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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
Daniel M. Coble, Circuit Judge

Appellate Case No. 2026-001167

Stacey Bryant,.....Appellant,

v.

Robert A. Smalls and Low Country Transit, LLC,.....Defendants,

Of which Robert A. Smalls is theRespondent.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES

- I. Did the circuit court err in refusing to make any part of the Appellant's attorneys' fees part of the verdict (or even hold a hearing to ascertain them) where the jury returned a verdict that included the Appellant's attorneys' fees as a category in its award, the Respondent never requested the jury be sent back to further deliberate, the Respondent expressly waived objection to the fees' inclusion in the verdict, and the Respondent agreed that a post-trial hearing on attorneys' fees would be held?**

STATEMENT OF THE CASE

This is an appeal by plaintiff Stacey Bryant (“the Plaintiff”) of an order refusing to allow attorneys’ fees as part of the verdict in her favor, after the jury specifically included “legal fees” as part of their verdict in the Plaintiff’s favor, Respondent Robert A. Smalls (“the Defendant”) allowed the jury to be excused without requesting further deliberation, and the Defendant consented to letting the verdict stand and that a hearing on attorneys’ fees would be held. (R. pp. ____; order of Nov. 17, 2025; verdict form; transcript p. 7 ln. 9 through p. 8 ln. 8.) Also appealed is the trial court’s denial of the Plaintiff’s motion to reconsider that ruling. (R. pp. ____; order denying motion to reconsider.)

The Plaintiff brought this action against the Defendant and his solely owned and controlled limited liability company, and the case went to trial. (R. pp. ____; order of Nov. 17, 2025; verdict form; amended complaint; transcript.) The case concerned the Defendant’s failure to repay the Plaintiff as agreed for an investment in the Defendant’s business, as the jury found the defendant agreed to do and failed to do. (R. pp. ____; verdict form; amended complaint.) The causes of action sent to the jury were for breach of contract, fraud and/or misrepresentation, breach of fiduciary duty, civil conspiracy, conversion, violation of the South Carolina Unfair Trade Practices Act, and defamation. (R. pp. ____; verdict form.)

The jury found for the Plaintiff on her breach of contract cause of action and against her on the others. (R. pp. ____; verdict form.) The jury rendered its verdict in the amount of “12,400 + \$4,000 + Legal fees[.]” (R. pp. ____; verdict form.)

After the jury read its verdict, the following exchange occurred:

THE COURT: All right. The only question I'm going to have is -- and you can see it. It says, "12 -- for the first question, "12,400 plus \$4,000 plus legal fees". That's not what I asked or instructed

them to do. They need to put numbers. So thoughts from the plaintiff?

PLAINTIFF'S COUNSEL: Your Honor, I think that you're correct. The... I don't know --

THE COURT: Well, what I'm gonna -- if -- what I usually use if it's in its proper form -- when I read it, it looked like it was describing something. So I thought that would be proper. But if they're asking for additional money, what I intend to do would be to say, essentially, continue your deliberations. The instructions are for question number one: numbers. And I just want numbers.

Mr. Scott [defense counsel]?

DEFENDANT'S COUNSEL: I'm not sure that there were -- I don't recall any testimony about legal fees or anything, so I don't know how they would even come up with a number based on the fact that there was, there was nothing in there. So what I would at this particular point, I'm not quite sure -- you're the Judge, you have to make this call. But to me, it's almost seems like the appropriate legal fees would be something that the Court would have to consider outside of the jury.

PLAINTIFF'S COUNSEL: Hearing all the legal fees after this -
-

DEFENDANT'S COUNSEL: That, like I said. Now it's your call, but it's just, I don't see how they can come up with a number for legal fees based on fact that there was no testimony about the legal fees for them to consider as a part of the fact finding. That's why I'm saying -- I'm kind of hesitant to to get to put it in their hands. I don't, I mean one way, or it doesn't. It just doesn't feel like it's illegally [sic: legally] appropriate for them based on them having heard no testimony about legal fees and those kinds of things.

PLAINTIFF'S COUNSEL: I think it would be appropriate to have a post-trial hearing on what the legal fees were.

THE COURT: So then, is there any objection to letting this verdict stand as specifically to this issue -- as to letting it stand as of the 12,400 plus the 4,000 and then any legal fees described in here will be handled by a post-trial motion.

Any objection to that by the plaintiff's Counsel?

PLAINTIFF'S COUNSEL: No, Your Honor.

DEFENDANT’S COUNSEL: No, Your Honor.

THE COURT: All right. So let's bring the jury. Is there -- are there any motions we need to put on the record regarding this verdict form?

PLAINTIFF’S COUNSEL: No.

DEFENDANT’S COUNSEL: None from the defendant, Your Honor.

THE COURT: All right. We're going to bring the jury in here, thank them for their service, and excuse them.

(R. pp. ____; transcript p. 6 ln. 10 through p. 8 ln. 16.)

The court then excused the jury. (R. pp. ____; transcript p. 8 ln. 24-25.)

The Plaintiff then filed post-trial motions, including one for her attorneys’ fees, per the Defendant’s consent to letting the verdict stand, including the attorneys’ fees to be later determined. (R. pp. ____; order of Nov. 17, 2025; motion for attorneys’ fees.) The Plaintiff supported that motion with affidavits of her counsel that set out the amount of the Plaintiff’s attorneys’ fees and addressed the six factors courts evaluate in determining the reasonableness of attorneys’ fees.¹ (R. pp. ____; attorney’s fee affidavits of French and Van Syckel.)

The trial court did not hold a hearing as agreed; rather, the trial court issued an order denying the motion for attorneys’ fees, with its analysis of this issue being as follows:

The Court denies awarding any attorney fees. Attorney fees are generally not recoverable unless authorized by contract or statute. At trial, there was no evidence of attorney fees, the contract did not contain any language for attorney fees, and there was no claim that would allow Plaintiff to prevail on attorney fees.

(R. pp. ____; order of Nov. 17, 2025, p. 1.)

¹ “There are six factors courts should consider in exercising that discretion: (1) nature, extent, and difficulty of the case; (2) time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services.” Burton v. York Cnty. Sheriff’s Dept., 358 S.C. 339, 358, 594 S.E.2d 888, 898 (Ct. App. 2004) (citing Jackson v. Speed, 326 S.C. 289, 486 S.E.2d 750 (1997)).

The Plaintiff made a motion to reconsider that ruling, pointing out that the Defendant had agreed to let the legal fees portion of the verdict stand and had allowed the jury to be excused without requesting a return to deliberations with appropriate instructions to deal with the issue of including attorneys' fees in the verdict. (R. pp. ____; motion to reconsider pp. 1, 2.) The judge denied the motion without a hearing. (R. pp. ____; order denying motion to reconsider.)

This appeal followed.

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).

ARGUMENT

The Defendant having consented to the inclusion of attorneys' fees in the verdict and to a hearing being held to determine them, the trial court was not at liberty to deny them. The Defendant having failed to request that the jury be returned to deliberate further, the jury's inclusion of legal fees as part of the verdict was final, and the trial court was not at liberty to disturb the jury's verdict and do something else.

I. The trial court was not permitted to ignore the Defendant's consent to letting the legal fees portion of the verdict stand.

The trial court's order refusing to assess the reasonableness of requested attorneys' fees and make any amount of attorneys' fees part of the verdict was controlled by an error of law in at least two ways. Let us discuss one of them.

By expressly consenting on the record to allowing the legal fees portion of the jury's verdict to stand, the Defendant waived any right to contest it, and the court was then bound to assess the fees' reasonableness and make the Plaintiff's reasonable fees a part of the judgment rendered in the jury verdict. (R. pp. ____; transcript p. 8 ln. 1-8.) Concessions made on the record by a party's counsel are binding and, absent the most extraordinary circumstances, cannot be undone. Porter v. S.C. Pub. Serv. Comm'n, 333 S.C. 12, 507 S.E.2d 328 (1998); Kirkland v. Allcraft Steel Co., 329 S.C. 389, 496 S.E.2d 624 (1998); State v. Pichardo, 367 S.C. 84, 623 S.E.2d 840 (Ct. App. 2005). The Defendant, through his counsel, expressly stated that he had no objection to letting this portion of the verdict stand, with a later hearing to be held on the amount of the fees to be included in the jury's award. (R. pp. ____; transcript p. 8 ln. 1-8.)

Once that happened, the Plaintiff's entitlement to *some* amount of her attorneys' fees being included in the judgment against the Defendant was established. The trial court decided to deny the inclusion of attorneys' fees in contravention of the law cited above, in contravention of the opposing party's express agreement, and in contravention of the trial court's own previous ruling that the legal fees portion of the verdict would stand. (R. pp. ____; transcript p. 8 ln. 1-8.)

That is a ruling controlled by an error of law – also one that ignores the relevant facts in the record about the Defendant's consent and express waiver of objection – and is an abuse of discretion. In re: Miller, 393 S.C. at 256. Our state Supreme Court has held 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). This court has observed that

“[t]he American tradition of rule of law has recognized from its earliest days that a motion to a court’s discretion is a motion, not to its inclination, but to its judgment; and its judgment is to be guided by sound legal principles.” Jordan v. Hartford Fin. Grp., Inc., 435 S.C. 501, 505, 868 S.E.2d 400, 402 (Ct. App. 2021).

Here, the trial court did not “fulfill[] the responsibility of exercising its discretion according to law.” Morris, 438 S.C. at 582. The trial court’s judgment was not “guided by sound legal principles.” Jordan, 435 S.C. at 505. Instead, the trial court ruled in defiance of the law (and the facts) both of which show the question of whether attorneys’ fees would be part of the verdict had already been determined in favor of the Plaintiff.

The trial court abused its discretion in making this ruling, which must be reversed.

II. Established law provides that even an improper component in a verdict is allowed to stand when the party that could ask for the jury to return to deliberating does not do so.

Let us discuss the other, very related way in which an abuse of discretion produced the appealed order. Under the law of this state, the Defendant’s failure to request that the case be resubmitted to the jury to deal with the inclusion of attorneys’ fees in the verdict means that the verdict stands, including the attorneys’ fees, even if it was wrong of the jury render the verdict it did. Bensch v. Davidson, 354 S.C. 173, 179, 580 S.E.2d 128 (2003); Dykema v. Carolina Em. Phys., P.C., 348 S.C. 549, 553-55, 560 S.E.2d 894, 896 (2002); Camden v. Hilton, 360 S.C. 164, 170, 171-72, 600 S.E.2d 88, 91-92 (Ct. App. 2004). The Supreme Court’s decision in Dykema so holds in no uncertain terms and explains that a party cannot allow the jury to be discharged and later complain of an error in the verdict that could have been corrected had the case been resubmitted to the jury for further deliberation. 348 S.C. at 553-55.

The Defendant, after consenting to the inclusion of attorneys' fees in the verdict and expressly waiving its objection to that, allowed the jury to be discharged without requesting resubmission to the jury with instructions concerning what to do about the attorneys' fee inclusion. (R. pp. ____; transcript p. 8 ln. 1-16, 24-25.) The trial court did not have authority to disturb this portion of the verdict. Bensch, 354 S.C. at 179; Dykema, 348 S.C. at 553-55; Camden, 360 S.C. at 170, 171-72.

As noted above, the trial court's ruling does not account for the fact of the Defendant's actions with regard to this issue and is also controlled by an error of law. The trial court's decision was controlled by its apparent belief that it was free to contravene the unchallenged verdict and free to disallow what the jury had included. (R. pp. ____; order of Nov. 17, 2025, p. 1.) That belief ran counter to the law.

The trial court's ruling on the appealed issue is the product of an abuse of discretion, and it must be reversed.

CONCLUSION

The appealed order defies the law. It is an abuse of discretion and must be reversed. This case should be remanded for a hearing on the amount of attorneys' fees to be included in the judgment against the Defendant, per the jury's verdict and the parties' agreement.

Respectfully submitted,

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PROOF OF SERVICE

I certify that I have served the appellant's initial brief on the date given below
by emailing it to opposing counsel at the address(es) noted below.

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Respectfully submitted,

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September 2, 2026