

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndrea G. Benjamin, Circuit Court Judge

Case No. 2011-CP-40-05170R

Jerry Gadson and Sheila Gadson, Appellants,
v.
Caroline Deloatch and Bank of America, Respondents.

Final Brief of Respondents

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2011
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Statement of Issues on Appeal

- I. The Gadsons did not respond to Bank of America's Requests for Admission on December 6, 2010, as alleged in their brief.**
- II. The Gadsons failed to preserve their appellate arguments for review by this Court.**
- III. The circuit court properly granted summary judgment because the Gadsons' failure to respond to the Requests for Admission deemed them admitted and eliminated all genuine issues of fact.**

Statement of the Case and Facts¹

Appellants Jerry Gadson and Sheila Gadson (“the Gadsons”) initiated this action against Respondents Caroline Deloatch and Bank of America (collectively “Bank of America”) on May 27, 2009. {Complaint; R. 11}. The complaint alleged claims for negligence, loss of consortium, assault, and battery. {Id.}. Bank of America timely answered and denied the allegations. {Answer dated July 28, 2009; R. 20}. The Gadsons never participated or otherwise advanced the litigation after Bank of America answered. {Bank of America’s Amended Motion for Summary Judgment filed December 28, 2011; Order Granting Bank of America’s Amended Motion for Summary Judgment filed March 20, 2011; R. 90; 4}.

On April 9, 2010, Bank of America served its First Interrogatories, Requests to Produce, and First Requests for Admission on the Gadsons.² {Bank of America’s First Interrogatories, Requests to Produce, and First Requests for Admission; R. 56-73}. The Gadsons’ response to the First Requests for Admission (hereinafter “Requests for Admission”) was due no later than May 10, 2010. The Gadsons untimely provided answers and responses to the First Interrogatories and Request for Production to Bank of America on December 6, 2010. {Letter enclosing Answers and Responses to First Interrogatories and Request for Production dated December 6, 2010; R. 79}. However, that correspondence did not contain any responses/answers to the Requests for Admission. {Letter enclosing Answers and Responses to First Interrogatories and

¹ Because the operative facts and procedural history of this case are intertwined, Bank of America combines its statement of the case as part of the statement of facts to limit repetition and for ease of understanding the nature of this dispute.

² The Gadsons’ eventual answers to Bank of America’s First Interrogatories and Requests to Produce are not at issue in this appeal.

Request for Production dated December 6, 2010; R. 79}. In fact, the Gadsons never served any response to the Requests for Admission.³

On May 19, 2010, the circuit court granted the request to strike this matter from the court docket pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure. {Consent Motion Striking Case from Docket dated May 17, 2010; Order Granting Motion Striking Case from docket filed May 19, 2010; R. 74; 1}. Notably, the consent motion, which was signed by counsel for the Gadsons, stated that:

The Parties will continue participating in discovery and discuss settlement while this matter is stricken from the docket.

{Consent Motion Striking Case from Docket dated May 17, 2010; R. 74 (emphasis added)}. The order also directed that discovery would remain ongoing, noting that “[t]he parties are hereby permitted to continue participating in discovery while this matter is stricken from the docket.” {Order Granting Motion Striking Case from docket filed May 19, 2010; R. 1(emphasis added)}. Despite this language, the Gadsons again failed to respond to the unanswered Requests for Admission. {Order Granting Bank of America’s Amended Motion for Summary Judgment filed March 20, 2011 p. 2; R. 4}.

Ultimately, the clerk of court restored the matter to the docket on March 8, 2011, upon the motion of the Gadsons. {Gadsons’ Motion to Extend Time to Respond to Defendants’ Request for Admission and/or Motion to Withdraw Admissions p. 4; R.

³ As more fully set forth in Section I, *infra*, the Gadsons repeatedly claim to this Court that they responded to Bank of America’s Requests for Admission on December 6, 2010. This allegation cannot be supported by the record and is untrue. As noted, the Gadsons never answered or responded to the Requests for Admission at any time.

120 (“In the instant case, on March 08, 2011, Gadsons get [sic] the case restored to the docket by the Clerk of Court”). However, the Gadsons never served Bank of America with their motion to restore the matter or the order restoring the case.⁴ {Letter dated March 3, 2011, from Gadsons to Clerk of Court (failing to serve or provide a courtesy copy to counsel for Bank of America); Order Granting Summary Judgment p. 2; R. 135; 4}. Bank of America did not learn that the case had been restored until counsel received a letter from the court dated September 12, 2011, inquiring as to the status of the litigation and trial readiness. {Letter from Court dated September 12, 2011; R. 82}. From March 8, 2011, through September 12, 2011, the Gadsons again failed to take any steps to advance their litigation or respond to the still unanswered Requests for Admission. {Order Granting Summary Judgment p. 2; R. 4}.

As a result of the Gadsons’ failure to respond to the Requests for Admission, Bank of America filed an amended motion for summary judgment.⁵ {Bank of America’s Amended Motion for Summary Judgment filed December 28, 2011; R. 91}. Bank of America contended that the Gadsons’ failure to respond to the Requests for Admission deemed those answers admitted and, thus, eliminated all genuine issues of fact. {Id. at 3; R. 93}. In response, the Gadsons only argued that summary judgment should be denied because (1) the Gadsons responded to the Requests for Admission on December 6, 2010, and (2) summary judgment was premature because the circuit court

⁴ In their brief to this Court, the Gadsons admit they sought to restore the case to the docket. {App. Br. p. 5 (“[T]he case was restored to the docket by the Court Clerk on motion by Appellants.”) (emphasis added)}.

⁵ In November 2011, Bank of America initially filed a motion to dismiss for failure to prosecute and motion for summary judgment. The amended motion for summary judgment, which is the subject of this appeal, eliminated the motion to dismiss component and requested summary judgment only.

had not deemed the requests admitted. {The Gadsons' Response to Bank of America's Amended Motion for Summary Judgment filed January 10, 2012; R. 97}.

Thereafter, the Gadsons filed a motion to extend the time to respond to Bank of America's Requests for Admission. {Motion to Extend Time to Respond to [Bank of America's] Request for Admission and/or Motion to Withdraw Admissions filed January 31, 2012; R. 116}. Alternatively, the Gadsons sought to have their admissions withdrawn. {Id.}. The Gadsons **admitted** in that motion that they never responded to Bank of America's Requests for Admission. {Id. at p. 2, 3, and 5; R. 117, 118, 121}.

Ultimately, the circuit court denied the motion to extend and granted summary judgment to Bank of America on each of the Gadsons' claims. Specifically, the circuit court granted summary judgment "[b]ecause the [Gadsons] failed to respond to [Bank of America's] Requests for Admission, [and] the facts contained therein are deemed admitted under the authority of Rule 36(a), SCRCP." {Order Granting Summary Judgment p. 3; R. 4}. The circuit court concluded that these deemed admissions were fatal to each of the Gadsons' claims and granted summary judgment to Bank of America. {Id. at p. 4-5; R. 7-8}.

Scope of Review

The appellate court reviews the grant of a motion for summary judgment by applying the same standard that governs the circuit court. Wogan v. Kunze, 379 S.C. 581, 585, 666 S.E.2d 901, 903 (2008); Jackson v. Bermuda Sands, Inc., 383 S.C. 11, 14 n. 2, 677 S.E.2d 612, 614 n. 2 (Ct. App. 2009). Summary judgment is proper where no genuine issue exists as to any material fact and the moving party is entitled to judgment as a matter of law. Id.; Rule 56(c), SCRCP. Rule 56(c), SCRCP, provides

summary judgment shall be granted where “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.” Hutchinson v. Liberty Life Ins. Co., 393 S.C. 19, 24, 709 S.E.2d 130, 133 (Ct. App. 2011).

Argument

The circuit court properly granted summary judgment in favor of Bank of America. The Gadsons’ failure to respond to Bank of America’s Requests for Admission caused the facts to be deemed admitted pursuant to Rule 36(a) of the South Carolina Rules of Civil Procedure. As a result, no genuine issues of material fact existed, and summary judgment was proper. Additionally, the Gadsons failed to preserve their arguments for appellate review. This Court should, therefore, affirm the order granting summary judgment.

I. The Gadsons did not respond to Bank of America’s Requests for Admission on December 6, 2010, as alleged in their brief.

Bank of America must initially respond to the Gadsons’ incorrect representations to this Court that they did respond to Bank of America’s Requests for Admission, albeit untimely. This assertion is unequivocally untrue. To be clear: the Gadsons still, to date, have never responded or answered Bank of America’s Requests for Admission. In fact, the Gadsons admitted to the circuit court that they never responded. The Gadsons cannot take a position to the contrary at this stage of the litigation. This Court should disregard this claim.

Despite their admitted failure to respond, the Gadsons repeatedly claim in their brief to this Court that they responded to Bank of America's Requests for Admission on December 6, 2010. Specifically, the Gadsons assert that: (1) "[o]n December 6, 2010, Appellants sent an unfiled answer to respondents' attorney denying all requests to admit (sic)" {App. Br. p. 5}; (2) "[i]n this case, the Gadsons responded to Respondents' request for admission on December 6, 2010 (sic)" {App. Br. p. 9}; and (3) "[i]t is pertinent to note that Appellants sent an unfiled answer to Respondents' Request for Admission to the Respondents' attorney on December 6, 2010" {App. Br. p. 12, n.6}. These statements contradict the record presented to, and filed in, the circuit court, and are simply untrue.

As noted in the statement of facts, *supra*, the Gadsons provided answers and responses to the First Interrogatories and Request for Production to Bank of America on December 6, 2010. That correspondence did **not** contain any responses/answers to the Requests for Admission. {See Letter enclosing Answers and Responses to First Interrogatories and Request for Production dated December 6, 2010; R. 134}. The Gadsons did **not** answer or respond to the Requests for Admission at that time.

Moreover, this claim is inconsistent with the Gadsons' subsequently filed Motion to Extend Time to Respond to Bank of America's Request for Admission and/or Motion to Withdraw Admissions filed with the circuit court on January 31, 2012. In that motion, the Gadsons sought an extension of time to file their answers to the Requests for Admission. There would have been no need to request an extension of time to answer the Requests for Admission at that time if the Gadsons had in fact answered on December 6, 2010. Importantly, the Gadsons **admitted** that they never

responded to the Requests for Admission in that same filing. {Gadsons' Motion to Extend Time to Respond to Bank of America's Request for Admission and/or Motion to Withdraw Admissions filed January 31, 2012; R. 116}. In that motion, the Gadsons admitted as follows: (1) that the "Gadsons could not respond to [Bank of America's] request" in reference to the Requests for Admission; (2) that "[t]he Gadsons would have responded to or would have at least sought to Defendants' request for admission (sic);" (3) that "[b]ecause Gadsons did not respond to these and other such requests, they are now deemed admissions (sic);" and (4) that "[t]he reason behind Gadson's failure to respond (sic). . . ." {Id. at p. 2, 3, and 5; R. 117, 118, 121}.

Lastly, the Gadsons did not include this purported December 6, 2010 late response to Bank of America's Requests for Admission in their Designation of Matters to Include in the Record on Appeal to this Court. {See App. Designation dated July 27, 2012}. The Gadsons could not designate this purported December 6, 2010 late response for inclusion in the record because the document does not exist. The Gadsons never served Bank of America with any response to the Requests for Admission.

Even if the Gadsons had answered Bank of America's Requests for Admission on December 6, 2010, which they did not do, the circuit court still properly deemed the answers admitted and granted summary judgment to Bank of America. The December 6, 2010 responses would have still failed to meet the temporal mandates of Rule 36(a) of the South Carolina Rules of Civil Procedure.

Rule 36(a) deems requests to admit as admitted if a party fails to answer "within thirty days after service." Rule 36(a), SCRCPP; see also Hatchell v. Jackson, 290 S.C. 256, 258, 349 S.E.2d 407, 408 (Ct. App. 1986) (finding that when a litigant never

responded to a request for admissions, those matters were deemed admitted); Bakala v. Bakala, 352 S.C. 612, 630, 576 S.E.2d 156, 166 (2003) (finding that because the Plaintiff did not respond to the Defendants' Request to Admit, the facts were deemed admitted under Rule 36(a), SCRCF); Scott v. Greenville Hous. Auth., 353 S.C. 639, 645, 579 S.E.2d 151, 154 (Ct. App. 2003) ("South Carolina has long had the discovery rule that failure to respond to requests for admissions renders any matter listed in the request conclusively admitted for trial").

Bank of America served the Requests for Admission on the Gadsons on April 9, 2010. Thus, the Gadsons' response to the Requests for Admission was due no later than May 10, 2010. Any response given on December 6, 2010 would have been 7 months untimely pursuant Rule 36(a), SCRCF. Therefore, the circuit court correctly deemed the Requests for Admission admitted and properly granted Bank of America summary judgment, even if the Gadsons answered on December 6, 2010.

II. The Gadsons failed to preserve their appellate arguments for review by this Court.

In their brief to this Court, the Gadsons present several grounds as to why the grant of summary judgment was improper. First, throughout their brief, the Gadsons allege that the circuit court erred in granting summary judgment because the Rule 40(j), SCRCF, dismissal obviated their need to respond to Bank of America's Requests for Admission.⁶ Second, the Gadsons claim summary judgment was improper because the circuit court failed to assign any grounds for denying their motion to withdraw the

⁶ See App. Br. p. 5, 8, 10, 11, 13 ("Specifically, Appellants did not file a timely response to Respondents' request for admissions because at the time respondents served the Request for Admission, both parties to this suit were contemplating withdrawing this suit pursuant to SCRCF, Rule 40(j)").

admissions.⁷ Third, the Gadsons claim that the trial court erred in granting summary judgment because Bank of America failed to establish prejudice if the admissions were withdrawn.⁸ However, the circuit court did not rule on any of these grounds. Therefore, these issues are not preserved for appellate review and cannot be considered by this Court. As a result, the grant of summary judgment should be affirmed.

“Preserving issues for appellate review is a fundamental component of appellate practice.” Kennedy v. S.C. Ret. Sys., 349 S.C. 531, 532-33, 564 S.E.2d 322, 323 (2001). Our appellate error preservation rules definitively require two elements before an issue is preserved for appellate review. The first step in preserving an issue for appellate review is to actually raise it to the circuit court. Wilder Corp. v. Wilke, 330 S.C. 71, 497 S.E.2d 731 (1998). The circuit court must also rule upon the issue for it to be preserved for review. Id.; see also Holy Loch Distribs., Inc. v. Hitchcock, 340 S.C. 20, 531 S.E.2d 282 (2000). Thus, the litigant must specifically raise the issue to the circuit court **and** then obtain a ruling from the court on that specific issue. See, e.g., Wilke, 330 S.C. at 76, 497 S.E.2d at 733 (holding that an issue must be raised to **and** ruled upon by the trial judge in order to be preserved for appellate review); Smith v. Phillips, 318 S.C. 453, 458 S.E.2d 427 (1995) (appellate court generally will not address an issue unless the issue was raised to **and** ruled upon by the trial court).

If the trial court does not initially rule on the issue, then it is incumbent on the party to file a Rule 59, SCRPC, motion requesting a ruling from the circuit court on the issue. S.C. Farm Bureau Mut. Ins. Co. v. S.E.C.U.R.E. Underwriters Risk Retention

⁷ See App. Brief p. 8, 13-14.

⁸ See App. Br. p. 9-11.

Grp., 347 S.C. 333, 343, 554 S.E.2d 870, 876 (Ct. App. 2001) (recognizing that when an issue is raised but not ruled on by the trial judge, the party must file a motion to alter or amend or the issue is not preserved for appellate review); see also I'On, LLC v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) (holding that a party must file a motion to alter or amend if the trial court fails to rule on an issue in order to preserve it for appellate review). Failure to follow these explicit rules renders the issue not preserved for appellate review. S.E.C.U.R.E. Underwriters, 347 S.C. at 343, 554 S.E.2d at 876.

Imposing this preservation requirement on the appellant is meant to enable the trial court to rule properly after it has considered all relevant facts, law, and arguments. Roche v. S.C. Alcoholic Beverage Control Comm'n, 263 S.C. 451, 211 S.E.2d 243 (1975). “The requirement also serves as a keen incentive for a party to prepare a case thoroughly.” I'On, 338 S.C. at 422, 526 S.E.2d at 724. Importantly, “[i]t prevents a party from keeping an ace card up his sleeve-intentionally or by chance-in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case.” Id.

In this matter, the Gadsons failed to preserve any of their appellate arguments for review by this Court. The circuit court granted summary judgment based on one ground only. The circuit court found summary judgment was proper because the Gadsons' failure to respond to the Requests for Admission deemed them admitted. {Order Granting Summary Judgment p. 2, 3, and 4; R. 5-7}. The circuit court did not rule on the Gadsons' argument that the Rule 40(j), SCRCP, dismissal obviated their need to respond. Nor did the circuit court rule on the Gadsons claim that summary

judgment was improper because Bank of America failed to establish prejudice if the admissions were withdrawn. Accordingly, our well-settled issue preservation rules required the Gadsons to file Rule 59, SCRCF, motion requesting a ruling from the trial court on these issues. The Gadsons failed to do so. Likewise, the Gadsons did not file a Rule 59, SCRCF, motion requesting the circuit court issue an order to assign specific grounds for denying their motion to withdraw the admissions. Thus, these issues are not preserved for appellate review.

In conclusion, the order granting summary judgment did not rule on the arguments challenging the grant of summary judgment raised in the Gadsons' brief. Thus, the Gadsons were required to file a Rule 59, SCRCF, motion requesting a ruling by the circuit court, but they failed to do so. Thus, these issues are not preserved for appellate review. The circuit court's grant of summary judgment in favor of Bank of America should be affirmed.

III. The circuit court properly granted summary judgment because the Gadsons' failure to respond to the Requests for Admission deemed them admitted and eliminated all genuine issues of fact.

In their brief, the Gadsons claim the circuit court erred in three primary ways in granting summary judgment to Bank of America. Each argument lacks merit and is addressed fully below. The circuit court properly deemed admitted the Requests for Admission due to the Gadsons' failure to answer. These admissions eliminated all genuine issues of fact and allowed summary judgment in favor of Bank of America. Therefore, this Court should affirm.

Throughout their brief, the Gadsons allege that the circuit court erred in granting summary judgment because the Rule 40(j), SCRCF, dismissal obviated their

need to respond to Bank of America's Requests for Admission. {App. Br. p. 5, 8, 10, 11, and 13}. This argument lacks merit and should be rejected for several reasons. This Court should affirm the order granting summary judgment.

First, as set forth in section I, *supra*, the Gadsons failed to preserve this issue for appellate review. The order granting summary judgment merely found (1) the Requests for Admission were deemed admitted, (2) those admissions eliminated all issues of fact, and (3) summary judgment was proper. The order did not address or rule on this argument. The Gadsons failed to file a Rule 59, SCRPC, motion requesting the circuit court rule on this issue. Thus, it is not preserved for review. See, e.g., I'On, 338 S.C. at 422, 526 S.E.2d at 724 (holding that a party must file a motion to alter or amend if the trial court fails to rule on an issue in order to preserve it for appellate review).

Second, even if this issue is preserved for appellate review, the Court should still decline to address this claim. The Gadsons failed to cite to any case law or otherwise provide any supporting authority for the claim that Rule 40(j), SCRPC, eliminated their need to respond to Bank of America's Requests for Admission. Therefore, the Gadsons abandoned this argument, and the Court should decline to address it. See, e.g., First Sav. Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (finding an issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but is not supported by authority); Shealy v. Doe, 370 S.C. 194, 205-06, 634 S.E.2d 45, 51 (Ct. App. 2006) (declining to address an issue on appeal when appellant failed to cite any supporting authority to support unfounded arguments).

Third, the terms of the Rule 40(j), SCRCF, dismissal directly refute the Gadsons' argument to this Court. Notably, the Gadsons agreed to continue discovery even while this matter was removed from the docket. The consent motion, which was agreed to and signed by counsel for the Gadsons, stated that:

The Parties will continue participating in discovery and discuss settlement while this matter is stricken from the docket.

{Consent Motion Striking Case from Docket dated May 17, 2010; R.74 (emphasis added)}. The circuit court's order granting the dismissal directed that discovery would remain ongoing, noting that "[t]he parties are hereby permitted to continue participating in discovery while this matter is stricken from the docket." {Order Granting Motion Striking Case from docket filed May 19, 2010; R. 1(emphasis added)}. Thus, the Gadsons agreed that discovery would remain ongoing and that they had the duty to respond to Bank of America's Requests for Admission. The direct terms of the Rule 40(j), SCRCF, dismissal defeat the Gadsons' claim to the contrary in their brief.

Moreover, even if the time to respond to Bank of America's Requests for Admission had been stayed by the Rule 40(j), SCRCF, dismissal, the Gadsons still are afforded no relief. The thirty-day time for the Gadsons to respond to the Requests for Admission had expired prior to the matter being stricken from the docket.

Pursuant to Rule 36(a), SCRCF, a failure to answer a request for admission within thirty days after service results in the request being deemed admitted without any further action by the court or proponent. Rule 36(a), SCRCF; Hinson-Barr, Inc. v. Pinckard, 292 S.C. 267, 356 S.E.2d 115 (1987) (holding that "[u]nder Rule 36(a),

SCRCP, all matters contained in a Request for Admission are admitted unless the party serves answers or objects within a certain time”); Scott v. Greenville Hous. Auth., 353 S.C. 639, 646, 579 S.E.2d 151, 154 (Ct. App. 2003) (holding that a request for admission is deemed admitted if the party fails to respond within thirty days of service).⁹ Bank of America served the Requests for Admission on the Gadsons on April 9, 2010. Their responses were due no later than May 10, 2010, per Rule 36(a), SCRCP, or the requests would be deemed admitted. The Gadsons did not serve any response to the Requests for Admission by May 10, 2010.¹⁰ At that time, Rule 36(a), SCRCP, deemed those requests admitted. The parties did not move to strike the case under Rule 40(j), SCRCP, until May 14, 2010. Therefore, at the time of the dismissal, the Gadsons responses to the Requests for Admission were **untimely for four days** and had already been deemed admitted per Rule 36(a), SCRCP. As a result, Rule 40(j), SCRCP, afforded no relief to the Gadsons. This Court should affirm the grant of summary judgment.

Second, the Gadsons allege that summary judgment was improper because the circuit court failed to provide a basis as to the denial of the motion to extend/withdraw the admissions. {App. Br. p. 8, 13-14}. This argument should be rejected. The circuit court considered the motion to extend/withdraw the admissions in conjunction with Bank of America’s motion for summary judgment. The grounds supporting the

⁹ Rule 36, SCRCP, lends further credence to the fact that the request is automatically deemed admitted under section (a) and no further action is needed from the proponent once a party fails to answer within thirty days. The rule places the onus on the admitting party to take corrective action and not the proponent to have to enforce the admission. The rule provides that the proper mechanism is for the admitting party to seek to have the admission withdrawn under Rule 36(b), SCRCP.

¹⁰ The Gadsons still had not served any response to the Requests for Admission at the time of the summary judgment order on March 20, 2012, which was nearly **two full years from the date of service**. In fact, the Gadsons have never served any response to the Requests for Admission.

grant of summary judgment provide the basis for the denial of the motion to extend/withdraw the admissions. The order clearly states these grounds. For example, the circuit court noted the Gadsons filed this action on May 27, 2009 but took no further action to advance the litigation. {Order Granting Summary Judgment p. 2; R. 5}. Moreover, the Gadsons took no action to respond to the discovery propounded by Bank of America on April 9, 2010.¹¹ {Id.}. The circuit court specifically found that the Gadsons never responded to the Requests for Admission, noting that “to date, the [Gadsons’] failed to serve any response to [Bank of America’s] First Requests for Admission.” {Id.}. From the date of service to the date of the order granting summary judgment was nearly two full years (from April 9, 2010 to March 22, 2012). The order also found the Gadsons failed to serve Bank of America with their motion to restore the case to the active docket. {Id.}. Each of these grounds provides an sufficient and well-reasoned basis for the circuit court’s denial of the Gadsons’ motion to extend/withdraw the admissions. As a result, this Court should reject this argument and affirm the order granting summary judgment.

Lastly, the Gadsons claim that the trial court erred in granting summary judgment because Bank of America presented no argument to establish prejudice if the admissions were withdrawn. {App. Br. p. 9-11, 13-14}. This argument is without merit. This Court should reject this argument and affirm the grant of summary judgment.

¹¹ The Gadsons untimely provided answers and responses to the First Interrogatories and Request for Production to Bank of America on December 6, 2010, some 7 months after served. The Gadsons never responded to the Requests for Admission.

Initially, this Court should decline to rule on this argument because the Gadsons failed to preserve it for appellate review. The order granting summary judgment does not rule on this prejudice argument. As such, it was incumbent on the Gadsons to file a Rule 59, SCRCP, motion requesting the circuit court rule on this issue. The Gadsons failed to do so. Thus, it is not preserved for review. See, e.g., I'On, 338 S.C. at 422, 526 S.E.2d at 724 (holding that a party must file a motion to alter or amend if the trial court fails to rule on an issue in order to preserve it for appellate review).

This argument is without merit even if this Court elects to address the merits. Bank of America extensively argued to the circuit court and established prejudice in its return to the Gadsons' motion to extend the time/withdraw the admissions. {Bank of America's Opposition to the Gadsons' Motion to Extend Time to Respond and/or Motion to Withdraw Admissions; R. 123}. This Court should reject this argument.

The purpose of Rule 36 is to promote both efficiency and economy in resolving disputes. See Scott, 353 S.C. at 649, 579 S.E.2d at 156. Requests for admission serve this purpose by allowing admission of facts about which there is no real dispute. Id. Because requests for admission are used to establish admission of facts about which there is no real dispute, South Carolina courts have established that "if a point is conceded, litigants need not expend effort in investigations concerning it nor incur expenses in presenting evidence to prove it." Id. Bank of America argued that the purpose of Rule 36, SCRCP, would be thwarted if the circuit court allowed the Gadsons to withdraw their admissions.

Moreover, Bank of America would be prejudiced by the withdrawal. This Court has established that "discovery is the quintessence of preparation for trial and,

when discovery rights are trampled, prejudice must be presumed.” Scott, 353 S.C. at 652, 579 S.E.2d at 158. Throughout the course of this litigation, the Gadsons failed to properly respond to discovery requests or otherwise advance the litigation toward trial. The Gadsons trampled Bank of America’s discovery rights, which created a presumption of prejudice, and sought to take advantage of that conduct in the circuit court. The circuit court refused to allow the Gadsons to withdraw the admissions on this basis.

Bank of America specifically argued that a withdrawal of the Gadsons’ admissions would cause prejudice in maintaining Bank of America’s defense on the merits of the case. Bank of America presented the circuit court with the fact that the Gadsons sought to withdraw their admissions nearly three years after they filed their complaint and immediately prior to the call of the case for trial.¹² Bank of America maintained that withdrawal would unfairly and unreasonably create enormous difficulty and expense related to the expedited need to conduct full discovery. Bank of America argued that it would be required to expend an inordinate amount of effort and money to obtain evidence to prepare its defense in an extremely tight time frame despite the fact that the Gadsons did not advance this litigation for over three years. Further, engaging in factual discovery at that stage of the litigation, and after such a lapse of time, would present Bank of America with insufficient time to obtain the necessary evidence to best prepare a defense on the merits of the case. Bank of America further asserted prejudice related to the incurring added expenses to engage in such expedited discovery practices.

¹² The circuit court had set the matter for trial on March 12, 2012. The circuit court held argument on the motion for summary judgment and the Gadsons’ motion to extend/withdraw the admissions on February 29, 2012.

Lastly, the Gadsons would be at an advantage should discovery begin mere weeks before trial and that the Gadsons should not be rewarded for their lack of diligence in pursuing their claims or attempting to withdraw their admissions. Thus, Bank of America presented sufficient evidence of prejudice. The circuit court correctly refused to allow the Gadsons to withdraw their admissions and properly granted summary judgment to Bank of America. This Court should affirm.¹³

Conclusions

Based on the foregoing, this Court should affirm the circuit court's grant of summary judgment in favor of Bank of America and Deloatch.

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¹³ On page 12 of their brief, the Gadsons additionally claim that “a Request for Admissions to which a response, objection or motion for time has not been filed before the thirty-first day should not be taken as irrevocably admitted.” This argument is manifestly without merit and need not be addressed by this Court. First, the Gadsons failed to cite to any case law or otherwise provide any supporting authority for this claim. Therefore, the Gadsons abandoned this argument. This Court should decline to address it. See, e.g., McLean, 314 S.C. at 363, 444 S.E.2d at 514 (finding an issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but is not supported by authority). Second, Rule 36(a), SCRCP, directly and unequivocally refutes this position. The rule states that failure to respond to requests for admission within thirty days automatically renders them admitted. Further, Rule 36(b), SCRCP, states that “[a] matter admitted under this rule is **conclusively** established” (emphasis added).

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndrea G. Benjamin, Circuit Court Judge

Case No. 2011-CP-40-05170R

Jerry Gadson and Sheila Gadson, Appellants,

v.

Caroline Deloatch and Bank of America, Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Respondent's Brief complies with Rule 211(b), SCACR.

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