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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Probate Court

Debra A. Faulkner, Probate Judge
Probate Case No. 2018-ES-23-02854

Appellate Case No. 2026-000267

IN THE MATTER OF:

Estate of Florence Petrak Mensch,

Sterling Raymond Mensch, III,
individually as former Personal Representative
of the Estate of Florence Petrak Mensch and
in his former capacity as Agent under a Power
of Attorney for Florence Petrak Mensch

Appellant,

v.

Shauna M. Waddell, individually and as
Personal Representative of the Estate of
Florence Petrak Mensch and John R.
Mensch

Respondents.

MOTION TO DISMISS APPEAL
AND MEMORANDUM IN SUPPORT OF MOTION TO DISMISS APPEAL

s/ Jenna Hendricks McLeod
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Given that this Court has already ruled on the only two issues on appeal in the Order of the Court of Appeals filed Nov. 13, 2024, Respondents respectfully request that the Court dismiss this appeal under Rule 269, 207, and all other applicable South Carolina rules and statutes.

- I. **The only remaining issues on appeal have already been decided by the South Carolina Court of Appeals in Unpublished Opinion No. 2024-UP-384. The appeal should be dismissed as frivolous pursuant to Rule 269.**

Florence Mensch died on April 26, 2018. Appellant was her Agent under a Power of Attorney, and after her death Respondents filed suit for his actions as Power of Attorney and subsequently personal representative. Respondents were granted summary judgment by the Greenville County Probate Court. A four (4) day trial on damages followed, culminating in a January 26, 2022 order awarding \$984,764.00 in damages against Appellant, Sterling Mensch, III. Order of the Probate Court, Jan. 26, 2022. Appellant then appealed to the Circuit Court and Respondents succeeded on a motion to dismiss his appeal on May 16, 2022.

Thereafter, Appellant appealed to the Court of Appeals and oral arguments were held on September 24, 2024. The Court of Appeals affirmed, finding that the probate court's order constitutes a final order, the appeal was properly dismissed as untimely, and the probate court had subject matter jurisdiction. *Mensch v. Waddell*, Op. No. 2024-UP-384 (S.C.Ct.App. filed Nov. 13, 2024) (Howard Adv.Sh. No. 44). Subsequently, Sterling Mensch, III petitioned the Supreme Court for a writ of certiorari, which they granted "only as to whether the appeal to circuit court was timely...." *Mensch v. Waddell*, Op. No. 2025-MO-037 (S.C.Sup.Ct. filed July 2, 2025). Based on the newly decided case *Swing v. Swing*, the Supreme Court ruled that even though Appellant's Rule 59(e) motion was defective under Rule 7(b)(1), it tolled the time to appeal and therefore Appellant's appeal was timely. 445 S.C. 340, 351, 914 S.E.2d 158, 164 (2025). The case was then remanded to the circuit court for consideration of the merits of the appeal.

On January 6, 2026, the circuit court once again affirmed the probate court finding the probate court's order constituted a final order and that the probate court had subject matter jurisdiction to hear the causes of action in the case related to pre-death damages. Order of the Circuit Court, Jan. 4, 2026, p. 3-5. As to Appellant's other issues, they were raised for the first time in his Initial Brief and were therefore waived. *Id.* at p. 5-10. "It is axiomatic that an issue cannot be raised for the first time on appeal." *State v. Haygood*, 409 S.C. 420, 762 S.E.2d 69, 74 (Ct. App. 2014) (quoting *State v. Cope*, 405 S.C. 317, 338-339, 748 S.E.2d 194, 205 (2013)). "For an issue to be properly preserved it has to be raised and ruled on by the trial court." *State v. Jennings*, 394 S.C. 473, 481, 716 S.E.2d 91, 95 (2011). "An argument advanced on appeal but not raised and ruled on below is not preserved." *State v. Freiburger*, 366 S.C. 125, 134, 620 S.E.2d 737, 741 (2005). Nevertheless, the circuit court considered the arguments on the merits and ruled that the probate court properly imposed a constructive trust in this case and that the probate court's award of attorneys' fees was proper. Order of the Circuit Court, Jan. 4, 2026, p. 5-10.

The Court of Appeals already heard and ruled on the two issues on appeal, finding that the probate court's order constituted a final order and that the probate court had subject matter jurisdiction to hear the causes of action in the case related to pre-death damages. *Mensch v. Waddell*, Op. No. 2024-UP-384 (S.C.Ct.App. filed Nov. 13, 2024) (Howard Adv.Sh. No. 44). Appellant's appeal is frivolous and taken solely for the purposes of delay. This case has been pending since 2019 and Appellant continues to improperly drag out this case to frustrate and harass his siblings and avoid his day of reckoning. Appellant has not paid any amount towards the \$984,763.00 that he stole first from his mother, then from his mother's estate, and was ordered to pay over four (4) years ago on January 26, 2022. Respondents are still having to pay attorneys' fees to respond to frivolous appeals and the Estate owes substantial amounts to the IRS due to

Appellant's liquidation of his mother's retirement account. Rather than attempt to do the right thing and pay any amount back to the Respondents, Appellant continues to tie the case up with frivolous appeals in an attempt to avoid fairly and adequately compensating his mother's estate for his misdeeds. In fact, the order from the probate court states that "[t]hese are just the damages that Petitioners have been able to discover from [Appellant] who has lied to the Court, lied to his siblings, lied by omission to GE Pension and BOA, failed to cooperate with his first attorney, refused to obey Court Orders, failed to cooperate in discovery, and failed to produce documentary evidence or witnesses to support his written allegations." Prob. Ct. Order p. 12. The actual damages to Florence Mensch's Estate were \$273,460.50 higher than the judgment amount, which represents Appellant's one-third (1/3) share under the Will of Florence Mensch. Appellant actually received his inheritance under the Will while Respondents have dealt with extensive litigation in an attempt to collect any inheritance.

To hear this appeal would only assist Appellant in his attempts to delay as long as possible. The family of Florence Mensch has attempted for years now to recover from Appellant the clear and devastating financial harm caused by his actions. Appellant has at every opportunity attempted to obscure and drag out the judicial process sought by the estate. The fact that Appellant continues to redundantly argue the same issues when those issues have been decided against him by the probate court, circuit court, court of appeals, and circuit court again, is simply more evidence of the lengths of which he will go to avoid fairly and adequately compensating his mother's estate for his misdeeds.

II. Appellant did not follow Rule 207 in ordering the transcript.

Rule 207, SCACR, clearly states that the transcript must be ordered within thirty (30) days of the service of the notice of appeal and that "[a]ppellant **shall contemporaneously** furnish all

counsel of record, the Office of Court Administration, and the clerk of the appellate court with copies of all correspondence with the court reporter.” Rule 207(a)(1), SCACR. Appellant failed to contemporaneously furnish the correspondence with the court reporter to anyone: not all counsel of record, not Court Administration, and not the clerk of the appellate court. On February 23, 2026, Jasmine Smith, Deputy Clerk of the Court of Appeals, issued a letter to Mr. Devon Puriefoy stating that the time for ordering the transcript has expired and that he must file a copy of the letter showing that he has timely ordered the transcript from the court reporter. Letter from Jasmine D. Smith, Deputy Clerk, to Devon Puriefoy, Esq. (Feb. 23, 2026).

In response to the Court of Appeals letter, Truluck Thomason, LLC sends an email stating that the attached email correspondence should serve as “confirmation that the transcript request for the above referenced matter was submitted in a timely manner, and counsel was notified of the same.” E-mail from Brandi Larobardiere, Ops. Dir., Truluck Thomason, LLC, to ctappfilings@sccourts.org, Jenna McLeod, and Tyler McLeod (Feb. 23, 2026, 02:16 PM EST). The email and attachment are attached hereto and incorporated herein. However, counsel was not notified of the transcript request. The attachment is simply the court reporters response to a form submission requesting a transcript. Opposing counsel, and obviously the clerk of the appellate court, were not copied on any correspondence with the court reporter, as required by Rule 207, SCACR.

What is more concerning is the fact that Truluck Thomason is now asserting that opposing counsel were notified when they were not. In response to Respondents Counsels’ inquiry about an email or correspondence to the court reporter copying Respondents’ Counsel, Truluck Thomason stated that “the request is sent directly to Court Administration, and a separate letter is not required. We confirmed this prior to submitting the request” and goes on to say Mr. McLeod

was copied on the request. E-mail from Brandi Larobardiere, Ops. Dir., Truluck Thomason, LLC, to Jenna McLeod and Tyler McLeod (Feb. 24, 2026, 03:32 PM EST). The email is attached hereto and incorporated herein. Neither Mr. McLeod nor Mrs. McLeod were copied on the request and Petitioner's Counsel cannot show that they were copied on any request. Petitioner's Counsel merely shows a transcript request form that lists his email, no correspondence on which they were copied. Similarly, Truluck Thomason has failed to produce any proof that either the clerk of the court of appeals or court administration was copied on the transcript request, as clearly required by Rule 207, SCACR

III. Given that the appeal is frivolous, taken solely for the purpose of delay, and not in compliance with the South Carolina Appellate Court Rules, Respondents respectfully request sanctions pursuant to Rule 269, SCACR.

Given that the appeal is frivolous and has already been decided by the Court of Appeals, Respondents respectfully request that Appellant's appeal be dismissed and that Appellant be sanctioned including but not limited to, the award of costs and attorneys' fees be granted to Respondents. Appellant's appeal is frivolous and taken solely for the purposes of delay. Appellant continues to improperly drag out this case to frustrate and harass his siblings and avoid his day of reckoning. The family of Florence Mensch has attempted for years now to recover from Appellant the clear and devastating financial harm caused by his actions. Appellant has at every opportunity attempted to obscure and drag out the judicial process sought by the estate. The fact that Appellant continues to redundantly argue the same issues when those issues have been decided against him by the probate court, circuit court, court of appeals, and circuit court again, is simply more evidence of the lengths of which he will go to avoid fairly and adequately compensating his mother's estate for his misdeeds.

Respondents respectfully request that the Court of Appeals dismiss Appellant's frivolous appeal and sanction the Appellant accordingly under SCAR 269.

Respectfully submitted,

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THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

In the Matter of: Estate of Florence Petrak Mensch

Sterling Raymond Mensch III, individually, as former Personal Representative of the Estate of Florence Petrak Mensch and in the former capacity as Agent under a Power of Attorney for Florence Petrak Mensch, Appellant,

v.

Shauna M. Waddell, individually and as Personal Representative of the Estate of Florence Petrak Mensch and John R. Mensch, Respondents.

Appellate Case No. 2022-000731

Appeal From Greenville County
Alex Kinlaw, Jr., Circuit Court Judge

Unpublished Opinion No. 2024-UP-384
Heard September 24, 2024 – Filed November 13, 2024

AFFIRMED

Devon Marc Puriefoy, of Truluck Thomason, LLC, of Greenville, for Appellant.

Knox L. Haynsworth III and Tyler Earl McLeod, both of
Brown Massey Evans McLeod & Haynsworth, LLC, of
Greenville, for Respondents.

PER CURIAM: In this probate matter, Sterling Raymond Mensch III, (Sterling), son of Florence Petrak Mensch and the agent designated in her power of attorney, appeals the circuit court's order dismissing his appeal as untimely. He also asserts the probate court's order was not a final order which would deprive the circuit court of appellate jurisdiction and argues the probate court lacked subject matter jurisdiction over the case. We affirm.

As to Sterling's argument the circuit court erred in finding the probate court's order constituted a final order, we affirm. While the order allowed for adjustment of the amount of taxes Sterling owed based on a pending appeal to the Internal Revenue Service, it adjudicated and completely fixed the rights of the parties leaving nothing further for the probate court to do. *See Olson v. Fac. House of Carolina, Inc.*, 344 S.C. 194, 213, 544 S.E.2d 38, 48 (Ct. App. 2001) ("Any judgment or decree, leaving some further act to be done by the court before the rights of the parties are determined, is interlocutory; *but if it so completely fixes the rights of the parties that the court has nothing further to do in the action, then it is final.*" (quoting *Adickes v. Allison & Bratton*, 21 S.C. 245, 259 (1883) (emphasis added); *Watson v. Underwood*, 407 S.C. 443, 458-59, 756 S.E.2d 155, 163 (Ct. App. 2014) ("[A] decree or judgment that leaves in doubt whether the plaintiff will prevail is not final."); *Good v. Hartford Acc. & Indem. Co.*, 201 S.C. 32, 21 S.E.2d 209, 212 (1942) ("[I]t has been laid down that in substance the decision must show intrinsically and distinctly, and not inferentially, that the matters in the record have been determined in favor of one of the litigants, or that the rights of the parties in litigation have been adjudicated." (quoting 2 R.C.L. 32, Appeal and Error § 10)).

As to Sterling's argument the circuit court erred in finding his appeal untimely because his motion for reconsideration violated Rule 7(b)(1), SCRCF, we affirm. The lack of specificity in the motion and the absence of other written or oral argument of counsel did not allow the probate court to "deal with the motion fairly." Because the motion was properly dismissed, it failed to stay the time to appeal. *See* S.C. Code Ann. § 62-1-308(a) (2022) (stating the notice of intent to appeal a probate court order must be filed within ten days); Rule 59(f), SCRCF (indicating "[t]he time for appeal for all parties shall be stayed by a timely motion under this Rule"); Rule 7(b)(1), SCRCF ("An application to the court for an order shall be by motion . . . shall be made in writing, *shall state with particularity the grounds therefor, and shall set forth the relief or order sought.*") (emphasis added); *Camp v. Camp*, 386 S.C. 571, 576 S.E.2d 634, 637 (2010) (finding appellant's

motion for reconsideration did not violate Rule 7(b)(1) because "[t]he trial court's order denying Father's motion for reconsideration stated that [b]ased on the arguments of counsel the motion was denied," therefore, "neither party was prejudiced, and the court dealt with the motion fairly." (internal quotations omitted); *Nexstar Media Grp., Inc. v. Davis Roofing Grp., LLC*, 431 S.C. 593, 601 848 S.E.2d 597, 601 (Ct. App. 2020) (finding the master-in-equity was "in a position to understand [the appellant's] motion [to reconsider] . . . fairly" after a hearing on the motion); *Operation of the Trial Courts During the Coronavirus Emergency*, S.C. Sup. Ct. Order dated June 15, 2021, (c)(4)(d) (recognizing that although hearings on motions were generally conducted, if, during the coronavirus emergency "a judge determine[d] that the motion [wa]s without merit, the motion [could] be denied without waiting for any return or other response from the opposing party or parties").

Finally, as to Sterling's argument the probate court lacked subject matter jurisdiction to hear the causes of action in the case related to pre-death damages, we affirm. Claims against an agent to whom authority is designated through a power of attorney are within the probate court's subject matter jurisdiction. *See* S.C. Code Ann. § 62-8-401 (Supp. 2018) ("The probate court has concurrent jurisdiction with the circuit courts of this State over all subject matter related to the creation, exercise, construction, and termination of powers of attorney governed by the provisions of this article."); S.C. Code Ann. § 62-8-116(a)(4)(5)(6) (2022) ("The following persons may petition a court to construe a power of attorney or review the agent's conduct, and grant appropriate relief: . . . (4) the principal's spouse, parent, or adult descendant; (5) an individual who would qualify as a presumptive heir of the principal; [and] (6) a person named as a beneficiary to receive any property, benefit, or contractual right on the principal's death . . ."); S.C. Code Ann. § 62-8-117 (2022) ("An agent that violates this article is liable to the principal or the principal's successors in interest for the amount required to: (1) restore the value of the principal's property to what it would have been had the violation not occurred; and (2) reimburse the principal or the principal's successors in interest for the attorney's fees and costs paid on the agent's behalf.").

AFFIRMED.

KONDUROS, GEATHERS, AND MCDONALD, JJ., concur.

THE STATE OF SOUTH CAROLINA
Court of Common Pleas

APPEAL FROM GREENVILLE COUNTY
Probate Court

Debra A. Faulkner, Probate Judge
Probate Case No. 2018-ES-23-02854

Appellate Case No. 2022-CP-23-01064

IN THE MATTER OF:

Estate of Florence Petrak Mensch,

Sterling Raymond Mensch, III,
individually as former Personal Representative
of the Estate of Florence Petrak Mensch and
in his former capacity as Agent under a Power
of Attorney for Florence Petrak Mensch

Appellant,

v.

Shauna M. Waddell, individually and as
Personal Representative of the Estate of
Florence Petrak Mensch and John R.
Mensch

Respondents.

ORDER AFFIRMING THE PROBATE COURT

This matter came before the Court for a hearing on Thursday, October 16, 2025 pursuant to Appellant's appeal from the Probate Court's Order following trial in September of 2021. After the Circuit Court and South Carolina Court of Appeals affirmed the Probate Court's Order, Appellant petitioned the Supreme Court for a writ of certiorari, which they granted "only as to whether the appeal to circuit court was timely..." *Mensch v. Waddell*, Op. No. 2025-MO-037 (S.C.Sup.Ct. filed July 2, 2025). Based on the newly decided case *Swing v. Swing*, the Supreme Court ruled that even though Appellant's Rule 59(e) motion was defective under Rule 7(b)(1), it tolled the time to appeal and therefore Appellant's appeal was timely. *Swing v. Swing*, 445 S.C. 340, 351, 914 S.E.2d 158, 164 (2025). The case was then remanded to this court for consideration of the merits of the appeal. After hearing arguments from Counsel for both parties and a complete review of the file, the Order of the Probate Court is affirmed.

STANDARD OF REVIEW

In a probate appeal, the circuit court, court of appeals, or supreme court shall hear and determine the appeal according to the rules of law. S.C. Code Ann. § 62-1-308(i) (Supp. 2018). "[I]f the action is at law, the circuit court should uphold the findings of the probate court if there is any evidence to support them." *In re Estate of Weeks*, 329 S.C. 251, 260, 495 S.E.2d 454, 459 (Ct. App. 1997).

An action to declare a constructive trust is in equity, and a court may find facts in accordance with its own view of the evidence. *Carolina Park Assocs., LLC v. Marino*, 400 S.C. 1, 732 S.E.2d 876 (2012) (citing *Lollis v. Lollis*, 291 S.C. 525, 530, 354 S.E.2d 559, 561 (1987)).

"An award of attorneys' fees and costs is a discretionary matter not to be overturned absent abuse by the trial court." *Donahue v. Donahue*, 299 S.C. 353, 365, 384 S.E.2d 741, 748 (1989). "Similarly, the specific amount of attorneys' fees awarded pursuant to statute authorizing

reasonable attorneys' fees is left to the discretion of the trial judge and will not be disturbed absent an abuse of discretion." *Layman v. State*, 376 S.C. 434, 444, 658 S.E.2d 320, 325 (2008).

I. The Probate Court's Order constituted a final order.

The Order of the Probate Court adequately addressed this issue and this Court adopts the findings of the Court of Appeals on this issue. The Court of Appeals held that:

While the order allowed for adjustment of the amount of taxes Sterling owed based on a pending appeal to the Internal Revenue Service, it adjudicated and completely fixed the rights of the parties leaving nothing further for the probate court to do. *See Olson v. Fac. House of Carolina, Inc.*, 344 S.C. 194, 213, 544 S.E.2d 38, 48 (Ct. App. 2001) ("Any judgment or decree, leaving some further act to be done by the court before the rights of the parties are determined, is interlocutory; *but if it so completely fixes the rights of the parties that the court has nothing further to do in the action, then it is final.*" (quoting *Adickes v. Allison & Bratton*, 21 S.C. 245, 259 (1883) (emphasis added); *Watson v. Underwood*, 407 S.C. 443, 458-59, 756 S.E.2d 155, 163 (Ct. App. 2014) ("[A] decree or judgment that leaves in doubt whether the plaintiff will prevail is not final."); *Good v. Hartford Acc. & Indem. Co.*, 201 S.C. 32, 21 S.E.2d 209, 212 (1942) ("[I]t has been laid down that in substance the decision must show intrinsically and distinctly, and not inferentially, that the matters in the record have been determined in favor of one of the litigants, or that the rights of the parties in litigation have been adjudicated." (quoting 2 R.C.L. 32, Appeal and Error § 10)).

Mensch v. Waddell, Op. No. 2024-UP-384 (S.C.Ct.App. filed Nov. 13, 2024) (Howard Adv.Sh. No. 44).

The order of the probate court was final. Nothing further needs to be done by the probate court, and there is nothing the probate court could do that would change in any way what the IRS decides. The amount of damages owed by Appellant was fixed and determined, and any decision by the IRS may simply modify that figure.

Appellant could not have filed an appeal of an order that was not "final." Section 62-1-308 of the Probate Code states in pertinent part: "Except as provided in subsection (g), appeal from

the probate court must be to the circuit court and are governed by the following rules: (a): A person interested in a **final order, sentence or decree of a probate court** and considering himself injured by it may appeal to the circuit court in the same county." S.C. Code Ann. §62-1-308 (emphasis added). The Supreme Court of South Carolina confirms that Section 62-1-308 codifies the final judgment rule in the case of *Fulmer v. Cain*. 380 S.C. 466, 469, 670 S.E.2d 652, 654 (2008). A final judgment is required before Appellant can appeal.

II. The Probate Court had subject matter jurisdiction to hear the causes of action in the case related to pre-death damages.

The Order of the Probate Court adequately addressed this issue and this Court adopts the findings of the Court of Appeals on this issue. The Court of Appeals held that:

Finally, as to Sterling's argument the probate court lacked subject matter jurisdiction to hear the causes of action in the case related to pre-death damages, we affirm. Claims against an agent to whom authority is designated through a power of attorney are within the probate court's subject matter jurisdiction. *See* S.C. Code Ann. § 62-8-401 (Supp. 2018) ("The probate court has concurrent jurisdiction with the circuit courts of this State over all subject matter related to the creation, exercise, construction, and termination of powers of attorney governed by the provisions of this article."); S.C. Code Ann. § 62-8-116(a)(4)(5)(6) (2022) ("The following persons may petition a court to construe a power of attorney or review the agent's conduct, and grant appropriate relief: . . . (4) the principal's spouse, parent, or adult descendant; (5) an individual who would qualify as a presumptive heir of the principal; [and] (6) a person named as a beneficiary to receive any property, benefit, or contractual right on the principal's death"); S.C. Code Ann. § 62-8-117 (2022) ("An agent that violates this article is liable to the principal or the principal's successors in interest for the amount required to: (1) restore the value of the principal's property to what it would have been had the violation not occurred; and (2) reimburse the principal or the principal's successors in interest for the attorney's fees and costs paid on the agent's behalf.").

Mensch v. Waddell, Op. No. 2024-UP-384 (S.C.Ct.App. filed Nov. 13, 2024) (Howard Adv.Sh. No. 44).

After Mr. Mensch appealed the final order, he then took the position that the circuit court had no appellate jurisdiction because there was no “final order” from the probate court. Nowhere at the trial court level did Mr. Mensch ever challenge the jurisdiction of the probate court prior to the issuance of the final order dated January 26, 2022. While it is true that subject matter jurisdiction may be raised at any time, even on appeal, it is also true that a party may not invoke the provisions of Rule 60(b) where it is clear the issue could have been litigated at trial. Appellant may not make an argument for lack of subject matter jurisdiction for the first time to the circuit court because he failed to make that argument to the probate court. “It is axiomatic that an issue cannot be raised for the first time on appeal.” *State v. Haygood*, 409 S.C. 420, 762 S.E.2d 69, 74 (Ct. App. 2014) (quoting *State v. Cope*, 405 S.C. 317, 338-339, 748 S.E.2d 194, 205 (2013)). “For an issue to be properly preserved it has to be raised and ruled on by the trial court.” *State v. Jennings*, 394 S.C. 473, 481, 716 S.E.2d 91, 95 (2011). “An argument advanced on appeal but not raised and ruled on below is not preserved.” *State v. Freiburger*, 366 S.C. 125, 134, 620 S.E.2d 737, 741 (2005).

III. The Probate Court properly imposed a constructive trust in this case.

Appellant raises the issue of constructive trust for the first time in his Initial Brief. (App. Brief p. 11). Appellant could have made an argument regarding the impropriety of a constructive trust at trial or in his written motion to reconsider, but he failed to do so, and therefore that argument has been waived. *See Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481 (Ct. App. 1990). “It is axiomatic that an issue cannot be raised for the first time on appeal.” *State v. Haygood*, 409 S.C. 420, 762 S.E.2d 69, 74 (Ct. App. 2014) (quoting *State v. Cope*, 405 S.C. 317, 338-339, 748 S.E.2d 194, 205 (2013)). “For an issue to be properly preserved it has to be raised and ruled on by the trial court.” *State v. Jennings*, 394 S.C. 473, 481, 716 S.E.2d 91, 95 (2011). “An

argument advanced on appeal but not raised and ruled on below is not preserved.” *State v. Freiburger*, 366 S.C. 125, 134, 620 S.E.2d 737, 741 (2005).

Even if Appellant had properly preserved the issue of constructive trust, the imposition of the constructive trust was proper and the Probate Court appropriately applied the law.

After the first two days of trial, Counsel for Respondents sent out updated subpoenas for bank records of Appellant¹. Respondents discovered that Appellant had liquidated his T. Rowe Price account of \$267,105.00 between April 1, 2021 and June 30, 2021. After counsel for Respondents filed a motion for preliminary injunction, Counsel for Appellant disclosed that the funds were in their IOLTA account. With the knowledge that Appellant’s funds were in the IOLTA account of Truluck Thomason, Judge Faulkner issued the January 26, 2022 final order imposing a constructive trust over all of Appellant’s non-exempt property “of whatever type, **wherever located, and however titled**. This remedy is appropriate as a result of his deceitful, devious, willful, wanton and careless actions set forth above.” (R. p. 17 (emphasis added)).

As far as the propriety of a constructive trust, this is exactly the scenario for which constructive trusts were created. “A constructive trust will arise whenever the circumstances under which property was acquired make it inequitable that it should be retained by the one holding legal title.” *Lollis v. Lollis*, 291 S.C. 525, 529, 354 S.E.2d 559, 561 (1987) (internal citations omitted). (R. p. 17). “As was held in the case of *All v. Prillaman*, 200 S.C. 279, 20 S.E.2d 741, a constructive trust is resorted to by equity to vindicate right and justice or frustrate fraud.” *Dominick v. Rhodes*, 202 S.C. 139, 148, 24 S.E.2d 168, 172 (1943) (internal citations omitted). “A constructive trust will arise whenever the circumstances under which property was acquired make it inequitable that it should be retained by him who holds the legal title, as against another, provided some

¹ Appellant’s records through December 2020 were already obtained in the case, and the subpoena was to update the records from January 2021 through present.

confidential relation exists between the two, and provided the raising of a trust is necessary to prevent a failure of justice. So, as has been said, the form and varieties of constructive trusts are practically without limit, such trusts being raised, broadly speaking, whenever necessary to prevent injustice.” *Id.* at 149, 172-173 (internal citations omitted).

In this case, Appellant was power of attorney for Florence Mensch and then personal representative for the Estate of Florence Mensch and abused the fiduciary relationship to completely drain her assets. (R. p. 17). “He engaged in repeated action of civil theft for 8 years, depleting his mother’s property without any regard to what her future needs might be, without regard to her estate plan, without regard to his siblings, without regard to tax law, probate law, prudent investment principles, etc.” *Id.* The constructive trust was necessary “as a result of his deceitful, devious, willful, wanton, and careless actions..” *Id.* A constructive trust arises when fraud, bad faith, abuse of confidence or violation of a fiduciary duty occurs which gives rise to an obligation in equity to make restitution. In this case, Appellant acted fraudulently, in bad faith, in abuse of confidence and in violation of the fiduciary duty imposed on him as power of attorney and therefore must, in equity, make restitution to his mother’s estate.

“A constructive trust ...can arise from a breach of a fiduciary duty giving rise to the obligation in equity to make *restitution.*” *See Verenes v. Alvanos*, 387 S.C. 11, 17 n.7, 690 S.E.2d 771, 774 n.7 (2010) (emphasis added). Appellant makes an unsupported argument that the constructive trust must be traceable to misappropriated property. Appellant attempts to differentiate his case by claiming that the money he stole from his mother and then spent, cannot now be subject to a constructive trust because he spent it. “It is an attempt at a technical avoidance which rests upon an asserted public policy or illegality of some kind. The courts have refused to accept this ruse because to do so would be to compound the defendant’s wrong. In those instances,

as here, the defendant is really attempting to assert, not a public policy but a “private policy” to insulate the defendant from his own wrong. Equity does not permit a defendant to defeat justice by such a ploy.” *Chapman v. Citizens and Souther Nat’l. Bank of South Carolina*, 302 S.C. 469, 395 S.E.2d 446 (Ct. App. 1990).

As an appellate court, this Court defers to the trial court’s award. “[T]he discretion that must be accorded to the [special referee] compels us to affirm the award as appropriate recompense for misconduct necessitating the imposition of a constructive trust.” *Hale v. Finn*, 388 S.C. 79, 694 S.E.2d 51 (Ct. App. 2010).

IV. The Probate Court’s award of attorneys’ fees was proper.

Appellant raises the issue of attorney’s fees for the first time in his Appellant Brief. (Appellant’s Brief p. 12). Appellant could have made an argument regarding the attorney’s fees award at trial or in his written motion to reconsider, but he failed to do so, and therefore that argument has been waived. *See Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481 (Ct. App. 1990). “It is axiomatic that an issue cannot be raised for the first time on appeal.” *State v. Haygood*, 409 S.C. 420, 762 S.E.2d 69, 74 (Ct. App. 2014) (quoting *State v. Cope*, 405 S.C. 317, 338-339, 748 S.E.2d 194, 205 (2013)). “For an issue to be properly preserved it has to be raised and ruled on by the trial court.” *State v. Jennings*, 394 S.C. 473, 481, 716 S.E.2d 91, 95 (2011). “An argument advanced on appeal but not raised and ruled on below is not preserved.” *State v. Freiburger*, 366 S.C. 125, 134, 620 S.E.2d 737, 741 (2005).

Even if Appellant had properly preserved the issue of the award of attorneys fees, the award of attorneys’ fees was proper and the Probate Court appropriately applied the law.

“The decision to award or deny attorneys’ fees under a state statute will not be disturbed on appeal absent an abuse of discretion....Similarly, the specific amount of attorneys’ fees awarded

pursuant to a statute authorizing reasonable attorneys' fees is left to the discretion of the trial judge and will not be disturbed absent an abuse of discretion." *Layman v. State*, 376 S.C. 434, 444, 658 S.E.2d 320, 325 (2008).

Respondents were awarded attorney's fees and costs in the total amount of \$127,572.00 pursuant to § 62-1-111 of the South Carolina Probate Code which states, "in a formal proceeding, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the estate that is the subject of the controversy." (R. p. 16). Judge Faulkner reduced the requested fees by \$6,380.00 for time spent on engagement letters, subpoenas and the Affidavit of Fees. *Id.* Judge Faulkner's order specifically states that she reviewed all elements under the case of *Glasscock v. Glasscock*, and finds such fees to be reasonable. *Id.* Judge Faulkner listed the factors, specifically stated that she considered them, and even reduced the fees to the amount she considered reasonable. *Id.*

Appellant cites no legal authority for his contention that "[e]vidence for each of the factors must be specific." "South Carolina law clearly states that short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review." *Id.* (quoting *Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001)). Rather than citing applicable legal authority, Appellant refers to a case where only a conclusory affidavit of attorney's fees was not upheld on appeal. The Amended Affidavit of Attorney's Fees and Costs filed by Counsel for Respondents was in no way conclusory as Appellant alleges. The Amended Affidavit was seven pages long. (R. p. 116-122). In addition to the affidavit, Counsel for Respondents included all of their billing entries, expense entries, and subtracted amounts previously awarded by the Probate Court. *Id.* The affidavit was not conclusory

like the cases cited by Appellant. Additionally, Judge Faulkner made thirty-four (34) findings of fact in her order spanning five (5) of the twelve (12) pages. (R. pp. 6-11).

As to the factor of contingency of compensation, Judge Faulkner specifically listed it as a factor that was considered in her Order. (R. p. 16). In 2021, the Court of Appeals decided the case of *Jordan v. Postell* and considered the “contingency of compensation” factor by stating “neither party had entered into contingency fee arrangements with their respective counsel.” 434 S.C. 510, 529, 864 S.E.2d 558, 568 (Ct. App. 2021)

Judge Faulkner was familiar with the nature, extent, and difficulty of the case as the presiding trial judge. Judge Faulkner considered all of the factors including the time devoted to the case, the professional standing of counsel, and the beneficial results obtained and awarded attorneys fees to Respondents. (R. p. 16). The Probate Court’s Order is affirmed.

IT IS SO ORDERED.

[Electronic Signature of Judge Gravely to follow]



Greenville Common Pleas

Case Caption: Sterling Raymond Mensch VS Shauna M Waddell , defendant, et al
Case Number: 2022CP2301064
Type: Order/Dismissal

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2026-01-04 09:23:22 page 11 of 11

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STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF GREENVILLE

CASE NO. 2018ES2302854

IN THE MATTER OF:
Estate of Florence Petrak Mensch

Shauna M. Waddell, individually and as
Personal Representative of the Estate of
Florence Petrak Mensch and John R. Mensch,
Petitioners,

ORDER

vs.

Sterling Raymond Mensch III, individually,
as former Personal Representative of the
Estate of Florence Petrak Mensch and in
his former capacity as Agent under Power
of Attorney for Florence Petrak Mensch,
Respondents.

FILED

JAN 26 2022

GREENVILLE COUNTY
PROBATE COURT

Date of Hearing: September 16, 17, 2021
Presiding Judge: Debora A. Faulkner, Probate Judge
Attorney for Petitioners: Tyler E. McLeod
Attorneys for Respondent: Devon M. Puriefoy, Kimberly Thomason
Court Reporter: Rachel Wood

This matter came before the court for trial to determine the amount of damages owed the Estate of Florence Mensch by Respondent, Sterling Raymond Mensch (SRM) admits he misappropriated funds belonging to Florence Mensch and her estate. However, the amount of damages due the estate is the central issue in the litigation. The relevant time period for the misappropriations is from May 17, 2010, the date Mrs. Mensch's executed her Durable Power of Attorney (DPOA) naming SRM as her Attorney in Fact, (AIF) and April 26, 2018, the date of Ms. Mensch's death.

Present at the hearing was Petitioner Shauna M. Waddell (SW) represented by Tyler McLeod. Petitioner John Mensch (JM) was present for days one and two of the hearing. SRM appeared for each day of trial with his attorneys, Devin Puriefoy and Kimberly Thomason. Witnesses in the case were Petitioner, SW, Petitioners' expert, John Markel, and Respondent's expert, Mark Chastain.

Prior to taking testimony the Court denied the Petitioner's *Motion in Limine*.

STIPULATIONS

- 1 SRM made a number of withdrawals from Mrs. Mensch's bank account totaling \$820,382.

SW
Z

2. SRM deposited the funds from these withdrawals into his single owner checking account.
3. Both expert witnesses are qualified to give their opinions

PROCEDURAL HISTORY

1. On December 14, 2018, SRM filed the Will and Codicil with the Court but took no action to have the documents admitted as the valid testamentary documents of his mother. Neither did he apply for appointment as Personal Representative (PR) which would have granted him legal authority over her assets for the benefit of the devisees named in her Will and any estate creditors.
2. On January 23, 2019, SRM filed his application for admission of the Will and Codicil to Probate and for his appointment as PR. He was appointed PR on January 23, 2019.
3. On May 15, 2019, this action was filed by Petitioners.
4. On August 28, 2019, the Hon. Clayton L. Jennings issued an Order in response to Petitioners' Motion to Compel which, among other rulings, ordered SRM to provide discovery to Petitioners within ten days of the entry of the Order. The Order attached hereto is incorporated herewith as if fully set out.
5. On December 4, 2019, the Hon. Clayton L. Jennings issued his Order in the Petitioner's first Rule to Show Cause proceeding finding SRM in willful contempt of the August 28, 2019 Order. Accordingly, the Court removed SRM as PR and appointed Shauna Waddell to serve as Successor PR. The Court imposed further financial sanctions against SRM. The Order is attached hereto and incorporated herewith as if fully set out.
6. On May 13, 2020, an Amended Petition was filed as permitted by Judge Jennings' Court Order.
7. On September 2, 2020, the Hon. Clayton L. Jennings issued an Order as a result of the Petitioners' filing a second Rule to Show Cause against SRM. The Court found SRM to be in willful contempt of the Court's prior Orders. This Order attached hereto is incorporated herewith as if fully set out.
8. On January 13, 2021, the Hon. Clayton L. Jennings issued an Order as a result of Petitioners third Rule to Show Cause alleging SRM willfully failed to comply with the September 2, 2020 Order. He was found to be in willful contempt, ordered to pay attorneys' fees to Petitioners and cautioned that he would be subject to incarceration should he violate this Order. This Order attached hereto is incorporated herewith as if fully set out.
9. On July 29, 2021, the Court entered an Order granting the Petitioners Summary Judgment on the following causes of action: 1) Breach of Fiduciary Duty as Attorney in Fact (AIF), 2) Violation of the S.C. Uniform Power of Attorney Act, and 3) Conversion. The Court denied Petitioners' Motion for Summary Judgment on the remaining causes of action: Negligence, Unjust Enrichment/Money Had and Received, and Constructive Trust.
10. Trial in this case was heard on September 16-17, '21. By agreement of counsel, Petitioner, John Mensch, participated by telephone on September 17, 2021.
11. A proposed Order was transmitted to the Court on 10/15/21. An extension was granted to SRM's counsel to Dec. 16, 2021 to lodge objections to the proposed Order.

FINDINGS OF FACT

By the preponderance of the evidence, I make the following findings of fact:



1. Mrs. Mensch and her husband moved to Greenville from New York. From their marriage, they had three children, John, Sterling and Shauna.
2. Mr. Mensch died in or around 1995.
3. The record contains no evidence that Ms. Mensch had anything other than a loving relationship with all three of her children.
4. In 1998, Ms. Mensch executed a Will leaving her estate equally to each of her three children. She named all three children to serve as Co-Personal Representatives. Similarly, she named each of her 3 three children to share equally in her non-probate accounts which includes a retirement account. Based on the foregoing, I find that Ms. Mensch intended to leave her estate both probate and non-probate to each of her three children in equal shares.
5. In 2007, Mrs. Mensch executed a DPOA naming the Petitioner, SW, as her attorney in fact but it was later revoked in favor of SRM in 2010.
6. After her husband's death, Ms. Mensch lived in her own home at 207 West Beverly Street in Greer, S.C.
7. On May 17, 2010, Ms. Mensch, with the assistance of an attorney, executed another DPOA naming SRM as her AIF. This DPOA contained no provisions allowing SRM to make gifts to himself.
8. She also executed a Codicil to her 1998 Will naming SRM as her sole Personal Representative. She republished her 1998 Will in all other respects, i.e. her estate plan remained unchanged.
9. SW testified that around 2009 she began to take notice of her mother's dementia symptoms.
10. In or around 2012, she purchased an apartment at Rolling Green. She moved into the Rolling Green apartment and sold her home in Greer.
11. In or around 2013 or 2014, as a result of her diagnosis of dementia, Alzheimer's type, SW arranged for FM to be moved to the memory care unit at Oakleaf Village. No evidence was presented that this decision was contested. She died at Oakleaf Village on April 26, 2018.
12. At Ms. Mensch's funeral, SRM advised his brother John to return to Oregon, because he would be starting the estate administration immediately. After hearing nothing from SRM, SW called him about the estate administration. SRM told her he was waiting on tax information.¹ She called again and he said the taxes were done and that he would be dropping off the estate information to attorney, David Massey's office. After hearing nothing further, SW called the attorney's office and the attorney's office didn't have any estate information. SRM told SW that their secretary probably lost it. The firm was never hired by SRM. SW's communication with SRM became increasingly difficult.
13. On December 14, 2018, SRM filed FM's Will and Codicil in the Probate Court without opening an estate. On January 23, 2019, nine months after Ms. Mensch's death, SRM filed his application to admit the Will and be appointed as the PR. He was appointed PR on January 23, 2019. He filed this without the assistance of counsel.
14. On April 30, 2018, SRM signed and filed a sworn *Inventory and Appraisement* with the Court. The *Inventory and Appraisement* is part of the Court's record. On that *Inventory*, he swore that the balance in the UBS account on 4/30/2018 was \$409,652. Petitioner's Exhibit 21, the UBS statement from April, 2018 shows that SRM had withdrawn \$259,000.00 on April 23, 2018 with a resulting balance of \$154,069. He also stated on the *Inventory*, under oath, that the Tarleton Way home had an existing mortgage of \$238,170.00 Two months earlier on February

¹ The records would later show that upon her appointment as Successor PR, SW learned that the 2018 tax return had never been filed. Petitioner's #19 is an IRS Letter stating that on 12/31/18, the estate owed \$91,367.

8, 2019, he paid the sum of \$232,047 in full satisfaction of the mortgage. So, after being sworn, he voluntarily and willfully filed perjured information to the Court.²

15. After his mother's death, rather than filing the Will immediately and becoming the PR of her estate, he was continuing to make post-death withdrawals from Ms. Mensch's x7059 account. He was also allowing her GE pension auto deposits to continue despite her death. He made his last withdrawals from FM's account in or around February, 2019 leaving approximately \$1500 in x7059 and \$65 in x2007. SRM withdrew a total of \$170,000 from Ms. Mensch's bank accounts after her death. This proceeding was commenced three months later on May 15, 2019

TARLETON WAY HOUSE AND LOT

16. On April 18, 2007, Ms. Mensch purchased property in a subdivision in Greer. As such, she signed the mortgage obligating herself to pay \$330,000.00 for the property in monthly installments. Further, she signed a "Rider" stating that this would be her second home and keep the home only for her exclusive use.

When she purchased the property, she was still living at her West Beverly Street property. Her intent was never to live at this Tarleton Way property. The intent was that the house would actually be purchased by SRM as a home for him and his daughter. SRM orchestrated this arrangement since he was a party in a divorce proceeding. He wanted to protect the property from being included as marital property subject to equitable division. SW testified that it wasn't until after FM's death that she and her brother discovered that the house was not actually owned by SRM.

SRM's expert witness, Mr. Chastain, listed that SRM should be given credit for \$39,000.00 that he paid as a down payment from his own funds when the home was purchased. Upon further examination of the witness, it appeared this was untrue in that the amount was folded into the mortgage.

SRM paid nothing to FM for the 12 years he lived there. It was home with landscaping, pool, theatre room, and nice finishes. SRM alleges he made a total of \$240,631.00 in payments from his personal funds to service the principal and interest on the Tarleton mortgage and that he should be credited with those payments as being beneficial to FM.

SRM's employment status and income were never presented in evidence. In order to weigh the veracity of this assertion, the ability of SRM to pay this would need to be known. It is unknown whether or not he was employed; or, if so, the dates of his employment and the amount of his income. Petitioner's expert witness, Mr. Markel, attempted to trace these alleged mortgage payments using bank documents. He found that many of the alleged payments were untraceable and were inconsistent with the dollar amounts alleged. Countless online cash withdrawals from x7059 to SRM's account were in amounts similar to the amount of the mortgage payments. Bank statements prior to 2012 were not available to the parties.

SRM also alleges that he used some of the cash from FM's accounts to make improvements and repairs to the home which were beneficial to FM. He alleges these expenditures amount to \$69,957.00.³ Despite repeated directions from the Court, SRM never produced receipts or other documents to prove this amount. He failed to testify at this hearing regarding how he arrived at this total. He failed to produce witnesses to confirm payments made for improvements. He failed to issue any subpoenas for merchants or repair companies to produce records.

² The estate record contains a claim filed on 2/11/2019 by Traci Malone of South State Bank. On the same day, February 11, a *Loan Payoff Statement* was filed. SRM satisfied the mortgage in full on 2/8/19. SW's *Settlement Statement* (Exh. #25) when TW was sold shows a mortgage payoff of 218,579 to South State Bank on 12/3/2020

³ SW testified in detail regarding the condition of the home after SRM moved resulting in an expense to the estate of \$10,000.00 on extensive cleaning and repairs in order to make it fit for sale.

When SRM moved from the home in September, 2020, the estate has to spend \$10,000 for cleaning and repairs to make the property presentable for potential buyers.

As a minor point, but one that shows how no opportunity was missed by SRM, SRM collected \$22,434.00 in insurance proceeds for hail damage to FM's home. The amount of the damage was not placed in the record. Again, these are proceeds from an insurance policy that FM pays for each month in mortgage payments for a house she doesn't need; and, that is being used as a residence for her able bodied son. SRM's expert witness testified that the damage estimate was less than the amount collected and that SRM appeared to have kept the balance not used. This was not contradicted by SRM.

FLORENCE MENSCH'S ASSETS

17. A listing of FM's assets and their values on the date SRM became FM's AIF in 2010 is not in evidence. Bank records were not available prior to 2012. However, from the evidence presented, it appeared that her assets, residential expenses were as follows on the dates indicated:

<u>Asset</u>	<u>Value</u>	<u>Date of Value</u>	<u>Residential Expense</u>
⁴ Home on Tarleton Way	420,000.00	Sold 12/3/20	Moved to Rolling Green In 2012 Oakleaf in 2015
x7059 BOA Checking account	various		
x2007 BOA Savings account	various		
Elfin Trusts + GE stock IRA ⁵	\$1,321,717.00	1/1/2015	
UBS Retirement Acct	\$913,511.00	12/30/16	

Annual Income

2012	\$16,000.00 SSA 2580 x 12/ 31K \$17,800.00 Pension <u>\$49,240.00 IRA Distribution</u> \$83,090.00
2013	\$16,000.00 SSA 2580 x 12/ 31K \$17,800.00 Pension <u>\$70,000.00 IRA Distribution</u> \$104,125.00
2014	\$16,000.00 SSA 2580 x 12/ 31K \$17,800.00 Pension <u>\$90,594.00 IRA Distribution</u> \$124,964.00
2015	\$16,000.00 SSA 4550x12/55K \$17,800.00 Pension

⁴ Purchased 2007 for \$330,000.00 includes \$39,700.00 down payment, additional \$65,000.00 for pool, home theater, fencing, landscaping, etc. SRM claims he paid this via his allegations in an affidavit.

⁵ Elfin later managed by State Street Global.

\$213,945.00 IRA Distribution
\$248,590.00

2016 \$16,000.00 SSA 4550x12/55K
 \$17,800.00 Pension
 \$208,727.00 IRA Distribution
 \$243,379.00

MANAGEMENT OF ASSETS BY SRM

18. FM's Bank of America (BOA) accounts are her checking account, x7059 and a savings account x2007. The fund balance in x7059 was the result of FM's monthly income deposits plus any online transfers directed by SRM-AIF from her investment accounts. Payments for her residence at the facilities were automatically drafted from x7059.⁶

19. In 2013, SRM, using the authority granted to him by FM in the DPOA, decided to add his name as a joint account owner to x7059. No evidence was presented on why SRM chose to do this, especially since this change would affect FM's estate plan. Instead of the balance being a part of her estate to be shared by all 3 of her children, this change would result in SRM being able to claim all funds remaining on deposit for himself.

20. SRM's personal BOA account is x3259. From 2013 until FM's death in April, 2018, SRM engaged in over 239 online transfers, cash transactions, withdrawals, from FM's BOA accounts. He directed these transfers to his personal BOA account x3259 which was a POD account, providing that his daughter would be paid the balance in the account upon his death. The parties stipulate that the total for all these transfers comes to \$820,382.00⁷ Once deposited into his account, SRM spent the funds on a variety of personal pleasures including nice restaurants, men's clothing stores, jewelry, home improvement stores, grocery stores, travel, alcohol, etc. He made several large cash withdrawals and made online payments to his personal credit card company from FM's account. The piece de resistance \$8000.00 to Greenville Matchmakers.

21. From 2015 through 2018, SRM withdrew funds from Elfin Trust, taking smaller amounts from FM's GM stock. On 12/31/2015, the Elfin fund's market value was \$279,819.00; on the same date, the GM market value was \$1,321,717.00.

22. SRM facilitated IRA distributions to FM in excess of the amount mandated for *required minimum distributions (RMD)*.⁸ In years 2011, 2012, 2015, 2016, and 2018, SRM unnecessarily caused FM's IRA distributions to exceed allowable RMD for each year. From the above chart, SSA and pension income were largely sufficient to cover her monthly living expense at Rolling Green and less so at Oak Leaf. However, no evidence is presented to show that the allowable RMD for each year plus her income would have been insufficient to comfortably pay for her care. The amount of income taxes incurred due to these excessive withdrawals was \$163,420.00.

23. On March 20, 2018, SRM sold the GE stock for \$406,255.80.

24. Petitioners allege that SRM failed to properly diversify FM's portfolio resulting in a reduction of approximately \$400,000.00 in value. Court finds that this was speculative and not supported by the preponderance of the evidence.

⁶ Occasionally, SRM would use the x2007 to receive online transfers.

⁷ No bank records were available prior to 2012.

⁸ Under Treasury Regulations, taxpayers over 70.5, like FM must take the required minimum distributions.

25. On April 23, 2019, three days prior to FM's death, SRM transferred \$259,000.00 of the \$409,652.00 held in FM's UBS retirement account to FM's 7059 account.

26. SRM failed to notify BOA and failed to notify GE Pension of FM's death. The pension payments continued unabated and SRM continued to make withdrawals from the BOA accounts. From the time of FM's death on April 26, 2018 until February 18, 2019, SRM directed \$170,000 of FM's, i.e. the Estate's, post-death funds to his x3259 personal account. These were funds earmarked to be divided equally among her 3 children. SRM withdrew these post-death pension payments from FM's account for his personal use. To reimburse GE for these overpayments. As a result, the estate was charged with an overpayment of \$30,157.00.

SW, as PR, agreed to forfeit the \$10,000 of GE life insurance that FM intended to be shared equally by her children. SW assigned \$3333.33 of the 10,000 for each beneficiary. This left a balance due to GE of \$20,157.81 from the estate. SRM should be liable to the estate for the total amount of overpayment in the amount of \$30,157.00.

27. At the time SW was appointed PR, there was only \$15,000 in FM's x7059 account.

TAX LIABILITIES

28. Between 2012 and 2016, SRM's failed to timely file tax returns and failed to timely pay taxes due resulting in penalties for failure to file and penalties and interest for failure to pay the IRS and SCDOR. The amount admitted by SRM's attorneys is \$13,820.17.

29. SRM failed to file tax return for FM for 2017.

30. SRM made gifts from FM to himself, SW and Steve, John and Shea, Sterling and Holly in the years 2014, 2015, and 2016 for the purpose of meeting the annual exclusion allowed by the IRS. This was permitted by FM's DPOA.

31. SRM failed to take action necessary to avoid \$40,314.00 penalties and interest connected to FM's 2018 taxes. This amount is currently on appeal.

32. From 2011 through 2016, SRM failed to itemize deductions for property tax and mortgage interest on the Tarlton Way on FM's returns. FM as owner of the property was clearly entitled to claim those itemized deductions, and thereby proportionately reduce her tax liability for each respective year. This failure amounts to \$24,559 in excessive tax.

33. From 2011 through 2018, SRM caused FM and, later, her estate to incur unnecessary tax liabilities of \$163,420 as set forth in Petitioner's Exhibit #1⁹ due to SRM's withdrawals in excess of the RMD for each year.

34. In 2015 and 2016, SRM wrote checks to his siblings, their spouses, to himself and his daughter in accordance with IRS rules that permit gifting a certain amount each year. Each year he wrote himself a check equal to the others, despite his siphoning of funds from his mother to subsidize his lifestyle. He has made no good faith effort whatsoever during this litigation to pay any amount that he admits he owes. The only amounts he has paid to the estate to date for his wrongdoing were attorneys' fees ordered by Judge Jennings short of incarceration. As a matter of equity, SRM should not be able to sit at the table with his siblings and collect a gift in an amount equal to theirs given his actions. Specifically, the record indicates he paid himself \$14,000.00 for 2015 and 2016 for a total of \$28,000.00.

⁹ Pet. Exhib. 21, USB states RMD for 2018 is \$3,358. SRM withdrew \$259,000 or \$ 225,642 in excess of IRS limits

CONCLUSIONS OF LAW

Applying the facts to applicable law, I make the following conclusions of law:

BREACH OF FIDUCIARY DUTY

1. "A confidential or fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience is bound to act in good faith and with due regard to the interests of the one imposing the confidence." *Davis v. Greenwood Sch. Dist. SO*, 365 S.C. 629, 635, 620 S.E.2d 65, 68 (2005). To establish a claim for breach of fiduciary duty, the plaintiff must prove (1) the existence of a fiduciary duty, (2) a breach of that duty owed to the plaintiff by the defendant, and (3) damages proximately resulting from the wrongful conduct of the defendant. See generally, *Moore v. Moore*, 360 S.C. 241, 599 S.E.2d 467 (Ct. App. 2004) (discussing the elements comprising a breach of fiduciary duty claim); *RFT Mgmt. Co. v. Tinsley & Adams*, 399 S.C. 322, 732 S.E.2d 166 (2012).

2. A fiduciary relationship existed between FM and SRM as expressed in the DPOA signed by FM in May, 2010. FM reposed special confidence in SRM; confidence that he would act in good faith placing her As such, SRM has all the duties and obligations set forth in the document plus he is duty bound to act at all times with due regard to the interests of FM. *Moore v. Benson*, 390 SC 153 (2010). Being in the firm grasp of Alzheimer's disease, she was squarely at the mercy of SRM to act in her best interests. Instead, SRM exploited the trust his mother bestowed on him at every turn.

3. The clear weight of the evidence shows SRM used the DPOA as a license to access as much of his mother's property as possible, leaving enough for her basic requirements, such as the payments to her facility. The chart above shows that her income and RMD distributions were substantially exceeded the amount of her monthly facility fees. The excess was taken as a part of the obvious scheme concocted by SRM to maximize his gift. At every opportunity, he placed his desire to take as much of her property as possible ahead of his mother's welfare. To further nail down his continued free use of his mother's money, to the detriment of his siblings, he added his name as a joint owner to her BOA accounts. By doing this, he was depriving his siblings of their right to inherit a share of the balance as their mother so intended. To further thwart his mother's estate plan, he designated his personal checking account as a POD account. With this change, all the ill-gotten funds in this account would become the property of his daughter to the detriment of his mother's estate, i.e. his siblings.

4. He breached his fiduciary duty by using the authority reposed in him by FM to delay or fail to file taxes, resulting in unnecessary fines and penalties, thus reducing FM's estate. He made withdrawals exceeding her RMDs, he liquidated her IRA, and also resulting in unnecessary taxes and penalties. These accounts were all created by FM to be divided equally at her death. FM's estate, both non-probate and probate, would have been substantially greater but for the shenanigans employed by SRM while his mother suffered with Alzheimer's disease, helpless to intervene.

5. The DPOA contained no express authority for SRM to gift himself any of his mother's property. The Decedent's DPOA contains the following provision on page 5, third paragraph:

Notwithstanding any provisions herein to the contrary, my attorney in fact shall not satisfy the legal obligations to the attorney in fact, out of any property subject to this power of attorney. Except to the extent this power of attorney specifically authorizes gifts to my attorney in fact, my attorney in fact may not exercise this power in favor to the attorney, the attorney's estate, the attorney's creditors, or the creditors of attorney's estate.

An agent acting for a principal pursuant to a power of attorney may not make a substantially gratuitous conveyance of the property of the principal to himself unless the power to do so is expressly granted by the instrument itself. *Fender v. Fender*, 329 SE2d 430 (1985).

6. Florence Mensch died on April 26, 2018. S.C. law requires anyone in possession of a decedent's Will to file the Will within 30 days of the date of death, 62-2-901 (Supp. 2014). SRM waited until December, 2018 to file the Will and Codicil. He waited until January of 2019 to open his mother's estate. He continued to collect her pension and spend money belonging to the estate from April 26, 2018 until February, 2019. Since her death, he continued to convert her property to his own use, said amount totaling approximately \$170,000.00 and causing the estate to be indebted to GE for the overpayment of monthly pensions.

SRM's actions equate him to executor de son tort. Because he continued to receive and spend estate property, he is chargeable as the executor of his own wrong. The value of the property is charged to the *executor de son tort*. 62-3-619 S.C. Code Annot. (Supp. 2014)

I find SRM, who was named as the PR in the Will of his mother, did intentionally and with bad faith convert and waste estate property by means of the concealment of the fact of his mother's death to her bank and to her pension company.

7. While serving as PR, SRM failed to repay or make any effort to repay to the Estate the property he converted to his own use. Further, he failed to comply with the Orders of this Court, failed to cooperate with his first attorney so the attorney could assist in the estate administration. All these acts together constitute a violation of his fiduciary duty as Personal Representative to the Estate causing unnecessary time and expense in the administration of what could have been a very straight forward estate administration.

8. While serving as PR, SRM failed to properly file his mother's 2018 tax returns resulting in taxes, penalties and interest assessed against her estate in excess of \$40,000.00.

VIOLATION OF THE UNIFORM POWER OF ATTORNEY ACT

9. As a matter of law, it is undisputed SRM owed a fiduciary duty to the Decedent as her AIF. Loftis v. Eck, 341 SE 2d 641(1986). Instead of preserving her funds for the future use of the Decedent, Sterling Mensch transferred funds from the Decedent's accounts to his personal account while acting under the authority given to him by her in her DPOA. It is undisputed that Sterling Mensch used funds from these transfers for his own personal use, resulting in the diminishment of available funds for the Decedent's estate to distribute. Therefore, Sterling Mensch failed to maintain Decedent's estate plan as is required by the South Carolina Power of Attorney Act.

This Court has previously ruled as a matter of law that no genuine issue of material fact exists as to this cause of action and Petitioners are entitled to judgment against Respondent.

The Decedent's DPOA contains the following provision on page 5, third paragraph:

Notwithstanding any provisions herein to the contrary, my attorney in fact shall not satisfy the legal obligations of the attorney in fact, out of any property subject to this power of attorney. Except to the extent this power of attorney specifically authorizes gifts to my attorney in fact, my attorney in fact may not exercise this power in favor to the attorney, the attorney's estate, the attorney's creditors, or the creditors of attorney's estate.

While serving as Decedent's AIF, Sterling Mensch transferred funds from the Decedent's accounts to his personal account. Sterling Mensch admitted that he made the unauthorized transfers as described. However, he claims that he used a substantial part of the transfers for the benefit of Florence Mensch. In Moore v. Benson (supra), the Court of Appeals upheld the Master in Equity's refusal to allow credit for alleged tax payments without documentary evidence to support the claim. As to these claims, the Court finds that Sterling Mensch was unable to demonstrate that the above-referenced transactions were for Florence Mensch's benefit. He produced no receipts, documents, witnesses and he failed to testify. In addition to failure to provide proof, as a matter of equity, He who comes into equity must come with clean hands. It is far more than a mere banality. It is a self-imposed ordinance that closes the door of the court of equity to one tainted with inequity or bad faith relative to the matter in

which he seeks relief, *Emery v. Smith*, 361 S.C. 207, 220, 603 SE2d 598, 605 (Ct. App. 2004). He who seeks equity must do equity. *Norton v. Matthews*, 249 S.C. 71, 152 SE2d 680 (1987).

As a result of Mr. Mensch's failure to keep complete and accurate records, the Court finds he has violated the following provisions of the Uniform Power of Attorney Act, S.C. Code Ann. 62-8-114 (Supp. 2017): failed to act in good faith; failed to act within the scope of authority granted in the DPOA; failed to act with care, competence and diligence; failed to keep records or all receipts, disbursements and transactions; failed to preserve the Decedent's estate plan by liquidating retirement accounts; failed to preserve the Decedent's estate plan by using her funds for his personal use resulting in less assets to be distributed to all three of her children from her estate; failed to timely file taxes resulting in penalties and interest; failed to minimize taxes and incurring penalties by liquidating retirement accounts; acted with reckless indifference to the purpose of the power of attorney; and his conduct was reckless and willful in complete disregard of duties imposed upon him as a fiduciary.

The Court finds that Sterling Mensch is liable to the Decedent's successors in interest for the amount required to restore the value of the Decedent's property to what it would have been had the violations not occurred. S.C. Code Annot. 62-8-117 (Supp. 2017).

As to the amount, See Section VII.

CONVERSION

10. The evidence is clear and convincing that SRM converted funds belonging to his mother, and later, the estate to his own use and control. To recover in an action for conversion, Petitioners must:

- (1) Have an interest in the thing converted;
- (2) Respondent must have converted the property to his own use;
- (3) The use was without Petitioners' permission.

Moseley vs. Oswald, 656 SE 2d 380 (2008). The Personal Representative has an interest in and a duty to recover all property due the Estate of Florence Mensch. John Mensch as a devisee in her Will has joined the Personal Representative in order to secure the inheritance intended for him by his mother. SRM has admitted taking over \$800,000.00. These funds were used without the permission of Florence Mensch, her Estate, or John Mensch.

By exploiting his status as AIF he wrongfully and willfully took without legal authority property belonging to FM and ultimately to FM's Estate. The wrongful detention of another's property may give rise to action for conversion; in such cases, conversion occurs when, without justification or excuse, one refuses to surrender the possession of goods after demand for possession by one entitled thereto. Conversion is a wrongful act and has been defined as the unauthorized assumption in the exercise of the right of ownership over goods or personal chattels belonging to another to the exclusion of the owner's rights. *Owens v. Andrews Bank & Trust Co.*, 265 SC 490, 220 S.E. 2d 116 (1975). Conversion is a wrongful act which emanates from either a wrongful taking or wrongful detention. *Kirby v. Horne Motor Co.*, 295 S.C. 7, 11, 366 S.E.2d 259, 261 (Ct. App. 1988).

This Court previously ruled as a matter of law that no genuine issue of material fact exists as to this cause of action and Petitioners are entitled to judgment against Respondent.

Rent, Pre-Judgment Interest, Causes of Action for Negligence, Fraudulent and Negligent Misrepresentation and Concealment, Unjust Enrichment/Money Had and Received and Eviction/Ejectment.

11. Petitioner has requested pre-judgment interest as a part of its relief. However, in order to recover pre-judgment interest, such must be specifically pled. *Tilley v. Pacesetter Corp.*, 355 S.C. 361, 585 S.E.2d 292 (2003). The Court finds that Petitioners statement of "including any interest and appreciation that should have accrued from the time of the violations," contained in line 70 of Petitioner's Petition does not constitute a specific pleading of pre-judgment interest. Therefore, the Court has determined that pre-judgment interest will not be awarded because it was not specifically pled.

12. Petitioner requested rent be charged against Respondent as damages related to Respondent's occupation of 512 New Tarleton Way. Special damages, however, must be particularly alleged and proved. *Kline Iron & Steel Co. v. Superior Trucking Co.*, 261 S.C. 542, 547, 201 S.E.2d 388, 390 (1973) (emphasis added) (failure to plead and prove special damages will prevent recovery). Thus, special damages must be specifically stated to avoid surprise to the other party. *Benedict College v. Nat'l. Credit Sys.* 400 S.C. 538, 548, 735 S.E.2d 518 523 (Ct. App. 2012). The reasoning for such a pleading requirement is to give a party due notice of the amounts sought. *Norwest Properties, LLC v. Strebler*, 424 S.C. 617, 624, 819 S.E.2d 154, 158 (Ct. App. 2018). The Court finds that rent will not be awarded from Respondent as such is special damages which must be specifically pled.

Additionally, Petitioners asserted causes of action for negligence, fraudulent and negligent misrepresentation and concealment, unjust enrichment/money had and received as well as a motion for eviction/ejectment. The Court dismisses the foregoing actions asserted by Petitioner as cumulative given the relief granted by the Court herein.

PUNITIVE DAMAGES

13. The Probate Court can only exercise the jurisdiction provided by statute as enacted by the S.C. General Assembly. As such, the Probate Court lacks subject matter jurisdiction to award punitive damages.

DAMAGES

14. The Court received a number of exhibits during the trial as well as testimony from SW, the estate's PR, and lengthy testimony from both expert witnesses. Mr. Chastain, Respondent's expert, offered testimony regarding his opinions based upon a review of banking and other transactional documents as to the amounts of money transferred from the account of Florence Mensch as compared to the opinion and report of Petitioner's expert John Markel whose testimony was also received. Based upon the testimony of Mr. Chastain in conjunction with the evidence submitted by Mr. Markel, Petitioners' expert, as well as the party's stipulation as to the amount, it is the finding of this court that \$820,382.00 was transferred from Decedent's accounts by Sterling Mensch to his own account for his own personal use.

It is the further finding of this court based upon the evidence that Sterling Mensch is not due any offsets or credits regarding the aforementioned amounts transferred from Decedent's account. Under the settled law of this State, an essential preliminary to the allowance of an offset is that the offset claimed must be pleaded, and there must be some evidence tending to establish such plea. *Hurst v. Sumter County*, 189 S.C. 376, 1 S.E.2d 238 (1939). Likewise, Respondent was required to plead offset. Furthermore, based on the testimony and evidence presented at trial by Respondent, this Court finds that Sterling Mensch has failed to meet his burden of showing that any transfers of funds were made directly for the benefit of Florence Mensch.

It is a further finding of this court that Petitioners shall not recover any amount for Sterling Mensch's failure to diversify Florence Mensch's assets, as such amount is too speculative for this Court to determine.

With regard to the \$820,382.00 transferred from the Decedent's account by Sterling Mensch, the court subtracts from such amount \$273,461.00 as a credit for Respondent's one-third (1/3rd) inheritance, leaving \$546,921.00 due from Respondent to the estate to compensate the Petitioners loss of inheritance. Added to this amount is \$24,559.00 for avoidable taxes due to failure to itemize for the years 2011 through 2016, as well as 2018 penalties and interest, currently on appeal to the IRS, in the amount of \$40,314.00. The Estate had to spend \$10,000.00 to clean and repair Tarleton Way when SRM moved in order to market the property. Because SRM concealed the death of his mother resulting in an overpayment in pension funds, he owes the estate \$ 30,000.00.

Sterling Mensch admitted he owed penalties and interest in the amount of \$13,820.00.00 thus, the total owed from Respondent to John Mensch and Shauna Waddell as damages is \$625,614.00. This amount will be reduced by the 2018 penalties and interest if the appeal of those penalties and interest is successful. Petitioner's expert calculated that \$163,420 in taxes were levied to excessive RMD distribution. Further, he should not receive the benefit of a gift from his mother at a time he was converting her funds almost on a daily basis in violation of his fiduciary duty to her when she needed him most.

These are just the damages that Petitioners have been able to discover from SRM who has lied to the Court, lied to his siblings, lied by omission to GE Pension and BOA, failed to cooperate with his first attorney, refused to obey Court Orders, failed to produce cooperate in discovery, and failed to produce documentary evidence or witnesses to support his written allegations,

By preponderance of the evidence and to confirm the foregoing, the Court finds in favor of Petitioners on causes of action for Breach of Fiduciary Duty both as AIF and Personal Representative, Violation of the SC Power of Attorney Act, and Conversion.

In addition to the damages referenced above, the court finds that Petitioners are entitled to recover from Respondent attorney's fees and costs in the total amount of \$127,572.00 as provided by 62-1-111 SC Code Annot. (Supp. 2014). This is a reduction of \$6380 related to time spent on engagement letters, subpoenas, time spent on Affidavit of Fees. I will further note that this amount includes the fees for Petitioners' expert witness. With regard to such fees, the court considered all the elements required under the case of Glasscock v. Glasscock, 304 S.C. 158, 403 S.E. 2d 313 (1991) and finds such fees to be reasonable. Specifically, the Court assessed (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 contingent nature of the compensation, if any, (5) the beneficial results obtained, and (6) customary legal fees for similar services. Applying the foregoing factors, as noted above, and after review of the Affidavit of Attorney's Fees and Costs submitted by Petitioners' Counsel, the Court finds \$127,572.00 to be reasonable attorney's fees and costs.

Petitioners request the Court award the estate 1,462,495.00 not including pre-judgment interest. Respondent requests that Court award \$513,336.00. To date, SRM has paid nothing toward even the amount he admits he owes.

The relief requested by John Mensch, as a 1/3 devisee of the estate, is addressed by payment to Shauna Waddell as Personal Representative of the Estate. Any claim he has against the Respondent is derivative to the Estate's claims.

In view of the foregoing, this Court awards the Estate of Florence Mensch a judgment in the amount of \$821,343.00 calculated as follows:

\$ 546,921.00 Misappropriations from FM's BDA accounts less SRM's 1/3 share in FM's Will

24,559.00 Failure to itemize FM's tax returns

¹⁰ 40,314.00 2018, taxes, penalties and interest

13,820.00 Tax penalties and interest

163,420.00 Avoidable Income tax due SRM taking more than the RMD from 2011-2018

30,157.00 GE pension overpayment

10,000.00 Cost to estate to clean and repair Tarleton Way

28,000.00 Annual exclusion gift to himself in 2015, 2016

127,572.00 Attorneys fees, costs

\$ 984,763 Total Damages

PAYMENT OF DAMAGES

15. A constructive trust will arise whenever the circumstances under which property was acquired make it inequitable that it should be retained by the one holding the legal title. *Lollis v. Lollis*, 354 SE2d 559, 561 (1987). A constructive trust arises entirely by operation of law without reference to any actual or supposed intentions of creating a trust. It is resorted to by equity to vindicate right and justice or frustrate fraud. *McNair v. Rainsford*, 499 SE2d 488, 501 (Ct. App 1988). The Court finds by clear and convincing evidence that a constructive trust should be imposed upon SRM's non-exempt property of whatever type, wherever located, and however titled. This remedy is appropriate as a result of his deceitful, devious, willful, wanton, and careless actions set forth above. He engaged in repeated action of civil theft for 8 years, depleting his mother's property without any regard to what her future needs might be, without regard to her estate plan, without regard to his siblings, without regard to tax law, probate law, prudent investment principles, etc.

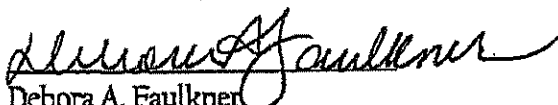
16. If execution on this judgment is commenced by Petitioners, the specific property subject to this constructive trust will be identified in accordance with 14-23-360-420, S. C. Code Annot. (1976 as Amended) and any other applicable law. Any discovery regarding the ability of SRM to pay the judgment will be incident to these supplemental proceedings after they have commenced.

¹⁰ This amount is on appeal with the IRS. SRM is allowed to reduce the total judgment should this amount change as a result of the appeal

ORDER

1. STERLING RAYMOND MENSCH, III shall pay \$984,763.00 in damages to Shauna Waddell, Personal Representative of the Estate of Florence Mensch. Payment shall be made immediately.
2. Shauna Waddell, Personal Representative of the Estate of Florence Mensch, is hereby awarded judgment against STERLING RAYMOND MENSCH, III in the amount of \$984,763.00.
3. Post-judgment interest shall begin to accrue at the legal rate of interest 7.25% or the current rate approved by the S.C. Supreme Court when this judgment is transcribed and enrolled in the Offices of the Clerk of Court of Greenville County.
4. Should this Order be appealed, interest on the judgement will be governed by 14-23-380 S.C. Code Annot. (1976 as Amended) and other applicable law.

IT IS SO ORDERED.


Debora A. Faulkner
Greenville County Probate Judge

Greenville, South Carolina
Dated this 26 day of Jan, 2022



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

February 23, 2026

Mr. Devon Marc Puriefoy, Esquire
3 Boyce Avenue
Greenville SC 29601

Re: Sterling R. Mensch, III v. Shauna Waddell
Appellate Case No. 2026-000267

Dear Counsel:

Our records reflect that the time for ordering the transcript has expired. Within ten days of the date of this letter, you must file a copy of the letter showing that you have timely ordered the transcript from the court reporter. If you have not timely ordered the transcript, you must serve and file a motion requesting permission to order the transcript outside of the filing deadlines set by Rule 207 of the SCACR, along with a copy of your letter addressed to the court reporter.

Be sure to copy the Court, the Office of Court Administration and opposing counsel with all correspondence concerning the transcript. The address for Court Administration is as follows:

South Carolina Office of Court Administration
1220 Senate Street, Suite 200
Columbia, SC 29201

You must advise the Court of the status of the transcript within ten (10) days of the date of this letter, or your appeal will be dismissed.

Very truly yours,

Jasmine D. Smith, Deputy
CLERK

cc: Julia Virginia Hendricks McLeod, Esquire
Tyler Earl McLeod, Esquire

Jenna McLeod

From: Brandi Larobardiere <brandi@truluckthomason.com>
Sent: Monday, February 23, 2026 2:16 PM
To: ctappfilings@sccourts.org
Cc: Devon Puriefoy; Jenna McLeod; Tyler Mcleod; jennahendricks1@gmail.com
Subject: Sterling R. Mensch, III v. Shauna Waddell (2026-000267)
Attachments: Transcript request.pdf

[EXTERNAL]

Good afternoon,

Please allow the attached email correspondence to serve as confirmation that the transcript request for the above referenced matter was submitted in a timely manner, and counsel was notified of the same.

Thank you,
Brandi



Brandi K. Larobardiere
Operations Director & Case Manager
brandi@truluckthomason.com
3 Boyce Avenue, Greenville, SC 29601
T & F 864-331-1751
www.truluckthomason.com

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Monday, February 23, 2026 at 13:38:29 Eastern Standard Time

Subject: UPDATED: Transcript Request for Docket Number
Date: Wednesday, February 11, 2026 at 4:45:39 PM Eastern Standard Time
From: Transcripts@sccourts.org
To: Brandi Larobardiere

Greetings,

Please accept this email and the **summarized Transcript Request shown below** as confirmation that the online transcript request that you submitted has been received by our office. You should receive communication from a transcriptionist within five (5) business days with an estimated cost for production.

If you need further assistance, please contact us at transcripts@sccourts.org.

Regards,

Court Administration

Summarized Transcript Request ID(s): **1472941758**

Requester Information:

Name: Brandi Larobardiere
Entity: Law Firm Truluck Thomason
Phone Number: (864) 331-1751
Email: brandi@truluckthomason.com
Address: 3 Boyce Ave Greenville, SC 29601
Is the requester a party on the case? No
Does the requester represent a party? Yes Sterling Mensch

Transcript Information:

Docket Number: 2022CP2301064
Court Type: Circuit
County: Greenville
Case Caption: Mensch, Sterling Raymond vs Waddell, Shauna M
Appeal Pending? Court of Appeals
Death Penalty? No
Start Date of Proceeding: 10/16/2025
End Date of Proceeding: 10/16/2025
Presiding Judge: Gravely, Perry H.
Court reporter daily assignments:
 10/16/2025: Dahl, Natalie
Opposing Counsel and/or other parties information:
 (Attorney) Tyler Earl McLeod
 (email): tmcleod@bmemhlaw.com
 (Defendant) Shauna M Waddell
 (email): tmcleod@bmemhlaw.com
 (Plaintiff) Sterling Raymond Mensch
 (email): devon@truluckthomason.com
 (Plaintiff Attorney) Devon Marc Puriefoy
 (email): devon@truluckthomason.com
Next hearing date: *Date not entered*
Portion of proceeding to be transcribed: Entire Hearing

Delivery Information:

Delivery Timeframe: Daily Delivery

Delivery Method: PDF/Email

Delivery Timeframe: Private/Self

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## Jenna McLeod

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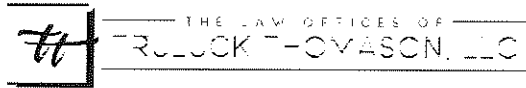
**From:** Brandi Larobardiere <brandi@truluckthomason.com>  
**Sent:** Tuesday, February 24, 2026 3:32 PM  
**To:** Jenna McLeod  
**Cc:** Devon Puriefoy; Tyler McLeod; Kimberly Thomason  
**Subject:** Re: Sterling R. Mensch, III v. Shauna Waddell (2026-000267)  
**Attachments:** Mensch v. Waddell - Transcript Correspondence.pdf

[EXTERNAL]

Good afternoon,

Per the guidelines for submitting online transcript requests, the request is sent directly to Court Administration, and a separate letter is not required. We confirmed this prior to submitting the request. As reflected in both the submission and the confirmation from Court Administration, Mr. McLeod was copied on the request. I have attached the relevant correspondence for your review.

Thank you,  
Brandi



Brandi K. Larobardiere  
Operations Director & Case Manager  
[brandi@truluckthomason.com](mailto:brandi@truluckthomason.com)  
3 Boyce Avenue, Greenville, SC 29601  
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[www.truluckthomason.com](http://www.truluckthomason.com)

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**From:** Jenna McLeod <jennamcleod@bmemhlaw.com>  
**Date:** Tuesday, February 24, 2026 at 3:14 PM  
**To:** Brandi Larobardiere <brandi@truluckthomason.com>  
**Subject:** RE: Sterling R. Mensch, III v. Shauna Waddell (2026-000267)

Brandi,

Do you have an email copying me, Tyler, court administration or the court of appeals when ordering the transcript? Or was it just the transcript request that was completed?

Thanks,

Jenna Hendricks McLeod, J.D.  
Brown, Massey, Evans, McLeod & Haynsworth, LLC  
106 Williams Street  
(PO Box 2464)  
Greenville, SC 29601 (29602)  
Office: (864) 271-7424 ext. 118  
Direct: (864) 331-2263  
Fax: (864) 242-6469

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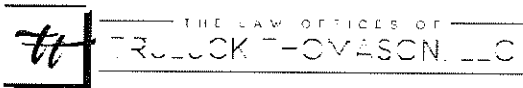
**From:** Brandi Larobardiere <brandi@truluckthomason.com>  
**Sent:** Monday, February 23, 2026 2:16 PM  
**To:** ctappfilings@sccourts.org  
**Cc:** Devon Puriefoy <devon@truluckthomason.com>; Jenna McLeod <jennamcleod@bmemhlaw.com>; Tyler McLeod <tmcleod@bmemhlaw.com>; jennahendricks1@gmail.com  
**Subject:** Sterling R. Mensch, III v. Shauna Waddell (2026-000267)

[EXTERNAL]

Good afternoon,

Please allow the attached email correspondence to serve as confirmation that the transcript request for the above referenced matter was submitted in a timely manner, and counsel was notified of the same.

Thank you,  
Brandi



**Brandi K. Larobardiere**  
Operations Director & Case Manager  
[brandi@truluckthomason.com](mailto:brandi@truluckthomason.com)  
3 Boyce Avenue, Greenville, SC 29601  
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[www.truluckthomason.com](http://www.truluckthomason.com)

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THE STATE OF SOUTH CAROLINA  
In the Supreme Court

---

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Alex Kinlaw, Jr., Circuit Court Judge  
Common Pleas Case No. 2022-CP-23-01064

---

Appellate Case No. 2025-000386

---

IN THE MATTER OF:

Estate of Florence Petrak Mensch,

Sterling Raymond Mensch, III,  
individually as former Personal Representative  
of the Estate of Florence Petrak Mensch and  
in his former capacity as Agent under a Power  
of Attorney for Florence Petrak Mensch

*Appellant,*

v.

Shauna M. Waddell, individually and as  
Personal Representative of the Estate of  
Florence Petrak Mensch and John R.  
Mensch

*Respondents.*

---

AFFIDAVIT OF ATTORNEYS FEES AND COSTS

---

Personally appeared before me, Jenna Hendricks McLeod, who, after being duly sworn states as follows:

1. I am an attorney of the firm Brown, Massey, Evans, McLeod & Haynsworth LLC and represent the Respondents in the above captioned case.
2. Respondents are requesting the Court to order Appellant or Appellant's Counsel to pay Respondents' attorney's fees and costs incurred to respond to their frivolous appeal, taken solely for the purposes of delay. The court has authority to award such fees pursuant to Rule 269, SCACR which states that "the appellate court may upon its own motion or that

of a party, after ten (10) days notice, impose upon offending attorneys or parties such sanctions as the circumstances of the case and discouragement of like conduct in the future might require.”

3. Tyler McLeod is an attorney licensed in South Carolina who has practiced in South Carolina for over twelve (12) years, with the majority of his practice involving estate planning, probate administration and probate litigation. His hourly rate in 2019 and in this case is \$295.00 per hour.
4. I am an attorney licensed in South Carolina who has practiced in South Carolina for over 12 years. My time has been kept in our system to ensure I received compensation for my work from any payment that may be received in this matter. My hourly rate in this case is \$295.00 per hour.
5. I affirm that the hourly rates specified herein are reasonable given the attorney’s professional qualifications and the fees customarily charged in South Carolina for similar legal services.
6. The attorneys’ fees and costs accrued in this case since February 3, 2026, the date the notice of appeal was filed with the Circuit Court and Court of Appeals total \$4,525.30.
7. Based upon the foregoing, the undersigned is informed and believes that attorneys’ fees should be awarded to his clients as reasonable attorney’s fees, costs, and expenses, payable from Appellant and/or Appellant’s Counsel directly to the undersigned within such reasonable time as may be determined by the Court.



Jenna Hendricks McLeod (S.C. Bar #: 101236)  
Brown, Massey, Evans, McLeod & Haynsworth,  
LLC  
106 Williams St.  
Greenville, South Carolina 29601  
(864) 271-7424  
[jennamcleod@bmemhalw.com](mailto:jennamcleod@bmemhalw.com)

Greenville, South Carolina  
February 27, 2026

SWORN to before me

this 27<sup>th</sup> day of February 2026.



Notary Public, State of South Carolina

My commission expires: 12/02/2030



RECEIVED

Feb 27 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
Court of Appeals

---

APPEAL FROM GREENVILLE COUNTY  
Probate Court

Debra A. Faulkner, Probate Judge  
Probate Case No. 2018-ES-23-02854

---

Appellate Case No. 2026-000267

---

IN THE MATTER OF:

Estate of Florence Petrak Mensch,

Sterling Raymond Mensch, III,  
individually as former Personal Representative  
of the Estate of Florence Petrak Mensch and  
in his former capacity as Agent under a Power  
of Attorney for Florence Petrak Mensch

*Appellant,*

v.

Shauna M. Waddell, individually and as  
Personal Representative of the Estate of  
Florence Petrak Mensch and John R.  
Mensch

*Respondents.*

---

CERTIFICATE OF SERVICE

---

I, the undersigned, served a copy of the Motion to Dismiss Appeal and Memorandum in Support of Motion to Dismiss Appeal with all exhibits, Affidavit of Attorneys Fees, and this Certificate of Service on the following on this 27<sup>th</sup> day of February 2027, by **email** to the following addresses of record:

Devon Puriefoy  
[devon@truluckthomason.com](mailto:devon@truluckthomason.com)

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