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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

R. Scott Sprouse, Circuit Court Judge

Appellate Case No. 2026-000971

Mary Gray, by and through
her Attorney-In-Fact,
Thomas W. Cox, …………….. Appellant,

v.

Dominion Anderson, LLC d/b/a
Dominion Senior Living of
Anderson, and Dominion
Senior Living LLC, …………… Respondents.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

1. Whether the offer of judgment interest to which a prevailing party is entitled by statute and court rule applies to an award issued by an arbitrator rather than a judge or jury.

STATEMENT OF THE CASE

Nina Edmondson initiated this civil action as Attorney in Fact for Appellant Mary Gray by filing a Summons and Complaint in the Anderson County Court of Common Pleas on May 21, 2024. Ms. Gray alleged negligence, corporate negligence, recklessness, and breach of fiduciary duty claims arising out of her time as a resident of Dominion Senior Living of Anderson, an assisted living community owned or operated by Respondents Dominion Anderson, LLC d/b/a Dominion Senior Living of Anderson, and Dominion Senior Living LLC. (Compl.). Respondents' alleged failure to properly supervise Ms. Gray's medical conditions caused her to suffer several preventable falls which led to a hospitalization, surgery, and substantial economic and noneconomic losses. (Compl. ¶ 37).

Ms. Gray served Respondents with an offer of judgment on August 6, 2024, offering to settle all claims for $350,000. (Offer of Judgment). The Offer was submitted pursuant to South Carolina's offer of judgment statute which reads as follows:

> (A) Offer of Judgment. Except in domestic relations actions, after commencement of any civil action based upon contract or seeking the recovery of money damages, whether or not other relief is sought, any party may, at any time more than twenty days before the actual trial date, file with the clerk of the court a written offer of judgment signed by the offeror or his attorney, directed to the opposing party, offering to take judgment in the offeror's favor, or as the case may be, to allow judgment to be taken against the offeror, for a sum stated therein, for property, or to the effect specified in the offer. The offeror shall give notice of the offer of judgment to the offeree's attorney, or if the offeree is not represented by an attorney, to the offeree himself, in accordance with the service rules for motions and other pleadings set forth in the South Carolina Rules of Civil Procedure. Within twenty days after notification, or at least ten days prior to the trial date, whichever date is earlier, the offeree or his attorney may file with the clerk of the court a written

> acceptance of the offer of judgment. Upon the filing, the clerk shall enter immediately judgment of the stipulation. If the offer of judgment is not accepted within twenty days after notification or prior to or on the tenth day before the actual trial date, whichever date occurs first, the offer shall be considered rejected and evidence thereof is not to be admissible except in a proceeding after the trial to fix costs, interests, attorney's fees, and other recoverable monies. Any offeror may withdraw an offer of judgment prior to its acceptance or prior to the date on which it would be considered rejected by giving notice to the offeree or his attorney in accordance with the service rules for motions and other pleadings outlined in the South Carolina Rules of Civil Procedure. Any offeror may file a subsequent offer of judgment in any amount provided that the subsequent offer supersedes any earlier offer that was rejected by the offeree or withdrawn by the offeror, and, on filing, terminates any rights of interest or costs that may have been applicable to the superseded offer. Notwithstanding this provision, an offer is not considered rejected upon the making of a counteroffer by the offeree, but shall remain effective until accepted, rejected, or withdrawn as provided in this subsection. Any and all offers of judgment and any acceptance of offers of judgment must be included by the clerk in the record of the case.
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> (B) Consequences of NonAcceptance. If an offer of judgment is not accepted and the offeror obtains a verdict or determination at least as favorable as the rejected offer, the offeror shall be allowed to recover from the offeree: (1) any administrative, filing, or other court costs from the date of the offer until judgment; (2) if the offeror is a plaintiff, eight percent interest computed on the amount of the verdict or award from the date of the offer; or (3) if the offeror is a defendant, a reduction from the judgment or award of eight percent interest computed on the amount of the verdict or award from the date of the offer.

S.C. Code Ann. § 15-35-400(A)-(B). Offers of judgment are also permitted by the South Carolina Rules of Civil Procedure:

> **(a) Offer of Judgment.** Any party in a civil action, except a domestic relations action, may file, no later than twenty days before the trial date, a written offer of judgment signed by the offeror or his attorney, directed to the opposing party, offering to take judgment in the offeror's favor, or to allow judgment to be taken against the offeror for a sum stated therein, or to the effect specified in the offer. Service of the offer of judgment shall be made as provided in these rules. Within twenty days after service of the offer of judgment or at least ten days prior to the trial date, whichever date is earlier, the offeree or his attorney may file a written acceptance of the offer of judgment. Upon the filing, the court shall immediately issue the judgment and the clerk shall enter the judgment as provided in the offer of judgment. If the offer of judgment is not accepted within twenty days after notification, or prior to or on the tenth day before the actual trial date, whichever date occurs first, the offer shall be considered rejected and evidence thereof is not admissible except in a proceeding after trial to fix costs, interest, attorney's fees,

> and other recoverable monies. Any offeror may withdraw an offer of judgment prior to its acceptance or prior to the date on which it would be considered rejected by giving notice to the offeree or his attorney as provided in these rules. Any offeror may file a subsequent offer of judgment in any amount which supersedes any earlier offer that was rejected by the offeree or withdrawn by the offeror, and, on filing and service, terminates any rights to interest or costs under the superseded offer. An offer is not considered rejected by a counter offer and shall remain effective until accepted, rejected, or withdrawn as provided in this subsection. All offers of judgment and any acceptance of offers of judgment must be included by the clerk in the record of the case.
>
> **(b) Consequences of Non-Acceptance.** If an offer of judgment is not accepted and the offeror obtains a verdict or determination at least as favorable as the rejected offer, the offeror shall recover from the offeree: (1) any administrative, filing, or other court costs from the date of the offer until the entry of the judgment; (2) if the offeror is a plaintiff, eight percent interest computed on the amount of the verdict or award from the date of the offer to the entry of judgment; or (3) if the offeror is a defendant, reduction from the judgment or award of eight percent interest computed on the amount of the verdict or award from the date of the offer to the entry of the judgment.

Rule 68(a)-(b), SCRCP. Respondents did not object or respond to Ms. Gray's offer.

Respondents presented the circuit court with a "Consent Order to Refer Case to Binding Arbitration and to Stay Litigation" that was signed by Judge R. Lawton McIntosh on August 9, 2024. (Consent Order). Based on a provision in Ms. Gray's "Resident Admission Agreement," the parties were consenting to arbitrate all claims in Ms. Gray's complaint with all arbitration proceedings governed by South Carolina's civil procedure and evidence rules. (Consent Order at 1-2 ¶ 2). Ms. Gray would be entitled to seek in arbitration all "remedies" available to her under governing law and to recover all damages available for her claims under South Carolina law. (Consent Order at 2 ¶ 4). Following the merits hearing, the arbitrator would issue a written statement resolving each of Ms. Gray's claims. (Consent Order at 2 ¶ 8).

The Consent Order also included provisions on the circuit court's role during the arbitration process. The civil action would not be terminated, only "stayed . . . until the entry of an arbitration award or until a settlement [was] reached." (Consent Order at 2 ¶ 3). The Consent Order stated that the circuit court "shall retain jurisdiction" to issue and enforce subpoenas. *Id.* The circuit court also retained a role after the arbitration hearing to enter judgment on any award the arbitrator granted. (Resident Admission Agreement at 13 ¶ 13) ("Judgment on the Award may be entered in any court having jurisdiction").

Following entry of the Consent Order, the circuit court maintained an active role in the case alongside the arbitration proceedings. In the wake of Ms. Edmonson's death, the circuit court entered the "Consent Order to Amend the Complaint to Substitute Party" on June 11, 2025, replacing her in the caption with Ms. Gray's new representative Thomas W. Cox. (Consent Order to Amend). An Amended Complaint consistent with that consent order was filed in the circuit court on June 18, 2025. (Am. Compl.). At Respondents' urging, a Stipulation of Dismissal ending Ms. Gray's claims against several defendants (Dominion Development Group, LLC, Dominion Group, LLC, and Dominion Management Group, LLC) was filed with the circuit court on November 25, 2025. (Stip. of Dismissal).

An arbitration hearing was held on January 6-8, 2026, with the arbitrator finding in Ms. Gray's favor on January 14, 2026. (Pla. Mot. to Confirm Award at 2). Although the exact amount of the award is confidential, the arbitrator ruling presented under seal to the circuit court showed Ms. Gray was awarded an amount in excess of the $350,000 offer of judgment. (Pla. Mot. to Confirm Award). Ms. Gray then returned to the still-active civil action in the circuit court to file her Motion to Confirm Award and Enforce Terms of Offer of Judgment (Pla. Mot. to Confirm Award). The motion sought both judicial confirmation of the arbitration award and for receipt of the costs and interest available for an unaccepted offer of judgment as stated in section 15-35-400(B) and Rule 68(b), SCRCP. (Pla. Mot. to Confirm at 2-4; Pla. Mem. in Supp.; Pla. Reply). Respondents did not contest confirmation of the arbitration award, but argued Ms. Gray could not recover costs or interest because the offer of judgment rule and statute did not apply to an award acquired in an arbitration proceeding. (Def. Mem. in Opp.).

Arguments on the motion were heard by Judge R. Scott Sprouse on February 11, 2026. On February 13, 2026, the circuit court entered a Form 4 order confirming the arbitration award but denying Ms. Gray's motion for offer of judgment costs and interest. (Form 4 Order). The circuit court's March 25, 2026 formal order concluded "the offer of judgment rule is inapplicable to arbitration because arbitration is not a civil action." (Order at 4). Ms. Gray noticed this appeal on April 20, 2026. (Notice of Appeal).

STANDARD OF REVIEW

Interpreting an offer of judgment involves the construction of a court rule and statute which are questions of law subject to *de novo* review. *Wells v. Vetech, LLC*, 437 S.C. 428, 433, 879 S.E.2d 6, 7 (Ct. App. 2022).

ARGUMENT

Rule 68, SCRCP and S.C. Code Ann. § 15-35-400 unambiguously grant interest and costs to Ms. Gray, a prevailing party who made an unaccepted offer of judgment. In finding the rule and statute exclude judgments entered on an arbitration award, the circuit court failed to apply their plain meaning, misconstrued the term "civil action," and pressed a litigation-versus-arbitration distinction that is neither required by law nor supported by the record. The circuit court's ruling should be reversed, not only because it denies Ms. Gray what she is promised by law, but also because it undermines the policy interest offers of judgment are intended to serve.

1. The governing rule and statute required the circuit court to grant Ms. Gray offer of judgment interest.

South Carolina's offer of judgment process is governed by a materially similar court rule (Rule 68, SCRCP) and statute (S.C. Code Ann. § 15-35-400) structured to impose requirements on an offer's making, an offeree's response, and the manner in which a court addresses an unaccepted offer. The circuit court's refusal to grant Ms. Gray offer of judgment interest misconstrues the rule and statute as, by their plain language, all of the requirements are met here.

The circuit court's ruling was based on its interpretation of the offer of judgment provisions' key terms. (Order at 3). The meaning of a statute and court rule are governed by the same general principles. *Farnsworth v. Davis Heating & Air Conditioning, Inc.*, 367 S.C. 634, 638, 627 S.E.2d 724, 726 (2006) ("In interpreting the meaning of the South Carolina Rules of Civil Procedure, the Court applies the same rules of construction used to interpret statutes"). A court's duty is to interpret a disputed statute so as to "ascertain and effectuate" the Legislature's intent. *Duke Energy Carolinas, LLC v. S.C. Office of Regulatory Staff*, 434 S.C. 392, 434, 864 S.E.2d 873, 895 (2021) (quoting *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)). The best evidence of legislative intent is unambiguous statutory language. *Id.*; *Edwards v. State*, 383 S.C. 82, 92, 678 S.E.2d 412, 417 (2009) (holding that reasonably plain statutory language "conclusive[ly]" states the legislature's intent). The South Carolina Supreme Court has previously found the offer of judgment statute's text to be "clear and unambiguous[]." *Garrison v. Target Corp.*, 435 S.C. 566, 586, 869 S.E.2d 797 (2022).

The rule and statute begin with the requirements for making an offer. Only a "party in a civil action" may make an offer of judgment. Rule 68(a), SCRCP; S.C. Code Ann. § 15-35-400(A) (extending the right to make an offer to "any party" to "any civil action . . . seeking the recovery of money damages"). The offer itself must take a certain form. It must bear the offeror's signature (or her attorney's), must be directed to the opponent, and must state the sum offered. *Id.* The offeror must serve the offer on her opponent consistent with the civil procedure rules. *Id.*

From there, the rule and statute move on to provisions related to an offeree. The recipient of an offer of judgment who intends to accept the offer must do so in a written filing. *Id.* An offeree who chooses not to respond to an offer has chosen to decline it because an offer is "considered rejected" if not timely[1] accepted. *Id.* Finally, the rule and statute describe how a court must address an unaccepted offer. Rue 68(b), SCRCP; S.C. Code Ann. § 15-35-400(B). For there to be any

[1] The rule and statute impose timing requirements on both the offeror and offeree. Rule 68(a), SCRCP; S.C. Code Ann. § 15-35-400(A) (requiring filing of offer "no later than twenty days before the trial date" and requiring filing of an acceptance by the earlier of "twenty days after service of the offer" or "ten days prior to the trial date"). The circuit court did not find, and Respondents have not argued, Ms. Gray's offer was untimely or that Respondents lacked the required time to consider the offer.

proceedings concerning an unaccepted offer, the offeror must "obtain a verdict or determination at least as favorable as the rejected offer." *Id*. If so, then an offeror plaintiff must recover "eight percent interest computed on the amount of the verdict or award from the date of the offer to the entry of judgment." *Id.*[2]

This case meets all three sets of requirements. First, Ms. Gray and her filing met all the specifications for filing an offer of judgment. Ms. Gray was indisputably eligible to make an offer of judgment as a "party in a civil action" pursuant to Rule 68(a) as her offer was filed in a case to which the circuit clerk of court assigned civil action number 2024-CP-0401069. (Offer of Judgment). Since Ms. Gray's civil action sought actual and punitive damages for fall-related medical bills and noneconomic damages allegedly caused by Respondents' negligent and reckless conduct (Compl. ¶¶ 17, 37, 42), her claim was "seeking the recovery of money damages" as contemplated by section 15-35-400(A). The offer itself met the rule and statute's form requirements. The document was electronically signed by Ms. Gray's attorney, was expressly directed to Respondents through their attorney, and specified $ 350,000 as a sum for which Ms. Gray was willing to accept judgment. (Offer of Judgment). By electronically filing the offer of judgment, Ms. Gray met the rule and statute's service requirement. S.C. Code Ann. § 15-35-400(A) (requiring compliance with civil procedure service rules for motions and other pleadings); Rule 5(b)(1), SCRCP (allowing service upon represented party's attorney); Rule 4(e)(2), South Carolina Electronic Filing Policies and Guidelines (governing automatic service on authorized e-filers by the e-filing system).

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[2] An offeror may also recover certain court costs (Rule 68(b), SCRCP; S.C. Code Ann. § 15-35-400(B)), but Ms. Gray does not seek costs here. (Hearing Tr. at 13).

Second, Respondents' inaction after receipt shows Ms. Gray's offer went unaccepted. Respondents' counsel was served with the offer on August 6, 2024, but Respondents never filed a written acceptance. Accordingly, the offer was "considered rejected" by August 27, 2024. Rule 68(a), SCRCP; S.C. Code Ann. § 15-35-400(A). Third, this case meets the requirements for proceedings to address an unaccepted offer. Ms. Gray—the offeror—"obtain[ed] a verdict or determination at least as favorable as the rejected offer." Rule 68(b), SCRCP; S.C. Code Ann. § 15-35-400(B). While the exact figure is protected from public disclosure, the parties agree the award Ms. Gray received in the January 2026 arbitration decision exceeded Ms. Gray's $ 350,000 offer of judgment. (Arbitration Award). Accordingly, the circuit court was required to grant Ms. Gray eight percent interest computed based on the amount of that award from August 6, 2024, until the date judgment is entered on the award. Rule 68(b), SCRCP ("the offeror shall receive from the offeree . . ."); S.C. Code Ann. § 15-35-400(B) ("the offeror shall be allowed to recover from the offeree . . ."). By refusing to order offer of judgment interest, the circuit court failed to follow the rule and statute's plain language.

2. Arbitration did not erase the civil action.

Rather than this straightforward application of the rule and statute, the circuit court's analysis began and ended with the fact that Ms. Gray's damages award came from an arbitrator. (Order at 3-4) ("arbitration is not a civil action"). In Respondents' telling, once the order for arbitration was entered, there "ceased to be a civil case." (Hearing Tr. at 6). But these views do not properly account for the rule/statute's language and structure or the practical realities of the proceedings below. A "civil action" does not disappear when arbitration is ordered, and judgment entered on an arbitration award is subject to the same legal rules as one following a jury verdict.

The circuit court's reasoning first fails as a matter of statutory interpretation. Absent an express definition, the meaning of "civil action" in Rule 68 and section 15-35-400 should be based on how that term is used in similar rules and statutes. *Hodges*, 341 S.C. at 85-88, 533 S.E.2d at 581-83 (requiring sections within same general statutory scheme to be construed together); *Beaufort Cnty. v. S.C. State Election Comm'n*, 395 S.C. 366, 718 S.E.2d 432, 435 (2011) (statutes dealing with the same subject matter are *in pari materia* and must be construed together). A "civil action" is described by the South Carolina Civil Procedure Rules as a legal matter commenced by filing and service of a Summons and Complaint. Rule 3, SCRCP. A South Carolina statute describes the term the same way. S.C. Code Ann. § 15-3-20(B) ("A civil action is commenced when the summons and complaint are filed with the clerk of court if actual service is accomplished" in a timely manner). As described above, this case is a "civil action" because Ms. Gray filed and served a summons and complaint in the Anderson County Court of Common Pleas to initiate her claims against Respondents. Whether the merits of those claims were later resolved by an arbitrator has no bearing on meaning of the term "civil action."

The circuit court's approach also misses an important point about the rule and statute's structure. The circuit court attributed the "civil action" requirement to the forum in which a dispute is resolved when actually the rule/statute's lone reference to a "civil action" is used to identify the parties permitted to make an offer. The respective opening sentences of subsections (a) in Rule 68 and section 15-35-400 use "civil action" to describe a permissible offeror. The circumstances for collecting interest following an unaccepted offer (i.e. "obtaining a verdict or determination at least as favorable as the rejected offer") are in a distinct section, and neither the statute's nor the rule's "Consequences of Non-Acceptance" provision says anything about a "civil action." Rule 68(b), SCRCP; S.C. Code Ann. § 15-35-400(B).

And, while the circuit court did not address the matter, the arbitrator's decision on Ms. Gray's claims falls squarely within Rule 68(b) and 15-35-400(B)'s descriptions of the rulings triggering offer of judgment interest. The rule and statute intentionally chose not to limit eligible recoveries to a jury "verdict" but rather to extend them to the much broader categories of "determination" and "award." *Id.* These terms have independent meaning, and they plainly expand the prospect of offer of judgment interest beyond a jury or court's ruling. *See CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877 (2011) (courts must read a statute so that "no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous"). Even the dictionary definition of "award" recognizes the term includes the product of an arbitration hearing. *Black's Law Dictionary* (12th ed. 2024) (defining "award" as a "final judgment or decision, esp[ecially] one by an arbitrator or by a jury assessing damages"). In fact, that is precisely how the term was understood by a leading South Carolina attorney resource when section 15-35-400 was enacted in its current form. An explainer for attorneys on the new statute made special note of the Legislature's choice to extend offer of judgment interest to any "award," noting the term "may have several meanings" include "final judgment or decision, ***especially one by an arbitrator*** or by a jury assessing damages." Warren Moise, *Offers of Judgment*, S.C. Law, May 2005, at 11, 13 (quoting *Black's Law Dictionary* 132 (7th ed. 1999) (emphasis added)). Finally, as Respondents' counsel admitted below, "award" is the common term used to describe a plaintiff's arbitration recovery, and the document granting Ms. Gray's recovery bears that title. (Hearing Tr. at 10-11; Arbitration Award).

Most importantly, Respondents and the circuit court's attempt to segregate Ms. Gray's "civil action" from the arbitration proceedings fundamentally misunderstands how an order compelling arbitration does and does not affect an existing civil action. The August 9, 2024, consent order stayed but did not dismiss the civil action. (Consent Order); 9 U.S.C. § 3 ("the court . . . shall on application of one of the parties stay the trial of the action . . ."); *Smith v. Spizzirri*, 601 U.S. 472, 475-76 (2024) (holding that, when a party moves for stay under 9 U.S.C. § 3, "the court does not have discretion to dismiss the suit . . ."). The circuit court cited three cases to conclude arbitration is "fundamentally distinct" from a civil action. (Order at 3-4). However, while there are some differences between how arbitration and litigation proceed, none of them affect how the offer of judgment rule/statute operate, and none of the circuit court's chosen authorities held or even suggested offer of judgment interest is unavailable in a civil action later resolved by an arbitrator.

The South Carolina cases noted only the highly deferential review of the merits of an arbitration ruling—a matter not at issue here. *Lauro v. Visnapuu*, 351 S.C. 507, 516, 570 S.E.2d 551, 555 (Ct. App. 2002) ("Judicial review of an arbitration award is limited in scope . . ."); *White v. Preferred Research, Inc.*, 315 S.C. 209, 212, 432 S.E.2d 506, 508 (Ct. App. 1993) (noting appellant failed to "show[] any ground for vacating the arbitration award"). The lone federal district court order addressed an idiosyncratic feature of Colorado's wrongful death statute which is also irrelevant here both because South Carolina's equivalent statute (S.C. Code Ann. § 15-51-20) does not reference a "civil action" and because Ms. Gray asserts no wrongful death claim. *Morrison v. Colo. Permanente Med. Group, P.C.*, 983 F. Supp. 937, 944 (D. Colo. 1997). Plus, as discussed below, *Morrison*'s reference to a "civil action" being stayed to compel "arbitration" cannot be used to suggest the two terms are mutually exclusive or even incompatible because the U.S. Supreme Court has recently confirmed a court's ongoing role in a civil action even after it is stayed to compel arbitration.

Respondents make a similar error. Respondents' counsel told the circuit court "the case went to arbitration and it ceased to be a civil case." (Hearing Tr. at 6). The U.S. Supreme Court unanimously rejected that proposition in a recent opinion. *Jules v. Andre Balazs Props.*, 146 S.Ct. 1209 (2026). *Jules* held that a court still has important duties even after granting motions to stay and compel arbitration under the Federal Arbitration Act ("FAA") (9 U.S.C. §§ 3-4). The court retains jurisdiction to perform its "ongoing," "supervisory" role in the case. *Id.* at 1219-20. The court has a duty to "superintend the arbitration to the end" and, notwithstanding the stay, it remains the court's job to "see the case through." *Id.* at 1220. In fact, the FAA explicitly identifies a number of tasks for a court to perform in the still-active civil action after arbitration proceedings begin. *Id.* at 1219-20 (citing 9 U.S.C. §§ 5, 7, 9).

Respondents know this firsthand as they actively participated in and benefitted from the circuit court's substantive activities in the civil action during the stay. Respondents' counsel signed on to a consent motion regarding the amendment of Ms. Gray's complaint filed in the circuit court in June 2025. (Consent Order, dated June 11, 2025). Respondents also proposed, acquired Ms. Gray's consent for, and filed in the circuit court a stipulation of dismissal for multiple parties in November 2025. (Stip. of Dismissal) (dismissing Dominion Dev. Grp., LLC, Dominion Grp., LLC, and Dominion Mgmt. Grp., LLC). Respondents cannot credibly argue the civil action "ceased" at the moment the stay was entered when they were still filing documents and garnering benefits in that action more than a year later.

As *Jules* shows, Respondents' ongoing utilization of the pending "civil action" after the stay is not improper, but it does directly contradict their core appellate argument. Sending an existing civil action to arbitration for disposition does not extinguish the civil action, alter the court's jurisdiction, or eliminate its role in the parties' dispute. 146 S.Ct. at 1218 ("Nothing in the

FAA eliminated [] jurisdiction while the parties arbitrated”). That is true for matters arising during *and* after the arbitration hearing. When Ms. Gray filed with the circuit court her motion to confirm the arbitration award and to obtain offer of judgment interest, she did not file a new “civil action.” There was no need—the original “civil action” remained active from the moment it was originally filed. *Jules*, 146 S.Ct. at 1220-21 (specifically rejecting argument that post-arbitration hearing motion to confirm/vacate is a “new” civil action).

Respondents make the same error in their characterization of these post-arbitration court proceedings, arguing nothing in the FAA would permit the circuit court to grant offer of judgment interest while confirming the arbitration award. (Hearing Tr. at 7). Respondents overlook an express FAA provision stating that a judgment related to an arbitration award should be treated the same as one following a jury’s verdict or judge’s ruling. 9 U.S.C. § 13(c) (“The judgment shall be docketed as if it were rendered in an action”). The same section states in plain terms:

> The judgment so entered shall have the same force and effect, in all respects, as, and be subject to all the provisions of law relating to, a judgment in an action; and it may be enforced as if it had been rendered in an action in the court in which it is entered.

Id. Accordingly, judgment on the arbitration award entered in Ms. Gray’s favor (1) “ha[s] the same force and effect”; (2) is “subject to all the provisions of law relating to”; and (3) “may be enforced as” a jury verdict or bench trial outcome.

Courts have consistently read this provision to require courts to treat an arbitration-derived judgment in precisely the same manner as one following a verdict. *AIG Baker Sterling, LLC v. AM. Multi-Cinema, Inc.*, 579 F.3d 1268, 1273 (11th Cir. 2009) (describing 9 U.S.C. § 13 as providing that “a judgment which has confirmed an [arbitration] award is to be treated no better or worse than any other civil judgment”). That means statutes granting interest to a prevailing party must apply to a judgment on a confirmed arbitration award if interest would be available to a similarly situated judgment on a verdict. *Carte Blanche (Singapore) v. Carte Blanche (Int'l)*, 888 F.2d 260, 269 (2d Cir. 1989) (quoting *Parsons & Whittemore Ala. Mach. & Servs. Corp. v. Yeargin Constr. Co.*, 744 F.2d 1482, 1484 (11th Cir. 1984) (finding party's "argument that enforcement of an arbitration award is not a judgment for which interest rates are statutorily regulated ignores the requirements of 9 U.S.C. § 13"); *Phillips v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 623 F. Supp. 493, 494 (D. Minn. 1985) (quoting 9 U.S.C. § 13 and awarding interest from the arbitration-award date through entry of judgment because a federal judgment confirming a state-law arbitration award is "no different in effect" from an ordinary federal court judgment on state-law claims).[3]

Finally, Respondents have never offered a way in which their flawed reading of the rule and statute furthers the policy interests offers of judgment are meant to serve. This Court has held that "the plain language and intent behind Rule 68" is "to encourage settlement and reduce litigation." *Wells*, 437 S.C. at 433, 879 S.E.2d at 8; *Black v. Roche Biomedical Labs.*, 315 S.C. 223, 227, 433 S.E.2d 21, 24 (Ct. App. 1993) (finding prior version of Rule 68 was "intended to encourage settlements and avoid protracted litigation"). The prospect of offer of judgment interest and costs spurs offerors to make a sober evaluation of their claims and forces offerees to seriously consider settlement before either party incurs the full temporal and monetary costs of adjudicating the claims. Those interests are as pertinent to civil actions that later proceed through arbitration as they are to any other.

This case proves the point. As the later award shows, Ms. Gray made Respondents a very reasonable offer to end this case for $ 350,000 in August 2024. (Offer of Judgment). Because

[3] *See also Reagan Constr. Co. v. Mayer*, 712 A.2d 372, 374 (R.I. 1998) (reaching same conclusion based on same language in state law arbitration statute).

Respondents declined that offer, the matter remained unresolved for another 16 months until the January 2026 arbitration hearing with both sides incurring substantial discovery costs, expert witness fees, and other expenses along the way. While a party in Respondents' position is free to reject a reasonable settlement offer and play a case out to the end for a worse outcome, the offer of judgment process is designed to discourage this approach by imposing monetary consequences. The circuit court's order allows Respondents to evade those consequences which only serves to remove any incentive offerees have to seriously consider offers of judgment.

Thus, not only is there no textual basis for distinguishing civil actions that lead to arbitration proceedings from all others, there is also no public policy served by exempting those actions from the duty to consider an offer and imposition of the consequences for declining one. In the end, Respondents' position risks an unconscionable result. The South Carolina Supreme Court has held that an arbitration agreement may not eliminate statutorily-protected remedies. *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 28-29, 644 S.E.2d 663, 670 (2007). For similar reasons, Respondents' artificial and atextual distinction between arbitration and litigation-derived judgments cannot be used to eliminate Ms. Gray's statutory right to offer of judgment interest.

In sum, the circuit court erred in finding Ms. Gray failed to meet the "civil action" requirement to receive offer of judgment interest. That requirement defines only the parties permitted to make an offer of judgment, and a civil action had been filed when Ms. Gray made hers. The circuit court's reliance on various format differences between arbitration and litigation as a dispute resolution forum is misplaced because none of them affect the requirements for receipt of offer of judgment interest stated in Rule 68(b) and section 15-35-400(B). More broadly, Respondents' attempt to portray the "civil action" as "ceased" on entry of the consent order compelling arbitration misunderstands the limited nature of a "stay," overlooks a trial court's ongoing supervisory role recently confirmed by the U.S. Supreme Court, and implies an arbitration-derived civil judgment is different from one based on a verdict despite a directly contrary FAA provision.

3. **The arbitration proceedings were not a viable forum for Ms. Gray to seek offer of judgment interest.**

Finally, the circuit court's Form 4 order faults Ms. Gray from not asking the arbitrator to grant her offer of judgment interest. (Form 4 Order) ("All issues of the offer of judgment could have been submitted to the arbitrator"). That assertion is inconsistent with both South Carolina law and the parties' arbitration agreement.

First, it would not have been feasible for Ms. Gray to seek offer of judgment interest from the arbitrator because the arbitrator would have no way to determine the amount of interest she is owed. Ms. Gray was entitled to receive eight percent interest "computed . . . from the date of the offer until the entry of the judgment." Rule 68(b), SCRCP. "Entry of judgment" had yet to occur when the arbitrator's work was done. The arbitration proceedings ended with issuance of the arbitration award. Judgment could only be entered later after Ms. Gray moved to have the arbitration award confirmed by the circuit court. Thus, there was never a period of time when this matter was in arbitration where the arbitrator would have the necessary information to determine the endpoint of Ms. Gray's right to offer of judgment interest and no basis for the arbitrator to determine the amount she was to receive. There is also no indication that an arbitrator has the authority to enter judgment on an arbitration award. *See e.g.* S.C. Code Ann. § 15-48-120 (stating court's role in confirming arbitration award); S.C. Code Ann. § 15-48-150 (providing that "judgment . . . shall be entered in conformity" with order confirming award).

Second, the circuit court's assertion is not consistent with the parties' arbitration contract. Ms. Gray followed the procedure established by the Resident Admission Agreement which stated that "[j]udgment on the Award may be entered in any court having jurisdiction." (Admission Agreement at 13 ¶ 13). Ms. Gray seeking confirmation of the award was also consistent with the FAA. 9 U.S.C. § 9 (allowing party to file motion to confirm arbitration award "[i]f the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration"). It was only after the award was confirmed that judgment could be entered and only after judgment was entered that the amount of offer of judgment interest to which Ms. Gray was entitled could be calculated.

In short, the circuit court's assertion that offer of judgment interest "could have" been addressed by the arbitrator is incorrect as a matter of law. The parties' contract called for a different procedure, and Rule 68(b) calls for a mathematical calculation of interest the arbitrator was never in a position to make.

CONCLUSION

Based on the arguments above, Ms. Gray respectfully requests the Court reverse the circuit court's order denying the motion for offer of judgment interest. The circuit court erred by answering a statutory interpretation question without any meaningful statutory interpretation. By the plain language of Rule 68 and section 15-35-400, Ms. Gray was entitled to make an offer of judgment, Respondents rejected that offer, and Ms. Gray received a more favorable determination when her claims were adjudicated. She was, therefore, entitled to offer of judgment interest as a matter of law. The circuit court's contrary conclusion is based on an interpretation of "civil action" inconsistent with its plain meaning, the rule/statute's structure, and the procedural history of this case. It is also grounded in a view on arbitration and civil actions at odds with U.S. Supreme Court precedent and the FAA. Finally, Respondents offer no explanation for how categorically excluding arbitration awards from offer of judgment interest encourages parties to settle their disputes—the primary aim of the entire offer of judgment process. The circuit court's order should be reversed.

Respectfully submitted,

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