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**SC Court of Appeals**

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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Appeal from Charleston County  
Court of Common Pleas  
2022-CP-10-05123  
Jennifer B. McCoy, Circuit Court Judge

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Appellate Case No.: 2024-000460

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Melanie R. Jones Metz a/k/a Melanie Jones Metz,

Respondent,

v.

Larry Allen Windham, Jr., and First Bank, Defendants,  
Of which Larry Allen Windham, Jr. is

Appellant.

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**APPELLANT'S INITIAL BRIEF**

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September 4, 2025

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## STATEMENT OF ISSUE ON APPEAL

1. DID THE TRIAL COURT ERR IN FINDING THAT APPELLANT DID NOT MEET HIS BURDEN OF PROOF?

### STATEMENT OF THE CASE

Appellant and Respondent were previously in a romantic relationship and separated in February 2020. In October 2018, Appellant and Respondent entered into an agreement under which the parties agreed to jointly borrow the sum of Two Hundred Sixty Thousand and No/Dollars (\$260,000.00) from First Bank (hereinafter "First Bank Loan"). The proceeds from the First Bank Loan were to be used for investment purposes including improvement to Appellant's property located at 6426 Maxville Road, McClellanville, South Carolina 29429 (hereinafter "6426 Maxville Road"), the purchase of a mobile home to be located at 6426 Maxville Road, and the parties' acquisition of other investment properties. In furtherance of their agreement, Respondent oversaw the First Bank loan proceeds which were to be used for the mutual benefit of the parties. In consideration thereof, Appellant conveyed a one-half (1/2) interest in 6426 Maxville Road to Respondent. This conveyance occurred in October 2018, commensurate with the closing of the First Bank loan.

On June 30, 2020, Respondent filed a Summons and Complaint which included a cause of action for Partition. On March 10, 2023, Appellant filed an Answer and Counterclaim in which he asserted claims for Partition, Unjust Enrichment, and Accounting.

The case was tried as a non-jury matter on January 7, 2025. Prior to the commencement of testimony, the parties advised the Court that they had agreed to certain stipulations as to the matters at issue. These stipulations were detailed in the Court's Final Order and included the following:

***“The parties stipulated and agreed that the three pieces of real estate which are the subject of this partition action will be sold by agreement of the parties as the best option to allow each party to recover their financial investment and share in the profits from their joint venture.”***

At trial, Respondent elected to proceed solely on her partition claim and abandoned all other causes of action. Appellant maintained that he should be reimbursed One Hundred Fifty Thousand Dollars and No/Cents (\$150,000.00) that he expended to purchase 6426 Maxville Road after which the remaining proceeds from the sale of this property would be divided equally between the parties. Appellant also sought the recovery of one-half (1/2) of the sales proceeds (\$30,000.00) derived from Respondent’s sale of a mobile home purchased by Respondent with First Bank Loan proceeds.

By Final Order issued February 26, 2025, the Court found that Appellant did not meet his burden of proof and noted that Appellant had not testified in support of his claim to the One Hundred Fifty Thousand Dollars and No/Cents (\$150,000.00) that he spent to acquire 6426 Maxville Road. The Court further found that Appellant did not establish his entitlement to one-half (1/2) of the sales proceeds (\$30,000.00) from Respondent’s sale of the mobile home. The Court ordered that net proceeds from the sale of the three (3) parcels to be divided equally amongst the parties. This appeal follows.

#### STANDARD OF REVIEW

When facts are undisputed and susceptible of only one inference, the issue presented for Appellate review is one purely of law. In such cases, the Appellate Court undertakes a *de novo* review of issues purely of law properly presented.

## ARGUMENT

### I. THE COURT ERRED IN FINDING THAT APPELLANT DID NOT MEET HIS BURDEN OF PROOF.

As set forth in the Final Order's stipulations, the parties advised the Court that they had agreed as to certain issues before this Court. These stipulations were placed on the record and accepted by the Court prior to testimony commencing.

In Stipulation #1, the parties agreed that the three (3) parcels at issue would be sold as the sale of said properties provided the best option to allow 1) *each party to recover their financial investment* and 2) *share in the profits from their joint venture*. (Emph. Added). In Stipulation #2, Appellant sought the recovery of monies which he paid to acquire 6426 Maxville Road and preserved his claim to an equal share of sales proceeds from Respondent's sale of the mobile home purchased with First Bank Loan proceeds. Appellant's claims are addressed below.

#### A. 6426 Maxville Road

The record before the Court included Respondent's trial testimony, Respondent's deposition testimony, and accounting documents and emails prepared by Respondent. This evidence establishes that Appellant personally spent One Hundred Fifty Thousand Dollars and No/Cents (\$150,000.00) to acquire 6426 Maxville Road using monies inherited from his mother. At trial, Respondent admitted that Appellant had solely used his monies to acquire this property:

*Q: We've addressed the source of the funds for the Maxville vacant lot, which was—  
Mr. Windham bought it?*

*A: Correct.*

*Q: And you believe it was about \$150,000?*

*A: Correct.*

Transcript of Record page 22, lines 6-10

Respondent was deposed on October 1, 2024. Page 5 of Exhibit 1 to her deposition is entitled "*Letter from Melanie R. Jones Metz regarding the inheritance received by Larry Allen*

*Windham, Jr. from his mother's estate and properties purchased with the inheritance/legacy/gift, dated June 10, 2020.*" In this email, Respondent states:

*"He purchased lot 3B now known as 6426 Maxville Rd. Awendaw for \$150,000 on November 14, 2005 TMS number 661-000-0193."*

At her deposition, Respondent admitted that 6426 Maxville Road was purchased by Appellant with inherited funds:

*Q: And you acknowledge that that property was acquired with Allen's inheritance?  
A: Correct.*

Deposition Transcript of Melanie R. Jones Metz, page 23, lines 15-17.

Respondent's trial and deposition testimony establish that Appellant personally invested the sum of One Hundred Fifty Thousand Dollars and No/Cents (\$150,000.00) to acquire 6426 Maxille Road. While the Court found that Appellant did not meet his burden of proof regarding his financial investment in this property by failing to testify, it is well settled that:

*"Party with a burden of proof is not required to prove matters of fact not in issue nor does he need to offer evidence to prove facts admitted to by opposing party," Parnell v. Farmers Telephone Co-op., 289 S.C. 112, 344 S.E.2d 883 (1986). While a party "must prove her case, either by direct or by circumstantial evidence...she is not required to prove conceded facts, which also may be shown by direct evidence or by admissions or concession which fairly establish them," Liverpool & London & Globe Inc. Company, Ltd. v. Bolling, 176 Va. 182, 10 S.E.2d 518 (1940).*

A party's allegations:

*"may be proved by any evidence, regardless of whether the evidence is brought out or introduced by the opposing party, or the opposing party's witnesses. That is to say, a party, in proving the claims or defense, is not limited solely to the testimony given by that party's witnesses, but may rely upon any evidence presented and introduced by the opposing party and upon any testimony elicited from the opposing party's witnesses on direct or cross-examination," Ralph King Anderon, Jr., South Carolina Requests to Charge – Civil, § 1-3 (2d ed. 2009).*

As set forth in Stipulation #1 of the Final Order, the parties agreed that the sale of the three (3) parcels was *"the best option to allow each party to recover their financial investment."*

Appellant's "financial investment" in 6426 Maxville Road totaled One Hundred Fifty thousand Dollars and No/Cents (\$150,000.00). The record establishes that Respondent admitted that Appellant had solely expended the monies to acquire 6426 Maxville Road. As Appellant's financial investment was conceded by Respondent, Appellant was not required to offer additional evidence to prove facts admitted to by Respondent to meet his burden of proof.

**B. Mobile Home**

At trial, Appellant preserved his claim to an equal share of proceeds derived from Respondent's sale of a mobile home due to Respondent's use of joint First Bank Loan funds to purchase it. The record establishes that a partnership existed between the parties. *"To establish a partnership, there must be an association of two (2) or more persons to carry on as co-owners of business for profit,"* Buttkin v. Strickland, 287 S.C. 343, 312 S.E.2d 579 (Ct. App. 1994), S.C. Code Ann. § 33-41-210 revised 1990. The fiduciary relationship of partners is discussed in 59A Am.Jur.2d Partnership § 420 (1987). It is universally recognized that *"the fiduciary relationship of partners and the obligations imposed of the utmost good faith and integrity in their dealings with one another in partnership affairs. It is a fundamental characteristic of partnerships that the partners' relationship is one of trust and confidence when dealing with each other and partnership matters. Partners are held to a standard stricter than the morals of the marketplace, in their fiduciary duties should be broadly construed, meaning not mere honesty, but the punctillo of honor most sensitive."*

At trial and her deposition, Respondent testified as to expenditures she made using First Bank Loan proceeds. These expenditures were delineated in a breakdown dated June 9, 2021 which Respondent authored. Both the "breakdown" and transcript from Respondent's deposition were entered into the record at trial. Respondent admitted that she had used First Bank Loan

monies to purchase a double-wide mobile home which she titled solely in her name. Supplies and materials for this mobile home were also purchased by Respondent with First Bank loan proceeds. On August 8, 2022, Respondent, without notifying Appellant, sold the mobile home for the sum of Sixty Thousand Dollars and No/Dollars (\$60,000.00). Respondent did not share any of the sales proceeds with Appellant.

Respondent was questioned regarding her conduct and testified as follows:

*Q: Was the 9906 Randall loan, the proceeds from that loan, used to acquire the mobile home that ended up on Maxville?*

*A: Correct.*

*Q: Okay. So you used the Randall loan money to buy a mobile home that you put in your name?*

*A: Correct.*

Deposition Transcript of Melanie R. Jones Metz, page 27-28, lines 24-25, 1-5

Respondent admitted that she did not share any proceeds from the sale of this mobile home with Appellant.

*Q: Did you share any of those proceeds with Mr. Windham?*

*A: I did not.*

*Q: Did you consult with him before you sold it?*

*A: I did not.*

Deposition Transcript of Melanie R. Jones Metz, page 35, lines 14-21

Respondent also admitted that the source of funds used for the at-issue mobile home was the parties' loan with First Bank.

*Q: And when you say "vacant mobile home," do you mean a mobile home that was bought with the proceeds from the mortgage on Randall?*

*A: Correct.*

Transcript of Record, page 24, lines 12-15

Respondent conceded that joint monies were used to acquire this home.

*Q: You would agree with me that joint funds were used to acquire this mobile home?*

*A: I would.*

Transcript of Record, page 43, lines 11-13

Respondent ultimately sold this mobile home without consulting Appellant and did not share the proceeds.

*Q: Did you consult with Mr. Windham before you sold this mobile home?*

*A: I did not.*

*Q: And how much did you sell this mobile home for?*

*A: \$60,000.00*

*Q: Did you give him half of that money?*

*A: I did not.*

Transcript of Record, page 43, lines 17-23

The record, which includes Respondent's testimony at trial and her deposition, establishes that Respondent breached her agreement with Appellant and the fiduciary duty owed to him. Respondent controlled joint First Bank Loan proceeds and used these funds, and the assets acquired therefrom, for her sole benefit without Appellant's knowledge or consent. Appellant was entitled to fifty percent (50%) (\$30,000.00) of the sales proceeds from Respondent's sale of the mobile home for Sixty Thousand Dollars and No/Dollars (\$60,000.00). As Respondent admitted to the matters at issue, Appellant's testimony was not required to meet his burden of proof.

#### CONCLUSION

It is well settled that a party with a burden of proof is not required to prove matters of fact admitted by the opposing party or opposing party's witnesses. The Court's finding that Appellant did not meet his burden of proof regarding facts not at issue constitutes error. Accordingly, the Court should reverse the decision of the Lower Court.

