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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

Appellate Case No. 2026-000971

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

v.

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

INITIAL REPLY BRIEF

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TABLE OF CONTENTS

Table of Authorities	iii
Reply Argument	
1. Respondents concede the facts needed to meet all requirements imposed by the rule and statute’s text.....	1
2. Respondents’ textual argument defines “award” too narrowly and transplants “civil action” to the rule and statute’s recovery provision...	2
3. The FAA treats the judgment entered on Ms. Gray’s arbitration award the same as any other judgment in a civil action.....	5
4. Ms. Gray’s right to obtain offer of judgment interest is not dependent on or precluded by the consent order’s terms.....	7
Conclusion.....	8

TABLE OF AUTHORITIES

Case Law

South Carolina

<i>Arredondo v. SNH SE Ashley River Tenant, LLC</i> , 433 S.C. 69, 856 S.E.2d 550 (2021).....	4
<i>Austin v. Stokes-Craven Holding Corp.</i> , 387 S.C. 22, 691 S.E.2d 135 (2010).....	8
<i>Coleman v. Mariner Health Care, Inc.</i> , 407 S.C. 346, 755 S.E.2d 450 (2014).....	4
<i>C-Sculptures, LLC v. Brown</i> , 403 S.C. 53, 742 S.E.2d 678 (2013).....	3
<i>Gissel v. Hart</i> , 382 S.C. 235, 676 S.E.2d 320 (2009).....	3
<i>Hodge v. UniHealth Post-Acute Care of Bamberg, LLC</i> , 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018).....	5
<i>Utilities Construction Co., Inc. v. Wilson</i> , 321 S.C. 244, 468 S.E.2d 1 (Ct. App. 1996).....	8
<i>Solesbee v. Fundamental Clinical & Operational Services., LLC</i> , 438 S.C. 638, 885 S.E.2d 144 (Ct. App. 2023).....	5
<i>Thompson v. Pruitt Corp.</i> , 416 S.C. 43, 784 S.E.2d 679 (Ct. App. 2016).....	4

Other Jurisdictions

<i>Jules v. Andre Balazs Properties</i> , 146 S.Ct. 1209 (2026).....	5
<i>Menke v. Monchecourt</i> , 17 F.3d 1007 (7th Cir. 1994).....	7
<i>Phillips v. Merrill Lynch, Pierce, Fenner & Smith, Inc.</i> , 623 F. Supp. 493 (D. Minn. 1985).....	7

Statutes

9 U.S.C. § 4.....	4
9 U.S.C. § 13(c).....	6
S.C. Code Ann. § 15-35-400.....	<i>passim</i>

Court Rule

Rule 68, SCRCR.....	<i>passim</i>
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Secondary Sources

<i>Black's Law Dictionary</i> (5th ed. 1979).....	8
<i>Black's Law Dictionary</i> (12th ed. 2024).....	2

REPLY ARGUMENT

1. Respondents concede the facts needed to meet all requirements imposed by the rule and statute's text.

Rule 68, SCRCP and S.C. Code Ann. § 15-35-400 impose eight requirements for the award of offer of judgment interest. (Appellant's Br. at 7-8). Some apply to the offeror, others to the offeree, and others to the offer itself. Respondents' brief concedes the facts needed to satisfy all eight.

By their plain language, the eight requirements to recover offer of judgment interest are as follows:

1. The offeror must be a "party in a civil action." Rule 68(a), SCRCP.
2. The offer must be made "after commencement of any civil action" seeking money damages. S.C. Code Ann. § 15-35-400(A).
3. The offer must be signed by the offeror or her attorney. Rule 68(a), SCRCP; S.C. Code Ann. § 15-35-400(A).
4. The offer must be directed to the offeror's opposing party (i.e. offeree). *Id.*
5. The offer must state the sum of the offer. *Id.*
6. The offer must be served in a manner consistent with the South Carolina Rules of Civil Procedure. *Id.*
7. The offeree rejects the offer unless the offeree accepts it in a timely written filing. *Id.*
8. The offeror must obtain a verdict or determination greater than or equal to the offer's sum. Rule 68(b), SCRCP; S.C. Code Ann. § 15-35-400(B).

Based on statements in Respondents' brief, none of the operative facts for these requirements are disputed. Respondents admit a civil action on Ms. Gray's behalf was filed on May 21, 2024. (Resp't Br. at 1) ("Plaintiff commenced a civil action . . ."). Respondents then admit Ms. Gray's civil action sought damages for "injuries" suffered while a resident in Respondents' facility and

that her offer was filed after the civil action commenced. (Resp't Br. at 1) (stating that civil action commenced on May 21, 2024, and offer was filed on August 6, 2024).

Likewise, all requirements for the offer itself (Nos. 3-6) are either conceded or self-evident from the face of the document. Respondents do not challenge service and admit the offer stated its sum. (Resp't Br. at 1) ("Plaintiff filed and served an Offer of Judgment in the amount of \$350,000.00 . . ."). The offer was plainly directed to Respondents and bore the signature of Ms. Gray's attorney. (Offer of Judgment). Requirement No. 7 is conceded as Respondents admit they "did not respond" to Ms. Gray's offer. (Resp't Br. at 1). Finally, Respondents admit the amount Ms. Gray was awarded was more than the sum stated in the offer. (Resp't Br. at 1) ("the arbitrator issued an award in favor of [Ms. Gray] which exceeded \$350,000"). Thus, while Respondents argue the "plain meaning" of the rule and statute supports the circuit court's ruling, they can point to no express rule or statutory requirement that is unmet.

2. Respondents' textual argument defines "award" too narrowly and transplants "civil action" to the rule and statute's recovery provision.

Respondent describe their position as supported by a "plain reading" of the statute and rule's text. (Resp't Br. at 7). However, Respondents' construction of multiple key terms does not account for their full meaning or their context in the rule and statute.

The offer of judgment interest Ms. Gray seeks is "computed on the amount of the verdict or award from the date of the offer." Rule 68(b)(2), SCRCP; S.C. Code Ann. § 15-35-400(B)(2). Respondents argue the term "award" is limited to monetary grants by a jury or during a bench trial and cannot encompass the product of an arbitration proceeding. (Resp't Br. at 6). But Respondents point to no authority to support that limitation. In fact, all the tools courts use to interpret statutes show an arbitrator's ruling is an "award." The term's ordinary legal definition includes the result of an arbitration proceeding. *Black's Law Dictionary* (12th ed. 2024) (defining "award" as a "final

judgment or decision, esp[ecially] one by an arbitrator or by a jury assessing damages”). “Award” is also the word South Carolina appellate courts routinely use to describe the outcome of an arbitration proceeding. *E.g. C-Sculptures, LLC v. Brown*, 403 S.C. 53, 55, 742 S.E.2d 678, 680 (2013) (“Respondent prevailed at arbitration, receiving an award of damages . . .”); *Gissel v. Hart*, 382 S.C. 235, 241, 676 S.E.2d 320, 323 (2009) (“Generally, an arbitration award is conclusive . . .”).

Unsurprisingly, the document granting recovery to Ms. Gray was labeled “Arbitration Award,” and that is even how Respondents’ counsel has referred to it in this case. (Pla. Mem. in Supp. at 2) (Hearing Tr. at 11) (“The arbitrator makes a decision. And if the arbitrator makes a decision for the plaintiff, there’s going to be a monetary award.”). Respondents’ attempt to limit offer of judgment interest to money given by a jury also fails in the rule and statute’s context. The rule and statute expressly extend the recovery of offer of judgment interest beyond a “verdict” to include both an “award” and a “determination” in favor of the offeror. Rule 68(b), SCRCPP; S.C. Code Ann. § 15-35-400(B). By adding “award” and “determination” to “verdict,” the rule makers and legislature chose to apply offer of judgment interest beyond the product of a jury trial. In both dictionary and colloquial usage, “award” encompasses the product of an arbitration proceeding.

Respondents’ also err in their view of the statutory term “civil action.” They argue this term is key limiting language defining which types of recovery can lead to offer of judgment interest. (Resp’t Br. at 9) (concluding rule and statute “apply only to civil actions, not to arbitrations”). However, that does not line up with the text. The sole use of “civil action” in the rule and statute concerns the identity of the offeror and the timing of the offer. Rule 68(a), SCRCPP (offeror may only be “party in a civil action”); S.C. Code Ann. § 15-35-400(A) (offer may be filed only “after commencement of any civil action . . .”). The term is not even in the subsection

governing the offer of judgment interest award process. Rule 68(b), SCRCP; S.C. Code Ann. § 15-35-400(B). Nor are most of the other terms (e.g. trial, clerk of court, court costs) Respondents argue exclude a judgment following an arbitration award from offer of judgment interest. At best for Respondents, these terms only indicate an offer must be made in a civil action, not that recovery of offers of judgment interest is limited to some litigation-specific subset of judgments. The operative section is bounded by the broader collection of terms discussed above (verdict, determination, award), not “civil action.”

Finally, Respondents are wrong in several respects to claim Ms. Gray “had no legal right” to file her civil action just because Respondents produced an arbitration contract. (Resp’t Br. at 7). For one thing, this argument does not affect the pertinent statutory analysis at all. Respondents admit there was a “civil action,” and that that the offer was made within it. That is all Rule 68(a) and section 15-35-400(A) require. Additionally, Respondents are proposing a very dangerous rule by suggesting no civil action may be filed anytime there is a purported arbitration agreement. That would preclude a person in Ms. Gray’s position from using litigation to challenge (1) the formation of the purported contract; (2) whether her claims fall within the contract’s scope; and (3) whether certain damage, discovery, or evidentiary limitations are enforceable. The Federal Arbitration Act (“FAA”) expressly allows for court proceedings on those sorts of questions. 9 U.S.C. § 4 (describing court proceedings to resolve disputes over “the making of the agreement for arbitration”). To hold that a person lacks the right to raise these challenges in a civil action would be especially detrimental for residents of long-term care facilities where purported arbitration contracts are often plagued by formation issues or loaded with unconscionable terms. *See e.g. Arredondo v. SNH SE Ashley River Tenant, LLC*, 433 S.C. 69, 856 S.E.2d 550 (2021); *Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 755 S.E.2d 450 (2014); *Thompson v. Pruitt Corp.*, 416

S.C. 43, 784 S.E.2d 679 (Ct. App. 2016); *Solesbee v. Fundamental Clinical & Operational Servs., LLC*, 438 S.C. 638, 650-51, 885 S.E.2d 144 (Ct. App. 2023); *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018). Ms. Gray’s later decision to accept arbitration rather than challenge the contract did not mean she “had no legal right” to file the civil action.

3. The FAA treats the judgment entered on Ms. Gray’s arbitration award the same as any other judgment in a civil action.

Looking beyond the rule and statute’s text, Respondents argue arbitration is “fundamentally distinct” from a “civil action” in its procedure and function. (Resp’t Br. at 7-10). However, while there are undoubtedly differences in litigation and arbitration procedures, none of them affect the offer of judgment rule/statute’s applicability or operation. In fact, substantial authority shows courts retain a role after a civil action is referred to arbitration and that the court must treat a judgment on an arbitration award the same as any other.

Respondents’ attempt to erect a barrier between arbitration and “civil action” is undermined when they disavow an earlier flawed argument. (Resp’t Br. at 8) (renouncing earlier claim that this “ceased to be a civil case” once it was referred to arbitration). It is also undercut by Respondents’ continued use of Ms. Gray’s civil action to their advantage while the arbitration proceedings were ongoing. (App. Br. at 4) (citing Stipulation of Dismissal). Respondents do not explain why the Court should consider the arbitration and civil action “fundamentally distinct” when Respondents used the latter to procure dismissal of several Dominion entities from this dispute. Respondents now acknowledge an ongoing supervisory role for courts after a case is referred to arbitration. (Resp’t Br. at 9) (citing *Jules v. Andre Balazs Props.*, 146 S.Ct. 1209 (2026)). *Jules* went on to hold the “civil action” in which a court enters judgment on an arbitration award is the same one in place before the order to arbitrate was filed. 146 S.Ct. at 1220-21. Thus,

even if the term “civil action” was part of the rule/statute’s offer of judgment interest requirement, it would be met here because the civil action where Ms. Gray sought offer of judgment interest is the same one in which she made the offer.

Respondents’ main retort is that a court’s ongoing role is limited at the award confirmation stage. (Resp’t Br. at 10) (“ministerial rather than adjudicative”). Even if that is true, it would not help Respondents here. Ms. Gray’s motion asked the circuit court not to decide the merits of whether Respondents provided reasonably competent nursing care but only to do the mathematical calculation laid out in the offer of judgment rule/statute. In other words, awarding offer of judgment interest fits within even Respondents’ view of a court’s role at this procedural stage because it involves a largely ministerial act, not an adjudication. Rule 68(b), SCRCF; S.C. Code Ann. § 15-35-400(B) (party seeking offer of judgment “shall be allowed to recover” when textual requirements are met).

Finally, the Court should reject Respondents’ assertion that the FAA makes judgments entered on an arbitration award “fundamentally distinct” from judgments following a jury or bench trial. (Resp’t Br. at 10-13). Respondents acknowledge the FAA as stating a judgment entered on an arbitration award has “the same force and effect” as any other. (Resp’t Br. at 11) (quoting 9 U.S.C. § 13(c)). Yet, they argue section 13 “has nothing to do with the application of” South Carolina’s offer of judgment rule/statute. (Resp’t Br. at 11). Respondents overlook the very next clause in section 13(c). Ms. Gray’s judgment on the arbitration award is “subject to all the provisions of law relating to, a judgment in an action.” 9 U.S.C. § 13(c). That language is why multiple courts have used section 13(c) to award statutory interest for judgments following arbitration awards. (App. Br. at 14-15) (collecting cases). Respondents push all these cases aside, arguing none addressed pre-award interest. (Resp’t Br. at 11). But that argument is both incorrect

and irrelevant. One of those cases did involve the application of a state statute to award prejudgment interest. *Phillips v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 623 F. Supp. 493, 494 (D. Minn. 1985) (“state law governs the rate of prejudgment interest in this case”). Even for the others, a distinct understanding of the governing FAA provision emerges. Section 13(c) calls for courts to apply interest statutes to a judgment on an arbitration award in the same way as it would on a judgment following a jury trial.¹

4. Ms. Gray’s right to obtain offer of judgment interest is not dependent on or precluded by the consent order’s terms.

Finally, Respondents turn to the consent order referring Ms. Gray’s claims to arbitration as a basis for excluding offer of judgment interest. Both versions of this argument fail. First, Respondents contend Ms. Gray has staked her pursuit of offer of judgment interest to the consent order. (Resp’t Br. at 12). That is incorrect. Ms. Gray’s brief does not rely on the consent order’s terms at all. The dispute is a matter of pure statutory interpretation, and Ms. Gray does not need any particular language in the consent order to give her what the rule/statute already promise. Second, Respondents seem to suggest the consent order’s provisions effectively preclude offer of judgment interest. (Resp’t Br. at 13) (listing the type of “damages” available in tort claims). Accepting for argument’s sake that the consent order’s language has any bearing on this appeal,

¹ Respondents cite one older federal appellate court ruling to conclude federal law constrains courts in a way that would preclude granting offer of judgment interest. (Resp’t Br. at 10) (quoting *Menke v. Monchecourt*, 17 F.3d 1007, 1009 (7th Cir. 1994)). However, *Menke* says only that “nothing in the [FAA] itself” granted a district court power to award attorney fees. 17 F.3d at 1009. Ms. Gray is not claiming the FAA as an independent source of authority. The circuit court’s authority lies in Rule 68 and section 15-35-400. Ms. Gray argues only that the FAA calls for arbitration awards and jury verdicts to be treated the same, and FAA section 13(c) says that explicitly. Plus, the constraints applied in *Menke* were mostly evidentiary in nature. The arbitration victor sought attorney fees which would require a court to turn a confirmation proceeding into a full evidentiary hearing receiving proof of the attorney’s work, billing rate, etc. *Menke*, 17 F.3d at 1009. No evidentiary hearing is required to award Ms. Gray the designated 8% interest laid out by rule/statute.

its terms are plenty broad enough to permit the recovery Ms. Gray seeks. The consent order states that she has access to “[a]ll remedies that would otherwise be available to [her] under applicable . . . state . . . laws.” (Consent Order ¶ 4). “Remedy” is an expansive term encompassing “the means by which a right is enforced or the violation of a right is prevented, redressed, or compensated.” *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 691 S.E.2d 135 (2010) (quoting *Black’s Law Dictionary* 1163 (5th ed. 1979)). The grant of fees and costs by statute “epitomizes the definition of a remedy.” *Id.*; see also *Utilities Constr. Co., Inc. v. Wilson*, 321 S.C. 244, 468 S.E.2d 1, 3 (Ct. App. 1996) (describing fee statute as a “remedy” the Legislature intended to afford to prevailing party).

CONCLUSION

Based on the arguments above and those in Ms. Gray’s earlier brief, the circuit court’s order should be reversed. Ms. Gray meets all requirements imposed by Rule 68 and section 15-35-400 to obtain offer of judgment interest on the judgment entered on her arbitration award.

Respectfully submitted,

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