

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Larry B. Hyman, Circuit Court Judge

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Case Nos. 2009-CP-26-1281  
2009-CP-26-3127  
2009-CP-26-3128

(Court of Appeals Case No. 2014-001344)

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J. Gregory Hembree, on behalf of the Horry County Police Department, Respondent,

v.

Taurus .38 Special SN: sg53109, 1994 Monaco RV VIN: 1RF120611R1010972 and  
One Thousand Eight Hundred and Forty Five Dollars (\$1,845.00) Defendant  
Property,

Michaela Albin, Individually and as Personal Representative of the Estate of Michael  
J. Albin, Appellant

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RESPONDENT'S RETURN TO PETITION FOR REHEARING

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SC Court of Appeals

## RETURN

Respondent J. Gregory Hembree, on behalf of the Horry County Police Department opposes Appellant's Petition for Rehearing.

## MEMORANDUM

This Court correctly affirmed the circuit court's order. As to the award of attorneys' fees, Appellant's Petition has not presented any evidence that the circuit court abused its discretion in denying Appellant attorney's fees. *See Video Gaming Consultants, Inc. v. S.C. Dep't of Revenue*, 358 S.C. 647, 649-50, 595 S.E.2d 890, 891 (Ct. App. 2004) ("On appeal, the [circuit] court's decision regarding an award of attorney's fees under [section 15-77-300 of the South Carolina Code (Supp. 2015)] will not be disturbed absent an abuse of discretion.").

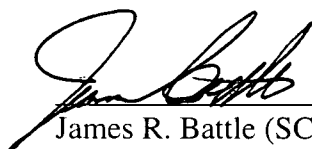
Moreover, Appellant's Petition has not presented any substantive arguments as to why S.C. Code Ann. § 15-77-310, which required Appellant to file a petition and affidavit for attorneys' fees within 30 days from the county clerk's filing of this Court's remittitur, should not apply to her. Appellant's argument that "the matter was not disposed of until after additional trial days" is not supported in the Record on Appeal or South Carolina case law. See Appendix pp. 3 & 4; *McDowell v. S.C. Dep't of Soc. Services*, 300 S.C. 24, 26-27, 386 S.E.2d 280, 281 (Ct. App. 1989) (noting that "final disposition" of a case occurs when the clerk of the court from which the party appealed files the appellate court's remittitur.).

As to prejudgment interest and loss of use, Appellant's Petition has not presented any arguments to justify her failure to file a motion to alter or amend the

circuit court's order pursuant to Rule 59(e), SCRPC and thereby preserve these issues for appeal.

### CONCLUSION

For the reasons stated above, Respondent requests this Court deny Appellant's Petition for Rehearing.



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The Honorable Jenny Abbott Kitchings  
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South Carolina Court of Appeals  
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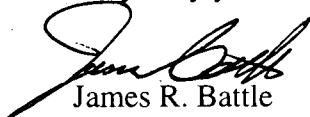
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May 3, 2016  
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RE: J. Gregory Hembree, et al. v. Michaela Albin, et al.  
Appellate Case No.: 2014-001344

Dear Madam Clerk:

Enclosed please find one original and six (6) copies of Respondent's Return to Petition for Rehearing and Proof of Service in the above referenced matter. By copy of this letter I am serving the attorney for the Appellant with a copy of these documents. Please return a clocked copy of the Proof of Service. I have enclosed an extra copy of the Proof of Service, as well as a self-addressed, stamped envelope for your convenience.

Very truly yours,

  
James R. Battle

Enclosure stated

Cc: David Canty

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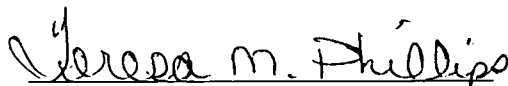
PROOF OF SERVICE

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Teresa Phillips certifies that she is an employee with the Battle Law Firm, LLC,  
attorneys for Respondent J. Gregory Hembree, on behalf of the Horry County Police  
Department, and that she has mailed Respondent's Return to Petition for Rehearing to  
the address shown this 3rd day of May, 2016 with the proper postage attached thereto.

ADDRESSEE:

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Teresa Phillips  
Battle Law Firm, LLC

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