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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

Case No. 2018-CP-40-00726

Appellate Case No. 2020-001257

Leonard R. Jordan, Jr., as Personal Representative of the Estate of Lil B. Jordan,

Appellant,

v.

Marian J. Kirk and Lucy J. Fuller,

Respondents.

FINAL BRIEF OF RESPONDENTS

Stephen M. Cox
scox@rbh.com
S.C. Bar No. 12263

ROBINSON BRADSHAW & HINSON, P.A.
202 East Main Street, Suite 201
Rock Hill, South Carolina 29730
(803) 325-2900

Attorneys for Respondents

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I. STATEMENT OF THE ISSUE ON APPEAL

Respondents do not take issue with Appellant's Statement of the Issues on Appeal, although as noted below, Appellant has unnecessarily multiplied issues arising from a single point of law.

II. STATEMENT OF THE CASE

Respondents generally agree with Appellant's Statement of the Case; however, Respondents have omitted one significant event in the proceedings below. On January 4, 2019, Appellant procured a Writ of Execution from the Richland County Clerk of Court on the Order for Partial Summary Judgment that had been entered by the Honorable Casey L. Manning on November 2, 2018. Respondents promptly filed a Motion To Quash the Writ of Execution on January 17, 2019 (R. pp. 38-41.), arguing that, because Judge Manning's Order had neither disposed of all claims in the case nor been certified as "final" under S.C.R. Civ. P. 54(b), it could not be the subject of a Writ of Execution. R. pp. 38-41. Judge Manning agreed. By Order entered on May 31, 2019, he quashed the Writ of Execution. R. p. 9.

III. STANDARD OF REVIEW

Appellant has generally stated the applicable standard of review in an action at law tried without a jury, in which "the trial judge's findings have the force and effect of a jury verdict upon the issues and are conclusive on appeal when supported by competent evidence." *Mathis v. Brown & Brown of South Carolina,*

Inc., 389 S.C. 299, 307, 698 S.E.2d 773, 777 (2010). Appellant has overlooked the more deferential standard that applies to a review of a punitive damages award, however:

> The trial judge has considerable discretion regarding the amount of damages, both actual and punitive. Because of this discretion, our review on appeal is limited to the correction of errors of law. Our task in reviewing a damages award is not to weigh the evidence, but to determine if there is any evidence to support the damages award.

Mellen v. Lane, 377 S.C. 261, 276, 659 S.E.2d 236, 244 (2008). Thus, if there is "any evidence" to support Judge Newman's decision not to award punitive damages in this case, that decision must be affirmed. *See Mellen, supra*, 377 S.C. at 292, 659 S.E.2d at 252-53 (affirming trial court's denial of punitive damages). "Only when the trial court's discretion is abused, amounting to an error of law, does it become the duty of [the appellate court] to set aside the award." *Gamble v. Stevenson*, 305 S.C. 104, 112, 406 S.E.2d 350, 355 (1991).

IV. STATEMENT OF FACTS

Appellant Leonard R. Jordan, Jr. ("Jordan") and Respondents Marian J. Kirk ("Kirk") and Lucy J. Fuller ("Fuller") are the three children of Lil B. Jordan, who died on June 5, 2012. R. p. 88, line 3 – p. 89, line 1. Mrs. Jordan lived on Grand Drive in Columbia for almost 50 years. R. p. 177, line 25 – p. 178, line 8. In 2006, she moved to an independent living facility called Laurel Crest. R. p. 178, lines 13-14**.** After about 18 months there, she moved to another assisted living facility in Columbia, where she passed away a few years later. R. p. 178, lines 23-25.

Until she left her home in 2006, Mrs. Jordan lived independently. R. p. 89, lines 2-7. She shopped for gas and groceries and even drove herself to the beach. R. p. 144, line 24 – p. 145, line 8; p. 184, lines 2-10**.** Kirk assisted her mother with day-to-day

household management and helped her pay her bills. R. p. 142, line 21-p. 143, line 6. Although Jordan (a member of the South Carolina Bar since 1975, R. p. 128, lines 1-2) had held his mother's power-of-attorney for decades, R. p. 128, lines 4-6, he trusted his sister and was happy for her to take the burden of his mother's daily affairs off of him. R. p. 143, lines 7-11.

In December 2005, after Mrs. Jordan had ordered a large number of magazine subscriptions and bounced a couple of checks, it became clear that she needed more active help with her finances. R. p. 179, line 5 – p. 180, line 13**.** To that end, Mrs. Jordan and Kirk went down to Wells Fargo Bank and completed paperwork to make Kirk a joint account holder on Mrs. Jordan's household checking account (the "1206 Account"). R. p. 182, line 17 – p. 183, line 6**.** Mrs. Jordan and Kirk later opened a joint savings account (the "1783 Account") at Wells Fargo Bank, too. R. p. 193, line 3 – p. 194, line 11. The Bank regularly sent statements showing activity in these two accounts (and indicating both Mrs. Jordan and Kirk as account holders) to Jordan, as his mother's attorney-in-fact. R. p. 133, lines 4-24; p. 135, lines 3-11.

Thereafter, in 2010, again to obtain a favorable interest rate, Kirk moved $21,857.80 from another joint account that she held with her mother at Wells Fargo (one opened at the urging of a Wells Fargo employee) to an account in her own name at Bank of America (the "Bank of America Account"). R. p. 195, line 18 – p. 196, line 19.

When Lil Jordan moved into an assisted living facility in 2008, she became eligible for the benefits of a long-term care policy she had procured from the Bankers Life Company. R. p. 90, lines 3-20. Kirk submitted the paperwork for that policy every month so that her mother could receive benefits, and she deposited the monthly insurance

checks into her mother's bank account (usually the 1783 Account) each month. R. p. 91, lines 4-20.

After Mrs. Jordan left her home on Grand Drive, Respondents did most of the work to ready the house for sale. R. p. 185, line 16 – p. 187, line 18. Following the sale, in 2008, a rupture developed between Jordan and his sisters over the disposition of approximately $125,000 in sales proceeds. R. p. 156, lines 2-23. Jordan wanted to invest that money in the stock market; Kirk and Fuller considered such an investment far too aggressive. R. p. 156, line 2 – p. 157, line 8. Jordan disregarded their advice and lost a substantial amount in the market. R. p. 158, line 4 – p. 159, line 25. For some time thereafter, Respondents attempted to learn how much of their mother's money Jordan had lost, but he was not forthcoming. R. p. 189, line 22 – p. 190, line 3. A couple of times, he even hung up on them when they pressed him for details. R. p. 161, lines 19-21. Ultimately, Respondents learned that the $125,000 invested by their brother had lost over $35,000 by the end of 2008. R. p. 158, line 4 – p. 159, line 25. This episode caused the relationship among the siblings to sour. R. p. 200, lines 5-13.

When Mrs. Jordan died in June 2012, Jordan was appointed the Personal Representative of her Estate. R. p. 88, lines 3-5. He did not open an estate bank account or contact his mother's financial service providers to verify the extent of her assets. R. p. 130, line 25 – p. 131, line 9. Instead, he simply asked Kirk to tell him how much his mother had in her Wells Fargo bank account and her Morgan Stanley brokerage account. R. p. 99, lines 7-16. On January 11, 2013, he filed an Inventory and Appraisement with the Richland County Probate Court showing the amounts that Ms. Kirk had given him in those accounts: $23,980.82 and $60,460.84, respectively. R. p. 97, line 25 – p. 98, line

3; pp. 245-250. The Wells Fargo amount represented the sum of the 1206 Account and 1783 Account as of approximately August 2012. R. p. 132, lines 1-20; p. 241.

Thereafter, when the Probate Court began to notify Jordan that he was delinquent in closing his mother's estate (R. p. 137, line 21 – p. 138, line 1), he filed an Application for Settlement in which he represented that he had collected and distributed the assets of the Estate shown on the Inventory and Appraisement. R. p. 136, lines 1-8. He also submitted a Receipt and Release to the Probate Court representing that he had received his 1/3 share of the assets shown on the Inventory and Appraisement. R. p. 137, line 14 – p. 138, line 9.

As Jordan conceded at trial, these representations were false. Though the Morgan Stanley account had been distributed among the three siblings, R. p. 136, line 23 – p. 137, line 1**,** the Wells Fargo Account had not been, as Jordan represented in the Application for Settlement. R. p. 137, lines 2-7. Nor had Jordan received a third of the Wells Fargo account, as he represented to the Probate Court in his Receipt and Release. R. p. 137, line 14 – p. 138, line 16. In Jordan's words, "I certainly did not handle this to the fullest extent that I should have." R. p. 100, lines 10-11. Nevertheless, on the basis of Jordan's representations and Application for Settlement, the Probate Court closed the Estate on October 9, 2013. R. p. 138, lines 20-23.

In 2016, years after his mother's estate had been closed, Jordan filed an action in the Richland County Court of Common Pleas in which he *personally* sued Kirk alone, seeking to recover the $23,980.82 that he had listed on the 2013 Inventory and Appraisement as being the Wells Fargo account.[1] R. p. 100, line 20 – p. 101, line 21.

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[1] The case is docketed as 2016-CP-40-05589.

After Kirk filed a Motion for Summary Judgment arguing lack of subject matter jurisdiction (because the assets in question were estate assets), Jordan dismissed that lawsuit and filed this action, as Personal Representative of his mother's Estate, on November 22, 2017. R. p. 128, lines 7-11; p. 138, line 24 – p. 139, line 6.

When he filed this action, Jordan sent a letter to his sisters detailing the amounts that he was seeking:

- The $23,980.82 shown in the Wells Fargo Account on the January 13 Inventory and Appraisement (the "Wells Fargo Claim"). R. p. 238.
- A $2,480 Bankers Life check that Kirk had deposited in the 1783 Account on December 17, 2012, after Mrs. Jordan had died (the "Bankers Life Claim"), R. p. 238.
- The $21,858.40 that Kirk had moved from Wells Fargo Bank to Bank of America in August 2010, and that she and Fuller had split between themselves four years later, R. p. 238.

Jordan conceded at trial that, because he and his sisters were the three beneficiaries of their mother's estate, R. p. 93, lines 13-15, any sums recovered by the Estate in this action had to be divided among the three of them after attorneys' fees and other expenses had been paid. R. p. 164, line 18 – p. 165, line 12.

V. ARGUMENT

A. Judge Newman's Verdict and Judgment of November 21, 2019 did not impermissibly overrule Judge Manning partial summary judgment ruling of December 10, 2018.

Although Appellant purports to assert six distinct "Issues on Appeal," his first, second and fourth Issues amount to the same argument: that Judge Newman impermissibly overruled Judge Manning's grant of partial summary judgment when she

issued her Verdict and Judgment on November 21, 2019. Appellant is mistaken—for several reasons.

First, Appellant overstates the rule in South Carolina that one circuit court judge may not overrule another, particularly with respect to a partial summary judgment ruling. A partial summary ruling is subject to the clear command of S.C.R. Civ. P. 54(b), which provides:

> When more than one claim for relief is presented in an action . . . the court may direct the entry of a final judgment only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims . . . shall not terminate the action as to any of the claims or parties, and the order or other form of decision *is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.*

(emphasis added). Here, Judge Manning's December 2018 order granting partial summary judgment did *not* make "an express determination that there [was] no just reason for delay," nor did that order expressly direct entry of final judgment. Accordingly, Judge Manning's order was subject to revision at any time before final adjudication of all claims in the case.[2] Appellant has cited no South Carolina case holding that a trial judge is preventing from exercising the discretion expressly granted her by Rule 54(b) to revisit a prior partial summary judgment ruling. It would have been neither improper nor inappropriate for Judge Newman to have done so here, especially

[2] Judge Manning implicitly accepted Respondents' arguments on these points when he held that his partial summary judgment ruling was not a "final judgment" and quashed Plaintiff's Writ of Execution. *See* R. pp. 38-41, p. 9.

because she had the benefit of a full evidentiary and testimonial record, while Judge Manning was limited to consideration of the papers presented to him at a motion hearing.

Because Appellant ignores the controlling language of Rule 54(b), it is not surprising that he also misapprehends the law of the case doctrine. That doctrine "prohibits issues which have been decided in a prior appeal from being relitigated in the trial court in the same case." *Ross v. Medical Univ. of S.C.*, 328 S.C. 51, 62, 492 S.E.2d 62, 68 (1997). But *before* a case has been appealed, Rule 54(b) makes it clear that a trial court is free to revisit a partial summary judgment ruling that has not been determined and directed to be a final judgment. *See Ashenfelder v. City of Georgetown*, 389 S.C. 568, 575, 698 S.E.2d 856, 861 (2010) (reviewing Rule 54(b) and noting repeatedly that a ruling with respect to fewer than all claims is "subject to revision"). As Rule 54(b) makes clear, such a partial ruling is *not* binding "law of the case," but can be modified at any time by the trial court prior to entry of judgment on all claims.

Ultimately, however, the foregoing legal observations are beside the point, because Judge Newman expressly declined to revisit Judge Manning's ruling. Indeed, at the conclusion of the trial, she ruled from the bench as follows:

> As to the partial summary judgment granted by Judge Manning, I don't intend to disturb that. That will become final judgment.

R. p. 234, lines 14-16. In so doing, Judge Newman declined to consider, at a minimum, substantial evidence showing that Appellant's Banker's Life Claim was barred by the same limitations period and principle of estoppel that barred his Wells Fargo Claim.[3]

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[3] Judge Newman denied from the bench Plaintiff's Wells Fargo Claim, finding it barred by the applicable statute of limitations and the doctrine of estoppel. She also found that the Wells Fargo account was a joint account that passed to Kirk, by

Just as Judge Manning had done, Judge Newman granted the Estate its actual damages and prejudgment interest on its Bankers Life Claim and Bank of America Claim. R. p. 234, lines 22-24.

B. Judge Newman's Verdict and Judgment of November 21, 2019 avoided an inequitable windfall to the Estate and fully preserved the estate's ability to recover its reasonable expenses (including a reasonable attorneys' fees).

Appellant Jordan, a licensed member of the Bar, admitted at trial that his sisters were entitled to their one-third shares of whatever the Estate recovered in this action (net of expenses). R. p. 164, line 18 – p. 165, line 12. Heeding this concession, Judge Newman sensibly concluded that Respondents did not need to tender *their own shares* of the $2,480.00 Bankers Life Claim and the $21,858.40 Bank of America Claim to the Estate, since the Estate would simply be handing those shares right back to them. It would have been especially burdensome and unjust to force Respondents to tender prejudgment interest on those shares. Prejudgment interest, after all, is supposed to compensate a party for the loss of use of money, and the Respondents had not lost the use of their shares of the Bankers Life Claim and the Bank of America Claim.

With all of these considerations in mind, Judge Newman fashioned a remedy that (i) ensured the Estate would be made whole, (ii) paid fidelity to Judge Manning's partial summary judgment ruling, and (iii) prevented the Estate from reaping a windfall and the Respondents from suffering an undue burden. She provided in her Verdict and Judgment that Respondents could fully discharge their obligations to the Estate by paying one-third of the Bank of America Claim and Bankers Life Claim to the Estate, renouncing any

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operation of law, upon Mrs. Jordan's death. Appellant has not appealed Judge Newman's ruling with respect to the Wells Fargo Claim.

claims to the Estate, and agreeing to be responsible for the reasonable expenses of the Estate in this action (as determined by the Probate Court). R. pp. 22-23. Respondents adopted this course of action by tendering the full amount ordered by the Court and renouncing any further claims to the Estate on August 31, 2020—within ten (10) days of the trial court's denial of Jordan's Motion To Reconsider the Verdict and Judgment.

Appellant has challenged the remedy fashioned by Judge Newman on a variety of grounds. First, he contends that the remedy is in the nature of setoff—an affirmative defense that was neither pled nor argued at trial. *App. Init. Br.* at p. 12. Appellant is mistaken, for three reasons. First, both Respondents *did* plead the defense of setoff in their answers, albeit with respect to services that they rendered to the Estate. R. pp. 72, 79. More to the point, however, and contrary to what Appellant claims, Respondents' counsel *extensively* argued at the closing of the trial in favor of the remedy ultimately adopted by Judge Newman. R. p. 229, line 21 – p. 234, line 5. Appellant did not object to that argument or attempt to counter it. *Id.* Accordingly, to the extent the remedy was an unpled affirmative defense, it was tried by implied consent. *See* S.C.R. Civ. P. 15(b) ("When issues not raised in the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings."); *Fraternal Order of Police v. S.C. Dep't of Rev.* 352 S.C. 420, 435, 574 S.E.2d 717, 725 (2002) ("In order to be tried by implied consent, the issue must have been discussed extensively at trial."); *Woods v. Rabon*, 295 S.C. 343, 347, 368 S.E.2d 471, 474 (Ct. App. 1988) (noting that litigant who fails to object to evidence on a issue impliedly consents to the trial of that issue).

Most importantly, however, the remedy adopted by Judge Newman was *not* in the nature of a setoff. Instead, it represented a calculation of the actual damages suffered by the Estate and a means of ensuring that the Estate would not reap a windfall. Jordan had argued at trial that the Estate should be allowed to recover from Respondents $21,858.40 on his Bank of America Claim and $2,480.00 on his Bankers Life Claim, plus prejudgment interest on those sums. But as noted above, Respondents are two of the three beneficiaries of the Estate who are entitled to two-thirds of the Estate's assets. It would have been absurd to allow the Estate to "recover" from Respondents money that already belonged to them, and much more absurd to require Respondents to pay themselves several years' worth of prejudgment interest on that "recovery." To avoid the burdensome inequity of requiring Respondents to pay to the Estate money that was already theirs, Judge Newman required Kirk and Fuller (i) to pay to the Estate only the one-third share of the Bank of America Claim and Bankers Life Claim that did not belong to them and (ii) to remain liable to the Estate for any reasonable expenses incurred by the Estate in this Action. R. pp. 22-23. This result was fully consistent with Judge Manning's partial summary judgment ruling, which made the Estate whole on the Bank of America Claim and Bankers Life Claim. It gave the Estate all of the damages to which it was entitled and avoided a windfall.

"Courts have the inherent power to do all things reasonably necessary to ensure that just results are reached to the fullest extent possible." *Robinson v. Estate of Harris*, 389 S.C. 360, 371, 698 S.E.2d 801, 807 (2010). Judge Newman did just that—ensuring that Jordan, as the remaining beneficiary of the Estate, would receive his fair share of the Bank of America and Banker's Life Claims and that the Estate could recover from

Respondents its reasonable expenses (as determined by the Probate Court). In fact, the remedy fashioned by Judge Newman gives Jordan (as beneficiary) substantially *more* than the result that he himself advocated at trial. The difference in the two approaches is illustrated by Appendix A to this brief, a demonstrative chart similar to one presented to Judge Newman at trial. That chart shows that, under the approach urged by Jordan, he would receive only $8,911.95 as beneficiary of the Estate. Under the approach advocated by Respondents (and adopted by Judge Newman), he will receive $13,367.93.[4]

Why, one might ask, is Jordan urging a result that would give him substantially *less* than he will receive under Judge Newman's Judgment, especially when that Judgment keeps Respondents on the hook for reasonable Estate expenses? The answer is attorneys' fees. Jordan entered into a contingent fee arrangement with the Estate's lawyer in this action by which counsel would receive an escalating percentage of the Estate's recovery depending on the stage of the proceedings. R. p. 162, line 15 – p. 163, line 22. This percentage was 33% at the time of trial and could go as high as 40%. *Id*. Under that agreement, the Estate's lawyer would recover a percentage of Respondents' own shares of the Bank of America Claim and Bankers Life Claim that came into the Estate, even though the Estate would not really have "recovered" those shares at all. R. p. 165, line 23 – p. 166, line 2. Put another way, under the approach urged by Jordan, his sisters would be required to pay their two-third shares of the Bank of America and Bankers Life Claims into the Estate (a total of $16,0633, plus prejudgment interest), have the Estate's lawyer take between 33%-40% of that amount, and then receive it right back again.

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[4] These outcomes calculate prejudgment interest through November 21, 2019—the date of Judge Newman's Verdict and Judgment.

The absurdity and injustice of this approach is shown on Appendix A. Indeed, under this approach, the Estate's lawyer ends up receiving far more than any of the beneficiaries, including Mr. Jordan himself. It was no doubt to avoid this inequity, and "to ensure that just results are reached to the fullest extent possible," *Robinson, supra,* 389 S.C. at 371, 698 S.E.2d at 807, that Judge Newman ruled as she did.

As Appellant acknowledged at trial, the amount of attorneys' fees to be awarded to Jordan (as Personal Representative in this action) is ultimately for the Probate Court to decide. R. p. 125, line 24 – p. 126, line 2. The Probate Court's oversight and authority over such fee awards is prescribed by S.C. Code Ann. § 62-3-720, which provides that a personal representative is entitled to "his necessary expenses and disbursements including reasonable attorneys' fees incurred" for any action that he "prosecutes . . . in good faith." The key word here is "reasonable." The Probate Court will not be bound by a contingent fee arrangement struck between Jordan and the Estate's counsel when determining a proper attorneys' fee award. *See Jackson v. Speed,* 326 S.C. 289, 308, 486 S.E.2d 750, 759 (1997) ("When determining the reasonableness of attorneys' fees under a statute mandating the award of attorneys' fees, the contract between the client and his counsel does not control the determination of a reasonable hourly rate."). Instead, the Probate Court will be required to determine the amount of the fee by applying judicially established criteria. *Blumberg v. Nealco,* 310 S.C. 492, 494, 427 S.E.2d 659, 660 (1993) (setting forth the six factors that a court must consider when determining a reasonable attorneys' fee). Indeed, the Probate Court may decide not to award an attorneys' fee at all, given Jordan's prior misrepresentations to the Probate Court, the needless litigation in this action that resulted from those misrepresentations, and the fact that Jordan

commenced this lawsuit on the Estate's behalf only after first pursuing the same claims individually against Kirk alone.

In any event, as Appellant has conceded, the determination of a reasonable attorneys' fee and an award of reasonable Estate expenses is for the Probate Court to make. Judge Newman's Verdict and Judgment allows for that determination and award and obligates Respondents to satisfy it. Appellant's suggestion that Respondents will violate the Probate Court's ultimate order on this issue is meritless. Respondents tendered the full amount of Judge Newman's Judgment to Appellant within ten (10) days of the denial of Appellant's Motion To Reconsider. They stand ready, willing and able to do the same thing with respect to any order that the Probate Court may enter.

C. Judge Newman rightly determined that Respondents should not be required to pay any punitive damages.

Appellant also challenges the trial court's refusal to award him punitive damages. As noted above, the trial court is granted wide discretion when determining whether and to what extent to award such damages. *Mellen, supra,* 377 S.C. at 292, 659 S.E.2d at 252-53 (affirming trial court's denial of punitive damages). This Court must affirm that decision if there is "any evidence" to support it. *Id.* Moreover, our State's appellate courts have regularly acknowledged that it is the trial court that is in the "best position to judge the witnesses' credibility." *Matter of Estate of Kay,* 423 S.C. 476, 480, 816 S.E.2d 542, 545 (2018). As the Supreme Court explained in *Lucht v. Youngblood,* 266 S.C. 127, 221 S.E.2d 854 (1976):

> The reasonableness of the verdict was challenged before the trial judge and he reduced it. The fact he heard the evidence and was more familiar than we with the evidentiary atmosphere at trial gives him, we think, a better informed view than we have. This is particularly true when the

> elements of damage are intangibles and the appraisal depends somewhat on an observation of the [witnesses] and evaluation of their testimony.

266 S.C. at 138, 221 S.E.2d at 860.

Punitive damages are not available to every plaintiff who suffers an intentional tort. Rather, such damages are reserved for cases in which the plaintiff has shown, by clear and convincing evidence, that "the defendant's conduct was willful, wanton, or in reckless disregard of the plaintiff's rights." *Taylor v. Medenica*, 325 S.C. 200, 221, 479 S.E.2d 35, 46 (1996). Even then, the trial court retains discretion to deny punitive damages. *See Mellen, supra,* 377 S.C. at 292, 659 S.E.2d at 252-53 (affirming trial court's denial of punitive damages despite a finding by the trial court that defendant had committed an "intentional and deliberate act which was willful, wanton, reckless and malicious under the circumstances").

Here, the trial court considered the circumstances surrounding Appellant's Bankers Life Claim and the Bank of America Claim; applied the eight-factor test for determining punitive damages set forth in *Gamble, supra,* 305 S.C. at 112, 405 S.E.2d at 354; and exercised her discretion to deny punitive damages. R. pp. 19-22. In so doing, Judge Newman thoroughly reviewed the relevant facts and circumstances. She noted, for example, that Kirk had not attempted to conceal the $2,480 Bankers Life check from Jordan, but had deposited that check into a Wells Fargo bank account (the 1783 Account) of which Jordan was or should have been aware. R. p. 20. Indeed, Jordan himself admitted at trial that he could have learned of that check had he exercised the customary diligence of a personal representative, which he failed to do. He could also have taken steps to exercise control over, and distribute, estate funds in the Wells Fargo 1783 account, which he failed to do even though he told the Probate Court he had. In short,

Judge Newman concluded, "[a]ny delay in the estate's ability to take control of the $2,480 [Banker's Life Claim] has been due to [Jordan's] own conduct, not to the conduct of Respondent Kirk." R. p. 20.

With respect to the Bank of America Claim, Judge Newman observed that Kirk originally moved funds from a joint account to Bank of America to obtain a better interest rate. R. p. 21. Those funds sat in Kirk's Bank of America account for four years, without any effort by Respondents to claim or use them as their own. R. p. 196, lines 16-23. To be sure, Respondents ultimately divided the Banker's Life and the Bank of America funds between themselves—a fact trumpeted by Appellant as evidence of the sort of "reprehensibility" that entitles the Estate to punitive damages. That division amounted to a conversion; Judge Manning found as much; and Judge Newman respected his decision. But Judge Newman rightly considered the surrounding circumstances when declining to award punitive damages. By the time of the division, the relationship among the three siblings had become polarized. Over his sisters' wishes, Jordan had lost tens of thousands of dollars of Mrs. Jordan's money in the 2008 stock market crash (far more than his roughly $8,000 share of the Banker's Life check and Bank of America account). R. p. 158, line 16 – p. 159, line 23. To compound that imprudence, he had refused to tell his sisters how much he had lost, even hanging up on them when they pressed him. R. p. 161, lines 19-21. And finally, Respondents had undertaken virtually all of the substantial efforts required to move their mother to assisted living facilities and to ready her home for sale—services which even Jordan admitted were "valuable" and "worthy of payment." R. p. 153, lines 1-3.

To be sure, none of these circumstances justified Respondents' conversion, and Judge Newman fully compensated the Estate for the *actual* damages occasioned by that conversion. At the same time, she acted well within her discretion by concluding that Respondents' actions amounted to a misbegotten, intrafamilial effort at "self-help" rather than the sort of reprehensible, malicious conduct justifying punitive damages. R. pp. 21-22. Judge Newman also found noteworthy Jordan's own poor conduct in mishandling his mother's estate, making misrepresentations to the Probate Court, and refusing to be transparent with his sisters concerning his handling of his mother's assets. R. p. 22. Finally, she observed that there would be no "beneficial deterrent effect" to a punitive damages award because, with her Judgment, "there are no other estate assets over which Respondents exercise custody or control." R. p. 22.

In sum, because there exists at least some evidence in support of the trial court's refusal to award punitive damages, the court's discretion should be upheld and Appellant's request for punitive damages rejected.

D. Any mathematical error in the Verdict and Judgment should be corrected, but the Judgment has now been fully satisfied.

In their response to Appellant's Motion To Reconsider Judge Newman's Verdict and Judgment, Respondents acknowledged that there was a mathematical error in the Judgment that required correction and that prejudgment interest should be extended through November 21, 2019 (the date of the Verdict and Judgment). Respondents consented to amendment of the Judgment as follows:

Description	Amount
Bank of America Claim Principal Amount	$ 21,857.80
Prejudgment Interest (06/06/12 – 11/21/19)	$ 14,263.28

Banker's Life Claim Principal Amount	$ 2,480.00
Prejudgment Interest (12/19/12 – 11/21/19)	$ 1,490.34
TOTAL	**$ 40,103.78**
One-Third Amount for Respondents To	$ 13,367.93
Discharge Obligations to Estate	

On August 31, 2020 (ten days after the trial court denied Appellant's Motion To Reconsider), Respondents tendered the sum of $14,303.37 to Appellant—representing the $13,367.93 above and post-judgment interest thereafter at the legal rate. The payment of this sum fully discharges all liability of Respondents to Appellant.

VI. CONCLUSION

For the foregoing reasons, Respondents respectfully request that, except for the correction of a minor mathematical error, the Verdict and Judgment of the trial court be affirmed.

This 6th day of May, 2021.

/s/ Stephen M. Cox_____
Stephen M. Cox
scox@rbh.com
South Carolina Bar No. 12263

ROBINSON, BRADSHAW & HINSON, P.A.
202 East Main Street, Suite 201
Post Office Drawer 12070
Rock Hill, South Carolina 29731
(803) 325-2900

ATTORNEYS FOR RESPONDENTS
MARIAN J. KIRK and
LUCY J. FULLER

APPENDIX A

POTENTIAL AWARDS TO ESTATE OF JORDAN

I. Recovery if Respondents must pay their own shares back into the Estate:

Bank of America Claim:	$	21,857.80
Prejudgment Interest at 8.75 % from 6/6/12 *2722 days at $5.24 per day*		14,263.28
Banker's Life Claim	$	2,480.00
Prejudgment Interest at 8.75 % from 12/19/12 *2526 days at $0.59 per day*		1,490.34
TOTAL:	$	40,103.78
One-Third Attorneys' Fee	$	13,367.93

This is the result urged by Appellant; it assumes that the Probate Court will determine that a 1/3 contingent fee is reasonable under these circumstances.

Balance to Beneficiaries:	$	26,735.85
One-Third to Each Beneficiary: **(Kirk, Fuller and Jordan)**	**$**	**8,911.95**

II. Recovery if Respondents must pay only Petitioner's share into Estate:

One-Third of "TOTAL" above, representing Appellant Jordan's one-third share as beneficiary	$	13,367.93
Total to Beneficiary Leonard Jordan:	**$**	**13,367.93**
Reasonable Attorney's Fee:	$	TBD

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

Case No. 2018-CP-40-00726

Appellate Case No. 2020-001257

Leonard R. Jordan, Jr., as Personal Representative of the Estate of Lil B. Jordan,

Appellant,

v.

Marian J. Kirk and Lucy J. Fuller,

Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Final Brief of Respondents Marian J. Kirk and Lucy J. Fuller in this matter comply with Rule 211(b) of the South Carolina Appellate Court Rules.

This 6th day of May, 2021.

/s/ Stephen M. Cox
S.C. Bar No. 12263
ROBINSON, BRADSHAW & HINSON, P.A.
140 East Main Street- Suite 420
Post Office Drawer 12070
Rock Hill, South Carolina 29731
(803) 325-2900

ATTORNEYS FOR RESPONDENTS