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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas
Hon. Thomas W. McGee, III, Circuit Court Judge

Appellate Case No. 2025-002548
Trial Court Case No. 2023-CP-1200288

Mary Simpson Carpenter Crowder, by and Through
Michael Paul Swearingen, as Special Administrator
for the Estate of Mary Simpson Carpenter Crowder, Appellant,

v.

Cedar Grove Baptist Church, Deacons of Cedar Grove
Baptist Church, a/k/a Cedar Grove Providence Church,
SCBT, and South State Bank, Respondents,

and

Cedar Grove Baptist Church as Third-Party Plaintiff Respondent,

v.

James Wylie Crowder, III, as Third-Party Defendant Appellant.

INITIAL BRIEF OF APPELLANTS

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INTRODUCTION

This appeal arises from a property dispute between neighboring property owners regarding the use of an access path connecting one of the properties with a public road. For decades, Mary Crowder and her family used this access path across Cedar Grove Baptist Church's ("Cedar Grove") land to access their family farm. Without this path, the Crowder family would have no practical way of accessing this portion of their farm because a significant waterway dissects their property. The Crowder family did not hide their use of the access path, nor did they obtain permission from Cedar Grove to use it.

After Mary Crowder's death in 2016, her son, James Wylie Crowder, III ("Jim Crowder" or "Mr. Crowder"), continued to use the access path in his individual capacity and on behalf of Mary Crowder's estate. The Crowder family's open, notorious, and adverse use of the access path created a prescriptive easement over the property. Regardless of whether this easement is properly attributed to Mary Crowder's estate or to Jim Crowder as an individual, Mr. Crowder had a legal right via prescriptive easement to enter Cedar Grove's property to access his farm—and he did so. Sometime after Mary Crowder's death, Cedar Grove began interfering with Mr. Crowder's use of the easement area by setting up barriers, which Mr. Crowder removed or surmounted to continue using the easement. To preserve its easement rights, Mary Crowder's estate filed suit against Cedar Grove, seeking formal recognition of the easement. Cedar Grove denied the easement and brought a trespass claim against Jim Crowder. Subsequently, Mr. Crowder sought recognition for the easement in his individual capacity.

The case was tried and at its conclusion, the jury found against the estate on its easement claim and in favor of Cedar Grove on its trespass claim. But the trial and those verdicts were tainted by multiple, prejudicial, reversible errors. First, the trial court made an objectively wrong ruling

of law which had significant ramifications for the rest of the case. Specifically, when granting Cedar Grove’s motion for directed verdict against Jim Crowder’s prescriptive easement claim, the trial court’s sole reason for its decision was a misstatement of the law, namely the court’s view that Jim Crowder could claim an easement only if he were the *owner* of the dominant estate. This requirement has never been recognized by—and is contrary to—South Carolina law. Instead, South Carolina recognizes prescriptive easements based on *use*, not formal title, and Mr. Crowder has sufficient legal interest to pursue his claim. This erroneous ruling also stripped Mr. Crowder of his defense to Cedar Grove’s trespass claim. Had the jury been permitted to consider Mr. Crowder’s claim, it could have found that Mr. Crowder’s use was lawful and that Cedar Gove’s trespass claim necessarily failed. Instead, the trial court gave the unavoidable impression that Mr. Crowder had no easement right at all and must be liable for trespass. The resulting verdict—and the damages that followed—cannot be separated from that error.

The remaining errors confirm that the judgment cannot stand. The jury awarded actual damages in the absence of any evidence from which this amount could be reasonably or reliably calculated. Without a proper actual damages award, the jury’s punitive damage award necessarily fails. In addition, the punitive damages award must be reversed because it is excessive and contrary to the evidence. The court also failed to conduct the necessary due-process review after trial. The jury’s attempt to award “all legal fees,” despite being expressly instructed not to do so and receiving no associated charge, demonstrates that the verdict was infected by confusion, prejudice, or disregard of the court’s charge. The verdict was also contrary to the evidence in the case.

The trial court’s errors were reversible and prejudicial. This Court should reverse or, in the alternative, remand for new trial absolute or *nisi remittitur*.

STATEMENT OF ISSUES ON APPEAL

- I. **Directed verdict:** Did the trial court err by granting Defendant Cedar Grove’s motion for a directed verdict on Jim Crowder’s claim for prescriptive easement when (a) the trial court’s ruling was based on the objectively incorrect legal assertion that only the owner of a dominant estate can establish a prescriptive easement, and (b) the ruling was treble prejudicial to Mr. Crowder by simultaneously dismissing a viable claim, preventing the jury from considering his sole defense to Cedar Grove’s trespass claim, and implying to the jury that he necessarily was liable for trespass?
- II. **Damages amounts:** Did the trial court err by denying the Estate’s and Jim Crowder’s motions for judgment notwithstanding verdict, new trial, or remittitur because the amounts awarded by the jury were unsupported and excessive when (a) the award of actual damages was unsupported by the evidence and (b) the award of punitive damages was not predicated on a proper amount of actual damages and, in any event, was excessive?
- III. **Jury deviations:** Did the trial court err by denying the Estate’s and Jim Crowder’s motion for judgment notwithstanding verdict or, alternatively, a new trial when the jury provided a verdict contrary both to their charge and to the specific instruction given by the judge in response to their question?
- IV. **Unsupported verdict:** Did the trial court err by denying the Estate’s and Jim Crowder’s motion for judgment notwithstanding verdict or, alternatively, a new trial when the jury’s verdict was contrary to the evidence?

STATEMENT OF THE CASE

I. **Pleadings, initial proceedings, and dispositive motions.**

On June 7, 2023, Mary Simpson Carpenter Crowder, by and through Michael Paul Swearingen as special administrator for the estate of Mary Simpson Carpenter Crowder (the “Estate”) filed a lis pendens in Chester County in anticipation of commencing suit seeking recognition of an easement and related relief in the Court of Common Pleas. *See Lis Pendens* (R. ____). The lis pendens named the dominant estate as part of a 70-acre tract of land owned by the Estate and identified as tax map number 104-00-00-091-000, and it designated the servient estate as part of a roughly eight-acre tract of land owned by Cedar Grove Baptist Church, Deacons of Cedar Grove Baptist Church, AKA Cedar Grove Providence Church, SCBT, and South State Bank (“Cedar

Grove”).¹ *Id.* (R. ____ to ____). Attached to the lis pendens as Exhibit A was a visual representation of the claimed easement area connecting the Estate’s property to Cedar Grove Church Road through a path on Cedar Grove’s property. *Id.* at Ex. A (R. ____).

The following day, June 8, 2023, the Estate filed the Summons and Complaint initiating this proceeding. *See* Compl. (R. ____). The Complaint named Cedar Grove Baptist Church and the Deacons thereof as the owners of certain real property. *Id.* at ¶ 3 (R. ____). SCBT was named as a defendant because it held a mortgage against that property, and South State was named because it held an assignment of rents from the same. *Id.* at ¶ 7 (R. ____). The Complaint alleged that the Estate held an easement by prescription across Cedar Grove’s property which connected the Estate’s property to Cedar Grove Church Road. *Id.* at ¶ 5 (R. ____). The Complaint sought the court’s recognition of such an easement and an injunction barring Cedar Grove from interfering with the Estate’s use thereof. *Id.* at ¶¶ 5–6 (R. ____ to ____).

On July 17, 2023, Cedar Grove filed its Answer, Counterclaim, and Third-Party Complaint. *See generally* Ans. (R. ____). Cedar Grove denied that the Estate was entitled to an easement and asserted various defenses in response, including allegations that the Estate had not been opened for two years after the decedent’s death and that this period disrupted any continuous use. *Id.* at ¶¶ 1–17 (R. ____ to ____). Cedar Grove further alleged that it had taken various actions to stop any such use of its property. *Id.* at ¶¶ 18–19 (R. ____ to ____). Cedar Grove named Jim Crowder as a third-party defendant, alleging that he improperly crossed Cedar Grove’s property as a representative of the Estate and in his own capacity. *Id.* at ¶¶ 29–45 (R. ____ to ____). Cedar Grove claimed that Jim

¹ In this brief, “Cedar Grove” refers to all named Defendants in the original action. However, SCBT and South State Bank did not appear in the proceeding below and are neither judgment holders nor judgment debtors in this matter, and, therefore, are not really parties to this appeal.

Crowder and the Estate were liable for trespass, and Cedar Grove sought actual damages, punitive damages, and an injunction against any future crossing of the property. *Id.* (R. ____ to ____).

On August 6, 2023, the Estate filed its Reply to Cedar Grove’s counterclaim, denying all material allegations. *See generally* Estate Repl. (R. ____). On the same day, Jim Crowder filed his Answer, Counterclaims, and Cross Claims in response to Cedar Grove’s Third-Party Complaint, denying all material allegations. *See Generally* Crowder Ans. (R. ____). He further requested recognition that he was entitled to an easement across Cedar Grove’s property on account of his own continued use of the easement area. *Id.* at ¶¶ 28–33 (R. ____ to ____). On October 5, 2023, Cedar Grove filed a Reply asserting additional defenses. *See generally* Cedar Grove Repl. (R. ____).

On March 26, 2024, Cedar Grove filed a motion for summary judgment and memorandum in support, which the court denied on June 17, 2024. *See* Cedar Grove Mot. Summ. J. (R. ____); Order, June 17, 2024 (R. ____). On November 13, 2025, Cedar Grove filed its Motions *in Limine* and Pre-Trial Brief. *See* Cedar Grove Mot. in Lim. (R. ____); Cedar Grove Pre-Trial Br. (R. ____). On November 13, 2025, the Estate and Jim Crowder filed their Motions *in Limine*. *See* Estate and Crowder Mot. in Lim. (R. ____).

II. Trial and trial motions.

On Monday, November 17, 2025, the trial in this matter began in Chester County. *See* Trial Tr. at 6:3 (R. ____). After jury voir dire and selection, the trial court considered the parties’ pre-trial motions. *Id.* at 6:1 to 47:10 (R. ____ to ____). In particular, the trial court considered and denied in part the Estate’s motion *in limine* to limit testimony regarding Jim Crowder’s prior bankruptcy as unduly prejudicial under Rule 403 of the South Carolina Rules of Evidence. *Id.* at 35:3 to 44:12 (R. ____ to ____). The trial court concluded that, while the parties were not to explicitly acknowledge his

past bankruptcy, the parties could reference sworn statements made in the course of that bankruptcy as prior inconsistent statements. *Id.* (R. ____ to ____).

After the Estate and Jim Crowder rested their case-in-chief, the trial court considered and denied Cedar Grove's four motions for directed verdict. *Id.* at 260:4 to 291:2 (R. ____ to ____). Cedar Grove then made its own case-in-chief, after which it renewed its motions for directed verdict. *Id.* at 382:2 to 410:15 (R. ____ to ____). All but one of Cedar Grove's six renewed motions for directed verdict were denied. *Id.* at 410:16 to 412:13 (R. ____ to ____). The trial court considered and granted Cedar Grove's motion that Jim Crowder could not show any entitlement to a prescriptive easement in his personal capacity because he was not the legal owner of the property but rather a devisee and personal representative of the Estate. *Id.* at 382:10 to 388:16, 410:16 to 411:4 (R. ____ to ____, ____ to ____). The trial court also considered and denied the Estate and Jim Crowder's renewed motions for directed verdict as to their prescriptive easement claim and Cedar Grove's trespass claim. *Id.* at 411:5 to 415:7 (R. ____ to ____).

After receiving their charge and retiring to the jury room, the jury submitted two questions to the court. *Id.* at 475:21 to 491:9 (R. ____ to ____). First, the jury asked for the following: a copy of the jury charge; the number of trees that had allegedly been damaged by Mr. Crowder while accessing the easement area; the law on easements; and an estimate of lawyer fees. *Id.* at 475:21 to 476:6 (R. ____ to ____); Ct.'s Ex. 2 (R. ____). The trial court provided the jury with the charges, instructed the jury to rely on their own recollection of the evidence regarding allegedly damaged trees, and did not provide an estimate of lawyer's fees. Trial Tr. at 479:21 to 482:1 (R. ____ to ____); Ct.'s Ex. 3 (R. ____). Second, the jury asked whether punitive damages include legal fees. Trial Tr. at 486:19–25 (R. ____); Ct.'s Ex. 5 (R. ____). The trial court answered the question in writing by

specifically saying “no” and directed the jury to the punitive damages charge. Trial Tr. at 486:19 to 491:7 (R. ____ to ____); Ct.’s Ex. 6 (R. ____).

Thereafter, the jury returned its verdict finding as follows: the Estate had not established its entitlement to a prescriptive easement by clear and convincing evidence; Cedar Grove had not proven its claim for trespass against the Estate; Cedar Grove had proven its claim for trespass against Jim Crowder; Cedar Grove’s actual damages amounted to \$7,500; and Cedar Grove was entitled to punitive damages of \$50,000 plus all legal fees. *Id.* at 492:12 to 493:5 (R. ____ to ____); Verdict Form (R. ____).

III. Post-trial motions.

Immediately following the announcement of the jury’s verdict, the Estate and Jim Crowder moved orally for judgment notwithstanding verdict or, in the alternative, a new trial. *Id.* at 497:6–14 (R. ____). They cited record evidence establishing the required elements for a prescriptive easement and argued that the verdict was not supported by evidence on the record. *Id.* (R. ____). The trial court denied their motion. *Id.* at 498:2–17 (R. ____). The Estate and Jim Crowder also renewed their motions for directed verdict on the grounds that the verdict was not supported by evidence on the record. *Id.* at 498:21–25 (R. ____). The trial court denied this motion on the same grounds. *Id.* at 499:8-17 (R. ____).

Thereafter, the Estate and Jim Crowder moved for remittitur as to the amount of punitive damages awarded. *Id.* at 499:19–25 (R. ____). They argued that the amount of \$50,000 was extremely high, shocked the conscience, and was not supported by evidence on the record. *Id.* (R. ____). The trial court thereafter inquired whether Cedar Grove contended it was entitled to legal fees in addition to the punitive damages. *Id.* at 500:19–24 (R. ____). Cedar Grove asked for additional time to brief the issue. *Id.* at 500:25 to 501:14 (R. ____ to ____). The trial court was

agreeable to this request and stated that Cedar Grove had “ten days *as [do] all of y’all.*” *Id.* at 501:20 to 502:1 (R. ____ to ____) (emphasis added). The trial court later affirmed that it was “[h]appy to grant” a request for ten days to submit written post-trial motions. *Id.* at 503:2–14 (R. ____). Even with the issue of the availability of attorneys’ fees outstanding, the trial court denied the Estate and Jim Crowder’s motion for remittitur, concluding that the amount was within the statutory limits, supported by the evidence, and did not shock the conscience. *Id.* at 503:15 to 504:6 (R. ____ to ____).

On November 25, 2025, the Estate and Jim Crowder timely moved in writing for judgment notwithstanding verdict or, in the alternative, a new trial. *See* Estate and Crowder’s Mot. for J. Notwithstanding Verdict (R. ____).² They argued that the uncontroverted evidence demonstrated the Estate’s right to a prescriptive easement across the property. *Id.* at 2–6. (R. ____ to ____). They further challenged the damages award as an instance of jury misconduct, *id.* at 6 (R. ____), and argued that Cedar Grove failed to submit any evidence as to the amount of actual damages, making the jury’s determination thereof violative of the damages charge and void. *Id.* at 6–7 (R. ____ to ____). They also requested a new trial on the basis of an improper jury verdict and deliberations, which disregarded the court’s instructions by awarding attorneys’ fees when the court expressly instructed the jury that such fees were not recoverable. *Id.* at 7–11 (R. ____ to ____). Additionally, they noted that the amount of punitive damages awarded was capricious, prejudicial, and excessive. *Id.* at 10–11 (R. ____ to ____). They further requested a new trial on the grounds that the verdict and damages awards were contrary to the evidence. *Id.* at 11–12 (R. ____ to ____).

² The Estate’s and Jim Crowder’s motion for judgment notwithstanding verdict is dated November 24, 2025, but was filed on November 25, 2025.

Also on November 25, 2025, Cedar Grove filed its post-trial motions. *See Cedar Grove Post-Trial Mots.* (R. ____). First, Cedar Grove moved to modify the jury's verdict to remove reference to legal fees as part of the punitive damages award because such amounts were unrecoverable. *Id.* at 2–4 (R. ____ to ____). Second, Cedar Grove moved for the trial court to review and uphold the punitive damages award. *Id.* at 4–6 (R. ____ to ____). Third, Cedar Grove moved for a permanent injunction barring the Estate and Jim Crowder from crossing Cedar Grove's property. *Id.* at 6–7 (R. ____ to ____). In connection with its post-trial motions, Cedar Grove filed a request for judicial notice of another litigation in which Jim Crowder was found liable for trespass, arguing that this prior ruling supported Cedar Grove's punitive damage award. *See Cedar Grove Req. for Judicial Notice* (R. ____). On the same day, Cedar Grove filed an affidavit of costs. *See Cedar Grove Aff. of Costs* (R. ____). On December 3, 2025, the parties filed their respective responses to the post-trial motions. *See Estate and Crowder's Resp. to Post-Trial Mots.* (R. ____); *Cedar Grove Resp. to Post-Trial Mots.* (R. ____).

Five days later, on December 8, 2025, the trial court awarded damages to Cedar Grove in the amount of \$59,405.11 allocated as follows: \$7,500 in actual damages; \$50,000 in punitive damages; and \$1,905.11 in court costs. *See Order, Dec. 8, 2025* (R. ____).

On December 10, 2025, the trial court issued a more formal order regarding its judgment. *See Order, Dec. 10, 2025* (R. ____). According to the December 10 Order, the Estate *would have* had the opportunity to take ten days to file its post-trial motions but forfeited that opportunity by making its motion orally in open court. *Id.* at 2–3 (R. ____ to ____). To the extent the Estate's November 25 filings reiterated the arguments made in open court, these arguments were denied on the same grounds. *Id.* at 3 (R. ____). To the extent the Estate's November 25 filings raised additional arguments, such as those of jury misconduct, these arguments were found to be untimely

and denied. *Id.* (R.____). This holding was contrary to correspondence between the Estate’s counsel and the court, which confirmed that the Estate also had ten days to file any supplemental post-trial motions. *See* Nov. 20 Correspondence (R.____). The trial court thereafter granted each of Cedar Grove’s post-trial motions. Order, Dec. 10, 2025 at 4–9 (R. ____ to ____).

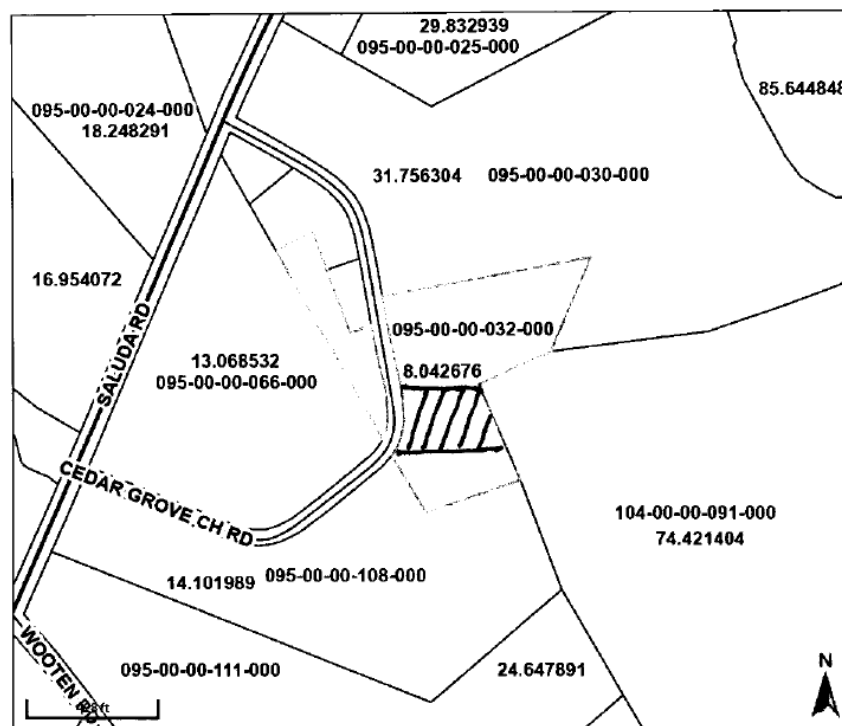
On December 19, 2025, the Estate and Crowder filed their notice of appeal, which was later amended on January 9, 2026. *See* Estate and Crowder’s Notice of Appeal (R. ____); Estate and Crowder’s Amended Notice of Appeal (R.____).

STATEMENT OF THE FACTS

On April 24, 1986, Mary C. Crowder was deeded certain property in Chester County, South Carolina, identified as tax map number 104-00-00-091 (the “Crowder Tract”). *See* Pls. Trial Ex. 18 (deed to Mary C. Crowder) (R. ____); Trial Tr. at 81:4–19 (R.____). Prior to purchasing the property, Mary and her family had rented and farmed the property since 1979. Trial Tr. at 53:17–18 (R.____); *id.* at 184:6 to 185:11 (R.____ to ____). Mary farmed this land until her death in 2016, and her heirs, including Jim Crowder, continued to farm the property after her death. *See id.* at 53:11–23 (R.____); *id.* at 141:15 to 142:4 (R.____ to ____); *id.* at 249:1–22 (R.____). In the years since Mary Crowder purchased the property, the family gradually expanded its farming operations. *Id.* at 184:19 to 186:22 (R.____ to ____).

A body of water known as “Fishing Creek” crosses the Crowder Tract, and due to its depth, rocky terrain, and legally protected status, the creek makes it impossible for the Crowders to move farming equipment across the creek to the other side of its property. *See* Pls. Trial Ex. 18 (R.____); Pls. Trial Ex. 25 (R.____); Trial Tr. at 114:12 to 117:7 (R.____ to ____); *id.* at 138:12 to 139:5 (R.____); *id.* at 175:16 to 177:11 (R. ____ to ____); *id.* at 180:14 to 181:13 (R. ____ to ____). So, for decades, to access this area of farmland, the Crowder family and those acting on their behalf have approached

the property on a public road, Cedar Grove Church Road, and then crossed a portion of property owned by Cedar Grove that adjoins the farmland. *See, e.g.*, Trial Tr. at 122:2–16 (R.____); *id.* at 182:3–16 (R.____); *id.* at 209:11–25 (R.____); Jim Crowder Aff. at 2 (“[M]y mother and myself, and my deceased father, *have always* used the [easement area] without permission to get to the [Crowder Tract] before and after my mother bought the land in 1986”) (emphasis added). The access point is connected to Cedar Grove’s parking lot across a patch of unused land where the former sanctuary sat. Trial Tr. at 53:17 to 54:2 (R.____); *id.* at 101:2–17 (R.____); 182:3–22 (R.____). This access path is adjacent to a gas line and to the north of Cedar Grove’s graveyard. *Id.* at 181:14 to 183:6. By using the access path shown below, the Crowders could access and make use of their farmland. *Id.* at 53:17–23 (R.____); 184:3 to 186:23 (R.____ to ____); 205:19–25 (R.____). Without this path, the Crowders would not be able to continue their farming operations or otherwise access the property. *See, e.g., id.* at 190:2–10 (R.____).



Compl. Ex. A (R.____).

When crossing this path, the Crowders and their agents regularly left their cars in Cedar Grove's parking lot and did not hide their use of the property. *See* Trial Tr. at 121:18 to 122:8 (R. ____ to ____); 191:23 to 192:14 (R. ____ to ____). Despite testimony that the Crowders' use of the property left physical marks demonstrating its continued use, representatives from the church later testified that they were not aware of the Crowders' use until roughly 2015. *See* Trial Tr. at 296:11 to 297:4 (R. ____ to ____); *id.* at 305:23 to 306:20 (R. ____ to ____); *id.* at 352:16 to 353:25 (R. ____ to ____). In 2016, twenty years after being deeded the Crowder Tract, Mary Crowder died. *See* Pls. Trial Ex. 20 (R. ____) (petition to approve will); Trial Tr. 83:6–13 (R. ____). Mary Crowder's will was admitted to probate in 2018, and the estate is designated as file number 2018-ES-12-133 in Chester County. *See* Jim Crowder Aff. at 2 (R. ____). In 2018, her sons, Jim Crowder and William Randolph Crowder, were appointed representatives of her estate and recognized to be devisees of the property. Pls. Ex. 21 (R. ____); Trial Tr. at 83:4 to 84:18 (R. ____). Prior to that time, Jim Crowder acted as the sole representative of the estate. Trial Tr. at 230:6–17. In 2020, the probate court issued a certificate of appointment. Pls. Ex. 20 (R. ____); Trial Tr. at 94:19–25 (R. ____ to ____).

Although the Crowders used the easement area for decades without permission and without protest, Cedar Grove suddenly demanded that the Crowders cease their use sometime after Mary Crowder's death. *See* Trial Tr. at 194:5 to 195:5 (R. ____ to ____); *id.* at 307:2–17 (R. ____). Cedar Grove planted small trees to form a barrier to cut off the Crowders' access to the Crowder Tract, but Jim Crowder was not deterred from continuing to use and drive through the easement area. *Id.* at 202:25 to 203:25 (R. ____ to ____); *id.* at 238:3 to 239:2 (R. ____ to ____); *id.* at 308:1 to 310:6 (R. ____ to ____). Cedar Grove also put up no trespassing signs. After escalating tensions in which Cedar Grove denied Jim Crowder access to the Crowder Tract, he and the Estate took steps to pursue legal action. *Id.* at 306:21–22 (R. ____) (discussing no trespassing signs put up by Cedar

Grove); *id.* at 308:1–11 (R.____) (testifying that a church representative put a pole in the access path, which was subsequently moved); *see generally* Compl. (R.____).

On March 16, 2023, Jim Crowder filed a petition individually and as personal representative of the Estate to have a special administrator appointed to pursue litigation against Cedar Grove to recognize the Estate’s entitlement to a prescriptive easement across Cedar Grove’s property. *See* Defs. Trial Ex. 8 (R.____); Trial Tr. 232:20 to 233:22 (R. ____ to ____). Thereafter, the Estate filed suit, seeking recognition of a prescriptive easement across Cedar Grove’s property.

STANDARD OF REVIEW

Directed verdict and JNOV. “When reviewing the trial court’s ruling on a motion for directed verdict or a JNOV, this Court must employ the same standard as the trial court by viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party.” *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 331–32, 732 S.E.2d 166, 171 (2012); *Wintersteen v. Food Lion, Inc.*, 344 S.C. 32, 35, 542 S.E.2d 728, 729 (2001) (same). If the plaintiff’s evidence is insufficient to support the jury’s verdict, the trial court should grant JNOV for the defendant. *Richardson v. Piggly Wiggly Cent., Inc.*, 404 S.C. 231, 743 S.E.2d 858 (Ct. App. 2013). In either situation, a trial court’s failure to direct a verdict or grant JNOV is reversible error. *Id.*; *Wintersteen*, 344 S.C. at 35, 542 S.E.2d at 729; *Young v. Meeting St. Piggly Wiggly*, 288 S.C. 508, 343 S.E.2d 636 (Ct. App. 1986).

New trial absolute or *nisi remittitur*. A trial court “may grant a new trial absolute when it finds the evidence does not justify the verdict. *Trivelas v. S.C. Dept. of Transp.*, 357 S.C. 545, 553, 593 S.E.2d 504, 508 (Ct. App. 2004); *see also Folkens v. Hunt*, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (1990) (“The thirteenth juror doctrine is a vehicle by which the trial court may grant a new trial absolute when he finds that the evidence does not justify the verdict.”). A new trial *nisi*

remittitur is warranted when verdict is so excessive that it clearly indicates the amount was the result of passion, caprice, prejudice, partiality, corruption or some other improper motive. *Cock-N-Bull Steak House v. Generali Ins. Co.*, 321 S.C. 1, 466 S.E.2d 727 (1996).

A trial court's decision to deny a new trial, either absolute or *nisi remittitur*, will be reversed if it "is wholly unsupported by the evidence or the conclusion reached was controlled by error of law." *Dent v. Redd*, 270 S.C. 585, 586, 243 S.E.2d 460, 460 (1978) (citations omitted).

Punitive Damages. South Carolina "appellate courts must conduct a de novo review when evaluating the constitutionality of a punitive damages award." *Mitchell, Jr. v. Fortis Ins. Co.*, 385 S.C. 570, 583, 686 S.E.2d 176, 183 (2009) (citing *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 431 (2001)). In reviewing such awards, appellate courts must consider the following factors: "(1) the degree of reprehensibility of the defendant's conduct; (2) the disparity between the actual and potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases." *Id.* at 585, 686 S.E.2d at 184 (citing *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 575 (1996)). "The ratio of actual or potential harm to the punitive damages award is 'perhaps the most commonly cited indicium of an unreasonable or excessive punitive damages award.'" *Id.* at 588, 686 S.E.2d at 185 (quoting *Gore*, 517 U.S. at 680). Generally, "few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process." *Id.* (quoting *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 425 (2003)).

ARGUMENT

I. The trial court’s ruling granting Cedar Grove’s motion for directed verdict on Jim Crowder’s claim for prescriptive easement rested on an objectively incorrect view of the law.

In directing a verdict against Jim Crowder’s prescriptive easement claim brought in his individual capacity, the trial court fundamentally misunderstood and misinterpreted South Carolina easement law and imposed conditions on that claim that have never previously been recognized in (and are contrary to) binding South Carolina precedent. The error was the view proposed by Cedar Grove and adopted by the trial court that only an *owner* of a dominant estate can establish a prescriptive easement to access that land. *See* Trial Tr. at 382:13 to 388:15 (R. ____ to ____). That erroneous premise was the sole basis for Cedar Grove’s motion on this claim:

Our first motion is this. We believe as to Jim Crowder, the claim for a prescriptive easement fails as a matter of law. The case law is clear that a prescriptive easement is not implied by law but it’s established by the conduct of the dominant tenement owner. Mr. Crowder has testified . . . that he doesn’t own the property

He is not an owner. He has not asserted a claim as an owner. . . . I think to the extent he is asserting a claim on his right, he doesn’t meet an essential element of the claim.

Id. at 382:17–23, 383:4–10 (R. ____, ____). Jim Crowder’s counsel disagreed, explaining that Cedar Grove misapprehended the law and, even if an ownership interest was required, Mr. Crowder’s interest in the land sufficed. *See id.* at 387:22–24 (R. ____) (responding to Cedar Grove’s motion by explaining that the easement at issue was “an easement appurtenant that runs with the land *no matter who owned it*”) (emphasis added); *id.* at 384:14–17 (arguing in the alternative that “the argument against [Cedar Grove’s] position is that Mr. Crowder has an interest in the property which devolved to him on the death of his mother.”).

Nevertheless, the trial court latched onto the erroneous premise advanced by Cedar Grover and, on that basis, granted a directed verdict on Jim Crowder's easement claim. When articulating the reasoning behind its ruling, the court said the following:

I am going to grant the motion for a directed verdict as to . . . the prescriptive easement claim by Jim Crowder. . . . I think the only evidence is that he has not been an owner and currently is not an owner. And so I think there's a difference between ownership of a prescriptive easement and using that prescriptive easement. . . . And so while he may or may not have been properly using that [prescriptive easement], he certainly testified that he's used it. But I don't believe that there is sufficient evidence that he is an owner of the property. I believe the only evidence is that the estate is. So I'm granting that directed verdict.

Trial Tr. at 410:16 to 411:4 (R. ____ to ____). In so doing, the court made two significant and reversible errors: (1) determining that only an "owner" of the Crowder Tract could claim a prescriptive easement over the access path; and (2) finding that the uncontroverted evidence failed to show sufficient ownership interest, if such an interest is required. As discussed below, the trial court's reasoning and ruling were wrong, and the error was not harmless and resulted in significant prejudice to Jim Crowder. Thus, the trial court's holding should be reversed, and Jim Crowder's individual prescriptive easement claim should be remanded to a fact finder for final determination. And, as explained below, that reversal necessarily requires the reversal of the verdict and damages against Mr. Crowder for trespass since the easement, if established, would be a complete defense.

A. The trial court's ruling was based on the erroneous conclusion that only the property owner of the dominant estate may claim a prescriptive easement, which is contrary to South Carolina law.

As a matter of well-established South Carolina law, the right to claim a prescriptive easement is *not* limited to those who hold title to the dominant estate. To the contrary, South Carolina courts regularly recognize that third-parties, such as utilities, may establish a prescriptive easement through their own conduct, even if they do not own or otherwise hold an interest in the

properties. This principle of property law is so axiomatic in South Carolina law that no South Carolina court has imposed ownership interest as a condition to a prescriptive easement claim. Thus, the trial court's decision to grant Cedar Grove's motion for directed verdict was in error.

To establish the right to a prescriptive easement under South Carolina law, the claimant must show the following: "(1) continued use for 20 years, (2) the identity of the thing enjoyed, and (3) use which is either adverse or under a claim of right." *Boyd v. Bellsouth Tel. Tel. Co.*, 369 S.C. 410, 418–19, 633 S.E.2d 136, 140–41 (2006) (citing *Horry County v. Laychur*, 315 S.C. 364, 367, 434 S.E.2d 259, 261 (1993)); *Shia v. Pendergrass*, 222 S.C. 342, 351, 72 S.E.2d 699, 703 (1952)). Use is presumed to be adverse when it is "open, notorious, continuous, and uninterrupted." *Id.* (citing *Poole v. Edwards*, 197 S.C. 280, 283, 15 S.E.2d 349, 350 (1941)). This frequently-cited legal standard omits any requirement that the claimant own the property forming the dominant estate. To the contrary, the only reference to "ownership" is in a different section of the court's analysis which states that "[a] prescriptive easement is not implied by law but is established by the conduct of the dominant tenement owner." *Id.* (cited, e.g., by *Kelley v. Snyder*, 396 S.C. 564, 572, 722 S.E.2d 813, 817 (Ct. App. 2012); *Simmons v. Berkeley Elec. Coop., Inc.*, 419 S.C. 223, 239, 797 S.E.2d 387, 390 (2016); *Bundy v. Shirley*, 412 S.C. 292, 304, 772 S.E.2d 163, 170 (2015)). This rule has been consistently applied to direct the court's attention to the conduct of the *claimant*, rather than the defendant, and has not been used to prohibit non-property owners from pursuing a prescriptive easement when they have satisfied the requirements for such a claim.

One need only look to South Carolina's long history of recognizing prescriptive easements for non-dominant-estate-owners, such as utilities, to confirm that ownership of the dominant estate is not a requirement for anyone claiming a prescriptive easement. For example, in *Simmons v. Berkley Electric Cooperative, Inc.*, the South Carolina Supreme Court considered whether two

utility companies—St. John’s Water and Berkley Electric—had claims to a prescriptive easement over the portion of the servient estate where their water and power lines ran. 419 S.C. 223, 226, 797 S.E.2d 387, 388–89 (2016). The utilities maintained these water and power lines, respectively, on the servient estate’s property, and the servient estate brought a claim for trespass and unjust enrichment. *Id.* at 227, 797 S.E.2d at 389. Neither utility owned the property itself or the neighboring property. *See generally id.* Yet, the *Simmons* court never mentioned or even considered this factor as relevant to whether these utilities could maintain a prescriptive easement claim against the servient estate. *Id.* In fact, the court upheld the lower court’s determination that Berkley Electric had a prescriptive easement over the portion of the servient estate where the utility maintained electric lines. *Id.* at 237–238, 797 S.E.2d at 394–95. As for St. John’s Water, the relevant inquiry was whether the utility had satisfied the recognized elements for a prescriptive easement—namely, whether their use was open and notorious. *Id.* at 233, 797 S.E.2d at 392.

Similarly, in *Loftis v. South Carolina Electric and Gas Company*, the South Carolina Court of Appeals found that a power company had a prescriptive easement across property where they maintained powerlines. 361 S.C. 434, 436, 604 S.E.2d 714, 715 (Ct. App. 2004), *overruled on other grounds by Simmons v. Berkeley Elec. Coop., Inc.*, 419 S.C. 223, 797 S.E.2d 387 (2016). The Court of Appeals focused on the power company’s use of the easement area, not whether the power company owned the surrounding property—or even the property where the power-lines terminated. *Id.*; *see also Johnson v. Time Warner Ent.-Advance/Newhouse P’ship*, No. 3:15-CV-01727-CMC, 2016 WL 3595496, at *4 (D.S.C. July 5, 2016) (denying summary judgment a utility’s claim for prescriptive easement for existence of a genuine, material issue of fact but not considering whether the utility owned the nearby property).

Indeed, South Carolina courts have long held that *the public* can acquire a prescriptive easement across private land. *See, e.g., State v. Miller*, 125 S.C. 289, 118 S.E. 624, 624 (1923) (“The rule in this state is that a prescriptive right arises in favor of the public after the continuous use of a road for twenty years[.]”) (quoting *State v. Rodman*, 86 S.C. 158, 68 S.E. 343, 345 (1910)) (internal quotations omitted); *see also Cleland v. Westvaco Corp.* 314 S.C. 508, 512, 431 S.E.2d 264, 267 (Ct. App. 1993); *Darlington County v. Perkins*, 269 S.C. 572, 576, 239 S.E.2d 69, 71 (1977). If the public—who, of course, are not owners of the adjoining dominant parcels—can acquire a prescriptive easement after 20 years of unpermitted use, so too can Mr. Crowder.

That interpretation is consistent with a historic trend in our state toward greater flexibility in the application of the law of prescriptive easements. Over time, South Carolina courts have increasingly recognized modern trends in property ownership and adapted the prescriptive easement doctrine as needed. For example, when applying the doctrine of “tacking on,” which allows a prescriptive easement to “tack on” their adverse use period to those of a prior property owner, courts have acknowledged that the adverse use “need not be continuous to [a claimant] personally.” *Bundy v. Shirley*, 412 S.C. 292, 313, 772 S.E.2d 163, 174 (2015) (emphasis added). Again, the critical inquiry is how the property was used and whether there is sufficient connection between the claimant and its predecessor in interest for the claimant to benefit from their adverse use. When discussing ownership of land, the goal is establishing the connection between the claimant’s interest and those of their predecessor. *See, e.g., id.*; *see also Braswell v. Amick*, 442 S.C. 618, 626–27, 900 S.E.2d 475, 479–80 (Ct. App. 2024); *Kelley v. Snyder*, 396 S.C. 564, 575, 722 S.E.2d 813, 819 (Ct. App. 2012). If South Carolina law supported the trial court’s theory that only the actions of an adjacent property owner were sufficient to establish a prescriptive easement, the case law would not have evolved to create more flexibility for claimants not owning property

for the entire adverse period. Implicit in the doctrine of “tacking on” is the central premise that a claimant can benefit from adverse uses not coinciding with their ownership of the dominant estate.

Because the trial court’s decision to grant Cedar Grove’s motion for directed verdict on Crowder’s prescriptive easement claim in his individual capacity was erroneous and contrary to South Carolina law, the trial court’s ruling should be reversed, and Crowder’s claim should be remanded for review by a factfinder.

B. Even if the trial court correctly determined that only property owners of a dominant estate may claim a prescriptive easement, the uncontradicted evidence at trial showed that Crowder had sufficient interest in the property to maintain his claim.

Alternatively, even if this Court adopts the trial court’s interpretation that a prescriptive easement requires the claimant own the dominant estate (which it should not), the trial court nonetheless erred in granting directed verdict against Jim Crowder’s prescriptive easement claim because the uncontroverted evidence at trial showed that he had sufficient legal interest to in the Crowder Tract to maintain his claim. Multiple exhibits and witnesses confirmed that Crowder was personal representative of the Estate and was devised the property, along with his brother, in his mother’s will. *See, e.g.*, Pls. Trial Ex. 20 (R. ____) (petition to the probate court to approve Mary Crowder’s will); Pls. Trial Ex. 21 (R. ____) (certificate of appointment); Trial Tr. 87:14–23 (R. ____ to ____) (showing plaintiff’s expert testify that Crowder “ha[d] an interest in the property” as personal representative and beneficiary of the Estate); *id.* at 96:14 to 97:15 (R. ____ to ____) (plaintiff’s expert testifying that Crowder had an interest in the property, even though the property had not been formally deeded to him); *id.* at 177:12 to 178:14 (R. ____ to ____) (Crowder testifying that he was co-personal representative of the Estate and that, according to his mother’s will, he and his brother would inherit the Crowder Tract). At no point did Cedar Grove present any contrary evidence. *See generally* Trial Tr. (R. ____). Instead, Cedar Grove insisted that, until the property

was formally deeded to Jim Crowder, he lacked sufficient interest to maintain his claim. *See, e.g., id.* at 382:17–23, 383:4–10 (R. ___, ___). But Cedar Grove presented no legal authority for the proposition that a prescriptive easement claimant must be the fee simple title holder of the dominant estate. *See id.* at 382:13 to 388:15 (R. ___ to ___). Nor did the trial court cite such any such source when granting Cedar Grove’s motion for directed verdict. *See id.* at 410:16 to 411:4 (R. ___ to ___).

Even assuming that Jim Crowder must have been the “owner” of the Crowder Tract, he had sufficient legal interest by virtue of being the Estate’s personal representative and devisee of his mother’s will. South Carolina law recognizes that, even before the estate transfers title of a decedent’s property, devisees have an interest in real property. *See, e.g., Est. of Livingston v. Livingston*, 404 S.C. 137, 145, 744 S.E.2d 203, 208 (Ct. App. 2013); *Church v. McGee*, 391 S.C. 334, 348–49, 705 S.E.2d 481, 489 (Ct. App. 2011); S.C. Code Ann. § 62-3-907; S.C. Code Ann. § 62-3-101; *see also In re Mack*, No. CV 22-02503-DD, 2023 WL 1869211, at *2 (Bankr. D.S.C. Feb. 9, 2023).³

The probate code is clear—upon a decedent’s death, “his real property *devolves to the persons to whom it is devised by last will*” subject to the powers of the personal representative in satisfying claims and administering the estate. S.C. Code Ann. § 62-3-101 (emphasis added). This contrasts with personal property, which is held by the personal representative. *Id.* The personal representative, during the pendency of the estate, has power over the title to the real property but only for the “benefit of creditors and *others interested in the estate.*” S.C. Code Ann. § 62-3-711(a) (emphasis added); *see also* S.C. Code Ann. § 62-3-709. The devisee’s ownership interest in real

³ This Court has also held similarly in unpublished cases in 2006 and 2023. Though these cases cannot be cited as precedent, *see* Rule 268(d)(2), SCACR, they illustrate the long-standing and ongoing vitality of the principle described above.

property may be evidenced by execution of a deed of distribution, but it is not dependent on it. *See* S.C. Code Ann. § 62-3-907; *Livingston*, 404 S.C. at 144, 744 S.E.2d at 207.

In *Estate of Livingston v. Livingston*, the South Carolina Court of Appeals considered the contours of a devisee and personal representative's claim to property during the pendency of probate. 404 S.C. 137, 144, 744 S.E.2d 203, 207 (Ct. App. 2013). A brother and sister were named the sole heirs of their father's estate, and the sister acted as personal representative of the estate. *Id.* at 140–41, 744 S.E.2d at 205. The brother began accepting USDA subsidies associated with the estate's real property and argued that, as a devisee, he was effectively a co-tenant with his sister and had authority to accept the USDA subsidies. *Id.* The Court of Appeals took this opportunity explain the nature of property ownership during the pendency of an estate. *Id.* at 143–44, 744 S.E.2d at 206–07. The court explained that real property immediately passes to heirs and devisees but that, during the administration of the estate, the personal representative has possession of and broad authority over the real property. *Id.* However, “*title to real property devolves at or soon after death to heirs and devisees, and not to the personal representative.*” *Id.* at 145, 744 S.E.2d at 207 (cleaned up) (emphasis added) (quoting Reporters Comments to S.C. Code Ann. § 62-3-711). This principle has been echoed by various other courts. *See, e.g., In re Mack*, No. CV 22-02503-DD, 2023 WL 1869211, at *3 (Bankr. D.S.C. Feb. 9, 2023) (“A close reading of this statute shows that, in the circumstances of intestate succession, the deed of distribution serves as a release of the personal representative's power over the real property provided under § 62-3-711. This statute does not expressly state that the deed of distribution is required to transfer title in circumstances involving intestate succession, but that the deed of distribution serves as evidence of title.”).⁴

⁴ Similarly, this Court has recognized in unpublished cases that the title to real property vests in the heir or heirs immediately on the death of the intestate, subject to probate administration and

Upon his mother's death, Jim Crowder immediately (or nearly immediately) received an interest in the Crowder Tract. Whether and when he ultimately receives title is immaterial to whether he can claim a prescriptive easement. Cedar Grove presented no evidence that there are encumbrances to the estate that threaten Jim Crowder's current interest ripening into legal, titled interest upon the closing of the estate. Nor is there any evidence that the personal representative's power over the real property somehow limits or negates Mr. Crowder's interest in the property in this context. To the contrary, as both the co-devisee and co-personal representative of the Estate, he has the full extent of legal interest that may be had in the Crowder Tract at this time.

The court's purported differentiation between Jim Crowder and a true "owner" is a distinction without difference. To take this argument to its logical conclusion, a farmer could file an action to establish a prescriptive easement he's adversely used for decades. But if that farmer dies before the lawsuit concludes, his child will not be a sufficient "owner" of the property until the estate is closed. Had his father died a few months later, the father could have secured a prescriptive easement that ran with the land—and thus to his child. Or if the farmer had died several months earlier, the child could have established title in the property and tacked on to his father's decades of adverse use. Under this theory, it would be the timing of the farmer's death—not his use of the property prior to that point—that decides their child's property interest. This outcome is particularly jarring when, as here, concerns regarding the legal rights to an easement are more likely to arise after the initial property user's death, as opposed to during their lifetime when they have used the property adversely for decades.

that the proof of death of a decedent raises the presumption that his real property descended to his heirs. *See also* 28 S.C. Jur. Descent & Distribution § 24.

Because the uncontroverted evidence shows that Crowder had legal interest in the Crowder tract, the trial court erred in directing a verdict against Crowder’s prescriptive easement claim because the verdict was contrary to the evidence. Thus, Crowder’s claim should be remanded for determination by a factfinder.

C. The trial court’s erroneous ruling granting Cedar Grove’s motion for directed verdict was not harmless error.

The trial court’s error in granting Cedar Grove’s motion for directed verdict against Jim Crowder’s individual prescriptive easement claim significantly prejudiced Mr. Crowder and likely impacted the ultimate outcome of the trial. Thus, this error was not harmless and should be reversed.

A decision should be reversed if it is “both erroneous and prejudicial.” *Matter of Hyman*, 447 S.C. 573, 597, 930 S.E.2d 1, 13 (2026), *reh’g denied* (June 15, 2026) (citing *In re Care & Treatment of Gonzalez*, 409 S.C. 621, 636, 763 S.E.2d 210, 217 (2014)). “No definite rule of law governs a finding of harmless error; rather[,] the materiality and prejudicial character of the error must be determined from its relationship to the entire case.” *Id.* (alteration in original) (quoting *Gonzalez*, 409 S.C. at 636, 763 S.E.2d at 217). If the error could have reasonably affected the result of the trial, it is not harmless and is therefore reversible. *Id.*

The prejudice from the trial court’s erroneous ruling was both significant and far-reaching, impacting the outcome of the entire trial. It prejudiced Mr. Crowder in at least two ways.

First and most notably, by directing a verdict against Jim Crowder’s individual claim for prescriptive easement, the trial court necessarily made it *far* more likely—if not outright predetermined—that he would be found liable for trespass, exposing him to actual and punitive damages. Throughout the trial, Mr. Crowder repeatedly admitted that he entered Cedar Grove’s property without permission. *See, e.g.*, Trial Tr. 189:18–22 (R.____); *id.* at 234:20–23 (R.____). This

evidence would have bolstered his prescriptive easement claim, which requires continuous adverse use of the easement area. *See Simmons v. Berkeley Elec. Coop., Inc.*, 419 S.C. 223, 229, 797 S.E.2d 387, 390 (2016) (setting forth the following elements for a prescriptive easement claim: “(1) the continued and uninterrupted use or enjoyment of the right for a period of 20 years; (2) the identity of the thing enjoyed; and (3) the use [was] adverse under claim of right.”). But once the defense of prescriptive easement was wrongly stripped from him, his admittedly unpermitted entry on the land almost inevitably established his liability on Cedar Grove’s trespass claims. *See Babb v. Lee Cnty. Landfill SC, LLC*, 405 S.C. 129, 139, 747 S.E.2d 468, 473 (2013) (defining trespass as “any interference with ‘one’s right to the exclusive, peaceable possession of his property’”) (quoting *Ravan v. Greenville Cnty.*, 315 S.C. 447, 463, 434 S.E.2d 296, 306 (Ct. App. 1993)). In contrast, had the jury returned a verdict in Mr. Crowder’s favor finding he had a prescriptive easement, he could not have been liable for trespass and would not have been exposed to the jury’s actual or punitive damage awards. *See, e.g., Jones v. S.C. Power Co.*, 191 S.C. 419, 4 S.E.2d 625, 629 (1939) (holding that the holder of an easement could only trespass on the property by acting outside the scope of their easement); *Snow v. City of Columbia*, 305 S.C. 544, 552, 409 S.E.2d 797, 802 (Ct. App. 1991) (“The unwarrantable entry on land in the peaceable possession of another is a trespass . . . [I]f one *without license from the person* in possession of land walks upon it, or casts a twig upon it, or pours a bucket of water upon it, he commits a trespass by the very act of breaking the enclosure.”).⁵

Second, had the trial court not improperly granted a directed verdict, Mr. Crowder would have been able to take his prescriptive easement to the jury and could have succeeded on his claim

⁵ Similarly, this Court has recognized in unpublished cases that the holder of a valid easement cannot be liable for trespass.

given the evidence in his favor. Had he succeeded, he would have both escaped liability for trespass and gained a recognized property right in the easement area such that his farming activities on the Crowder Tract would not be interrupted. One expects that, in response to this argument, Cedar Grove will argue that any error from granting the motion for directed verdict as to Mr. Crowder was harmless because the jury did not find that the Estate had established a prescriptive easement by clear and convincing evidence. Presumably Cedar Grove will argue that, because Mr. Crowder only received his property interest in the Crowder Tract after his mother's death in 2016, he would have needed to "tack on" to his mother's adverse use of the property to meet the requisite period of twenty years for a prescriptive easement. Cedar Grove will insist that, if the Estate's use did not amount to a prescriptive easement, Mr. Crowder can't rely on that time period to claim a prescriptive easement and would have failed on the merits. However, this argument fails in two important respects.

1. It's speculative. Because it the jury did not state *why* they failed to find a prescriptive easement for the Estate, it is possible that any defects in the Estate's claim would have been cured by Mr. Crowder's ongoing use of the property after his mother's death. For example, it is possible that, because the decedent died several years prior to trial, the jury was persuaded by Cedar Grove's arguments that the use of the property was not sufficiently continuous to warrant finding a prescriptive easement as to the estate. (That conclusion is not supported by the facts presented at trial, but it was an argument that Cedar Grove advanced.) Had Jim Crowder's claim been submitted to the jury, however, it is possible that the jury would have determined that his ongoing use of the easement area resolved this deficiency. Thus, the jury may have found that Mr. Crowder had a prescriptive easement, even if the Estate did not.

2. The trial court's directed verdict prejudiced Mr. Crowder by wrongly implying to the jury that he must be liable for trespass. The jury knew that, at the outset of trial, Mr. Crowder had himself asserted a claim for a prescriptive easement. They also knew that, by the conclusion of trial when they were charged and the case submitted to them, Mr. Crowder's claim had been eliminated by the judge. And they knew that in the absence of a prescriptive easement, which would act as a complete defense to the trespass claim, Jim Crowder had essentially admitted to all the elements of trespass. Armed with those facts, what inevitable inference would a jury take from the fact that the judge threw out Mr. Crowder's claim for a prescriptive easement, especially when they were never instructed or advised that the dismissal of that claim was based on an (erroneous) technicality and that they shouldn't draw any conclusions from it? The unexplained, un-instructed elimination of the prescriptive easement claim telegraphed to the jury that it should—it *must*—find Mr. Crowder liable for trespass. The directed verdict ruling wasn't harmless.

In sum, the trial court's grant of Cedar Grove's motion for directed verdict on Jim Crowder's prescriptive easement claim was both erroneous and significantly prejudicial, and it likely influenced the outcome of the trial. For these reasons, the trial court's decision should be reversed and remanded for further proceedings. In addition, because Mr. Crowder's prescriptive easement claim, if successful, would be a complete defense to and mutually exclusive of trespass liability, that verdict, too, should be reversed and remanded.

II. The trial court erred by not granting the Estate's and Jim Crowder's motions for judgment notwithstanding verdict, new trial, or remittitur on the basis of the jury awarding unsupported and excessive damages.

The damages awarded by the jury at the close of trial are unsupported by evidence, excessive, and patently contrary to South Carolina law. Cedar Grove presented no evidence from which the jury could reasonably calculate actual damages – no appraisal, no repair costs, no value of the allegedly damaged saplings, and no estimate beyond one witness's vague reference to Cedar

Grove having spent “a few thousand dollars.” *See generally, e.g.*, Trial Tr. (R.____); Trial Tr. at 371:3–22 (R.____) (emphasis added). Nevertheless, the jury awarded \$7,500 in actual damages and \$50,000 in punitive damages. Trial Tr. at 492:21 to 493:5 (R. ____ to ____); Verdict Form (R. ____). This is precisely the type of guesswork which cannot stand under South Carolina law. Because the actual damage award rests on mere speculation and conjecture, the award must be reversed, and the punitive damages award must be reversed, too, because it cannot exist without a proper actual damages award. The trial court erred in failing to grant Estate and Jim Crowder’s motions for judgment notwithstanding verdict, new trial, or remittitur on this basis.

Furthermore, the trial court failed to conduct the mandatory constitutional review of the punitive award. Had it conducted the proper review, it would have discovered that the award is independently excessive under the governing due-process guidelines. For these reasons, the trial court further erred in denying Estate and Jim Crowder’s motions for judgment notwithstanding verdict, new trial, or remittitur on this basis

A. The jury’s award of actual damages was unsupported by evidence, pure conjecture, and grossly excessive.

At the close of trial, the jury awarded Cedar Grove \$7,500 in actual damages for its trespass claim. Trial Tr. at 438:18 to 439:5 (R.____ to ____); Order, Dec. 8, 2025 (R.____) (confirming the jury’s actual damages award); Order, Dec. 10, 2025 at 9 (R.____) (same). Yet, in the three days of trial, Cedar Grove presented no evidence from which that amount could be reasonably calculated. In fact, Cedar Grove offered no evidence as to any reasonably precise amount of damages suffered and instead vaguely asserted that Cedar Grove may have lost a few thousand dollars. *See generally* Trial Tr. (R.____); *id.* at 371: 3–22 (R.____). Because this award was unsupported by evidence and, instead, was the result of pure conjecture or speculation and was grossly excessive, the trial court

erred in refusing to grant the Estate’s and Mr. Crowder’s motion for judgment notwithstanding verdict or new trial.

Generally, “the fact finder [must] determine the amount of damages with reasonable certainty from the evidence.” *Moore v. Moore*, 360 S.C. 241, 255, 599 S.E.2d 467, 474 (Ct. App. 2004). “The amount of damages cannot be left to conjecture, guess, or speculation.” *Id.* In reviewing a damages award, an appellate court must consider whether the award is supported by evidence. *J & W Corp. of Greenwood v. Broad Creek Marina of Hilton Head, LLC*, 441 S.C. 642, 680–81, 896 S.E.2d 328, 349 (Ct. App. 2023) (citing *Whisenant v. James Island Corp.*, 277 S.C. 10, 13, 281 S.E.2d 794, 796 (1981)). An appellate court may reverse a damages award if it is unsupported by evidence, particularly when the amount of damages is “grossly excessive so as to be the result of some influence outside the evidence.” *Stroud v. Elliott*, 316 S.C. 242, 244–45, 449 S.E.2d 261, 262 (Ct. App. 1994) (cleaned up); *J & W Corp.*, 441 S.C. at 680, 896 S.E.2d at 349.

While the existence of damages is presumed upon finding trespass, the claimant must nonetheless prove the **amount** of actual damages in order to recover that sum. *See, e.g., Mack v. Edens*, 320 S.C. 236, 240–41, 464 S.E.2d 124, 127 (Ct. App. 1995); *Snow v. City of Columbia*, 305 S.C. 544, 553, 409 S.E.2d 797, 802 (Ct. App. 1991); *Babb v. Lee Cnty. Landfill SC, LLC*, 405 S.C. 129, 141, 747 S.E.2d 468, 474 (2013); *Stroud v. Elliott*, 316 S.C. 242, 244, 449 S.E.2d 261, 262 (Ct. App. 1994); *Joyner v. St. Matthews Builders*, 263 S.C. 136, 140, 208 S.E.2d 48, 49–50 (1974).

When, as here, a jury awards a damages amount for trespass that doesn’t align with the speculative damages estimate presented at trial, the Court should (and does) reverse. For example, in an analogous case, the South Carolina Court of Appeals considered whether there was sufficient evidence to support the amount of actual damages awarded for trespass. *Mack v. Edens*, 320 S.C.

236, 240–41, 464 S.E.2d 124, 127 (Ct. App. 1995). In *Mack*, the plaintiff was awarded \$1,000 in compensatory damages and \$3,000 in punitive damages for trespass. *Id.* at 238, 464 S.E.2d at 125. The only evidence of actual damage involved the destruction of a barrier put in the road to stop the trespass. *Id.* 240, 646 S.E.2d at 127. When asked how much it cost to construct that barrier, the plaintiff replied, “I’d have to look. I don’t have a record of that. Five or six hundred dollars is *just a guess.*” *Id.* (emphasis in original). The court found that this “speculation about the cost of erecting the [barrier] cannot pass muster” and was insufficient to support the amount of actual damages awarded. *Id.* Concluding that there was “no competent evidence in the record by which to measure the extent of any actual damages [the plaintiff] may have suffered,” the court reversed the award of actual and punitive damages. *Id.*

Again, in *Stroud v. Elliott*, the South Carolina Court of Appeals considered a similar case in which a jury awarded actual damages of \$59,010. 316 S.C. 242, 244, 449 S.E.2d 261, 262 (Ct. App. 1994). However, the only evidence on the record regarding the amount of actual damages indicated that the damage was valued at \$33,910. *Id.* The court determined that “[t]here is no evidence whatsoever to support the other \$25,100 that comprises approximately 43 percent of the jury’s award of actual damages.” *Id.* Because the award was not supported by evidence and was so “grossly excessive so as to be the result of some influence outside the evidence,” the court reversed the actual and punitive damages awards and remanded for a new trial. *Id.* (cleaned up).

In *Joyner v. St. Matthews Builders*, the South Carolina Supreme Court considered a verdict where a plaintiff was awarded \$3,500 in actual damages. 263 S.C. 136, 140, 208 S.E.2d 48, 49–50 (1974). Yet, the plaintiff had only purchased the property for \$400, and the damage to his property was limited. *Id.* The court found that, in addition to a dirt road in the rear portion of his property being graded and a structure encroaching on that part of the property, the only other

evidence of damage was photographs showing “some small trees and vegetation were removed in grading the road.” *Id.* Importantly, “[t]here [was] no evidence as to the value, if any, of the trees.” *Id.* The court held that “[t]he verdict for damages [was] so manifestly and grossly excessive [that] a new trial must be granted.” *Id.* at 140–141, 208 S.E.2d at 50.

So too here. The record is completely devoid of evidence from which the jury could have determined the amount of actual damages. At the outset, the general rule is that trespass damages are the diminution in market value of the property resulting from the trespass. *Ravan v. Greenville Cnty.*, 315 S.C. 447, 465, 434 S.E.2d 296, 307 (Ct. App. 1993); *see also Babb v. Lee Cnty. Landfill SC, LLC*, 405 S.C. 129, 141–42, 747 S.E.2d 468, 474–75 (2013) (explaining that, for temporary trespass, the proper measure is the lost rental value of the property). Yet, Cedar Grove presented no evidence as to the value of the property generally, let alone any diminution thereof. *See generally* Trial Tr. (R.____). A trespass claimant may also seek actual damages from damage to real or personal property harmed by the trespass. *See, e.g., Mack*, 320 S.C. at 240–41, 464 S.E.2d at 127; *Stroud*, 316 S.C. at 244, 449 S.E.2d at 262; *Joyner*, 263 S.C. at 140, 208 S.E.2d at 49–50. But, even then, the claimant must establish what the damage amount was. On this issue, Cedar Grove only presented evidence that, in the course of accessing the easement area, Mr. Crowder and the Estate ran over several pine saplings planted to block their access. *See, e.g.,* Trial Tr. at 203:6–25, 308:5–11, 371:3–7 (R.____, ____, ____). Another witness testified that, due to Mr. Crowder and the Estate crossing the easement areas, there were “ruts” in the ground. *See* Trial Tr. 305:23 to 306:11 (R.____ to ____). However, no witness testified to the actual value of these trees, the cost to plant the trees, the value of any damage from the “ruts,” or the cost to remedy the “ruts.” Instead, the only evidence as to value came from Timothy Brannon, a member of Cedar Grove’s board of trustees and treasurer. *See* Trial Tr. 367:9–16 (R.____). Brannond testified as follows:

Q: Does [the damage to the trees] constitute an economic damage to the church?

A: It does. I'm not *100 percent certain of the actual cost*, but ***a few thousand dollars that went into the planting of the trees and prepping the land from the ruts*** that was created.

Trial Tr. at 371:17–22 (R.____) (emphasis added). It is based on this guesswork alone that the jury purportedly calculated actual damages as \$7,500.

Apparently recognizing the scant evidence from which they could calculate damages, during jury deliberations, the jury sent a note asking how many trees had been damaged by Crowder in the course of accessing the easement area. Trial Tr. at 475:21 to 476:6 (R. ____); Court's Ex. 2 (R.____). The trial court acknowledged that he did not "think there was any direct testimony" about the amount of tree damage. Trial Tr. at 479:21 to 481:20 (R.____ to ____). Ultimately, the court responded to the question by telling the jury to rely on their own recollection of the evidence. *Id.* at Trial Tr. at 479:21 to 482:1 (R. ____ to ____); Ct.'s Ex. 3 (R.____).

Without any evidence as to the value of the trees or the purported property damage from Jim Crowder's trespass, it is impossible to reasonably calculate actual damages, and it is even more difficult to determine how the jury calculated \$7,500 as the actual number. In this case, there is even *less* evidence of damage than in *Mack*, *Stroud*, or *Joyner*. In those cases, at least there was testimony as to an actual value. There are only two possible explanations for the jury's award here. Either the verdict was the product of pure conjecture and speculation or "some influence outside the evidence." *Stroud*, 316 S.C. at 244, 449 S.E.2d at 262 (cleaned up). Both are improper and contrary to South Carolina law.

Notably, if the jury felt that damages were appropriate but lacked sufficient evidence to calculate actual damages, they were instructed that they could award nominal damages instead. *See, e.g.*, Trial Tr. at 463:12–23 (R.____) (instructing the jury as to nominal and actual damages);

see also *Snow v. City of Columbia*, 305 S.C. 544, 553, 409 S.E.2d 797, 802 (Ct. App. 1991) (stating that nominal damages are recoverable for trespass). Despite this, the jury awarded actual damages based off nothing but their own speculation. See Trial Tr. at 492:21 to 493:5 (R.____ to ____) (awarding actual damages); Verdict Form (R.____).

Thus, the trial court erred by refusing to reverse the actual damages award and grant Crowder and the Estate’s motion for judgment notwithstanding the verdict or in the alternative new trial.

B. The jury’s award of punitive damages was not supported by a proper actual damages award and thus should be vacated.

As explained above, the jury’s actual damages award was unsupported by the evidence and was conjectural, speculative, and grossly excessive. As a matter of well-established law, “there can be no punitive damages without actual damages.” *Mack v. Edens*, 320 S.C. 236, 240–41, 464 S.E.2d 124, 127 (Ct. App. 1995) (citing *Sparrow v. Toyota of Florence*, 302 S.C. 418, 396 S.E.2d 645 (Ct. App. 1990)). If an actual damages award is found to be in error and reversed, South Carolina appellate courts must also vacate any associated punitive damages award. See, e.g., *Stroud v. Elliott*, 316 S.C. 242, 244, 449 S.E.2d 261, 262 (Ct. App. 1994) (“Our reversal of the actual damages award requires us to vacate the punitive damages award as well.”); *Mack*, 320 S.C. at 240–41, 464 S.E.2d at 127 (“Because there can be no punitive damages without actual damages, we additionally reverse the award of punitive damages.”); *Gamble v. Stevenson*, 305 S.C. 104, 111, 406 S.E.2d 350, 354 (1991) (“[P]unitive damages may be awarded only upon a finding of actual damages.”).

For the reasons stated above, the jury’s actual damages award is in error and should be vacated. Therefore, the jury’s punitive damages award should also be vacated.

C. The trial court failed to subject the punitive damages award to the required post-judgment constitutional review.

In its December 10, 2025 post-trial order, the trial court reviewed the punitive damages award exclusively under the *Gamble* factors, which is contrary to South Carolina law. *See* Order, Dec. 10 at 5–7 (R.____ to ____). In *Mitchell, Jr. v. Fortis Insurance Company*, the South Carolina Supreme Court set forth the requirements for a **mandatory** constitutional due process review of **all punitive damage awards** and explained that the *Gamble* factors are only relevant insofar as they assist in the application of this test. 385 S.C. 570, 587–88, 686 S.E.2d 176, 185–86 (2009); *see also Hollis v. Stonington Dev., LLC*, 394 S.C. 383, 396, 714 S.E.2d 904, 911 (Ct. App. 2011) (assessing the constitutionality of a punitive damages award “requires us to determine whether the award was reasonable in light of the . . . [Gore] guideposts”). Following *Mitchell*, the Legislature made this post-judgment review an essential part of any punitive damages award. *See* S.C. Code Ann. § 15-32-520(F). However, the lower court did not apply the standards set forth in *Mitchell* and instead only applied the *Gamble* framework. *See* Order, Dec. 10, 2025 at 5–7 (R.____ to ____). By failing to subject the punitive damages award to the required due process review pursuant to *Mitchell*, the trial court committed reversible error as a matter of law.

D. The jury’s punitive damages award is excessive, unreasonable, and contrary to the evidence.

The evidence in this case tells a simple story: Jim Crowder, believing he had a legal right to cross Cedar Grove’s property (whether in his individual capacity or on behalf of the Estate), repeatedly entered Cedar Grove’s property to use an access path to his farming operations on the Crowder Tract. On at least one occasion, Mr. Crowder removed barriers blocking his entry to this path. Because the trial court erroneously refused to allow the jury to consider whether he had a legal right to the easement area, the jury necessarily determined that Mr. Crowder trespassed on Cedar Grove’s property. Regardless of whether this ruling was correct (which it was not), the jury

subsequently awarded punitive damages to Cedar Grove in the amount of \$50,000, which was grossly excessive, unreasonable, and contrary to the evidence.

Punitive damages are only appropriate when “there is evidence that a tortfeasor’s conduct was willful, wanton, or in reckless disregard of rights of other.” *Scoggins v. McClellion*, 321 S.C. 264, 271, 468 S.E.2d 12, 16 (Ct. App. 1996). “The state’s interests in awarding punitive damages must remain consistent with the principle of penal theory that ‘the punishment should fit the crime.’” *Mitchell, Jr. v. Fortis Ins. Co.*, 385 S.C. 570, 584, 686 S.E.2d 176, 183 (2009) (citation omitted). In reviewing any punitive damages award, a court must consider the *Gore* factors, which are set forth as follows:

- (1) the degree of reprehensibility of the defendant’s conduct;
- (2) the disparity between the actual and potential harm suffered by the plaintiff and the punitive damages award; and
- (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases

Mitchell, 385 S.C. at 585, 686 S.E.2d at 184. In evaluating these factors, the court may also consider the *Gamble* factors “insofar as it adds substance to the *Gore* guideposts.”⁶ *Id.* at 587, 686 S.E.2d at 185. If the court determines that the award is excessive in light of these factors, the award violates the due process clause and should not stand. *Id.* at 585, 686 S.E.2d at 184.

⁶ The *Gamble* factors are as follows:

- (1) defendant’s degree of culpability; (2) duration of the conduct; (3) defendant’s awareness or concealment; (4) the existence of similar past conduct; (5) likelihood the award will deter the defendant or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7) defendant’s ability to pay; and finally, (8) as noted in *Haslip*, “other factors” deemed appropriate.

Gamble v. Stevenson, 305 S.C. 104, 111–12, 406 S.E.2d 350, 354 (1991)

In the totality of circumstances, the jury's \$50,000 punitive damages award is clearly excessive and not warranted by the evidence.

1. The degree of reprehensibility does not support the punitive damages award.

The first *Gore* factor is the degree of reprehensibility of the defendant's conduct, which is "perhaps the most important indicium of the reasonableness of a punitive damage award." *Mitchell*, 385 S.C. at 587, 686 S.E.2d at 185 (quoting *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 565 (1996)). Courts may consider the following factors in evaluating the reprehensibility of the defendant's conduct:

- (i) the harm caused was physical as opposed to economic;
- (ii) the tortious conduct evinced an indifference to or a reckless disregard for the health or safety of others;
- (iii) the target of the conduct had financial vulnerability;
- (iv) the conduct involved repeated actions or was an isolated incident; and
- (v) the harm was the result of intentional malice, trickery, or deceit, rather than mere accident

Id. at 587, 686 S.E.2d at 85.

In applying these considerations, it is clear that Jim Crowder's conduct was not so reprehensible as to justify the punitive damages awarded. At most, he is accused of having run over small saplings in an effort to access the Crowder Tract for farming purposes using an access path his family had used for over forty years. Any resulting harm was minimal, and as discussed above, Cedar Grove failed even to quantify the amount of its damage from this trespass.

2. The ratio between Cedar Grove's alleged harm and the punitive damages award is too disparate to justify the punitive damages award.

The second *Gore* factor is the disparity between the "actual or potential harm suffered by the plaintiff and the amount of the punitive damages award," which is the most-commonly cited evidence of an unreasonable punitive damages award. *Id.* at 587–88, 686 S.E.2d at 185. While there are no bright-line limits on this ratio, "few awards exceeding a single-digit ratio between

punitive and compensatory damages, to a significant degree, will satisfy due process.” *Id.* (quoting *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 425, 123 S. Ct. 1513, 155 L. Ed. 2d 585 (2003)). Because Cedar Grove failed to quantify the harm it suffered from Mr. Crowder’s conduct, it is impossible to determine whether the jury’s punitive damage award’s ratio is appropriate.

3. *Comparative punitive damage penalty awards do not support the jury’s punitive damages award.*

In deciding whether a case is comparable, courts may consider the following: “the type of harm suffered by the plaintiff or plaintiffs; the reprehensibility of the defendant’s conduct; the ratio of actual or potential harm to the punitive damages award; the size of the award; and any other factors the court may deem relevant.” *Id.* at 588–89; 686 S.E.2d at 186.

Assuming that the amount of actual damages awarded actually measures Cedar Grove’s harm (which it does not), the ratio between the actual damages award and the punitive damages award is 1-to-6.7. In two recent trespass claims, the court awarded punitive damages with a lesser ratio.

In *Landford v. McConnell*, the plaintiff and defendant owned neighboring tracts, and the plaintiff presented evidence that the defendant repeatedly trespassed, placed debris on the plaintiff’s property, and cut trees from the plaintiff’s property. No. 2015CP42005181, 2016 WL 8710214, at *1 (S.C. Com. Pl., Dec. 9, 2016) The defendant claimed that they trespassed because they believed they owned the property, but there was evidence indicating the contours of their property had been properly recorded years prior. *Id.* The court awarded \$8,100 in actual damages and \$8,100 in punitive damages, resulting in a ratio of 1:1. *See Landford v. McConnell*, No. 2015-CP-42-05181, 2017 WL 1413665 (S.C. Com. Pl., Mar. 6, 2017). *Landford* is similar to this case

because it involved a repeated trespass in which the defendant believed they were entering the property pursuant to a legal right and they subsequently harmed trees on the property.

Similarly, in *Berry v. Reichardt*, the defendant bought property neighboring plaintiff without performing a survey. No. 2013-CP-41-0091, 2014 WL 8104080, at *1 (S.C. Com. Pl., June 19, 2014). Believing he owned that additional land, he repeatedly trespassed on the property and cut timber on the plaintiff's land. *Id.* at *2. Cutting this timber made the property unsuitable for hunting, which had been one of its primary uses, and was harmful to the abundant natural wildlife in the area. *Id.* The parties met to discuss the ongoing trespass, and despite being informed he lacked a legal interest in the property, the defendant continued to trespass, despite the plaintiff putting up no trespassing signs and sending written notices. *Id.* at *1. The court awarded actual damages in the amount of \$4,193.00 and punitive damages of \$20,969.00 for a ratio of 1:5. *Id.* at *2. *Berry* is similar because the defendant also believed he entered the property pursuant to a legal right and continued to trespass after receiving notice from the landowner.

In contrast, the amount awarded here was excessive, unsupported, and unreasonable. The trial court erred by denying the Estate's and Jim Crowder's motion for JNOV, new trial, or remittitur.

III. The trial court erred by denying the Estate's and Crowder's motion for judgment notwithstanding verdict or, in the alternative, new trial when the jury provided a verdict contrary to their charge.

"[I]t is fundamental that a jury must abide by the judge's charge, be it right or wrong." *Se. Mobile Homes, Inc. v. Walicki*, 282 S.C. 298, 302, 317 S.E.2d 773, 775 (Ct. App. 1984). "Where the jury renders a verdict in disregard of his charge, it is error for the judge not to grant a new trial upon motion." *Id.* South Carolina Courts have a long history of vacating a damages award when the jury returns an award inconsistent with their charge—particularly when the erroneous award

impacts the remaining damages. *See, e.g., Webber v. Town of Jonesville*, 94 S.C. 189, 77 S.E. 857, 858 (1913); *Calhoun v. S. Ry. Co.*, 115 S.C. 489, 106 S.E. 780, 781 (1920).

Here, the jury was not instructed on awarding attorneys' fees, nor did any party argue for the imposition of attorneys' fees. *See generally* Trial Tr. (R.____); *id.* at 454:13 to 473:9 (R.____ to ____) (jury charges). During deliberations, the jury asked two questions of the Court. *Id.* at 475:21 to 491:9 (R. ____ to ____). First, they asked, *inter alia*, for an estimate of lawyer fees. *Id.* at 475:21 to 476:6 (R. ____ to ____); Ct.'s Ex. 5 (R.____). The trial court answered the jury's other questions but did not provide an estimate of lawyer fees. Trial Tr. at 476:7 to 485:25 (R. ____ to ____); Ct.'s Ex. 3 (R.____). Despite receiving no estimate or charge on attorneys' fees, the jury subsequently asked whether punitive damages included attorneys' fees. Trial Tr. at 486:19–25 (R. ____); Ct.'s Ex. 5 (R.____). The trial court responded in the negative, writing as follows: "No. Please refer to the jury charge on punitive damages." Ct.'s Ex. 6 (R.____). The verdict form did not include any placeholder for legal fees. *See* Verdict Form (R.____).

Nonetheless, the jury returned a verdict for "all legal fees." Trial Tr. at 493:2–4 (R.____); Verdict Form. (R.____). The verdict form included the award under the placeholder for punitive damages, though it is unclear if the jury intended the legal fees to be part of that award. Verdict Form (R.____).

IV. If you answered "Yes" to the questions in Section II and/or Section III, then also complete the following:	FILED 2025 NOV 20 PM 3:03 CLERK OF COURT CHESTER CO S.C.
1. We, the jury, find that Defendant is entitled to actual damages in the amount of _____ (\$ <u>7,500.</u>) dollars.	
2. We, the jury, find that Defendant is entitled to punitive damages in the amount of _____ (\$ <u>50,000.</u>) dollars. <u>Plus all legal fees.</u>	

Verdict Form (R. ____).

After the trial, the parties agreed that the award was clearly erroneous, and it was omitted from the final judgment. *See* Cedar Grove’s Post-Trial Mots. (R.____); Order, Dec. 8, 2025 (R.____); Order, Dec. 10, 2025 (R.____). However, striking this award does not eliminate the troubling fact that the jury plainly and intentionally disregarded the trial court’s instructions, nor does it resolve this startling evidence that the jury’s verdict was guided by prejudicial, extra-judicial considerations. It seems that the jury was inflamed by some significant prejudice that drove them to award legal fees, despite repeated instructions that this was inappropriate. In light of the jury’s blatant disregard for the court’s instructions and the demonstrable prejudice that likely consumed the award in total, the court should have granted Mr. Crowder’s and the Estate’s motion for judgment notwithstanding verdict or in the alternative a new trial. *See, e.g., Johnson v. Parker*, 279 S.C. 132, 135, 303 S.E.2d 95, 97 (1983) (“A jury verdict should be upheld when it is possible to do so and carry into effect the jury’s clear intention. However, *when a verdict is so confused that the jury’s intent is unclear, the safest and best course is to order a new trial*”) (emphasis added).

Contrary to the trial court’s December 10, 2025 Order, this issue was properly raised before it and is now preserved for appeal. *See* Order, Dec. 10, 2025 at 3–4 (R.____ to ____). At the conclusion of the trial, the court asked if Jim Crowder and the Estate wished to go forward with their post-trial motions in open court or wait ten days to do so. Trial Tr. at 496:20 to 497:3 (R.____ to ____). The court assured Mr. Crowder and the Estate that, “[i]f you want to file anything, you can file it” and “[i]f you want to take ten days, you’re entitled to it.” *Id.* (R.____ to ____). Crowder and the Estate elected to begin making their post-trial motions in open court. *Id.* at 497:4 (R.____). Later, when discussing an issue Cedar Grove intended to brief, the trial court again assured the parties that “you may certainly . . . have ten days as all of y’all” and “if there’s anything y’all want to brief, . . . I’m happy to do that y’all consent to me hearing it if it’s necessary.” *Id.* at 501:15 to

502:1 (R.____ to ____). After trial, on November 20, 2025, counsel for Mr. Crowder and the Estate emailed the court to clarify that he could submit supplemental briefings within ten days. Nov. 20, 2025 Correspondence (R.____). The judge's law clerk responded affirmatively. *Id.* (R.____). Thereafter, Mr. Crowder and the Estate filed their post-trial motions on November 25, 2025 and explained their arguments for why the award of attorneys' fees demonstrated prejudice and juror misconduct. *See* Crowder and Estate's Post-Trial Motions (R.____). However, when Mr. Crowder and the Estate timely filed this motion, the Court responded that the supplemental briefing was untimely. *See* Order, Dec. 10, 2025 at 3–4 (R.____ to ____). This determination was clearly in error, and the issue remains ripe for appeal.

IV. The trial court erred by denying the Estate's and Jim Crowder's motion for judgment notwithstanding verdict or, in the alternative, new trial because the jury's verdict was contrary to evidence.

The verdict in this case was unsupported by the evidence, and the trial court should have exercised its authority as the thirteenth juror to direct a new trial. *See Trivelas v. S.C. Dept. of Transp.*, 357 S.C. 545, 593 S.E.2d 504 (Ct. App. 2004) (affirming grant of new trial absolute pursuant to thirteenth juror doctrine); *see also S.C. Dept. of Highways and Pub. Transp. v. Mooneyham*, 275 S.C. 205, 269 S.E.2d 329 (1980) (granting new trial absolute because the verdict was contrary to the fair preponderance of the evidence); *Ex parte Travelers Home and Marine Ins. Co. v. Stringfellow*, 427 S.C. 238, 830 S.E.2d 718 (Ct. App. 2019) (granting new trial where verdict was against the fair preponderance of the evidence); *Sorin Equip. Co., Inc. v. The Firm, Inc.*, 323 S.C. 359, 474 S.E.2d 819 (Ct. App. 1996) (granting new trial absolute in action for breach of contract based on the thirteenth juror doctrine).

As the thirteenth juror, the trial court may weigh the evidence as a juror and is not required to view it in the light most favorable to the non-moving party. *McEntire v. Mooregard Exterminating Servs., Inc.*, 353 S.C. 629, 633, 578 S.E.2d 746, 748 (Ct. App. 2003). Rather, the

trial court should evaluate whether the fair preponderance of the evidence supports the verdict. *Id.* In fact, the trial court need not state the reasons for granting a new trial as the thirteenth juror. *Folkens*, 300 S.C. at 254, 387 S.E.2d at 267. As long as there is conflicting evidence, a trial judge's grant of a new trial will not be disturbed. *Lane v. Gilbert Const. Co., Ltd.*, 383 S.C. 590, 597–98, 681 S.E.2d 879, 883 (2009).

A. The jury's verdict denying the Estate a prescriptive easement was contrary to the evidence.

At trial, the Estate presented clear and convincing evidence that it was entitled to a prescriptive easement across Cedar Grove's property, and Cedar Grove failed to offer any evidence to contradict this conclusion. Instead, Cedar Grove offered evidence which is consistent with or can be harmonized with that introduced by the Estate.

A claimant has successfully shown their entitlement to a prescriptive easement when they have shown the following elements by clear and convincing evidence: "(1) the continued and uninterrupted use or enjoyment of the right for a period of 20 years; (2) the identity of the thing enjoyed; and (3) the use [was] adverse under claim of right." *Simmons v. Berkeley Elec. Coop., Inc.*, 419 S.C. 223, 229, 797 S.E.2d 387, 390 (2016) (quoting *Darlington Cnty. v. Perkins*, 269 S.C. 572, 576, 239 S.E.2d 69, 71 (1977)). A use is presumed to be adverse when "the claimant has enjoyed an easement openly, notoriously, continuously, and uninterruptedly, in derogation of another's rights, for the full period of 20 years." *Id.* (quoting *Williamson v. Abbott*, 107 S.C. 397, 400, 93 S.E. 15, 16 (1917)).

At trial, the evidence was clear. Mary Crowder owned the Crowder Tract since the 1980s, and even before this time, she and her family used the property for farming purposes. *See* Pls. Trial Ex. 18 (deed to Mary C. Crowder) (R. ____); Trial Tr. at 81:4–19 (R. ____); 53:11–23 (R. ____); *id.* at 141:15 to 142:4 (R. ____ to ____); *id.* at 249:1–22 (R. ____). Due to the unique topography of the

property, she and her family always used an access path across Cedar Grove's property. *See* Pls. Trial Ex. 18 (R.____); Pls. Trial Ex. 25 (R.____); Trial Tr. at 114:12 to 117:7 (R.____ to ____); *id.* at 138:12 to 139:5 (R.____); *id.* at 175:16 to 177:11 (R. ____ to ____); *id.* at 180:14 to 181:13 (R. ____ to ____). As her health declined, her family continued to use the access path to access the property for farming and hunting. *Id.* at 104:20 to 106:10 (R.____ to ____), 141:15 to 142:5 (R.____ to ____), 143:11–24 (R.____). This use did not cease after her death in 2016. *See, e.g., id.* at 141:15 to 142:5 (R.____ to ____). Multiple witnesses attested that they had personal knowledge of the Crowder family using this access path to access the Crowder Tract, and some had even used the path on the Crowder family's behalf. *See, e.g., id.* at 101:2–19 (R.____), 107:22 to 108:4 (R.____ to ____), 111:19–21 (R.____), 140:25 to 146:14 (R.____ to ____). The Crowder family never had permission from Cedar Grove to use the access path, and they never hid their use. *Id.* at 194:5 to 195:5 (R. ____ to ____); *id.* at 307:2–17 (R.____). Out of respect, the Crowder family refrained from extensive activity on the easement area during religious services. *See, e.g., id.* at 119:20 to 120:17 (R.____ to ____); 191:14–22 (R.____). Otherwise, the Crowder family used the property openly and notoriously as they had for decades. *See, e.g.,* 121:18 to 122:8 (R.____ to ____); 191:23 to 192:14 (R.____ to ____). Even when Cedar Grove attempted to block the Estate's access, those acting on the Estate's behalf continued to use the path. *See, e.g.,* 202:25 to 203:25 (R. ____ to ____); *id.* at 238:3 to 239:2 (R. ____ to ____); *id.* at 306:21–22 (R.____); *id.* at 308:1 to 310:6 (R.____ to ____). On its face, this evidence is sufficient to establish the Estate's right to a prescriptive easement.

In response, Cedar Grove pointed to Jim Crowder's prior statements indicating that he had not made an *income* farming the property during certain periods of time. *See* Trial Tr. at 227:5 to 228:24 (R.____ to ____); *see also id.* at 221:10–23, 225:15–19 (R.____, ____) (questioning Jim Crowder as to his other sources of employment). As Mr. Crowder explained during his testimony,

the volatility of the agricultural market means that some years do not involve a profit for a farm. *Id.* at 251:11–22. He also explained that, during the time period relevant to Cedar Grove’s question, his mother was still alive and he was assisting her on the farm. *Id.* at 228:9–17 (R.____). Even if the lack of income during that time necessarily means that Mr. Crowder was not farming the land on behalf of the Estate, this would be immaterial to the Estate’s prescriptive easement claim, as the relevant question is whether the Estate is using the easement area for access and not whether their use is financially profitable or what they are accessing the property to do. *See Simmons*, 419 S.C. at 229, 797 S.E.2d at 390 (setting forth the elements for a prescriptive easement).

Later, Cedar Grove presented evidence that two church members were unaware of the Estate’s use of the easement area. *See, e.g.*, Trial Tr. at 296:18 to 297:4 (R.____ to ____). It does not follow that, because two particular individuals lack knowledge of a use, that the use did exist or that it was open and notorious.

Because the evidence demonstrates that the Estate was entitled to a prescriptive easement across the easement area and Cedar Grove presented no evidence which would support the jury’s verdict against the Estate, the court erred in refusing to grant the Estate’s motion for judgment notwithstanding the verdict or in the alternative a new trial. This error was not harmless, and the claim should be reversed and remanded.

B. The jury’s verdict granting Cedar Grove’s trespass claim is contrary to the evidence and the law because Jim Crowder crossed the land pursuant to an easement.

The evidence is uncontradicted that Jim Crowder repeatedly entered Cedar Grove’s property without permission to access the Crowder Tract. To determine if he was liable for trespass, the relevant inquiry was whether he entered the property with legal authority to do so. *See Snow v. City of Columbia*, 305 S.C. 544, 552, 409 S.E.2d 797, 802 (Ct. App. 1991) (“The unwarrantable entry on land in the peaceable possession of another is a trespass . . . [I]f one *without*

license from the person in possession of land walks upon it, or casts a twig upon it, or pours a bucket of water upon it, he commits a trespass by the very act of breaking the enclosure.”).⁷ Simply put, Mr. Crowder could not be liable for trespass if he entered the property pursuant to a prescriptive easement belonging to the Estate or himself. As described above, the court wrongfully directed a verdict against his prescriptive easement claim brought in his own capacity, and the court erroneously failed to grant the Estate’s motion for judgment notwithstanding the verdict or in the alternative a new trial when the evidence clearly showed the Estate’s entitlement to a prescriptive easement. If the Court agrees as to either point, the Court must also reverse the jury’s verdict against Mr. Crowder as to trespass.

CONCLUSION

For the foregoing reasons, Appellants request that this Court reverse the judgment of the lower court, or in the alternative, remand for new trial absolute or *nisi remittitur*.

Respectfully submitted,

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⁷ As noted above, this Court has recognized in unpublished cases that the holder of a valid easement cannot be liable for trespass.