THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B. Hyman, Circuit Court Judge

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SC Court of Appeals

Case No: 2014-CP-26-1684

Archie Howell,..... Respondent.

v.

Christopher Chabot, d/b/a Autoworks, ... Appellant.

RESPONDENT'S FINAL BRIEF

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II. STATEMENT OF THE CASE:

This case arises out of mechanical repairs to Respondent Archie Howell's vehicle at Appellant Christopher Chabot's automotive repair shop - Autoworks. Mr. Howell entrusted his vehicle with Mr. Chabot. Instead of fixing the vehicle, Mr. Chabot negligently destroyed the vehicles' engine. Mr. Howell filed suit against Mr. Chabot for breach of contract and negligence. The circuit court affirmed the magistrate's judgment in favor of Mr. Howell.

A. Procedural History:

On September 9, 2013, Respondent filed his Complaint alleging damages in the amount of Seven Thousand Five Hundred 00/100 ($7,500.00) Dollars.[1] The Complaint asserts five causes of action, including: (1) breach of contract; (2) negligence; (3) breach of warranty; (4) misrepresentation; and (5) violation of South Carolina Consumer Protection Code.[2] On October 14, 2013, Appellant filed his Answer denying Respondent's allegations.[3]

[1] Complaint, September 9, 2013. R.p. 2.

[2] Complaint, September 9, 2013. R.p. 2.

[3] Answer, October 14, 2013. R.p. 6.

On January 22, 2014, a bench trial was held at the Surfside Beach Magistrate Court with The Honorable G. Derek Blanton presiding. Judge Blanton found judgment in favor of Respondent in the amount of Three Thousand Nine Hundred Ninety-Five 00/100 ($3,995.00) Dollars.[4] On March 17, 2014, Appellant filed a Notice of Appeal of the Magistrate Court's decision.[5] On October 1, 2014, a hearing was held at the Horry County Circuit Court with The Honorable Larry B. Hyman, Jr. presiding. Judge Hyman affirmed the Magistrate Court's judgment.[6] On October 2, 2014, Appellant filed a Motion to Vacate and Motion to Dismiss.[7] On October 6, 2014, Judge Hyman filed an Order dismissing Appellant's Appeal.[8]

On October 13, 2014, Appellant filed a Motion for Reconsideration, Motion for Judgment Notwithstanding the Verdict and/or Alter or Amend the Judgment, Motion for Judicial Review, Motion for Judicial Review of Damages, and Motion for Trial *De Novo*.[9] A hearing was scheduled for May 4, 2015, but Appellant failed to appear at the hearing. Accordingly, Judge Hyman filed an Order dismissing Appellant's Motion as a result of Appellant's failure to prosecute.[10] Thereafter, Appellant filed a Notice of Appeal on June 5, 2015.[11]

B. Statement of Facts

1. Damages to vehicle.

This case arises out of mechanical repairs conducted on a 2000 BMW 745i (hereinafter the "vehicle") owned by Archie Howell by Christopher Chabot d/b/a Autoworks.[12] Autoworks is

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[4] Transcript of Judgment for Plaintiff, March 20, 2014. R.p. 101.
[5] Notice of Appeal, March 17, 2014. R.p. 15.
[6] Order, October 6, 2014. R.p. 83.
[7] Motion to Vacate and Motion to Dismiss Plaintiff's Claim, October 2, 2014. R.p. 26.
[8] Order, October 6, 2014. R.p. 83.
[9] Motion for Reconsideration, October 13, 2014. R.p. 85.
[10] Order, May 7, 2015. R.p. 95.
[11] Notice of Appeal, June 5, 2015. R.p. 98.
[12] Complaint, September 9, 2013. R.p. 2.

located in Horry County and is owned and operated by Christopher Chabot.[13] Autoworks repairs mostly European cars such as Volvo, Audi, and BMW.[14]

Mr. Howell decided to take the vehicle to Mr. Tunning at Twisted Off Road after he noticed white smoke coming from the exhaust pipe.[15]

Once Twisted Off Road received the vehicle, Mr. Tunning began researching the issues Mr. Howell was having with the vehicle.[16] It became apparent to Mr. Tunning, both from his own experiences with other vehicles and through research, that the issues Mr. Howell was having with the vehicle were very common among the "7 series" BMWs.[17] Mr. Tunning determined that the valve seals in the vehicle's engine needed to be replaced.[18]

Mr. Howell gave Mr. Tunning Six Hundred 00/100 ($600.00) Dollars to purchase and install the new valve seals.[19] Once Mr. Tunning began to disassemble the engine by first taking the engine cover off, he decided to consult with Mr. Chabot.[20] Having worked with Mr. Chabot in the past, Mr. Tunning knew that Mr. Chabot worked on BMWs.[21] Mr. Tunning contacted Mr. Chabot on behalf of Mr. Howell. Mr. Chabot agreed to install the valve seals on Mr. Howell's vehicle.[22] Mr. Chabot agreed that if he was provided the already purchased valve seals for the

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[13] Complaint, September 9, 2013. R.p. 2.
[14] January 22, 2014 Transcript, R.p. 78, lines 8-9.
[15] January 22, 2014 Transcript, R.p. 46, lines 3-10.
[16] January 22, 2014 Transcript, R.p. 46, lines 10-13; Rp. 61.
[17] January 22, 2014 Transcript, R.p. 61, lines 1-9.
[18] January 22, 2014 Transcript, R.p. 60, line 18-R.p. 61, line 9.
[19] January 22, 2014 Transcript, R.p. 46, line 14; R.p. 52, lines 25-27.
[20] January 22, 2014 Transcript, R.p. 61, line 25- R.p. 62, lines 9.
[21] January 22, 2014 Transcript, R.p. 62, lines 2-4.
[22] January 22, 2014 Transcript, R.p. 62, lines 6-7.

vehicle, he would do the work at a discounted rate of One Thousand Five Hundred 00/100 ($1,500.00) Dollars.[23]

Before taking the vehicle to Mr. Chabot the vehicle had no problems and drove fine except for smoke coming from the exhaust at the initial start.[24]

After waiting several weeks, Mr. Howell and Mr. Tunning went to Autoworks to check the status of the vehicle.[25] When they arrived at Autoworks, they observed the hood to the vehicle was open and the replaced old valve seals were in a box next to the vehicle.[26] The vehicle's battery was being charged.[27] Mr. Tunning and Mr. Howell waited at Autoworks for the battery to become fully charged.[28]

Once the battery had a full charged, the vehicle's engine was started in the presence of Mr. Tunning and Mr. Howell.[29] Both Mr. Tunning and Mr. Howell were standing in front of the vehicle with the hood up.[30] Immediately, Mr. Tunning heard a loud banging sound emitting from the back left-side of the engine.[31] Immediately, Mr. Tunning instructed Mr. Chabot's employee to turn off the engine because something was obviously wrong.[32]

Within a few minutes Mr. Tunning and Mr. Chabot agreed that the timing was off.[33] Mr. Howell's vehicle has an interference engine.[34] At trial Mr. Tunning testified the aligning of cam

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[23] January 22, 2014 Transcript, R.p. 62, lines 14-24.
[24] January 22, 2014 Transcript, R.p. 50, lines 1-11; R.p. 75, lines 7-21.
[25] January 22, 2014 Transcript, R.p. 47, lines 8-23; R.p. 64, lines 7-18.
[26] January 22, 2014 Transcript, R.p. 64, lines 14-20.
[27] January 22, 2014 Transcript, R.p. 64, lines 20-21.
[28] January 22, 2014 Transcript, R.p. 64, lines 25-28.
[29] January 22, 2014 Transcript, R.p. 65, lines 3-4.
[30] January 22, 2014 Transcript, R.p. 65, lines 4-7.
[31] January 22, 2014 Transcript, R.p. 65, lines 7-10.
[32] January 22, 2014 Transcript, R.p. 65, lines 7-10.
[33] January 22, 2014 Transcript, R.p. 65, lines 14-18.
[34] January 22, 2014 Transcript, R.p. 67, lines 9 - 24.

shafts in an interference engine is very important to ensure the timing is not off.[35] If the timing is off, pistons in the engine will damage the other pistons and destroy the engine.[36] To ensure that the timing is correct, a special tool is needed to align the cam shafts.[37] Without this tool, it is impossible to keep sprockets on the end of the cam shafts in line to put a belt back on and ensure that the timing is not off.[38] Mr. Tunning testified he gave Mr. Chabot money to order this tool, but it is unclear whether or not Mr. Chabot actually purchased the tool.[39]

Mr. Chabot admitted "I wish you all didn't hear that, but I'll have it fixed."[40] Mr. Chabot asked for several more days to fix the car and told Mr. Tunning and Mr. Howell not to worry about it, because he would have the car fixed.[41]

At trial, Mr. Chabot testified that the events surrounding the vehicle were "all very hazy because [he did not] remember this car."[42] He also testified he "did not remember much . . . regarding the car – at all," and had no "recollection about this . . . particular vehicle."[43]

After giving Mr. Chabot additional time to make the repair, but to no avail, Mr. Howell had his vehicle towed to Billy Hughes, owner of Hughes Automotive.[44] Hughes Automotive inserted a camera into the engine and determined the engine was destroyed.[45]

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[35] January 22, 2014 Transcript, R.p. 67, lines 9 - 24.
[36] January 22, 2014 Transcript, R.p. 67, lines 9 - 24.
[37] January 22, 2014 Transcript, R.p. 67, lines 1-8.
[38] January 22, 2014 Transcript, R.p. 67, lines 1-8.
[39] January 22, 2014 Transcript, R.p. 66, lines 15-24.
[40] January 22, 2014 Transcript, R.p. 71, lines 1-3.
[41] January 22, 2014 Transcript, R.p. 71, lines 3-6.
[42] January 22, 2014 Transcript, R.p. 76, lines 26-28. R.p. 44, lines 23-27.
[43] January 22, 2014 Transcript, R.p. 79, lines 14-26.
[44] January 22, 2014 Transcript, R.p. 51, lines 1-14.
[45] January 22, 2014 Transcript, R.p. 71, line 26 – R.p. 72, line 16.

After finding out the engine in the vehicle was destroyed, Mr. Howell researched that the value of the vehicle prior to the engine being destroyed was Six Thousand Two Hundred 00/100 ($6,200.00) Dollars.[46]

Because of the destroyed engine, Mr. Howell sold the vehicle to Mr. Hughes for Three Thousand 00/100 ($3,000.00) Dollars.[47] Additionally, Mr. Howell testified he was also out of pocket for Six Hundred 00/100 ($600.00) Dollars for the cost of the valves, and Sixty 00/100 ($60.00) Dollars to have the vehicle towed from Autoworks to Hughes Automotive. [48]

2. The January 22, 2014 bench trial.

On January 22, 2014, a trial was held at the Surfside Beach Magistrate Court with The Honorable G. Derek Blanton presiding.[49] Prior to trial, Judge Blanton disclosed to both parties that he had served on the Surfside Beach Rotary with Mr. Howell's wife, but was no longer a member of the Rotary since 2008.[50] Judge Blanton also stated that he knew of Mr. Howell, but did not socialize or have any dealing with him.[51] Judge Blanton stated that he did not have a conflict, but if either party had any concerns about him trying the case, he would recuse himself.[52] Without objection, both parties indicated they had no objections with Judge Blanton hearing the case.[53] Mr. Chabot did not ask Judge Blanton to recuse himself.

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[46] January 22, 2014 Transcript, R.p. 52, lines 12-15.
[47] January 22, 2014 Transcript, R.p. 51, line 23 –R.p. 52, line 8.
[48] January 22, 2014 Transcript, R.p. 52, line 25 –R.p. 53, line 11.
[49] January 22, 2014 Transcript, R.p. 42.
[50] Testimony of Trial, dated April 30, 2014. R.p. 106.
[51] Testimony of Trial, dated April 30, 2014. R.p. 106.
[52] Testimony of Trial, April 30, 2014. R.p. 106.
[53] Testimony of Trial, April 30, 2014. R.p. 106.

Respondent called Mr. Tunning as a witness and moved the court to qualify him as an expert. Mr. Tunning testified he is the owner and operator of Twisted Off Road.[54] Twisted Off Road is an automotive shop specializing in the installation of rims, tires, and lift kits.[55] Twisted Off Road also handles maintenance and general automotive repairs.[56] Mr. Tunning has been in the automotive repair business for approximately fourteen (14) years. [57]

Mr. Tunning began handling small repair jobs when he was sixteen (16) years old before eventually accepting a job at Myrtle Beach Mitsubishi.[58] Mr. Tunning began working at Myrtle Beach Mitsubishi when he was eighteen (18) years old. While at Myrtle Beach Mitsubishi, Mr. Tunning worked on everything from motor swaps to oil changes and tune-ups.[59] After approximately one (1) year, [60] Mr. Tunning was accepted into the Universal Technical Institute NASCAR, where he learned about aerodynamics, NASCAR engines, and fabrication.[61] Mr. Tunning attended Universal Technical Institute NASCAR for two (2) years. After graduating from the Universal Technical Institute NASCAR, Mr. Tunning began handling auto repairs on his own.[62] Mr. Tunning also started installing lift kits on trucks.[63] Eventually, Mr. Tunning opened Twisted Off Road, focusing mainly on the repairs and installation of accessories on

[54] January 22, 2014 Transcript, R.p. 54, line 25 – R.p. 55 line 7.
[55] January 22, 2014 Transcript, R.p. 55, lines 11-13.
[56] January 22, 2014 Transcript, R.p. 55, lines 11-13.
[57] January 22, 2014 Transcript, R.p. 55, lines 18-21.
[58] January 22, 2014 Transcript, R.p. 55, lines 14-25.
[59] January 22, 2014 Transcript, R.p. 56, lines 1-7.
[60] January 22, 2014 Transcript, R.p. 58, lines 14-20.
[61] January 22, 2014 Transcript, R.p. 56, lines 6-7.
[62] January 22, 2014 Transcript, R.p. 58, lines 20-24.
[63] January 22, 2014 Transcript, R.p. 58, lines 25-28.

trucks,[64] but also basic maintenance and general automotive repairs.[65] Mr. Tunning has owned Twisted Off Road for over eight (8) years.

Judge Blanton offered Mr. Chabot an opportunity to cross-examine Mr. Tunning.[66] Judge Blanton also explained to Mr. Chabot what is meant by *voire dire*, explaining to him that he could question Mr. Tunning on his expertise.[67] Mr. Chabot asked Mr. Tunning a line of questions.[68] These questions confirmed that Mr. Tunning had graduated from Universal Technical Institute NASCAR, worked at Myrtle Beach Mitsubishi for roughly one (1) year, and had conducted some under the table jobs before opening his own mechanical shop.[69] Judge Blanton qualified Mr. Tunning as an expert in general automotive repair.[70] Mr. Chabot did not object.[71] In fact, Mr. Chabot recognized Mr. Tunning as an expert.[72]

After hearing all the evidence, Judge Blanton determined that there was sufficient evidence to find judgment in favor of Mr. Howell. Judge Blanton awarded Mr. Howell damages in the amount of Three Thousand Eight Hundred Sixty 00/100 ($3,860.00) Dollars, plus One Hundred Thirty Five 00/100 ($135.00) Dollars in court cost.

3. Appellant's appeal of the Magistrate Court's decision.

On March 17, 2014, Appellant filed a Notice of Appeal of the Magistrate Court's order.[73] A hearing was held on October 1, 2014, with the Honorable Larry B. Hyman, Jr. presiding.

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[64] January 22, 2014 Transcript, R.p. 58, lines 25-28.
[65] January 22, 2014 Transcript, R.p. 55, lines 8-13.
[66] January 22, 2014 Transcript, R.p. 57, lines 1-3.
[67] January 22, 2014 Transcript, R.p. 57, lines 9-19.
[68] January 22, 2014 Transcript, R.p. 57, lines 20-27, R.p. 58, lines 1-27, R.p. 59, lines 1-6.
[69] January 22, 2014 Transcript, R.p. 57, lines 20-27, R.p. 58, lines 1-27, R.p. 59, lines 1-6.
[70] January 22, 2014 Transcript, R.p. 60, lines 9-12.
[71] January 22, 2014 Transcript, R.p. 60, lines 9-12.
[72] January 22, 2014 Transcript, R.p. 73, lines 20-24.
[73] Notice of Appeal, March 17, 2014. R.p. 15.

During the hearing, Judge Hyman affirmed the magistrate court's order.[74] On October 2, 2014, Appellant filed a Motion to Vacate and Motion to Dismiss [Respondent's] Claim with Prejudice.[75] On October 6, 2014, Judge Hyman's Order dismissing Appellant's Appeal of the Magistrate Court's decision was filed.[76]

4. Appellant's Motion for Reconsideration.

On October 13, 2014, Appellant filed a Motion for Reconsideration.[77] On April 13, 2015 Appellant requested a continuance of the Motion for Reconsideration hearing date.[78] However, Appellant's request was not granted. On May 4, 2015, Circuit Court Judge Larry B. Hyman, Jr. filed an Order dismissing Appellant's Motions for failure to prosecute.[79] Thereafter, Appellant filed a Notice of Appeal of the Circuit Court decision.[80]

III. LEGAL ARGUMENTS:

A. Standard of Review:

"On appeal from the magistrate court, the circuit court may make its own findings of fact." S.C. Code Ann. § 18-7-170 (1985) ("In giving judgment the court may affirm or reverse the judgment of the court below, in whole or in part, as to any or all the parties and for errors of law or fact."). "Where the circuit court has affirmed the magistrate court decision, the Court of Appeals must look to whether the circuit court order is controlled by an error of law or is unsupported by the facts." Parks v. Characters Night Club, 345 S.C. 484, 490, 548 S.E.2d 605, 608 (Ct. App. 2001). "The Court of Appeals will presume that an affirmance by a circuit court of

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[74] Order, October 6, 2014. R.p. 83.
[75] Motion to Vacate and Motion to Dismiss Plaintiff's Claim, October 2, 2014. R.p. 26.
[76] Order, October 6, 2014. R.p. 83.
[77] Motion for Reconsideration, October 13, 2014. R.p. 85.
[78] Request for continuance, April 23, 2015. R.p. 93.
[79] Order, May 4, 2015. R.p. 95.
[80] Notice of Appeal, June 5, 2015. R.p. 98

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.

"A pro se litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law." State v. Burton, 356 S.C. 259, 265 n.5, 589 S.E.2d 6, 9 n.5 (2003). "When a party fails to cite authority or when the argument is simply a conclusory statement, the party is deemed to have abandoned the issue on appeal." See First Sav. Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994).

B. Appellant failed to preserve issues for appellate review.

"An issue may not be raised for the first time on appeal, but must have been raised to the trial judge to be preserved for appellate review." State v. Nichols, 325 S.C. 111, 120-21, 481 S.E.2d 118, 123 (1997) (citation omitted); *accord* State v. Fleming, 254 S.C. 415, 175 S.E.2d 624 (1970); State v. Adams, 354 S.C. 361, 580 S.E.2d 785 (Ct. App. 2003), *cert. denied.* "Where an objection and the ground therefore is not stated in the record, there is no basis for appellate review." State v. Morris, 307 S.C. 480, 485, 415 S.E.2d 819, 823 (Ct. App. 1991). "A contemporaneous objection is required at trial to properly preserve an issue for appellate review." State v. King, 334 S.C. 504, 514 S.E.2d 578 (1999); State v. Thomason, 355 S.C. 278, 584 S.E.2d 143 (Ct. App. 2003). "Where no formal objection is made and the trial court makes no ruling, the assignment of error cannot be considered on appellate review." See Norman v. Stevenson Theatres, Inc., 159 S.C. 191, 196, (1931); See State v. Bailey, 368 S.C. 39, 44, 626 S.E.2d 898, 900 (Ct. App. 2006) (holding, in appeal from magistrate court to circuit court, where preservation

issue was never brought to the attention of the circuit court, it was not appropriate for the court of appeals to review the issue).

On appeal, the appellant has the burden of providing the appellate court with a sufficient record for review. See State v. Freiburger, 366 S.C. 125, 135, 620 S.E.2d 737, 742 (2005). Where the appellant indicates a hearing was held before the circuit court, but provides no transcript from the hearing in the record on appeal, it is impossible for the court of appeals to discern appellant's argument and position. Pickens County v. Ward, 2006 S.C. App. Unpub. LEXIS 220, *7-8, 2006 WL 7286056 (S.C. Ct. App. July 7, 2006).

In the instant case, issues presented by Appellant are raised for the first time on appeal. Appellant did not make any formal objections during the bench trial. Consequently, the trial court made no rulings, leaving any issues pertaining to an error of law unavailable for appellate review. Additionally, Appellant failed to provide the transcript from the October 1, 2014 circuit court hearing. Appellant also failed to appear at the May 4, 2015 hearing. Consequently, Appellant failed to provide a sufficient record for appellate review.

Therefore, because Appellant failed to preserve the issues presented in his appeal and failed to present the transcript from the circuit court hearing, there is no basis or record available for appellate review.

C. The trial court judge did not err by failing to recuse himself.

"Under South Carolina law, if there is no evidence of judicial prejudice, a judge's failure to disqualify himself will not be reversed on appeal." Patel v. Patel, 359 S.C. 515, 524, 599 S.E.2d 114, 118 (2004) (citation omitted); Simpson v. Simpson, 377 S.C. 519, 522, 660 S.E.2d 274, 276 (Ct. App. 2008). "Appellate courts accord great weight to the trial judge's assurance of his own impartiality." Id. "It is the movant's responsibility to provide some evidence of the

existence of the judge's impartiality." Lyvers v. Lyvers, 280 S.C. 361, 367, 312 S.E.2d 590, 594 (Ct. App. 1984) (citation omitted).

Pursuant to Canon 3(E)(1) of the Judicial Code of Conduct:

> A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned . . . ." Canon 3(E)(1), Rule 501, SCACR. The judicial canons provide direction as to when disqualification may be necessary, including but not limited to, instances where: (1) the judge holds personal bias or prejudice towards a litigant or counsel or has personal knowledge of evidentiary facts in dispute in the proceeding; (2) the judge either worked on the case as a lawyer, a lawyer with whom the judge previously practiced law worked on the case while the judge was associated with the lawyer's firm, or the judge has been a material witness concerning the case; (3) the judge "knows" that he or a member of his family (spouse, parent, or child) has more than a *de minimis* economic interest in the litigation and the litigation will "substantially affect[]" that interest; or (4) the judge or his spouse or a person within the third degree of relationship to them (or the spouse of such a person) is either a party or the officer, director, or trustee of a party, is a lawyer in the case, known to have more than a *de minimis* interest that could be substantially affected by the litigation, or, to the judge's knowledge, is likely to be a material witness in the proceeding. Canon 3(E)(1)(a)-(d).

Davis v. Parkview Apts., 409 S.C. 266, 284, 762 S.E.2d 535, 545 (2014).

In the instant case, Appellant did not object to Judge Blanton hearing the case and failed to preserve this issue on appeal. However, in abundance of caution, Respondent makes the following argument:

It is clear that none of the disqualifications set forth in Cannon 3(E)(1) are present. Appellant's allegations concern mere social relationships between the trial judge and Respondent's wife. However, "the trial judge's decision to disclose this relationship before trial demonstrates his sensitivity to assuaging any concerns about his impartiality." Simpson, 377 S.C. at 525, 660 S.E.2d at 277. Judge Blanton disclosed his relationship with Respondent's wife and

offered to recuse himself if either party objected, which neither party did. This waived Appellants right to raise this issue on appeal. Furthermore, Appellant has not presented any evidence of prejudice or bias against him. See Mortg. Elc. Sys., Inc. v. White, 384 S.C. 606, 616, 682 S.E.2d 498, 503 (Ct. App. 2009).

Additionally, Appellant did not timely file a motion to disqualify Judge Blanton. See Duplan Corp v. Milliken, 400 D.Supp 497, 510 (D.S.C. 1975)("Timeliness is essential to any recusal motion. To be timely, a recusal motion must be made at counsel's first opportunity after discovery of the disqualifying facts."). Here, Appellant did not make a recusal motion prior or during the trial.

Therefore, it is clear that Judge Blanton did not err by failing to recuse himself and his decision to preside over the bench trial should not be disturbed on appeal.

D. The trial court judge properly qualified Joseph Tunning as an expert witness.

A person may be qualified as an expert based upon "knowledge, skill, experience, training, or education." Rule 702, SCRE. "The qualification of a witness as an expert is a matter largely within the trial court's discretion and will not be reversed absent an abuse of that discretion." Gooding v. St. Francis Xavier Hosp., 326 S.C. 248, 252, 487 S.E.2d 596, 598 (1997). "An abuse of discretion occurs when the trial court's decision is based upon an error of law or upon factual findings that are without evidentiary support." Id.

"The party offering the expert has the burden of showing the witness possesses the necessary learning, skill, or practical experience to enable the witness to give opinion testimony." State v. Von Dohlen, 322 S.C. 234, 471 S.E.2d 689 (1996); State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993); State v. Henry, 329 S.C. 26, 274, 495 S.E.2d , 463, 466 (Ct. App. 1997). "There is no exact requirement concerning how knowledge or skill must be

acquired." Honea v. Prior, 295 S.C. 526, 369 S.E.2d 846 (Ct. App. 1988). "Defects in the amount and quality of the expert's education or experience go to the weight to be accorded the expert's testimony and not to its admissibility." Id.; see also Brown v. Carolina Emergency Physicians, P.A., 348 S.C. 569, 580, 560 S.E.2d 624, 629 (Ct. App. 2001). "Any decision relative to the veracity and credibility of witnesses can best be made by the trial judge who heard the witnesses and observed their demeanor." Thomas v. Mitchell, 287 S.C. 35, 38, 336 S.E.2d 154, 155 (Ct. App. 1985).

In the instant case, Appellant failed to preserve this issue on appeal, having made no objections at trial and raising this issue for the first time in his Initial Brief. Furthermore, during the trial, Appellant even recognized Mr. Tunning as an expert.[81] However, in abundance of caution, Respondent makes the following argument:

The trial court properly qualified Joseph Tunning as an expert witness, because Mr. Tunning testified as to his education and practical experiences, which supported the trial court's decision to qualify him as an expert witness.[82] Any defects in the amount and quality of Mr. Tunning's education and experience would have gone towards the weight to be accorded to Mr. Tunning's testimony and not its admissibility. The trial court was best situated to determine the veracity and credibility of Mr. Tunning's testimony, having the ability to hear Mr. Tunning and observe his demeanor at trial.

Therefore, because the trial court's decision to qualify Mr. Tunning as an expert witness was not based on an error of law, but instead based on factual findings with evidentiary support, the trial court's decision should not be disturbed on appeal.

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[81] January 22, 2014 Transcript, R.p. 73, lines 20-24.

[82] January 22, 2014 Transcript, R.p. 15, lines 1-11; R.p. 57, lines 20-27, R.p. 58, lines 1-27, R.p. 59, lines 1-6.

E. The trial court judge did not err in finding judgment in favor for Respondent.

The trial court did not err in finding judgment in favor of Respondent, because Respondent provided sufficient evidentiary support for the judge's findings. "In an action at law tried without a jury, the judge's findings of fact will not be disturbed on appeal unless there is no evidentiary support for the judge's findings." Murrells Inlet Corp. v. Ward, 378 S.C. 225, 231, 662 S.E.2d 452, 455 (Ct. App. 2008).

"The elements for a breach of contract are the existence of a contract, its breach, and damages caused by such breach." S. Glass & Plastics Co. v. Kemper, 399 S.C. 483, 491-92, 732 S.E.2d 205, 209 (Ct. App. 2012). "The required elements of a contract are an offer, acceptance, and valuable consideration." Sauner v. Pub. Serv. Auth. of South Carolina, 354 S.C. 397, 406, 581 S.E.2d 161, 166 (2003). "The general rule is that for a breach of contract the [breaching party] is liable for whatever damages follow as a natural consequence and a proximate result of such breach." Id. at 492, 732 S.E.2d at 209 (quoting Fuller v. E. Fire & Cas. Ins. Co., 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962)).

In the case at hand, Respondent provided sufficient evidence for the trial court to find in favor of Respondent by preponderance of evidence. Here, a valid agreement existed between the parties. Mr. Tunning testified he contacted Mr. Chabot to help him repair Respondent's vehicle.[83] Mr. Chabot agreed.[84] Mr. Chabot also was aware that Respondent would be the person paying him for the repairs.[85] Mr. Chabot agreed to do the work for One Thousand Five Hundred

[83] January 22, 2014 Transcript, R.p. 62, lines 5-6.
[84] January 22, 2014 Transcript, R.p. 62, line 7.
[85] January 22, 2014 Transcript, R.p. 62, lines 11-24.

00/100 ($1,500.00) Dollars.[86] After taking possession of Respondent's vehicle, Mr. Chabot stated that he would give Mr. Tunning a call when everything was done.[87]

Additionally, Respondent provided sufficient evidence to show that Appellant breached his contract with Respondent and that damages to the vehicle were caused by his negligence. Prior to taking the vehicle to Mr. Chabot, the vehicle was operational and there was no banging sound coming from the engine.[88] Having waited patiently for several weeks, Respondent and Mr. Tunning decided to check the status of the vehicle at Autoworks.[89] Shortly after arriving, an employee of Autoworks started the vehicle's engine whereby it became immediately apparent, due to a banging sound coming from the back left-side of the engine apparent, something was terribly wrong with the vehicle.[90] After having the vehicle towed and examined at Hughes Automotive, Mr. Hughes determined that due to Appellant's negligence, the vehicle's engine had been destroyed.[91] Appellant admitted that the timing was off and he wished Respondent had not heard the banging sound coming from the engine.[92]

Appellant owed Respondent a duty of care, since contractual privity existed between the parties. Carolina Winds Owners' Ass'n v. Joe Harden Builder, Inc., 297 S.C. 74, 85, 374 S.E.2d 897, 904 (Ct. App. 1988). Appellant breached this duty of care when the vehicle's engine was destroyed due to the negligent repair. Redwend L.P. v. Edwards, 354 S.C. 459, 473, 581 S.E.2d 496, 504 (Ct. App. 2003). Consequently, Respondent suffered Three Thousand Eight Hundred

[86] January 22, 2014 Transcript, R.p. 62, lines 11-24.
[87] January 22, 2014 Transcript, R.p. 63, line 1-12.
[88] January 22, 2014 Transcript, R.p. 75, lines 3-23.
[89] January 22, 2014 Transcript, R.p. 47, lines 8-23; R.p. 64, lines 7-18.
[90] January 22, 2014 Transcript, R.p. R.p. 65, lines 3-11.
[91] January 22, 2014 Transcript, R.p. 71 line 26- R.p. 72 line 17.
[92] January 22, 2014 Transcript, R.p. 71, lines 1-3.

Sixty 00/100 ($3,860.00) Dollars in pecuniary loss as a proximate result of Appellant's negligence.[93] Respondent presented testimony at trial evidencing his damages.

Therefore, the trial court did not err in finding judgment in favor of Respondent, because Respondent provided sufficient evidentiary support for the judge's findings.

F. The circuit court properly denied Appellant's Motion to Vacate and Dismiss Plaintiff's Claims with Prejudice.

Appellant's argument that the circuit court erred in denying Appellant's Motion to Vacate and Dismiss [Respondent's] Claim with Prejudice has no merit and should not be disturbed on appeal for the following reasons:

"Whether to grant or deny a motion under Rule 60(b) lies within the sound discretion of the judge." Raby Constr., L.L.P. v. Orr, 358 S.C. 10, 17-18, 594 S.E.2d 478, 482 (2004). "An appellate court's standard of review, therefore, is limited to determining whether there was an abuse of discretion." Id. "An abuse of discretion arises where the order was controlled by an error of law or where the order is based on factual conclusions that are without evidentiary support." Tri-County Ice & Fuel Co. v. Palmetto Ice Co., 303 S.C. 237, 242, 399 S.E.2d 779, 782 (1990).

In the instant case, Appellant argues the circuit court erred in denying Appellant's Motions, because Appellant [sic] "didn't remember the vehicle or the Respondent at the time of the damages to the car was caused."[94] Appellant's argument in his Initial Brief is made without any supportive transcript from the October 1, 2014 hearing, and admittedly, the Appellant "proceed[s] with this appeal without those."[95]

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[93] January 22, 2014 Transcript, R.p. 53, lines 1-11.
[94] January 22, 2014 Transcript, R.p.44, lines 23-27.
[95] Appellant's Initial Brief, p. 9.

Additionally, Appellant failed to cite any authority in his Initial Brief to support his conclusion that the circuit court erred in denying Appellant's Motions. Consequently, any issues here should be considered abandoned, because Appellant failed to provide and cite the transcript of the October 1, 2014 hearing, failed to cite any authority, and his argument is simply a conclusory statement. See Broom v. Jennifer J., 403 S.C. 96, 115, 742 S.E.2d 382, 391 (2013) (finding an issue abandoned where the party's brief cited only one family court rule and presented no argument as to how the family court's ruling was an abuse of discretion or constituted prejudice); McLean, 314 S.C. at 363, 444 S.E.2d at 514 (noting that when a party fails to cite authority or when the argument is simply a conclusory statement, the party is deemed to have abandoned the issue on appeal); State v. Lindsey, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011) ("An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority.").

No evidence was presented to support his motion before the circuit court. Therefore, because of the aforementioned reasons, the circuit court's denial of Appellant's Motions should be affirmed.

G. The circuit court properly denied Appellant's Motion for Reconsideration, Motion for Judgment Notwithstanding the Verdict and/or Alter or Amend the Judgment, Motion for Judicial Review, Motion for Judicial Review of Damages, and Motion for Trial *De Novo*.

The circuit court properly denied Appellant's Motion. Appellant failed to appear for the hearing and the motion was dismissed for failure to prosecute.

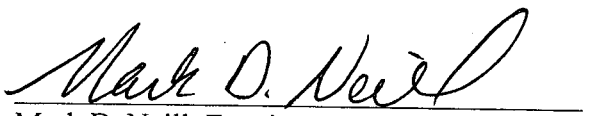
Appellant stated he "could not make the court date and should have had the case continued for good cause." However, Appellant failed to cite any legal authority. See Broom, 403 S.C. at 115, 742 S.E.2d at 391(finding an issue abandoned where the party's brief cited only

one family court rule and presented no argument as to how the family court's ruling was an abuse of discretion or constituted prejudice); McLean, 314 S.C. at 363, 444 S.E.2d at 514 (noting that when a party fails to cite authority or when the argument is simply a conclusory statement, the party is deemed to have abandoned the issue on appeal); Lindsey, 394 S.C. at 363, 714 S.E.2d at 558 ("An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority."). Therefore, the circuit court's denial of Appellant's Motions should be affirmed.

IV. CONCLUSION:

For the reasons discussed above, Appellant's Appeal must be dismissed and the lower courts' Orders affirmed.

Respectfully submitted,



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September 9, 2016
Murrells Inlet, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B. Hyman, Circuit Court Judge

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SEP 12 2016
SC Court of Appeals

Case No: 2014-CP-26-1684

Archie Howell,..... Respondent.

v.

Christopher Chabot, d/b/a Autoworks, ... Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Respondent's Final Brief complies with Rule 211(b) of the South Carolina Appellate Court Rules.

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