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SC Court of Appeals

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

**APPEAL FROM HORRY COUNTY
Court of Common Pleas
The Honorable B. Alex Hyman, Circuit Court Judge**

**Appellate Case No. 2026-001092
Case No. 2025-CP-260-7475**

Chyrdonna Dean, Appellant,

v.

USAA Federal Savings Bank, Respondent.

BRIEF OF RESPONDENT

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STATEMENT REGARDING ORAL ARGUMENT

This case involves the trial court's dismissal of a straightforward case involving duplicative credit card payments authorized by Appellant. Because the issues presented are straightforward, oral argument is unlikely to be helpful to the Court. Rule 215, SCACR.

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INTRODUCTION

This case involves the trial court's dismissal of a straightforward case involving duplicative credit card payments authorized by Appellant.

Appellant alleges that she suffered financial harm when Respondent USAA Federal Savings Bank ("USAA FSB") processed two duplicative credit card payments that Appellant had authorized. Ten days after the payments were processed, Appellant invoked the judicial process by suing USAA FSB in the Magistrate's Court of Horry County. The parties were summoned to a bench trial before the magistrate in September 2025. At trial, each party presented testimonial and documentary evidence, and the magistrate received oral argument. It is undisputed that both of Appellant's credit card payments were processed before she contacted USAA FSB to cancel or reverse either payment. It is also undisputed that Appellant received and deposited a check reimbursing her for the duplicative payment, less amounts owed on her credit card balance.

Based on these undisputed facts, the magistrate properly dismissed Appellant's claims and the circuit court affirmed the magistrate's dismissal.

STATEMENT OF ISSUES PRESENTED

- I. Did the circuit court err in affirming the ruling of the magistrate and dismissing the appeal?
- II. Did Appellant waive her right to arbitration when she failed to demand arbitration and then prosecuted her claim through trial in the magistrate's court?

STATEMENT OF THE CASE

A. Nature of the case

Appellant alleges that USAA FSB impermissibly processed two duplicative credit card payments, one on May 17, 2025 and a second on May 18, 2025. Appellant alleges that the duplicative payments overdrew her USAA FSB checking account, thereby lowering her USAA FSB savings account to cover the difference. For this, Appellant sought \$2,230.00 in damages,

including \$2,000.00 for pain and suffering, \$150.00 for transportation and time, and \$80 for court fees. USAA FSB has issued, and Appellant has accepted and deposited, a check reimbursing Appellant for the duplicative payment, less amounts owed on Appellant's credit card balance.

B. Course of proceedings and disposition below

On May 28, 2025, ten days after Appellant's duplicative credit card payments were processed, Appellant sued USAA FSB in the Magistrate's Court of Horry County. USAA FSB answered on July 7, denying Appellant's allegations. The parties were summoned to a bench trial before the magistrate on September 8. At trial, the magistrate received all testimony and evidence offered by the parties, including documentary evidence and sworn testimony from Appellant and USAA FSB's corporate witness. At the conclusion of the evidence, the magistrate ruled for USAA FSB based on a preponderance of the evidence and the testimony presented. The magistrate dismissed Appellant's case the same day.

On September 23, Appellant appealed the magistrate court's dismissal to the Circuit Court of Horry County pursuant to Rule 18, SCRMC. The magistrate's return was filed with the circuit court on February 23, 2026, and the circuit court heard Appellant's appeal on April 1. On April 6, the circuit court issued a Form 4 order that Appellant's appeal was under advisement, and on April 7 the circuit court issued a Form 4 order dismissing Appellant's appeal. This appeal followed.

STANDARD OF REVIEW

This Court reviews a circuit court's affirmance of a magistrate court's decision "for whether the circuit court order is controlled by an error of law or is unsupported by the facts." *A & I, Inc. v. Gore*, 366 S.C. 233, 239, 621 S.E.2d 383, 386 (Ct. App. 2005) (citation modified). This Court presumes "that an affirmance by a Circuit Court of a magistrate's judgment was made upon the merits where the testimony is sufficient to sustain the magistrate's judgment and there are no facts that show the affirmance was influenced by an error of law." *Id.*

STATEMENT OF THE FACTS

A. Appellant authorizes two duplicative credit card payments.

On April 23, 2025, Appellant received a USAA FSB credit card statement reflecting a \$21,852.29 balance, due on May 18, 2025. (Magistrate’s Return, at 11–13). On April 28, 2025, Appellant authorized a \$21,852.29 credit card payment to USAA FSB, to be paid from her USAA FSB checking account on May 18, 2025. (*Id.*, at 1, 14). Then, on May 13, 2025, Appellant authorized a second \$21,852.29 credit card payment to USAA FSB, to be paid from her USAA FSB checking account on May 17, 2025. (*Id.*, at 1, 15). Both of Appellant’s authorized credit card payments processed on the requested dates. (*Id.*, at 14, 15). The duplicative payments were itemized on Appellant’s May 23, 2025 USAA FSB credit card statement, which reflected a negative balance and instructed Appellant “DO NOT PAY.” (*Id.*, at 16–19).

B. Appellant sues USAA FSB for processing the duplicative payments.

On May 28, 2025, ten days after Appellant’s duplicative credit card payments were processed, Appellant sued USAA FSB in the Magistrate’s Court of Horry County. (*Id.*, at 1). On May 29, Appellant contacted USAA FSB, telling it “please don’t change anything and take no further action,” because Appellant intended to sue USAA FSB.” (*Id.*). USAA FSB answered on June 14 denying Appellant’s allegations. (*Id.*) The parties were summoned to a bench trial before the magistrate on September 8. At trial, the magistrate received “all testimony and evidence offered” by the parties, including documentary evidence and sworn testimony from Appellant and USAA FSB’s corporate witness. (*Id.*). USAA FSB’s witness testified that USAA FSB “did what the plaintiff requested,” and that Appellant had “lost no money and was made whole.” (*Id.*) The magistrate ruled for USAA FSB based on a preponderance of the evidence and the testimony presented. (*Id.*). The magistrate dismissed Appellant’s case the same day.

C. Appellant appeals to the circuit court and demands arbitration.

On September 23, Appellant appealed the magistrate court's dismissal to the Circuit Court of Horry County pursuant to Rule 18, SCRMC. In her appeal to the circuit court, Appellant argued for the first time that the magistrate "erred in failing to compel arbitration pursuant to the Federal Arbitration Act and Respondent's arbitration clause." (Appellant's Cir. Ct. Br., at 1). Appellant's magistrate's court complaint made no demand for arbitration, she never moved to compel arbitration in the magistrate's court, she never raised arbitration during the bench trial in the magistrate's court, and she never submitted any applicable arbitration clause or agreement to the magistrate's court. (*See* Magistrate's Return). Appellant only raised arbitration—and even then without ever submitting a valid arbitration clause or agreement—*after* she had prosecuted her claims through a trial on the merits before the magistrate's court and received an unfavorable result dismissing her case. The magistrate's return was filed with the circuit court on February 23, 2026, and the circuit court heard Appellant's appeal on April 1. The circuit court dismissed Appellant's appeal on April 7, 2026.

D. Appellant submits documents not considered by the trial court.

Appellant then appealed to this Court, raising many of the same arguments that she had raised before the circuit court. In her initial brief, Appellant attaches nine color-copy exhibits, each bearing an exhibit label applied in the lower righthand corner. (*See* Appellant's Br., at Ex. 1–9). None of these color-copy, stamped exhibits were submitted to the magistrate for consideration, introduced into evidence at the bench trial, or included in the magistrate's return to the circuit court. (*See* Magistrate's Return). Among the new exhibits not considered by the magistrate is Appellant's Exhibit No. 8, which is dated October 10, 2025—more than one month after the September 8, 2025 bench trial before the magistrate's court. (Appellant's Br., at 29–31).

SUMMARY OF THE ARGUMENT

The circuit court correctly affirmed the magistrate court's judgment for USAA FSB and dismissal of Appellant's case. "[B]ased on a preponderance of the evidence," after careful review of the documentary evidence and considering sworn testimony from the parties, the magistrate court "found for the defendant" and dismissed Appellant's case. Then, the circuit court, presented with the magistrate's return and after oral argument, dismissed Appellant's appeal.

This Court should affirm. Appellant had a full opportunity to present any evidence supporting her claims at the bench trial before the magistrate. The undisputed evidence submitted to the magistrate shows that Appellant authorized duplicative credit card payments, first on April 28 and next on May 13. The undisputed evidence also demonstrates that Appellant lost no money and was made whole for the duplicative payment. Appellant was not "denied a fair opportunity to present her case," and now attempts to relitigate the merits of the bench trial on appeal, submitting documents not considered by the magistrate court, including documents dated *after* the September 8, 2025 bench trial before the magistrate and subsequent dismissal of Appellant's case.

As for Appellant's argument that the "lower court erred by failing to address Appellant's request for arbitration," that issue was not preserved for appeal and therefore waived. First, Appellant never raised arbitration before the magistrate. She did not demand arbitration in her complaint, submit any arbitration clause or agreement for the magistrate's consideration, offer any arbitration clause or agreement into evidence at the bench trial, or file a post-trial motion with the magistrate regarding arbitration. Second, Appellant invoked the judicial process and prosecuted her case through a full trial on the merits. Only when she lost and had her claims dismissed did she ever demand arbitration. By then, she had waived any such arbitration right.

This court should affirm the circuit court's dismissal.

ARGUMENT

I. The circuit court correctly dismissed Appellant’s appeal of the magistrate’s dismissal.

The circuit court correctly dismissed Appellant’s appeal of the magistrate court’s dismissal of Appellant’s claims. The magistrate’s court “found for the defendant” USAA FSB “based on a preponderance of the evidence.” (Magistrate’s Return, at 1). In so ruling, the magistrate “received all testimony and evidence offered” at the bench trial, including sworn testimony from Appellant and USAA FSB’s corporate witness. (*Id.*). On that record, the circuit court dismissed Appellant’s appeal. This Court should affirm the circuit court’s dismissal.

A. Appellant had a full opportunity to present her claims and evidence to the magistrate’s court.

Appellant argues that the lower court “erred by dismissing the case without properly considering Appellant’s evidence” and that “Appellant was denied a fair opportunity to present her case.” Appellant Br., at 6–7. But that is not true.

On May 28, 2025, Appellant filed her original complaint against USAA FSB in the magistrate’s court. (Magistrate’s Return, at 2–10). USAA FSB answered on July 7, denying Appellant’s allegations. (*Id.*, at 65–73). The next day, the magistrate’s court issued summonses to all parties for a bench trial on September 8 at 11:00 am. (*Id.*, at 74–76). At trial, “all parties appeared,” [a]ll parties were sworn,” and the magistrate “received all testimony and evidence offered.” (*Id.*, at 1). The magistrate’s return included all exhibits offered into evidence at trial, including all exhibits submitted by Appellant (*id.*, at 25–64), and the six exhibits submitted by USAA FSB (*id.*, at 9–24). The magistrate’s return also catalogues the testimonial evidence received at trial, including from Appellant and from USAA FSB’s corporate witness. (*Id.*, at 1).

Appellant had the opportunity at trial to submit all evidence that she desired for the magistrate’s consideration. *See Ex parte Trustgard Ins. Co.*, 442 S.C. 485, 506, 900 S.E.2d 448,

459 (Ct. App. 2023) (“The purpose of the summons is to acquire jurisdiction of the person of the defendant and to give him notice of the action and an opportunity to appear and defend.”). South Carolina law has long recognized a strong presumption that judicial officers properly discharge their official duties unless the record affirmatively demonstrates otherwise. *Zimmerman v. S. Ry. Co.*, 59 S.C. 277, 281–82, 37 S.E. 834, 835 (1901); *see also S.C. Nat’l Bank v. Florence Sporting Goods, Inc.*, 241 S.C. 110, 115–16, 127 S.E.2d 199, 202 (1962) (“In the absence of any proof to the contrary, public officers are presumed to have properly discharged the duties of their offices and to have faithfully performed the duties with which they are charged”). This presumption makes sense, as a “trial judge’s role in a bench trial is to admit all evidence and then evaluate it in a non-jury setting.” *Brown v. Allstate Ins. Co.*, 344 S.C. 21, 27, 542 S.E.2d 723, 726 (2001). Appellant has not rebutted this presumption.

Appellant cites no transcript, ruling, or other competent evidence demonstrating that the magistrate refused to receive admissible evidence, ignored properly admitted exhibits, or otherwise failed to perform the judicial responsibilities entrusted to the magistrate’s court. Instead, Appellant asks this Court to infer error from unsupported factual assertions contained in her appellate brief. But these broad arguments do not carry Appellant’s burden of demonstrating that the circuit court’s dismissal was premised on an error of law or was unsupported by the facts. *See Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001) (“[S]hort, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review.”); *S.C. Dept. of Transp. v. Thompson*, 357 S.C. 101, 105, 590 S.E.2d 511, 513 (Ct. App. 2003) (“[a]rguments made by counsel are not evidence”).

To be sure, Appellant never identified *what* evidence the magistrate disregarded or failed to consider at trial. While she generally argues that the magistrate’s court “did not fully consider

Appellant’s evidence before dismissing the case,” she never takes the next step of articulating *specific* evidence that was not accepted or considered. (Appellant’s Br., at 6). Appellant’s failure to articulate any specific error is futile to her present appeal. *See State v. Lindsey*, 394 S.C. 354, 364, 714 S.E.2d 554, 559 (Ct. App. 2011) (holding that issues identified but not fully addressed in appellate brief precluded their consideration on appeal).

B. This Court cannot consider evidence not submitted to the magistrate’s court.

Appellant attaches nine color-copy exhibits to her initial brief, each bearing an exhibit label applied in the lower righthand corner. (*See* Appellant’s Br., at Ex. 1–9). None of these color-copy exhibits were submitted to the magistrate for consideration, introduced into evidence at the bench trial, or included in the magistrate’s return to the circuit court. Highlighting these improper submissions is Appellant’s Exhibit No. 8, which is dated October 10, 2025—more than one month after the September 8, 2025 bench trial before the magistrate’s court.

Appellant’s new exhibits are impermissible and cannot be considered by this Court. Rule 210(c), SCACR (“The Record shall not, however, include matter which was not presented to the lower court or tribunal.”); *see also Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 23, 602 S.E.2d 772, 779-80 (2004) (“Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court.”). This Court should not entertain Appellant’s attempt to supplement her case after an unfavorable ruling from the trial court.

II. Appellant waived any right to arbitration.

Appellant waived any right to arbitration that she may have possessed. *First*, Appellant never raised arbitration before the magistrate’s court, either in her initial complaint, in a motion to compel arbitration, or at trial. *Second*, Appellant invoked the judicial process, opting to sue USAA FSB a mere 10 days after Appellant’s duplicate credit card payments were processed and only demanding arbitration on appeal after the magistrate’s court dismissed her claims against USAA

FSB. To date, Appellant has still never submitted—to any court—any arbitration clause or agreement under which she claims a right to arbitration. This Court must therefore reject Appellant’s arbitration argument and affirm.

A. Appellant never raised any right to arbitration in the magistrate’s court.

Appellant contends that the Magistrate Court erred by failing to address Appellant’s request for arbitration, which she raised “verbally and in writing before and during the court process.” Appellant’s Br. 7. But the record refutes this argument.

It is axiomatic that an issue must be both “raised to and ruled upon” by the lower court “to be preserved for appellate review.” *Harris v. Bennett*, 332 S.C. 238, 245, 503 S.E.2d 782, 786 (Ct. App. 1998). “The circuit court, acting as an appellate court in a case heard by the magistrate, cannot consider questions that have not been presented to the magistrate.” *Indigo Assocs. v. Ryan Inv. Co.*, 314 S.C. 519, 431 S.E.2d 271 (Ct. App. 1993); *State v. Brown*, 358 S.C. 382, 387, 596 S.E.2d 39, 41 (2004) (“[I]t is error for [an appellate court] to consider facts not included in the magistrate’s return.”). Likewise, the parties to an appeal from the magistrate’s court are restricted to the arguments raised in the magistrate’s court. *Id.*; see *Elam*, 361 S.C. at 23, 602 S.E.2d at 779-80 (“Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court.”).

The first time Appellant raised arbitration was in her appeal to the circuit court, where Appellant argued that the magistrate’s “failure to enforce arbitration deprived Appellant of her contractual right to an impartial forum.” (Appeal of Magistrate’s Order, at 3). Appellant’s magistrate’s court complaint made no demand for arbitration, she never moved to compel arbitration in the magistrate’s court, she never raised arbitration during the bench trial in the magistrate’s court, and she never submitted any applicable arbitration clause or agreement to the magistrate’s court. (*See* Magistrate’s Return). So, Appellant had never “presented” the arbitration

issue to the magistrate, the arbitration issue was “not ruled on in the [magistrate’s] order,” and the arbitration issue was never “raised in an appropriate post-trial motion.” *See Harris*, 503 S.E.2d at 786. Therefore, the arbitration issue was not “preserved for appeal.” *Id.*

Because Appellant never raised arbitration before the magistrate’s court, the issue was not preserved and was waived on appeal to the circuit court. *See id.* Accordingly, the arbitration issue was also waived on Appellant’s appeal to this Court.

B. Appellant waived any right to arbitrate by prosecuting her case through trial.

Appellant sued USAA FSB in the Magistrate Court of Horry County ten days after her duplicative credit card payments were processed, rushing to court instead of pursuing arbitration.

It is well established that “[t]he right to enforce an arbitration clause . . . may be waived.” *Rhodes v. Benson Chrysler-Plymouth, Inc.*, 374 S.C. 122, 126, 647 S.E.2d 249, 251 (Ct. App. 2007). “In order to establish waiver, a party must show prejudice through an undue burden caused by delay in demanding arbitration.” *Id.* Compelling arbitration in this action would prejudice USAA FSB, which prepared for and litigated the merits of Appellant’s claims in a bench trial before the Magistrate’s Court nearly a year ago, in September 2025.

“As the party seeking arbitration,” Appellant “bore the onus to halt” the judicial process. *Evans v. Accent Manufactured Homes, Inc.*, 352 S.C. 544, 551, 575 S.E.2d 74, 77 (Ct. App. 2003). She never did so. Instead, Appellant sued USAA FSB in court, prosecuted her case to trial, presented her case in a bench trial before the Magistrate, and received a judgment. Now, unhappy with the result, Appellant seeks to compel arbitration on appeal. It would prejudice USAA FSB to allow Appellant to “belatedly assert a right to arbitrate at the eleventh hour” after the case has already been tried on the merits. *Rhodes*, 647 S.E.2d at 251.

CONCLUSION

For the above reasons, this Court should affirm the circuit court's dismissal.

Dated: September 8, 2026

Respectfully submitted,

/s/ Carson S. Phillips

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PROOF OF SERVICE

I hereby certify that a copy of the foregoing **BRIEF OF RESPONDENT** was sent via first-class U.S. Mail, postage prepaid, and addressed as follows:

Chyrdonna Dean
1509 Culbertson Avenue
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Appellant

This the 8th day of September 2026.

/s/ Carson S. Phillips

Carson S. Phillips (SC Bar No. 104921)