RECEIVED
Jun 08 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Courtney Clyburn-Pope, Circuit Court Judge
Maite Murphy, Circuit Court Judge

Appellate Case No.: 2025-001435

Karen Fine,.....Respondent,

v.

Herman Brown Hamrick,.....Appellant.

FINAL REPLY BRIEF

R. Hawthorne Barrett (SC Bar #16973)
Turner Padget Graham & Laney, PA
P.O. Box 1473
Columbia, SC 29202
(803) 227-4219
tbarrett@turnerpadget.com

Attorney for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

(A) Case

(B) Statutes

ARGUMENT

I. The applicable statute does not give parties a right to take depositions during property damage arbitrations.

Fine argues that the statutes governing the informal property damage arbitration proceedings must allow for written discovery because they refer to depositions. However, that argument is based on a misinterpretation of the statute. Although S.C. Code §38-77-710 does address depositions, the language of the statute makes is clear that parties and their attorneys do not have the same right to notice and take depositions in property damage arbitrations that they have in regular civil litigation.

In relevant part, §38-77-710 states: "*The court may* provide for the taking of depositions of a witness within or without the State." S.C. Code Ann. §38-77-710 (all emphasis added). This provision allows the court (not the arbitration parties) to order depositions of "witnesses" (not the parties). Unlike in normal civil cases, the parties and their lawyers do not have the right to notice depositions under this statute. Rather, they must seek an order from the court, and even then, the statute limits such depositions to witnesses, as opposed to the parties themselves. In addition, the use of the word "may" demonstrates that the circuit court has discretion as to whether or not to order depositions for informal arbitrations. This further demonstrates that depositions of witnesses in those arbitrations are to be the exception, not the rule.

None of the statutes dealing with property damage arbitrations allow for the kinds of discovery available in circuit court civil litigation. Section 38-77-710's reference to discretionary, court-ordered depositions of witnesses does not change that fact. Therefore Fine's reliance on that statute is misplaced.

II. S.C. Code §38-77-750(a) does not allow for requests to produce in property damage arbitrations.

Fine also misinterprets S.C. Code §38-77-750(a) when she argues that it impliedly permits parties in property damage arbitrations to serve production requests, as that term is understood for purposes of Rule 34, SCRCP. It is true that this statute gives courts the ability to enforce certain aspects of property damage arbitrations, including the "production of records." But when placed in the correct context, the phrase "production of records" does not mean what Fine argues it does.

The phrase appears in the following sentence:

> The court of common pleas shall, on application of the arbitrators, or any one of them, or any party or his attorney, enforce by proper proceedings the attendance and testimony of witnesses and the production of records and may punish for contempt of court, by fine or imprisonment or both, the unexcused failure or refusal to attend and give testimony *or produce records required by any subpoena issued.*

S.C. Code Ann. §38-77-750(a) (emphasis added). Based on the context of this full provision, it is clear that "production of documents" refers to materials that are responsive to subpoenas. The statute makes no reference at all to Rule 34 production requests served by the parties or their attorneys, nor does its language support any inference that such production requests are permitted in property damage arbitrations. Section 38-77-750(a) deals only with the circuit court's retained ability to compel witnesses to attend hearings and/or to comply with *subpoenas* for production of documents. There is no other way to interpret this section's clear language.

Section 38-77-740 lends further support to this position. That section states that the clerk of court's hearing notice to the parties or their attorneys of record must "advise the parties to bring all records which may pertain to the claim, including, but not limited to,

the following: (1) Two estimates of damage to the motor vehicle or its contents signed by the estimator. (2) Signed receipts for car repairs. [and] (3) Bills or receipts for other property damages claimed." S.C. Code Ann. §38-77-740(a).

Subsection (a) lists the kinds of documents the parties should present at the arbitration hearing in property damage cases. Significantly, the subsection does not impose any requirement that the parties produce or exchange those materials *prior to* the arbitration hearing. The absence of any such requirement from subsection (a) – and from all of the other applicable statutes as well – further demonstrates that in creating the informal property damage arbitration process, the General Assembly did not intend for the parties to engage in the kinds of formal discovery set forth in the South Carolina Rules of Civil Procedure.

Therefore, Fine's assertion that the statutes allow for the use of Rule 34 production requests in property damage arbitrations is incorrect, and it does not provide any basis for affirming the circuit court's erroneous rulings in this case.

III. The de novo appeal of a property damage arbitration decision renders everything from those proceedings a nullity.

Fine argues that parties may not only conduct discovery in property damage arbitration cases, but also use the results of that discovery in a future civil case arising from one party's decision to appeal the arbitration award. That argument misapprehends the effects of the de novo status created by such an appeal. As noted in the Appellant's Brief, an appeal of a property damage arbitration award effectively nullifies everything that occurred in those proceedings. The matter begins anew as a civil lawsuit, and only then do the discovery provisions of the Rules of Civil Procedure take effect.

Although not directly on point, the Supreme Court's decision in *Blizzard v. Miller*, 306 S.C. 373, 412 S.E.2d 406 (1991), supports the principle that a de novo appeal from a property damage arbitration award creates a clean slate and a brand new case. In *Blizzard*, the Court concluded that a defendant could seek to change venue after appealing a property damage arbitration award. The defendant was not bound by the venue for the arbitration proceeding, and could pursue a motion to transfer venue just as if the matter were a newly filed civil action. The fact that the arbitration took place in the original county had no binding effects on the defendant, and the defendant did not waive any venue defenses by participating in the arbitration. This demonstrates that nothing from a property damage arbitration continues to have any legal force or effect after one of the party commences a de novo appeal.

Of course, nothing in the controlling statutes prevents the parties to a property damage arbitration from *agreeing between themselves* to exchange documents prior to the hearing, or to allow materials presented at that hearing to be used in the new civil lawsuit after a de novo appeal. Absent such an agreement, however, there is no requirement that a party produce such materials or consent to any disclosures being used in future civil proceedings after an appeal.

The present case demonstrates this point. The parties were free to make informal requests to each other for information and materials to be used at the arbitration hearing. But neither party had any obligation to respond to such requests. Although one or both of them could have chosen to respond voluntarily, the governing statutes did not impose on them any duty to do so. The absence of such a duty created a choice for the parties: They could choose on their own to respond to any requests for information (whatever those

requests might be called), or they could decline to respond without any negative consequences. The circuit court improperly punished Hamrick for selecting the latter option, and this Court should reverse that legal error.

IV. The circuit court's decision fails to honor the purpose of the property damage arbitration system.

The governing statutes demonstrate that the General Assembly intended the property damage arbitration system to be a quicker, cheaper and less formal method for resolving disputes over claims involving only damage to vehicles or other personal property. By concluding not only that written discovery is permitted in those arbitrations, but also that it continues to have legal force and effect after a de novo appeal, the circuit court overlooked that legislative intent.

If full discovery were permitted in property damage arbitrations, that process would become almost, if not equally, as time-consuming and costly as a lawsuit in circuit court. That fact, coupled with the essentially non-binding nature of the arbitrators' decisions, would defeat the purpose of conducting such arbitrations in the first place. And allowing discovery requests from property damage arbitrations to be used for purposes of future motions to compel in circuit court would mean that the appeal would not lead to a fully de novo action.

The term of art "de novo," which the General Assembly purposely included in the applicable statute,[1] means that nothing from the previous action continues to have any legal significance. For all practical purposes, the case begins anew. The circuit court overlooked this critical point in granting Fine's motions, which constitutes an error of law. This Court

[1] S.C. Code Ann. §38-77-770

should reverse that error and remand with instructions for the circuit court to conduct a truly de novo trial, in which Hamrick can present all applicable defenses.

CONCLUSION

The General Assembly intended property damage arbitrations to be faster, less formal and less costly than a full lawsuit in circuit court. This is precisely why the governing statutes provide for certain means of gathering information for the arbitration hearing, but clearly omit any references to formal discovery requests pursuant to the Rules of Civil Procedure. For this reason, Hamrick had no obligation to respond to Fine's discovery requests during the arbitration process, as those requests never had any legal force or validity. Thus, the circuit court erred both in treating the discovery requests as legitimate and in using them as the basis for granting Fine's motions. This Court should now reverse those decisions and remand this case for a de novo trial.

Respectfully submitted,

s/ R. Hawthorne Barrett
R. Hawthorne Barrett (SC Bar #16973)
Turner Padget Graham & Laney, P.A.
P.O. Box 1473
Columbia, SC 29202
(803) 227-4219
tbarrett@turnerpadget.com

Attorneys for the Appellant