THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
J. Derham Cole, Circuit Court Judge

Appellate Case No. 2021-000446
Civil Action No. 2017-CP-10-04371

Cary E. Fechter, M.D. ..... Appellant,

v.

Leon Martin Ortner, The Ortner Law Firm, LLC, Gerald Rosenthal, and Rosenthal, Levy, Simon, and Ryles, P.A. ..... Respondents.

FINAL BRIEF OF RESPONDENTS LEON MARTIN ORTNER AND ORTNER LAW FIRM, LLC

M. Dawes Cooke, Jr., Esquire
Justin P. Novak, Esquire
Barnwell Whaley Patterson & Helms, LLC
P.O. Drawer H
Charleston, South Carolina 29402
Phone: (843) 577-7700
Fax: (843) 577-7708
mdc@barnwell-whaley.com
jnovak@barnwell-whaley.com

Attorneys for Leon Martin Ortner and The Ortner Law Firm, LLC

June 7, 2022

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CONSTITUTIONS, STATUTES, & RULES

Constitutions

Statutes

Rules

OTHER MATERIALS

COUNTER-STATEMENT OF ISSUES ON APPEAL

1. **Whether the trial court abused its discretion by dismissing Appellant's claims against Respondent Leon Martin Ortner and Ortner Law Firm, LLC, with prejudice for lack of personal jurisdiction because Appellant failed to effect service of the summons and complaint upon them in accordance with the requirements of the South Carolina Rules of Civil Procedure and within the applicable statute of limitations.**

2. **Whether the trial court's dismissal of Appellant's claims against Respondents Leon Martin Ortner and Ortner Law Firm, LLC, is further supported by the additional sustaining ground that the trial court lacked jurisdiction over the subject matter of Appellant's claims because the South Carolina Workers' Compensation Commission previously exercised exclusive original jurisdiction over the subject matter of the causes of action and divested the Circuit Court of jurisdiction to hear and determine the claims.**

3. **Whether the trial court's dismissal of Appellant's claims against Respondents Leon Martin Ortner and Ortner Law Firm, LLC, is further supported by the additional sustaining ground that the trial court lacked jurisdiction over the subject matter of Appellant's claims because Appellant failed to exhaust the administrative remedies provided for in the South Carolina Workers' Compensation Law.**

4. **Whether the trial court's dismissal of Appellant's claims against Respondents Leon Martin Ortner and Ortner Law Firm, LLC is further supported by the additional sustaining ground that the doctrines of collateral estoppel, estoppel by record, laches, waiver, equitable estoppel, and res judicata barred re-litigation of the claims in the Circuit Court after the South Carolina Workers' Compensation Commission actually and necessarily litigated and directly determined the claims in an action in which Appellant had a full and fair opportunity to litigate the claims.**

5. **Whether the South Carolina Court of Appeals has jurisdiction over Appellant's challenge to the trial court's order dismissing the claims against the Ortner Respondents where Appellant only served and filed a notice of appeal of the order denying Appellant's motions to reconsider the orders dismissing those claims and failed to serve and file a copy of the order to be challenged on appeal.**

STATEMENT OF THE CASE

Appellant Cary E. Fechter, M.D. ("Appellant") filed the Summons and Complaint in this civil action in the Court of Common Pleas for Charleston County on August 25, 2017 ("Complaint").[1] In the Complaint, Appellant alleged causes of action for breach of contract, fraud, breach of contract with fraudulent intent, violation of the South Carolina Unfair Trade Practices Act, and pre-judgment interest arising from allegations that Appellant should have been further compensated for the performance of medical examinations of and treatment provided to workers' compensation claimants represented by Respondents Leon Martin Ortner and Ortner Law Firm, LLC ("Ortner Respondents") and Gerald Rosenthal and Levy, Simon, and Ryles, P.A. ("Rosenthal Respondents"). The Complaint alleged, *inter alia*, that the Respondents agreed to provide the additional compensation upon resolution of the claims by settlement or verdict.[2]

On December 7, 2017, Appellant attempted service of the Summons and Complaint upon both Respondent Leon Martin Ortner and Respondent Ortner Law Firm, LLC, by sending the documents by certified mail to the principal place of business for Ortner Law Firm, LLC. Neither Respondent Leon Martin Ortner nor Respondent Ortner Law Firm, LLC accepted service of nor signed for the envelope containing the documents. Appellant did not make any subsequent attempts to effect service of the Summons and Complaint upon either Respondent Leon Martin Ortner or Respondent Ortner Law Firm, LLC.

On January 8, 2018, the Ortner Respondents filed a motion to dismiss the causes of action asserted against them pursuant to Rules 12(b)(1), (3), (5) & (6), SCRCP. In the motion, the Ortner Respondents argued, *inter alia*, that the trial court lacked jurisdiction over the claims because of

---

[1] One hundred twenty days from the date of the filing of the Summons and Complaint is December 23, 2017.

[2] The claimants collectively settled their worker's compensation claims on April 1, 2014. The South Carolina Workers' Compensation Commission ordered the release of all settlement funds on January 26, 2016.

insufficient service of process and the statute of limitations now precluded assertion of the claims. After Appellant's then-counsel[3] failed to appear at a hearing of the motion held on April 16, 2018, the trial court continued hearing of the motion until January 9, 2019. On the date of the second hearing, Appellant's then-counsel filed an affidavit executed by him one day earlier alleging service of process upon the Ortner Respondents on December 7, 2017. The affidavit did not include a copy of the return receipt or returned envelope showing whether the mailing was accepted, refused, or returned.

On April 5, 2019, the Honorable Deadra L. Jefferson filed an order denying the motion to dismiss that deferred consideration of whether service of process was insufficient. After Judge Jefferson denied the Ortner Respondents' motion for reconsideration, the Ortner Respondents filed a notice of appeal of those orders with the South Carolina Court of Appeals on July 22, 2019.[4] On October 25, 2019, the South Carolina Court of Appeals dismissed the appeal after determining that the orders were not immediately appealable and remitted the claims back to the trial court. The South Carolina Court of Appeals remitted the case to the trial court on November 13, 2019.

During the pendency of the appeal, the Rosenthal Respondents filed a motion to dismiss the claims asserted against them pursuant to Rules 12(b)(1), (2), (4) and (5), SCRCP. Upon remittitur, the Ortner Respondents also filed a renewed motion to dismiss pursuant to Rule 12(b)(5), SCRCP. In the motion and supporting memorandum, the Ortner Respondents argued that the trial court lacked jurisdiction over the claims because Appellant, *inter alia*, failed to serve the Summons and Complaint upon either Respondent Leon Martin Ortner or Respondent Ortner Law Firm, LLC within the statute of limitations.

---

[3] At the relevant time, Appellant was represented by counsel different than that of his appellate counsel. On or about June 24, 2021, Appellant discharged his original counsel in this action and subsequently retained his current counsel. (Letter from Dr. Cary E. Fechter to South Carolina Court of Appeals, June 24, 2021).

[4] On July 24, 2019, the Ortner Respondents filed a Notice of Appeal in Appellate Case No. 2019-001230.

On January 27, 2020, the Honorable J. Derham Cole held a hearing of the Ortner Respondents' renewed motion to dismiss and the Rosenthal Respondents' motion to dismiss. On February 5, 2020, Judge Cole issued a Form 4 Order granting both motions and requesting the Respondents prepare and submit proposed formal orders for the trial court's consideration. On June 8, 2020, Judge Cole filed an order dismissing Appellant's claims against the Rosenthal Respondents pursuant to Rules 12(b)(1), (2), (4) and (5), SCRCP. On June 17, 2020, Appellant filed a motion for reconsideration of the subsequent order dismissing Appellant's claims against the Rosenthal Respondents. On August 4, 2020, Judge Cole filed an order granting the Ortner Respondents' renewed motion to dismiss pursuant to Rule 12(b)(5), SCRCP. On August 13, 2020, Appellant filed a motion for reconsideration of the order dismissing the claims against the Ortner Respondents. On March 30, 2021, Judge Cole filed a Form 4 Order denying Appellant's motions to reconsider the orders dismissing the claims against the Ortner Respondents and Rosenthal Respondents. On April 21, 2021, Appellant served a notice of appeal of Judge Cole's Form 4 Order filed on March 30, 2021.

STATEMENT OF THE FACTS[5]

Appellant is a medical doctor allegedly retained by Leon Martin Ortner and The Ortner Law Firm, LLC ("Ortner Respondents") to perform medical examinations and issue medical reports for individual claimants involved in workers' compensation actions, including Sadie Adams, et al., v. International Paper Company and Nevamar Company, LLC (WCC File No. 0326995) ("Workers' Compensation Actions").[6] (Compl. ¶ 3-5; R. p. 81.) Appellant further alleges that the Ortner Respondents associated Gerald Rosenthal and Rosenthal, Levy, Simon, and Ryles, PA, ("Rosenthal Respondents") as co-counsel in the prosecution of the claims and that the Rosenthal Respondents affirmed and adopted Appellant's compensation agreement and undertook full responsibility for compensating Appellant for his services. (Compl. ¶ 9, 11; R. p. 82; Appellant's Initial Brief at 7 n.13, n.14.) Appellant alleges that the Rosenthal Respondents initially paid for individual examinations and reports for fifty (50) claimants and agreed to compensate Appellant for his other services upon resolution of the claims by settlement or verdict. (Compl. ¶ 12, 15-16; R. pp. 82-83.) Prior to completion of the reports, however, the Rosenthal Respondents informed Appellant that only thirty-nine (39) evaluations and reports would be required. (Order Granting Mot. Release Funds at 3, Jan. 26, 2016; R. p. 59.) Appellant alleges making initial examinations and reports for approximately four hundred fifty-eight (458) claimants in the Workers' Compensation Actions. (Compl. ¶ 13; R. p. 83.)

On April 1, 2014, the Workers' Compensation Actions claimants collectively settled their claims at mediation. (Consent Order ¶ 5, July 22, 2014, R. p. 76.) Pursuant to the settlement

---

[5] By restating allegations taken from the Complaint, the Ortner Defendants do not endorse their veracity.

[6] Sadie Adams, et al., v. International Paper Company and Nevamar Company, LLC involved the settlement of workers' compensation claims asserted by numerous individuals alleging injuries from exposure to toxic chemicals while working at the Nevamar plant in Hampton County, South Carolina. (See Order Granting Mot. to Release Funds 2, Jan. 26, 2016; R. p. 57.)

agreement, the Workers' Compensations Actions defendants deposited the settlement funds into a qualified fund to be administered by a special referee from which all attorneys' fees and costs were also to be distributed upon approval of the South Carolina Workers' Compensation Commission ("Commission"). (Id.) The Order appointing the special referee expressly empowered the referee "to make the determinations as to values on each claim and proper distribution of settlement funds." (Order, May 27, 2015; R. p. 73.) While Appellant did not make a formal claim to the Commission for compensation from the qualified fund, Appellant made claims to the Rosenthal Respondents for further payment for services performed beyond the examinations and reports for the fifty (50) claimants initially requested. (Order Granting Mot. Release Funds at 4, Jan. 26, 2016; R. p. 59.) The Rosenthal Respondents disputed Appellant's claims. (Id.)

To provide Appellant with a fair opportunity to present evidence and testimony on his behalf in support of his claim to the settlement funds, the Rosenthal Respondents served Appellant with a subpoena for the production of documents and for his deposition. (Id. at 6; R. p. 62.) In response, Appellant produced records allegedly supporting his claims and provided deposition testimony regarding his claims to additional compensation on November 2, 2015. (Id. at 4, 6-7; R. pp. 60, 62-63.) Appellant, however, failed to produce a single document that established a contractual relationship or that entitled him to further compensation. (Order Granting Mot. to Release Funds at 6-7, Jan. 26, 2016; R. pp. 62-63.) Moreover, Appellant testified that he never signed a contract entitling him to payment for any additional services and that the Respondents were not responsible for the continued treatment of the workers' compensation claimants. (Id. at 4-6; R. pp. 60-62.) In considering Appellant's claims, the Commission made portions of Appellant's deposition a part of the record in the Workers' Compensation Actions. (Id. at 4; R. p. 60.)

On November 13, 2015, the special referee set aside in trust Five Hundred Thousand Dollars ($500,000.00) in approved costs pending instructions from the claimants' attorneys regarding final disbursement or an order from the Commission. (Initial Report of the Special Referee ¶ 1(b), Nov. 13, 2015; R. p. 69.) On November 18, 2015, the Rosenthal Respondents submitted to the presiding Commissioner a motion to release the funds held on deposit for the reimbursement of approved costs incurred on behalf of the Workers' Compensation Actions claimants. (Mot. Release Funds, Nov. 18, 2015; R. p. 130.) The Rosenthal Respondents served Appellant with a copy of the motion. (Order Granting Mot. to Release Funds at 3, Jan. 26, 2016; R. p. 59.) In the motion, the Rosenthal Respondents sought the release to themselves of all of the funds held in trust. (Id. at 1; R. p. 57.) The motion specifically asserted that the Commissioner should deny any claims to the funds made by Appellant on the grounds that Appellant could not establish any contractual right to any further payment. (Id.)

On November 30, 2015, the Ortner Respondents submitted a reply to the motion, similarly serving Appellant. (Reply Mot. Release Funds, Dec. 2, 2015; R. p. 148; Order Granting Mot. to Release Funds at 3, Jan. 26, 2016; R. p. 59.) In the reply, the Ortner Respondents requested that the Commissioner inquire into Appellant's claims to additional payment and issue an order determining the rights of all concerned parties to the funds being held in trust. (Id. at ¶ 1; R. p. 149.) The Ortner Respondents made no claim to the funds. (Id.) The Ortner Respondents simply sought complete adjudication of the rights and responsibilities of all parties to any monies which may be owed to Appellant. (Id. ¶ 6; R. p. 153.)

Appellant did not respond to the motion or reply. (Order Granting Mot. to Release Funds at 1, Jan. 26, 2016; R. p. 57.) After Appellant failed to take the opportunity to litigate his claims to the funds held in trust before the Commission, the Commissioner approved the special referee's

decisions regarding the settlement proceeds. (Order ¶¶ 2-3, Dec. 10, 2015; R. p. 67.) On January 26, 2016, the Commissioner ordered the release of the totality of the funds to the Rosenthal Respondents. (Order Granting Mot. to Release Funds, Jan. 26, 2016; R. p. 57.) In the order, the Commissioner specifically found that: (1) Appellant was properly served with the Motion to Release Funds and the Reply of Leon Martin Ortner to Motion to Release Funds and failed to respond, (2) Appellant failed to establish entitlement to any funds in addition to those previously received, (3) Appellant cannot establish any contractual arrangement that would entitle Appellant to any additional funds, (4) no agreement exists obligating the Ortner Respondents or the Rosenthal Respondents to pay for any of the additional services performed by Appellant, and (5) Appellant was not being deprived of any payment due. (Id. at 2, 4, 5-6; R. pp. 58, 60, 61-62.) Appellant was served with the Order Granting Motion to Release Funds on January 27, 2016. (Id. at 9; R. p. 65.)

Appellant did not appeal the Order; instead, Appellant filed the Summons and Complaint in this civil action on August 25, 2017.[7] On December 7, 2017, Appellant attempted service of the Summons and Complaint upon both Respondent Leon Martin Ortner and Respondent Ortner Law Firm, LLC, by sending the documents by certified mail addressed to Respondent Leon Martin Ortner personally at the principal place of business for Ortner Law Firm, LLC, located at 145 King Street, Ste. 211, Charleston, South Carolina. The address is not Respondent Leon Martin Ortner's dwelling house or usual place of abode. (Leon Martin Ortner Aff. ¶¶ 2-3; R. p. 310.) While the address is the principal place of business for Respondent Ortner Law Firm, LLC, the subject envelope is not addressed to Respondent Ortner Law Firm, LLC. Neither Respondent Leon Martin

[7] Appellant also filed a complaint with the Supreme Court of South Carolina's Office of Disciplinary Counsel ("ODC") alleging that Respondent Leon Martin Ortner failed to provide payment for the services rendered in the workers' compensation actions. (Letter from ODC to Dr. Cary E. Fechter, Mar. 2, 2016; R. p. 440). After an investigation, the ODC determined that there is no evidence of any misconduct on the part of Mr. Ortner. (Id.) Plaintiff failed to seek review of the ODC's determination.

Ortner nor Respondent Ortner Law Firm, LLC, accepted service of or signed for the envelope containing the documents. (Id. ¶¶ 5-6; R. p. 310.) The envelope also was not delivered to any officer, managing or general agent, or any other agent authorized by appointment to receive service of process on behalf of Ortner Law Firm, LLC. (Ortner Law Firm Aff. ¶¶ 2-11; R. p. 312; Karen Ortner Aff. ¶¶ 2-7; R. p. 314.) In fact, there is no record of any signature for the envelope. Appellant did not make any subsequent attempts to effect service of the Summons and Complaint upon either Respondent Leon Martin Ortner or Respondent Ortner Law Firm, LLC.

On January 8, 2018, the Ortner Respondents filed a motion to dismiss the causes of action asserted against them pursuant to Rules 12(b)(1), (3), (5) & (6), SCRCP, on numerous grounds, including that Appellant failed to properly effect service within the statute of limitations and insufficiency of service of process. In the motion, the Ortner Respondents specifically challenged the sufficiency of service of process under Rule 12(b)(5), SCRCP, on the grounds that (1) Appellant should have through the exercise of reasonable diligence had notice of the settlement and arising right to payment at least by the entry of the consent order memorializing the settlement on July 22, 2014, and (2) Appellant failed to effect service upon the Ortner Defendants as alleged on December 7, 2017.

On the day of the court hearing of the Ortner Respondents' motion to dismiss on January 9, 2019, Appellant's then-counsel filed an Affidavit of Service by Certified Mail ("Affidavit of Service") executed by himself on January 8, 2019, declaring that Appellant's then-counsel served the Summons and Complaint on the Ortner Respondents "by delivering to them, by certified mail, US Postal Service on December 7, 2017 in Charleston, South Carolina and leaving with them copies of the same at 145 King Street, Ste. 211, Charleston, SC." (Aff. Service, Jan. 8, 2019; R. p. 172.) The Affidavit of Service did not include a copy of the return receipt or returned envelope

showing whether the mailing was accepted, refused, or returned. (Id.) Instead, the Affidavit of Service includes an attached document purporting to be printed from the United States Postal Service website showing tracking information for an item delivered to the front desk, reception area, or mail room of an unidentified property in Charleston, SC, at 3:10 pm on December 7, 2017. (Id.) The Affidavit of Service is silent as to the authenticity or relevance of the attached document. (Id.) Appellant also filed a Memorandum in Opposition to the Motion to Dismiss in which Appellant asserts that service of process may not have been effected upon the Ortner Respondents. (See Memo. Opp. Mot. Dismiss ¶ 58-64; R. pp. 195-196.)

Although the Honorable Deadra L. Jefferson denied the Ortner Defendants' motion to dismiss pursuant to Rules 12(b)(1), (3) & (6), SCRCP, Judge Jefferson deferred consideration of the Ortner Defendants' motion to dismiss pursuant to Rule 12(b)(5), SCRCP, on the ground that Appellant failed to properly effect service within the statute of limitations so that the Ortner Respondents could raise the grounds at a later date. (Order Den. Mot. Dismiss at 2 n.1, April 5, 2019; R. p. 42.) ("At the call of the motion, Defense Counsel informed the Court that it was withdrawing the motion to dismiss the case based on insufficient service of process grounds. However, by doing so was not waiving the right to raise it at a later date.").

On December 19, 2019, the Ortner Defendants filed a Renewed Motion to Dismiss on Behalf of Defendants Leon Martin Ortner and The Ortner Law Firm, LLC, pursuant to Rule 12(b)(5), SCRCP. (Ortner Motion Dismiss, Dec. 19, 2019; R. p. 255.) In the motion and supporting memorandum, the Ortner Respondents argued that the trial court lacked jurisdiction over the claims because Appellant, *inter alia*, failed to serve the Summons and Complaint upon either Respondent Leon Martin Ortner or Respondent Ortner Law Firm, LLC within the statute of limitations. (Ortner Mot. Dismiss, Dec. 19, 2019 R. p. 255; Mem. Supp. Ortner Mot. Dismiss, Jan.

10, 2020 R. p. 277.) On August 4, 2020, the Honorable J. Derham Cole filed an order granting the Ortner Respondents' renewed motion to dismiss. (Order Dismiss, Aug. 4, 2020; R. p. 6.) On August 13, 2020, Appellant filed a motion for reconsideration of the order dismissing the claims against the Ortner Respondents. (Mot. Recons., Aug. 13, 2020; R. p. 537.) On March 30, 2021, Judge Cole filed a Form 4 Order denying Appellant's motions to reconsider the orders dismissing the claims against the Ortner Respondents and Rosenthal Respondents. (Form 4 Order, Mar. 30, 2021; R. p. 1.) On April 21, 2021, Appellant served a notice of appeal of Judge Cole's Form 4 Order filed on March 30, 2021. (Notice Appeal, Apr. 21, 2021; R. p. 683.)

STANDARDS OF REVIEW

The trial court dismissed Appellant's claims against the Ortner Respondents pursuant to Rule 12(b)(5), SCRCP, because Appellant failed to serve either Respondent Leon Martin Ortner or Respondent the Ortner Law Firm, LLC with the Summons and Complaint on December 7, 2017.[8] (Order Dismissing Pl.'s Compl. at 6-8, Aug. 4, 2020; R. pp. 11-13.) "[A]ffidavits and other evidence outside the pleadings may, in certain circumstances, be considered in support of a motion to dismiss based on lack of jurisdiction." Baird v. Charleston County, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999). "The trial court's findings of fact regarding validity of service of process are reviewed under an abuse of discretion standard." Graham Law Firm, P.A. v. Makawi, 396 S.C. 290, 294-95, 721 S.E.2d 430, 432 (2012) (citing Clark v. Key, 304 S.C. 497, 500, 405 S.E.2d 599, 601 (1991)); see also Christian v. Healy, No. 5881, 2021 S.C. App. LEXIS 156 (Ct. App. Dec. 15, 2021). "An abuse of discretion occurs when the trial court's decision is unsupported by the evidence or controlled by an error of law." Strategic Resources Co. v. BCS Life Ins. Co., 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006) (citing County of Richland v. Simpkins, 348 S.C. 664, 668-69, 560 S.E.2d 902, 904 (Ct. App. 2002)). "The findings of the circuit court on such issues are binding on the appellate court unless wholly unsupported by the evidence or manifestly influenced or controlled by error of law." Moore v. Simpson, 322 S.C. 518, 524, 473 S.E.2d 64, 66 (Ct. App. 1996) (discussing questions of fact regarding the validity of service of process). The prejudicial effect of a dismissal is also determined by the trial court's exercise of its discretion, which will be

[8] Appellant erroneously asserts that the Ortner Respondents' motion to dismiss pursuant to Rule 12(b)(5), SCRCP, was, in effect, transformed into a motion for summary judgment upon the trial court's consideration of matters outside the pleadings. (Appellant's Initial Brief at 31, n.76.). However, only a motion to dismiss under Rule 12(b)(6), SCRCP, for failure of the pleading to state facts sufficient to constitute a cause of action shall be treated as one for summary judgment and disposed of as provided in Rule 56, SCRCP, when matters outside the pleading are presented to and not excluded by the Court. Rule 12(b), SCRCP. Moreover, a trial court may consider matters outside the pleadings introduced in challenge to the circuit court's jurisdiction, including various unappealed orders. See In re Morrison, 321 S.C. 370 n. 2, 468 S.E.2d 651 n. 2 (1996) (noting that an unappealed ruling becomes the law of the case and precludes further consideration of the issue).

reversed only for an abuse of discretion. See Berry v. McLeod, 328 S.C. 435, 449-50, 492 S.E.2d 794, 802 (Ct. App. 1997); Newman v. Old West, Inc., 286 S.C. 394, 396-97, 334 S.E.2d 275, 276 (1985). In addition, "[t]he appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal." Rule 220(c), SCACR; I'on, LLC v. Town of Mt. Pleasant, 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000) ("Under the present rules, a respondent—the 'winner' in the lower court—may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court.").

ARGUMENT

I. The trial court did not abuse its discretion by dismissing Appellant's claims against the Ortner Respondents with prejudice for lack of personal jurisdiction because Appellant failed to effect service upon them in accordance with the requirements of the South Carolina Rules of Civil Procedure and within the applicable statute of limitations.

The trial court did not abuse its discretion by finding that it did not have personal jurisdiction over either Respondent Leon Martin Ortner or Respondent the Ortner Law Firm, LLC because the evidence supports the trial court's decision that Appellant failed to effect service upon the Ortner Respondents on December 7, 2017. As a result of Appellant's failure to effect service of the Summons and Complaint upon the Ortner Respondents, the trial court did not acquire jurisdiction over the Ortner Respondents regardless of whether the Ortner Respondents had notice of the action.[9] As Appellant failed to effect service upon the Ortner Respondents within the applicable statute of limitations, the trial court did not abuse its discretion by dismissing the claims with prejudice.

A. The evidence supports the trial court's decision that Appellant failed to effect service upon the Ortner Respondents on December 7, 2017.

"A civil action is commenced when the summons and complaint are filed with the clerk of court if: (1) the summons and complaint are served within the statute of limitations in any manner

[9] As a preliminary matter, Appellant erroneously asserts that the Ortner Respondents did not directly challenge the fact that service of process had actually been accomplished on December 7, 2017. (Appellant's Initial Brief at 32). The Ortner Respondents initial motion to dismiss, however, expressly asserted that (1) service of process was insufficient and (2) the applicable statute of limitations precluded Appellant from asserting the claims contained in the Summons and Complaint. (Ortner Mot. Dismiss at 16, Jan. 8, 2018; R. p. 102 ("As a result, this Court should dismiss the instant action pursuant to Rule 12(b)(5), SCRCP, because service of process is insufficient and the statute of limitations precludes Plaintiff from asserting these claims.").) In response to the motion, Appellant filed the Affidavit of Service by Certified Mail on January 9, 2019. After the trial court deferred consideration whether service of process was insufficient, (Order Den. Mot. Dismiss at 2 n.1, April 5, 2019; R. p. 42.), the Ortner Respondents filed a renewed motion to dismiss pursuant to Rule 12(b)(5), SCRCP expressly asserting that the trial court lacked jurisdiction over the claims because Appellant, *inter alia*, failed to effect service of process on either Respondent Leon Martin Ortner or Respondent Ortner Law Firm, LLC. (Ortner Renewed Mot. Dismiss at 1, Dec. 19, 2019; R. p. 255; Ortner Mem. Support Renewed Mot. Dismiss at 3-8, Jan. 10, 2020; R. pp. 279-284.)

prescribed by law; or (2) if not served within the statute of limitations, actual service must be accomplished not later than one hundred twenty days after filing." Rule 3(a), SCRCP; see also S.C. Code § 15-3-20. "Copies of the original summons shall be served upon each defendant." Rule 4(a), SCRCP.

An individual may be served "by delivering a copy of the summons and complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion residing therein, or by delivering a copy to an agent authorized by appointment or by law to receive service of process." Rule 4(d)(1), SCRCP. A corporation may be served "by delivering a copy of the summons and complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant." Rule 4(d)(3), SCRCP. "Service of a summons and complaint upon [an individual or corporation] may [also] be made by . . . registered or certified mail, return receipt requested and delivery restricted to the addressee. Service is effective upon the date of delivery as shown on the return receipt." Rule 4(d)(8), SCRCP; see also Langley v. Graham, 322 S.C. 428, 430-31, 472 S.E.2d 259, 260-61 (Ct. App. 1996) (holding service ineffective where the defendant did not sign the return receipt and delivery was not restricted to the addressee only). "Rule 4(d)(8) requires that the return receipt be restricted to the addressee and show acceptance by the defendant." Roche v. Young Bros., Inc., 318 S.C. 207, 211, 456 S.E.2d 897, 900 (1995). "An officer's return of process creates the legal presumption of proper service that cannot be 'impeached by the mere denial of service by the defendant.'" Fassett v. Evans, 364 S.C. 42, 47, 610 S.E.2d 841, 843 (Ct. App. 2005) (citing Richardson Construction Company v. Meek Engineering and Construction, 274 S.C. 307, 311, 262 S.E.2d 913, 916 (1980)).

"When the rules are followed, it is presumed that service was proper." Roberson v. Southern Finance. of South Carolina, 365 S.C. 6, 10, 615 S.E.2d 112, 114–15 (2005) (citing Roche, 318 S.C. at 211, 456 S.E.2d at 900). However, "[i]t is the plaintiff's burden to show that the court has personal jurisdiction over the defendant." Fassett, 364 S.C. at 47, 610 S.E.2d at 843 (citing Jensen v. Doe, 292 S.C. 592, 594, 358 S.E.2d 148, 148 (Ct. App. 1987)). It is also the plaintiff's burden to show compliance with the rules. Roche, 318 S.C. at 211, 456 S.E.2d at 900. "[While e]xacting compliance with the rules is not required to effect service of process[,] [the Court must] inquire whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings." [10] BB&T v. Taylor, 369 S.C. 548, 552, 633 S.E.2d 501, 503 (2006) (quoting Roche, 318 S.C. at 209-10, 456 S.E.2d at 899-900). "[It is] the fact-finder's right to accept all, some, or none of the testimony of a particular witness." Graham Law Firm, P.A., 396 S.C. at 298-99, 721 S.E.2d at 434-35. "The trial court's findings of fact regarding validity of service of process are reviewed under an abuse of discretion standard." Id. at 294-95, 721 S.E.2d at 432 (citing Clark, 304 S.C. at 500, 405 S.E.2d at 601); see also Christian, No. 5881, 2021 S.C. App. LEXIS 156. "An abuse of discretion occurs when the trial court's decision is unsupported by the evidence or controlled by an error of law." Strategic Resources Co., 367 S.C. at 544, 627 S.E.2d at 689 (citing County of Richland, 348 S.C. at 668-69, 560 S.E.2d at 904).

---

10 In Roche v. Young Brothers, Inc. of Florence, 318 S.C. 207, 456 S.E.2d 897 (1995), the South Carolina Supreme Court cited several cases in support of its declaration that South Carolina Courts have never required exactingly compliance with the rules to effect service of process. Id. at 209-210, 456 S.E.2d 897, 899-900. The cited cases involve incorrect or missing declarations on the return of the server that could be amended. See e.g., Foster v. Crawford, 57 S.C. 551, 36 S.E. 5 (1900) (when officer's return defective as to time and place of service, it can be amended to state facts); Saunders v. Bobo, 2 Bailey 492 (1831) (sheriff's incomplete return that was not sworn to may be amended).

1. The evidence supports the trial court's decision that Appellant failed to effect service upon Respondent Leon Martin Ortner on December 7, 2017.

Appellant alleges service of the Summons and Complaint upon Respondent Leon Martin Ortner via certified mail at the principal place of business of the Ortner Law Firm, LLC, pursuant to Rule 4(d)(8), SCRCP. Appellant does not allege service by personal delivery to Respondent Leon Martin Ortner, by leaving a copy at his dwelling house or usual place of abode, or by delivery to an agent authorized by appointment or by law to receive service of process on his behalf Rule 4(d)(1), SCRCP. Accordingly, Appellant must demonstrate the trial court's personal jurisdiction over Respondent Leon Martin Ortner by showing service of the summons and complaint upon him by registered or certified mail, return receipt requested and delivery restricted to the addressee pursuant to Rule 4(d)(8), SCRCP. See Rule 4(d)(1), (8), SCRCP.

In Langley v. Graham, 322 S.C. 428, 472 S.E.2d 259 (Ct. App. 1996), the South Carolina Court of Appeals expressly held service ineffective pursuant to Rule 4(d)(8), SCRCP, where the defendant did not sign the return receipt and delivery was not restricted to the addressee only. Id. at 430-31, 472 S.E.2d at 260-61. In Langley, the plaintiff attempted to serve the defendant pursuant to Rule 4(d)(8), SCRCP, by mailing the summons and complaint to the defendant at his home by certified mail, return receipt requested; however, delivery was not restricted to the defendant and the defendant's sister who resided with him signed the return receipt. Id. at 429, 472 S.E.2d at 259. The Langley Court reasoned that the mailing did not satisfy Rule 4(d)(8), SCRCP, because the defendant did not actually sign the return receipt and its delivery was not restricted to the addressee only. Id. at 430-31, 472 S.E.2d at 260-61. In addition, the Langley Court noted the general rule of law that "acceptance of service by someone other than the addressee is defective where the mail is sent restricted delivery." Id. at 431, 472 S.E.2d at 261.

More recently, in Christian v. Healy, No. 5881, 2021 S.C. App. LEXIS 156 (Ct. App. Dec. 15, 2021), the South Carolina Court of Appeals affirmed a trial court's determination that service had been ineffective pursuant to Rule 4(d)(8), SCRCP, where the plaintiff failed to produce a return receipt or other documentation indicating that the pleadings had been delivered to the defendant. In Christian, the plaintiff asserted sending the pleadings to the defendant via certified mail, return receipt requested, restricted delivery to the defendant at an address obtained on the internet but failed to produce a return receipt or other documentation to substantiate his claim. Id. at *2-4. As a result, the Christian Court concluded that the trial court did not err in dismissing the complaint based upon insufficient service of process pursuant to Rule 12(b)(5), SCRCP. Id. at *5.

In this case, the only evidence in support of service is the Affidavit of Service executed by Appellant's then-counsel over a year after the purported service—on January 8, 2019—declaring service upon Respondent Leon Martin Ortner "by delivering to [him], by certified mail, US Postal Service on December 7, 2017, in Charleston, South Carolina and leaving with them copies of the same at 145 King Street, Ste. 211, Charleston, SC." (Aff. Service, Jan. 8, 2019; R. p. 172.) The Affidavit of Service does not include a copy of the return receipt or returned envelope showing whether the mailing was accepted, refused, or returned. (Id.) Instead, the Affidavit of Service includes an attached document purporting to be printed from the United States Postal Service website showing tracking information for an item delivered to the front desk, reception area, or mail room of an unidentified property in Charleston, SC, at 3:10 pm on December 7, 2017. (Id.) The Affidavit of Service is silent as to the authenticity or relevance of the attached document. (Id.)

In fact, Appellant appears to have mailed the summons and complaint addressed personally to Respondent Leon Martin Ortner at the office of the Ortner Law Firm, LLC, by certified mail, signature confirmation, restricted delivery. There, however, is no evidence that Respondent Leon

Martin Ortner accepted service of or signed for the envelope. See Langley, 322 S.C. at 431 n.2, 472 S.E.2d at 261 n.2) ("[A]n individual ordinarily accepts service under [Rule 4(d)(8), SCRCP] when he signs the return receipt."). The record, instead, shows that nobody signed the return receipt—most notably Respondent Leon Martin Ortner. The unexecuted return receipt also does not include a date of delivery to fix the effective date of service as required by Rule 4(d)(8), SCRCP. [11] Instead, the record shows that a back-office employee of the Ortner Law Firm, LLC, happened to pick up the envelope along with other mail delivered to the firm on December 7, 2017. There is also no indication on the outside of the envelope that it contained a summons and complaint. (Aff. Service, Jan. 8, 2019; R. p. 172.)

In citing various courts in foreign jurisdictions, Appellant argues that the trial court could have ignored South Carolina's requirement that the plaintiff produce a return receipt or other documentation indicating that the pleadings had been delivered to the defendant by taking judicial notice of the facts necessary to demonstrate actual service. As discussed above, however, South Carolina requires a party attempting to avail itself of the convenience afforded by Rule 4(d)(8), SCRCP, to produce a return receipt or other documentation showing actual service upon the defendant. See Roche, 318 S.C. at 211, 456 S.E.2d at 900; Langley, 322 S.C. at 431 n.2, 472 S.E.2d at 261 n.2. Moreover, the trial court declined to take any such judicial notice and, instead, determined that Appellant failed to effect service upon Respondent Leon Martin Ortner with the Summons and Complaint on December 7, 2017. (Or. Dismissing Pl.'s Compl. at 7-8; R. pp. 12-13.)

As there is evidence to support the trial court's decision that Appellant failed to comply with Rules 4(a), (d), or (g), SCRCP, there is evidence to support the trial court's finding that

[11] Appellant's failure to attach a copy of the return receipt or returned envelope to the Affidavit of Service also violates Rule 4(g), SCRCP.

Appellant failed to effect service upon Respondent Leon Martin Ortner with the Summons and Complaint on December 7, 2017. Accordingly, the trial court did not abuse its discretion by finding that it did not have personal jurisdiction over Respondent Leon Martin Ortner. As a result, this Court should affirm the trial court's dismissal of Appellant's claims against Respondent Leon Martin Ortner.

2. The evidence supports the trial court's decision that Appellant failed to effect service upon Respondent Ortner Law Firm, LLC, on December 7, 2017.

Appellant similarly alleges service of the Summons and Complaint upon Respondent Ortner Law Firm, LLC, via the same certified mailing sent to its principal place of business pursuant to Rule 4(d)(8), SCRCP. Appellant does not allege service by personally delivering a copy of the summons and complaint to an officer, a managing or general agent or to any other agent authorized by appointment or by law to receive service of process on behalf of Respondent Ortner Law Firm, LLC pursuant to Rule 4(d)(3), SCRCP. Accordingly, Appellant must demonstrate the trial court's personal jurisdiction over Respondent Ortner Law Firm, LLC, by showing service of the summons and complaint upon the entity by registered or certified mail, return receipt requested and delivery restricted to the addressee pursuant to Rule 4(d)(8), SCRCP. See Rule 4(d)(1), (8), SCRCP.

As with Respondent Leon Martin Ortner, the only evidence in support of service is the Affidavit of Service declaring service upon Respondent Ortner Law Firm, LLC "by delivering to [it], by certified mail, US Postal Service on December 7, 2017, in Charleston, South Carolina and leaving with them copies of the same at 145 King Street, Ste. 211, Charleston, SC." (Aff. Service, Jan. 8, 2019; R. p. 172.) Again, the Affidavit of Service does not include a copy of the return receipt or returned envelope showing whether the mailing was accepted, refused, or returned. (Id.)

Instead, the Affidavit of Service includes an attached document purporting to be printed from the United States Postal Service website showing tracking information for an item delivered to the front desk, reception area, or mail room of an unidentified property in Charleston, SC, at 3:10 pm on December 7, 2017. (Id.) As discussed above, the Affidavit of Service is silent as to the authenticity or relevance of the attached document. (Id.)

While this address is the principal place of business for Ortner Law Firm, LLC, the subject envelope is not addressed to Ortner Law Firm, LLC, and does not indicate that it contained a summons and complaint. The envelope was also not delivered to any officer, managing or general agent, or any other agent authorized by appointment to receive service of process on behalf of Ortner Law Firm, LLC. (Ortner Law Firm Aff. ¶¶ 2-11; R. p. 312; Karen Ortner Aff. ¶¶ 2-7; R. p. 314.) In fact, there is no record of any signature for the envelope. The unexecuted return receipt also does not include a date of delivery to fix the effective date of service as required by Rule 4(d)(8), SCRCP. Instead, the record shows that a back-office employee of the Ortner Law Firm, LLC, happened to pick up the envelope along with other mail delivered to the firm on December 7, 2017. Graham Law Firm, P.A., 396 S.C. at 297, 721 S.E.2d at 434 (quoting Langley, 322 S.C. at 431 n.2, 472 S.E.2d at 261 n.2) ("If [Rule 4(d)(8), SCRCP] permitted acceptance by anyone who happens to pick up the mail, the requirement that delivery of the suit papers by certified mail be restricted to the addressee would have no meaning."); see also Moore, 322 S.C. at 522-25, 473 S.E.2d at 66 ("Without specific authorization to receive process, service is not effective when made upon an employee of the defendant, such as a secretary.").

As there is evidence to support the trial court's decision that Appellant failed to comply with Rules 4(a), (d), or (g), SCRCP, there is evidence to support the trial court's finding that Appellant failed to effect service upon Respondent Ortner Law Firm, LLC, with the Summons and

Complaint on December 7, 2017. Accordingly, the trial court did not abuse its discretion by finding that it did not have personal jurisdiction over Respondent Ortner Law Firm, LLC. As a result, this Court should affirm the trial court's dismissal of Appellant's claims against Respondent Ortner Law Firm, LLC.

B. As Appellant failed to effect service of process on the Ortner Respondents, the trial court did not acquire personal jurisdiction over them regardless of whether the Ortner Respondents had notice of the action.

Appellant erroneously asserts that the Ortner Respondents' knowledge of the summons and complaint and an employee of Respondent Ortner Law Firm, LLC's possession of the pleadings was sufficient for the trial court to acquire personal jurisdiction over both the Ortner Respondents. (Appellant Initial Brief at 32-33.) In South Carolina, however, "Rule 4, SCRCP, serves at least two purposes." BB&T, 369 S.C. at 551, 633 S.E.2d at 503 (quoting Roche, 318 S.C. at 209, 456 S.E.2d at 899). In addition to assuring that defendants have reasonable notice of a civil action, service of process confers personal jurisdiction on the trial court. Id.; see also White Oak Manor, Inc. v. Lexington Insurance Company, 407 S.C. 1, 8-9, 753 S.E.2d 537, 541 (2014) (quoting State v. Sanders, 118 S.C. 498, 502–03, 110 S.E. 808, 810 (1920) ("'The purpose of the summons is to acquire jurisdiction of the person of the defendant and to give him notice of the action and an opportunity to appear and defend.'") (emphasis added).

"It is the plaintiff's burden to show that the court has personal jurisdiction over the defendant." Fassett, 364 S.C. at 47, 610 S.E.2d at 843 (citing Jensen, 292 S.C. at 594, 358 S.E.2d at 148). As a result, "[the Court must] inquire whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings." BB&T, 369 S.C. at 552, 633 S.E.2d at 503 (quoting Roche, 318 S.C. at 209-10, 456 S.E.2d at 899-900).

In this case, the trial court expressly found that Appellant failed to effect service upon either of the Ortner Respondents on December 7, 2017. (Or. Dismissing Pl.'s Compl. at 7-8; R. pp. 12-13.) Accordingly, the trial court determined that it did not have personal jurisdiction over either of the Ortner Respondents regardless of whether the Ortner Respondents had notice of the action or an employee of Respondent Ortner Law Firm, LLC had possession of the pleadings. As South Carolina law requires proper service of process for a trial court to acquire personal jurisdiction over defendants and there is evidence that to support the trial court's finding that Appellant failed to effect service upon the Ortner Respondents, the trial court did not abuse its discretion by finding that it did not have personal jurisdiction over the Ortner Respondents and dismissing Appellant's claims against them. See Momani v. Van Surdam, 296 S.C. 409, 410, 373 S.E.2d 691, 692 (Ct. App. 1988) (quoting Wyman v. Hoover, 10 S.C. 135, 136 (1878) ("When a defendant is not properly served, 'the Court has no jurisdiction of the defendant, and all proceedings based on the pretended service are void.'"); Limehouse v. Hulsey, 404 S.C. 93, 104, 744 S.E.2d 566, 572 (2013) (quoting 32A Am.Jur.2d Federal Courts § 581 (2007) ("'Without jurisdiction, a court cannot proceed at all in any cause; jurisdiction is the power to declare law, and when it ceases to exist, the only function remaining to a court is that of announcing the fact and dismissing the cause.'") As a result, this Court should affirm the trial court's dismissal of Appellant's claims against Respondent Leon Martin Ortner and Respondent Ortner Law Firm, LLC.

C. As Appellant failed to effect service of process upon the Ortner Respondents within the applicable statute of limitations, the trial court did not abuse its discretion by dismissing the claims with prejudice.

The prejudicial effect of a dismissal is determined by the trial court's exercise of its discretion. See Berry, 328 S.C. at 449-50, 492 S.E.2d at 802; Newman, 286 S.C. at 396-97, 334 S.E.2d at 276. An action upon a contract, obligation, or liability, express or implied, must be

commenced within three years. S.C. Code § 15-3-530. "A civil action is commenced when the summons and complaint are filed with the clerk of court if: (1) the summons and complaint are served within the statute of limitations in any manner prescribed by law; or (2) if not served within the statute of limitations, actual service must be accomplished not later than one hundred twenty days after filing." Rule 3(a), SCRCP; see also S.C. Code § 15-3-20. "Pursuant to the discovery rule, a breach of contract action accrues not on the date of the breach, but rather on the date the aggrieved party either discovered the breach,or could or should have discovered the breach through the exercise of reasonable diligence." Maher v. Tietex Corp., 331 S.C. 371, 376-77, 500 S.E.2d 204, 207 (Ct. App. 1998). "A cause of action should have been discovered through exercise of reasonable diligence when the facts and circumstances would have put a person of common knowledge and experience on notice that some right had been invaded or a claim against another party might exist." Id. at 377, 500 S.E.2d at 207.

In this case, Appellant alleged causes of action for breach of contract, fraud, breach of contract with fraudulent intent, violation of the South Carolina Unfair Trade Practices Act, and pre-judgment interest arising from allegations that Appellant should have been further compensated upon resolution of the claims by settlement or verdict. (Compl. ¶ 16; R. p. 83.) The evidence presented to the trial court shows that the Workers' Compensation Actions claimants collectively settled their workers' compensation claims at mediation on April 1, 2014. (Consent Order ¶ 5, July 22, 2014, R. p. 76.) The record also shows that Appellant made claims for further payment that were disputed by the Rosenthal Respondents prior to Appellant's subpoena response and deposition testimony on November 2, 2015. (Order Granting Mot. to Release Funds at 4, 6-7, Jan. 26, 2016; R. p. 60, 62-63.) In addition, the record shows that the Rosenthal Respondents served Appellant with a copy of the motion to release the settlement funds that specifically asserted

that the Commissioner should deny any claims to the funds made by Appellant on the grounds that Appellant could not establish any contractual right to any further payment. (Id. at 3; R. p. 59.) The record also shows that the Ortner Respondents also served Appellant with a reply to the motion on December 2, 2015, which sought complete adjudication of the rights and responsibilities of all parties to any monies which may be owed to Appellant. (Consent Order ¶ 6, July 22, 2014, R. p. 77.) The record also shows that Appellant was also served with the Order Granting Motion to Release Funds on January 27, 2016. (Order Granting Mot. to Release Funds, Jan. 26, 2016; R. p. 114.) Appellant filed the Summons and Complaint on August 25, 2017. Appellant admits in the Complaint that his right to further payment arose on January 26, 2016 (Compl. ¶ 17; R. p. 83.)

In the Motion to Dismiss on Behalf of Defendants Leon Martin Ortner and the Ortner Law Firm, LLC, the Ortner Respondents expressly asserted, *inter alia*, that (1) service of process was insufficient and (2) the applicable statute of limitations precluded Appellant from asserting the claims contained in the Summons and Complaint. (Ortner Mot. Dismiss at 16, Jan. 8, 2018; R. p. 102 ("As a result, this Court should dismiss the instant action pursuant to Rule 12(b)(5), SCRCP, because service of process is insufficient and the statute of limitations precludes Plaintiff from asserting these claims.").) With regard to the statute of limitations, the Ortner Respondents argued that the exercise of reasonable diligence by Appellant would have put him on notice of the settlement and arising right to payment on or around the settlement of those claims at mediation on April 1, 2014. Accordingly, the Ortner Respondents argued that the applicable statute of limitations required Appellant to commence any action to recover any amounts owed on or about July 22, 2017. As a result, the Ortner Respondents argued that Appellant's delay in waiting to file the Summons and Complaint until August 25, 2017, occurred after the expiration of the applicable three-year statute of limitations period, which required dismissal of Appellant's claims.

In addition, the Ortner Respondents expressly asserted that service of process attempted on December 7, 2017, was insufficient. In response to the motion, Appellant filed the Affidavit of Service by Certified Mail on January 9, 2019. After the trial court deferred consideration whether service of process was insufficient, (Or. Denying Mot. Dismiss at 2 n.1, April 5, 2019; R. p. 42.), the Ortner Respondents filed a renewed motion to dismiss pursuant to Rule 12(b)(5), SCRCP again expressly asserting that the trial court lacked jurisdiction over the claims because Appellant, *inter alia*, failed to effect service of process on either Respondent Leon Martin Ortner or Respondent Ortner Law Firm, LLC. (Ortner Renewed Mot. Dismiss at 1, Dec. 19, 2019; R. p. 255; Ortner Mem. Supp. Renewed Mot. Dismiss at 3-8, Jan. 10, 2020; R. pp. 279-284.)

As Appellant admits that his right to further payment arose on January 26, 2016, (Compl. ¶ 17; R. p. 83.), the applicable statute of limitations at least required that Appellant commence an action against the Ortner Respondents by January 26, 2019. See S.C. Code § 15-3-530. While Appellant filed the Summons and Complaint on August 25, 2017, as discussed above, Appellant failed to effect service of the Summons and Complaint upon the Ortner Respondents prior to January 26, 2019. Accordingly, the trial court's determination on February 5, 2020, that Appellant had failed to effect service upon either of the Ortner Respondents on December 7, 2017, precluded Appellant from commencing the action against the Ortner Respondents.

As there is evidence to support the trial court's decision that Appellant failed to effect service upon Respondent Ortner Law Firm, LLC, with the Summons and Complaint prior the expiration of the applicable statute of limitations, the trial court did not abuse its discretion by dismissing Appellant's claims with prejudice. As a result, this Court should affirm the trial court's dismissal of Appellant's claims against Respondent Leon Martin Ortner and Respondent Ortner Law Firm, LLC.

II. The trial court's dismissal of Appellant's claims against Respondents Leon Martin Ortner and Ortner Law Firm, LLC is further supported by the additional sustaining ground that the trial court lacked jurisdiction over the subject matter of Appellant's claims because the South Carolina Workers' Compensation Commission previously exercised exclusive original jurisdiction over the subject matter of the causes of action and divested the Circuit Court of jurisdiction to hear and determine the claims.

"Jurisdiction is generally defined as 'the authority to decide a given case one way or the other.'" Limehouse, 404 S.C. at 104, 744 S.E.2d at 572 (quoting 32A Am.Jur.2d Federal Courts § 581 (2007)). "Specifically, 'Jurisdiction is composed of three elements: (1) personal jurisdiction; (2) subject matter jurisdiction; and (3) the court's power to render the particular judgment requested.'" Id. (quoting Indep. Sch. Dist. No. 1 of Okla. County v. Scott, 15 P.3d 1244, 1248 (Okla. Civ. App. 2000)). "'Without jurisdiction, a court cannot proceed at all in any cause; jurisdiction is the power to declare law, and when it ceases to exist, the only function remaining to a court is that of announcing the fact and dismissing the cause.'" Id. (quoting 32A Am.Jur.2d Federal Courts § 581 (2007)).

"Subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong." Dove v. Gold Kist, Inc., 314 S.C. 235, 237-38, 442 S.E.2d 598, 600 (1994). "A court's subject matter jurisdiction is determined by whether it has the authority to hear the type of case in question." Allison v. W.L. Gore & Associates, 394 S.C. 185, 188, 714 S.E.2d 547, 549 (2011) "A court lacking subject matter jurisdiction . . . has no authority to act[.]" Dove, 314 S.C. at 238, 442 S.E.2d at 600. "This same principle applies to administrative agencies." Allison, 394 S.C. at 188, 714 S.E.2d at 549.

The Constitution of the State of South Carolina provides that "[t]he Circuit Court shall be a general trial court with original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts[.]" S.C. CONST Art. V, § 11.

Accordingly, "[w]hile the circuit court has subject matter jurisdiction over [general classes of] claims, certain cases may be taken from the circuit court's original jurisdiction by the General Assembly." Poch v. Bayshore Concrete Products/South Carolina, Inc., 386 S.C. 13, 22, 686 S.E.2d 689, 694 (Ct. App. 2009). For example, "[t]he General Assembly has vested the South Carolina Workers' Compensation Commission with exclusive original jurisdiction over employees work-related injuries." Posey v. Proper Mold & Eng'g, Inc., 378 S.C. 210, 223, 661 S.E.2d 395, 402 (Ct. App. 2008) (citing Sabb v. S.C. State Univ., 350 S.C. 416, 423, 567 S.E.2d 231, 234 (2002)). As a result, "a Workers' Compensation action is the exclusive means to determine claims against an individual's employer for work-related accidents and injuries." Id. at 224, 661 S.E.2d at 403.

As part of this exclusive original jurisdiction, the Workers' Compensation Commission has the authority to determine all questions relating to workers' compensation claims, including the approval and disbursement of costs incurred in the prosecution of a claim. S.C Code § 42-3-180 ("All questions arising under this title, if not settled by agreement of the parties interested therein with the approval of the commission, shall be determined by the commission, except as otherwise provided in this title."); S.C. Code Regs. § 67-1206 ("[A]n attorney may request approval of the actual costs incurred in the prosecution of a claim [including] expenses associated with the evaluation or treatment of the client."); Labouseur v. Harleysville Mutual Insurance Company, 302 S.C. 540, 543, 397 S.E.2d 526, 528 (1990) (holding that the Workers' Compensation Commission is also empowered to decide questions not arising under the Workers' Compensation Act that arise in the context of an employee's claim although ancillary to the determination of the employee's right to compensation). A party's failure to raise to the Commission the factual issue of jurisdiction constitutes waiver. McGreery v. Covenant Presbyterian Church, 303 S.C. 271, 274, 400 S.E.2d 130, 131 (1990) ("Where subject matter jurisdiction depends upon a factual finding, a

judicial decree determining such a fact does or does not exist cannot be challenged on collateral attack.")).

In Sadie Adams, et al., v. International Paper Company and Nevamar Company, LLC (WCC File No. 0326995), the Workers' Compensation Commission properly exercised its exclusive original jurisdiction over claims for costs incurred in the prosecution of the action. (S.C Code § 42-3-180; S.C. Code Regs. § 67-1206; Order Granting Mot. to Release Funds at 2, Jan. 26, 2016; R. p. 58.) The dispute over the costs incurred in the prosecution of the action principally arises under the Worker's Compensation Act because the Act expressly provides that an attorney—as opposed to a medical provider—may request approval of the actual costs incurred in the prosecution of a claim, including expenses associated with the evaluation or treatment of claimants, which are paid directly from any claim proceeds recoverable by the claimants. Compare S.C. Code Regs. § 67-1206 ("[A]n attorney may request approval of the actual costs incurred in the prosecution of a claim [including] expenses associated with the evaluation or treatment of the client.") with Baker Hospital v. Firemans Fund Insurance Company, 314 S.C. 98, 441 S.E.2d 822 (1994) (holding that medical provider did not have standing to seek redress before the South Carolina Worker's Compensation Commission) and Roper Hospital v. Clemons, 326 S.C. 534, 539, 484 S.E.2d 598, 600 (1997) ("The lack of an express statutory grant of standing to health care providers clearly supports finding that Appellant is without standing before the Commission"). The determination of any such costs is necessary to the determination of claimants' rights to compensation because the costs are ultimately borne by the claimants. This includes the approval and disbursement of the fees sought by Appellant through the appointment of the special referee. (See Order Granting Mot. to Release Funds at 7, Jan. 26, 2016; R. p. 63 ("[Appellant has] received payments well in addition to $25,000 from his patients, insurance companies, Medicare, and other

third party sources."); Order, May 27, 2015; R. p. 73.) Otherwise, the language of S.C. Code Regs. § 67-1206 would be without meaning. Accordingly, Appellant's claims were properly adjudicated by the Commissioner pursuant to the adoption of the Special Referee's Initial Report at the request of the attorneys in the Workers' Compensation Actions. (Compare Compl.; R. p. 81 with Order Granting Mot. to Release Funds at 3, Jan. 26, 2016; R. p. 59.) As a result, the Circuit Court had been divested of jurisdiction to hear and determine Appellant's claims as the proper forum for the adjudication of the claims was the Workers' Compensation Commission.

Moreover, although provided the opportunity, Appellant failed to raise any factual issue contesting the Commission's jurisdiction. (Order Granting Mot. to Release Funds at 2, 4, 5-6, 9, Jan. 26, 2016; R. pp. 58, 60, 61-62, 65.) The failure to raise to the Commission any factual issue of jurisdiction constitutes waiver of whether the Commission had been the proper forum for adjudication of the claims, particularly where the parties relied upon the determination of the extent of any such costs as part of the determination of the claimants' rights to compensation. McGreery, 303 S.C. at 274, 400 S.E.2d at 131 ("Where subject matter jurisdiction depends upon a factual finding, a judicial decree determining such a fact does or does not exist cannot be challenged on collateral attack."). Accordingly, Appellant waived the issue of whether the Commission had been the proper forum for adjudication of the claims.

As the Commission exercised exclusive original jurisdiction over the subject matter of Appellant's causes of action and Appellant failed to raise the factual issue of jurisdiction before the Commission when provided the full and fair opportunity to litigate the matter, the Circuit Court was divested of jurisdiction to hear and determine the claims asserted in the Complaint. As a result, the trial court's dismissal of Appellant's claims against Respondents Leon Martin Ortner and Ortner Law Firm, LLC is further supported by the additional sustaining ground that the trial court

lacked jurisdiction over the subject matter of Appellant's claims because the South Carolina Workers' Compensation Commission previously exercised exclusive original jurisdiction over the subject matter of the causes of action and divested the Circuit Court of jurisdiction to hear and determine the claims.

III. The trial court's dismissal of Appellant's claims against Respondents Leon Martin Ortner and Ortner Law Firm, LLC is further supported by the additional sustaining ground that the trial court lacked jurisdiction over the subject matter of Appellant's claims because Appellant failed to exhaust the administrative remedies provided for in the South Carolina Workers' Compensation Law.

The doctrine of exhaustion of administrative remedies comes into play "when a litigant attempts to invoke the original jurisdiction of a circuit court to adjudicate a claim based on a statutory violation for which the legislature has provided an administrative remedy." Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 102, 674 S.E.2d 524, 530 (2009) (quoting Thomas Sand Co. v. Colonial Pipeline Co., 349 S.C. 402, 413, 563 S.E.2d 109, 115 (Ct. App. 2002)). "[D]ismissal may be proper under Rule 12(b)(6), SCRCP, for failure to state a claim where the opposing party is required to exhaust its administrative remedies as a matter of law, but failed to do so." Id. at 101, 674 S.E.2d at 529 (citing Unisys Corp. v. S.C. Budget & Control Bd., 346 S.C. 158, 176, 551 S.E.2d 263, 273 (2001)).

As discussed above, "[t]he General Assembly has vested the South Carolina Workers' Compensation Commission with exclusive original jurisdiction over employees work-related injuries." Posey, 378 S.C. at 223, 661 S.E.2d at 402 (citing Sabb, 350 S.C. at 423, 567 S.E.2d at 234). As a part of this exclusive original jurisdiction, the Commission has the authority to determine all questions relating to workers' compensation claims, including the disbursement of costs. S.C Code § 42-3-180; S.C. Code Regs. § 67-1206. In addition, the General Assembly has

prescribed mandatory rules for the administrative review of Commission determinations. See S.C. Code § 42-17-50; S.C. Code § 42-17-60; Allison, 394 S.C. at 187-89, 714 S.E.2d at 548-50.

The South Carolina Workers' Compensation Law ("SCWCL") expressly provides that a party seeking review of a single commissioner's ruling must seek review from the Commission within fourteen days of notice of the determination. S.C. Code § 42-17-50. The SCWCL also provides that a party must appeal a determination of the Commission by serving and filing a notice of appeal with the South Carolina Court of Appeals within thirty days of the determination. S.C. Code § 42-17-60. If not reviewed in due time, a determination "is conclusive and binding as to all questions of fact." Id. The South Carolina Supreme Court has held that the Commission lacks jurisdiction over a single commissioner's determination where not timely appealed. Allison, 394 S.C. at 188-89, 714 S.E.2d at 549-50.

In this matter, the Commission exercised exclusive original jurisdiction over the approval and disbursement of attorney's fees and costs, which required an adjudication of the claims asserted in the Complaint. Although properly served with the Motion to Release Funds, Reply of Leon Martin Ortner to Motion to Release Funds, and Order Granting Motion to Release Funds, Appellant failed to pursue his claims before the Commission prior to the disbursal of the funds held in trust. Appellant also failed to pursue the statutorily prescribed remedies to review the Commissioner's determination that neither the Ortner Respondents nor the Rosenthal Respondents had failed to pay Appellant any sums owed to him. Appellant did not seek review by the Commission within fourteen days of service of the order. Appellant did not serve and file notice of appeal with the Court of Appeals within thirty days of service of the order.

As a result, the trial court's dismissal of Appellant's claims against Respondents Leon Martin Ortner and Ortner Law Firm, LLC is further supported by the additional sustaining ground

that the trial court lacked jurisdiction over the subject matter of Appellant's claims because Appellant failed to exhaust the administrative remedies provided for in the South Carolina Workers' Compensation Law. S.C. Code § 42-17-50 (providing a mandatory process for review of a single commissioner's ruling); S.C. Code § 42-17-60 (providing a mandatory process for review of the Commission's ruling); see also Unisys Corp., 346 S.C. at 176, 551 S.E.2d at 273 (affirming that failure to exhaust administrative remedies precludes original resort to courts where an administrative agency is granted exclusive jurisdiction by the express terms of a statute); Allison, 394 S.C. at 187-89, 714 S.E.2d at 548-50 (holding that the Commission lacked jurisdiction to hear an untimely appeal of a single commissioner's ruling).

IV. The trial court's dismissal of Appellant's claims against Respondents Leon Martin Ortner and Ortner Law Firm, LLC is further supported by the additional sustaining ground that the doctrines of collateral estoppel, estoppel by record, laches, waiver, equitable estoppel, and res judicata barred re-litigation of the claims in the Circuit Court after the South Carolina Workers' Compensation Commission actually and necessarily litigated and directly determined the claims in an action in which Appellant had a full and fair opportunity to litigate the claims.

"'Collateral estoppel prevents a party from re-litigating an issue in a subsequent suit which was actually and necessarily litigated and determined in a prior action.'" Crosby v. Prysmian Communications Cables and Systems USA, LLC, 397 S.C. 101, 108, 723 S.E.2d 813, 816-17 (Ct. App. 2012) (affirming that a trial court properly gave preclusive effect to a factual finding of the Workers' Compensation Commission (quoting Aaron v. Mahl, 381 S.C. 585, 592, 674 S.E.2d 482, 486 (2009))). Accordingly, "under the doctrines of res judicata and collateral estoppel, the decision of an administrative tribunal precludes the relitigation of the issues addressed by that tribunal in a collateral action." Bennett v. S.C. Department of Corrections, 305 S.C. 310, 312, 408 S.E.2d 230, 231 (1991); see also Grausz v. Englander, 321 F.3d 467 (4th Cir. 2003) (precluding a non-party

with a pecuniary interest in the outcome of a fee application proceeding from asserting a later claim).

"'A party precluded from relitigating an issue with an opposing party . . . is also precluded from doing so with another person unless the fact that he lacked full and fair opportunity to litigate the issue in the first action or other circumstances justify affording him an opportunity to relitigate the issue.'" Beall v. Doe, 281 S.C. 363, 315 S.E.2d 186 (1984) (quoting Restatement (Second) of Judgments § 29 at 291-92 (1982)). "[T]he primary concern of our courts in applying collateral estoppel is not whether the parties satisfy the mutuality requirement, but whether a potentially precluded party had a full and fair opportunity to litigate the issues in a prior action." Snavely v. AMISUB of South Carolina, 379 S.C. 386, 398, 665 S.E.2d 222, 227 (Ct. App. 2008); see also Patel v. Garrett Law Firm, PC, No. 2011-186586, 2013 WL 8538731, at *1 (S.C. Ct. App., June 26, 2013) (affirming the preclusion of a non-party from relitigating proximate cause). A party is also precluded pursuant to the doctrine of estoppel by record "to deny the truth of matters set forth in a record, whether judicial or legislative, and also to deny the facts adjudicated by a court of competent jurisdiction." Watson v. Goldsmith, 205 S. C. 215, 215, 31 S. E. 2d 317, 320 (1944).

In addition, "[e]quitable estoppel precludes a party from asserting rights 'he otherwise would have had against another' when his own conduct renders assertion of those rights contrary to equity." Pearson v. Hilton Head Hosp., 400 S.C. 281, 290, 733 S.E.2d 597, 601 (Ct. App. 2012) (quoting Long v. Silver, 248 F.3d 309, 316 (4th Cir. 2001)). "[E]quitable estoppel focuses on a party's detrimental reliance on another party's conduct[.]" Strickland v. Strickland, 375 S.C. 76, 85, 650 S.E.2d 465, 471 (2007). "For example, one who delays unreasonably could be said to be estopped from asserting a claim if another has relied on that delay to his detriment." Id.

A party may also voluntarily and intentionally relinquish or abandon a known right. Strickland, 375 S.C. at 83-86, 650 S.E.2d at 469-71 (discussing the doctrines of waiver and laches). "Laches is an equitable doctrine defined as 'neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done.'" Id. at 83, 650 S.E.2d at 469 (quoting Hallums v. Hallums, 296 S.C. 195, 198, 371 S.E.2d 525, 527 (1988)). "In order to establish laches as a defense, a defendant must show that the complaining party unreasonably delayed its assertion of a right, resulting in prejudice to the defendant." Id. (citing Kelley v. Kelley, 368 S.C. 602, 606, 629 S.E.2d 388, 391 (Ct. App. 2006)). "The equitable doctrine of laches is equivalent to the legal doctrine of waiver, which is the 'voluntary and intentional relinquishment or abandonment of a known right[.]'" Id. at 85, 650 S.E.2d at 470 (quoting Parker v. Parker, 313 S.C. 482, 487, 443 S.E.2d 388, 391 (1994)). Waiver "may be implied from circumstances indicating an intent to waive." Provident Life & Accident Ins. Co. v. Driver, 317 S.C. 471, 478-79, 451 S.E.2d 924, 929 (Ct. App. 1994). "Acts that are inconsistent with the continued assertion of a right may also give rise to a waiver." Id.

In the Complaint, Appellant asserted claims for further compensation for the performance of medical examinations and the issuance of medical reports for claimants involved in workers' compensation actions, including Sadie Adams, et al., v. International Paper Company and Nevamar Company, LLC. (See Compl.) As discussed above, the Commission properly exercised exclusive original jurisdiction over the approval and disbursement of attorney's fees and costs in that matter. (Order Granting Mot. Release Funds at 2, Jan. 26, 2016; R. p. 58.) In the adjudication of those matters, the Commissioner actually and necessarily directly determined the material facts and issues of law underlying Appellant's claims, including any rights to payment of fees and the rights of all concerned parties to the funds being held in trust from which all attorney's fees and

costs were to be distributed. (Id. at 1-7; R. pp. 57-63.) The Commissioner also properly considered and adjudicated the claims of all parties having any pecuniary interest in the funds. (Id.) As a result of that litigation, the Commissioner specifically determined that Appellant cannot establish contractual entitlement to any of the funds held in trust and that neither the Ortner Respondents nor the Rosenthal Respondents have any obligation to pay Appellant any additional sums. (Id. at 4-7; R. pp. 60-63.)

Appellant had the full and fair opportunity to litigate his claims for further payment with regard to the workers compensation claimants. In fact, Appellant responded to a subpoena for any documents supporting his claims and provided deposition testimony regarding any right to additional compensation. (Id. at 6-7; R. pp. 62-63.) After Appellant failed to respond to the motion and reply, the Commissioner issued a detailed order specifically addressing the claims now asserted in the instant action. (Id. at 1-7; R. pp. 57-63.) Appellant similarly failed to contest the order.

Instead, Appellant filed a complaint with the Supreme Court of South Carolina's Office of Disciplinary Counsel ("ODC") alleging that the Ortner Respondents failed to provide payment for services rendered in the Workers' Compensation Actions. (Letter from ODC to Dr. Cary E. Fechter (Mar. 2, 2016); R. p. 440.) After conducting an investigation, the ODC determined that there was no evidence of lawyer misconduct on the part of the Ortner Respondents. (Id.) Appellant similarly failed to seek review of the ODC's determination. As the South Carolina Rules of Professional Conduct specifically address an attorney's duties where a third-party asserts claims to disputed funds in the attorney's possession, see Moore v. Weinberg, 373 S.C. 209, 223-26, 644 S.E.2d 740, 747-48 (Ct. App. 2007), the ODC also actually and necessarily directly determined that the Ortner Respondents did not violate a duty to disburse any funds to Appellant. (See Letter from ODC to

Dr. Cary E. Fechter, Mar. 2, 2016; R. p. 440.) As a result, Appellant is precluded from now arguing that the Ortner Respondents violated any duty owed to Appellant by failing to disburse to Appellant any of the funds held in trust. (See Appellant's Initial Brief at 42-46.)

Appellant failed to exercise diligence by taking the full and fair opportunities provided to litigate his rights to further payment prior to the disbursal of the funds held in trust, particularly where the Workers' Compensation parties, attorneys, and others participating in the action relied upon the finality of the prior adjudication. As a result, the trial court's dismissal of Appellant's claims against Respondents Leon Martin Ortner and Ortner Law Firm, LLC is further supported by the additional sustaining ground that the trial court lacked jurisdiction over the subject matter of Appellant's claims because Appellant voluntarily and intentionally relinquished and abandoned his right to assert the claims by failing to pursue these claims before the Commissioner, the Commission, the South Carolina Court of Appeals, and the ODC.

V. The South Carolina Court of Appeals does not have jurisdiction over Appellant's challenge to the trial court's order dismissing the claims against the Ortner Respondents because Appellant only served and filed a notice of appeal of the order denying Appellant's motions to reconsider the orders dismissing those claims and failed to serve and file a copy of the order to be challenged on appeal.

"A party intending to appeal must serve and file a notice of appeal and otherwise comply with [the South Carolina Appellate Court Rules]." Rule 203(a), SCACR. "A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment." Rule 203(b), SCACR. "The notice of appeal shall be filed with the clerk of the lower court and the clerk of the appellate court within ten (10) days after the notice of appeal is served." Rule 203(d)(1)(B), SCACR. "The notice filed with the appellate court shall be accompanied by the following: . . . (ii) A copy of the order(s) and judgment(s) to be challenged on appeal if they have been reduced to writing[.]" Rule 203(d)(1)(B)(ii), SCACR (emphasis added).

"The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice." Elam v. South Carolina Department of Transportation, 361 S.C. 9, 17, 602 S.E.2d 772, 776 (2004); see also Rule 203(d)(3), SCACR ("If the notice of appeal is not timely filed . . . the appeal shall be dismissed . . . ."). "[T]he failure to comply with procedural requirements for an appeal divests a court of appellate jurisdiction." State v. Brown, 358 S.C. 382, 387, 596 S.E.2d 39, 41 (2004).

On April 21, 2021, Appellant served the Notice of Appeal appealing "the judgment of the Honorable J. Derham Cole dated March 30, 2021." On April 26, 2021, Appellant filed the Notice of Appeal with the Clerk of the South Carolina Court of Appeals along with the Form 4 Order filed by Judge Cole on March 30, 2021. Appellant, however, failed to serve and file with the Notice of Appeal the Form 4 Order dismissing the action filed on February 5, 2020, or the Order Dismissing Plaintiff's Complaint with Prejudice as to the Ortner Respondents filed on August 4, 2020. As a result, Appellant failed to comply with the procedural requirements necessary to provide the South Carolina Court of Appeals with appellate jurisdiction over these orders. Accordingly, this Court lacks jurisdiction to consider their appeal by Appellant and should dismiss the appeal. See Order, State v. Poe, No. 2013-001239 (S.C. Ct. App. May 29, 2014) (dismissing appeal for failure to file a copy of the order challenged); see also Crabtree v. Crabtree, No. 2021-UP-111, 2021 S.C. App. Unpub. LEXIS 117 at *1-5 (S.C. Ct. App. April 7, 2021); Bartley v. Bartley, No. 2017-UP-097, 2017 S.C. App. Unpub. LEXIS 130 at *1-3 (S.C. Ct. App. Mar. 8, 2017).

CONCLUSION

For the foregoing reasons, this Court should affirm the trial court's Order dismissing Appellant's claims against Respondents Leon Martin Ortner and Ortner Law Firm, LLC.

Respectfully submitted,

/s/ Justin P. Novak

M. Dawes Cooke, Jr., Esquire
Justin P. Novak, Esquire
Barnwell Whaley Patterson & Helms, LLC
P.O. Drawer H
Charleston, South Carolina 29402
Phone: (843) 577-7700
Fax: (843) 577-7708
mdc@barnwell-whaley.com
jnovak@barnwell-whaley.com

Attorneys for Respondents Leon Martin Ortner and Ortner Law Firm, LLC

June 7, 2022

RECEIVED
Jun 07 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas
J. Derham Cole, Circuit Court Judge

Appellate Case No. 2021-000446
Civil Action No. 2017-CP-10-04371

Cary E. Fechter, M.D. ..... Appellant,

v.

Leon Martin Ortner, The Ortner Law Firm, LLC, Gerald Rosenthal, and Levy, Simon, and Ryles, P.A. ……... Respondents.

RULE 211 CERTIFICATION OF RESPONDENTS LEON MARTIN ORTNER AND ORTNER LAW FIRM, LLC

I, the undersigned, herby certify that pursuant the ***Final Brief of Respondents Leon Martin Ortner and Ortner Law Firm, LLC*** complies with the requirements of Rule 211, SCACR.

/s/ Justin P. Novak

M. Dawes Cooke, Jr., Esquire
Justin P. Novak, Esquire
Barnwell Whaley Patterson & Helms, LLC
P.O. Drawer H
Charleston, South Carolina 29402
Phone: (843) 577-7700
Fax: (843) 577-7708
mdc@barnwell-whaley.com
jnovak@barnwell-whaley.com

Attorneys for Respondents Leon Martin Ortner and Ortner Law Firm, LLC

June 7, 2022