

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas
Frank R. Addy, Jr., Circuit Court Judge

Case No. 2016-CP-40-04463
Appellate Case No. 2023-000556

RECEIVED

Oct 23 2026

SC Court of Appeals

Jean Watkins, as Personal Representative
of the Estate of Mildred Watkins,

Respondent,

v.

Sterling Healthcare, Inc., Country
Wood Nursing Center, LLC, and
Guardian Resources, LLC,

Appellants.

APPELLANTS' RETURN TO RESPONDENT'S PETITION FOR REHEARING

Appellants submit this Return in response to the Court's letter of October 13, 2026. They respectfully request that the Court deny Respondent's Petition for Rehearing.

To prevail on a petition for rehearing, the petitioner "must demonstrate the Court overlooked or misapprehended" the argument. *Kennedy v. S.C. Ret. Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001); Rule 221(a), SCACR. "The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time." *Kennedy*, 349 S.C. at 532, 564 S.E.2d at 322 (citation omitted).

The Petition identifies nothing the Court overlooked or misapprehended. Its first ground misstates the Court's holding and reargues the evidence. Its second ground raises an argument that, by Respondent's own admission, was never presented to the circuit court or briefed in this Court.

I. The Court Applied the Correct Standard of Review and Correctly Construed Section 15-32-530(C)(1).

Respondent contends the Court substituted its factual judgment for that of the circuit court. It did not. The Court did not weigh competing evidence of intent; it held there was none on the dispositive element.

The Court found “no evidence that staff acted to intentionally harm” Mrs. Watkins. It found “no direct testimony or expert medical testimony presented that would support a finding of intentional harm.” (Op. at 10.) It held that “no evidence beyond mere speculation was introduced to support the conclusion that staff intended to harm Watkins,” and that “[a]t best, the evidence raised suspicion that some of her injuries were intentionally inflicted.” (Op. at 10–11.)

Those holdings apply the very standard Respondent invokes. (Pet. at 1–2.) “In an action at law tried without a jury, an appellate court’s scope of review extends merely to the correction of errors of law. The Court will not disturb the trial court’s findings unless they are found to be without evidence that reasonably supports those findings.” *Temple v. Tec-Fab, Inc.*, 381 S.C. 597, 599–600, 675 S.E.2d 414, 415 (2009) (citation omitted). A finding without evidentiary support is precisely the type of finding *Temple* permits an appellate court to correct.

Speculation and suspicion do not reasonably support a finding. “[T]he existence of a fact cannot rest in speculation, surmise or conjecture.” *Gastineau v. Murphy*, 331 S.C. 565, 570 n.2, 503 S.E.2d 712, 714 n.2 (1998). For circumstantial evidence to support a finding, “the circumstances must lead to the conclusion with reasonable certainty and must have sufficient probative value to constitute the basis for a legal inference, not for mere speculation.” *Id.*

That rule applies with particular force where, as here, the finding requires clear and convincing proof of a defendant’s intent. In *Ralph v. McLaughlin*, the Supreme Court “carefully reviewed the record in a light most favorable to” the parties seeking punitive damages and found

“no evidence creating a question of fact.” 432 S.C. 640, 651, 856 S.E.2d 154, 159–60 (2021). It held as a matter of law that the suggestion the record established “clear and convincing evidence of [the defendants’] malicious intent . . . was not merely speculation, but absurd.” *Id.* at 651, 856 S.E.2d at 160. Deference to the fact-finder does not extend to findings the record cannot support.

Respondent also does not address why the record was devoid of evidence of intent. The only direct testimony on intent was Respondent’s lay opinion that her mother’s condition must have resulted from intentional abuse. Appellants objected to that testimony. This Court held it was improperly admitted under Rule 701, SCRE, because it was “mere speculation,” because any testimony about the cause of Mrs. Watkins’s injuries “required specialized medical knowledge,” and because it was not corroborated by the medical records. (Op. at 8–9.) The Petition does not challenge that ruling.

With the excluded opinion set aside, what remains is evidence the Court found “could reasonably be attributed to gross negligence or even accidental injury.” (Op. at 10.) Evidence equally consistent with an unintentional explanation does not lead to a finding of intent “with reasonable certainty,” *Gastineau*, 331 S.C. at 570 n.2, 503 S.E.2d at 714 n.2, much less by clear and convincing evidence.

Finally, the Court’s holding rests on the construction of section 15-32-530 itself. The Court recognized that “the legislature clearly intended to differentiate between these two types of conduct in the statute.” (Op. at 10.) Reckless conduct supports punitive damages and an enhanced cap under subsection (B). The cap may be set aside under subsection (C)(1) “only when the defendant intended to harm and did harm the claimant.” (*Id.*) The circuit court’s finding of “callous indifference and intent to harm” merged those categories. (Op. at 7.)

“Determining the proper interpretation of a statute is a question of law,” reviewed de novo. *Garrison v. Target Corp.*, 435 S.C. 566, 576, 869 S.E.2d 797, 803 (2022) (citation omitted). A trial court’s misapplication of a statutory damages provision is an error of law the appellate court corrects. *See Temple*, 381 S.C. at 600, 675 S.E.2d at 415 (agreeing that the trial court’s award of statutory treble damages “was controlled by an error of law”). The Petition does not engage with that statutory distinction at all.

II. Respondent Abandoned the Effective-Date Argument, and It Is Not a Proper Ground for Rehearing.

Respondent’s second ground is that section 15-32-530 does not apply to this action under the effective-date provision of 2011 Act No. 52. Respondent concedes this point “was not raised before the trial court or in Respondent’s brief before the Court of Appeals” and was raised for the first time at oral argument. (Pet. at 3 n.1.) That concession is dispositive.

First, the Court cannot have overlooked or misapprehended an argument that was never presented to it in the briefs. *See Kennedy*, 349 S.C. at 532, 564 S.E.2d at 322 (denying rehearing where “[t]he argument was not considered because it was never presented to this Court”). A point first raised at oral argument, never raised or ruled upon below, and never addressed in the briefs is not preserved. *Tucker v. Doe*, 413 S.C. 389, 396 n.1, 776 S.E.2d 121, 125 n.1 (Ct. App. 2015); *see also Bochette v. Bochette*, 300 S.C. 109, 112, 386 S.E.2d 475, 477 (Ct. App. 1989).

Second, Rule 220(c), SCACR, does not rescue the argument. A respondent may ask this Court to affirm on a ground appearing in the record, but it must do so in its brief. Rule 208(b)(2), SCACR. A respondent “may abandon an additional sustaining ground . . . by failing to raise it in the appellate brief.” *I’On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000). Rule 208(b)(1)(B) adds that “[o]rdinarily, no point will be considered which is not

set forth in the statement of the issues on appeal.” Respondent did not raise this argument in its brief. It is abandoned.

Third, even a properly preserved sustaining ground is addressed only in this Court’s discretion. “An appellate court may not rely on Rule 220(c), SCACR, when the reason does not appear in the record, or when the court believes it would be unwise or unjust to do so in a particular case.” *I’On*, 338 S.C. at 420, 526 S.E.2d at 723. An appellate court “likely would perceive it as being unfair or unwise to resolve a case on a ground never mentioned by the respondent prior to appeal.” *Id.* at 421, 526 S.E.2d at 724.

The Supreme Court has applied that principle specifically to sustaining grounds omitted from the brief. It is “reticent to invoke an alternative sustaining ground where the ground is not raised in the appellate brief,” because “[i]nvolving an additional sustaining ground under such circumstances would generally be unfair to an unaware appellant.” *Alexander v. Houston*, 403 S.C. 615, 620 n.4, 744 S.E.2d 517, 520 n.4 (2013); accord *Dixon v. Pattee*, 442 S.C. 233, 260, 898 S.E.2d 158, 172 (Ct. App. 2023). In *Alexander*, the respondents had at least referenced the omitted ground in the circuit court. The Supreme Court nonetheless declined to reach it because it was not raised in the appellate brief. 403 S.C. at 620 n.4, 744 S.E.2d at 520 n.4.

Respondent’s position here is weaker. Respondent never mentioned this ground in the circuit court and did not mention it in its brief. It first surfaced when Respondent’s counsel raised it at oral argument. When the panel asked Appellants’ counsel about it, counsel advised that this was the first time Appellants had heard the argument and that he would need to review it before offering a position. Appellants have never had an opportunity to brief it. Granting rehearing on that basis would be exactly the unfair result *I’On* and *Alexander* warn against.

Fourth, Respondent’s new position contradicts the judgment it is defending. The circuit court applied section 15-32-530 throughout: it refused to “reward [Appellants] with the protections of [section] 15-32-530[(A)],” and it removed the cap under subsection (C)(1). (Op. at 7.) Respondent defended that ruling in this Court, and it argued that the survival and wrongful death awards should be combined “for the purpose of determining whether the punitive damages award exceeds the statutory cap.” (Op. at 9 n.3.) “[O]ne cannot present and try a case on one theory and then attack the result below by presenting another theory on appeal.” *Kennedy*, 349 S.C. at 533, 564 S.E.2d at 323. Having litigated this case under section 15-32-530 when the statute’s exceptions served its position, Respondent cannot obtain rehearing on the theory that the statute never applied. “[A]ppellate courts, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked.” *Id.* (quoting *State v. Austin*, 306 S.C. 9, 19, 409 S.E.2d 811, 817 (Ct. App. 1991)).

CONCLUSION

The Petition identifies nothing the Court overlooked or misapprehended. Appellants respectfully request that the Court deny Respondent’s Petition for Rehearing.

Respectfully submitted this 23rd day of October, 2026.

/s/ Robert L. Eaton

Robert L. Eaton
SC Bar No. 106005
LEWIS BRISBOIS BISGAARD & SMITH LLP
4000 Faber Place Drive, Suite 300
North Charleston, South Carolina 29405
(843) 920-0269

Attorney for Appellants

CERTIFICATE OF SERVICE

I certify that on this date, I served this APPELLANTS' RETURN TO RESPONDENT'S PETITION FOR REHEARING upon all counsel of record via e-mail as follows:

Jennifer Randolph Purdy, Esq.
PURDY LAW, LLC
828 Woodrow Street
Columbia, SC 29205
Jennifer@purdylawsc.com

Counsel for Respondent

Graham L. Newman, Esq.
CHAPPELL, CHAPPELL, & NEWMAN, ATTORNEYS, LLC
PO Box 61170
Columbia, SC 29260
Graham@chappell.law

Counsel for Respondent

RECEIVED
Oct 23 2026
SC Court of Appeals

This 23rd day of October, 2026.

/s/ Robert L. Eaton
Robert L. Eaton
SC Bar No. 106005
LEWIS BRISBOIS BISGAARD & SMITH LLP
4000 Faber Place Drive, Suite 300
North Charleston, South Carolina 29405
(843) 920-0269

Attorney for Appellants