



OPINIONS
OF
THE SUPREME COURT
AND
COURT OF APPEALS
OF
SOUTH CAROLINA

ADVANCE SHEET NO. 1
January 3, 2024
Patricia A. Howard, Clerk
Columbia, South Carolina
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**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

George N. Moses, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2020-000093

ON WRIT OF CERTIORARI

Appeal from Orangeburg County
Edgar W. Dickson, Circuit Court Judge

Opinion No. 6041
Heard November 16, 2023 – Filed January 3, 2024

AFFIRMED

Appellate Defender Jessica M. Saxon, of Columbia, for
Petitioner.

Attorney General Alan McCrory Wilson and Senior
Assistant Attorney General Mark Reynolds Farthing,
both of Columbia, and Solicitor David Michael Pascoe,
Jr., of Orangeburg, all for Respondent.

GEATHERS, J.: Petitioner George N. Moses appeals the December 16, 2019 denial of his application under the Access to Justice Post-Conviction DNA Testing

Act (the DNA Testing Act),¹ in which he sought post-conviction DNA testing of evidence used to convict him of voluntary manslaughter and armed robbery in February 2009. Moses argues the circuit court erred by relying on the incorrect part of the statute and misapplying the statutory factors used to review his application. We affirm.

FACTS

George Moses was convicted of voluntary manslaughter and armed robbery and sentenced to life without parole on February 12, 2009, for the killing of Harry Livingston (the victim). On September 29, 2006, Moses visited the victim to purchase drugs. A fight broke out between the two surrounding the terms of the exchange and resulted in Moses stabbing and hitting the victim with a stick until the victim passed out. The victim was subsequently found dead, and an autopsy attributed his death to a closed-head injury and subarachnoid hemorrhaging. After the altercation, Moses went to a friend's house and hid a pair of bloody shorts, which police later found. A grand jury indicted Moses for armed robbery and murder. At trial, Moses admitted to the altercation with the victim and argued that he acted in self-defense. DNA testing of several pieces of evidence, including strips cut from the bloody shorts Moses stashed after his fight with the victim, did not reveal Moses' DNA.

Moses filed an application under the DNA Testing Act on January 3, 2017, requesting that the State perform a DNA test on two other items: swabs taken from the pockets of the pair of shorts he admitted to hiding and fingernail clippings taken from the victim. Moses alleged that testing these items would reveal the true identity of the person wearing the shorts and the identity of the person who actually killed the victim.²

¹ S.C. Code Ann. §§ 17-28-10 to -120 (2014 & Supp. 2023).

² At oral argument, Moses' counsel explained that Moses was likely confused by the fact that multiple DNA swabs were taken from the bloody shorts and that Moses thought that there were two pairs of shorts somehow involved in the State's case. Because Moses admitted at trial that he was wearing the bloody shorts of which he now seeks DNA testing, counsel explained that the focal point of Moses' case was testing the victim's fingernail clippings, which he asserts could potentially show that an interceding actor caused the victim's death.

Moses' application sat pending for over two years, apparently owing to confusion over how the application was to be handled. On August 28, 2019, the circuit court held an evidentiary hearing in which Moses' counsel began by advising the court he had been unable to verify that the items for which testing was sought still existed.³ The parties then spent most of the hearing arguing whether identity was a critical factor at Moses' trial. On this point, Moses argued that DNA evidence from the shorts and the victim's fingernails would reveal that the victim had been in another altercation after his fight with Moses. The State argued Moses' testimony at trial that he engaged in an altercation with the victim before his death and that he stashed the bloody shorts at a friend's house precluded a finding that identity was an issue during the trial.

After taking the parties' arguments under advisement, the circuit court issued an order on December 16, 2019, denying Moses' application. Moses concedes on appeal that no objections were raised at the hearing nor was the circuit court asked to reconsider its order. Indeed, Moses reads the record as making clear "that everyone involved, from [Moses'] DNA counsel to the [s]olicitor to the circuit court[,] did not properly address [Moses'] DNA application." Moses sought certiorari from this court pursuant to Rule 247(a), SCACR,⁴ and this court granted the petition on June 16, 2021.

ISSUE ON APPEAL

Did the circuit court err in finding Petitioner failed to meet the requirements of section 17-28-40(C) of the South Carolina Code, which enumerates the required contents of the DNA testing application, rather than the requirements of section 17-28-90(B), which specifies the factors to be proved at the hearing on the DNA testing application?

³ Under the DNA Testing Act, applicants have the burden of showing the items for which testing is sought still exist. § 17-28-90(B) ("The court shall order DNA testing of the applicant's DNA and the [evidence] . . . upon a finding that the applicant has established each of the . . . factors by a preponderance of the evidence[.]").

⁴ Rule 247(a), SCACR, provides: "A final order of the circuit or family court denying or granting DNA testing under the . . . DNA Testing Act . . . shall be reviewed upon petition of either party for a writ of certiorari according to the procedure set forth in this rule."

STANDARD OF REVIEW

Section 17-28-90(G) of the South Carolina Code provides that both the State and the applicant have a right to appeal a final order granting or denying an application under the DNA Testing Act. Our research has revealed no published appellate court decision defining the standard of review for such appeals. Applications under this statute are in some ways similar to applications seeking post-conviction relief (PCR) under the Uniform Post-Conviction Procedure Act (the PCR Act).⁵

However, whereas the PCR Act provides that "[a]ll rules and statutes applicable in *civil* proceedings are available to the parties," the DNA Testing Act provides that "[a]ll rules and statutes applicable in *criminal* proceedings are available to [the parties]." *Compare* § 17-27-80 (emphasis added), *with* § 17-28-90(A) (emphasis added). This key difference between the two acts justifies applying the standard of review for criminal proceedings to the present case. "In criminal cases, the appellate court sits to review errors of law only." *State v. Elwell*, 403 S.C. 606, 609, 743 S.E.2d 802, 804 (2013). "Therefore, this [c]ourt is bound by the trial court's factual findings unless the appellant can demonstrate that the trial court's conclusions either lack evidentiary support or are controlled by an error of law." *Id.*

LAW AND ANALYSIS

The State contends that Moses' arguments are unpreserved while Moses asks this court to relax preservation rules to reach the merits of his claims. We agree with the State and hold Moses' arguments on appeal are not preserved for appellate review.

South Carolina appellate courts do not follow the "plain error" standard when sitting in review of a trial court's decision. *State v. Sheppard*, 391 S.C. 415, 421, 706 S.E.2d 16, 19 (2011) ("[T]he plain error rule does not apply in South Carolina state courts."). "Instead, a party must have a contemporaneous and specific objection to preserve an issue for appellate review." *Id.* "[I]t is a litigant's duty to bring to the court's attention any perceived error, and the failure to do so amounts to a waiver of the alleged error." *State v. Geer*, 391 S.C. 179, 193, 705 S.E.2d 441, 448 (Ct. App. 2010) (quoting *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007)). However, appellate courts are to be "mindful of

⁵ S.C. Code Ann. §§ 17-27-10 to -160.

the need to approach issue preservation rules with a practical eye and not in a rigid, hyper-technical manner" and thus should not apply preservation rules in a manner that "elevat[es] form over substance to trap trial lawyers so as to prevent the appeal of a legitimate issue." *State v. Morales*, 439 S.C. 600, 609, 889 S.E.2d 551, 556 (2023) (quoting *Herron v. Century BMW*, 395 S.C. 461, 470, 719 S.E.2d 640, 644 (2011)).

"One primary purpose of our issue preservation rules is to 'give the trial court a fair opportunity to rule.'" *Id.* (quoting *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012)). Second, preservation rules work to ensure that "both parties are aware of the nature of the objection such that they may present their best arguments addressing *that* objection." *Id.* Our supreme court has assessed requests to set aside preservation in the interest of justice against both of these high-level goals. *See id.* (noting that the court's refusal to ignore issue preservation rules "serves each [of the two aforementioned] purposes").

Moses asks this court to analyze the merits of his appeal, regardless of whether the issues are preserved, in the interest of justice. To support this, Moses cites state and federal case law supporting the proposition that at times, "the interests of justice require . . . courts to be flexible with procedural requirements before . . . applicants suffer procedural default on substantial claims." *Mangal v. State*, 421 S.C. 85, 99, 805 S.E.2d 568, 575 (2017).

In *Simmons v. State*, our supreme court took the "extraordinary action" of remanding a PCR case to the lower court even though it found "the State [was] technically correct" that the applicant's issue on appeal was not preserved. 416 S.C. 584, 592–93, 788 S.E.2d 220, 225 (2016). It noted that "[a] remand under these circumstances must . . . be granted sparingly and be reserved for the *rarest of cases*." *Id.* at 593, 788 S.E.2d at 225 (emphasis added). The applicant in *Simmons* had been sentenced to death for murder and filed a PCR application, asserting ineffective assistance of counsel, newly discovered evidence, and a claim that he was deprived of due process by the State's presentation of false DNA evidence to the jury and its failure to disclose exculpatory evidence. *Id.* at 589, 788 S.E.2d at 223. The PCR court vacated the applicant's death sentence and denied the remaining claims, including the challenge to the DNA evidence. *Id.* at 591, 788 S.E.2d at 224. On appeal, the State did not deny that "the strength of the State's DNA evidence against [the applicant] was misrepresented to the jury," but our supreme court noted that it found "no evidence of conscious wrongdoing in the prosecution of [the] case." *Id.* Instead, it attributed the misrepresentation to faulty evidence the State had received "concerning a complex matter." *Id.* Finding that the PCR court did not make

specific findings of fact, our supreme court vacated the PCR court's order in part and remanded it for further factual findings. *Id.* at 592–93, 788 S.E.2d at 225.⁶

Simmons and similar cases cited by Moses are distinguishable from the instant case. Whereas in *Simmons*, the PCR court failed to make sufficient factual findings required of it by the law, Moses makes no allegation here that the circuit court did not make the factual findings required of it under the DNA Testing Act. Rather, Moses essentially argues the circuit court erred by deriving the factors it applied from the wrong part of the DNA Testing Act.⁷ Only under extraordinary circumstances—such as when a PCR court fails to make sufficiently specific findings of fact—do the interests of justice permit a court to reach unpreserved issues. *See Fishburne v. State*, 427 S.C. 505, 517, 832 S.E.2d 584, 590 (2019) (Hearn, J., concurring) ("Although we have overlooked the lack of a [posttrial] motion in the past, . . . those decisions clearly represent extraordinary circumstances. Our issue preservation rules are well-settled. [We depart] from [these rules] only in exceptional circumstances.").

Softening preservation rules for Moses' claim would be tantamount to employing the plain error rule. Although—as discussed—our jurisprudence sometimes permits reaching unpreserved issues to avoid hyper-technical applications of preservation rules, the case at hand is not one in which preservation

⁶ *Simmons* is in the same vein as a line of cases stemming from *McCray v. State*, 305 S.C. 329, 408 S.E.2d 241 (1991). In *McCray*, our supreme court took the opportunity to remind PCR courts of their obligation to "make specific findings of fact, and state expressly [their] conclusions of law, relating to each issue presented." 305 S.C. at 330, 408 S.E.2d at 241 (quoting S.C. Code Ann. § 17-28-80). Finding that "[t]he PCR court's conclusions regarding ineffective assistance are insufficient for appellate review and fail to meet the standard set forth in the statute," our supreme court remanded the case. *Id.* A year later, in *Pruitt v. State*, our supreme court expressed "concern with the increasing number of orders in PCR proceedings that fail to address the merits of the issues raised by the applicant" and vacated and remanded the case to the PCR court for additional findings. 310 S.C. 254, 255–56, 423 S.E.2d 127, 128 (1992) (per curiam).

⁷ Specifically, Moses argues the circuit court relied on section 17-28-40(C), which sets out factors for evaluating an *application* under the DNA Testing Act, instead of section 17-28-90(B), which specifies the factors to be applied to a *hearing* held under the DNA Testing Act.

rules must be tortured or even construed strictly in order to function as a bar to Moses' claim. Rather, Moses did not object during the DNA testing hearing. In short, the issues Moses brings on appeal were neither raised to nor ruled on by the circuit court. *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review."). The State had no opportunity to address any of the arguments about the circuit court's order that Moses makes on appeal because this appeal is the first time he has raised them. The same can be said about the circuit court. *See Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006) ("Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide us with a platform for meaningful appellate review."). Thus, Moses failed to preserve the errors he assigns for appellate review and no extraordinary circumstances warrant this court to set aside preservation rules and reach the issues.

CONCLUSION

For the foregoing reasons, the circuit court's order is

AFFIRMED.

THOMAS and KONDUROS, JJ., concur.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Renewable Water Resources, Respondent,

v.

Insurance Reserve Fund, a Division of the State Fiscal
Accountability Authority of South Carolina, Appellant.

Appellate Case No. 2020-000669

Appeal from Greenville County
Charles B. Simmons, Jr., Master-In-Equity

Opinion No. 6042
Heard September 13, 2023 – Filed January 3, 2024

**AFFIRMED IN PART, REVERSED IN PART, AND
REMANDED**

Andrew F. Lindemann, of Lindemann Law Firm, P.A., of
Columbia, for Appellant.

William Stevens Brown, V and Miles Edward Coleman,
both of Nelson Mullins Riley & Scarborough, LLP, of
Greenville; and Rivers Samuel Stilwell, of Maynard
Nexsen PC, of Greenville, all for Respondent.

THOMAS, J.: In this action for recovery under an insurance policy, the Insurance Reserve Fund (the Fund) appeals the findings of the master-in-equity, arguing the master erred by (1) finding coverage and making an award for covered loss under

the Building and Personal Property Policy (the Policy) issued by the Fund; (2) wrongly interpreting and applying regulations governing land application of biosolids¹ and the National Pollutant Discharge Elimination System (NPDES) permits issued to Renewable Water Resources (ReWa); (3) failing to make specific findings of fact and conclusions of law; (4) allowing inadmissible summary exhibits; (5) failing to consider the Policy's \$3,000 deductible per occurrence; and (6) denying the Fund's new trial motion. We affirm in part, reverse in part, and remand for further findings in accordance with this opinion.

FACTS

In January of 2013, ReWa, a special-purpose district created for the treatment of wastewater, discovered through routine sampling that a third party had illegally introduced polychlorinated biphenyls (PCBs)² into its wastewater treatment system. The parties stipulated that during the relevant time period, ReWa was subject to the Policy, which was held by the Fund. The parties also stipulated that the third party's actions constituted vandalism and that vandalism was an included cause of loss under the Policy.

In relevant part, the Policy states the Fund "will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss." The Policy directs the insured to "[t]ake all reasonable steps to protect the Covered Property from further damage." It also includes a "Cause of Loss – Special Form" that states coverage will be provided for "risks of direct physical loss" and lists an "Ordinance or Law Exclusion" that bars coverage for a loss "caused directly or indirectly" by "the enforcement of any ordinance or law[] (1) [r]egulating construction, use or repair of any property; or (2) [r]equiring the tearing down of any property, including the cost of removing its debris." This exclusion applies "regardless of any other cause or event that contributes concurrently or in any sequence to the loss."

¹ Biosolids are a byproduct of wastewater treatment and are sometimes referred to as "sludge."

² According to the South Carolina Department of Health and Environmental Control (DHEC), the United States banned PCBs in 1979 due to their ability to build up in the environment and cause adverse health effects.

The federal Toxic Substances Control Act (TSCA)³ regulates biosolids containing PCB levels at or above fifty parts per million (ppm). Additionally, each of ReWa's facilities operates under NPDES permits⁴ regulating the land application of biosolids and the discharge of wastewater. These permits contain a "duty to mitigate" clause directing the permittee to "take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment" and stating that failure to comply violated the Clean Water Act (the Act) and "was a ground for enforcement action." The NPDES permit regulating wastewater also contains a list of chemicals and corresponding levels at which the permittee is allowed to discharge into the wastewater source. PCBs do not appear on this list.

Initial sampling showed levels of PCBs in the wastewater at ReWa's Pelham facility; through additional testing, ReWa discovered PCBs in holding tanks of biosolids for land application at the Mauldin Road and Lower Reedy facilities in March of 2013. A former ReWa board member testified that in total, ReWa held eleven million gallons of contaminated biosolids.

By August of 2013, ReWa had ceased land application⁵ of the biosolids, had ordered temporary presses to compact the biosolids in preparation to dispose of them at a landfill, and was reactivating existing presses. ReWa also contracted with an attorney on environmental hazards and hired AECOM, a consulting firm, to advise ReWa on remediation.

On September 25, 2013, DHEC issued an Emergency Regulation for Management of Wastewater System Sludge prohibiting the land application of biosolids with any quantifiable PCB levels. It also provides that any wastewater generated as a byproduct of the treatment process with a quantifiable level of PCBs may not be reintroduced back into the treatment system. The emergency regulation remained in effect until February of 2014.

³ 15 U.S.C. §§ 2601-2697.

⁴ Although the permits for only ReWa's Pelham facility were entered into evidence, ReWa's chief technical officer testified the permits for its Mauldin Road and Lower Reedy facilities were "very similar."

⁵ Prior to the contamination, ReWa primarily disposed of the biosolids by applying them to land as soil conditioner.

ReWa submitted a proposed plan to remediate the Pelham facility, which contained several structures that, when tested for PCBs, showed levels above fifty ppm. DHEC approved the plan subject to several requirements, including a directive that if any PCBs were detected, ReWa should cease operations until it could comply with the emergency regulation. ReWa later undertook plans to remediate the Mauldin Road and Lower Reedy facilities.

ReWa subsequently submitted an insurance claim to the Fund, which denied coverage but offered a total of \$30,000 under the Pollutant Cleanup and Removal Provision policy, an additional coverage provision. ReWa then brought this action to determine coverage.

The master found the Policy covered most of ReWa's remediation expenses and awarded ReWa \$5,824,924.49 in damages. It found ReWa incurred \$8,751,949.60 in remediation expenses but subtracted \$2,516,054.27 from the total award for the normal costs of processing the biosolids. The master declined to award damages for the following expenses: \$249,572.00 paid to Greenville County Solid Waste due to lack of sufficient proof; \$4,246.25 paid to AECOM for lack of sufficient proof; \$1,320.00 for a double charge for pressure washing; and \$155,832.59 in attorney's fees relating to the environmental and coverage counsel. This appeal by the Fund followed.

STANDARD OF REVIEW

"When the purpose of the underlying dispute is to determine whether coverage exists under an insurance policy, the action is one at law." *State Farm Mut. Auto. Ins. Co. v. Goyeneche*, 429 S.C. 211, 217, 837 S.E.2d 910, 913 (Ct. App. 2019) (quoting *Crossmann Cmty. of N.C., Inc. v. Harleysville Mut. Ins. Co.*, 395 S.C. 40, 46, 717 S.E.2d 589, 592 (2011)). "In an action at law, tried without a jury, the appellate court's standard of review extends only to the correction of errors of law." *Smith v. Auto-Owners Ins. Co.*, 377 S.C. 512, 515, 660 S.E.2d 271, 272 (Ct. App. 2008). "We will not disturb the trial court's findings of fact unless those findings are wholly unsupported by the evidence or controlled by an erroneous conception or application of the law." *Id.* "However, an appellate court may make its own determination on questions of law and need not defer to the trial court's rulings in this regard." *Auto-Owners Ins. Co. v. Rhodes*, 405 S.C. 584, 593, 748 S.E.2d 781, 785 (2013).

LAW/ANALYSIS

I. Policy Coverage

The Fund argues the master erred in finding the Policy covered ReWa's remediation efforts at the three facilities. We agree the master erred in finding the Policy covered several categories of consequential damages but find the master properly awarded costs for cleaning the affected structures.

Initially, we note the Fund conceded in its appellate briefs that the Policy covered expenses associated with cleaning the three holding tanks at the Pelham facility "to the extent ReWa provided a breakdown of those specific costs." The Fund argues instead that ReWa has not provided a detailed report of the costs; however, multiple witnesses testified ReWa provided "almost monthly" expense reports to the Fund during the period between the filing of the claim and the Fund's denial of coverage. Moreover, ReWa's Exhibit 99 submitted at trial includes a summary of charges separated by facility, and the associated spreadsheet in ReWa's Exhibit 100 provides even more detail about these charges. ReWa informed the master that the corresponding invoices and related documents to these exhibits had been available for four years via discovery. Thus, we find the Fund has conceded the costs associated with cleaning the Pelham facility's holding tanks were covered under the Policy.

Next, we find the cleaning of the affected structures in the Mauldin Road and Lower Reedy facilities was also covered under the Policy. We acknowledge the structures in these facilities did not exceed the fifty-ppm-threshold under the Act; however, the uncontroverted evidence showed contaminated biosolids adhered to the walls of these structures even after initial washing. We find this constitutes direct physical loss or damage, which is covered under the Policy.

At oral argument, both parties agreed the interpretation of "direct physical loss or damage" contemplated in *Sullivan Management, LLC v. Fireman's Fund Insurance Co.*⁶ controlled in this case. In *Sullivan*, our supreme court held that applying the plain meaning of "direct physical loss or damage" required "a tangible or material component to loss or damage." 437 S.C. at 594, 879 S.E.2d at 745. Although the court found neither restrictions on business operations nor the presence of airborne

⁶ 437 S.C. 587, 879 S.E.2d 742 (2022).

virus particles constituted physical loss or damage, it distinguished the case from "traditional" contamination cases, in which "coverage may exist." *Id.* at 593 n.3, 879 S.E.2d at 745 n.3. We find the adherence of contaminated materials to tank walls meets the triggering language of direct physical loss or damage.

Additionally, we find the master correctly applied the holding of *Ocean Winds Council of Co-Owners, Inc. v. Auto-Owners Insurance Co.*⁷ to this case in analyzing whether ReWa's actions to prevent further damage to the structures were covered under the Policy. In *Ocean Winds*, our supreme court accepted a certified question regarding whether an insurance policy that provided coverage for "risks of direct physical loss involving collapse of a building or any part of a building" covered a building which manifested "substantial structural impairment." 350 S.C. at 269-70, 565 S.E.2d at 307. The court found the phrase "risks of direct physical loss involving collapse" was "more expansive than the word 'collapse' and appear[ed] to cover even the threat of loss from collapse." *Id.* at 271, 565 S.E.2d at 308. Accordingly, our supreme court held that "a requirement of imminent collapse [wa]s the most reasonable construction of the policy clause covering 'risks of direct physical loss involving collapse'" and defined "imminent collapse" as "collapse . . . likely to happen without delay." *Id.* Here, the Policy stated it provided coverage for "risks of direct physical loss." We find the master correctly found coverage for a portion of the expenses incurred in preventing imminent damage through further contamination of the structures, such as providing for the sequestration of incoming waste.

However, we hold the master erred in awarding damages for several categories of consequential damages. The Fund points to four specific categories it argues constitute consequential damages: (1) testing and sampling; (2) expert consultation regarding DHEC and Environmental Protection Agency requirements; (3) investigating the contamination; and (4) continuing the operation of the wastewater facilities including future protocols for receiving waste. We agree these appear to be consequential damages and thus are not covered by the Policy because they do not relate to a direct loss. *See Sullivan*, 437 S.C. at 594, 879 S.E.2d at 745 (confirming "direct physical loss or damage" requires a "tangible or material element"). Accordingly, we reverse this portion of the damages award and remand

⁷ 350 S.C. 268, 565 S.E.2d 306 (2002).

to the master for recalculation of the award after excluding expenses falling into these categories of consequential damages.⁸

II. Specific Findings of Fact and Conclusions of Law

The Fund argues the master erred in failing to set forth sufficiently specific findings of fact and conclusions of law in its order. We disagree.

Rule 52(a) of the South Carolina Rules of Civil Procedure provides, "In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon" This rule does not "require a lower court to set out findings on all the myriad factual questions arising in a particular case." *In re Treatment & Care of Luckabaugh*, 351 S.C. 122, 133, 568 S.E.2d 338, 343 (2002). However, "the findings must be sufficient to allow [appellate courts] to ensure the law is faithfully executed below." *Id.*

We find the master's order sufficiently stated its reasoning behind finding the cleaning costs were covered under the Policy; however, as discussed above, we reverse and remand for removal of the specified consequential damages from the overall award.

III. Admission of Summary Exhibits

The Fund argues the master erred in admitting ReWa's Exhibit 99 and Exhibit 100 as summary exhibits under Rule 1006 of the South Carolina Rules of Evidence. The Fund points to the testimony of Glen McManus, ReWa's director of operations during the period of contamination, arguing that because he did not personally

⁸ To the extent the Fund argues the master erred by awarding other consequential damages, the argument regarding these damages is not preserved for this court's review because it was raised for the first time on appeal. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review."); *Herron v. Century BMW*, 395 S.C. 461, 466, 719 S.E.2d 640, 642 (2011) (holding that an issue "must be sufficiently clear to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the judge").

review each line item in the exhibits prior to trial, these exhibits were not a faithful rendering of the underlying data, and the master erred because the underlying data was not entered into evidence. We disagree.

Rule 1006 reads,

The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation, provided the underlying data are admissible into evidence. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at [a] reasonable time and place. The court may order that they be produced in court.

Regarding Rule 1006, this court has explained,

The party seeking to admit a summary must demonstrate (1) the contents of the documents upon which the summary is based are so voluminous it would be inconvenient to examine them in court; (2) the underlying documents are admissible in evidence; (3) the summary is a faithful rendering of the underlying data, and any inferences it contains are supported by the contents and are neutral and non-argumentative; and (4) the originals or duplicates of the underlying documents have been made reasonably available to the other parties.

State v. Warner, 430 S.C. 76, 95, 842 S.E.2d 361, 370 (Ct. App. 2020), *aff'd in part and remanded*, 436 S.C. 395, 872 S.E.2d 638 (2022). "[T]he trial court—so better attuned to the rhythms of the trial than we are—has wide discretion over the choice of whether a summary should be admitted, excluded, or allowed only as a demonstrative aid." *Id.* at 97, 842 S.E.2d at 371.

Initially, we find the Fund's argument that the summaries should not have been admitted because the underlying data was also not admitted is without merit. Rule 1006 clearly states that the underlying data must be *admissible*, and the Fund has put forth no argument that the invoices which formed the basis for the summaries

would not have been admissible at trial. Moreover, although McManus testified he did not identify each item in the Exhibit 100 spreadsheet, he and Patricia Dennis, ReWa's controller, testified the spreadsheet went through multiple rounds of review, and Dennis confirmed that each transaction was "absolutely" backed by an invoice or corresponding document in the accounting system. Finally, although we acknowledge it is not evidence, ReWa's counsel indicated the documents were available for four years via discovery for the Fund to review. Accordingly, we believe the master did not abuse its discretion in admitting the summaries. *See Osterneck v. Osterneck*, 374 S.C. 573, 579, 649 S.E.2d 127, 131 (Ct. App. 2007) ("The admission of evidence is a matter left to the discretion of the trial judge and, absent clear abuse, will not be disturbed on appeal.").

IV. The Policy's Deductible

The Fund argues the master erred in failing to consider the Policy's deductible when calculating the damages award. We agree.

Section D of the Policy provides that the Fund "will not pay for loss or damage in any one occurrence until the amount of loss or damage exceeds the Deductible shown in the Declarations." Following the fulfillment of the deductible, the Fund "will then pay the amount of loss or damage in excess of the Deductible, up to the applicable Limit of Insurance."⁹ The Policy Declarations indicate a deductible of \$3,000.

We find the master erred in failing to account for the Policy's deductible. The Fund argues the master also erred in failing to define the number of occurrences; however, the Fund asserts in its appellate brief that it "believes there was a single occurrence." Accordingly, we direct the master to subtract \$3,000 from the revised damages award.

V. New Trial

The Fund argues the master's refusal to allow closing arguments, the inclusion of damages in the proposed orders, and the presence of a court reporter for a

⁹ Although the limits of insurance for the three impacted facilities appear to have fluctuated over the relevant time period, it is undisputed that ReWa's remediation expenses never exceeded any of the insurance limits.

subsequent phone call following the hearing deprived it of its due process rights and necessitated the grant of a new trial. We find this issue is not preserved for appellate review. Although the Fund requested closing arguments, the inclusion of damages in the proposed orders, and the presence of the court reporter, it made no mention of due process. *See Patterson v. Reid*, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995) ("A party cannot for the first time raise an issue by way of a Rule 59(e) motion which could have been raised at trial."); *see also Herron*, 395 S.C. at 466, 719 S.E.2d at 642 (holding that although "a party is not required to use the exact name of a legal doctrine in order to preserve the issue," an issue "must be sufficiently clear to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the judge").

CONCLUSION

Accordingly, the order on appeal is

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

KONDUROS and GEATHERS, JJ., concur.