. 7). Both lots were utilized and necessary to run the Citgo business. (R. p. 169, l. 12 – p. 171, l. 1). Petitioner borrowed approximately

\$130,000.00 to convert the store into a gas station. This loan was paid for out of store income. (R. p. 178, ll. 13-19).

After the purchase of 820 Meeting Street, both properties on which the business sat were in the Petitioner's name. As set forth above, this was a mutual decision – to put properties held by the couple – in Petitioner's name due to her credit history and the fact that Respondent was engaged in a number of businesses whose legality was at issue/in question at the time. These were the sole reasons for this arrangement(s). (R. p. 196, ll. 10-15; p. 200, l. 5 – p. 201, l. 1). It was understood and agreed upon that despite the titling of the properties, the Respondent retained an interest in the business. (R. p. 196, l. 9 – p. 197, l. 1).

The installation of gas pumps did, in fact, improve business which allowed the parties to pay off business and personal debts. (R. p. 224, ll. 1-8; p. 225, ll. 9-13). Shortly after the gas station began operation, customers began complaining of water in gas purchased at the station. (R. p. 227, l. 21 – p. 228, l. 20). As a result, the parties discovered that water was getting into the underground storage tanks. In 2009, L&D brought suit in the Lexington County Court of Common Pleas against a third-party, alleging that the third-party had installed defective gasoline storage tanks at 812 Meeting Street. (R. p. 227, l. 23 – p. 228, l. 10; p. 688). Both parties testified. (R. p. 228, ll. 15-18).

The lawsuit was subsequently settled for \$150,000.00 in July of 2013 with a net payment of \$100,000.00. (R. p. 178, l. 20 – p. 179, l. 6; p. 688). Although the parties were still operating the station together, Petitioner deposited \$100,000.00 of these funds into her personal checking account. (R. 179, ll. 7 -12). She testified that she used this money to pay down personal credit card bills and also to buy supplies for Jimmy's Mini Mart. (R. p. 180, l. 24 – p. 181, l. 8; p. 688).

The parties later decided to sell the gas station and listed the business for sale through a brokerage. (R. p. 221, ll. 3-25). This was a mutual decision based on the amount of work necessary for the two of them to run the station. Respondent testified that the parties intended to use the proceeds from this sale to be able to retire. (R. p. 222, l. 7 – p. 223, l. 1).

As a result of this listing, in May of 2014, the business name, goodwill and inventory of L&D (operating as Jimmy's Mini Mart/Jimmy's Citgo but not the real estate on which it sat) was sold to a third party, Chharvi & Bhavya, LLC. (R. p. 160, l. 13 – p. 161, l. 1; p. 161, ll. 4-8). Mr. Viral Patel, the purchaser, testified at trial that he negotiated the sale with both parties who he considered to be joint owners of the business. (R. p. 351, l. 4 – p. 352, l. 2; p. 355, ll. 4-8). The business was sold to Mr. Patel's LLC for \$150,000.00 of which \$25,000.00 was owner financed. (R. p. 160, l. 13 – p. 161, l. 1).

A total sum of \$108,335.00 was deposited into a bank account at Wells Fargo that was used for the operation of Jimmy's Mini Mart. (R. p. 656). Some, but not all of these proceeds were later transferred by Petitioner to a personal bank account. (R. p. 161, ll. 15-19). Mr. Patel paid off the owner financed part of the sale (\$25,000.00) with monthly payments of \$1,000.00 per month at the rate of 5% interest per month. Mr. Patel also paid \$3800.00 a month rent which continued once the owner-financed portion of the sale was paid off. (R. p. 172, l. 8 – p. 173, l. 12). These monies were paid to Appellant who put the proceeds in her bank account. (R. p. 173, ll. 11-12; p. 175, ll. 13-17). Respondent testified that contrary to the intent of the parties, he never saw any of the proceeds from the sale of the business. (R. p. 222, l. 20 – p. 223, l. 1).

The parties' relationship ended sometime around 2016. Respondent asked Petitioner to put his name (along with hers) on a number of real property deeds, including the titles to the 812 Meeting Street and 820 Meeting Street properties. She refused to do so. (R. p. 211; ll. 6-13; p. 227,

ll. 9-13). In addition, she refused to share any of the monthly rents she was receiving from the purchaser of the business. (R. p. 227, ll. 9-13).

ARGUMENTS

1. **THE CIRCUIT COURT HAD SUBJECT MATTER JURISDICTION OVER THIS ACTION**

The Court of Appeals opinion properly found that the Circuit Court had jurisdiction over this matter. This action was clearly, as the Court of Appeals affirmed, an action for division of partnership property, not an action to establish any type of marital relationship or to divide marital assets. At no time in the Circuit Court case did the Respondent request that the Court declare the parties “husband and wife” pursuant to any common law marriage. (R. pp. 25-30). In her Family Court Answer, Petitioner specifically denied that there was any type of marital relationship and also denied that the Family Court had any jurisdiction over the parties or the issues between them (contrary to the position she now takes in her Petition for Certiorari). Based on this the position of Petitioner, Respondent then commenced the present action in Circuit Court on the basis of the Petitioner’s assertions in her Family Court Answer. *Id.* Respondent’s Circuit Court Complaint specifically alleged that if there were not issues before the Family Court, then a business partnership existed between the parties and the issues between them were subject to the Circuit Court’s jurisdiction. *Id.*

The Respondent’s Circuit Court Complaint prayed for actual and punitive damages; for an order declaring the rights of the parties to another; for an accounting; for a division of partnership properties; and for a winding up and termination of partnership affairs. *Id.* In her Answer, Petitioner once again specifically denying the fact that the Family Court had any jurisdiction over the parties and alleging that the Circuit Court lacked jurisdiction **only** in the event that the Family Court retained jurisdiction over the Family Court action. (R. pp. 31-34). (Emphasis Added).

This case then proceeded to trial. Both parties filed Pretrial Briefs with the Court prior to trial. Under, “**An objective statement of the facts in controversy,**” Respondent, through his counsel stated:

This Court should order a dividing up of the partnership affairs and should issue such order as is just and proper as to the division of partnership property. Plaintiff (Respondent) prays for judgement against Defendant (Appellant) for actual damages; for punitive damages ; for an Order declaring the rights of the parties one to another; for an accounting; for a division of partnership properties; for a winding up and termination of partnership affairs; and for such other and further relief as the Court might deem just and proper.

(R. pp. 72-75). Under “**Legal issues involved,**” Respondent stated, “The legal issues primarily involve...theories of evidence to prove a business partnership between the partners, tenancy in partnership, breach of fiduciary duty, breach of trust, express trust, resulting trust, constructive trust and conversion.” *Id.* There was no reference made to the establishment of any common law marriage or any matters that would otherwise be properly heard in Family Court.

The case then proceeded to Trial. The following exchange with Judge Manning, which is actually set forth in the Appellant’s Brief is extremely telling and important:

THE COURT: While she’s marking them (exhibits), just parenthetically, I read something somewhere. Was there an action filed in Family Court?

MS. JEFFRIES (Appellant’s Trial Counsel): There was an action filed in Family Court.

THE COURT: What happened to that action? I’m curious.

MS. JEFFRIES: It got administratively dismissed in December of 2016.

After a brief discourse on masks, the discussion continued.

MS. JEFFRIES: It got administratively dismissed.

THE COURT: Administratively dismissed. Go ahead Mr. Moore.

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

THE COURT: A common-law marriage existed, was that it?

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

MS JEFFRIES: And that is correct Your Honor...

THE COURT: Well, currently there is no matter pending in family court affecting this hearing here today?

MS. JEFFRIES: It's no. No. No, your honor.¹

(R. p. 90, l. 14 – p. 91, ll. 23).

Judge Manning then stated:

THE COURT: Okay. Alright. 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.

Petitioner's Counsel raised no objection to this statement by Judge Manning. (R. p. 90, l. 14 – p. 92, l. 4).

Prior to the trial, Petitioner moved for Summary Judgment on the grounds that there was no evidence of any partnership between the parties. (R. p. 40). Petitioner's counsel did not raise any issues regarding the Family Court action or the present action before the Court in her motion which was based solely on the issues raised by Respondent in his Circuit Court Complaint. Judge Manning denied Petitioner's Motion for Summary Judgment and the trial began.

On July 21, 2021, Judge Manning issued his Order. (R. pp. 11-13). The Order made no findings as to whether or not a common law marriage existed between the parties. The Court's Order made no mention or reference to the division of any "marital property." Instead the Court's

¹ This position is completely inconsistent with Appellant's pleadings in the Family Court and Circuit Court. In light of her previous assertions in pleadings filed with the Family Court asserting that the Family Court had no jurisdiction over the issues between the parties, one wonders which court the Appellant would concede has jurisdiction over the issues between the parties.

Order addressed whether or not a partnership existed between the parties as to ownership of certain properties and the business located at the 812 Meeting Street and 820 Meeting Street. *Id.*

Following Judge Manning's Order, the Petitioner moved for reconsideration or in the alternative for a new trial solely on the grounds that (1) the Circuit Court erred in finding that the Parties held the property at 812 and 820 Meeting Street in partnership and in awarding Plaintiff (Respondent) title to the property; (2) the Court erred in finding that ordering a sale of 812 and 820 Meeting Street was inequitable; (3) the Circuit Court failed to order a winding up of the affairs of the partnership to include division of liabilities connected with 812 and 820 Meeting Street when the Court found the parties held the property in partnership; and (4) the Circuit Court erred in dividing proceeds from the sale of the rights to Jimmy's Citgo, litigation proceeds, and account balance. (R. pp. 76-80). Appellant's motion alleged error with the Court's division of monies arising out of the sale and operation of the convenience store/gas station located on these two pieces of property. *Id.* Appellant's motion alleged no other error on the part of the Trial Judge and sought no other relief from the Trial Court's Order. There was no issue raised with respect to Judge Manning's Order addressing the existence of a common law marriage and the division of any "marital property" as these were not issues decided by the Circuit Court. *Id.*

Judge Manning denied Petitioner's motion. His Order set forth that his original Order, issued in the case on June 21, 2021, "...held that a partnership existed and partnership property was equitably divided amongst the Plaintiff (Respondent) and Defendant (Appellant)." (R. pp. 11-13). Again there was no finding whatsoever as to any common law marriage or division of "marital property."

In denying the Appellant's motion. Judge Manning concluded:

The analysis in the June 21, 2021 order of the existence of the partnership is reaffirmed and the winding up of the partnership affairs was accomplished by the equitable division of the partnership property. The equitable division of property in the June 21, 2021 order relied on the filings, and testimony of the parties at trial and a forensic accountant report prepared by Marcus Hodge that included extensive financial records of Plaintiff (Respondent) and Defendant (Appellant).

Id.

Based on the overwhelming evidence, the Court of Appeals correctly decided and determined that the Circuit Court had subject matter jurisdiction over this matter.

2. THE COURT'S OPINION PROPERLY FOUND THAT A PARTNERSHIP EXISTED BETWEEN THE PARTIES TO THIS LAWSUIT

The Court correctly found the existence of a partnership between the parties as it pertained to the business located at 812 Meeting Street and 820 Meeting Street in West Columbia, South Carolina.

A. THE RESPONDENT MET HIS BURDEN OF PROOF TO ESTABLISH A PARTNERSHIP BETWEEN THE PARTIES

The Court's finding that a partnership existed between the parties as to the business located at 812 Meeting Street and 820 Meeting Street (Jimmy's Mini Mart/Jimmy's Citgo) and that this property was held as partnership property was correctly affirmed by the Court. (R. pp. 7-10).

The parties both operated Jimmy's Mini Mart and later Jimmy's Citgo as partners. Respondent testified numerous times that he retained an interest in the gas station and that he considered himself and Petitioner to operate the business as partners. (R. p. 196, l. 16 – p. 197, l. 3). Both Petitioner and Respondent invested time and money into the operation of the convenience store/gas station. (R. p. 112, ll. 17-19). Both invested money into the operation of the store and improvements that were made to it. (R. p. 229, ll. 7-20).

Sometime in 2003, Respondent asked Petitioner to assist him with the operation of the convenience store. Petitioner put \$20,000.00 of her own funds in the convenience store. She testified that she did this to keep the store solvent and operating. (R. p. 112, ll. 17-19). In 2004, Petitioner purchased the adjacent property to the convenience store, located at 820 Meeting Street in West Columbia. (R. p. 168, ll. 11-13). In January of 2006, Respondent transferred title of the 812 Meeting Street Property to Petitioner for \$5.00. (R. p. 156, l. 13 – p. 157, l. 3; p. 728). Appellant took over the loan to Al Landers. (R. p. 111, ll. 10-12). This was a mutual decision – to put properties held by the couple – in Petitioner’s name due to her credit history and the fact that Respondent was engaged in a number of businesses whose legality was at issue/in question. These were the sole reasons for this arrangement(s). (R. p. 148, ll. 11-19; p. 196, ll. 10 – 15). Despite the titling of the properties, Respondent considered the parties to be partners in the running of the store and he did not intend to give up his interest in the store. (R. p. 225, l. 22 – p. 226, l. 5; p. 231, ll. 23-25; p. 254, ll. 1-8).

The parties changed the name of the business from “Alice’s” to Jimmy’s Mini Mart. (R. p. 198, ll. 3-9; p. 310, ll.11-18). This was a mutual decision. (R. p. 310, ll. 13-18; p. 198, ll. 3-17). Respondent trusted Petitioner and recognized her intelligence and business acumen. (R. p. 198, ll. 8-9; p. 122, l. 21 – p. 123, l. 17). Petitioner began working with Respondent at the convenience store. (R. p. 122, ll. 1-5; p. 195, ll. 2-5) with Respondent would maintain his interest in the store and in its operation. (R. p. 196, l. 16 – p. 197, l. 3).

Both parties derived income from the operation of the store. Petitioner represented Jimmy’s Mini Mart as her employer on a signature card for a personal deposit account at Wells Fargo. Petitioner reported the income from Jimmy’s Mini Mart on her income tax returns. (R. p. 727; p. 729). Respondent and Petitioner both used income from the store to purchase properties and to pay

off existing debts. (R. p. 273, ll. 11-13). The parties jointly controlled the day to day business operation of the convenience store. (R. p. 322, ll. 7-10). Petitioner managed the daily operation of the business which included management of personnel, tax compliance and the acquisition of assets of the business. (R. p. 199, ll. 8-13). Respondent also worked at Jimmy's. He ran the register and stocked boxes as well as mixing with potential customers. (R. p. 199, ll. 4-7; p. 373, ll. 19-22). Both parties hired and managed store employees. (R. p. 322, ll. 7-10).

Both parties wrote and signed business checks. (R. p. 373, ll. 5-10). The parties paid personal and business related expenses and bills out of the proceeds of the business and out of their personal funds. (R. p. 145, l. 22 – p. 146, l. 2; p. 146, l. 2 – p. 147, l. 3; p. 177, l. 24 – p. 178, l. 19). The parties reached a mutual decision to “convert” the existing convenience store to a gas station and convenience store. They decided to add gas pumps in order to improve the profitability of the convenience store. (R. p. 223, l. 15 – p. 224, l. 8; p. 201, ll. 3-8). Respondent testified that while this was Petitioner's idea, the decision to put in the gas pumps was a mutual one. (R. p. 201, ll. 3-8; p. 223, l.15 – p. 224, l. 8). The parties met with representatives of Mansfield Oil and negotiated the transaction together. (R. p. 224, ll. 9-13).

The existing lot at 812 Meeting Street was too small for the placement of underground pumps, necessary to operate a gas station and convenience store. The tanks needed for the placement of gas pumps were placed under the property which had been previously purchased in the Appellant's name at 820 Meeting Street. In addition to the underground storage tanks which were buried beneath 820 Meeting Street, the pumps and canopy over them were also placed on the 820 Meeting Street property. (R. p. 168, l. 24 – p. 169, l. 7). Both lots were utilized and necessary to run the Citgo business. (R. p. 169, l. 12 – p. 171, l. 1). Petitioner borrowed approximately

\$130,000.00 to convert the store into a gas station. This loan was paid for out of store income. (R. p. 178, ll. 13-19).

After the purchase of 820 Meeting Street, both properties on which the business sat were in the Petitioner's name. Despite this fact, it was understood and agreed upon that despite the titling of the properties, the Respondent retained an interest in the business. (R. p. 196, l. 9 – p. 197, l. 1). The installation of gas pumps improved business which allowed the parties to pay off business and personal debts. (R. p. 224, ll. 1-8; p. 225, ll. 9-13). When the parties discovered that water was getting into the underground storage tanks. In 2009, L&D brought suit in the Lexington County Court of Common Pleas against a third-party, alleging that the third-party had installed defective gasoline storage tanks at 812 Meeting Street. (R. p. 227, l. 23 – p. 228, l. 14; p. 688). Both parties testified. (R. p. 228, ll. 15-18). The lawsuit was subsequently settled for \$150,000.00 in July of 2013 with a net payment of \$100,000.00. (R. p. 178, l. 20 – p. 179, l. 6; p. 688). Although the parties were still operating the station together, Petitioner deposited \$100,000.00 of these funds into her personal checking account. (R. p. 179, ll. 7-12). Petitioner testified that she used this money to pay down personal credit card bills and also to buy supplies for Jimmy's Mini Mart. (R. p. 180, l. 24 – p. 181, l. 8; p. 688).

The parties later decided to sell the gas station and listed the business for sale through a brokerage. (R. p. 221, ll. 3-25). This was a mutual decision based on the amount of work necessary for the two of them to run the station. Respondent testified that the parties intended to use the proceeds from this sale to be able to retire. (R. p. 160, l. 7 – p. 161, l. 1).

As a result of this listing, in May of 2014, the business name, goodwill and inventory of L&D (operating as Jimmy's Mini Mart/Jimmy's Citgo but not the real estate on which it sat) was sold to a third party, Chharvi & Bhavya, LLC. (R. p. 160, l. 13 – p. 161, l. 1; p. 161, ll. 4-8). Mr.

Viral Patel, the purchaser, testified at trial that he negotiated the sale with both Appellant and Respondent, who he considered to be joint owners of the business. (R. p. 351, l. 4 – p. 352, l. 2; p. 355, ll. 4-8). The evidence clearly establishes that the parties operated Jimmy’s Mini Mart as a partnership. The Court of Appeals correctly determined that Respondent met his burden of proof.

B. THE CIRCUIT COURT CORRECTLY DIVIDED UP THE PARTNERSHIP PROPERTY

The Petitioner argues that the Trial Court erred in its division of partnership property. In his Order, Judge Manning found that a partnership existed only as to 812 Meeting Street and 820 Meeting Street and the business located on the two pieces of property. Judge Manning’s Order did not find partnership property existed as to the remaining properties at issue in the lawsuit. (R. pp. 7-10). Therefore, these properties are not applicable or relevant to any of the issues involved in the present appeal.

With respect to the division of 812 Meeting Street and 820 Meeting Street, Judge Manning held that the disputed property was held as partnership property. Judge Manning found that with respect to these properties, Respondent held legal title to both properties and that it would be inequitable to divide these properties as they operate as joint property for Jimmy’s Mini Mart, now Jimmy’s Citgo.” *Id.* Judge Manning equally divided the proceeds from the sale of Jimmy’s Mini Mart/Jimmy’s Citgo and the proceeds from the Lexington County Lawsuit. Judge Manning also equally divided the deposit account funds, derived from the operation of the business. *Id.*

The equitable division of property by Judge Manning was supported by the evidence presented before him at Trial, the documentary evidence introduced, as well as the testimony of the parties. The Court of Appeals’ opinion affirming this division is correct.

Petitioner argues that the deeds are controlling as to the issues before the Court. The deeds are not conclusive and dispositive as to the issues before the Court. The Court heard ample

testimony as to why the property on which the Citgo Station was located and operated were put in the Petitioner's name and not the Respondent's name. (R. p. 148, ll. 11-19; p. 196, ll. 10-15). The Appellant's argument completely ignores this testimony. Further, this line of argument was not raised before the Trial Court. Appellant did not raise this argument during trial and this argument was not found in her post-trial motions. Arguments first argued on appeal, are not preserved for appellate review. *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998).

3. THE WORK OF THE COURT'S EXPERT ACCOUNTANT WAS NOT ONLY PROPER, BUT ALSO NOT PRESERVED FOR REVIEW BY THIS COURT

Petitioner argues that the Court's appointment of a Forensic Accountant, Marcus Hodge, by Judge Manning was "prejudicial error". This argument is irrelevant as none of these issues were preserved by Appellant's trial counsel and are not before the Court for Appellate review.

Prior to the first witness being called, the Court informed the parties that he was contemplating the appointment of an expert to assist the Court in the valuation of any issues involved in this case. Judge Manning informed the parties and their counsel that, "Now, what my job is today, is to hear everything from both sides. I'll sort through it and at the end, hopefully, I'll be able to make a decision that is fair to both of you." (R. p. 102, ll. 22-24). Judge Manning informed the parties that:

But before I get to that point, and I've raised this with the lawyers involved, I see Exhibits 1 through 10 that list some property. I see in here both list 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 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 type 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. 102, l. 25 – p. 103, l. 14). As set forth above, Petitioner's counsel failed to note or raise any

objection to the Court's consideration of the appointment of Mr. Hodge at this point in the trial.² Further, the Court's need for an expert had nothing to do with whether or not either party had complied with discovery, or failed to file a Motion to Compel with respect to discovery.

Petitioner's trial counsel raised no objection to the Court's appointment of Mr. Hodge at either the close of the Respondent's case or after she rested Appellant's case. At the close of the evidence the Court once again informed the parties of his intention to appoint Mr. Hodge. Judge Manning informed the parties:

And, of course, I am not going to make a decision in this matter. I'm going to take this matter under advisement as you 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. I need to contact him, give him an idea of what's involved in this situation, then ask whether or not typically this is the type of thing he does. And I sort of mentioned this to you beforehand. I think I'm going to need at least a forensic accountant, and I'm not sure about an appraiser yet, but I think I need to start with a forensic accountant.

(R. p. 408, ll. 7 – 25). Once again, Petitioner's counsel failed to raise any objection to the appointment of Mr. Hodge.

On September 18, 2020, Judge Manning issued his Order appointing Mr. Hodge. (R. p. 6). Once more Petitioner's counsel failed to raise any issue or objection to the appointment of Mr. Hodge by the Court. Mr. Hodge then conducted discovery which included discovery requests and the issuance of subpoenas. At no time did Petitioner's counsel object to any of these discovery efforts or request.

In March of 2021, Judge Manning provided the parties' counsel a copy of Mr. Hodge's "Summary Report" via email. (R. pp. 634-644). Once more nothing was heard from Petitioner's

² The Appellant's tortured interpretation of this exchange to insinuate that Judge Manning was predisposed at this point in favor of Respondent simply lacks merit.

counsel regarding Mr. Hodge, the work that he had done to date or the summary report.

On March 17, 2021, Petitioner's Trial Counsel, Lakesha Jeffries wrote Judge Manning to acknowledge receipt of the report. (R. p. 731). Attorney Jeffries informed Judge Manning that, "Respectfully, on behalf of Ms. Willing, **we accept Mr. Hodge's report as the Court's evidence.**" Attorney Jeffries added that as a result of Mr. Helm's failure to retain his own accountant, "...we believe speculation as to values may be inappropriate." *Id.* (Emphasis added). She concluded that her client's view as to contents of the report were not aligned with Mr. Helms. However, Attorney Jeffries raised no objection to the appointment of Mr. Hodge or the manner in which he carried out his work. Rather, on behalf of Petitioner she "accepted" Mr. Hodge's report as Court's evidence.

On June 21, 2021, the Court issued its Order. (R. pp. 7-10). Petitioner, through her trial counsel, moved for Reconsideration. (R. pp. 76-80). The Motion has an Affidavit of Appellant attached to it which raises issues pertaining to the decision regarding the 812 Meeting Street and 820 Meeting Street properties. No objection is made to Mr. Hodge or his role in this case. (R. pp. 79-80). Once more, Petitioner or her counsel failed to make any objection to Mr. Hodge's appointment or to raise any issues with respect to the manner in which he conducted business and his contact with the Court. Petitioner's counsel raised no objection to any of the facts found or relied upon by Mr. Hodge as to his valuation of any properties.

The Petitioner raised no such issues until her Brief filed with the Court. Her Appellate Brief was the first time during the course of this litigation that she raised any issues as to the appointment of Mr. Hodge by the Court, the reason(s) why Mr. Hodge's work was necessary (such as the alleged discovery failures of Respondent), the work performed by him in completion of his duties and the conclusions contained in his report. At no time did Appellant's counsel raise any

objections to the appointment of Mr. Hodge or his efforts in this case. These issues, first argued on appeal, are not preserved for appellate review. *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998).

Even if these issues were preserved (which they were clearly not), there was no error in the Court's appointment of Mr. Hodge. Petitioner has not been able to cite one shred of concrete evidence of any wrongdoing or over reaching on the part of Mr. Hodge and the work that he did in this case at the request of the Circuit Court. To the contrary, the evidence shows that Mr. Hodge took his work seriously and presented a non-biased report to the Court which the Court relied on in the valuation of property that was equitably divided by the Court.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the Court deny the Petition for Certiorari.

Respectfully submitted,

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