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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

The Honorable L. Casey Manning, Circuit Court Judge

Appellate Case No. 2021-00898
Circuit Court Case No. 2015-CP-40-07268

Jimmy Helms Respondent

v.

Debbie Willing..... Appellant

RESPONDENT’S INITIAL BRIEF

S. Jahue Moore, SC Bar #4063
Moore Bradley Myers Law Firm, P.A.
1700 Sunset Boulevard (29169)
P.O. Box 5709
West Columbia, SC 29171
(803) 796-9160
Jake@mbmlawsc.com
Attorney for Respondent

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STATEMENT OF ISSUES ON APPEAL

- 1. DID THE CIRCUIT COURT HAVE SUBJECT MATTER JURISDICTION OVER THIS ACTION?**
- 2. DID THE COURT ERR IN ITS DETERMINATION AND RULING THAT A PARTNERSHIP EXISTED BETWEEN JIMMY HELMS AND DEBBIE WILLING?**
- 3. DID THE COURT PROPERLY DIVIDE THE PARTNERSHIP ASSETS?**
- 4. WAS THERE ANY ERROR IN THE APPOINTMENT OF THE COURT'S EXPERT MARCUS B. HODGE?**

STATEMENT OF THE CASE

Respondent Jimmy Helms (“Respondent”) commenced an action against Appellant Debbie Willing (“Appellant”) in the Richland County Family Court in September of 2015. (Family Court Complaint; R. ____). Appellant filed an Answer. In her Answer, Appellant denied that there was any type of marital relationship between the parties and also denied that the Family Court had any jurisdiction over the parties or the issues between them including any “equitable distribution of property.” (Family Court Answer dated October 21, 2015; R. ____)

After receiving Appellant’s Family Court Answer, Respondent filed the present action in Circuit Court. (“Circuit Court Complaint”) based on Appellant’s position that there was no common law marriage and that the Family Court lacked jurisdiction over the parties or issues involved in the Family Court action. Respondent alleged in his Circuit Court Complaint that if, in fact there were no issues or jurisdiction before the Family Court, a business partnership existed between the parties. (Complaint dated December 3, 2015; R. ____). The Respondent’s Complaint prayed for actual and punitive damages; for an order declaring the rights of the parties to another; for an accounting; for a division of partnership properties; and for a winding up and termination of partnership affairs. (Complaint dated December 3, 2015; R. ____).

The Appellant answered Respondent’s Circuit Court Complaint, once again specifically denying the fact that the Family Court had any jurisdiction over the parties and alleging that the Circuit Court lacked jurisdiction **only** in the event that the Family Court retained jurisdiction over the Family Court action (Emphasis Added) (Answer and Counterclaim dated January 5, 2016; R. ____).

This matter was tried non-jury before the Honorable L. Casey Manning, Presiding Judge of the Fifth Judicial Circuit on July 13 and July 14, 2020. Prior to the first witness being called,

Judge Manning appointed Marcus B. Hodge, CPA/ABV/CFF, MBA, CFE or ASC Forensic as the Court's forensic accountant/expert. Neither party objected to the appointment of Mr. Hodge in this capacity. Judge Manning heard the case and took the matter under advisement. Mr. Hodge conducted discovery which included the discovery requests and the issuance of subpoenas to the parties. At no time did Appellant object to any of the discovery undertaken by Mr. Hodge. Mr. Hodge then issued his report which was provided to the parties. Appellant, through her trial counsel, accepted Mr. Hodge's report as a Court's exhibit.

On July 21, 2021, Judge Manning issued his Order. (Order of the Honorable L. Casey Manning, dated July 21, 2021, R. ____). The Court found that no partnership existed as to the disputed properties located at 1900 Osceola, 1904 Osceola, 809 Shull Street, 185 Harbor Watch (owned by Appellant) and the 1905 Osceola Property (owned by the Respondent). The Court did find that 812 Meeting Street and 820 Meeting Street and proceeds from the business located on it were held as partnership property. The Court held that Respondent holds the legal title to the property. The Court divided the proceeds from the sale of Jimmy's Mini Mart/Jimmy's Citgo as well as the proceeds from the lawsuit involving defective gasoline tanks. The Court divided the \$86,620.48 which constituted the balance of three deposit accounts controlled by Appellant as of July 1, 2015, that received proceeds from the sale of the parties' business (Jimmy's Mini Mart), rental income from 812 Meeting Street/820 Meeting Street, and installment payments from the sale and inventory of Jimmy's Mini Mart equally between the parties. (Order of the Honorable L. Casey Manning dated June 21, 2021; R. ____)

Following Judge Manning's Order, the Appellant moved for Reconsideration or in the alternative for a new trial solely on the grounds that (1) the Circuit Court erred in finding that the Parties held the property at 812 and 820 Meeting Street in partnership and in awarding Plaintiff

(Respondent) title to the property; (2) the Court erred in finding that ordering a sale of 812 and 820 Meeting Street was inequitable; (3) the Circuit Court failed to order a winding up of the affairs of the partnership to include division of liabilities connected with 812 and 820 Meeting Street when the Court found the parties held the property in partnership; and (4) the Circuit Court erred in dividing proceeds from the sale of the rights to Jimmy's Citgo, litigation proceeds and account balances. (Notice of Motion and Motion for Reconsideration or in the Alternative Motion for New Trial; R. ____). Appellant's counsel raised no issue(s) concerning the Court's ruling on any of the properties at issue other than the 812 Meeting Street and 820 Meeting Street properties. (Notice of Motion and Motion for Reconsideration or in Alternative Motion for New Trial; R. ____). Appellant's Motion alleged error with the Court's division of monies arising out of the sale and operation of the convenience store/gas station located on these two pieces of property. (Notice of Motion and Motion for Reconsideration or in the Alternative Motion for New Trial; R ____). Appellant's Motion alleged no other error on the part of the Trial Judge and sought no other relief from the Trial Court's Order. Appellant's Motion raised no issues as to the appointment of Mr. Hodge or the work that he performed in this case.

On July 19, 2021, Judge Manning issued his Order denying Appellant's Motion.¹ In denying Appellant's Motion, Judge Manning set forth that his original Order, issued in the case on June 21, 2021, "...held that a partnership existed and partnership property was equitably divided amongst the Plaintiff (Respondent) and Defendant (Appellant)." (Order Denying Motion for Reconsideration and Denying Motion for New Trial; R. ____). Judge Manning concluded:

The analysis in the June 21, 2021 order of the existence of the partnership is reaffirmed and the winding up of the partnership affairs was accomplished by the equitable division of the partnership property. The equitable division of property in the June 21, 2021 order relied on the

¹ Although Respondent submitted a proposed order at the request of the Trial Judge, it was not used by the trial court in denying Appellant's post-trial motion.

filings, and testimony of the parties at trial and a forensic accountant report prepared by Marcus Hodge that included extensive financial records of Plaintiff (Respondent) and Defendant (Appellant).

(Order Denying Motion for Reconsideration and Denying Motion for New Trial. R. ____). This appeal followed.

STATEMENT OF THE FACTS

Respondent Jimmy Helms and Appellant Debbie Willing began a relationship in December of 2003. (Transcript of Record, Page 26, Line 25 – Page 27, Line 6; R. ____). The parties were never formally married in any type of religious or civil ceremony. (Transcript of Record, Page 26, Lines 6-9; R. ____). Appellant Debbie Willing has continuously taken the position in her Court pleadings and her trial testimony that the parties were never married. (Family Court Answer dated October 20, 2015; R. ____) (Answer and Counterclaim dated January 5, 2016; R. ____) (Transcript of Record Page 26, Lines 10-12; R. ____). Mr. Helms and Ms. Willing were “together” for approximately eleven (11) years. (Transcript of Record, Page 27, Lines 7-9; R. ____). Their relationship ended in 2016. (Transcript of Record, Page 127, Lines 22-24; R. ____).

At the time that the parties’ relationship began, Appellant Mr. Helms was also operating a small convenience store at 812 Meeting Street in West Columbia, South Carolina, “owned” by L&D Enterprises (“L&D”) doing business under the name of “Alice’s Food and Beverage.” (“Alice’s”). (Transcript of Record, Page 31, Lines 18-23; R. ____) (Transcript of Record Page 31, Lines 21 – Page 32, Line 7; R. ____). (Transcript of Record, Page 64, Lines 16 – Page 65, Line 4; R. ____). Respondent was also the owner of the real property located at 812 Meeting Street, in West Columbia on which the convenience store sat.

L&D was incorporated in the late 1990’s (Transcript of Record, Page 229, Line 25 – Page 230, Line 3; R. ____). L&D was “named after” two of Respondent’s children. (Transcript of

Record, Page 138, Lines 5-6; R. ____). Initially L&D was in the name of Respondent's ex-wife, Sandy Helms. (Transcript of Record, Page 138, Lines 9-14; R. ____). The business was later sold to one of Respondent's children, Christa Wilks and/or her husband, Michael Wilks. (Transcript of Record, Page 230, Lines 4-8; R. ____) (Detailed Report for the Matter of *Helms v. Willing*; Page 76, R. ____).

In 2000, Respondent purchased the business from his son-in-law, Michael Wilks. For \$20,000.00. (Transcript of Record, Page 115, Line 24 – Page 116, Line 2; R. ____) (Transcript of Record Page 230, Lines 4-8; R. ____) (Detailed Report for the Matter of *Helms v. Willing*; Page 76, R. ____). Following this transaction, Respondent took over the day-to-day running of the convenience store. The store sold drinks, food items, cigarettes and lottery tickets. (Transcript of Record Page 117, Line 25 – Page 118, Line 2; R. ____). There were no gas pumps at the store at that time. (Transcript of Record, Page 230, Lines 9-10; R. ____).

At the time that the Respondent took over operation of Alice's from Michael Wilks, the small lot on which it sat, 812 Meeting Street in West Columbia, South Carolina was owned by an individual named Al Landers. Respondent purchased the 812 Meeting Street Lot from Mr. Landers in return for a \$120,000.00 Promissory note. (Transcript of Record, Page 33, Lines 14-15; R. ____) (Transcript of Record, Page 116, Lines 3-4; R. ____) (Detailed Report for the Matter of *Helms v. Willing*, Page 81; R. ____). Appellant had no interest whatsoever in the operation of the convenience store or any ownership interest in the property on which it sat at the time the parties' relationship began. (Transcript of Record Page 31, Line 5 – Page 32, Line 7; R. ____) (Transcript of Record, Page 31, Lines 18-20; R. ____)

Sometime in 2003, Respondent asked Appellant to assist him with the operation of the convenience store. Appellant put \$20,000.00 of her own funds in the convenience store. She

testified that she did this to keep the store solvent and operating. (Transcript of Record Page 32, Lines 17-19; R. ____). Appellant testified that she put this money into the bank account of Alice's in exchange for a promissory note signed by Christa and Michael Wilks which she did not negotiate. (Transcript of Record, Page 72, Line 21 – Page 73, Line 6; R. ____) (Detailed Report for the Matter of *Helms v. Willing*; Page 77, R. ____). While Appellant claims that as a result of this transaction, L&D was transferred into her name, she has no documentary evidence establishing this fact. (Transcript of Record, Page 73, Lines 10-14; R. ____) (Transcript of Record, Page 74, Line 23 – Page 75, Line 6; R. ____) (Transcript of Record, Page 230, Line 23 – Page 231, Line 1; R. ____).

In 2004, Appellant purchased the adjacent property to the convenience store, located at 820 Meeting Street in West Columbia. (Transcript of Record, Page 88, Lines 11-13; R. ____). In January of 2006, Respondent transferred title of the 812 Meeting Street Property to Appellant for \$5.00. (Transcript of Record, Page 76, Line 13 – Page 77, Line 3; R. ____) (Detailed Report for the Matter of *Helms v. Willing*; Page 81, R. ____). Appellant took over the loan to Al Landers. (Transcript of Record, Page 31, Lines 10-12; R. ____). This was a mutual decision – to put properties held by the couple – in Appellant's name due to her credit history and the fact that Respondent was engaged in a number of businesses whose legality was at issue/in question. These were the sole reasons for this arrangement(s). (Transcript of Record, Page 68, Lines 11-19; R. ____) (Transcript of Record, Page 116, Lines 10 – 15; R. ____). Despite the titling of the properties, Respondent considered the parties to be partners in the running of the store and he did not intend to give up his interest in the store. (Transcript of Record, Page 145, Line 22 – Page 146, Line 5; R. ____) (Transcript of Record, Page 151, Lines 23-25; R. ____) (Transcript of Record Page 174, Lines 1-8; R ____)

The parties changed the name of the business from “Alice’s” to Jimmy’s Mini Mart. (Transcript of Record, Page 118, Lines 3-9; R. ____) (Transcript of Record, Page 230, Lines; 11-18;R. ____). This was a mutual decision. (Transcript of Record, Page 230, Lines 13-18; R. ____) (Transcript of Record, Page 118, Lines 3-17; R. ____).

Respondent trusted Appellant and recognized her intelligence and business acumen. (Transcript of Record, Page 42, Lines 8-9; R. ____) (Transcript of Record, Page 42, Line 21 – Page 43, Line 17, R. ____). Appellant began working with Respondent at the convenience store. (Transcript of Record, Page 42, Lines ____; R. ____) (Transcript of Record, Page 115, Lines ____; R. ____). The parties agreed that Respondent would maintain his interest in the store and in its operation. (Transcript of Record, Page 116, Line 16 – Page 117, Line 3; R. ____).

Both parties derived income from the operation of the store. Appellant represented Jimmy’s Mini Mart as her employer on a signature card for a personal deposit account at Wells Fargo. Appellant reported the income from Jimmy’s Mini Mart on her income tax returns. (Detailed Report for the Matter of *Helms v. Willing*; Page 80, R. ____) (Detailed Report for the Matter of *Helms v. Willing*, Page 82, R. ____). Respondent and Appellant both used income from the store to purchase properties and to pay off existing debts. (Transcript of Record, Page 193, Lines 11-13; R. ____).

The parties jointly controlled the day to day business operation of the convenience store. (Transcript of Record, Page 242,, Lines 7-10; R. ____). Appellant managed the daily operation of the business which included management of personnel, tax compliance and the acquisition of assets of the business. (Transcript of Record, Page 119, Lines 8-13; R. ____). Respondent also worked at Jimmy’s. He ran the register and stocked boxes as well as mixing with potential customers. (Transcript of Record, Page 119, Lines 4-7; R. ____) (Transcript of Record Page 293,

Lines 19-22; R. ____). Both parties hired and managed store employees. (Transcript of Record, Page 242., Lines 7-10; R. ____).

Both parties wrote and signed business checks. (Transcript of Record, Page 293, Lines 5-10; R. ____). The parties paid personal and business related expenses and bills out of the proceeds of the business and out of their personal funds. (Transcript of Record, Page 65, Line 22 – Page 66, Line 2; R. ____) (Transcript of Record, Page 66, Line 2- Page 67, Line 3; R. ____) (Transcript of Record Page 97, Line 24 – Page 98, Line 19, R. ____).

The parties reached a mutual decision to “convert” the existing convenience store to a gas station and convenience store. They decided to add gas pumps in order to improve the profit of the convenience store. (Transcript of Record, Page 143 Line 15 – Page 144, Line 8; R. ____) (Transcript of Record Page 121, Lines 3-8; R. ____). Respondent testified that while this was Appellant’s idea, the decision to put in the gas pumps was a mutual one. (Transcript of Record, Page 121, Lines 3-8; R. ____) (Transcript of Record, Page 143, Line 15 – Page 144, Line 8; R. ____). The parties met with representatives of Mansfield Oil and negotiated the transaction together. (Transcript of Record, Page 144, Lines 9-13; R. ____).

The existing lot at 812 Meeting Street was too small for the placement of underground pumps, necessary to operate a gas station and convenience store. The tanks needed for the placement of gas pumps were placed under the property which had been previously purchased in the Appellant’s name at 820 Meeting Street. In addition to the underground storage tanks which were buried beneath 820 Meeting Street, the pumps and canopy over them were also placed on the 820 Meeting Street Property. (Transcript of Record, Page 88, Line 24 – Page 89, Line 7. R. ____). Both lots were utilized and necessary to run the Citgo business. (Transcript of Record, Page 89, Line 12 – Page 91, Line 1; R. ____). Appellant borrowed approximately \$130,000.00 to convert the

store into a gas station. This loan was paid for out of store income. (Transcript of Record, Page 98, Lines 13-19; R. ____).

After the purchase of 820 Meeting Street, both properties on which the business sat were in the Appellant's name. As set forth above, this was a mutual decision – to put properties held by the couple – in Appellant's name due to her credit history and the fact that Respondent was engaged in a number of businesses whose legality was at issue/in question. These were the sole reasons for this arrangement(s). (Transcript of Record, Page 116, Lines 10-15; R. ____) (Transcript of Record, page 120, Line 5 – Page 121, Line 1; R. ____). It was understood and agreed upon that despite the titling of the properties, the Respondent retained an interest in the business. (Transcript of Record, Page 116, Line 9 – Page 117, Line 1; R. ____).

The installation of gas pumps did, in fact, improve business which allowed the parties to pay off business and personal debts. (Transcript of Record, Page 144, Lines 1-8; R. ____) (Transcript of Record, Page 145, Lines 9-13; R. ____). Shortly after the gas station began operation, customers began complaining of water in gas purchased at the station. (Transcript of Record, Page 147, Line 21 – Page 148, Line 20; R. ____). As a result, the parties discovered that water was getting into the underground storage tanks. In 2009, L&D brought suit in the Lexington County Court of Common Pleas against a third-party, alleging that the third-party had installed defective gasoline storage tanks at 812 Meeting Street. (Transcript of Record, Page 147; Lines ____; R. ____) (Detailed Report for the Matter of *Helms v. Willing*, Page 41, R. ____). Both parties testified. (Transcript of Record, Page 148, Lines 15-18; R. ____).

The lawsuit was subsequently settled for \$150,000.00 in July of 2013 with a net payment of \$100,000.00. (Transcript of Record, Page 98, Line 20 – Page 99, Line 6; R. ____) (Detailed Report for the Matter of *Helms v. Willing*, Page 41, R. ____). Although the parties were still

operating the station together, Appellant deposited \$100,000.00 of these funds into her personal checking account. (Transcript of Record, Page 99, Lines 7-9; R. ____) (Transcript of Record, Page 99, 10-12; R. ____). Appellant testified that she used this money to pay down personal credit card bills and also to buy supplies for Jimmy's Mini Mart. (Transcript of Record, Page 100, Line 24 – Page 101, Line 8; R. ____) (Detailed Report for the Matter of *Helms v. Willing*, Page 41, R. ____).

The parties later decided to sell the gas station and listed the business for sale through a brokerage. (Transcript of Record, Page 141 Lines 3-25; R. ____). This was a mutual decision based on the amount of work necessary for the two of them to run the station. Respondent testified that the parties intended to use the proceeds from this sale to be able to retire. (Transcript of Record, Page 142, Line 7 – Page 143, Line 1; R. ____).

As a result of this listing, in May of 2014, the business name, goodwill and inventory of L&D (operating as Jimmy's Mini Mart/Jimmy's Citgo but not the real estate on which it sat) was sold to a third party, Chharvi & Bhavya, LLC. (Transcript of Record, Page 80, Line 13 – Page 81, Line 1; R. ____) (Transcript of Record Page 81, Lines 4-8; R. ____). Mr. Viral Patel, the purchaser, testified at trial that he negotiated the sale with both Appellant and Respondent, who he considered to be joint owners of the business. (Transcript of Record, Page 271, Line 4 – Page 272, Line 2; R. ____) (Transcript of Record, Page 275, Lines 4-8; R. ____). The business was sold to Mr. Patel's LLC for \$150,000.00 of which \$25,000.00 was owner financed. (Transcript of Record, Page 80, Line 13 – Page 81, Line 1; R. ____).

A total sum of \$108,335.00 was deposited into a bank account at Wells Fargo that was used for the operation of Jimmy's Mini Mart. (Detailed Report for the Matter of *Helms v. Willing*; Page 9, R. ____). Some, but not all of these proceeds were later transferred by Appellant to a personal

bank account. (Transcript of Record, Page 81, Lines 15-19; R. ____). Mr. Patel paid off the owner financed part of the sale (\$25,000.00) with monthly payments of \$1,000.00 per month at the rate of 5% interest per month. Mr. Patel also paid \$3800.00 a month rent which continued once the owner-financed portion of the sale was paid off. (Transcript of Record, Page 92, Line 8 – Page 93, Line 12, R. ____). These monies were paid to Appellant who put the proceeds in her bank account. (Transcript of Record, Page 93, Lines 11-12; R. ____) (Transcript of Record, Page 95, Lines 13-17; R. ____). Respondent testified that contrary to the intent of the parties, he never saw any of the proceeds from the sale of the business. (Transcript of Record, Page 142, Line 20 – Page 143, Line 1; R. ____).

The parties' relationship ended sometime around 2016. Respondent asked Appellant to put his name (along with hers) on a number of real property deeds, including the titles to the 812 Meeting Street and 820 Meeting Street properties. Appellant refused to do so. (Transcript of Record, Page 131, Lines 6-13; R. ____) (Transcript of Record, Page 147, Lines 9-13; R. ____). In addition, the Appellant refused to share any of the monthly rents she was receiving from the purchaser of the business. (Transcript of Record, Page 147, Lines 9-13; R. ____).

STANDARD OF REVIEW

When legal and equitable causes of action are maintained in one suit, each retains its own identity as legal or equitable for purposes of the applicable standard of review on appeal *Corley v. Ott*, 326 S.C. 89, 485 S.E.2d. 97 (1997). The question as to the existence of a partnership is a question of law. *See Dulany & Co. v. Elford & Dargan*, 22 S.C. 304, 308 (1885); *Am. Type Founders Co. v. Greenwood Printing Co.*, 88 S.C. 308, 70 S.E. 804 (1911); *Beck v. Clarkson*, 300 S.C. 293, 387 S.E.2d 681, (Ct.App.1989); *Hofer v. St. Clair*, 298 S.C. 503, 381 S.E.2d 736 (1989) On an appeal of an action at law tried without a jury, the Appellate Court's standard of review

extends only to the correction(s) of errors of law. “The findings of fact of the trial judge will not be disturbed unless they are found to be without evidence which reasonably supports the trial court’s findings. On appeal, the Court’s role is to determine whether any evidence reasonably supports the factual findings of the trial court.” *Townes Associates, Ltd. V. City of Greenville*, 266 S.C. 81, 221 S.E.2d. 773 (1976). *Electro Lab of Aiken, Inc. v. Sharp Constr. Co. of Sumter, Inc.*, 357 S.C. 363, 593 S.E. 2d. 170 (Ct. App. 2004). In an action in equity, the appellate court may resolve questions of fact in accordance with its own view of the preponderance of the evidence. *See, Wilder Corp. v. Wilke*, 324 S.C. 570, 577, 479 S.E.2d 510, 513 (Ct.App.1996). In an action tried in equity, tried by a judge alone, the appellate court may find facts in accordance with its own view of the preponderance of the evidence. *Inlet Harbour v. S. C. Dep't of Parks, Recreation & Tourism*, 377 S.C. 86, 659 S.E.2d. 151 (2008); *Mac Papers, Inc. v. Genesis Press, Inc.*, 426 S.C. 393, 826 S.E.2d. 874 (2019).

ARGUMENTS

1. THE CIRCUIT COURT HAD SUBJECT MATTER JURISDICTION OVER THIS ACTION

The Appellant repeatedly mischaracterizes the nature of the case before the Court. At no time in the Circuit Court case did the Respondent request that the Court declare the parties “husband and wife” pursuant to any common law marriage. (Complaint dated December 3, 2015; R. ____). In her Family Court Answer, Appellant specifically denied that there was any type of marital relationship and also denied that the Family Court had any jurisdiction over the parties or the issues between them. Respondent then commenced the present action in Circuit Court on the basis of the Appellant’s allegations in her Family Court Answer (Complaint dated December 3, 2015; R. ____). Respondent’s Circuit Court Complaint specifically alleged that if there were not issues before the Family Court, then a business partnership existed between the parties and the

issues between them were subject to the Circuit Court's jurisdiction. (Complaint dated December 3, 2015; R. ____).

The Respondent's Circuit Court Complaint prayed for actual and punitive damages; for an order declaring the rights of the parties to another; for an accounting; for a division of partnership properties; and for a winding up and termination of partnership affairs. (Complaint dated December 3, 2015; R. ____). The Appellant answered Respondent's Circuit Court Complaint, once again specifically denying the fact that the Family Court had any jurisdiction over the parties and alleging that the Circuit Court lacked jurisdiction **only** in the event that the Family Court retained jurisdiction over the Family Court action. (Answer and Counterclaim dated January 5, 2016; R. ____) (Emphasis Added)

This case then proceeded to trial. Both Appellant and Respondent filed Pretrial Briefs with the Court prior to trial. Under, "**An objective statement of the facts in controversy,**" Respondent, through his counsel stated:

This Court should order a dividing up of the partnership affairs and should issue such order as is just and proper as to the division of partnership property. Plaintiff (Respondent) prays for judgement against Defendant (Appellant) for actual damages; for punitive damages ; for an Order declaring the rights of the parties one to another; for an accounting; for a division of partnership properties; for a winding up and termination of partnership affairs; and for such other and further relief as the Court might deem just and proper.

(Plaintiff's Pretrial Brief; R. ____). Under "**Legal issues involved,**" Plaintiff (Respondent) stated, "The legal issues primarily involve...theories of evidence to prove a business partnership between the partners, tenancy in partnership, breach of fiduciary duty, breach of trust, express trust, resulting trust, constructive trust and conversion." (Plaintiff's Pretrial Brief; R. ____). There was no reference made to the establishment of any common law marriage or any matters that would otherwise be properly heard in Family Court.

The case then proceeded to Trial. The following exchange with Judge Manning, which is

actually set forth in the Appellant's Brief is extremely telling and important:

THE COURT: While she's marking them (exhibits), just parenthetically, I read something somewhere. Was there an action filed in Family Court?

MS. JEFFRIES (Appellant's Trial Counsel): There was an action filed in Family Court.

THE COURT: What happened to that action? I'm curious.

MS. JEFFRIES: It got administratively dismissed in December of 2016.

After a brief discourse on masks, the discussion continued.

MS. JEFFRIES: It got administratively dismissed.

THE COURT: Administratively dismissed. Go ahead Mr. Moore.

MR. MOORE: Basically what happened was we filed it in family court and in circuit court in an effort to try to determine –

THE COURT: A common-law marriage existed, was that it?

MR. MOORE: Yes, sir. When they filed saying they denied it, we allowed it to administratively die so we could try the matter in circuit court.

MS JEFFRIES: And that is correct Your Honor, but I, I do have some concerns because – well, we'll get to that in the motion for summary judgement. But if there is – the argument is we were common-law husband and wife, I think that needs to be adjudicated in family court because family court would be the court of exclusive jurisdiction over whether or not there was a marriage. If there was a marriage, what are the assets of this marriage and how is it going to equitably apportioned, so.

THE COURT: Well, currently there is no matter pending in family court affecting this hearing here today?

MS. JEFFRIES: It's no. No. No, your honor.²

(Transcript of Record, page 10, Line 14 – Page 11, Line 23; R. ____).

Judge Manning then stated:

THE COURT: Okay. Alright. What happens later on, we'll worry about crossing that

² This position is completely inconsistent with Appellant's pleadings in the Family Court and Circuit Court. In light of her previous assertions in pleadings filed with the Family Court asserting that the Family Court had no jurisdiction over the issues between the parties, one wonders which court the Appellant would concede has jurisdiction over the issues between the parties.

bridge when we come to it. Right now I have jurisdiction. Everybody agrees. We're ready to proceed.

ATTY. MOORE: Yes, sir.

THE COURT: Fair enough, okay.

(Transcript of Record, Page 10, Line 14 – Page 12, Line 4; R. ____).

Prior to the trial, Appellant moved for Summary Judgment on the grounds that there was no evidence of any partnership between the parties. (Motion for Summary Judgment; R. ____)(Amended Motion for Summary Judgment, R. ____). This Motion was argued before Judge Manning. (Transcript of Record, Page 15, Line 10 – Page 22, Line 14; R. ____). Appellant's counsel did not raise any issues regarding the Family Court action or the present action before the Court in her motion which was based solely on the issues raised by Respondent in his Circuit Court Complaint. Judge Manning denied Appellant's Motion for Summary Judgment and the trial began.

On July 21, 2021, Judge Manning issued his Order. (Order of the Honorable L .Casey Manning, dated July 21, 2021, R. ____). The Court found that no partnership existed as to the disputed properties located at 1900 Osceola, 1904 Osceola, 809 Shull Street, 185 Harbor Watch (owned by Appellant) and the 1905 Osceola Property (owned by the Respondent). The Court did find that 812 Meeting Street and 820 Meeting Street were held as partnership property. The Court held that Respondent holds the legal title to the property. The Court divided the proceeds from the sale of Jimmy's Mini Mart/Jimmy's Citgo as well as the proceeds from the lawsuit involving defective gasoline tanks. The Court divided the \$86,620.48 which constituted the balance of three deposit accounts controlled by Appellant as of 7/1/2015 that received proceeds from the sale of the parties' business (Jimmy's Mini Mart), rental income from 812 Meeting Street/820 Meeting Street and installment payments from the sale and inventory of Jimmy's Mini Mart equally between the parties. (Order of the Honorable L. Casey Manning dated June 21, 2021; R. ____)

The Court's order made no findings as to whether or not a common law marriage existed between the parties. The Court's Order made no mention or reference to the division of any "marital property." Instead the Court's Order addressed whether or not a partnership existed between the parties as to ownership of certain properties and the business located at the 812 Meeting Street and 820 Meeting Street. (Order of the Honorable L. Casey Manning, dated June 21, 2021; R. ____).

Following Judge Manning's Order, the Appellant moved for Reconsideration or in the alternative for a new trial solely on the grounds that (1) the Circuit Court erred in finding that the Parties held the property at 812 and 820 Meeting Street in partnership and in awarding Plaintiff (Respondent) title to the property; (2) the Court erred in finding that ordering a sale of 812 and 820 Meeting Street was inequitable; (3) the Circuit Court failed to order a winding up of the affairs of the partnership to include division of liabilities connected with 812 and 820 Meeting Street when the Court found the parties held the property in partnership; and (4) the Circuit Court erred in dividing proceeds from the sale of the rights to Jimmy's Citgo, litigation proceeds, and account balance. (Notice of Motion and Motion for Reconsideration or in the Alternative Motion for New Trial; R. ____). Appellant's Motion alleged error with the Court's division of monies arising out of the sale and operation of the convenience store/gas station located on these two pieces of property. (Notice of Motion and Motion for Reconsideration or in the Alternative Motion for New Trial; R. ____). Appellant's Motion alleged no other error on the part of the Trial Judge and sought no other relief from the Trial Court's Order. There was no issue raised with respect to Judge Manning's Order addressing the existence of a common law marriage and the division of any "marital property" as these were not issues decided by the Circuit Court. (Notice of Motion and Motion for Reconsideration or in the Alternative Motion for a New Trial; R. ____).

On July 19, 2021, Judge Manning issued his Order denying Appellant's Motion. In denying Appellant's Motion, Judge Manning set forth that his original Order, issued in the case on June 21, 2021, "...held that a partnership existed and partnership property was equitably divided amongst the Plaintiff (Respondent) and Defendant (Appellant)." (Order Denying Motion for Reconsideration and Denying Motion for New Trial; R. ____). Again there was no finding whatsoever as to any common law marriage or division of "marital property."

In denying the Appellant's Motion. Judge Manning concluded,

The analysis in the June 21, 2021 order of the existence of the partnership is reaffirmed and the winding up of the partnership affairs was accomplished by the equitable division of the partnership property. The equitable division of property in the June 21, 2021 order relied on the filings, and testimony of the parties at trial and a forensic accountant report prepared by Marcus Hodge that included extensive financial records of Plaintiff (Respondent) and Defendant (Appellant).

(Order Denying Motion for Reconsideration and Denying Motion for New Trial. R. ____).

This was not a Family Court matter tried by the Circuit Court, as alleged by Appellant numerous times in her Brief. As recognized by the Appellant in her own pleadings, this was a matter that was properly in the Circuit Court. This was a case properly tried in Circuit Court to determine if there was a partnership between the parties and resolving matters pertaining to the ownership of partnership property. The Appellant's argument to the contrary and that the Circuit Court lacked jurisdiction mischaracterizes the issues that were addressed and, more importantly, decided by Judge Manning. The issue before Judge Manning was whether or not a partnership(s) existed between the parties, and not whether or not they were common law husband and wife. The Circuit Court had jurisdiction over the parties to this action and the issues between them.

A. THE FAMILY COURT ACTION LACKED EXCLUSIVE SUBJECT MATTER JURISDICTION

The prior Family Court action did not deprive the Circuit Court of its jurisdiction over this matter. After Respondent commenced an action in the Richland County Family Court, Appellant filed an Answer. In her Answer, Appellant not only denied that there was any type of marital relationship between the parties, but also denied that the Family Court had any jurisdiction over the parties or the issues between them including any “equitable distribution of property.” (Family Court Answer dated October 20, 2015; R. ____)

After receiving Appellant’s Family Court Answer, Respondent then filed the present action in Circuit Court. Respondent filed a Complaint in Circuit Court (“Circuit Court Complaint”) based on Appellant taking the position that there was no common law marriage and that the Family Court lacked jurisdiction over the parties. Respondent alleged in his Complaint that if, in fact there were no issues before the Family Court, a business partnership existed between the parties. (Complaint dated December 3, 2015; R. ____) The Respondent’s Complaint prayed for actual and punitive damages; for an order declaring the rights of the parties to another; for an accounting; for a division of partnership properties; and for a winding up and termination of partnership affairs. (Complaint dated December 3, 2015; R. ____). The Appellant answered Respondent’s Circuit Court Complaint, once again specifically denying the fact that the Family Court had any jurisdiction over the parties and alleging that the Circuit Court lacked jurisdiction only in the event that the Family Court retained jurisdiction over the Family Court action. (Answer and Counterclaim dated January 5, 2016; R. ____)

The Family Court action did not preclude the filing of the Circuit Court action which forms the basis of this Appeal. The Family Court did not retain jurisdiction over the parties. The Family Court action was dismissed prior to the trial of this case and counsel for *both* Appellant and

Respondent affirmatively represented to the Court prior to the first witness being called, that the Family Court action had no bearing on the present case before the Court. (Transcript of Record, Page 10, Line 14- Page 11, Line 23; R. ____).

The Appellant's argument that the Family Court action retained subject matter jurisdiction even after its dismissal lacks merit. First, the Circuit Court action was brought after the Appellant denied that the Family Court had any jurisdiction over the issues between the parties. (Family Court Answer, R. ____). It is an entirely inconsistent position to now argue before this Court that not only does the Family Court have jurisdiction, it has exclusive and continuing jurisdiction over the parties.

As set forth above, the issues raised by in the matter before Family Court (the existence of a common law marriage) and the matters before the Circuit Court (the existence of a partnership over certain businesses and properties) were different. The Appellant's argument seems to imply that any and all actions between the parties, from the filing of the Family Court action on, would be subject to litigation in the Family Court. Rule 16 of the South Carolina Rules of Family Court simply has no application to the action that was tried before Judge Manning. Rule 2 of the Family Court Rules provides that the rules are applicable to "domestic relations actions." The matter tried before Judge Manning was not a "domestic relations action" but an action to determine whether or not partnerships existed between the parties as to certain properties and businesses. The Circuit Court properly exercised its jurisdiction over the parties to this action and the issues between the parties.

2. THE TRIAL COURT PROPERLY FOUND THAT A PARTNERSHIP EXISTED BETWEEN THE PARTIES TO THIS LAWSUIT

The Respondent met his burden of proving the existence of a partnership between the parties. The Court correctly found the existence of a partnership between the parties as it pertained

to the business located at 812 Meeting Street and 820 Meeting Street in West Columbia, South Carolina.

A partnership is an association of two or more persons to carry on as co-owners of a business for profit. 28 S.C. Jur. Partnerships and Joint Ventures, Section 1; S.C. Code Ann. § 33–41–210 (Supp.2003); *Wyman v. Davis*, 223 S.C. 172, 174, 74 S.E.2d 694, 698 (1953); *Halbersberg v. Berry*, 302 S.C. 97, 101, 394 S.E.2d 7, 10 (Ct.App.1990); *Beck v. Clarkson*, 300 S.C. 293,387 S.E.2d 681 (Ct.App.1989); *Buffkin v. Strickland*, 280 S.C. 343, 312 S.E.2d 580 (Ct.App.1984).³

[W]here the parties to a contract, by their acts, conduct, or agreement show that they intended to combine their property, labor, skill and experience, or some of these elements on one side, and some on the other, to carry on, as principals or co-owners, a common business, trade, or venture as a commercial enterprise, and to share, either expressly or by implication, the profits and losses or expenses that may be incurred, such parties are partners.

Stephens v. Stephens, 213 S.C. 525, 50 S.E.2d 577 (1948). “A partnership agreement may rest in parol. It may be implied and without express intention.” *Wyman*, 223 S.C. at 174, 74 S.E.2d at 698; *Halbersberg*, 302 S.C. at 101, 394 S.E.2d at 10; *accord Beck*, 300 S.C. at 301, 387 S.E.2d at 685; *Buffkin*, 280 S.C. at 345, 312 S.E.2d at 580. A partnership may be found to exist by implication from the parties’ conduct. *Corley v. Ott*, 326 S.C. 89, 92, 485 S.E.2d 97, 99 (1997); *Stephens*, 213 S.C. at 532, 50 S.E.2d at 580. “One of the most important tests as to the existence of a partnership is the intention of the parties.” *Stephens*, 213 S.C. at 530–31, 50 S.E.2d at 579. To determine whether a partnership exists, the following tests are used: (1) the sharing of profits and losses; (2) community of interest in capital or property; and (3) community of interest

³ In her relentless effort to discredit the trial judge, Appellant takes issue with the trial court’s use of Blacks Law Dictionary to define partnership when in fact the definition used by the trial court is nearly identical to the one cited by South Carolina Law. Further, Appellant later relies upon the same authority, Black’s Law Dictionary, in her Brief.

in control and management. *Wyman*, 223 S.C. at 181, 74 S.E.2d at 699; *Stephens*, 213 S.C. at 531, 50 S.E.2d at 579; *Halbersberg*, 302 S.C. at 101, 394 S.E.2d at 10. “[W]hen all of the conditions exist which by law create a legal relationship, the effects flowing legally from such relation follow whether the parties foresaw and intended them or not.” *Stephens*, 213 S.C. at 531, 50 S.E.2d at 579; *Moore v. Moore*, 360 S.C. 241, 599 S.E.2d. 467 (Ct. App. 2004).⁴

A. THE PLAINTIFF MET HIS BURDEN OF PROOF TO ESTABLISH A PARTNERSHIP BETWEEN THE PARTIES

The Court found that a partnership existed between the parties as to the business located at 812 Meeting Street and 820 Meeting Street (Jimmy’s Mini Mart/Jimmy’s Citgo) and that this property was held as partnership property. (Order of the Honorable L. Casey Manning dated June 21, 2021; R. ____).

The Judge’s Order is supported by the facts presented at the hearing. The parties both operated Jimmy’s Mini Mart and later Jimmy’s Citgo as partners. Respondent testified numerous times that he retained an interest in the gas station and that he considered himself and Appellant to operate the business as partners. (Transcript of Record, Page 116, Line 16 – Page 117, Line 3; R. ____). Both Appellant and Respondent invested time and money into the operation of the convenience store/gas station. (Transcript of Record, Page 32, Lines 17-19; R. ____). Both Mr. Helms and Ms. Willings invested money into the operation of the store and improvements that were made to it. (Transcript of Record, Page 149, Lines 7-20; R. ____).

⁴ Again, in her efforts to discredit Judge Manning, Appellant argues that the case law relied upon by Judge Manning is “outdated.” This argument is no doubt surprising to the Judges of this Court who continue to rely upon and cite these “outdated” cases in their opinions. See, *KCI Management Corporation, et. al. v. Post*, No. 2004 UP -147, 2004 WL 6249216 (Ct. App. 2004); *Moore v. Moore*, 360 S.C. 241, 599 S.E.2d. 467 (Ct. App. 2004); *Wright v. Cartledge*, No. 2011 UP -470, 2011 WL 1173531, (Ct. App. 2011).

Sometime in 2003, Respondent asked Appellant to assist him with the operation of the convenience store. Appellant put \$20,000.00 of her own funds in the convenience store. She testified that she did this to keep the store solvent and operating. (Transcript of Record Page 32, Lines 17-19; R. ____).

In 2004, Appellant purchased the adjacent property to the convenience store, located at 820 Meeting Street in West Columbia. (Transcript of Record, Page 88, Lines 11-13; R. ____). In January of 2006, Respondent transferred title of the 812 Meeting Street Property to Appellant for \$5.00. (Transcript of Record, Page 76, Line 13 – Page 77, Line 3; R. ____) (Detailed Report for the Matter of *Helms v. Willing*; Page 81, R. ____). Appellant took over the loan to Al Landers. (Transcript of Record, Page 31, Lines 10-12; R. ____). This was a mutual decision – to put properties held by the couple – in Appellant’s name due to her credit history and the fact that Respondent was engaged in a number of businesses whose legality was at issue/in question. These were the sole reasons for this arrangement(s). (Transcript of Record, Page 68, Lines 11-19; R. ____) (Transcript of Record, Page 116, Lines 10 – 15; R. ____). Despite the titling of the properties, Respondent considered the parties to be partners in the running of the store and he did not intend to give up his interest in the store. (Transcript of Record, Page 145, Line 22 – Page 146, Line 5; R. ____) (Transcript of Record, Page 151, Lines 23-25; R. ____) (Transcript of Record Page 174, Lines 1-8; R. ____)

The parties changed the name of the business from “Alice’s” to Jimmy’s Mini Mart. (Transcript of Record, Page 118, Lines 3-9; R. ____) (Transcript of Record, Page 230, Lines; 11-18;R. ____). This was a mutual decision. (Transcript of Record, Page 230, Lines 13-18; R. ____) (Transcript of Record, Page 118, Lines 3-17; R. ____).

Respondent trusted Appellant and recognized her intelligence and business acumen. (Transcript of Record, Page 42, Lines 8-9; R. ____) (Transcript of Record, Page 42, Line 21 – Page

43, Line 17, R. ____). Appellant began working with Respondent at the convenience store. (Transcript of Record, Page 42, Lines ____; R. ____) (Transcript of Record, Page 115, Lines ____; R. ____). The parties agreed that Respondent would maintain his interest in the store and in its operation. (Transcript of Record, Page 116, Line 16 – Page 117, Line 3; R. ____).

Both parties derived income from the operation of the store. Appellant represented Jimmy's Mini Mart as her employer on a signature card for a personal deposit account at Wells Fargo. Appellant reported the income from Jimmy's Mini Mart on her income tax returns. (Detailed Report for the Matter of *Helms v. Willing*; Page 80, R. ____) (Detailed Report for the Matter of *Helms v. Willing*, Page 82, R. ____). Respondent and Appellant both used income from the store to purchase properties and to pay off existing debts. (Transcript of Record, Page 193, Lines 11-13; R. ____).

The parties jointly controlled the day to day business operation of the convenience store. (Transcript of Record, Page 242,, Lines 7-10; R. ____). Appellant managed the daily operation of the business which included management of personnel, tax compliance and the acquisition of assets of the business. (Transcript of Record, Page 119, Lines 8-13; R. ____). Respondent also worked at Jimmy's. He ran the register and stocked boxes as well as mixing with potential customers. (Transcript of Record, Page 119, Lines 4-7; R. ____) (Transcript of Record Page 293, Lines 19-22; R. ____). Both parties hired and managed store employees. (Transcript of Record, Page 242,, Lines 7-10; R. ____).

Both parties wrote and signed business checks. (Transcript of Record, Page 293, Lines 5-10; R. ____). The parties paid personal and business related expenses and bills out of the proceeds of the business and out of their personal funds. (Transcript of Record, Page 65, Line 22 – Page 66,

Line 2; R. ____) (Transcript of Record, Page 66, Line 2- Page 67, Line 3; R. ____) (Transcript of Record Page 97, Line 24 – Page 98, Line 19, R. ____).

The parties reached a mutual decision to “convert” the existing convenience store to a gas station and convenience store. They decided to add gas pumps in order to improve the profitability of the convenience store. (Transcript of Record, Page 143 Line 15 – Page 144, Line 8; R. ____) (Transcript of Record Page 121, Lines 3-8; R. ____). Respondent testified that while this was Appellant’s idea, the decision to put in the gas pumps was a mutual one. (Transcript of Record, Page 121, Lines 3-8; R. ____) (Transcript of Record, Page 143, Line 15 – Page 144, Line 8; R. ____). The parties met with representatives of Mansfield Oil and negotiated the transaction together. (Transcript of Record, Page 144, Lines 9-13; R. ____).

The existing lot at 812 Meeting Street was too small for the placement of underground pumps, necessary to operate a gas station and convenience store. The tanks needed for the placement of gas pumps were placed under the property which had been previously purchased in the Appellant’s name at 820 Meeting Street. In addition to the underground storage tanks which were buried beneath 820 Meeting Street, the pumps and canopy over them were also placed on the 820 Meeting Street property. (Transcript of Record, Page 88, Line 24 – Page 89, Line 7. R. ____). Both lots were utilized and necessary to run the Citgo business. (Transcript of Record, Page 89, Line 12 – Page 91, Line 1; R. ____). Appellant borrowed approximately \$130,000.00 to convert the store into a gas station. This loan was paid for out of store income. (Transcript of Record, Page 98, Lines 13-19; R. ____).

After the purchase of 820 Meeting Street, both properties on which the business sat were in the Appellant’s name. Despite the titling of the properties, it was understood and agreed upon

that despite the titling of the properties, the Respondent retained an interest in the business. (Transcript of Record, Page 116, Line 9 – Page 117, Line 1; R. ____).

The installation of gas pumps did, in fact, improve business which allowed the parties to pay off business and personal debts. (Transcript of Record, Page 144, Lines 1-8; R. ____)
(Transcript of Record, Page 145, Lines 9-13; R. ____). Shortly after the gas station began operation, customers began complaining of water in gas purchased at the station. (Transcript of Record, Page 147, Line 21 – Page 148, Line 20; R. ____). As a result, the parties discovered that water was getting into the underground storage tanks. In 2009, L&D brought suit in the Lexington County Court of Common Pleas against a third-party, alleging that the third-party had installed defective gasoline storage tanks at 812 Meeting Street. (Transcript of Record, Page 147; Lines ____; R. ____)
(Detailed Report for the Matter of *Helms v. Willing*, Page 41, R. ____). Both parties testified. (Transcript of Record, Page 148, Lines 15-18; R. ____).

The lawsuit was subsequently settled for \$150,000.00 in July of 2013 with a net payment of \$100,000.00. (Transcript of Record, Page 98, Line 20 – Page 99, Line 6; R. ____) (Detailed Report for the Matter of *Helms v. Willing*, Page 41, R. ____). Although the parties were still operating the station together, Appellant deposited \$100,000.00 of these funds into her personal checking account. (Transcript of Record, Page 99, Lines 7-9; R. ____) (Transcript of Record, Page 99, 10-12; R. ____). Appellant testified that she used this money to pay down personal credit card bills and also to buy supplies for Jimmy's Mini Mart. (Transcript of Record, Page 100, Line 24 – Page 101, Line 8; R. ____) (Detailed Report for the Matter of *Helms v. Willing*, Page 41, R. ____).

The parties later decided to sell the gas station and listed the business for sale through a brokerage. (Transcript of Record, Page 141 Lines 3-25; R. ____). This was a mutual decision based

on the amount of work necessary for the two of them to run the station. Respondent testified that the parties intended to use the proceeds from this sale to be able to retire. (Transcript of Record, Page 142, Line 7 – Page 143, Line 1; R. ____).

As a result of this listing, in May of 2014, the business name, goodwill and inventory of L&D (operating as Jimmy's Mini Mart/Jimmy's Citgo but not the real estate on which it sat) was sold to a third party, Chharvi & Bhavya, LLC. (Transcript of Record, Page 80, Line 13 – Page 81, Line 1; R. ____) (Transcript of Record Page 81, Lines 4-8; R. ____). Mr. Viral Patel, the purchaser, testified at trial that he negotiated the sale with both Appellant and Respondent, who he considered to be joint owners of the business. (Transcript of Record, Page 271, Line 4 – Page 272, Line 2; R. ____) (Transcript of Record, Page 275, Lines 4-8; R. ____).

The evidence clearly establishes that the parties operated Jimmy's Mini Mart as a partnership. As correctly cited by Judge Manning in his initial Order and in his Order denying Appellant's Motion for Reconsideration, the Respondent met his burden for proving the existence of a partnership with respect to the property located at 812 Meeting Street/820 Meeting Street and the business sitting on it.

Appellant argues that the Trial Court erred in not applying the provisions of the South Carolina Uniform Partnership Act to this case to determine if there was any partnership between the parties and because the Court did not exclusively rely on these provisions, the Trial Court's Order should be reversed. This matter is not before the Court for review as it was raised for the first time on appeal and not by the Appellant's trial counsel in her post-trial motions filed with the Court. See, *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998).

Even if this matter is properly before the Court, the Uniform Partnership Act, South Carolina Code Section 33-41-10, et. seq. does supersede or replace the common law as argued by

Appellant in her Brief. Neither of the statutory provisions relied upon by Appellant for this proposition, South Carolina Code Section 33-41-40(1) and/or South Carolina Code Section 33-41-40(4) stand for this far reaching assertion. During the time that the Uniform Partnership Act has been in existence in South Carolina, this Court and the South Carolina Supreme Court have continued to rely upon cases decided under the common law to determine whether or not a partnership existed. See, *Wyman v. Davis*, 223 S.C. 172, 174, 74 S.E.2d 694, 698 (1953); *Halbersberg v. Berry*, 302 S.C. 97, 101, 394 S.E.2d 7, 10 (Ct.App.1990); *Beck v. Clarkson*, 300 S.C. 293, 387 S.E.2d 681 (Ct.App.1989); *Buffkin v. Strickland*, 280 S.C. 343, 312 S.E.2d 580 (Ct.App.1984) *Moore v. Moore*, 360 S.C. 241, 599 S.E.2d. 467 (Ct. .App. 2004)

Further if the Uniform Partnership Act is controlling and supersedes and replaces the common law (which the Respondent does not believe is the case), the facts of this case support the Court's determination that a partnership existed between the parties with respect to the operation of the Citgo station located on the property located at 812 Meeting Street/820 Meeting Street. The parties clearly carried on as co-owners of the Citgo for profit. The parties shared the operation and profits of the enterprise. Even using the Uniform Partnership Act as the sole test for the existence of a partnership, the Trial Judge correctly found and ruled that a partnership existed between the parties.

The Appellant also argues that the Court erred in its division of partnership properties as it failed to apply the provisions of the Uniform Partnership Act regarding the dissolution and winding down of partnership property. Again, this argument is not controlling as to the issues involved in this case. Contrary to the assertions of Appellant in her brief, Judge Manning did not "willy-nilly" allocate the partnership property once he determined that the property held at 812 Meeting Street/820 Meeting Street was held in partnership between the parties. Judge Manning heard

testimony of the parties at the two day hearing. He appointed a Court appointed expert to advise him on the partnership property and its value. The Order equitably divides the assets of the partnership and the remaining funds arising out of its operation. The Order is proper, supported by the evidence presented to Judge Manning and should be affirmed by this Court.

B. THE CIRCUIT COURT CORRECTLY DIVIDED UP THE PARTNERSHIP PROPERTY

The Appellant argues that the Trial Court erred in its division of partnership property. In his Order, Judge Manning found that a partnership existed only as to 812 Meeting Street and 820 Meeting Street and the business located on the two pieces of property. Judge Manning's Order did not find partnership property existed as to the remaining properties at issue in the lawsuit. (Order of the Honorable L. Casey Manning dated June 21, 2021; R. ____). Therefore, these properties are not applicable or relevant to any of the issues involved in the present appeal.

With respect to the division of 812 Meeting Street and 820 Meeting Street, Judge Manning held that the disputed property was held as partnership property. Judge Manning found that with respect to these properties, Respondent held legal title to both properties and that it would be inequitable to divide these properties as they operate as joint property for Jimmy's Mini Mart, now Jimmy's Citgo." (Order of the Honorable L. Casey Manning dated June 21, 2021; R. ____). Judge Manning equally divided the proceeds from the sale of Jimmy's Mini Mart/Jimmy's Citgo and the proceeds from the Lexington County Lawsuit. Judge Manning also equally divided the deposit account funds, derived from the operation of the business. (Order of the Honorable L. Casey Manning, dated June 21, 2021; R. ____).

The equitable division of property by Judge Manning was supported by the evidence presented before him at Trial, the documentary evidence introduced, as well as the testimony of the parties. The property distribution should be affirmed by this Court.

The Appellant relies on the fact that at the time the parties' relationship ended, she held title to the property located at 812 Meeting Street and 820 Meeting Street and that the deeds are controlling as to the issues before the Court. The deeds are not conclusive and dispositive as to the issues before the Court. The Court heard ample testimony as to why the property on which the Citgo Station was located and operated were put in the Appellant's name and not the Respondent's name. (Transcript of Record, Page 68, Lines 11-19; R. ___) (Transcript of Record, Page 116, Lines 10-15; R. ___).

The Appellant's argument completely ignores this testimony. Further, this line of argument was not raised before the Trial Court. Appellant did not raise this argument during trial and this argument was not found in her post-trial motions. Arguments first argued on appeal, are not preserved for appellate review. *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998).

3. THE WORK OF THE COURT'S EXPERT ACCOUNTANT WAS NOT ONLY PROPER, BUT ALSO NOT PRESERVED FOR REVIEW BY THIS COURT

Appellant spends a considerable part of her Brief discussing the Court's appointment of a Forensic Accountant, Marcus Hodge, and Judge Manning's interactions with Mr. Hodge which she characterizes as "unlawful" and unethical on the part of Judge Manning. These baseless allegations against Judge Manning and these discussions as to the appointment of Mr. Hodge and his involvement in this case are irrelevant as none of these issues were preserved by Appellant's trial counsel and are not before the Court for Appellate review.

Prior to the first witness being called, the Court informed the parties that he was contemplating the appointment of an expert to assist the Court in the valuation of any issues involved in this case. Judge Manning informed the parties and their counsel that, "Now, what my job is today, is to hear everything from both sides. I'll sort through it and at the end, hopefully, I'll

be able to make a decision that is fair to both of you.” (Transcript of Record, Page 22, Lines 22-24; R. ____) Judge Manning informed the parties that:

But before I get to that point, and I’ve raised this with the lawyers involved, I see Exhibits 1 through 10 that list some property. I see in here both list property, but I have no – I’ve got to sit as the trier of fact as well as law, and I have no idea what’s the value of these properties. I’ve mentioned this to both lawyers, Ms. Jeffries and Mr. Moore. At some point in time I’m going to have to appoint an appraiser to come back and report to me “Judge Manning, this is what I think the different properties are worth.” And then I might get to the point of being able to make some intelligent decision about who gets what, how do you split the baby and a watermelon, that type of thing. But I’ve got to hear it all and I will hear it all, and I’ll be as fair as I can to both sides involved.

(Transcript of Record, Page 22, Line 25 – Page 23, Line 14; R. ____). As set forth above, Appellant’s counsel failed to note or raise any objection to the Court’s consideration of the appointment of Mr. Hodge at this point in the trial.⁵ Further, the Court’s need for an expert had nothing to do with whether or not either party had complied with discovery, or failed to file a Motion to Compel with respect to discovery.

Appellant’s trial counsel raised no objection to the Court’s appointment of Mr. Hodge at either the close of the Respondent’s case or after she rested Appellant’s case. At the close of the evidence the Court once again informed the parties of his intention to appoint Mr. Hodge. Judge Manning informed the parties:

And, of course, I am not going to make a decision in this matter. I’m going to take this matter under advisement as you well know. I have the name of a gentleman named Marcus Hodge. He is a forensic accountant...I haven’t spoken to him yet. That’s the name that was just given to me this morning. I need to contact him, give him an idea of what’s involved in this situation, then ask whether or not typically this is the type of thing he does. And I sort of mentioned this to you beforehand. I think I’m going to need at least a forensic accountant, and I’m not sure about an appraiser yet, but I think I

⁵ The Appellant’s tortured interpretation of this exchange to insinuate that Judge Manning was predisposed at this point in favor of Respondent simply lacks merit.

need to start with a forensic accountant.

(Transcript of Record, Page 328, Lines 7 – 25, R. ____). Once again, Appellant’s counsel failed to raise any objection to the appointment of Mr. Hodge.

On September 18, 2020, Judge Manning issued his Order appointing Mr. Hodge. (Order of the Honorable L. Casey Manning, dated September 18, 2020, R. ____). Once more Appellant’s counsel failed to raise any issue or objection to the appointment of Mr. Hodge by the Court. Mr. Hodge then conducted discovery which included discovery requests and the issuance of subpoenas. At no time did Appellant’s counsel object to any of these discovery efforts or request.

In March of 2021, Judge Manning provided the parties’ counsel a copy of Mr. Hodge’s “Summary Report” via email. (Summary Report dated March 1, 2021; R. ____). Once more nothing was heard from Appellant’s counsel regarding Mr. Hodge, the work that he had done to date or the summary report.

On March 17, 2021, Appellant’s Trial Counsel, Lakesha Jeffries wrote Judge Manning to acknowledge receipt of the report. (Letter from Attorney Lakesha Jeffries to Judge Manning dated March 17, 2021, R. ____). Attorney Jeffries informed Judge Manning that, “Respectfully, on behalf of Ms. Willing, **we accept Mr. Hodge’s report as the Court’s evidence.**” Attorney Jeffries added that as a result of Mr. Helm’s failure to retain his own accountant, “...we believe speculation as to values may be inappropriate.” *Id.* (Emphasis added). She concluded that her client’s view as to contents of the report were not aligned with Mr. Helms. However, Attorney Jeffries raised no objection to the appointment of Mr. Hodge or the manner in which he carried out his work. Rather, on behalf of Appellant she “accepted” Mr. Hodge’s report as Court’s evidence.

On June 21, 2021, the Court issued its Order. (Order of The Honorable Casey Manning dated June 21, 2020; R. ____). Appellant, through her trial counsel, moved for Reconsideration..

(Motion for Reconsideration, dated June 29, 2021; R. _____). The Motion has an Affidavit of Appellant attached to it which raises issues pertaining to the decision regarding the 812 Meeting Street and 820 Meeting Street properties. No objection is made to Mr. Hodge or his role in this case. (Affidavit of Debbie Willing attached to Motion for Reconsideration; R. ____). Once more, Appellant or her counsel failed to make any objection to Mr. Hodge's appointment or to raise any issues with respect to the manner in which he conducted business and his contact with the Court. Appellant's counsel raised no objection to any of the facts found or relied upon by Mr. Hodge as to his valuation of any properties.

The Appellant raised no such issues until her Brief filed with the Court. Her Appellate Brief was the first time during the course of this litigation that she raised any issues as to the appointment of Mr. Hodge by the Court, the reason(s) why Mr. Hodge's work was necessary (such as the alleged discovery failures of Respondent), the work performed by him in completion of his duties and the conclusions contained in his report.

It is fundamental that for an issue to be preserved for review, it must have been raised before the Trial Court. At no time did Appellant's counsel raise any objections to the appointment of Mr. Hodge or his efforts in this case. These issues, first argued on appeal, are not preserved for appellate review. *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998).

Even if these issues were preserved (which they were clearly not), there was no error in the Court's appointment of Mr. Hodge. Contrary to the rampant speculation, conjectures and suppositions repeated over and over in her brief as to the actions of a well-respected senior Circuit Court Judge and Mr. Hodge, the Appellant has not been able to cite one shred of concrete evidence of any wrongdoing or over reaching on the part of Mr. Hodge and the work that he did in this case at the request of the Circuit Court. To the contrary, the evidence (absent conjecture) shows that

Mr. Hodge took his work seriously and presented a non-biased report to the Court which the Court relied on in the valuation of property that was equitably divided by the Court.

CONCLUSION

For the reasons set forth above, Judge Manning's Order should be affirmed by this Court. Judge Manning correctly determined that the parties held the property at 812 Meeting Street and 820 Meeting Street and the business which sat on it in trust. This finding and ruling was supported by the evidence presented before him. Judge Manning correctly applied South Carolina partnership law to reach this conclusion. The evidence in this case also supports the equitable division of property by Judge Manning. There was no error in the appointment of the Court's expert, Marcus Hodge. Judge Manning's Order should be affirmed by the Court.

Respectfully submitted,

s/S. Jahue Moore
S. Jahue Moore, SC Bar #4063
Moore Bradley Myers Law Firm, P.A.
1700 Sunset Boulevard (29169)
P.O. Box 5709
West Columbia, SC 29171
(803) 796-9160
Jake@mbmlawsc.com
Attorney for Respondent