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SC Court of Appeals

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

**APPEAL FROM ANDERSON COUNTY
Court of Common Pleas**

J. Cordell Maddox, Circuit Court Judge

Appellate Case No. 2025-000455

Brock Landscape Contractors, LLC d/b/a Brock Landscape..... Respondent,
v.

Clyde E. Abernathy, Sharon M Abernathy, and Michael L. Abernathy,
Individually, and Michael L. Abernathy d/b/a Abernathy Welding &
Sandblasting.....Appellants.

AND

Michael L. Abernathy d/b/a Abernathy Welding & SandblastingAppellant,
v.

William Harold Brock, Jr.,..... Respondent

RESPONDENTS' INITIAL BRIEF

PRUITT & PRUITT

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June 9, 2026

TABLE OF CONTENTS

Table of Authorities	iii
Statement of Issues on Appeal	1
Statement of the Case	1
Standard of Review	2
Statement of Facts	3
Argument	5
1. Appellants Have Failed to Allege any Errors of Law	6
2. The Trial Court's Order was Supported by the Evidence Presented	7
Conclusion	10

TABLE OF AUTHORITIES

Cases

Butler Contracting, Inc. v. Court Street, LLC, 369 SC 121, 127, 631 S.E. 2d 252, 256 (2006) 2

Cohen’s Drywall v. Seaspray Homes, 648 S.E.2d 598, 374 SC 195 (2007) 2

First Sav. Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) 7

Kinard v. Richardson, 407 S.C. 247, 754 S.E.2d 888, 893 (Ct. App. 2014) 3

Oskin v. Johnson, 400 S.C. 390, 397, 735 S.E.2d 459, 463 (2012) 3, 9

State ex rel. McLeod v. Wilson, 279 S.C. 562, 310 S.E.2d 818 (Ct.App.1983) 9

Townes Assoc. Ltd. V. City of Greenville, 266 S.C. 81, 86, 221 S.E. 2d 773, 775 (1976) 2, 6

Statutes

S.C. Cod Ann. § 29-5-10 1

STATEMENT OF ISSUES ON APPEAL

1. **DID THE TRIAL COURT ERR IN WEIGHING THE CREDIBILITY OF CONFLICTING TESTIMONY AND EVIDENCE TO FIND IN FAVOR OF RESPONDENTS?**

2. **HAVE THE APPELLANTS SUFFICIENTLY ALLEGED ANY ACTUAL ERRORS IN THE ORDER BELOW SUFFICIENT TO WARRANT REVIEW?**

STATEMENT OF THE CASE

This is a simple mechanic's lien foreclosure. Respondents filed their foreclosure action on April 19, 2019 seeking to foreclose a previously filed mechanic's lien whereby they asserted entitlement to \$16,711.31 in unpaid work at Appellants' property. Respondents also sought an award of attorney's fees and costs consistent with the mechanic's lien statute authorizing the same. S.C. Cod Ann. § 29-5-10, *et seq.*

Appellants timely answered and denied that any further payments were due. Appellants further sought judgment against Respondent based on counterclaims alleging breach of contract and slander of title. Appellants sought \$30,810.00 for breach of contract and various alleged damages for slander of title, the latter claimed premised on the filing of a mechanic's lien which Appellants disputed. As part of Appellants' responsive pleadings, they also named Respondent William Harold Brock, Jr. individually based on allegations that certain contract work had been performed for Mr. Brock in his individual capacity.

Following protracted delays and no further payments between the parties, the matter proceeding to trial before the Honorable J. Cordell Maddox over three (3) days. The parties each called multiple witnesses in support of their respective positions and entered various exhibits. At the conclusion of trial, Judge Maddox took the matter under advisement and requested that each party, through counsel, submit a post-trial memorandum. Both parties submitted memoranda. The Trial Court issued its Order on January 6, 2025, finding in favor of Respondents and ordering foreclosure of the mechanic's lien by judicial sale.

Appellants timely filed a Motion to Reconsider, Alter, or Amend. Respondent's timely filed a Motion for Attorney's Fees. the Trial Court issued an Order denying Appellants' Motion on February 19, 2025 without a hearing. Respondent's Motion for Attorney's fees has not yet been scheduled for a hearing at the time this appeal divested the Trial Court of jurisdiction. Appellants timely filed their Notice of Appeal on March 10, 2026.

STANDARD OF REVIEW

The foreclosure of a mechanic's lien is an action at law. *Cohen's Drywall v. Seaspray Homes*, 648 S.E.2d 598, 374 SC 195 (2007) (citing *Butler Contracting, Inc. v. Court Street, LLC*, 369 SC 121, 127, 631 S.E. 2d 252, 256 (2006)). In an action at law, tried without a jury, an appellate court will not disturb the trial court's findings of fact unless they are wholly unsupported by the evidence or unless it clearly appears the findings are controlled by an error of law. *Id.* (citing *Townes Assoc. Ltd. V. City of Greenville*, 266 S.C. 81, 86, 221 S.E. 2d 773, 775 (1976)).

In an equitable action,¹ this court may make findings according to its own view of the preponderance of the evidence. *Kinard v. Richardson*, 407 S.C. 247, 754 S.E.2d 888, 893 (Ct. App. 2014). However, ... [the] court is not required to disregard the ... [trial court's] factual findings or ignore the fact that the ... [trial court] was in the better position to assess the credibility of the witnesses. *Id.* (citing *Oskin v. Johnson*, 400 S.C. 390, 397, 735 S.E.2d 459, 463 (2012)).

STATEMENT OF FACTS

The background facts are largely undisputed. Respondent Harold Brock had a long-term professional relationship with Appellant Michael “Mike” Abernathy. Mike Abernathy performed welding work for Mr. Brock, with such work regularly required due to the nature of Mr. Brock’s contracting business. The prior working relationship between these parties had been consistent for many years in that Mr. Brock would request work, Mike Abernathy would complete the work, and then Mr. Brock would promptly pay invoices submitted for work performed all billed at the rate of \$95.00 per hour. None of the parties disputed this background at trial.

In 2018, Mike Abernathy sought the services of Harold Brock to perform hauling and grading work at his property. The parties did not discuss an overall budget for the project or an initial deposit for work performed. The parties did not dispute that Appellants were in the initial stages of building a new shop on their property for which they required grading work. The parties were able to secure dirt by agreement with a

¹ This is not an equitable action. Respondents cite to this *do novo* standard of review only as Appellants seek to have this Court disregard the Trial Court’s credibility determinations which would be inappropriate even under a less deferential standard of review.

neighbor of Appellants. Respondents had employees or contractors haul dump trucks with fill dirt to Appellants' property in order to achieve the necessary grade surface prior to further construction. Accordingly to Respondent Harold Brock's testimony, the work performed for Appellants was over the course of several months as agreed between the parties as Mr. Brock worked for Appellants around other obligations. (R. _____). The parties dispute the exact length of time required for the project.

The parties do not dispute that Mr. Brock and his company were paid, prior to this litigation, a total of \$16,000 for work performed. However, the parties dispute the timing of such payment. Respondents testified that a progress payment was received in July 2018, as noted in their accounting records and subsequent invoice. (R. _____). Respondents also presented evidence that Appellants withdrew cash from their bank close to the amount of this payment a few days prior to payment. (R. _____). Appellants allege that the cash payment came much later, in October 2018, and relied on a timestamped photograph of cash to substantiate this allegation.

By completion of work, the relationship between the parties had deteriorated although they dispute the reasons for such change. The parties met in October 2018 to finalize payment for the project. Respondent Harold Brock brought a final invoice to this meeting with Appellants' agent and the son of Mike Abernathy, Jacob Abernathy. The total on the final invoice matched the total of the mechanic's lien, \$16,711,31, and showed all charges and prior payment. At this same meeting, Respondents were presented with an invoice by Jacob Abernathy on behalf of his father and their welding business whereby they alleged entitlement to \$30,810.00. This invoice reflected work

dating back to the prior year and at a rate of \$195.00 per hour. The situation grew tense, as evidenced by the video of the parties' interaction, and Mr. Brock departed without either party making payment to the other.

The parties dispute the timing and sequence of events surrounding their "competing invoices". It is undisputed that each party, prior to commencement of this litigation, alleged entitlement to a similar amount of total payment from the other party.² Appellants alleged that Respondent Harold Brock altered his invoice upon receipt of their invoice, although Appellants could not produce a prior or conflicting invoice. In contrast, Respondent Brock alleged he was blindsided by an invoice that did not match the course of dealing between the parties, prior charges, or hours actually spent performing work. Central to this appeal, the Trial Court had the opportunity to listen to the parties and their witnesses describe their own view of events that lead to this litigation and assess the credibility of witnesses as part of the Trial Court's Order.

ARGUMENT

Appellants have failed to identify any errors in the Order below. Indeed, Appellants entire brief is devoid of any allegation of error or supporting authority. Instead, Appellants merely reference trial testimony and ask this Court to assess the evidence and reach a different result. This is an action at law. Absent an allegation of error, this Court should refuse the invitation to alter the standard of review and conduct what would essentially be *de novo* review of the record. However, even if this Court

² Harold Brock, and his company, alleged a total due of \$33,568.81, although the outstanding amount was the lower amount ultimately incorporated into the lien as Mr. Brock acknowledged a prior payment of \$16,000.

accepts such an invitation, the record amply supports the findings of the Trial Court.

This Court should AFFIRM the Order below and REMAND the matter for a hearing on Respondents' Motion for Attorney's fees and to finalize the foreclosure.

1. Appellants Have Failed to Allege any Errors of Law

Appellants clearly disagree with the Order below. However, this Court needs no reminder that the business of appeals is hardly the same as a re-trial. Appellants invite the Court to favor some evidence and discount competing evidence. That request would certainly invite challenge even under a *do novo* standard of review. In this mechanic's lien foreclosure case, Appellants' request should be summarily denied.

In order to succeed on appeal, Appellants must necessarily identify errors including but not limited to demonstrating how the decision below is "wholly unsupported by the evidence or unless it clearly appears the findings are controlled by an error of law." *Townes Assoc. Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E. 2d 773, 775 (1976). However, even a charitable reading of Appellants' brief does not come close to meeting this standard. Appellants merely point to evidence they believe would have permitted the Court to find in their favor. The possibility of a different outcome is not co-extensive with an order "wholly unsupported" by the evidence.

Appellants' entire argument is premised on having this Court credit preferred evidence and discount competing evidence. Appellants make no real argument that the Order below is unsupported- only that the Court erred in failing to believe their witnesses. Accordingly, Appellants have failed in even attempting to meet their burden under this Court's appropriate standard of review. In making argument only be

reference to the record, without allegations of an error of law or citations to supporting authority, Appellants have effectively abandoned their appeal. *First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994). This Court should disregard such unsupported arguments and summarily affirm.

2. The Trial Court's Order was Supported by the Evidence Presented.

Respondents met their burden at trial. Respondents presented evidence of work performed. (R. _____, Plaintiff's Ex. 1). Respondents acknowledged partial payment and afforded credit for that payment. Respondent Harold Brock, to his credit, acknowledged that Appellant Mike Abernathy did SOME work for him for which he had not yet been invoiced and did not dispute an offset for the small amount due. (R. _____, Order p. ____). While the parties presented conflicting evidence on several points, it was the job of the trial court to hear all witnesses, weigh the evidence, and- where appropriate- assess credibility. The Order below clearly identifies the evidence presented and which witnesses were more credible in support of its well-reasoned Order.

To the extent this Court accepts the invitation to perform a do novo review, Respondents would direct the Court to the inconsistent and confusing testimony of Appellant's primary witness Jacob Abernathy. (R. _____). Jacob Abernathy testified to the following at trial:

- He admitted a poor memory and kept a notebook to track his work time. (R. _____, Transcript p. 105-114). He could not explain why, with a poor memory, he waited- by his own admission- some two weeks to then enter a total of seventy-eight hours in welding work on a single project.

He could not provide any further documentation other than recording an alleged total two (2) weeks later.

- He testified, regarding the rate of charges for welding, that the higher \$195.00 was actually the “shop rate” which is why it differed from the previous \$95.00 charged by his father Mike Abernathy. After extensive cross-examination, Jacob Abernathy admitted that this newfound “shop rate” included time for two (2) welders such that the entries on his invoice reflected twice the amount of time in actual hours (R. _____).
- He testified that he came to believe he could not trust Harold Brock. Because of this stated lack of trust, he felt it important to properly document payment which he- for reasons he could not explain- needed to go to the bank, get cash, take a picture of cash, post a picture of cash on “Snapchat”, and then meet with Plaintiff. (R. _____).
- He could not explain why a check would not be better documentation of payment or why cash was withdrawn in the approximate amount of payment to Harold Brock in July 2018. (R. _____).
- He testified he knew Harold Brock did not do the amount of work claimed, based on loads of dirt hauled despite not being billed by the load, as he was told by Anderson County officials a precise number of loads of dirt required to obtain a permit for future construction. (R. _____).
- In response to questions about discovery, neither Jacob Abernathy nor Mike Abernathy could explain why they initially acknowledged payment

to Harold Brock in July 2018 (admitting withdrawal of the amount reflected on their July 2018 bank statement and adding cash they already had on hand) before deciding that no payment had been made until October 2018. (R. _____).

- He testified to having over \$100,000 available for payment on construction despite contrary evidence from bank records and no corroboration for any such funds to pay for work completed (R. _____).

This disjointed and often contradictory testimony only further confused the allegations Appellants were attempted to make at trial. The Trial Court correctly, and within its discretion, chose to lend credibility to Respondents' witnesses over that of the Appellants. Again, even if this Court were conducting de novo review it would still be inappropriate to "disregard the ... [trial court's] factual findings or ignore the fact that the ... [trial court] was in the better position to assess the credibility of the witnesses. *Oskin v. Johnson*, 400 S.C. 390, 397, 735 S.E.2d 459, 463 (2012). Furthermore, if this Court were looking to find an abuse of discretion (as opposed to an error of law), the result would still be the same. *See State ex rel. McLeod v. Wilson*, 279 S.C. 562, 310 S.E.2d 818 (Ct.App.1983) ("Mere allegations of error are not sufficient to demonstrate an abuse of discretion. On appeal, the burden of showing abuse of discretion is on the party challenging the trial court's ruling.").

Perhaps just as telling as the confusing testimony of Jacob Abernathy, both Jacob Abernathy and Mike Abernath testified they came to distrust Harold Brock. (R. _____, _____). Indeed, Mike Abernathy testified- in colorful language- that he had been

overcharged prior to the time which he alleged he knew what he would be charged. R. _____. Moreover, Appellants alleged that their growing mistrust of Harold Brock lead them to properly document their payments which they believed would best be done with Snapchat pictures of an envelope of cash. (R. _____). This Court, to the extent necessary, should review the entirety of this testimony which doubtless will make no more sense on appeal than it did to the trial court. The Court below was correct to weigh the testimony of witnesses and enter appropriate findings related thereto.

As to invoices, it is undisputed that each party presented an invoice to the other. In reviewing the record, this Court may readily note that each party sought total payment in a similar amount. Appellants seek to have this Court reverse the Trial Court by alleging, essentially, that Harold Brock altered his invoice to match that presented by Appellants. However, in looking to competing claims, the converse is more plausible and clearly within the scope of what the Trial Court necessarily considered. More specifically, it would appear that Appellants may have been tempted to manufacture reasons for non-payment and create an invoice to offset their payment obligation, as is amply supported by the bizarre testimony about how they came to determine the amount they allege was due by October 2018.

The Order below is supported by the evidence. The availability of other evidence that the Trial Court found less than credible is not the basis for a successful appeal, a reality that is underscored by the appropriate standard of review.

CONCLUSION

This was a straightforward case and should be a simple appeal. Appellants

contracted for work. Appellants failed to pay in full for such work in full. The Trial Court heard witnesses, assessed the evidence, and entered its Order accordingly. The Order below is well-supported. Appellants on appeal merely seek to have this Court substitute its judgment for that of the trial court and, again, essentially conduct *de novo* review. This Court should decline that invitation, affirm the Order below, and REMAND the matter to the trial court. The only remaining issues on remand are attorney's fees due to Respondents and the judicial sale of property to effectuate the Trial Court's Order.

Respectfully Submitted,

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