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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Milton G. Kimpson, Circuit Judge

Appellate Case No. 2025-001220

Ansel Jamahl Postell,..…………...……………………………Respondent-Appellant,

v.

Campus Advantage, Inc. and EMRES II South Carolina, LLC d/b/a The Rowan,…………………...……………………..………Appellants-Respondents.

FINAL APPELLANT'S BRIEF OF
RESPONDENT-APPELLANT ANSEL JAMAHL POSTELL

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STATEMENT OF ISSUES

I. Did the circuit court err reversibly by limiting the amount trebled under the Unfair Trade Practices Act to $27,500 when the jury's verdict found that Appellant had sustained $230,000 in actual damages?

II. Did the circuit court err reversibly by limiting the amount of Appellant's attorneys' fees awarded under the Unfair Trade Practices Act to a third of the trebled amount only, a decision it made under the belief that such limitation was what the law required?

STATEMENT OF THE CASE

This is a cross-appeal brought by Respondent-Appellant Ansell Jamahl Postell of two substantive post-trial decisions of the circuit court reflected in the three appealed orders. (R. pp. 4-31.) The circuit court declined to treble the amount of Postell's actual damages awarded by the jury in this unfair trade practices case and, instead, limited the trebled amount to a small portion of the actual damages verdict, the portion the circuit court found was "the value of [Postell's] lost personal property listed on the spreadsheet he produced for Defendants." (R. p. 19.) Postell sought an award of attorney's fees for one third of the judgment awarded to Postell, but the circuit court wrote that it "believes it must base the eventual attorney fee award under §39-5-140(a) on the trebled damage award of $82,500" and, consistent with the court's belief in that limitation, awarded only $27,500, a small portion of Postell's incurred attorney's fees, because it was a third of the $82,500 produced by the court's limited trebling. (R. pp. 23-25.)

Postell brought suit against Appellants-Respondents Campus Advantage, Inc. and EMRES II South Carolina, LLC d/b/a The Rowan ("the landlords"), alleging causes of action for ouster, conversion, breach of contract, negligence, and violations of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, *et seq.*, all arising out of the destruction or loss of Postell's personal property as a result of the landlords' unauthorized removal of it from the apartment Postell rented from them. (R. pp. 4, 167-72.) The case was tried, a directed verdict for the landlords was entered on the ouster claim, and the jury returned a verdict for Postell on the remaining causes of action. (R. pp. 4, 32-33.) While the verdict form provided for the jury to indicate its specific liability findings on each cause of action, it called for a general verdict on Postell's actual damages (i.e., not segregated by cause of action) and a general verdict for Postell's punitive damages. (R. pp. 32-33.) The jury found for Postell on all causes of action that were submitted to the jury, and the jury returned a verdict of $230,000 actual damages and $462,500.24 in punitive damages. (R. pp. 32-33)

The parties each made post-trial motions. (R. pp. 34-115.) Postell moved for the court to treble the actual damages verdict and award Postell his reasonable attorneys' fees and costs, per the provisions of the Unfair Trade Practices Act at S.C. Code Ann. § 39-5-140, as well as for interest and costs under his previously made offer of judgment. (R. pp. 49-115.) Though Postell's contract with his attorney called for a 40 percent contingent fee in the event the case was tried, Postell sought an attorneys' fee award of "only one-third of the judgment amount ultimately determined" as the total judgment after trebling, advising the trial court that "[i]f the Court determines that the actual damages should be trebled, this amount comes to $384,166.75 in attorney's fees." (R. p. 57.) Postell provided his counsel's affidavit and the affidavits of two other attorneys attesting to the reasonableness of the Postell's attorney's fees per the six factors used to assess the reasonableness of a proposed fee award. <u>E.g.</u>, <u>Jackson v. Speed</u>, 326 S.C. 289, 486 S.E.2d 750 (1997); (R. pp. 94-104.)

The trial court issued an order that denied the landlords' post-trial motions, granted Postell's motion for interest and costs under the offer of judgment, and partially granted and partially denied Postell's trebling and attorneys' fees motions. (R. pp. 4-21.) As to trebling, the trial judge found that the landlords' unfair trade practices were willful as that term is understood under S.C. Code Ann. § 39-5-140(d) and ruled that the grant of treble damages was required. (R. pp. 18-19.) The trial judge went on to write the following:

> This does not, however, translate into a finding that the entire actual damages award of $230,000 should be trebled. Recovery under S.C. Code Ann. § 39-5-140(a) is available to a person "who suffers any ascertainable <u>loss of money or property, real</u>

> or personal, as a result of the use or employment by another person of an unfair or deceptive method, act . . ." (emphasis added). On its face, therefore, the plain language of this statutory provision limits recovery thereunder to the value of lost "money or property.["] "This is the same as economic damage." See generally, Payne v. Holiday Towers, Inc., 283 S.C. 210, 321 S.E.2d 179 (Ct. App. 1984).
>
> This Court has earlier alluded to the belief that Plaintiff[Postell]'s economic damages were at least $27,500, the value of his lost personal property listed on the spreadsheet he produced for Defendants [landlords]. Accordingly, upon its finds that Defendants [landlords'] violation of the UTPA was willful within the meaning of 39-5-140, the Court trebles the sum of $27,500 to $82,500.

(R. p. 19.)

In that order, the trial judge also ruled that Postell is entitled to an attorney's fee award under S.C. Code Ann. § 39-5-140(a) and directed that a hearing be held on the amount of fees to be awarded. (R. p. 19.)

Postell moved for reconsideration of the ruling that limited the amount to be trebled. (R. pp. 135-38.) Postell noted that, while S.C. Code Ann. § 39-5-140(a) provides that an unfair trade practices claimant must establish that he has sustained a loss of money or property, that statutory section does not state that the recoverable actual damages are limited to the value of the lost money or property. (R. p. 136.) Postell pointed out that S.C. Code Ann. § 39-5-140(a) states that a successful claimant is to "recover actual damages" and that the trebling portion of the section provides that "the court shall award three times the actual damages sustained." (R. p. 136.) Postell argued that:

> What this statute says, in pertinent part, is that someone who has suffered an ascertainable loss of money or property as the result of an unfair trade practice has the right to bring an action, and, in that action, the person may recover his "actual damages" – which would include, but are not limited to, the loss of money

> or property that makes him eligible to bring the cause of action. [S.C. Code Ann. § 39-5-140(a).]
>
> Were it otherwise, the legislature could easily have (and surely would have) made the statute say that "Any person who suffers any ascertainable loss of money or property, real or personal, as a result of . . . may bring an action . . . to recover that money or property." *That* or similar language would have limited the damages recoverable along the lines the court ordered. But that is not what the statute states. Id. The statute states what is recoverable and treble-able are a plaintiff's "actual damages" and "actual damages sustained." Id.

(R. pp. 136-37.)

Postell cited decisions of this court that have stated the actual damages recoverable under S.C. Code Ann. § 39-5-140(a) include special and consequential damages. (R. p. 137.)

The court held the hearing on attorney's fees. (R. pp. 1148-78.) Following the hearing, the trial judge ordered as follows:

> The Court believes it must base the eventual attorney fee award under §39-5-140(a) on the trebled damage award of $82,500.00. Plaintiff disputes this, asserting instead that the fee award should be based on the entire jury verdict of $692,500.24. While there is some appeal to this argument when considering the purpose of the UTPA and the fact that here, the jury rendered a general verdict, the Court believes that basing the fee award on the entire jury verdict which found Defendants liable for causes of action other than the UTPA is inconsistent with the statutory mandate that fees and costs are appropriate where a court has found a violation of "this article." On its face, the operative language of §39-5-140(a) directs that attorney's fees and costs are to be awarded to the person "bringing an action under this section" (emphasis added). The Court, therefore, awards attorney's fees to Plaintiff on the UTPA cause of action of thirty-three (33%) percent of the trebled damage amount, which results in a fee award of $27,225.00. The Court further awards 33% of the total cost amount of $6,996.81, for costs related to the UTPA violation equaling $2,308.95.

(R. pp. 23-24, 25) (footnotes omitted).

Postell moved for reconsideration of that ruling, citing South Carolina Supreme Court decisions that rejected similar limitations on attorney's fee recovery under the Unfair Trade Practices Act. (R. pp. 145-47.) Postell further noted that his "attorney's fees in this case are not susceptible of segregation as to what was done concerning the unfair trade practices cause of action and other causes of action. All of the Plaintiff's attorney's fees relate to all of the Plaintiff's causes of action, including the unfair trade practices cause of action." (R. pp. 145-46.)

On June 18, 2025, the landlords served and filed a notice of appeal of the denial of their post-trial motions. (R. pp. 1179.)

On June 25, 2025, the trial judge denied both of Postell's motions to reconsider. (R. pp. 30-31.) Postell served notice of this cross-appeal the same day. (R. pp. 1183.)

STANDARD OF REVIEW

"The decision to award or deny attorney['s] fees and costs will not be disturbed on appeal absent an abuse of discretion." Maybank v. BB&T Corp., 416 S.C. 541, 579-80, 787 S.E.2d 498, 528 (2016). "An abuse of discretion occurs when the conclusions of the trial court are either controlled by an error of law or are based on unsupported factual conclusions." In re: Care and Treatment of Miller, 393 S.C. 248, 256, 713 S.E.2d 253, 257 (2011).

The writer of this brief was not able to find a reported decision defining the standard of review of an order deciding the amount of actual damages to be trebled under the Unfair Trade Practices Act. By analogy to the standard for similar issues, such as an award of attorney's fees and costs, it appears that our appellate courts apply an abuse of discretion standard to the review of an order that decides the amount to be trebled under S.C. Code Ann. § 39-5-140(a). Cf. Maybank, 416 S.C. at 579-80; Peterson v. Natl. R.R. Passenger Corp., 365

S.C. 391, 618 S.E.2d 903 (2005); Black v. Roche Biomed. Labs., 315 S.C. 223, 433 S.E.2d 21 (Ct. App. 1993); Payne v. Holiday Towers, Inc., 283 S.C. 210, 321 S.E.2d 179 (Ct. App. 1984). That standard has been applied to review of trebling decisions under a different statute. Rice v. Multimedia, Inc., 318 S.C. 95, 456 S.E.2d 381 (1995).

An appellate court reviews all questions of law *de novo*. Transportation Ins. Co. v. S.C. Second Injury Fund, 389 S.C. 422, 427, 699 S.E.2d 687, 689 (2010); Verenes v. Alvanos, 387 S.C. 11, 15, 690 S.E.2d 771, 772-73 (2010).

ARGUMENT

I. The trial court erred by limiting the amount to be trebled to less than the actual damages the jury found Postell sustained as a result of the landlords' unfair trade practices.

The Unfair Trade Practices Act states that a successful private civil plaintiff under the Act is to "recover actual damages[,]" and the trebling portion of the section provides that when, as here, the court finds the Act's violation to be willful or knowing (R. pp. 18-19), "the court shall award three times the actual damages sustained." S.C. Code Ann. § 39-5-140(a).

The circuit court did not treble the actual damages the jury found Postell sustained as a result of the landlords' unfair trade practices. (R. pp. 19, 32-33.) Instead, the court limited trebling to what the circuit judge saw as part of the actual damages Postell sustained, trebling only "$27,500, the value of his lost personal property listed on the spreadsheet he produced for" the landlords. (R. p. 19.)

This was the judge's damages assessment; the jury had not broken down the components of its actual damages verdict and was never called upon to do so. (R. pp. 19, 32-33.) Nor was there any need for the court or the jury to segregate out portions of the damages and assign them to categories. The limitation the judge applied to what damages are able to be trebled is not a limitation that is contained in the law.

The trial judge' order correctly observed that "[r]ecovery under S.C. Code Ann. 39-5-140(a) is available to a person 'who suffers any ascertainable <u>loss of money or property, real or personal</u>, as a result of the use or employment by another person of an unfair or deceptive method, act …' (emphasis added)." (R. p. 19.) Next, the trial court asserted its view of this statutory language, stating that "[o]n its face, therefore, the plain language of this statutory provision limits recovery thereunder to the value of lost 'money or property.'" (R. p. 19.)

A look at the language of S.C. Code Ann. § 39-5-140(a) reveals it states as follows:

> <u>Any person who suffers any ascertainable loss of money or property, real or personal</u>, as a result of the use or employment by another person of an unfair or deceptive method, act or practice declared unlawful by Section 39-5-20 <u>may bring an action</u> individually, but not in a representative capacity, <u>to recover *actual damages*</u>. If the court finds that the use or employment of the unfair or deceptive method, act or practice was a willful or knowing violation of Section 39-5-20, <u>the court shall award three times *the actual damages sustained*</u> and may provide such other relief as it deems necessary or proper. Upon the finding by the court of a violation of this article, the court shall award to the person bringing such action under this section reasonable attorney's fees and costs.

<u>Id.</u> (emphasis added).

"It is well settled that the words of a statute will be given their plain and ordinary meaning." <u>Rice</u>, 318 S.C. at 98. The plain and ordinary meaning of S.C. Code Ann. § 39-5-140(a) is that someone who has suffered an ascertainable loss of money or property as the result of an unfair trade practice has the right to bring an action, and, in that action, the person may recover his "actual damages" – which of course include, but are not limited to, the loss of money or property that makes him eligible to bring the cause of action. (R. pp. 135-36.) The words of S.C. Code Ann. § 39-5-140(a) state that the amount to be trebled, when trebling is done, is "three times the actual damages sustained" – again, with no limitation to only the portion of the actual damages that is the measure of the lost money or property. (R. pp. 135-36.)

The plain and ordinary meaning of the words of S.C. Code Ann. § 39-5-140(a) is at odds with the trial judge's view. The section's plain and ordinary meaning is that both recovery and trebling are of actual damages. Id. Its plain and ordinary meaning is that whether a person has suffered a monetary or property loss speaks to whether he or she has an Unfair Trade Practices cause of action, not to what damages may be recovered or trebled. Id. On the latter point, the statutory language lays out without nuance that the measure is the actual damages the plaintiff sustained. Id.

If the General Assembly had intended for the recoverable and treble-able damages to be limited to money and property loss, it could easily have and surely would have made the statute say that "Any person who suffers any ascertainable loss of money or property, real or personal, as a result of . . . may bring an action . . . to recover that money or property." *That* or similar language would have limited the damages recoverable along the lines the court ordered.

But that is not what the statute states. Id. The statute states what is recoverable and treble-able are a plaintiff's "actual damages" and "actual damages sustained." Id.

This state's case law also does not support the trial judge's reading of the statute. The Payne v. Holiday Towers, Inc., 283 S.C. 210, 321 S.E.2d 179 (Ct. App. 1984), case cited in the trial court's order does speak to what constitutes economic damage but does not indicate economic damage is a limit on what damages are able to be recovered or trebled under S.C. Code Ann. § 39-5-140(a). Indeed, this court's Payne decision states that, since the Unfair Trade Practices "Act does not define the term 'actual damages,' we hold that the term means common law damages." Payne, 283 S.C at 216. This court has also issued another decision that affirms recoverable and treble-able actual damages are not circumscribed to the plaintiff's money or property loss; rather, "[a]ctual damages under the UTPA include special or consequential damages that are a natural and proximate result of deceptive conduct." Collins Holding Corp. v. Defibaugh, 373 S.C. 446, 646 S.E.2d 147 (Ct. App. 2007). In light of the statutory language, no other conclusion would have made sense for this court to reach. See Rice, 318 S.C. at 98 ("the words of a statute will be given their plain and ordinary meaning").

Our Supreme Court has observed that "no court is entitled to the deference associated with the discretion standard of review until that court has earned deference by fulfilling the responsibility of exercising its discretion according to law." Morris v. BB&T Corp., 438 S.C. 582, 885 S.E.2d 394 (2023). Here, the trial court did not exercise its discretion according to law but instead made an error of law: concluding that the Unfair Trade Practices Act allows the recovery and trebling of only monetary or property loss and not, as it states, the plaintiff's actual damages. (R. pp. 18-19.) That error controlled the court's analysis of this issue. (R. pp. 18-19.) Controlled as it is by an error of law, the trial court's ruling to limit the trebling to what the judge – not the jury – determined was the amount of lost money or property was an abuse of discretion. "An abuse of discretion occurs when the conclusions of the trial court are . . . controlled by an error of law[.]" In re: Miller, 393 S.C. at 256.

The circuit court abused its discretion and erred reversibly in its limiting of the amount to be trebled. This court should reverse and direct the entry of judgment that trebles the correct amount: the actual damages that the jury found Postell sustained as a result of the landlords' unfair trade practices. (R. pp. 32-33.)

II. The trial court erred by limiting the attorneys' fees awarded to Postell to a third of the amount produced by the improperly limited trebling.

Similarly, the trial judge erred in limiting the awarded attorney's fees to one third of the amount created by its unlawful limiting of the trebled damages. (R. pp. 23-24, 25.) The rationale for the trial judge's ruling was based on the error of law discussed above, which controlled his decision on the amount to treble. And the decision is indeed controlled by that error of law: if the actual damages the jury awarded had been trebled, the circuit judge here by his own analysis would have awarded one-third of the amount produced by the proper trebling. (R. pp. 23-24, 25.) Had the judge properly trebled all the actual damages and done the rest of his analysis exactly as he did, the result reached on the attorney's fee award would have been correct. (R. pp. 23-24, 25.)

For the reasons discussed above, the amount the trial judge considered as the starting point for calculating the percentage-based attorney's fees here was wrong as the result of an error of law. That error informed every following step in the trial court's analysis; thus, the trial court's decision is very much controlled by that error. That controlling error would require reversal. See In re: Miller, 393 S.C. at 256.

Nor is the trial judge's decision on this issue saved from reversal because of the several causes of action on which the jury found for Postell. (R. pp. 32-33, 169-72.) As a review of the complaint makes plain and as Postell noted to the trial court, Postell's actual damages in this case all arise from the same conduct by the landlords. (R. pp. 145-46, 167-72.) It is not as though the landlords did X, which was the basis for the unfair trade practices cause of action, and also took separate action Y, which was the basis for the other causes of action. (R. pp.

145-46, 167-72.) Of necessity, the attorney work that went into went into each cause of action also went into each of the other causes of action. (R. pp. 145-46, 167-72.) Postell's lawyer's work is not capable of being segregated by cause of action. (R. pp. 145-46, 167-72.) All causes of action arose out of the same small set of transactions and occurrences, which is a good reason why the verdict form provided one place for the jurors to find what Postell's actual damages are rather than separate damages findings for each cause of action. (R. pp. 32-33, 145-46, 167-72.)

There is controlling precedent in South Carolina that governs the analysis of attorney's fee awards where a verdict for a plaintiff is rendered on several causes of action, only one or some of which provide for recovery of attorneys' fees. In 1992, the Supreme Court of South Carolina decided the case of Taylor v. Nix, which set out what remains the legal framework for that analysis. 307 S.C. 551, 557, 416 S.E.2d 619, 622 (1992).

> We hold when an action in which attorney fees are recoverable by statute is joined with alternative theories of recovery based on the same transaction, no allocation of attorney's services need be made except to the extent counsel admits that a portion of the services was totally unrelated to the statutory claim or it is shown that the services related to issues which were clearly beyond the scope of the statutory claim proceeding.

Id.

Under this analysis – i.e., under the law in this state – all of Postell's contingent attorney's fee, forty percent of his recovery before his counsel's voluntary reduction, was simultaneously the amount of his attorney's fee for each of the causes of action on which he prevailed. See id. That amount, not a part of it calculated on a part of his recovery, is Postell's attorney's fee for the unfair trade practices claim on which he prevailed. (R. pp. 49-115.)

Quite differently from the trial court, our Supreme Court has rejected the idea that attorney's fee awards under S.C. Code Ann. 39-5-140(a) are or should be limited in scope by the unfair trade practices portion of awarded damages, even when there are separate amounts found for damages on several causes of action.

In Taylor v. Medenica, 331 S.C. 575, 582, 503 S.E.2d 458, 462 (1998), a bedrock unfair trade practices case, the Court held that "there is no requirement that an attorney's fee be less than or comparable to a party's monetary judgment" and rejected a challenge to an attorney's fee award based on the idea that it should be limited by the amount of damages recovered under S.C. Code Ann. 39-5-140(a). The Supreme Court observed that "[t]his Court has approved an award of attorney's fees where the fee substantially exceeded the actual recovery." Taylor, 331 S.C. at 582.

Austin v. Stokes-Craven Holding Corp., 387 S.C. 22, 57, 691 S.E.2d 135, 153 (2010), was a case brought with several causes of action, including one under the Automobile Dealers' Act (strongly analogous to the South Carolina Unfair Trade Practices Act in many ways) but also including common law claims such as fraud. The Supreme Court held that the prevailing plaintiff's attorneys' fee award should be based on his recovery on all his causes of action, not just the one under the Dealer's Act that authorized the attorneys' fees. Id. The Court held that an award based on the total recovery, unsegregated by cause of action, "in its entirety would be consistent with the precedent of this Court" and would further the policy aim of encouraging actions under the Dealer's Act. Id. The Unfair Trade Practices Act has that same policy aim. See Taylor, 331 S.C. at 582.

Most respectfully to the trial judge, his decision on the attorney's fee issue was controlled by an error of law. It is, thus, an abuse of discretion, and the standard of review here calls for it to be overruled. See In re: Miller, 393 S.C. at 256.

When it comes to the process after reversal on this issue, this court can, in a broad sense, take one of two approaches: i) remand for a new hearing (or new decision without a hearing) on the attorney's fees to be awarded or ii) issue of a decision that modifies the award to its proper amount, if the right circumstances are present to allow for the latter option. See Horton v. Jasper Cnty. Sch. Dist., 423 S.C. 325, 331-32, 815 S.E.2d 442, 445 (2018). Where the trial court has determined the fees sought to be reasonable but has reduced the amount of fees awarded on a basis that lacks evidentiary support, it is proper for an appellate court to modify the fee award to bring it up to the correct number. Id. It follows that the same procedure is available when the trial court has found the requested fees to be reasonable but has reduced the amount awarded because of a misconception of the controlling law. See id.

The six factors South Carolina courts traditionally consider in determining the amount of attorney's fees to be awarded are (1) the nature, extent, and difficulty of the legal services rendered; (2) the time and labor necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the fee customarily charged in the locality for similar legal services; and (6) the beneficial results obtained. E.g., Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 383, 377 S.E.2d 296 (1989). The trial judge evaluated the six factors and found Postell's request for attorney's fees of one third of the amount recovered under S.C. Code Ann. § 39-5-140(a) to be reasonable after assessment of those six factors. (R. pp. 22-29.)

We have here a situation in which the Horton rationale applies. See Horton, 423 S.C. at 331-32. This court can and should modify the attorney's fee award to reflect what Postell's actual attorney's fees in this case are: with his counsel's generous reduction, a third of the entirety of the judgment in Postell's favor, including proper trebling. (R. pp. 49-115.) Postell's counsel below calculated that figure and presented it, $384,166.75, to the trial court. (R. pp. 57.) One of the primary purposes of attorney's fee awards is to ensure the parties entitled to them are truly made whole, so that they do not have to bear the cost of financing the litigation. See Reid v. Reid, 280 S.C. 367, 312 S.E.2d 724 (Ct. App. 1984).

If this court chooses not to modify the award itself, remand for a new hearing to determine attorney's fees would be proper and could take fees for this appeal into account in a single decision. Cf. Horton, 423 S.C. at 331-32.

The circuit court abused its discretion and erred reversibly in imposing unlawful limits on Postell's attorney's fee recovery.

CONCLUSION

This court should reverse the improper trebling, treble the actual damages the jury awarded, as S.C. Code Ann. 39-5-140(a) requires, and modify the judgment to reflect that proper trebling. This court should reverse the improper limitation of the attorney's fee award, either modifying it to change it to $384,166.75 or remanding for a new hearing to determine the reasonable fees to be awarded.

Respectfully submitted,

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CERTIFICATE OF COUNSEL
REGARDING COMPLIANCE WITH RULE 211(b), SCACR

I certify that the foregoing final brief complies with Rule 211(b), SCACR.

Respectfully submitted,

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August 5, 2026