STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Mary Ann Ridenour, Plaintiff, v. Brock Owen McGrew and Anastasia McGrew, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO. 2022-CP-10-02642 **ORDER DENYING DEFENDANT'S AMENDED MOTION FOR RELIEF FROM FINAL ORDER**

Judge:	The Honorable Diane S. Goodstein
Date of Hearing:	July 28, 2023
Plaintiff's Appearances:	Plaintiff's Counsel, Christopher T. Dorsel
Defendant's Appearance:	Defense Counsel, Nathan Williams and Brock Owen McGrew

This matter came before this court on July 28, 2023 on Defendant Brock McGrew's amended motion for relief from final order. Present at the hearing were counsel for Plaintiff, Chris Dorsel, counsel for Defendant, Nathan Williams, and Defendant Brock McGrew ("Defendant").

In this case, both Defendants were personally served with a Summons and Complaint, by process, on June 23, 2022. The Charleston County Clerk of Court entered an Entry of Default against Defendants on August 4, 2022. On August 22, 2022, the Defendants filed a Motion to Set Aside Default. A hearing was held on August 23, 2022, to determine the Plaintiff's damages, and a subsequent order was issued on December 7, 2022. A Notice of Appeal was filed by Defendant's on January 10, 2023 and an order dismissing the appeal from the Court of Appeals was filed on March 10, 2023. An Amended Motion for Relief From Final Order and Incorporated Memorandum of Law was filed on April 7, 2023.

On July 28, 2023, the Court held a hearing on the Motion to Set Aside Default, and defendant Brock McGrew provided testimony at that hearing. The crux of Mr. McGrew's testimony and filings is that he consulted with an attorney before the default was entered and believed the attorney was handling his case when the default judgment was entered. Defendant argued to the court that his communications with now deceased attorney David Aylor in June and July of 2022 provides evidence of excusable neglect to justify relief from the default judgment under Rule 60(b), SCRCP.

After careful consideration of the submissions by the parties, applicable legal authority, and oral argument of counsel at the hearing, the Court finds Defendant's arguments unpersuasive and makes the following findings:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

SCRP Rule 60(b)(1) allows a Court to set aside a default judgment when based upon "(1) mistake, inadvertence, surprise, or excusable neglect". "It is generally recognized that courts should closely scrutinize default judgments to prevent harsh results and drastic action. It is the policy of the law to favor the trial of cases on the merits." *Renney v. Dobbs House, Inc.,* 275 S.C. 562, 567, 274 S.E.2d 290, 292 (1981).

In determining whether to grant a motion under Rule 60(b), the circuit court should consider: (1) the promptness with which relief is sought; (2) the reasons for the failure to act promptly; (3) the existence of a meritorious defense; and (4) the prejudice to the other party. *Mictronics, Inc. v. S.C. Dep't of Revenue*, 345 S.C. 506, 510–11, 548 S.E.2d 223, 226 (2001).

The Court finds that Defendant has not provided competent evidence of an attorney-client relationship between himself and attorney Aylor. This argument has been previously presented to

the court and rejected. At the default damages hearing on August 26, 2022, Plaintiff's counsel advised the Court that he immediately contacted attorney Aylor who explained that Defendant had contacted him, but that Mr. Aylor explicitly declined representation. Any prior representation by attorney Aylor or his office for other, unrelated matters does not constitute nor create legal representation for this matter. Defendant has not provided any retainer agreement, fee schedule, or any document indicating that he hired attorney Aylor to represent him and has specifically admitted in his motion that "he never signed a retainer agreement with" attorney Aylor. Defendant admits that he has hired attorney Aylor in the past. Defendant has provided no indication that any payment or retainer agreement was made with attorney Aylor and texts or emails presented to the court simply fail to show that any attorney client relationship was made between Defendant and attorney Aylor for this matter.

Further, to the extent there is any evidence of an attorney-client relationship or perceived attorney-client relationship between Defendant and attorney Aylor, Defendant's course of action in this matter negates the relevance of any such evidence. In Defendant's August 22, 2022, letter to the court, Defendant requested a continuance so that he could hire counsel.[1] The Court granted the continuance, yet Defendant did not have attorney Aylor present at the damages hearing on August 26, 2022. Following orders issued on December 8, 2022, and December 12, 2022, attorney Aylor did not make an appearance. Now, after attorney Aylor has passed away, Defendant seeks to shift blame for his default on this attorney. This court finds that based on all the facts and circumstances, no attorney-client relationship existed between Defendant and attorney Aylor.

The Court further finds that Defendant's argument fails to meet the high standard required to obtain relief under Rule 60(b), SCRCP. In his motion, Defendant cites no case law to support

[1] In the letter, Defendant stated, "I would very much appreciate a little time to talk to some lawyers about this matter. Please give us a continuance."

his argument. Instead, he makes statements that are directly contrary to established case law. Defendant admits that he never had a retainer agreement with attorney Aylor and that he "is a lay person and does not possess the same knowledge and training of the court systems and its rules…" Our South Carolina Court of Appeals has held that the failure to understand the legal process is not sufficient to afford relief under Rule 60(b)(1). *Hill v. Dotts*, 345 S.C. 304, 310 (Ct. App. 2001) ("[Defendant] erroneously believes his failure to understand the legal process is a sufficient reason to excuse his tardy reply. We disagree."); *See also Goodson v. Am. Bankers Ins. Co.,* 295 S.C. 400, 403 (Ct.App.1988) ("[A] party has a duty to monitor the progress of his case. Lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney.").

Even if an attorney-client relationship existed, neglect of an attorney to timely plead or to assert a defense has also been consistently rejected by our Court of Appeals as a ground for relief under 60(b)(1). *Greenville Income Partners v. Holman*, 308 S.C. 105, 107, 417 S.E.2d 107 (Ct. App. 1992) ("The question then becomes whether the asserted failure of an attorney to interpose available defenses amounts to the kind of mistake, surprise, inadvertence, and excusable neglect contemplated by Rule 60(b). We hold it does not."); *See also Mitchell Supply Co. v. Gaffney,* 297 S.C. 160, 163–64 (Ct.App.1988) ("[T]he neglect of the attorney is the neglect of the client, and ... no mistake, inadvertence or neglect attributable to an attorney can be successfully used as a ground for relief unless it would have been excusable if attributable to the client."). Defendant's argument that trusting attorney Aylor caused the default is a matter that should be taken up with attorney Aylor. However, case law and precedent make it clear that this argument does not provide proper grounds for relief from a final judgment.

The matters considered herein are well within the Court's discretion. *See Tri-Cnty. Ice & Fuel Co. v. Palmetto Ice Co.*, 303 S.C. 237, 242, 399 S.E.2d 779, 782 (1990), *citing Mitchell Supply Co., supra* ("A motion for relief pursuant to Rule 60(b)(1) is addressed to the sound discretion of the trial judge and will not be disturbed absent an abuse of discretion."). After reviewing the parties' submissions and hearing evidence and argument at the hearing on Defendant's motion, the Court finds that Defendant has not presented sufficient evidence to convince the court that he is entitled to relief from the default judgment.

THEREFORE, IT IS ORDERED that Defendant Brock McGrew's amended motion for relief from final order is DENIED.

AND IT IS SO ORDERED.

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Hon. Diane Goodstein, Presiding Judge

_____, South Carolina

_____, 2023

Charleston Common Pleas

Case Caption: Mary Ann Ridenour VS Anastasia Mcgrew , defendant, et al

Case Number: 2022CP1002642

Type: Order/Other

It is so Ordered!

s/Diane S. Goodstein