THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
In the Court of Common Pleas for the Fourteenth Circuit

R. Ferrell Cothran, Jr., Circuit Court Judge

Appellate Case No.: 2022-001600

Ronnie L. Douglas, Eric J. Douglas, Jacqueline Walker,
Donna Harding, and Diane Brenda Spears, ... Appellants,

v.

Kevin Holmes, ... Respondent.

FINAL BRIEF OF RESPONDENT

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III. As additional sustaining grounds, was the Circuit Court correct in granting Holmes' motion for summary judgment where the Heirs, seeking to set aside a default judgment from 2015, failed to produce any evidence showing entitlement to relief under Rule 60(b) and where this action is untimely as a matter of law?

STATEMENT OF THE CASE

Appellants Ronnie L. Douglas, Eric J. Douglas, Jacqueline Walker, Donna Harding, and Diane Brenda Spears (collectively, "the Heirs") appeal the Circuit Court's order granting summary judgment in favor of Respondent Kevin Holmes ("Holmes").

The Heirs filed this action on August 29, 2019, pursuant to Rule 60(b) of the South Carolina Rules of Civil Procedure, asking the Circuit Court to set aside a default judgment entered by the Beaufort County Court of Common Pleas on November 23, 2015.

On June 11, 2020, Holmes filed a motion to dismiss the complaint. The Honorable Deadra L. Jefferson decided the issue on the briefs and denied the motion to dismiss by Form 4 order dated July 28, 2020.

On September 30, 2021, Holmes filed a motion for summary judgment. Holmes submitted a memorandum of law in support of the motion, with accompanying exhibits, court records, deposition testimony, and transcript of hearing. The Heirs did not file a response to the motion for summary judgment.

On July 22, 2022, the Circuit Court heard oral argument on Holmes' motion for summary judgment. At the close of the summary judgment hearing, the Circuit Court of its own initiative allowed the Heirs ten (10) days to supplement any information relevant to the issues raised at the hearing. On July 27, 2022, the Heirs supplemented their summary judgment argument by filing a letter, along with the Form 4 order denying Holmes' motion to dismiss. Holmes' counsel responded by

correspondence to the Circuit Court. (R. pp. 525–26). On August 2, 2022, the Heirs requested a copy of the transcript of hearing before the Circuit Court. (R. p. 617).

On August 16, 2022, the Circuit Court granted Holmes' motion for summary judgment. (R. pp. 1–11). On August 25, 2022, the Heirs filed a motion for reconsideration. Holmes filed a response in opposition. (R. p. 522). On October 27, 2022, the Circuit Court denied the motion for reconsideration. (R. pp. 12–14). The Heirs filed a notice of appeal on November 9, 2022.

STATEMENT OF FACTS

Procedural Background in the 2011 Lawsuit

Appellants are heirs of Clinton Douglas and Susie Douglas, both deceased. On July 1, 2011, Holmes, represented by Svalina Law Firm, filed a premises liability action against Clinton Douglas, Susie Douglas, Eric Douglas, and Studio Seven Club, Inc. for injuries and damages Holmes sustained during a shooting at Studio Seven Club in Beaufort County (the "2011 Lawsuit").

After Studio Seven Club was served with the summons and complaint, Colony National Insurance Company sent a letter to Svalina Law Firm on August 9, 2011, requesting an extension of time for Studio Seven Club to answer the complaint. Svalina Law Firm granted the extension, but no answer was filed on behalf of Studio Seven Club.

On November 16, 2012, the Beaufort County Clerk of Court recorded entries of default as to all defendants in the 2011 Lawsuit. On November 23, 2015, the Circuit Court entered its final order of judgment by default in the amount of $483,000.00. (R.

p. 31). The Court found that Clinton Douglas, Susie Douglas, Eric Douglas, and Studio Seven Club were properly served with the summons and complaint, the motion for default judgment, and the notice of damages hearing.

Clinton and Susie Douglas owned three adjoining parcels of real estate in Beaufort County (the "Subject Properties") as tenants in common. While in operation, Studio Seven Club was located on one of the Subject Properties. Upon Susie Douglas' death, title to the Subject Properties passed by operation of law to her husband, Clinton Douglas, and to her heirs, including Eric Douglas. *See* S.C. Code Ann. §§ 62-2-102 through -103 (1976). Therefore, the judgment lien created by the default judgment in the 2011 Lawsuit attached to the property interests of Clinton Douglas and Eric Douglas. Clinton Douglas passed away in Georgia on August 29, 2016, nearly a year after the Circuit Court entered the default judgment against him.

Procedural Background of the Foreclosure Action

On April 20, 2018, Holmes filed an action to foreclose the judgment lien, naming as defendants the Estates of Clinton and Susie Douglas and the Heirs: Eric Douglas, Ronnie Douglas, Jacqueline Walker, Donna Harding, and Brenda Spears. (R. p. 37). On September 10, 2018, the foreclosure action was referred to the Honorable Marvin H. Dukes, III, Beaufort County Master-in-Equity. None of the Heirs filed an answer, and an entry of default was entered.

A default final hearing to foreclose the judgment lien attached to the Subject Properties was scheduled on October 18, 2018. At the hearing, the Heirs requested a continuance to investigate the judgment subject to foreclosure, which the Master

granted. On April 4, 2019, a second default final hearing was held. Prior to the hearing, the Heirs moved to set aside the judgment in the 2011 Lawsuit pursuant to Rule 60(b).

Denial of 60(b) Motion to Set Aside Default Judgment

On May 20, 2019, the Master heard the Heirs' Rule 60(b) motion to set aside the default judgment. The Master took testimony from Ronnie and Eric Douglas and accepted several exhibits into evidence.

The Heirs argued the default judgment should be vacated because service was purportedly improper on the defendants in the 2011 Lawsuit. The Heirs maintained that Clinton Douglas was incompetent and suffering from Alzheimer's at the time of service and Susie Douglas was deceased and could not be served. The Heirs also claimed Studio Seven Club had been dissolved before it was served on July 18, 2011, which was contradicted by the Heirs' own exhibit showing articles of dissolution were not filed with the South Carolina Secretary of State until August 26, 2011. The Heirs did not argue that Eric Douglas was improperly served in the 2011 Lawsuit.

On July 2, 2019, the Master denied the Heirs' 60(b) motion, finding the default judgment was valid. (R. p. 21). Initially, the Master observed that the Heirs "ha[d] not filed a separate motion in the Court of Common Pleas to overturn the default judgment in the 2011 case; therefore, that order is still in effect." (R. p. 22). As to the merits, the Master found that whether service of Susie Douglas was proper "does not affect the judgment against her husband, Clinton R. Douglas, and issue, Eric J. Douglas, in the same lawsuit." (R. p. 22). The Master explained that "[b]ecause

property owned by Susie M. Douglas passed by operation of law to Clinton R. Douglas and Eric J. Douglas, the judgment lien still attaches to their interest in the real estate subject to foreclosure." (R. pp. 22–23).

As to Studio Seven Club, the Master found "service was accomplished by serving Eric J. Douglas, who qualifies as a 'managing or general agent.' " (R. p. 23). Furthermore, the Master found that because Studio Seven Club "failed to follow South Carolina law requiring [it] to have an accurate registered agent listed with the Secretary of State, service of Clinton R. Douglas, who owned Studio Seven Club, Inc. and the property on which the club was located, provided additional notice to Studio Seven Club, Inc. as [Clinton Douglas] would also qualify as a managing or general agent." (R. p. 24). Nonetheless, the Master determined that "whether service of Studio Seven Club, Inc. was proper in the 2011 action does not affect the foreclosure action" because "[t]here is no evidence the corporation owned the real estate that is subject to foreclosure." (R. p. 24).

Finally, the Master addressed service of Eric and Clinton Douglas in the 2011 Lawsuit: "As to whether the Court of Commons Pleas had personal jurisdiction of the other defendants—Eric J. Douglas and Clinton R. Douglas—in the 2011 action, I find service of process was proper and the judgment entered by the Court of Common Pleas stands against those defendants." (R. p. 24).

60(b) Action to Set Aside Default Judgment in Circuit Court

The Heirs failed to appeal the Master's denial of their Rule 60(b) motion. Instead, they filed this action on August 29, 2019, seeking to set aside the default judgment based on the same arguments rejected and ruled upon by the Master.

On September 30, 2021, Holmes filed a motion for summary judgment. The Heirs did not file a written response to the motion. The Honorable R. Ferrell Cothran, Jr., heard oral argument regarding Holmes' motion on July 22, 2022. At the summary judgment hearing, the Circuit Court questioned counsel regarding the Master's July 2, 2019 order: how the Court could look beyond—in essence, disregard—a final judgment and unappealed ruling. (R. p. 98, lines 11–16; p. 99, lines 10–14; p. 101, line 21–p. 102, line 1; p. 106, lines 4–6). The Heirs persisted to argue that Judge Jefferson denied the motion to dismiss, which was undisputed and irrelevant. (R. p. 93, lines 14–16; p. 96, lines 10–13; p. 98, lines 20–21; p. 523; p. 13). Though requested by them, the Heirs fail to include the transcript of hearing before the Circuit Court. (R. p. 617).

At the close of the summary judgment hearing, the Circuit Court of its own initiative allowed the Heirs ten (10) days to supplement any information relevant to the issues raised at the hearing. The Heirs failed to follow the Court's instruction, providing instead the Form 4 order denying the motion to dismiss "previously filed by Defendant [Holmes]." (R. p. 12). As the Circuit Court noted, "the denial of [Holmes'] motion to dismiss was undisputed at the [summary judgment] hearing." (R. p. 13). "Ultimately, [the Heirs] failed to address the relevant issues raised at the

summary judgment hearing, as argued by [Holmes] and set forth more fully in the Court's August 16, 2022 Order." (R. p. 13).

The Circuit Court subsequently granted Holmes' motion for summary judgment by order dated August 16, 2022. The Circuit Court based its ruling on two grounds: (1) because the Heirs failed to appeal the Master's denial of their Rule 60(b) motion, which was a final judgment on the merits, this unappealed ruling is the law of the case and the validity of the default judgment cannot be contested; and (2) the Heirs failed to produce any evidence showing entitlement to relief under 60(b), and the action was untimely as a matter of law. (R. pp. 1–10).

The Circuit Court found that the Master denied the Heirs' 60(b) motion to set aside the default judgment, which was a final judgment on the merits. (R. pp. 5–6). Because the Heirs "failed to appeal the denial of their motion to set aside the default judgment," "the validity of the judgment became the law of the case." (R. pp. 5, 6).

As another basis for granting summary judgment, the Circuit Court addressed the merits of the action. The Court found the Heirs "failed to produce any evidence showing entitlement to relief under Rule 60(b), and th[e] action [wa]s untimely as a matter of law." (R. p. 6). Regarding the Heirs' assertion that newly discovered evidence entitled them to relief, the Court found the Heirs "fail[ed] to establish the existence of any of the five elements required for relief under Rule 60(b)(2)." (R. p. 8). In fact, the Court indicated that the Heirs did not even "allege specifics as to what 'newly discovered' evidence exists." (R. p. 8). In making this assertion, the Court found it important to note that it had to review the complaint and miscellaneous exhibits

submitted by the Heirs because the Heirs "did not file a written response to the motion for summary judgment." (R. p. 8). Additionally, the Court found the action untimely as a matter of law because it was filed almost four years after the default judgment was entered—and Rule 60(b)(2) requires that relief must be sought "not more than one year after the judgment . . . was entered." (R. p. 8).

The Circuit Court also addressed the Heirs' claims under Rule 60(b)(3). The Court found that, consistent with its previous analysis, "the nearly four-year delay between the time the default judgment was entered on November 23, 2015, and [the Heirs'] filing this action serves as an absolute bar, because '[t]he one-year limit is a non-discretionary mandate.' " (R. p. 8). The Court then addressed the merits of the Heirs' 60(b)(3) argument, finding they "presented no evidence of fraud, misrepresentation, or other misconduct." (R. pp. 8–9). The Court stated that "[w]hile they generally allege service of process issues, [the Heirs] fail to present any facts or provide any evidence that would rise to the level of fraud or misrepresentation." (R. p. 9).

Finally, the Circuit Court found that the Heirs "presented no evidence that the judgment is void" pursuant to Rule 60(b)(4). Moreover, the Court held that "the Master explicitly found the default judgment was valid," which the Heirs failed to appeal. (R. pp. 9–10). Therefore, the Court concluded, "the validity of the judgment is the law of the case . . . ." (R. p. 10).

The Heirs filed a motion to reconsider, which the Circuit Court denied by order dated October 27, 2022.

STANDARD OF REVIEW

"When reviewing the grant of a summary judgment motion, the appellate court applies the same standard which governs the trial court under Rule 56(c), SCRCP: [S]ummary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." *BPS, Inc. v. Worthy*, 362 S.C. 319, 324, 608 S.E.2d 155, 158 (Ct. App. 2005). A court should grant summary judgment "when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ." *Hedgepath v. Am. Tel. & Tel. Co.*, 348 S.C. 340, 355, 559 S.E.2d 327, 336 (Ct. App. 2001).

ARGUMENT

I. None of the issues presented by the Heirs on appeal are preserved for appellate review.

Before this Court, the Heirs do not address the relevant issues raised at the summary judgment hearing and even fail to include the transcript of hearing before the Circuit Court. Accordingly, the Heirs have failed to present a proper record. *See Harkins v. Greenville Cnty.*, 340 S.C. 606, 616, 533 S.E.2d 886, 891 (2000) ("[Appellants] have the burden of presenting th[e] Court with an adequate record.").

The Heirs' arguments are unpreserved for appellate review. For one, the Heirs fail to include the transcript of hearing from which they appeal.[1] *See id.* (stating appellants must "present[] th[e] Court with an adequate record"); *see also Com. Credit Loans, Inc. v. Riddle*, 334 S.C. 176, 186, 512 S.E.2d 123, 129 (Ct. App. 1999)

[1] In his Designation of Matter, Holmes proposes to include the entire transcript of hearing before the Circuit Court. (¶ 10).

("[B]ecause the transcript of the proceedings below is omitted from the record, it appears the first time [appellant] made this argument was in its Rule 59(e) motion for reconsideration. Accordingly, this issue is not properly preserved for our review."); *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) ("If our review of the record establishes that an issue is not preserved, then we should not reach it."); *cf. 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.").

It must be emphasized that the Heirs do not address in their brief the grounds for the Circuit Court's order granting summary judgment. The Court granted summary judgment on the grounds that the validity of the default judgment was the law of the case; and secondarily, that the Heirs failed to meet their burden of presenting evidence to prove facts essential to entitle them to relief under Rule 60(b), as well as the untimeliness of this action as a matter of law.

In their brief, the Heirs argue two issues: (1) whether there were issues of fact regarding the service of the defendants in the 2011 Lawsuit and (2) whether there was notice given to the parties for the damages and default hearing that occurred in 2015. These arguments were not ruled upon by the Circuit Court and are not preserved for appellate review. *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."); *Solley v. Navy Fed. Credit Union, Inc.*, 397 S.C. 192, 213, 723

S.E.2d 597, 608 (Ct. App. 2012) ("The record must show that the issue was raised in the trial court.").

Although the Heirs' issues are not preserved for appellate review and they have failed to provide an adequate record, Holmes now addresses the grounds for the Circuit Court's order granting summary judgment. Furthermore, the Appellate Court may affirm upon any ground(s) appearing in the record. Rule 220(c), SCACR.

II. The Circuit Court correctly held that the Heirs failed to appeal the Master's order denying their Rule 60(b) motion to set aside the default judgment, a final judgment on the merits and thus, the law of the case, requiring affirmance.

On July 2, 2019, the Master denied the Heirs' Rule 60(b) motion to set aside the default judgment, finding the judgment was valid. Specifically, the Master held that the Circuit Court had personal jurisdiction over the defendants in the 2011 Lawsuit because they were properly served. Therefore, the 2015 default judgment was valid. (R. pp. 21–24). The Heirs failed to appeal this ruling. In the instant action, the Circuit Court relied on that failure in granting summary judgment, finding the Master's unappealed ruling was a final judgment on the merits, and "the validity of the [default] judgment became the law of the case." (R. p. 5).

"The denial of a motion to set aside a default judgment is immediately appealable as it is a final judgment on the merits." *Palmetto Constr. Grp., LLC v. Restoration Specialists, LLC*, 428 S.C. 261, 265–66, 834 S.E.2d 204, 206 (Ct. App. 2019) (Lockemy, C.J.), *aff'd as modified on other grounds*, 432 S.C. 633, 856 S.E.2d 150 (2021); *Ateyeh v. United of Omaha Life Ins. Co.*, 293 S.C. 436, 437, 361 S.E.2d 340, 340 (Ct. App. 1987). "An appealable order from which no appeal is taken becomes

the law of the case in all subsequent proceedings involving the same parties and the same subject matter." *Prof'l Bankers Corp. v. Floyd*, 285 S.C. 607, 613, 331 S.E.2d 362, 365 (Ct. App. 1985).

Accordingly, the Master's unappealed ruling is the law of the case and requires affirmance. *Transp. Ins. Co. & Flagstar Corp. v. S.C. Second Inj. Fund*, 389 S.C. 422, 431, 699 S.E.2d 687, 691 (2010); *see also Atl. Coast Builders*, 398 S.C. at 329, 730 S.E.2d at 285 ("[A]n unappealed ruling, right or wrong, is the law of the case."); *ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche*, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997) ("There was no appeal of the master's ruling . . . . This unappealed ruling is the law of the case . . . and should not have been considered by the Court of Appeals."). The Circuit Court correctly held that the validity of the default judgment is the law of the case. The action sub judice involves the same parties and seeks to set aside the same judgment. *See Prof'l Bankers*, 285 S.C. at 613, 331 S.E.2d at 365 ("An [un]appeal[ed] order . . . becomes the law of the case in all subsequent proceedings involving the same parties and the same subject matter."). Because the Heirs failed to appeal the Master's order that ruled the default judgment was valid, this Court should affirm summary judgment on grounds of the unappealed final judgment being the law of the case.

III. As additional sustaining grounds, the Circuit Court order granting Holmes' motion for summary judgment should be affirmed because the Heirs failed to produce any evidence showing entitlement to relief under Rule 60(b), and this action is untimely as a matter of law.

As another basis for granting summary judgment, the Circuit Court addressed the merits of the action, holding the Heirs "failed to produce any evidence showing

entitlement to relief under Rule 60(b), and th[e] action [wa]s untimely as a matter of law." (R. p. 6).

To seek relief from a default judgment, a party must provide an explanation for the default and give reasons why vacation of the judgment would serve the interests of justice. *Sundown Operating Co. v. Intedge Industries, Inc.*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009). "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." *Id*. at 607–08, 681 S.E.2d at 888.

"The standard for granting relief from a default judgment under Rule 60(b) is more rigorous than the 'good cause' standard established in Rule 55(c)." *Id*. at 608, 681 S.E.2d at 888. Specifically, relief from a default judgment "requires a more particularized showing of mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or 'other misconduct of an adverse party.' " *Id*. (quoting Rule 60(b), SCRCP). "The movant in a Rule 60(b) motion has the burden of presenting evidence proving the facts essential to entitle him to relief." *Bowers v. Bowers*, 304 S.C. 65, 67, 403 S.E.2d 127, 129 (Ct. App. 1991).

Rule 60(b), SCRCP, provides five grounds upon which a court may relieve a party from a final judgment, only three of which could have any relevance to this action:

(b)(2): newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
(b)(3): fraud, misrepresentation, or other misconduct of an adverse party;
(b)(4): the judgment is void.

We address Rule 60(b) and each of the Circuit Court's findings below.

A. The Heirs presented no newly discovered evidence.

Rule 60(b)(2) allows a court to set aside a judgment when there is "newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b)." The rule requires, without exception, that relief be sought "within a reasonable time" and "not more than one year after the judgment . . . was entered." Rule 60(b), SCRCP.

The Circuit Court first discussed the Heirs' assertion that newly discovered evidence entitled them to relief. The Court found the Heirs failed "to establish the existence of any of the five elements required for relief under Rule 60(b)(2)." (R. p. 8).

To be entitled to relief under Rule 60(b)(2), "the moving party must establish that the newly discovered evidence: (1) will probably change the result if a new trial is granted; (2) has been discovered since the trial; (3) could not have been discovered before the trial; (4) is material to the issue; and (5) is not merely cumulative or impeaching." *Se. Hous. Found. v. Smith*, 380 S.C. 621, 638, 670 S.E.2d 680, 689 (Ct. App. 2008) (citation and internal quotation marks omitted).

The Circuit Court noted that the Heirs did not even "allege specifics as to what 'newly discovered' evidence exists." (R. p. 8). There was no evidence, or seemingly any allegation, of newly discovered evidence "which by due diligence could not have been

discovered in time to move for a new trial under Rule 59(b)." *See* Rule 60(b)(2), SCRCP. The Court found it important to mention that it had to review the complaint and miscellaneous exhibits submitted by the Heirs because the Heirs "did not file a written response to the motion for summary judgment." (R. p. 8). Moreover, the Court correctly observed that Rule 60(b)(2) contemplates the occurrence of a trial on the merits, not a default hearing. *See* Rule 59(a), (b) (setting forth the standards and procedure for motions for a new trial). Therefore, Rule 60(b)(2) does not apply in this case.

Additionally, the Court found this action untimely as a matter of law because it was filed almost four years after the 2015 default judgment was entered—and Rule 60(b) requires relief be sought "not more than one year after the judgment . . . was entered." (R. p. 8). The Heirs waited four years before seeking relief from the judgment. The Circuit Court entered the default judgment in the 2011 Lawsuit on November 23, 2015. (R. pp. 29, 34). On April 20, 2018, Holmes filed a summons and complaint of foreclosure to enforce the 2015 default judgment, naming the Heirs as defendants. (R. p. 37). For the very first time, on April 4, 2019, the Heirs filed a "motion to dismiss" the 2015 final judgment pursuant to Rule 60(b), on the verge of four years after the Circuit Court entered the default judgment. (R. p. 527). After the Master denied their motion, the Heirs filed this action in the Circuit Court in an attempt to set aside the same default judgment.

"The one-year limit [of Rule 60(b)] is a non-discretionary mandate." *Coleman v. Dunlap*, 303 S.C. 511, 513, 402 S.E.2d 181, 183 (Ct. App. 1991). The almost four-

year delay between the time the default judgment was entered and the time the Heirs sought relief from the judgment serves as an absolute bar to this action.

B. The Heirs presented no evidence of fraud, misrepresentation, or other misconduct.

The Circuit Court also addressed the Heirs' claim for relief under Rule 60(b)(3). Rule 60(b)(3) allows a court to set aside a judgment due to "fraud, misrepresentation, or other misconduct of an adverse party." Similarly, the rule requires, without exception, that relief be sought "within a reasonable time" and "not more than one year after the judgment . . . was entered." Rule 60(b), SCRCP.

Like the analysis above, the Circuit Court found "the nearly four-year delay between the time the default judgment was entered on November 23, 2015, and [the Heirs'] filing this action serves as an absolute bar, because '[t]he one-year limit is a non-discretionary mandate.' " (R. p. 8). *See Coleman*, 303 S.C. at 513, 402 S.E.2d at 183.

The Circuit Court then addressed the merits of the 60(b)(3) argument, finding the Heirs "presented no evidence of fraud, misrepresentation, or other misconduct." (R. pp. 8–9). In the complaint, the Heirs state in a conclusive manner that the judgment should be set aside for "fraud, misrepresentation, or other misconduct." (R. p. 50). The Court stated that "[w]hile they generally allege service of process issues, [the Heirs] fail to present any facts or provide any evidence that would rise to the level of fraud or misrepresentation." (R. p. 9). *See Hansen v. DHL Labs., Inc.*, 316 S.C. 505, 511, 450 S.E.2d 624, 628 (Ct. App. 1994), *cert. granted, decision aff'd*, 319 S.C. 79, 459 S.E.2d 850 (1995) (listing the elements necessary to prove fraud); *see also*

West v. Gladney, 341 S.C. 127, 133, 533 S.E.2d 334, 337 (Ct. App. 2000) (listing the elements necessary to prove misrepresentation). And there exists no evidence whatsoever to prove the existence of fraudulent intent, which is an essential element of fraud. *See Perry v. Heirs at Law of Gadsden*, 357 S.C. 42, 47, 590 S.E.2d 502, 504–05 (Ct. App. 2003).

Rule 60(b) "requires a more particularized showing of . . . fraud, misrepresentation, or 'other misconduct of an adverse party' " to entitle the movant to relief. *Sundown Operating Co.*, 383 S.C. at 608, 681 S.E.2d at 888. In this case, the Heirs have provided no showing, let alone a particularized showing, that would entitle them to relief.

Because the Circuit Court correctly ruled that this action was time-barred and that the Heirs failed to present any evidence of fraud, misrepresentation, or other misconduct, this Court should affirm the order granting summary judgment.

C. The default judgment is valid.

Rule 60(b)(4) allows a court to set aside a judgment when the judgment is void. The Circuit Court, however, found the Heirs "presented no evidence that the judgment is void." (R. p. 9). Indeed, the record is bereft of any evidence to indicate the default judgment was void. While the complaint alleges defects in service of process in the 2011 Lawsuit, no evidence supports these allegations.

Moreover, the Circuit Court held "the Master explicitly found the default judgment was valid," which the Heirs failed to appeal, concluding that "the validity of the judgment is the law of the case." (R. pp. 9–10). The Master found the 2015

default judgment was valid because the defendants in the 2011 Lawsuit were properly served. (R. pp. 21–24). The Heirs failed to appeal the Master's order denying their Rule 60(b) motion. Therefore, the Circuit Court correctly ruled that the validity of the judgment is now the law of the case. *See Palmetto Constr. Grp.*, 428 S.C. at 265–66, 834 S.E.2d at 206 ("The denial of a motion to set aside a default judgment is immediately appealable as it is a final judgment on the merits."); *Transp. Ins. Co.*, 389 S.C. at 431, 699 S.E.2d at 691 ("An un-appealed ruling is the law of the case and requires affirmance.").

CONCLUSION

For the reasons above, the Circuit Court properly granted summary judgment on grounds of an unappealed ruling and the law of the case doctrine, and pursuant to Rule 60(b). Additionally, the Heirs have failed to present this Court with an adequate record. Therefore, the Circuit Court order granting Holmes' motion for summary judgment should be affirmed.

Respectfully submitted,

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APPEAL FROM BEAUFORT COUNTY
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v.

Kevin Holmes,.....Respondent.

CERTIFICATE OF COMPLIANCE

I certify that the foregoing Final Brief of Respondent complies with Rule 211(b), SCACR.

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