The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211
1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

November 28, 2017

The Honorable Julie J. Armstrong
100 Broad St Ste 106
Charleston SC 29401-2210

REMITTITUR

Re: Jacquelin S. Bennett v. T. Heyward Carter, Jr.
Lower Court Case No. 2011-CP-10-00400
Appellate Case No. 2016-000065

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court along with the earlier decision of the South Carolina Court of Appeals is enclosed.

Very truly yours,

CLERK

cc: A. Camden Lewis, Esquire
Keith M. Babcock, Esquire
Ariail Elizabeth King, Esquire
James Mixon Griffin, Esquire
M. Dawes Cooke, Jr., Esquire
Frederick K. Sharpless, Esquire

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Jacquelin S. Bennett, Genevieve S. Felder, and Kathleen S. Turner, individually, as Co-Trustees and Beneficiaries of the Marital Trust and the Qualified Terminable Interest Trust created by the Thomas Stevenson Will, and Jacquelin S. Bennett, and Kathleen S. Turner, as Co-Personal Representatives on behalf of the Estate of Jacquelin K. Stevenson, Respondents,

v.

T. Heyward Carter Jr., Evans, Carter, Kunes & Bennett, P.A., Douglas Capital Management, Inc., Dixon Hughes f/k/a Pratt-Thomas Gumb & Co., P.A., and Lynne L. Kerrison, Defendants,

Of Whom Dixon Hughes f/k/a Pratt-Thomas Gumb & Co., and Lynne L. Kerrison are the Petitioners.

Appellate Case No. 2016-000065

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Charleston County
Roger M. Young Sr., Circuit Court Judge

Opinion No. 27748
Heard May 24, 2017 – Filed November 8, 2017

AFFIRMED AS MODIFIED

M. Dawes Cooke Jr., of Barnwell Whaley Patterson & Helms, LLC, of Charleston, and Frederick K. Sharpless, of Greensboro, both for Petitioners.

Keith M. Babcock, A. Camden Lewis, James Mixon Griffin, and Ariail Elizabeth King, all of Lewis Babcock & Griffin, LLP, of Columbia, for Respondents.

JUSTICE JAMES: We granted certiorari to review the court of appeals' decision reversing in part a circuit court order which granted Petitioners summary judgment on Respondents' individual cause of action for aiding and abetting a breach of fiduciary duty. *Bennett v. Carter*, Op. No. 2015-UP-491 (S.C. Ct. App. filed Oct. 14, 2015). The sole issue before the Court is whether this cause of action survives summary judgment. We affirm as modified.

FACTUAL AND PROCEDURAL HISTORY

Jacquelin Stevenson (Mother) was the sole lifetime beneficiary of two trusts created by the will of her husband, who died in 1988.[1] The residual beneficiaries of the two trusts were her sons, Thomas Stevenson III and Daniel Stevenson II (collectively, the Stevenson brothers), and her daughters, Respondents.

The Stevenson brothers were also co-trustees of the two trusts from 1999 to 2006. Respondents allege that while the Stevenson brothers were co-trustees, they violated their fiduciary duties by unlawfully taking money from the trusts. Respondents claim the Stevenson brothers stole approximately five million dollars from the two trusts.

In 1997, Lynne Kerrison and her accounting firm Dixon Hughes (collectively, Petitioners) began preparing the income tax returns of Mother and the two subject trusts. Mother's personal bookkeeper, Pat Neapolitan, provided Kerrison with the information needed to complete Mother's tax returns and those of the trusts. In 2001, while preparing Mother's tax returns, Kerrison noticed the records reflected loans to one of the Stevenson brothers and had concerns about the

---

[1] The factual recitations herein are in the light most favorable to Respondents, as this is an appeal from a grant of summary judgment. These findings are not binding on the fact-finder on remand.

propriety of the transactions. She contacted Mother's attorney, Heyward Carter Jr., and informed him of the transactions. In October of 2001, Kerrison, Carter, and the Stevenson brothers met to discuss the suspect transactions. At this meeting, the Stevenson brothers were advised about the impropriety of these transactions, and they were advised to tell Respondents about their actions. Neither Carter nor Kerrison had any discussions with Respondents about Mother's finances or the finances of the trusts. The Stevenson brothers did not tell Respondents about the transactions until a meeting in 2006.

After the meeting in 2001, the Stevenson brothers continued to withdraw money from the trusts. Neapolitan died, and at some point in 2003, Petitioners began performing the bookkeeping for Mother and the trusts. Petitioners had possession of the trust checkbooks and would write checks from the trusts to the Stevenson brothers. The Stevenson brothers held sole check-signing authority.

To obtain checks from the trusts, the Stevenson brothers would request a withdrawal at Petitioners' office, and Petitioners' employees would then write the checks as requested. Petitioners knew the Stevenson brothers continued to withdraw money from the trusts after the October 2001 meeting. Petitioners were aware some of the checks written for the Stevenson brothers were to the Stevenson brothers' companies, and Petitioners were aware one of Petitioners' partners was personally investing in one of those businesses, as well as sitting on its board.

In 2006, Respondent Kathleen S. Turner (Turner) attended a meeting with Kerrison, Carter, and the Stevenson brothers. At this meeting, Turner learned for the first time that the Stevenson brothers had withdrawn money from the two trusts over a five year period. Mother passed away in 2007. In 2008, Respondents brought suit against the Stevenson brothers, resulting in a settlement with Thomas Stevenson and a judgment against Daniel Stevenson. In 2009, Respondents filed the present action against Petitioners for professional negligence, breach of fiduciary duty, and aiding and abetting a breach of fiduciary duty.

The circuit court granted Petitioners' motion for summary judgment on the basis that the three-year statute of limitations had expired on all causes of action. The circuit court also ruled Respondents had not presented sufficient evidence to withstand summary judgment on their claim for aiding and abetting a breach of fiduciary duty. The court of appeals reversed in an unpublished decision, holding there was a question of fact as to when the statute began to run on the cause of action for aiding and abetting a breach of fiduciary duty, and holding Respondents

presented sufficient evidence in support of that claim to withstand summary judgment. *Bennett v. Carter*, Op. No. 2015-UP-491 (S.C. Ct. App. filed Oct. 14, 2015). Petitioners do not challenge the statute of limitations holding; therefore, the only issues before the Court are (1) whether the court of appeals erred in holding Petitioners presented sufficient evidence to allow the aiding and abetting claim to survive summary judgment, and (2) whether the aiding and abetting claim abated upon Mother's death in 2007.

DISCUSSION

We review the granting of summary judgment under the same standard applied by the trial court under Rule 56(c) of the South Carolina Rules of Civil Procedure. *Quail Hill, LLC v. Cty. of Richland*, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010). The trial court shall grant summary judgment if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. "In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party." *Quail Hill, LLC*, 387 S.C. at 235, 692 S.E.2d at 505 (quoting *Pye v. Estate of Fox*, 369 S.C. 555, 563, 633 S.E.2d 505, 509 (2006)). "However, it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine." *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013). When the trial court grants summary judgment on a question of law, we review the ruling de novo. *See Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008).

The elements for aiding and abetting a breach of fiduciary duty are (1) a breach of a fiduciary duty owed to the plaintiff; (2) the defendant's knowing participation in the breach; and (3) damages. *Future Grp., II v. Nationsbank*, 324 S.C. 89, 99, 478 S.E.2d 45, 50 (1996). "The gravamen of the claim is the defendant's knowing participation in the fiduciary's breach." *Id.*

A. There is Sufficient Evidence to Allow the Aiding and Abetting Claim to Survive Summary Judgment.

In finding Respondents presented sufficient evidence to withstand summary judgment, the court of appeals wrote, "In addition to taking no further action

regarding [the Stevenson brothers'] activities, Kerrison's firm actually had possession of the trust checkbooks and wrote the checks for [the Stevenson brothers'] withdrawals of funds from the trusts." *Bennett v. Carter*, Op. No. 2015-UP-491. We agree Respondents presented evidence from which a jury could reasonably conclude Petitioners knowingly participated in the Stevenson brothers' breach through Petitioners' possession of the trust checkbooks and writing checks to the Stevenson brothers.[2] However, to the extent the "in addition to taking no further action" language employed by the court of appeals can be interpreted to hold that Petitioners' non-disclosure is evidence of Petitioners' knowing participation, we modify the court of appeals' opinion.

Petitioners contend the "in addition to" language employed by the court of appeals allows Respondents to pursue their aiding and abetting claim on the theory Petitioners should have disclosed the Stevenson brothers' withdrawals to Respondents, or at least to Turner. Petitioners argue such disclosure is prohibited by 26 U.S.C. § 7216 (2000) and S.C. Code Ann. § 40-2-190 (Supp. 2004).[3] Respondents argue the "related taxpayer" exception in 26 C.F.R. § 301.7216-2(b)(1)-(2) (2001)[4] allowed Petitioners to make the disclosure to Respondents. We agree with Petitioners.

---

[2] We take no position as to whether other facts, if proven, would also support a claim for aiding and abetting a breach of fiduciary duty.

[3] Petitioners cite section 40-2-190(A) of the South Carolina Code for the proposition that their disclosure of the withdrawals to Respondents was prohibited. Respondents contend Petitioners failed to cite this statute in their arguments before the trial court and the court of appeals, and, therefore, Petitioners are unable to now rely on this statute as authority. We first note the effective date of current section 40-2-190(A) was July 22, 2004—several years after the allegedly improper withdrawals began but more than a year before they ended. It appears the text of current section 40-2-190(A) did not exist elsewhere in the South Carolina Code prior to July 22, 2004; at the least, Petitioners have not cited to any similar statutory language existing prior to this date, and we have been unable to find any such language. Whatever the case, we find the applicable federal authority as discussed herein is sufficient to support our conclusions.

[4] Parties cite to the "related taxpayer" exception as 26 C.F.R. § 301.7216-2(e)(1)-(2); however, during the time period in which the alleged aiding and abetting occurred, the "related taxpayer" exception was located in subsection (b)(1)-(2). The "related taxpayer" exception was not moved to subsection (e)(1)-(2) until the

Petitioners were prohibited by 26 U.S.C. § 7216 from disclosing the Stevenson brothers' withdrawals to Respondents because this statute prohibits any person who is engaged in the business of preparing tax returns—here, Petitioners—from disclosing to a third party any information furnished for, or in connection with, the preparation of any such return and imposes criminal sanctions for a violation of this prohibition. Respondents contend the "related taxpayer" exception set forth in 26 C.F.R. § 301.7216-2(b)(1)-(2)[5] allowed for disclosure to Turner, as Petitioners also prepared her individual tax returns. We disagree. The exception does not apply, as the exception is triggered only when the tax preparer is engaged in "preparing a tax return of a second taxpayer" *and* when the subject information was used in preparing the second taxpayer's returns. 26 C.F.R. § 301.7216-2(b)(1)-(2). While Turner may have been a "second taxpayer," there is no evidence any information pertaining to the illicit withdrawals was used "in preparing" her personal returns.

Respondents also claim Petitioners should have disclosed the withdrawals to Turner because she was designated as Mother's attorney-in-fact under Mother's 2001 power of attorney. Respondents correctly state that the holder of a power of attorney steps into the shoes of the grantor and is basically the alter ego of the grantor. *See Muller v. Bank of Am., N.A.*, 12 P.3d 899, 904 (Kan. Ct. App. 2000) (citing 3 Am. Jur. 2d, *Agency* § 23). However, since Kerrison notified Carter, Mother's personal attorney, of the withdrawals, that was sufficient to notify Mother. *See Crystal Ice Co. of Columbia, Inc. v. First Colonial Corp.*, 273 S.C. 306, 309, 257 S.E.2d 496, 497 (1979) ("It is well established that a principal is affected with constructive knowledge of all material facts of which his agent receives notice while acting within the scope of his authority."). Mother was Carter's client and was competent at the time Kerrison informed Carter about the withdrawals. While Kerrison *could have* disclosed any information to Turner that was disclosed to Mother through Carter, the power of attorney did not create a separate and independent obligation on the part of Petitioners to disclose the withdrawals to Turner in her capacity as Mother's attorney-in-fact. The fact that disclosure to Turner as attorney-in-fact would have resulted in her being individually aware of the withdrawals is of no import.

2008 version of the Code of Federal Regulations. *See* 26 C.F.R. § 301.7216-2(e)(1)-(2) (2008). Nevertheless, the language is substantially the same.

[5] *See* note 4.

B. The Aiding and Abetting Claim Survives Mother's Death.

Petitioners contend they are entitled to summary judgment on the ground that Respondents' claim for aiding and abetting a breach of fiduciary duty abated on the death of Mother because the claim rests on a theory of fraud and deceit.[6] We disagree.

Section 15-5-90 of the South Carolina Code (2005) provides "[c]auses of action for and in respect to . . . any and all injuries to the person or to personal property shall survive both to and against the personal or real representative . . . of a deceased person . . . any law or rule to the contrary notwithstanding." However, South Carolina recognizes several exceptions to the survivability of a claim, including an exception for fraud. *See Mattison v. Palmetto State Life Ins. Co.*, 197 S.C. 256, 15 S.E.2d 117 (1941).

Petitioners first argue Respondents' claim for aiding and abetting does not survive Mother's death because the essence of the claim is that Petitioners fraudulently failed to disclose to Respondents the Stevenson brothers' fraud and deceit. This argument is unavailing, as we have determined Petitioners had no obligation to disclose the Stevenson brothers' withdrawals to Respondents. Nondisclosure to Respondents—fraudulent or otherwise—is not part of Respondents' aiding and abetting claim.

Second, Petitioners argue the aiding and abetting claim does not survive Mother's death because the claim is based on the Stevenson brothers' fraudulent conduct against Mother, the sole lifetime beneficiary of the trusts. That argument is likewise unavailing. While the Stevenson brothers' alleged fraud and deceit committed against Mother will be in evidence, Respondents' claim for aiding and abetting is based on the Stevenson brothers' fraud and deceit committed against Respondents. The issues framed to this Court have been with regard to Respondents' *individual* claims as beneficiaries, not their claims as co-trustees or co-personal representatives of Mother's estate. Within the context of abatement,

---

[6] Petitioners asserted this ground in their original motion, but it was not ruled upon by the trial judge. Petitioners asserted it as an additional sustaining ground before the court of appeals and then again in their petition for rehearing, but it was not ruled upon by the court of appeals. They have raised the issue again before this Court.

the fact that Mother may have been a victim of the Stevenson brothers' fraud and deceit does not impact the viability of Respondents' individual claims. Their individual claims do not derive from damage sustained by Mother during her lifetime, but rather from damage they must prove they individually sustained as residual beneficiaries.

CONCLUSION

The decision of the court of appeals reversing the grant of summary judgment to Petitioners is affirmed as modified.

AFFIRMED AS MODIFIED.

BEATTY, C.J., KITTREDGE, HEARN, JJ., and Acting Justice Clifton Newman, concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Jacquelin S. Bennett, Genevieve S. Felder, and Kathleen S. Turner, individually, as Co-Trustees and Beneficiaries of the Marital Trust and the Qualified Terminable Interest Trust created by the Thomas Stevenson Will, and Jacquelin S. Bennett and Kathleen S. Turner, as Co-Personal Representatives on behalf of the Estate of Jacquelin K. Stevenson, Appellants,

v.

T. Heyward Carter, Jr.; Evans Carter, Kunes & Bennett, P.A.; Douglas Capital Management, Inc; Dixon Hughes f/k/a Pratt-Thomas Gumb & Co., P.A.; and Lynne L. Kerrison, Defendants,

Of Whom Dixon-Hughes f/k/a Pratt-Thomas Gumb & Co., P.A., and Lynne L. Kerrison are the Respondents.

Appellate Case No. 2013-001893

Appeal From Charleston County
Roger M. Young, Sr., Circuit Court Judge

Unpublished Opinion No. 2015-UP-491
Heard June 3, 2015 – Filed October 14, 2015

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED

Keith M. Babcock, A. Camden Lewis, James Mixon Griffin and Ariail Elizabeth King, all of Lewis Babcock & Griffin, LLP, of Columbia, for Appellants.

M. Dawes Cooke, Jr., of Barnwell Whaley Patterson & Helms, LLC, of Charleston, and Frederick K. Sharpless, of Greensboro, N.C., for Respondents.

HUFF, J.: Jacquelin S. Bennett, Genevieve S. Felder, and Kathleen S. Turner, individually, as co-trustees and beneficiaries of the Marital Trust and the Qualified Terminable Interest Trust (QTIP) created by the Thomas Stevenson Will, and Jacquelin S. Bennett and Kathleen S. Turner, as co-personal representatives on behalf of the estate of Jacquelin K. Stevenson (collectively Appellants) appeal the trial court's order granting summary judgment to Lynne Kerrison and her accounting firm Dixon-Hughes (collectively Respondents). We affirm in part, reverse in part, and remand.

1. We agree with Appellants' argument the trial court erred in holding the statute of limitations began to run on their claims on April 19, 2006. We find the trial court erred by holding Appellants were bound by Kathleen S. Turner's response to the request for admission: "Thomas Stevenson informed you that he and Daniel Stevenson removed money from the trust on April 19, 2006." *See* Rule 36(b), SCRCP ("Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission."); *Scott v. Greenville Hous. Auth.*, 353 S.C. 639, 651, 579 S.E.2d 151, 157 (Ct. App. 2003) ("[A] trial court may allow a party to amend or withdraw its answers to a request to admit when: (1) the presentation of the merits is furthered by the amendment; and (2) the party who obtained the admission cannot demonstrate prejudice because of the amendment." (citation and internal quotation marks omitted)); *id.* at 648, 579 S.E.2d at 155-56 ("The efficacy of these admissions is akin to the doctrine of judicial estoppel . . . ."). Not only is this request for admission ambiguous and the last of 171 requests, it is in direct conflict with Kathleen's deposition testimony. Whether due to the sheer number of requests for admission or the confusing language of this request, Kathleen's response did not reflect her actual position that Thomas did not discuss the withdrawals of money at this meeting. Because the record contains conflicting evidence, presentation of the merits would be furthered by the withdrawal or amendment of the response. In addition, Respondents are not prejudiced by the withdrawal. Respondents were aware of Kathleen's deposition

testimony and Appellants argued the contradictory testimony made summary judgment inappropriate. No expert witness relied on Kathleen's admission in forming an opinion. We also believe the trial court erred in finding the motion to amend or withdraw the response was untimely. The court informed the parties of its decision to grant summary judgment on June 10, 2013. Respondents submitted the proposed order on June 13, 2013. Appellants filed their motion to amend or withdraw the response three days later. The trial court did not file its order until July 3, 2013. *See Bowman v. Richland Mem'l Hosp.*, 335 S.C. 88, 91, 515 S.E.2d 259, 260 (Ct. App. 1999) ("An order is not final until it is written and entered by the clerk of court.").

2. We find without the admission, only a conflict in the testimony remains with Thomas testifying he told Kathleen about his and Daniel's withdrawals of money from the trusts and Kathleen's denial that the withdrawals were discussed. *See Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 338, 534 S.E.2d 672, 681 (2000) ("Application of the discovery rule . . . , as well as the determination of the date the statute began to run in a particular case, are questions of fact for the jury when the parties present conflicting evidence."); *L & W Wholesale, Inc. v. Gore*, 305 S.C. 250, 253, 407 S.E.2d 658, 659 (Ct. App. 1991) (stating the trial court does not weigh conflicting evidence or make credibility determinations during consideration of summary judgment); *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009) ("[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.")

3. We agree with Appellants' argument the trial court erred in holding the statute of limitations began to run May 21, 2003. *See Moriarty*, 341 S.C. at 338, 534 S.E.2d at 681 ("Application of the discovery rule . . . , as well as the determination of the date the statute began to run in a particular case, are questions of fact for the jury when the parties present conflicting evidence."); *L & W Wholesale, Inc.*, 305 S.C. at 253, 407 S.E.2d at 659 (stating the trial court does not weigh conflicting evidence or make credibility determinations during consideration of summary judgment); *Hancock*, 381 S.C. at 330, 673 S.E.2d at 803 ("[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment."). Thomas testified that during the May 21, 2003 meeting he showed Kathleen a piece of paper detailing the assets of the Trusts, including the "investments" in his and Daniel's companies. Kathleen testified Thomas looked down at a piece of paper in his lap and mumbled so badly she did not understand a

word he said. Although Kathleen indicated she thought something was very wrong, nothing about the meeting would raise a red flag concerning the trusts if she truly was unable to hear what Thomas said. We find the question of whether Kathleen had notice of the loans on this date involves an issue of credibility and, thus, was inappropriate for summary judgment.

4. We agree with Appellants' argument the trial court erred in granting summary judgment on their individual claim for aiding and abetting a breach of fiduciary duty. We find the statute of limitations did not begin to run in October 2001 on their claims because Kerrison's notice to Heyward Carter, who was the attorney for Jacquelin K. Stevenson (Mother), could not serve as notice to Appellants individually as he was not their attorney. We also find Appellants presented sufficient evidence to withstand summary judgment. *See Future Group, II v. Nationsbank*, 324 S.C. 89, 99, 478 S.E.2d 45, 50 (1996) (stating the elements for the cause of action for aiding and abetting a breach of fiduciary duty are: "(1) a breach of a fiduciary duty owed to the plaintiff[;] (2) the defendant's knowing participation in the breach[;] and (3) damages"); *id.* ("The gravamen of the claim is the defendant's knowing participation in the fiduciary's breach."). Thomas and Daniel, as trustees, owed the beneficiaries of the trusts a fiduciary duty.[1] *See Univ. of S. Cal. v. Moran*, 365 S.C. 270, 281, 617 S.E.2d 135, 141 (Ct. App. 2005) (stating a trustee "has a fiduciary obligation to administer the trust in the best interests of the trust beneficiaries"). Kerrison admitted she believed the withdrawals of money from the trusts by Thomas and Daniel were not proper and one "could probably call" the transactions self-dealing. Upon her discovery of the withdrawals from the trusts, she questioned the propriety of the transactions, contacted Carter, and met with Thomas and Daniel, who were advised to disclose the withdrawals to their siblings. She admitted she was aware Thomas and Daniel continued to remove funds from the trusts until the spring of 2006. In addition to taking no further action regarding Thomas's and Daniel's activities, Kerrison's firm actually had possession of the trust checkbooks and wrote the checks for Thomas's and Daniel's withdrawals of funds from the trusts. We find Appellants presented at least a scintilla of evidence from which a jury could infer Respondents knowingly participated in Thomas's and Daniel's breach of their fiduciary duty.

---

[1] *See Holcombe-Burdette v. Bank of Am.*, 371 S.C. 648, 659, 640 S.E.2d 480, 485 (Ct. App. 2006) ("It is not the uncertainty of enjoyment in the future, but the uncertainty of the right to that enjoyment which marks the difference between a vested and a contingent interest.").

5. We find Appellants' argument concerning a breach of fiduciary duty is conclusory and, therefore, abandoned. *See First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (noting an issue is deemed abandoned when an appellant "fails to provide arguments or supporting authority for his assertion"); *Eaddy v. Smurfit–Stone Container Corp.*, 355 S.C. 154, 164, 584 S.E.2d 390, 396 (Ct. App. 2003) ("[S]hort, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not preserved for our review.").

6. We find Appellants' argument the trial court erred in granting summary judgment on their individual claim for professional negligence is conclusory and, therefore, abandoned. *See First Sav. Bank*, 314 S.C. at 363, 444 S.E.2d at 514 (noting an issue is deemed abandoned where an appellant "fails to provide arguments or supporting authority for his assertion"); *Eaddy*, 355 S.C. at 164, 584 S.E.2d at 396 ("[S]hort, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not preserved for our review."). In their brief, Appellants focus on Kathleen's role as the holder of Mother's power of attorney. They fail to develop or support with authority any argument on a duty owed to Appellants individually as Appellants were not Respondents' clients. When questioned at oral argument, Appellants only offered as support for their claims the supreme court's recent case of *Fabian v. Lindsay*, in which the court affirmatively recognized "a cause of action, in both tort and contract, by a third-party beneficiary of an existing will or estate planning document against a lawyer whose drafting error defeats or diminishes the client's intent." 410 S.C. 475, 492, 765 S.E.2d 132, 141 (2014). We do not see how this case is applicable as Appellants have not argued they are third-party beneficiaries in Respondents' provision of accounting services to Mother and Thomas and Daniel as trustees. *See id.* at 490, 765 S.E.2d at 140 (finding the "intent in estate planning is directly and inescapably for the benefit of the third-party beneficiaries"); *id.* ("Thus, imposing an avenue for recourse in the beneficiary, where the client is deceased, is effectively enforcing the *client's intent*, and the third party is in privity with the attorney. It is the breach of the attorney's duty to the client that is the actionable conduct in these cases.").

7. We disagree with Appellants' argument the trial court erred in holding notice to Carter started the running of the statute of limitations on their remaining claims. *See Crystal Ice Co. of Columbia, Inc. v. First Colonial Corp.*, 273 S.C. 306, 309, 257 S.E.2d 496, 497 (1979) ("It is well established that a principal is affected with constructive knowledge of all material facts of which his agent receives notice while acting within the scope of his authority."); *id.* at 309, 257 S.E.2d at 498 ("An

equally well-recognized exception to this general rule exists in situations where the agent is acting fraudulently against his principal or for any other reason has an interest in concealing his acquired knowledge from his principal."). The record contains no evidence Carter advanced any interest of his own by not telling Appellants directly about Thomas's and Daniel's withdrawals from the trusts. He was always acting in what he believed was Mother's best interest. Only Mother was his client, and she was competent at the time Kerrison told Carter about Thomas's and Daniel's withdrawals. While Kerrison could have disclosed any information to Kathleen that could have been disclosed to Mother, the power of attorney did not create a separate duty of disclosure to Kathleen independent of disclosures made to Mother while she remained competent. *See* 3 Am. Jur. 2d *Agency* § 20 (2013) ("An attorney-in-fact is essentially an alter ego of the principal and is authorized to act with respect to any and all matters on behalf of the principal with the exception of those acts which by their nature, by public policy, or by contract require personal performance."). Appellants make no other argument challenging the trial court's ruling the statute of limitations began to run no later than October 2001. Accordingly, we find the trial court did not err in finding the statute of limitations barred Appellants' remaining claims.[2]

AFFIRMED IN PART, REVERSED IN PART, and REMANDED.

WILLIAMS, J., concurs.

FEW, C.J., concurring in part and dissenting in part: I agree with the majority's rulings on points 1 through 4. As to points 5 and 6, I agree with the result reached by the majority. As to point 7, I respectfully dissent.

As to points 5 and 6, the majority holds Appellants abandoned the claims. To explain my position, it is necessary to identify the claims the majority is addressing. Appellants contend Kerrison had a fiduciary duty and a duty of due care, each of which required her to take some action based on what she observed while preparing the trust's tax returns in 2001 and subsequent years. Kerrison concedes the existence of some duty. The following dialogue occurred at oral argument:

---

[2] We take no position on whether Respondents satisfied their duty of care by the disclosure to Carter in October 2001. Appellants' argument challenging the trial court's holding regarding the running of the statute of limitations beginning in October 2001 was limited to the issue of the imputation of notice. They did not raise to the trial court or this court the issue of continuous accrual.

Kerrison: [F]actually, Ms. Kerrison sees in 2001, or as she is preparing the 2000 tax return in 2001, she sees some transactions that she has some questions about. That's uncontested.

The Court: And from that sight there's no question that there arose a duty on her part to take some action.

Kerrison: There arose a duty on her part to take some action, and we'll talk about what that action might be.

This dialogue identifies the questions remaining to be resolved at trial. The question is not whether Kerrison owed a duty *to the beneficiaries*. Appellants maintain a claim against Kerrison based on the duty she concedes exists—a duty to the trusts. As to this duty, the questions are, first, whether the plaintiffs presented evidence to support a factual finding that Kerrison breached her duty to the trusts based on what she observed, and, second, whether the beneficiaries may bring an action for breach of that duty.[3] In my view, the answer to the first question is "yes," and the circuit court did not address the second question. Under the majority's analysis, Appellants' claims that Kerrison owed duties to the beneficiaries are abandoned. However, under the majority's analysis, the two questions I listed above regarding Kerrison's conceded duty to the trusts must be remanded for trial. As to points 5 and 6, therefore, I concur in the result reached by the majority.

As to point 7, the majority holds the statute of limitations began to run in October 2001—the date Kerrison informed Carter of what she observed. I respectfully disagree with that holding. Carter represented only Mother, and specifically denied in his answer he represented the trusts. Kerrison's duty was to the trusts. Because Carter did not represent the trusts, informing Carter did not inform the trusts, and thus did not put the trusts on notice of any claim.

Even under the majority's analysis, however, Appellants' claims against Kerrison for damages resulting from breaches of duty Kerrison committed subsequent to

---

[3] If it makes any difference whether the duty is fiduciary, that question may be resolved at trial.

October 2001 remain viable for trial on remand. This is true for two reasons: first, Kerrison's October 2001 actions could not have put anyone on notice of a claim that had not yet accrued, and second, the circuit court did not address the merits of any claim of the trusts that accrued after October 2001.

As to the statute of limitations for these claims, Kerrison continued to observe misconduct by the trustees after she informed Carter in October 2001. For any claims for damages resulting from misconduct by the trustees that occurred after Kerrison informed Carter what she observed in 2001, the statute of limitations could not begin to run in 2001 because the claims had not yet accrued. Because we are reversing summary judgment as to all subsequent dates the circuit court determined the statute began to run, those claims remain viable for trial on remand.

As to the merits of these claims, the majority does not address the circuit court's finding that "any duty to disclose was satisfied by the October 21, 2001 notice to . . . Carter" because its holding that the statute began to run then made doing so unnecessary. The circuit court made no determination as to whether any subsequent act by Kerrison of informing Carter satisfied Kerrison's duty to the trusts. As to the subsequent actions of Kerrison, the summary judgment analysis would be different from the analysis of her 2001 actions. In my opinion, Kerrison's actions subsequent to October 2001 present questions of fact as to whether she breached her duty to the trusts. By Kerrison's own observation, her October 2001 action of informing Carter was insufficient. When Kerrison saw the trustees committing the same misconduct in 2002 and subsequent years, she knew she had not taken sufficient action to protect the trusts. Her duty of care required her to consider that her previous action had been unsuccessful, and to act accordingly. What additional action should have been taken is a question of fact for a jury.