THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Case No. 13-CP-40-0319
Appellate Case No. 2025-000801

Daniel O'Shields and Roger W. Whitley, a Partnership d/b/a O & W Cars,..... Appellants,

v.

Columbia Automotive Company, LLC d/b/a Midlands Honda,.....Respondent.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. Was the circuit court acting within its discretion on remand in awarding $63,921 in attorney's fees in this case in which the actual damages were $6,645?

2. Did the circuit court correctly find that the judgment date in this matter is March 16, 2017, based on the clerk of court's records and unappealed portions of the circuit court's orders entered on December 2, 2016 and March 16, 2017?

3. Did the circuit court err in granting leave for Columbia Automotive Company, LLC d/b/a Midlands Honda to deposit all or a portion of the judgment amount with the clerk of court pursuant to Rule 67, SCRCP and in finding that post-judgment interest would no longer accrue as to any funds deposited?

INTRODUCTION

This case involves a dispute relating to damage disclosures between two car dealerships stemming from a single sale in 2010 of a used car for $5,200 at a North Carolina auction open only to automobile dealers. (R. at 92-100 (¶¶ 1-6 and 25), 1014). The circuit court understood what was at issue and noted during the trial, "I mean this is a Magistrate Court case you understand. The jurisdiction's under the Six Thousand Dollars." (R. at 695:18-20). Now, more than fifteen years later, Daniel O'Shields & Roger W. Whitley, A Partnership d/b/a O&W Cars ("O&W") are still attempting to turn this small claim into a huge attorney's fee award. As reflected in the record, Columbia Automotive Company, LLC d/b/a Midlands Honda ("Midlands Honda") has stood ready to pay the judgment for years and remains eager to bring this matter to a close.

STATEMENT OF THE CASE

This is the second appeal in this case. In the first appeal, *O'Shields v. Columbia Auto., LLC*, 435 S.C. 319, 867 S.E.2d 446 (Ct. App. 2021), *aff'd*, 443 S.C. 29, 902 S.E.2d 375 (2024) ("*O&W I*"), Daniel O'Shields & Roger W. Whitley, A Partnership d/b/a O&W Cars ("O&W") served a notice of appeal on April 11, 2017, challenging the circuit court's post-trial rulings as to attorney's fees, punitive damages, election of remedies, and offer of judgment interest. (App. at 24-81). This Court affirmed the reduction in punitive damages, reversed as to election of remedies, and remanded on the issues of attorney's fee and offer of judgment interest. (App. at 1-19). The South Carolina Supreme Court affirmed those rulings, and the case was remitted to the circuit court on June 7, 2024. (Remittitur, R. at ____).

Midlands Honda incorporates its statements of the case and facts from *O&W I* here. (App. at 88-96). The pertinent additional history for this appeal is provided below.

I. The Post-Trial Orders.

This matter was tried before a jury from April 18 to 22, 2016. The jury rendered a verdict of $6,650 in actual damages on the following causes of action: (1) breach of contract; (2) negligent misrepresentation; (3) NCUTPA; and (4) fraud. (R. at 43-46). The jury also returned a verdict of $2,381,888.00 in punitive damages on the fraud cause of action. (R. at 47). The circuit court granted the parties ten days to make post-trial motions. (R. at 935:4-9). O&W filed a motion to treble the NCUTPA verdict, for attorney's fees, for offer of judgment interest, and for prejudgment interest. (R. at 1301-02). Midlands Honda filed motions for judgment notwithstanding the verdict, or, in the alternative, a new trial or a new trial nisi remittitur, to require election of remedies, to enforce the North Carolina punitive damages cap, and for setoff or recoupment. (R. at 1277-1300).

A. The judgment date is March 16, 2017.

The circuit court issued a written order addressing the post-trial motions on November 28, 2016, which was filed on December 2, 2016 ("December 2016 Order").[1] (R. at 1-23). Among other things, the December 2016 Order directs that "[e]ntry of final judgment shall take place after the Court rules on Defendant's motion for setoff, as the amount of the final judgment may be effected by that ruling." (R. at 23). O&W filed a motion to alter or amend in which the only discussion of the judgment date was as follows:

> The Order's calculation of pre-judgment interest is through October 10, 2016, but the judgment was not rendered until December 2, 2016. The award should therefore be increased by $77.38 through the day of filing of the order, or $71.84 through the date of signing the order, further augmented by pre-judgment interest for any days between those dates and the filing of the amended order.

(R. at 1897). O&W did not challenge the language directing when the entry of judgment would take place. (R. at 1884-97).

[1] The order does not address Midlands Honda's motion for setoff, which was later withdrawn.

In addressing the motion to alter or amend and request for supplemental attorney's fees by order dated February 27, 2016 and filed March 16, 2017 ("March 2017 Order"), the circuit court directed the entry of judgment to include prejudgment interest. (R. at 24-29). The clerk of court followed that direction and entered judgment on March 16, 2017, concurrent with the filing of the March 2017 Order. (Judgment listing from Public Index, R. at ____). O&W did not appeal the portions of the December 2016 and March 2017 Orders relating to the timing of the entry of judgment or the pre-judgment interest award. (App. at 24-81).

B. The circuit court awarded $31,404 in attorney's fees.

The circuit court's post-trial orders awarded attorney's fees of $21,264 (R. at 23), $7,020 (R. at 26 (July 21-27, 2016)), and $3,120 (R. at 26-27 (July 28-September 13, 2016)) for a total of $31,404. (R. at 1-34). The circuit court expressed frustration that O&W did not discount:

> the total time spent in this case to reflect the claims on which it was not successful. Plaintiff initially asserted claims for violation of the South Carolina Unfair Trade Practices statute, S.C. Code Ann. § 39-5-10 *et seq.* and violation of the South Carolina Dealer's Act, S.C. Code Ann. § 56-15-10 *et seq.* These claims were abandoned after Defendant sought to dismiss them. In addition, Plaintiff withdrew a claim for constructive fraud after Defendant filed a motion for summary judgment. Lastly, the Court found the economic loss rule barred Plaintiff's negligence claim and granted Defendant's motion for directed verdict. Thus, Plaintiff abandoned or was unsuccessful on half the claims asserted against this Defendant (4 of 8).

(R. at 14). The circuit court further indicated that hours had been included relating to a claim against an unrelated defendant. (R. at 15). In addition, the circuit court found that time entries appeared to be excessive and that block billing prevented a meaningful review of the fee submission. (R. at 15-16).[2]

[2] None of these findings were reversed in *O&W I*.

The circuit court considered O&W's requests for supplemental attorney's fees and made awards specific to the work performed, including deducting a large number of hours for a late-filed and largely improper affidavit of counsel and hours that were not timely submitted. (R. at 24-29).[3] The circuit court declined to award any fees incurred after September 14, 2016, based on its finding that there was no longer an unwarranted refusal to settle based on the following factual finding:

> As shown in the Affidavit of James Y. Becker attached to Midland's Honda's response to O&W's motion [R. at 1999-2010], Midlands Honda made another settlement attempt in response to the Court's order that amounted to an effort "to fully resolve the matter which constitutes the basis of [this suit." On September 14, 2016, Midlands Honda, through counsel, hand delivered a settlement offer to Mr. Moskos offering to pay O&W "a sum reflecting actual damages plus the trial court's award of both punitive damages and attorney's fees for a total of $81,069 ($6,645 in actual damages + $46,515 in punitive damages + $21,264 in attorney's fees)." In other words, Midlands Honda offered to pay O&W all of the relief approved by the Court, including alternative relief which would have been foreclosed by O&W's election of remedies. In fact, Midlands Honda made a slight math error in its settlement offer and, as a result, the offer was greater than the total amount of relief approved by the Court.
>
> On September 16, O&W rejected the settlement offer, stating "I have reviewed Midlands Honda's confidential settlement offer with my clients. While the offer is confusing since it offered $81,069 but the numbers totaled only $74,424, my clients have decided to decline both offers." Midlands Honda twice asked for a counter offer (on September 16 and October 3), but O&W had not responded as of the date of Mr. Becker's affidavit.

(R. at 27-28). When O&W continued to seek additional attorney's fee awards for time spent after September 14, 2016, the circuit court reiterated its rulings and added as additional grounds that the it was denying fees in its discretion after that date and that any fees after that date were not incurred to protect the judgment. (R. at 30-34).[4]

[3] These findings were not reversed in *O&W I.*

[4] The September 14, 2016 cutoff was affirmed in *O&W I.*

In *O&W I*, this Court reversed in part and remanded the issue of attorney's fees with the following instructions:

> On remand, the circuit court should not seek to apportion requested fees between the fraud and the NCUTPA claims. The circuit court may exclude fees incurred after the date of the September 2016 settlement offer. The circuit court should eliminate any redundant fees, improper cost, and paralegal fees as it had in the previous award. However, the court should not exclude fees for travel. Finally, the circuit court may—or may not—reduce the remaining amount of requested fees by a percentage it finds is appropriate to reflect reasonable attorney's fees based on the success of the litigation. This percentage may be impacted by the decision of the court regarding the election of remedies, which will be addressed in the next section.

435 S.C. at 340, 867 S.E.2d at 457. In addition, this Court found that the circuit court could properly exclude any fees that were not expended to "protect the judgment." *Id.* at n. 11.

II. Post-Remand Orders.

Following the issuance of the remittitur on June 7, 2024, O&W sent a letter to the circuit court on October 4, 2024, setting forth its position on attorney's fees.[5] (Letter, R. at ____). Undeterred by the specific language of the remand from this Court, O&W demanded $441,480 in attorney's fees and $2,772.06 in travel expenses. (*Id.* ("**PLAINTIFFS SHOULD RECEIVE $441,480 IN ATTORNEY'S FEES AND $2,772.06 FOR TRAVEL EXPENSES.**" (emphasis in original)). O&W did not attempt to better describe its time, break the time down into phases, or exclude time after September 14, 2016. In fact, the letter attaches the same materials previously submitted. (*Compare* R. at ____ *with* R. at 1343-60 (Exhibit 1), 1537-40 (Exhibit 2), 1960-71 (Exhibit 3), 2065-69 (Exhibit 4), 2146-48 (Exhibit 5), 1544-48 (Exhibit 6), 1982-91 (Exhibit 7), 2070-81 (Exhibit 8), 2137-42 (Exhibit 9)).

[5] O&W did not raise or reference offer of judgment interest to the circuit court following the remand in *O&W I*.

The circuit court issued an order dated December 13, 2024 and filed January 7, 2025 ("January 2025 Order") addressing the issues of attorney's fees and travel expenses. The order grants the full requested amount for travel expenses. With respect to attorney's fees, the circuit court awarded an additional $42,657. (Order, R. at ____).

O&W filed a motion to alter or amend on January 7, 2025 on the following grounds: (1) that the order cut the fees requested "on grounds that the work was performed after conclusion of the trial;" (2) that it was error to "undo fee awards previously made;" (3) that the order failed to comply with the remand because it did not "undo its apportionment of fees among causes of action;" (4) that the finding in the December 2016 Order that this case was not exceptionally complicated for counsel had somehow been overruled in *O&W I*; (5) that the order erred in its recitation of fees previously awarded; (6) that the amount was so low as to be an abuse of discretion; (7) that the order failed to perform a new analysis of the factors for a fee award in North Carolina notwithstanding the extensive prior analysis and the rulings in *O&W I*; (8) that the circuit court should reconsider its order based on the "purpose of fee shifting statutes;" and (9) that the circuit court should clarify the judgment based on O&W's election of remedies. (Motion, R. at ____). In its discussion of the judgment, O&W calculated pre-judgment interest through the judgment date of March 17, 2017.

Midlands Honda responded on February 24, 2025, detailing why the January 2025 Order was generally proper, particularly in light of O&W's renewed request for attorney's fees in the amount of $441,480, the limited success obtained, and the circuit court's prior orders addressing the post-trial period. (Response, R. at ____). Midlands Honda agreed that clarification of the January 2025 Order was needed to address that the award was intended to be in addition to all

prior fee awards and to state the amended judgment amount. (*Id.*). Midlands Honda suggested the following calculation on the issue of attorney's fees:

> With respect to Arguments II and V in Plaintiff's Motion, it appears not that the Court meant to undo fee awards previously made, but rather that it made a calculation error. The Court's original orders awarded attorney's fees of $21,264 (November 28, 2016 Order), $7,020 (February 27, 2017 Order for period of July 21-27, 2016), and $3,120 (February 27, 2017 Order for period of July 28-September 13, 2016) for a total of $31,404. To the extent the Court's order contains a mathematical error, the revised additional award amount would be $32,317 for a total attorney's fee award of $63,921 ($31,404 in previously awarded fees + $32,317 in additional fees upon remand).

(*Id.*, R. at ____). In addition, Midlands Honda sought leave, pursuant to Rule 67, SCRCP, to deposit all or a portion of the judgment amount with clerk of court. (*Id.*, R. at ____).

In response to the motion for leave, O&W filed a response and motion for partial summary judgment on March 3, 2025 seeking to require payment of any deposited funds to O&W and to require that post-judgment interest continue to run at the statutory rate. (Response, R. at ____). Shortly thereafter, on March 5, 2025, O&W filed a "Motion to Conform the Judgment to the Remand's Directive Regarding Punitive Damages and to Assess Attorney's Fees in Light of the Correct Judgment." (Motion, R. at ____). In that motion, O&W represented that the total fee amount through September14, 2016 was $308,061 (789.9 hours). Again, O&W did not exclude anything from this calculation, despite the circuit court's prior rulings and the language of the remand.

Following the filing of the motion to conform, the circuit court reached out to counsel for clarification on what should be included in the judgment. (3/5/2025 email from Land, R. at ____). In the ensuing email exchange, O&W continued to include pre-judgment interest through the judgment and to calculate post-judgment interest from the judgment date. (*See* 3/7/25 email, R. at ____). Midlands Honda clarified that the request for leave to deposit the judgment amount was

only in the event of a further appeal by O&W and that it contemplated that it would make a direct payment to O&W if there was not further litigation. (3/7/25 email, R. at ____). After receiving responses and proposed orders from both parties (Emails and proposed orders, R. at ____), the circuit court issued an order on March 25, 2025 ("March 2025 Order") amending the judgment and the attorney's fee award and providing Midlands Honda leave to deposit "all or any portion of the judgment amount plus accrued interest" with the clerk of court.[6] (Order, R. at ____). The amended judgment was as follows:

Actual Damages	$6,645
Punitive Damages	$46,515
Costs	$529.07
Travel Expenses	$2,772.06
Prejudgment Interest	$2,222.60 (through entry of March 17, 2017 order)
Attorney's Fees	$63,921.00
Total:	**$122,907.73**

(R. at ____).

O&W did not move to alter or amend the March 2025 Order. Instead, it moved under Rule 60, SCRCP on April 10, 2025 (as amended April 13, 2025) to correct what it contented were "mathematical mistakes" in the January and March 2025 orders. (Motions, R. at ____). One of those errors was an addition error in the amended judgment amount in the quoted table above, the total should have been $122,604.73 rather than $122,907.73. The other purported "error" was a new argument that the January 2025 Order did not include $95,160 in attorney's fees that O&W contended should have been awarded. Midlands Honda agreed that the amended judgment contained an addition error as to the total judgment amount, but argued (1) that the additional $95,160 in attorney's fees sought by O&W was not a scrivener's error of the type contemplated

[6] Although the March 2025 Order adopts portions of the proposed order submitted by Midlands Honda, the circuit court incorporated its own language with respect to attorney's fees. (*Compare* Proposed Order *with* Order, R. at ____).

by Rule 60(a), SCRCP or a mistake for purposes of Rule 60(b)(1), and (2) that the issue should have been raised earlier by O&W. (Response, R. at ____).

Before the circuit court ruled on this request, O&W filed a notice of appeal on April 24, 2025. (Notice of Appeal, R. at ____). Midlands Honda deposited $254,646.68 with the clerk of court on April 30, 2025. (Receipt, R. at ____). That figure reflected the judgment amount of $122,604.73 plus $131,738.95 in post-judgment interest through April 30, 2025.

The circuit court issued an order on May 6, 2025 correcting the tabulation error in the judgment amount, but denying the request for an additional $95,160 in attorney's fees. (Order, R. at ____). Due to the pending appeal, O&W filed a motion to withdraw or reconsider the order on May 8, 2025. This Court remanded the matter to the circuit court to rule on the request for relief under Rule 60, SCRCP on May 15, 2025. (Remand Order, R. at ____). The circuit court denied the motion to reconsider and "ratified and reconfirmed" the May 6 order by order dated May 21, 2025. O&W filed a second notice of appeal to include the May 2025 orders on June 20, 2025. (Notice of Appeal 2, R. at ____).

ARGUMENT

I. The circuit court's award of $63,921 in attorney's fees in this case in which actual damages totaled $6,645 was within its discretion and should be affirmed.

This Court remanded the attorney's fee determination in this matter with the following instructions:

> To summarize, we remand the issue of attorney's fees to the circuit court. (1) On remand, the circuit court should not seek to apportion requested fees between the fraud and the NCUTPA claims. (2) The circuit court may exclude fees incurred after the date of the September 2016 settlement offer. (3) The circuit court should eliminate any redundant fees, improper cost, and paralegal fees as it had in the previous award. However, the court should not exclude fees for travel. (4) Finally, the circuit court may—or may not—reduce the remaining amount of requested fees by a percentage it finds is appropriate to reflect reasonable attorney's fees based on the success of the litigation. This percentage may be impacted by the decision of the court regarding the election of remedies, which will be addressed in the next section.

(App. at 14-15) (numbering added). O&W's brief in this appeal hinges on the faulty premise that it is entitled to a full award for any work before September 14, 2016. This is simply untrue.

It is clear from the remand that there was no expectation that O&W would be awarded all of its claimed fees for the pre-September 14, 2016 period, but rather that the circuit court would revisit the issue and reach a reasonable fee award excluding redundant fees, improper costs, paralegal fees, and any fees not expended to protect the judgment. This Court further provided that an adjustment could be made for lack of success of the litigation. It is also clear from the March 2025 Order that the circuit court did not revoke any previously made award, but rather was making an additional award to comply with the remand. (Order, R. at ____).

O&W did not offer the circuit court any assistance with this task, but rather made a full demand for $441,480 based on the same attachments that had been previously submitted and found deficient by the circuit court. (10/4/24 letter, R. at ____ (attaching materials previously submitted at R. 1343-60 (Exhibit 1), 1537-40 (Exhibit 2), 1960-71 (Exhibit 3), 2065-69 (Exhibit 4), 2146-

48 (Exhibit 5), 1544-48 (Exhibit 6), 1982-91 (Exhibit 7), 2070-81 (Exhibit 8), 2137-42 (Exhibit 9)). O&W made no effort to remove the fees after September 14, 2016, did not remove fees that were previously excluded and not subject to reversal (such as the late submitted hours or the hours spent on a largely improper affidavit), did not attempt to address excessive entries such as 23.2 hours spent for review of a single deposition (R. at 16), and did not undertake to provide further clarity on block billed time.[7]

In the absence of any effort by O&W to present a more reasonable demand, the circuit court made its own review and awarded $32,317 in attorney's fees in addition to the $31,404 previously awarded, bringing the total award to $63,931. (Orders, R. at ____). This award is slightly less than ten times the amount of actual damages, $6,645.

A. Standard of Review.

The South Carolina standard of review applies to the consideration of the attorney's fee award. *O&W I*, 435 S.C. at 335 n.10, 867 S.E.2d at 454 n. 10. In considering an award of attorney's fees, "the overriding benchmark [] is that attorneys' fees must be 'reasonable.'" *Layman v. State*, 376 S.C. 434, 455, 658 S.E.2d 320, 331 (2008).

[7] This unwillingness to accept an attorney's fee award of anything less than the full amount claimed is standard operating procedure for O&W's counsel. *See Greenawalt v. Nissan N. Am., Inc.*, No. 2023-001124, 2025 WL 1517016, at *1 (S.C. Ct. App. May 28, 2025) ("The circuit court awarded $75,000 in fees. Appellants concede the court performed the appropriate legal analysis up until the portion of the order reducing the award. Appellants argue this was error because they are statutorily entitled to all hours 'actually expended,' or 'full compensation.' We respectfully disagree and affirm."), *cert. denied* January 16, 2026; *West v. Am. Honda Motor Co., Inc.*, No. 2022-000162, 2025 WL 1514479, at *1 (S.C. Ct. App. May 28, 2025) ("Appellant requested $92,385 in fees and $2,386.28 in costs. The circuit court awarded $27,585. On appeal, Appellant asserts the circuit court erred in not awarding all of the requested fees and in failing to award costs. We affirm the amount of awarded fees but amend the award to include the requested costs."), *cert. denied* December 16, 2025.

The determination of the amount of attorney's fees awarded pursuant to a statute is addressed to the sound discretion of the trial court and will not be reversed absent an abuse of that discretion. *EFCO Corp. v. Renaissance on Charleston Harbor, LLC*, 370 S.C. 612, 621, 635 S.E.2d 922, 926 (Ct. App. 2006); *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 493, 427 S.E.2d 659, 660 (1993). "[A]n appellate court will not reverse an award [of attorney's fees] unless it is based on an error of law or is without *any evidentiary support.*" *Williamson v. Middleton*, 374 S.C. 419, 427, 649 S.E.2d 57, 61 (Ct. App. 2007) (emphasis in original), *rev'd on other grounds*, 383 S.C. 490, 681 S.E.2d. 867 (2009). Moreover, "[b]ecause a [trial court] has close and intimate knowledge of the efforts expended and the value of the services rendered, the fee award must not be overturned unless it is clearly wrong." *Harwood v. Am. Airlines, Inc.*, 37 F.4th 954, 960 (4th Cir. 2022) (quoting *Plyler v. Evatt*, 902 F.2d 273, 278 (4th Cir. 1990) (cleaned up)). Midlands Honda further notes that this Court may affirm for any reason in the record pursuant to Rule 220, SCACR.

B. The circuit court was within its discretion in making the additional attorney's fee award.

Fee awards in South Carolina must be reasonable. *Layman*, 376 S.C. at 455, 658 S.E.2d at 331. The determination of what is reasonable is left to the sound discretion of the circuit court. *Brawley v. Richland Cnty.*, 445 S.C. 80, 90, 911 S.E.2d 156, 161 (Ct. App. 2025) ("We will not disturb this decision unless the circuit court abused its discretion. An abuse of discretion occurs when the conclusions of the trial court are either controlled by an error of law or are based on unsupported factual conclusions." (citations and quotations omitted)).

Under the NCUTPA, attorney's fees may be awarded under the following conditions:

> In any suit instituted by a person who alleges that the defendant violated G.S. 75-1.1, the presiding judge may, *in his discretion*, allow a reasonable attorney fee to the duly licensed attorney representing the prevailing party, such attorney fee to be

> taxed as a part of the court costs and payable by the losing party, upon a finding by the presiding judge that:
>
> (1) The party charged with the violation has willfully engaged in the act or practice, and there was an unwarranted refusal by such party to fully resolve the matter which constitutes the basis of such suit; or
>
> (2) The party instituting the action knew, or should have known, the action was frivolous and malicious.

N.C.G.S. § 75-16.1 (emphasis added). The plain wording of the statute confirms that: (1) attorney's fees may not be awarded unless there was an unwarranted refusal to settle; and (2) even if such a refusal is present, an award of fees rests in the discretion of the Court and is reserved for "extreme cases." *See Evans v. Full Circle Prods., Inc.*, 443 S.E.2d 108, 110 (N.C. Ct. App. 1994).

The purpose of the fee award "is to encourage private enforcement" of the NCUTPA. *See Shepard v. Bonita Vista Properties, L.P.*, 664 S.E.2d 388, 396 (N.C. Ct. App. 2008). To this end, a plaintiff has the burden of establishing that there has been an unwarranted refusal to settle before any fee award can issue. *Llera v. Sec. Credit Sys., Inc.*, 93 F. Supp. 2d 674, 680 (W.D.N.C. 2000). In addition, trial courts retain the discretion to deny attorney's fees even if the elements of § 75-16.1 are met. *Id.* at 681. As found by the North Carolina Court of Appeals in direct contravention to O&W's arguments that this is a plaintiff friendly statute, "we also recognize that the statute apparently has been designed to award attorney's fees in extreme cases, since even when the statutory requirements are met, an award of attorney's fees is within the trial court's discretion." *Evans*, 443 S.E.2d at 110.

Under the NCUTPA, a trial court may award attorney's fees for post-trial or appellate work by a prevailing party on an unfair trade practices claim where such work is expended in an "effort" to "protect the judgment." *See Faucette v. Carmel Road, LLC*, 775 S.E.2d 316, 326 (N.C. Ct. App. 2015); *Cotton v. Stanley*, 380 S.E.2d 419, 422 (N.C. Ct. App. 1989) ("Fees are

authorized for the prevailing party and may be awarded for all time, including appeal, *reasonably expended in obtaining or sustaining the status of prevailing party*.") (emphasis added). Additionally, an award of attorney's fees under N.C.G.S. § 75-16.1 is always discretionary, even when the factors which would support an award are present. *Basnight v. Diamond Developers, Inc.*, 178 F.Supp.2d 589, 592 (M.D.N.C. 2001) ("[e]ven where the facts of a particular case will support a finding that the requirements of N.C.Gen.Stat. § 75-16.1 have been met and an award of attorney's fees may be warranted, the Court retains the discretion to deny the award"); *Blankenship v. Town & Country Ford, Inc.*, 174 N.C.App. 764, 771, 622 S.E.2d 638, 643 (2005) ("[t]he decision whether or not to award attorney fees under section 75-16.1 rests within the sole discretion of the trial [court]. *And if fees are awarded*, the amount also rests within the discretion of the trial court.") (emphasis added and citation omitted); *Evans*, 443 S.E.2d at 110 ("[W]e also recognize that the statute apparently has been designed to award attorney's fees in extreme cases, since even when the statutory requirements are met, an award of attorney's fees is within the trial court's discretion.").

In determining attorney's fees, "the most critical factor is the degree of success obtained." *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983). A fee award may be adjusted downward in the trial court's discretion based on an analysis of the following: (1) did the plaintiff fail to prevail on other claims and (2) "did the plaintiff achieve a level of success that makes the hours reasonably expended a satisfactory basis for making a fee award?" *O&W I*, 435 S.C. at 338, 867 S.E.2d at 456 (quoting *Hensley* at 433-37). This is consistent with North Carolina and Fourth Circuit law. *See Okwara v. Dillard Dep't Stores, Inc.*, 525 S.E.2d 481, 486–87 (N.C. Ct. App. 2000) (finding determination as to whether the fee should be reduced is "largely left to the

discretion of the trial judge, who has 'intimate knowledge' of the facts and circumstances of the case"); *Johnson v. City of Aiken*, 278 F.3d 333, 336–37 (4th Cir. 2002).

Against this backdrop and the language of the remand, which clearly contemplated that there would be reductions, the circuit court awarded $42,657 in additional attorney's fees. (Order, R. at ____). That total was later clarified to reflect the correct total for the fee awards prior to *O&W I*, resulting in a revised award of $63,921. (Order, R. at ____).

On remand, O&W merely dusted off its full ask from the period prior to the appeal, seeking $441,480 in this case involving an actual damages award of $6,645. (Letter, R. at ____). The circuit court's ruling shows that it did not deem this to be a reasonable request.

The circuit court, in recognition of the remand in *O&W I* and based on its determination of what would be reasonable, reflective of success, and incurred to protect the judgment, awarded additional fees totaling $42,657, later corrected to $32,317.[8] In reaching this result, the circuit court did not undo any past awards, and its prior awards/ exclusions of claimed fees for the periods of July 21-27, 2016 and July 28-September 13, 2016 are fully consistent with the remand as was the exclusion of late claimed fees for May 2, 2016-July 20, 2016, any fees incurred after September 14, 2016, and any fees for the largely improper affidavit. The circuit court's ruling was not based upon apportionment or a new cutoff date, but rather on the circuit court's determination that the fees after the verdict other than those previously awarded were not incurred to protect the verdict or were unreasonable. The revised attorney's fee award is not a small amount—it dwarfs the actual damages award reached by the jury ($6,645).

[8] The Court's original orders awarded attorney's fees of $21,264 (R. at 23), $7,020 (R. at 26), and $3,120 (R. at 27) for a total of $31,404. The circuit court adjusted this original figure to reach a total of $63,921 in the March 2025 Order ($31,404 in previously awarded fees + $32,317 in additional fees upon remand) (Order, R. at ____).

This result is particularly appropriate in light of the degree of success achieved in this case where O&W asserted eight claims, but either abandoned or was unsuccessful on four of them. In addition to the lack of success with respect to certain of the claims, much of O&W's counsel's time was spent chasing a large punitive damages award beyond any level that was constitutionally supported. O&W viewed success in this matter to be based on a multi-million dollar punitive damages award, or at the very least, a $500,000 award (one award of the North Carolina punitive damages cap as set in N.C.G.S. § 1D-25 for each of the partners in O&W)—a view that was objectively unreasonable based on South Carolina and United States Supreme Court case law discussing the due process implications of punitive damages awards. *See BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 568, 116 S.Ct. 1589, 134 L.Ed.2d 809 (1996); *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 691 S.E.2d 135 (2010). O&W maintained this position for years until it was finally rejected by the South Carolina Supreme Court in *O&W I.*

In short, the circuit court found that any additional post-verdict time that had not been previously awarded was either not incurred to protect the judgment or was not reasonable given the success achieved, and it declined to make any additional award in the post-verdict period. With respect to the pre-verdict period, the circuit court determined that an additional $32,317 would be a reasonable award considering the remand in *O&W I*. As this court has repeatedly reminded O&W's counsel, the circuit court is not required to award all fees requested. *See Greenawalt,* 2025 WL 1517016 at *1 ("Appellants argue this was error because they are statutorily entitled to all hours 'actually expended,' or 'full compensation.' We respectfully disagree and affirm."); *West*, 2025 WL 1514479, at *1 ("On appeal, Appellant asserts the circuit court erred in not awarding all of the requested fees and in failing to award costs. We affirm the amount of awarded fees but amend the award to include the requested costs."). Here, the fee award is reasonable in light of

the remand in *O&W I*, the prior awards, the degree of success on the merits, and the fees incurred to protect the judgment.

Midlands Honda has sought in good faith to resolve this matter since September 14, 2016 at the latest. O&W has shown no interest in bringing this litigation to an end. For this reason, Midlands Honda asks that the Court affirm the circuit court's award of a reasonable attorney's fee as a valid exercise of discretion.

C. Portions of the circuit court's original orders relating to attorney's fees were either affirmed or not appealed. Those findings remained in place on remand.

Certain portions of the circuit court's original orders remained in place on remand. Most notable of these findings was the September 14, 2016 cutoff. In addition, O&W did not appeal the trial court's ruling that its request for additional fees for work performed from May 2, 2016-July 20, 2016 made by way of Plaintiff's Motion Pursuant to Rule 59 and Motion for Supplemental Attorney's Fees filed on December 20, 2016 was not timely.[9] (R. at 25). As a result, that portion of the circuit court's order is law of the case and those fees were not available for award on remand. *ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche*, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997) (holding unappealed ruling is law of the case).

In addition, the circuit court had already determined that certain elements of the requested fees were improper. For example, the trial court denied fees beyond two hours for the preparation of a generally improper affidavit because the remaining hours claimed by O&W's counsel were "not reasonably expended."[10] (R. at 26-27). To the extent matters were previously decided and

[9] The total number of hours subject to this ruling is 153.8. (R. at 1950-58). At $390/hour, this exclusion totals $59,982.

[10] Attorney Moskos claimed 60.9 hours in connection with this affidavit. (R. at 26). At $390/hour, the exclusion amount here was an additional $22,971.

were either not appealed or were affirmed, those rulings are the law of the case and should not have been included as part of O&W's post-remand fee demand. *See id.*

D. O&W's arguments relating to the scope of the remand and failure to explain (Argument I(A)(2)) are not preserved because they were not made to the circuit court. Nor did the circuit court err in failing to award O&W an additional $95,160 in attorney's fees pursuant to Rule 60, SCRCP.

O&W's arguments in section I(A)(2) of its brief were not made to the circuit court. (*See* 10/4/2024 letter and motion to reconsider, R. at ____). O&W did not ask the circuit court to provide an explanation for its ruling, nor did it ask for clarification of the numbers included, nor did it provide its own breakdown of fees incurred before versus after the trial in this matter prior to its Rule 60, SCRCP motion (Motion, R. at ___). As such, these arguments are not preserved for this Court's review. *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 734 (1998) (holding that an argument must have been raised to and ruled on by the circuit court to be preserved for appellate review). O&W was so focused on maximizing its attorney's fee award that it provided the circuit court with no assistance in reaching an award on remand.

With respect to the request for an increased fee award pursuant to Rule 60, SCRCP, "Rule 60(a) cannot be used to relitigate facts [or] to change the clear intent of the judgment[.]" James F. Flanagan, South Carolina Civil Procedure 717-18 (4th ed. 2020). "A clerical error 'is a mistake or omission by a clerk, counsel, judge or printer, *which is not the result of exercise of judicial function.*" *Ex parte Strom*, 343 S.C. 257, 264, 539 S.E.2d 699, 702 (2000) (quotation omitted). Upon receipt of the January 2025 Order, O&W filed an extensive motion to alter or amend, which included nine different grounds. Nowhere in that motion did O&W raise any "mathematical error" as to $95,160 in fees in the pre-trial period.

The circuit court, in considering the motion to alter or amend, revisited the attorney's fee award and increased it from $42,657 to $63,921 in the March 2025 Order. (Order, R. at ____).

This total clarified that no previous awards had been revoked and that some time in the post-verdict phase had been awarded.

O&W did not move to alter or amend that revised amount, nor did it seek any additional rulings about what was included in that amount. Instead, O&W waited until after the ten days allowed to seek relief under Rule 59(e), SCRCP had passed and then sought to relitigate the issue of attorney's fees under Rule 60 by attaching an additional 11 out of context pages from earlier filings and claiming these show a "math error" in its favor of $95,160. (Motion, R. at ____). This is not a permissible use of Rule 60(a). Nor was there any basis to change the January 2025 Order under Rule 60(b)(1), SCRCP. There has not been any "mistake, inadvertence, surprise, or excusable neglect[.]" This was not a default judgment. If O&W had a concern about the figure awarded in the December Order, it could have raised it in its Rule 59(e) motion and was required to do so to preserve an argument for appeal.

II. The judgment date is March 16, 2017.

The judgment date is March 16, 2017. (Judgment listing from Public Index, R. at ____). This date was established by the circuit court in the December 2016 Order ("[e]ntry of final judgment shall take place after the Court rules on Defendant's motion for setoff, as the amount of the final judgment may be effected by that ruling") and March 2017 Order. (R. at 23, 24-29). To the extent O&W disagreed with the circuit court's determination of the judgment date, it was free to appeal the issue in *O&W I.* It did not do so. As such, that date is the law of the case and may not be revisited. *ML-Lee Acquisition Fund, L.P.*, 327 S.C. at 241, 489 S.E.2d at 472.

Nor is this argument preserved. *Wilder Corp.*, 330 S.C. at 76, 497 S.E.2d at 734. The circuit court stated that the judgment date was March 16, 2017 in its March 2025 Order. O&W did not move to alter or amend this ruling. Thus, O&W's arguments on appeal were not presented to the circuit court, and they should not be considered by this Court.

Further, the circuit court was correct on the merits. "A money decree or **judgment** of a court **enrolled or entered** must draw interest according to law." S.C. Code Ann. § 34-31-20 (emphasis added). The statute relates to the judgment, not a verdict. "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Here, there was not an enrolled or entered judgment until March 16, 2017, and post-judgment interest did not begin to accrue until that date.

The judgment has since been revised since the remand in *O&W I*. Post-judgment interest will run on the amended amount from the original judgment date, March 16, 2017. *Calhoun v. Calhoun*, 339 S.C. 96, 104, 529 S.E.2d 14, 18–19 (2000). As set forth there,

> The case before us is a perfect example of how complicated calculating post-judgment interest can become when a money judgment is modified at several different junctures before reaching finality and why a bright line rule for the accrual of interest needs to be established. While different jurisdictions have come up with creative and complicated methods of resolving the issue, it appears that the simplest way to resolve it is by adopting a rule that when a money judgment is finalized, whether in a lower court or in an appellate court, the interest on that amount, whether it has been modified upward or downward or remains the same, runs from the date of the original judgment.

Id. The judgment includes pre-judgment interest through March 16, 2017, and O&W has not appealed that figure in this appeal or in *O&W I*. Although there are cases where the verdict date and the judgment date are the same, the plain language of the statute follows the judgment, not the verdict. For these reasons, the circuit court correctly determined that the judgment date is March 16, 2017.

III. The circuit court was within its discretion in allowing Midlands Honda to deposit all or part of the judgment amount with the clerk of court and in providing that post-judgment interest would no longer accrue on the deposited amount.

O&W challenges the circuit court's order allowing Midlands Honda to deposit all or a part of the judgment amount with the circuit court and providing that post-judgment interest would no longer accrue on the deposited amount. Rule 67, SCRCP provides,

> In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum or thing, whether or not that party claims all or any part of the sum or thing. Money paid into the court under this rule shall be deposited as directed by the court in any bank or institution authorized to receive public funds, and shall be withdrawn only upon the check of the clerk of court in favor of the party to whom the order of the court directs.

Orders made pursuant to this rule are subject to an abuse of discretion standard. *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 369 S.C. 150, 153, 631 S.E.2d 533, 535 (2006).

Under Rule 67, "[a] judgment debtor can deposit the amount of the judgment with the court pending appeal and stop the accrual of post-judgment interest at the statutory rate from the date of the deposit." James F. Flanagan, South Carolina Civil Procedure 770 (4th ed. 2020); *Russo v. Sutton*, 317 S.C. 441, 444, 454 S.E.2d 895, 896 (1995) ("a judgment debtor's deposit of funds into the court pending his own appeal prevents further accrual of interest. Such a rule encourages the debtor to pay the judgment and assures the judgment creditor the funds will be available at the conclusion of the appeal."); *TCC of Charleston, Inc. v. Concord & Cumberland, LLC*, 446 S.C. 202, 227, 918 S.E.2d 699, 712 (Ct. App. 2025) ("Our supreme court has held that 'a judgment debtor's deposit of funds into court pursuant to Rule 67 pending his own appeal stops the accrual of interest on the judgment.'"). The deposit may be for "all or any part" of the judgment amount. Rule 67, SCRCP.

O&W repeatedly refers to the holding in *Russo* as dicta. This is incorrect. The issue in *Russo*, as framed by the South Carolina Supreme Court, was "[D]id Sutton's deposit of the judgment with the Clerk of Court ["pending the debtor's own appeal of the judgment"] stop accrual of post-judgment interest?" 317 S.C. at 443, 454 S.E.2d at 896. In answer to that question, the *Russo* court ruled, "we **hold** that to stop accrual of interest, a debtor must comply with the plain language of Rule 67." 317 S.C. at 444, 454 S.E.2d at 897 (emphasis added). In other words, if a deposit is made in accordance with Rule 67, there is no further accrual of interest. The cases cited by O&W address interest generally and do not have any bearing on the holding in *Russo* and the implications of a deposit under Rule 67.[11]

[11] This Court recently rejected O&W's argument in an unpublished opinion, as follows:

> As to Wedgewood's argument the circuit court erred in granting Centex's motion because [S.C. Code Ann. § 34-31-20] conflicts with Rule 67, SCRCP, we find no error. *See* [*S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 369 S.C. 150, 153, 631 S.E.2d 533, 535 (2006)] ("The granting of leave to deposit money with the court pursuant to Rule 67, SCRCP[,] is a matter within the discretion of the trial court and will not be overturned absent an abuse of that discretion."); *id.* ("An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion without evidentiary support."); Rule 67, SCRCP ("In an action in which any part of the relief sought is a judgment for a sum of money ..., a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum or thing ...."); S.C. Code Ann. § 34-31-20(B) ("A money decree or judgment of a court enrolled or entered must draw interest according to law. The legal rate of interest is equal to the prime rate as listed in the first edition of the Wall Street Journal published for each calendar year for which the damages are awarded, plus four percentage points, compounded annually."); *Russo v. Sutton*, 317 S.C. 441, 444, 454 S.E.2d 895, 896 (1995) (holding **"a judgment debtor's deposit of funds into court [pursuant to Rule 67] pending his own appeal prevents further accrual of interest"**); [*Small v. Pioneer Mach., Inc.*, 330 S.C. 62, 64–65, 496 S.E.2d 884, 885 (Ct. App. 1998)] (affirming the circuit court's grant of a motion to deposit $500,000 based on a damages award pursuant to Rule 67 when the defendant had complied with the requirements of Rule 67 and noting that the "judgment debtor's deposit of funds into the court pending his own appeal prevents further accrual of interest on the judgment"); *Duval v. Heritage Life Ins. Co.*, 339 S.C. 616, 620, 529 S.E.2d 566, 568-69 (Ct. App. 2000) (affirming the trial court's allowing a judgment debtor to avoid postjudgment interest by depositing the amount of the judgment with the court and stating it was bound by the clear

There is one judgment in this action, the amount of which is challenged by O&W in this appeal. Midlands Honda has tried to resolve this case for years as acknowledged by the circuit court in disallowing fees after September 14, 2016. (R. at 27-28). Midlands Honda further represented that it was prepared to pay the judgment following remand if O&W did not challenge the judgment amount by way of appeal. (March 2025 Order, R. at ____). Midlands Honda has not appealed any of the circuit court's rulings in the interest of putting this matter to rest. The long history of this case falls entirely on O&W's shoulders. The request to deposit into court was made in yet another effort by Midlands Honda to bring this matter to a close.

The circuit court, given its familiarity with this case and O&W's insatiable demands for attorney's fees, granted the motion for leave after reciting the applicable law and finding that the request was "consistent with the language and spirit of Rule 67" should O&W pursue another appeal. (*Id.*, R. at ____). This ruling is a clear exercise of discretion by the circuit court.[12]

> precedent in *Russo*); *Zurich Am. Ins. Co. of Ill. v. Palmetto Cont. Servs., Inc.*, 434 S.C. 104, 110, 862 S.E.2d 714, 717 (Ct. App. 2021) (noting that when our state rule is substantially the same as the federal rule, the court can analyze federal case law interpreting the federal rule when deciding issues related to our state rule); [*Renaissance Enters., Inc. v. Ocean Resorts, Inc.*, 334 S.C. 324, 327, 513 S.E.2d 617, 619 (1999)] ("Rule 67 is substantially the same as the federal rule allowing a deposit into court."); *Zelaya/Cap. lnt'l Judgment, LLC v. Zelaya*, 769 F.3d 1296, 1303 (11th Cir. 2014) ("The federal courts ... have overwhelmingly held that post[-]judgment statutory interest stops accruing once the disputed funds are deposited into the court's registry."); *Russo*, 317 S.C. at 443, 454 S.E.2d at 896 (explaining the cessation of postjudgment interest under Rule 67 **"encourages the debtor to pay the judgment and assures the judgment creditor the funds will be available at the conclusion of the appeal"**).

Wedgewood Condo. Ass'n v. Centex Homes, No. 2023-001150, 2025 WL 2718547, at *1 (S.C. Ct. App. Sept. 24, 2025) (footnote omitted).

[12] O&W's arguments relating to the exercise of discretion were not raised to the circuit court and are not preserved for consideration by this Court. O&W did not raise them in its pro-order briefing, nor were they raised in a motion to alter or amend. Therefore, these arguments should not be considered on appeal. *Wilder Corp.*, 330 S.C. at 76, 497 S.E.2d at 734.

Given the above, the circuit court's ruling allowing for deposit into court and that interest would cease upon deposit was a reasonable exercise of discretion that is fully supported by applicable law. As such, the ruling should be affirmed.

CONCLUSION

For these reasons, this Court should affirm the circuit court's rulings. To the extent O&W argues that the Court should reverse and direct judgment consistent with O&W's arguments to include a full award of all of the attorney's fees it requested through September 14, 2016, such an award would be inappropriate and inconsistent with *O&W I.* Although this Court may affirm for any reason appearing in the record consistent with Rule 220, SCACR, the converse is not true. As set forth above, the remand in *O&W I* did not contemplate that all requested fees would be awarded. In addition, portions of the circuit court's exclusions are law of the case or were contemplated in the remand in *O&W I.* As such, there is no basis in this case to award O&W $244,140 in additional attorney's fees even if the Court is inclined to reverse the circuit court's award of additional attorney's fees on remand.

Respectfully submitted,

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