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SC Court of Appeals

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

Appeal from Charleston County
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

Case No. 2016-CP-10-02955

Court of Appeals Case No. 2021-000272

Supreme Court Case No. 2025-001715

TCC of Charleston, Inc.,

Petitioner/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 and Betty L. Beatty are

Respondents/Petitioners.

BETTY L. BEATTY'S PETITION FOR A WRIT OF CERTIORARI

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CERTIFICATION OF COUNSEL

Pursuant to Rule 242(d)(1), SCACR, Respondent/Petitioner Betty L. Beatty (“Mrs. Beatty”), by and through her undersigned counsel, certifies that the Court of Appeals filed its opinion in this matter on March 19, 2025 (the “Subject Opinion”), that Mrs. Beatty timely petitioned for rehearing, and that the Court of Appeals denied rehearing by order filed July 30, 2025.

QUESTIONS PRESENTED

- I. **Did the Court of Appeals err in reversing the master’s award of attorney’s fees to Mrs. Beatty?**
 - A. **Did the Court of Appeals err 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?**
 1. **Did TCC request to be heard regarding the fees submitted to the master by Mrs. Beatty’s counsel on February 10, 2021?**
 2. **Did TCC fail 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), SCRCP, motion?**
 3. **Was TCC’s Rule 59(e) motion for reconsideration on the issue of attorney’s fees timely?**
 - B. **Assuming, *arguendo*, that TCC preserved the issue of attorney’s fees for appeal, (1) did TCC meet its burden to show that the master abused his discretion with respect to the amount of fees awarded to Mrs. Beatty and (2) did the Court of Appeals’ reversal of the master’s award of attorney’s fees to Mrs. Beatty erroneously shift burdens that belong to TCC as appellant to respondent Mrs. Beatty?**

STATEMENT OF THE CASE

Mrs. Beatty is a resident of the Concord & Cumberland condominium complex in Charleston, South Carolina. The complex is governed by Respondent/Petitioner Concord & Cumberland Horizontal Property Regime (the “HPR”). In early 2014, the HPR hired

Petitioner/Respondent, TCC of Charleston, Inc. (“TCC”), to address significant exterior construction defects. By early 2016, the working relationship between the HPR and TCC had broken down over a payment dispute.

A. TCC’s lien, verified complaints, and sworn statements of account

TCC originally filed suit against the HPR via a summons, verified complaint, notice and certificate of mechanic’s lien, statement of account, and motion to stay and compel arbitration filed in the Charleston County Court of Common Pleas on June 6, 2016. (R. pp. 122-259, pp. 615-744.) TCC filed a *lis pendens* on June 10, 2016. (R. pp. 260-275.) In its verified complaint and attached sworn statement of account TCC swore it last furnished labor or materials on March 17, 2016. (R. p. 124.) The verified complaint, in Paragraph 9, reads as follows:

That in accordance with their agreements the Plaintiff furnished the agreed-upon material and services to the Defendants which were used in the work, and on related structures on the subject property, that material and services improved the property, and *the last date of such furnishing materials and services was March 17, 2016.*

(R. p. 124 (emphasis added).) TCC’s president, John David Griffith, verified the complaint by verification dated May 19, 2016. (R. p. 127.) In the verification, Mr. Griffith swore under oath that he was an officer of TCC, and that he had been authorized by TCC to make the verification. (R. p. 127.) As to the facts of the verified complaint, he swore to the following:

. . . I have read the foregoing Complaint and know the contents thereof and that based upon my own personal knowledge, the facts therein are true and correct.

(R. p. 127.) TCC’s president also swore to the date of last work in TCC’s statement of account attached to the complaint as Exhibit A. (R. p. 130.) In Paragraph 4 of Exhibit A, Mr. Griffith swore under oath to the following:

That the last day work was performed or materials provided to the property described in EXHIBIT B was March 17, 2016.

(R. p. 130.)

Apparently realizing that it could not enforce a mechanic's lien against the HPR under South Carolina law, TCC filed an amended summons and amended verified complaint, amended notice and certificate of mechanic's lien, and amended statement of account adding as defendants each unit owner, including Mrs. Beatty, on June 10, 2016. (R. pp. 276-465.) An amended *lis pendens* was filed on June 16, 2016. (R. pp. 431-446.) In its amended verified complaint and statement of account, TCC realleged—under oath—that March 17, 2016, was the date of last furnishing labor or materials. (R. pp. 280, 287.) Paragraph 10 of the amended complaint contains the identical language which is quoted above as Paragraph 9 of the original complaint, alleging that “the last date of such furnishing of materials and services was March 17, 2016.” (R. p. 280.)

Mr. Griffith, TCC's president, on June 10, 2016, again verified the amended complaint, attesting unequivocally that, “based upon my own personal knowledge, the facts as alleged therein are true and correct.” (R. p. 283.) This was the *third* sworn attestation under oath that March 17, 2016, was the date TCC ceased work. TCC attached to its amended complaint as Exhibit A, a second sworn statement of account dated June 10, 2016, and signed by its president, Mr. Griffith. (R. p. 287.) This was TCC's *fourth* sworn attestation under oath that March 17, 2016, was the date it ceased work. None of these four (4) statements mention or use the term “substantial completion.” Rather, the original verified complaint at Paragraph 12 and the amended verified complaint at Paragraph 13 attest that “Plaintiff has completed its work and has demanded payment for the balance due on its contract from the Defendants.” (R. pp. 124, 281.)

B. Service of the lien on Mrs. Beatty

Mrs. Beatty was served on June 22, 2016, with the amended complaint, the amended notice and certificate of mechanic's lien, the June 10, 2016, second statement of account, and the

amended *lis pendens*. (R. pp. 2495.) The letter to her from TCC’s counsel is dated June 21, 2016. (R. pp. 1826.) Both the May 19, 2016, and June 10, 2016, sworn statements of account were filed with the circuit court. The June 10, 2016, sworn statement of account was filed in the Register of Deeds Office in Book 0560 at Page 116, clouding Mrs. Beatty’s title. (R. pp. 284-302.)

C. Proceedings before the arbitration panel

This case was stayed by order of the Honorable Roger M. Young, Circuit Court Judge, dated January 2, 2017, to allow TCC’s contract claims to proceed to arbitration as required by the terms of the contract between TCC and the HPR. (R. pp. 3-6.) Mrs. Beatty did not participate individually in the arbitration, as she was not a party to the contract.

The merits hearing was conducted before the arbitration panel (the “Panel”) from January 21–24, 2019. (R. pp. 879-881.) On April 16, 2019, the Panel entered its arbitration award in favor of TCC, which it subsequently corrected, issuing a corrected arbitration award on August 12, 2019. (R. pp. 879-881, 7-15.) In both awards, the Panel declined to award attorney’s fees, because the parties’ contract contained no provision for fees, and the Horizontal Property Act., S.C. Code Ann. § 27–31–230 (1976), prohibits mechanic’s liens against the HPR, which was the only defendant in the arbitration. (R. pp. 879-881, 7-15.) The Panel made no finding regarding TCC’s last date of furnishing labor or materials, finding only that substantial completion occurred on March 8, 2016. (R. pp. 879-881, 7-15.)

The HPR filed a motion to vacate the original award on July 16, 2019, and filed a motion to vacate the corrected award on November 18, 2019. (R. pp. 856-865, 1250-1253.) By order filed January 30, 2020, the Honorable Deadra L. Jefferson, Circuit Court Judge, denied the HPR’s motions to vacate. (R. pp. 16-26.) Thereafter, by order filed May 1, 2022, denying the HPR’s motion to reconsider, Judge Jefferson found, as had the Panel, that the date of substantial

completion was March 8, 2016, nine (9) days before March 17, 2016, the date TCC swore before the Court and upon the record in the Register of Deeds Office as the date of last service. (R. p. 29.)

By order dated February 16, 2021, the arbitration award against the HPR was confirmed in the amount of \$2,216,899.06, and the HPR was granted leave to deposit the resulting judgment amount into court pursuant to Rule 67, SCRCF. (R. pp. 83-97.) The HPR has paid the amount of \$2,216,899.06 into court. (R. p. 2808.)

D. Proceedings in the lower court re: mechanic's lien claims

On May 8, 2020, following the lifting of the arbitration stay, Mrs. Beatty moved for partial summary judgment as to TCC's cause of action for mechanic's lien foreclosure asserting TCC's service of the lien upon her was untimely. (R. pp. 1820-1826.) Mrs. Beatty pointed out that TCC had attested under oath, on the public record, and on four (4) occasions, that March 17, 2016, was the date it ceased providing labor or materials for which it sought to perfect and enforce its lien. (R. pp. 1820-1826.)

In response to Mrs. Beatty's motion, TCC filed its "Objection to Proceeding," Memorandum in Opposition to Pending Summary Judgment Motions and Response to Motion to Deposit Funds on May 22, 2020. (R. pp. 1953-1963.) TCC also moved on May 15, 2020, for leave to amend its verified amended complaint. (R. pp. 1830-1831.) Notably, this proposed second amended complaint removed any reference to the date upon which TCC last performed work or provided materials, instead alleging in Paragraph 12 that TCC "timely gave the Defendants notice of the statement of account for Mechanic's Lien and timely served and filed its lien relative to the date of last work as determined by the Panel of arbitrators." (R. pp. 1832-1838.) Curiously, the Panel made *no finding* regarding the date of last work. (R. pp. 879-881, 7-15.) The only date contained within

both the Panel's original and corrected awards is March 8, 2016, which the Panel determined to be the date of substantial completion. (R. pp. 880, 9.)

The Honorable Jennifer McCoy, Circuit Court Judge, scheduled a hearing on these motions for May 28, 2020. On May 22, 2020, six (6) days prior to the scheduled hearing, TCC filed an affidavit from TCC's project superintendent, Ryan Tomberlin, directly contradicting the four (4) prior sworn statements of TCC's president. (R. pp. 1992-1993.) The only explanation in Mr. Tomberlin's affidavit for Mr. Griffith's contradictory testimony is found in Paragraph 3, stating:

TCC believed substantial completion of the project was
March 17, 2016.

(R. p. 1993.) TCC, through Mr. Tomberlin's affidavit, made no effort to explain why Mr. Griffith swore to the facts as he did. Notably, Mr. Griffith, TCC's president, made no effort to explain or correct his prior sworn statements prior to the May 28, 2020, hearing.

Mrs. Beatty's motion and others were argued before Judge McCoy on May 28, 2020; however, Judge McCoy declined to rule on them. Instead, Judge McCoy granted TCC's motion to amend, authorized it to file a second amended complaint, and referred this matter to the Honorable Mikell R. Scarborough, Master-in-Equity for Charleston County, directing him to decide the remaining motions, including Mrs. Beatty's motion for summary judgment. (R. pp. 41-43.) TCC filed its second amended complaint on August 24, 2020. (R. pp. 478-484.) Mrs. Beatty answered on September 3, 2020. (R. pp. 599-606.) The master scheduled all motions for hearing on November 5, 2020.

On October 1, 2020, more than four (4) years after filing its verified complaints and sworn statements of account and four (4) months after Mrs. Beatty argued her motion for summary judgment before Judge McCoy, TCC filed a motion to amend its statement of account. (R. pp. 2081-2105.) The unsigned proposed revised statement of account, prepared for the signature of Mr.

Griffith, deleted any reference to the date when TCC last performed work on the project and directly contradicts the testimony given by Mr. Griffith in four (4) filings sworn to be true in court and filed of record with the Register of Deeds. (R. pp. 2087-2089.) TCC attached to its motion an affidavit of Mr. Griffith stating, in pertinent part, the following: (1) that he was involved in the Concord and Cumberland project from its beginning, and he signed the verified complaint and statement of account relating to the project; (2) that when he signed the statement of account, he referred to the date of substantial completion; and (3) that additional work was performed through August, 2017. (R. pp. 2091-2092.) TCC filed a subsequent memorandum in opposition to Mrs. Beatty's motion for summary judgment on October 27, 2020. (R. pp. 53-54.) In its memorandum, TCC did not explain why Mr. Griffith swore under oath that the last date of work was March 17, 2016. (R. pp. 53-54.) Instead, TCC refiled the affidavit of Mr. Tomberlin and a number of Exhibits, including a document identified as Exhibit D that purports to be a payroll summary for Heather Dagg, listing her hours for the months of December 2016 and January 2017. (R. pp. 53-54.)

E. The master's order, TCC's appeal, and the Subject Opinion

At the November 5, 2020, hearing, the master issued an oral ruling which, among other things, granted Mrs. Beatty's summary judgment motion. (R. pp. 2532-2596.) As requested by the master, Mrs. Beatty submitted a proposed order granting her motion and awarding her attorney's fees and costs along with an attorney's fee affidavit and redacted time records in support of her claim for fees. (R. pp. 46-63.) TCC objected to the proposed order on November 30, 2020, filing with the court a document entitled "TCC Omnibus Response and Objections to Filings and Submittals of Betty Beatty." (R. pp. 2132-2141.) Mrs. Beatty responded to TCC's "Omnibus Response" by letter dated December 3, 2020. (R. pp. 2799-2802.) Argument on TCC's objections was presented on January 27, 2021. (R. pp. 2496-2531.) On February 16, 2021, the master issued an order granting

Mrs. Beatty's motion for summary judgment and awarding her attorney's fees under § 29–5–10. (R. pp. 64-82.) On February 19, 2021, the master entered a Form 4 order confirming the award of attorney's fees. (R. pp. 98-103.)

On March 11, 2021, TCC noticed an appeal of the master's February 16, 2021, Order. (R. pp. 2739-2740.) On March 12, 2021, TCC filed a motion for reconsideration pursuant to Rules 59(e), 60(a), or 60(b), SCRCF. (R. pp. 2240-2247.) In its motion, TCC sought a ruling explaining how the master exercised his discretion in awarding attorney's fees to Mrs. Beatty. (R. pp. 2240-2247.) On March 19, 2021, Mrs. Beatty filed her memorandum in opposition to TCC's motion. (R. pp. 2254-2267.) On March 26, 2021, the master denied TCC's motion on grounds that TCC's Rule 59(e) motion was untimely as it was submitted well outside of the Rule's ten (10) day window. (R. pp. 115-119.) Additionally, the master further found that TCC had failed to submit any grounds for overturning the judgment and award of attorney's fees under Rule 60. (R. pp. 115-119.) The master further explained his basis for excluding certain fees Mrs. Beatty sought to recover for legal services performed while the case was stayed pending arbitration. (R. pp. 115-119.)

As certified above, the Court of Appeals decided TCC's appeal via the Subject Opinion, filed March 19, 2025. In pertinent part, insofar as Mrs. Beatty is concerned, the Court of Appeals reversed the master's award of attorney's fees to Mrs. Beatty. (Regarding Mrs. Beatty, the Court of Appeals also affirmed the master's grant of summary judgment in her favor. This petition does not raise any challenge with respect to the master's grant of summary judgment in Mrs. Beatty's favor.)

STANDARD OF REVIEW

A mechanic's lien is an action at law. *Glover v. Lewis*, 299 S.C. 44, 46, 382 S.E.2d 242, 243 (Ct. App. 1989). This Court reviews questions of law de novo. *Ex parte TLC Laser Eye Ctrs.*

(Piedmont/Atlanta), LLC, 404 S.C. 385, 392, 745 S.E.2d 105, 109 (2013). The award of attorney’s fees to the prevailing party in a mechanic’s lien action is mandatory. *Utilities Construction Co., Inc. v. Wilson*, 321 S.C. 244, 468 S.E.2d 1 (Ct. App. 1996). The determination of the amount of attorney’s fees that should be awarded under the mechanic’s lien statute is addressed to the sound discretion of the trial court. *D.A. Davis Constr. Co. v. Palmetto Props., Inc.*, 281 S.C. 415, 315 S.E.2d 370 (1984). The trial court’s decision regarding such a matter will not be disturbed absent an abuse of discretion. *Id.* An abuse of discretion occurs when, *inter alia*, the trial judge’s ruling is based upon an error of law. *Bayle v. South Carolina Dep’t of Transp.*, 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001).

ARGUMENT

- I. The Court of Appeals erred in reversing the master’s award of attorney’s fees to Mrs. Beatty.**
 - A. The Court of Appeals 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,¹ 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.”)² The Court of Appeals should have addressed

¹ (Mrs. Beatty’s Br. pp. 33-37.)

² In matters before the Court of Appeals, the only exception to this rule is that the Court of Appeals “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.

these arguments and, upon doing so, should have affirmed the master's award of attorney's fees to Mrs. Beatty.

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.)³ Ten days later, on

³ 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.)

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 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. (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).⁴

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

The Court of Appeals’ 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 appellate review, 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.)

⁴ 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.”).

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 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.

2. 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), the Court of Appeals 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), SCRCF, motion.” *Id.* at 286, 851 S.E.2d at 735. There, the Court of Appeals 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, the Court of Appeals should have affirmed the master’s award, as TCC did not preserve this issue for appellate review.

3. 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). (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 this 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, (1) 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 (2) the Court of Appeals’ 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 of Appeals 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,⁵ 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

⁵ *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 of Appeals "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 of Appeals 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 of Appeals "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],”⁶ 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. p. 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 came to the Court of Appeals 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.

⁶ (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 of Appeals’ 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 of Appeals with a record sufficient to do so. Rather, the Court of Appeals’ 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 any petition filed in this Court by the HPR, 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 with respect to the issue of the attorney’s fees that the master awarded her, overturn the Court of Appeals’ reversal of the master’s award of attorney’s fees to Mrs. Beatty, and affirm the master’s award of attorney’s fees to Mrs. Beatty.

<SIGNED ON THE FOLLOWING PAGE>

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