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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE CHARLESTON
COURT OF COMMON PLEAS

The Honorable Roger M. Young, Sr., Circuit Court Judge

Appellate Case No. 2023-000623
Case No. 2020-CP-10-02357

Jessica Taylor, individually
and on behalf of others
similarly situated, Appellant,

v.

Charleston Southern University, Respondent.

APPELLANT’S MEMORANDUM ADDRESSING THE ISSUE OF APPEALABILITY

Pursuant to the request of the Court of Appeals dated April 21, 2023, Appellant Jessica Taylor submits this memorandum addressing the issue of appealability of the orders challenged on appeal. These orders are couched as “Setting Aside Default” but are based on the Circuit Court’s determination that it lacked subject matter jurisdiction over this action. A Court’s determination that it lacks subject matter jurisdiction is a final order subject to appeal.¹

¹ It is axiomatic that decisions finding the circuit court lacked jurisdiction are immediately appealable final orders. *See e.g., Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 15, 655 S.E.2d 476, 477 (2007) (on appeal following the circuit court’s dismissal of complaint for lack of personal jurisdiction); *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 489, 611 S.E.2d 505, 507 (2005) (same); *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 326, 594 S.E.2d 878, 881 (Ct. App. 2004) (same); *Power Prod. & Servs. Co. v. Kozma*, 379 S.C. 423,

INTRODUCTION

On March 27, 2023, the Circuit Court granted Defendant/Respondent Charleston Southern University's "Motion for Relief from Void Entry of Default, Void Order(s) and Void Proceedings or, in the alternative, Motion to Dismiss for Lack of Subject Matter Jurisdiction or, in the alternative, Motion to Set Aside Entry of Default" based on a finding that the Circuit Court lacked subject matter jurisdiction for lack of a certified order of remand from federal district court. *See e.g.*, Exhibit A at pp.2, 6. ("This Court cannot ignore the absence of jurisdiction in this case"). Accordingly, the Circuit Court held that it did not have power to enter Defendant into default because it did not have subject matter jurisdiction. *Id.* at p.10.

This case was filed in Charleston County Court of Common Pleas on May 28, 2020. On July 24, 2020, Respondent removed this action to Federal Court. On February 18, 2021, Judge Bruce Howe Hendricks issued a remand order, which was sent to the Charleston County Clerk of Court via email and via mail. On or about that same day, a Federal Clerk mailed a certified order to the Charleston County clerk's office.² *See* Exhibit C (Affidavit of Virginia Druce).

On April 20, 2021, sixty-one days after the case was remanded to the Circuit Court, Appellant entered Respondent into default pursuant to Rule 55, SCRPC for failing to file an answer or otherwise respond. Just shy of three years from when this lawsuit was filed, and despite Respondent's engagement in the lawsuit including participating in depositions, written discovery and mediation, Respondent sought for the first time to void entry of default arguing the Circuit Court did not have jurisdiction because the certified remand order from the Federal Court

665 S.E.2d 660 (Ct. App. 2008) (same).

² The Court found the clerk's affidavit establishing this fact, insufficient to establish jurisdiction. *See* Exhibit A at p.5 ("Accordingly, the affidavit of Ms. Druce is insufficient to cure the absence of the certified remand order...").

had not been mailed to the Circuit Court.

The Circuit Court, agreeing with Respondent, held the Court lacked subject matter jurisdiction after remand because the remand order filed by the state court clerk's office was not attested to by the federal clerk, despite the fact that the Remand Order was filed in the Circuit Court on the same day Federal District Judge Hendricks issued the remand order, and despite an affidavit from the clerk stating that a certified order was mailed. *See* Exhibit C. Appellant argued that jurisdiction had re-vested in the Circuit Court upon the mailing of the Remand Order pursuant to 28 U.S.C. § 1447(c). As will be shown in the appellate briefs, Appellant presented an affidavit of federal district clerk Virginia Druce attesting that she emailed and mailed the Remand Order to the Circuit Court. Despite this, the Circuit Court found that the circuit has never had jurisdiction post-remand, therefore the clerk's entry of default entered on the record in 2021 is void.³

As a practical matter, this is an issue that needs guidance from the South Carolina Appellate Courts. This case has been in jurisdictional purgatory for two years: the Federal District Court remanded and ceded jurisdiction and the Circuit Court held it does not have jurisdiction, despite evidence showing the satisfaction of the remand statute, 28 U.S.C. § 1447(c), which states "certified copy of the order of remand shall be mailed by the clerk of the State Court." The only evidence presented shows that the mailing occurred and thus the jurisdiction re-vested in state court. However, Circuit Court Judge Young's ruling seems to require that the mailed remand order also be filed in state court as a certified copy.

³ The Circuit Court then agreed with Respondent that good cause exists to relieve Respondent from the default entered against it, despite the Court holding that it does not have the power to exercise jurisdiction in this case. If the Circuit Court does not have jurisdiction, then the Circuit Court cannot find that there is good cause to relieve Respondent from default almost a year and a half after default was first entered.

Respondent found a number of other cases in the Charleston Division alone that apparently fall into this same jurisdictional purgatory. *See* Exhibit D (Defendant CSU's exhibit E to its Reply to Plaintiff's Memorandum in Opposition to Motion for Relief from Default).

Now, Appellant appeals to the Court of Appeals to challenge whether the Circuit Court lacked subject matter jurisdiction, and without guidance, there is no way to properly effectuate a transfer without creating more confusion and potentially another argument three years after the fact that jurisdiction has not been properly conveyed by the ministerial function of the Federal District Court.

STANDARD ON APPEAL

Whether subject matter jurisdiction exists is a question of law, which this Court is free to decide with no particular deference to the circuit court. *See Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009) (citing *Chew v. Newsome Chevrolet, Inc.*, 315 S.C. 102, 104, 431 S.E.2d 631, 631 (Ct. App. 1993)); *Catawba Indian Tribe of S.C. v. State*, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007). Therefore, on appeal, the circuit court's findings are reviewed *de novo*. *See Capital City*, 382 S.C. at 99, 674 S.E.2d at 528; *Catawba Indian Tribe*, 372 S.C. at 524, 642 S.E.2d at 753. "An appellate court may determine the question of appealability of a decision from a lower court as a matter of law." *Ashenfelder v. City of Georgetown*, 389 S.C. 568, 571, 698 S.E.2d 856, 858 (Ct. App. 2010).

ARGUMENT

I. Lack of Subject Matter Jurisdiction is Immediately Appealable.

The Court of Appeals is "required to address the issue of subject matter jurisdiction if it appear[s] that the lower court *did not* possess subject matter jurisdiction." *Johnson v. S.C. Dep't*

of Prob., Parole, & Pardon Servs., 372 S.C. 279, 284, 641 S.E.2d 895, 897 (2007) (emphasis in original).

Subject matter jurisdiction is defined as “the power [of a court] 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). Lack of subject matter jurisdiction can be raised at any time on appeal. *See Town of Hilton Head Island v. Godwin*, 370 S.C. 221, 223, 634 S.E.2d 59, 60–61 (Ct. App. 2006); *see also Amisub of S.C., Inc. v. Passmore*, 316 S.C. 112, 114, 447 S.E.2d 207, 208 (1994); and *see Carter v. State*, 329 S.C. 355, 362, 495 S.E.2d 773, 777 (1998); *see Anderson v. Anderson*, 299 S.C. 110, 382 S.E.2d 897 (1989). South Carolina Supreme Court precedent “expressly provides, lack of subject matter jurisdiction in a case may not be waived and ought to be taken notice of by an appellate court.” *Johnson.*, 372 S.C. at 284, 641 S.E.2d at 897; *Passmore*, 316 S.C. at 114, 447 S.E.2d at 208; *Anderson*, 299 S.C. at 110, 382 S.E.2d at 897.

On March 27, 2023, the Circuit Court granted Defendant/Respondent’s Motion holding that the Circuit Court lacked subject matter jurisdiction. *See* Exhibit A. Specifically, the Circuit Court found that jurisdiction was never transferred from Federal District Court after remand back to Circuit Court. *Id.* Accordingly, the Court found the default entered against Defendant/Respondent was void. Because the Circuit Court found it did not possess subject matter jurisdiction, this Order, finding a lack of subject matter jurisdiction, is appealable.

An order finding a lack of subject matter jurisdiction is always immediately appealable. Indeed, one will be hard pressed to find such a statement in Appellate Jurisprudence as it is an accepted fact, demonstrated by myriad appeals of lower court decisions finding a lack of jurisdiction. *See e.g., Dema v. Tenet Physician Servs.-Hilton Head, Inc.*, 383 S.C. 115, 120, 678

S.E.2d 430, 433 (2009) (on appeal challenging the trial court's ruling on motion to dismiss that it did not have subject matter jurisdiction); *Dove*, 314 S.C. at 238, 442 S.E.2d at 600 (same); *Brown v. Evatt*, 322 S.C. 189, 470 S.E.2d 848 (1996) (same); *Martin v. Paradise Cove Marina, Inc.*, 348 S.C. 379, 559 S.E.2d 348 (Ct. App. 2001) (same); *Posey v. Proper Mold & Eng'g, Inc.*, 378 S.C. 210, 217, 661 S.E.2d 395, 399 (Ct. App. 2008) (Court taking up appeal of a court granting defendant's motion for lack of subject matter jurisdiction).

Here, the Circuit Court held that it lacked subject matter jurisdiction to hear Plaintiff's case and voided all proceedings that occurred post-remand in February of 2021. *See* Exhibit A; *see also* Exhibit B (Order Denying Plaintiff's Motion to Reconsider). The effect of this order, despite not explicitly saying so, is final judgment on all proceedings the parties engaged in over the last two years of litigation that are now void. On remand, the federal district court determined it lacked federal jurisdiction and relinquished its jurisdiction upon emailing and mailing the remand order to Circuit Court. 28 U.S.C. 1446(d) (1996); *see Davis v. Davis*, 267 S.C. 508, 511, 229 S.E.2d 847, 848 (1976). After the Circuit Court issued its Order, the federal district court did not take any other action. Now, no court has the power to hear Plaintiff's case. Therefore, the order ending and voiding two (2) years of proceedings including discovery and meaningful mediation for both parties is immediately appealable.

Moreover, if an order *denying* a motion to dismiss for lack of subject matter jurisdiction is *not* immediately appealable because it does not end the case, certainly the inverse is true when action taken without subject matter jurisdiction is void *ab initio*. *See Kosciusko v. Parham*, 428 S.C. 481, 492, 836 S.E.2d 362, 368 (Ct. App. 2019); *c.f. Allison v. W.L. Gore & Assocs.*, 394 S.C. 185, 188, 714 S.E.2d 547, 549 (2011) ("An order denying a motion to dismiss for lack of subject matter jurisdiction is also not directly appealable.").

Additionally, the issue on appeal in this case is an unsettled area of law, which will continue to lead to judicial inefficiency if not clarified by the Appellate Courts. Here, a remand order was emailed and mailed and both parties continued with the case for almost two years participating in discovery on the belief that Respondent was in default. A federal court clerk's compliance with a federal statute should eliminate any question as to whether the Circuit Court was re-vested with subject matter jurisdiction over the case such that all proceedings after remand are not void. Without clarification from the appellate courts, litigants across the state risk complex judgments and proceedings being called into question and sent back to day one to start all over again.

Here, the Circuit Court held that it lacked subject matter jurisdiction over the case and voided proceedings dating back two years. Because the Circuit Court in its Order held that it lacked subject matter jurisdiction, this issue is immediately appealable.

II. In the alternative, the Circuit Court's Order finding that it lacks subject matter jurisdiction affects Plaintiff's substantial rights.

Section 14-3-330 of the South Carolina Code controls the right to appeal, which applies to both the South Carolina Supreme Court and Court of Appeals. *See Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 6, 630 S.E.2d 464, 467 (2006); *Ashenfelder v. City of Georgetown*, 389 S.C. 568, 573, 698 S.E.2d 856, 859 (Ct. App. 2010). The relevant portion of section 14-3-330 states:

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review an order on appeal:...

(2) An order affecting a substantial right made in an action when such order

(a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action,...

S.C. Code Ann. § 14-3-330.

A plaintiff in South Carolina has no greater right than to have his dispute heard, where

said dispute falls in the circuit court's jurisdiction. This right is undeniably affected by the Court's Order finding that it lacked subject matter jurisdiction and voiding all proceedings dating back to February of 2021, based upon a finding that a ministerial function of the Federal District Court was not met to confer said jurisdiction. In this case, Plaintiff correctly and fairly followed the South Carolina Rules of Civil Procedure to enter Defendant into default after over 60 days of its failure to respond to the Complaint following remand from federal district court. The parties then litigated the case for *over two years*. Now, three (3) years from filing the lawsuit, the Circuit Court's Order forces her to revert two years backwards to remand and ignore proceedings and discovery the parties engaged in to ultimately prevent the default judgment Plaintiff fairly entered against Defendant. Plaintiff had a substantial right to be heard in circuit court. This right was denied when the Court incorrectly held it did not have jurisdiction.

When a court finds on a defendant's motion that it lacks subject matter jurisdiction, the plaintiff no longer has the right to proceed on the merits of her claims against the defendant. Therefore, when the Circuit Court made its finding and voided all prior proceedings, Plaintiff's rights to what would have been the default outcome, as well as a just, speedy and inexpensive determination of her case, were substantially affected.

Respectfully,

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EXHIBIT A

court. Defendant filed a motion to dismiss in federal court on July 31, 2020. Plaintiff filed an amended complaint in federal court on August 17, 2020, and a motion to remand on August 21, 2020. With the consent of the parties, the federal court entered an order extending the time allowed by the Federal Rules of Civil Procedure for Defendant to respond to the amended complaint in federal court, allowing a response ten days after issuance of the federal court's order on Plaintiff's motion to remand. On February 28, 2021, the federal district court judge entered an order remanding the matter to state court. The same day, the federal district court clerk transmitted a copy of the remand order to the Charleston County Clerk of Court, and the Charleston Clerk promptly recorded the remand order received from the federal court. The remand order filed in this Court is not a certified copy, bearing no seal of the federal district court nor the clerk's attestation that the remand order is a true copy. To date, no certified copy of the remand order has been filed in state court.

On June 21, 2021, on motion of Plaintiff, the Court entered default against Defendant. On June 28, 2021, one week after the entry of default, Defendant filed its initial motion to set aside the entry of default. Over the next several months, Plaintiff's counsel conducted discovery from Defendant, including Defendant's production of documents, written discovery responses, as well as Defendant's Rule 30(b)(6) deposition on December 13-15, 2021. On January 3, 2022, Defendant withdrew its initial motion to set aside entry of default for purposes of facilitating mediation. Mediation took place on May 31, 2022, and on November 21, 2022, but was unsuccessful. On January 6, 2023, Defendant filed the present Motion seeking relief from the entry of default.

FINDINGS

The Court finds that the entry of default is void because this Court does not have power to exercise jurisdiction in this case due to the lack of a certified remand order. Although a federal

court must mail a certified remand order for jurisdiction to resume in state court upon a remand, mailing alone is not sufficient. The certified remand order must also be filed as part of the record in the state court. The time for answering a complaint pauses while the case is removed to federal court and resumes only when the state court receives a certified remand order, not when the federal court mails it. To the extent a good cause analysis is necessary under Rule 55, SCRCF, the Court further finds that good cause exists to set aside default entered against Defendant, and Plaintiff has not shown prejudice that would warrant refusal to set aside the entry of default in any event.

I. Jurisdiction

The South Carolina Supreme Court found in *Limehouse v. Hulsey*, that the lack of a certified copy of the remand order precluded the court from resuming jurisdiction. 404 S.C. 93, 96, 744 S.E.2d 566, 568 (2013) (“[W]e find the state court proceedings are void as the lack of a certified remand order precluded the state court from resuming jurisdiction over the cases.”). It would be error for this Court to proceed with the exercise of jurisdiction in the absence of a certified remand order. *Id.* at 108, 744 S.E.2d at 575 (finding lower courts “erred in finding the state court had jurisdiction to conduct the proceedings as the absence of the certified order precluded jurisdiction from resuming in the state court”). All state court proceedings undertaken in the absence of a certified remand order are void. *Id.* at 109, 744 S.E.2d at 575 (“Because the absence of a certified order precluded jurisdiction from resuming in the state court, we hold the state court proceedings conducted after the federal court’s entry of the remand order are void.”). Because no certified remand order exists here, all proceedings that have taken place since remand – including the entry of default – are void.

Plaintiff argues that jurisdiction resumes in the state court after remand when the federal court mails a certified remand order to the state court and that proof of mailing is sufficient to find a resumption of state court jurisdiction. She submits an affidavit of a federal clerk to prove mailing

of the certified remand order in this case. In support of her argument that mailing alone transfers jurisdiction, Plaintiff relies upon the applicable federal statute, 28 U.S.C. § 1447(c), which references mailing but not receipt. Plaintiff urges that any doubt regarding application of this federal statute should be resolved in Plaintiff's favor, citing a statement in *Limehouse* that "removal statutes must be strictly construed, and any doubts are to be resolved in favor of state court jurisdiction and remand." *Id.* at 106, 744 S.E.2d at 573. This Court rejects these arguments for several reasons.

First and foremost, Plaintiff's position cannot be reconciled with *Limehouse* and would result in unfairness and confusion for litigants when cases are remanded to state court. In *Limehouse*, after finding the federal court must mail a certified remand order to the state court to transfer jurisdiction, the Supreme Court repeated three times that the state court could exercise jurisdiction only after it also received the certified remand order. *See id.* at 96, 744 S.E.2d at 568 ("[W]e . . . vacate the state court proceedings, and remand to the circuit court to recommence the cases from the procedural point at which the state court received a certified remand order from the federal court."); *see also id.* at 109-110, 117, 744 S.E.2d at 575, 579. The Supreme Court further held that the defendants' time for answering was tolled until the state court received a certified copy of the remand order mailed from the federal court. *See id.* at 117, 744 S.E.2d at 579 ("[W]e find the time for filing responsive pleadings was tolled during the removal proceedings as no subsequent pleadings could be filed in state court until jurisdiction resumed."); *see also id.* at 110-13, 744 S.E.2d at 575-77 (addressing "the computation of time for filing responsive pleadings following the state court's receipt of a certified remand order"). Accordingly, this Court rejects Plaintiff's argument that jurisdiction resumed in state court when the federal court mailed a certified remand order to the state court because it is not consistent with the ruling in *Limehouse*

that the state court must also receive the certified remand order. Because jurisdiction did not resume in state court in the absence of a certified remand order, Defendant's time for answering in state court has not yet begun to run, and Defendant may not be held in default.

Plaintiff relies on an affidavit from Virginia Druce, a federal court deputy clerk, attesting that she recalls mailing a certified copy of the remand order to the Charleston County Clerk of Court in this case two years ago. Notwithstanding Ms. Druce's recollection as set forth in her affidavit (which this Court does not question), neither her affidavit, the federal court record, nor the state court record contains a certified copy of the remand order. Just as in *Limehouse*, the only copy of the remand order in the record here is an uncertified copy. Accordingly, the affidavit of Ms. Druce is insufficient to cure the absence of the certified remand order, and this Court's jurisdiction has not recommenced in this case.

Further, the only jurisdictional trigger that would be workable and fair for litigants is the state court's receipt and filing of the certified remand order. Attorneys must be able to rely on court records to know when they are subject to state court jurisdiction and when their clock for answering resumes in state court after a remand. Otherwise, defendants would have no record notice of when the clock for answering in state court resumes, and confusion would prevail.

This Court also rejects Plaintiff's argument that entry of default should not be vacated because 28 U.S.C. § 1447(c) must be strictly construed in favor of presuming state court jurisdiction. In support of her argument, Plaintiff refers to a sentence in *Limehouse* that states: "Because removal proceedings encroach upon a state court's jurisdiction, removal statutes must be strictly construed, and any doubts are to be resolved in favor of state court jurisdiction and remand." 404 S.C. at 106, 744 S.E.2d at 573. First, the South Carolina Supreme Court construed this very statute in *Limehouse* and found that state court jurisdiction may not resume in the absence

of a certified remand order, and the clock for answering resumes only upon the state court's receipt of such an order. This Court is bound to follow the *Limehouse* Court's interpretation of 28 U.S.C. § 1447(c), and it may not devise a different interpretation as Plaintiff urges.

Further, the rule of statutory construction raised by Plaintiff does not apply here. This rule applies to determining whether federal jurisdiction is properly established for removal purposes, where any doubt is to be resolved in favor of remand back to state court. *See Brierly v. Alusuisse Flexible Packaging, Inc.*, 184 F.3d 527, 534 (6th Cir. 1999) (cited in *Limehouse*) ("In interpreting the statutory language, we are mindful that the statutes conferring removal jurisdiction are to be construed strictly because removal jurisdiction encroaches on a state court's jurisdiction. Thus . . . federal jurisdiction should be exercised only when it is clearly established, and any ambiguity . . . should be resolved in favor of remand to the state courts.") Here, Defendant is not challenging the correctness of the federal court's decision to remand this case to state court, so this rule of construction is not a relevant consideration.

The Court further rejects Plaintiff's argument that Defendant waived any objection to jurisdiction by not raising it sooner and instead responding to Plaintiff's discovery and attempting to negotiate settlement before filing the subject Motion. First, one week after entry of default, Defendant filed a motion to set it aside, and Defendant withdrew that motion without prejudice to facilitate mediation. Accordingly, Defendant preserved its rights. Second, subject matter jurisdiction cannot be waived. *See Paschal v. Causey*, 309 S.C. 206, 209, 420 S.E.2d 863, 865 (Ct. App. 1992) ("Subject matter jurisdiction of a court depends upon the authority granted to the court by the constitution and laws of the state. Subject matter jurisdiction cannot be waived or conferred by consent."). Thus, Defendant could not and did not waive the challenge to jurisdiction. This Court cannot ignore the absence of jurisdiction in this case.

In sum, this Court's jurisdiction did not recommence because this Court did not receive a certified copy of the remand order from the federal district court. Defendant's time to answer in state court remains tolled, all proceedings in state court (specifically including the entry of default) are void, and this Court has no power to enter default.

II. Good cause under Rule 55

In the alternative, to the extent a good cause analysis is necessary under Rule 55, SCRPC, the Court finds the absence of a certified copy of the remand order in the federal and state court records is in itself good cause to set aside default entered against Defendant for failure to answer timely. This Court has wide discretion in deciding whether to set aside an entry of default, and “[t]his discretionary element makes it clear that the party requesting a judgment by default is not entitled to one as of right, even when the defendant is technically in default.” *In re Est. of Weeks*, 329 S.C. 251, 259, 495 S.E.2d 454, 459 (Ct. App. 1997). South Carolina also has a strong public policy in favor of litigation being decided on the actual merits of the case, rather than due to a procedural error by a party. *See In re Moore*, 342 S.C. 1, 5 n.7, 536 S.E.2d 367, 369 n.7 (2000) (“Rule 55(c) should be liberally construed so as to promote justice and dispose of cases on the merits.”).

The South Carolina Supreme Court has stated that the Rule 55(c) “standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice,” and that once “a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted.” *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 607–08, 681 S.E.2d 885, 888 (2009) (citing *Wham v.*

Shearson Lehman Bros., 298 S.C. 462, 465, 381 S.E.2d 499, 501 (Ct. App. 1989)). With respect to the Court's evaluation of the interests of justice here, Defendant's counsel at the time of the entry of default, Wilbur Johnson, has submitted an affidavit explaining the reason for the default. The Court has reviewed Mr. Johnson's affidavit and finds that setting aside default here serves the interests of justice. *See Jordan v. Hartford Fin. Grp., Inc.*, 435 S.C. 501, 507, 868 S.E.2d 400, 403 (Ct. App. 2021) (in a workers compensation matter setting aside procedural default resulting from a calendaring error and holding, "The touchstone here is good cause, a standard designed to excuse honest, harmless human mistakes so a case may be judged on its merits rather than its missteps.").

The Court also finds that Defendant has meritorious defenses. To obtain relief from default, the defaulting party "does not have to establish that he would prevail on the merits, but only that his defense is meritorious." *Thompson v. Hammond*, 299 S.C. 116, 121, 382 S.E.2d 900, 903 (1989). The Court finds that Defendant has several meritorious defenses to Plaintiff's claims, as evidenced by Defendant's motion to dismiss filed in the federal district court before the entry of the remand order, and Defendant indicates it will file a similar motion to dismiss in state court after jurisdiction properly resumes in this Court.

With respect to the timeliness of the motion to set aside default, Plaintiff argues that Defendant's Motion was filed too late because the federal court remanded this case two years ago. The Court disagrees and finds the timing of Defendant's Motion does not weigh against good cause for setting aside the entry of default in this case. As noted above, Defendant promptly filed its motion for relief from the entry of default only a week after the default was entered. Defendant later withdrew that motion, while reserving the right to re-file it, only for purposes of pursuing and facilitating mediation, and the Court always commends the parties' good faith efforts to mediate. Mediation took place over two days several months apart, and following the failure of mediation

to produce a settlement, Defendant filed the present Motion seeking relief from the entry of default. The Court finds that in light of these circumstances, time that has elapsed since Defendant's first motion to set aside entry of default does not weigh against Defendant in establishing good cause.

Last, the Court finds that Plaintiff has not shown any cognizable prejudice that would result from this Court granting Defendant relief from the entry of default. Mere delay and the burden of litigating the case on the merits are not sufficient for establishing necessary prejudice to warrant refusal to set aside entry of default. *See Krantz v. KLI, Inc.*, No. 6:09-CV-01623-JMC, 2011 WL 1642375, at *4 (D.S.C. May 2, 2011) ("Generally, there is no cognizable prejudice in requiring a plaintiff to prove a defendant's liability."); *see also Colleton Preparatory Acad., Inc. v. Hoover Universal, Inc.*, 616 F.3d 413, 419 n.6 (4th Cir. 2010) ("As numerous decisions make clear, prejudice may not be found from delay alone or from the fact that the defaulting party will be permitted to defend on the merits."). Plaintiff did not and cannot show that the delay will result in loss of evidence, missing witnesses, increased difficulties in discovery, or anything else significant enough to rise to the level of requisite prejudice. The Court finds that, contrary to Plaintiff's argument, the fact that Plaintiff took Defendant's Rule 30(b)(6) deposition and obtained other discovery from Defendant while the Court was without jurisdiction does not constitute the type of prejudice that would warrant keeping Defendant in default. The Court fails to see how Plaintiff is prejudiced by obtaining information from Defendant through discovery merely because this information was exchanged when the Court had no jurisdiction.

Having fully considered all of Plaintiff's and Defendant's arguments and considering all applicable factors, the Court concludes that good cause exists under Rule 55, SCRPC, to set aside default entered against Defendant.

CONCLUSION

The Court finds that it does not have power to exercise jurisdiction to proceed in this case due to the lack of a certified copy of the remand order from the federal district court as required by the South Carolina Supreme Court in *Limehouse v. Hulsey*, 404 S.C. 93, 744 S.E.2d 566 (2013). As a result, the Court holds that default entered against Defendant is void because the Court did not have the power to enter it. In the alternative, to the extent necessary, the Court also finds good cause exists under Rule 55, SCRPC, to set aside the entry of default, and Plaintiff has not shown any requisite prejudice to warrant refusal of granting Defendant relief from default under the circumstances in this case. In light of the foregoing, the Court grants Defendant's Motion and sets aside default entered against Defendant.

AND IT IS SO ORDERED.

[Electronic Signature Page to Follow]



Charleston Common Pleas

Case Caption: Jessica Taylor VS Charleston Southern University

Case Number: 2020CP1002357

Type: Order/Other

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

EXHIBIT B

JFA, 2010 U.S. Dist. LEXIS 95277, *2 (D.S.C. Sept. 13, 2010) (quoting Exxon Shipping Co. v. Baker, 554 U.S. 471, n.5 (2008)). In other words, “[a] party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not.” Stevens & Wilkinson of S.C., Inc. v. City of Columbia, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014); Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995). Nor does “[a] party’s mere disagreement with the court’s ruling . . . warrant a Rule 59(e) motion.” In re Pella Corp. Architect & Designer Series Windows Mktg., Sales Practices & Prods. Liab. Litig., 269 F.Supp. 3d 685, 691 (D.S.C. 2017); *see also* Lyons v. Fid. Nat’l Title Ins. Co., 415 S.C. 115, 135, 781 S.E.2d 126, 137 (Ct. App. 2015).

After considering the issues raised in Plaintiff’s motion, this Court hereby **DENIES** Plaintiff’s Motion to Alter or Amend the Court’s March 27, 2023 Order.

AND IT IS SO ORDERED.

[Electronic Signature Page to Follow]



Charleston Common Pleas

Case Caption: Jessica Taylor VS Charleston Southern University

Case Number: 2020CP1002357

Type: Order/Amend

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

EXHIBIT C

JESSICA TAYLOR, individually and on behalf of others similarly situated,

Plaintiff,

vs.

CHARLESTON SOUTHERN UNIVERSITY,

Defendant.

Civil Action No.: 2020CP1002357

AFFIDAVIT OF VIRGINIA DRUCE

The Affiant, Virginia Druce, being duly sworn, swears, and deposes that:

1. I am over the age of eighteen (18) and I have the legal and mental competency to give this sworn affidavit and give sworn testimony in court.

2. I am currently the courtroom deputy for the Honorable Bruce Howe Hendricks, and was in February of 2021, a civil case manager and deputy clerk of court for the United States District Court for the District of South Carolina.

3. On February 18, 2021 I emailed a filed copy of the Remand Order signed by the Honorable Bruce Howe Hendricks *in Taylor v. Charleston Southern*, Case No. 2:20-cv-02731-BHH to Julie Armstrong and Bonnie Campbell with the Charleston County Clerk of Court's office.

4. Thereafter, I mailed a certified copy of the Remand Order to the Charleston County Clerk of Court.

5. The order I mailed was sealed and signed by me certifying it was a true and accurate copy of the Remand Order.

FURTHER AFFIANT SAYETH NAUGHT.


Virginia Druce

STATE OF SOUTH CAROLINA)
COUNTY OF Charleston)

I Crystal Perry, a Notary Public for the State of South Carolina, do hereby certify that the above-referenced individual personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 26th day of January, 2023.

Crystal A Perry

Signature of Officer

Crystal A. Perry

Printed Name of Officer

My commission expires: July 3, 2028



EXHIBIT D

EXHIBIT E

Exhibit E – Sampling of Charleston Division Cases

Judge	Case Name	Case No.	Proof of Cert in Fed Ct?	Proof of Cert in State Ct?	Court Official
Hendricks	Singletary v. US bank Nat'l Ass'n	2:19-cv-3394; 2019-CP-10-0849	Yes	Yes	H.A.
Hendricks	Carmona v. Charleston Water System	2:22-cv-1694; 2022-CP-10-2138	No	Yes	D.G.
Hendricks	Wilkey v. Costco	2:18-cv-2283; 2018-CP-10-2991	Yes	Yes	V.D. ¹
Hendricks	Eady v. CVS Pharmacy	2:18-cv-0717; 2018-CP-10-379	Yes	Yes	V.D.
Hendricks	Taylor v. CSU	2:20-cv-2731; 2020-CP-10-2357	No	No	V.D.
Hendricks	Stanley v. Enterprise Leasing Co. Southeast	2:18-cv-1711; 2016-CP-10-5174	No	No	V.D.
Hendricks	Bullock v. SCG Patriots Plaza	2:19-cv-2631; 2019-CP-10-4298	No	No	V.D.
Seymour	Devey et al v. Johnson & Johnson et al.	2:19-cv-1151; 2018-CP-10-790	No	No	V.D.
Seymour	Dupree v. Johnon & Johnson et al.	2:19-cv-1150; 2018-CP-10-2899	No	No	V.D.
Gergel	Kinloch v. Mantech Advanced Systems Int'l Inc, et al.	2:22-cv-2848; 2022-CP-10-3254	Yes	Yes	S.S.
Gergel	Dubois v. South Carolina	2:22-cv-3910; 2022-CP-10-4521	Yes	Yes	S.S.
Gergel	Liggon v. Continental Casualty Co.	2:20-cv-4375; 2020-CP-10-4966	Yes	Yes	S.S.

¹ “V.D.” stands for Virginia Druce, the federal court clerk that executed the affidavit at issue in this case.

Norton	Castellanos v. Fluor-Lane SC	2:22-cv-01970; 2022-CP-10- 988	Yes	Yes	H.A.
Norton	Pryor v. Trident Medical Center LLC	2:21-cv-1047; 2021-CP-10- 1095	Yes	Yes	H.C.
Norton	Kisner v. Medtronic	2:21-cv-1767; 2021-CP-10- 2189	Yes	Yes	S.S.
Norton	Smalls v. Walmart east	2:20-cv-1269; 2020-CP-1106	Yes	Yes	J.B.