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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas
Walter H. Sanders, Jr., Special Referee

Appellate Case No. 2023-001001

Donald Youngblood…… ……..……...Respondent,

-v-

Sheila Wright……..……..……...Appellant.

INITIAL BRIEF OF RESPONDENT

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COUNTERSTATEMENT OF THE CASE

On April 14, 2020, Respondent Donald Youngblood was injured after stepping in a grass-covered hole in Appellant Sheila Wright's yard in Yemassee, South Carolina. (Compl. ¶ 2). On January 25, 2022 Youngblood filed a premises liability action against Wright in the Hampton County Court of Common Pleas, alleging that Wright failed to warn of the hazardous condition and failed to eliminate or repair it. (*Id.* at ¶ 3). Wright was served with the Summons and Complaint at her residence via process server on January 29, 2022. (Aff. of Service). No answer or responsive pleading was filed or served on Wright's behalf within the time constraints prescribed by Rule 12, SCRCP.

On January 13, 2023, undersigned counsel as attorney for Youngblood filed an affidavit attesting that more than thirty (30) days had elapsed since the date of service on Wright and that no answer or responsive motion had been filed or served on her behalf. (John E. Parker Aff.). On January 18, 2023, the Circuit Court entered default against Wright, finding that she was properly served under Rule 4, SCRCP.

(Jan. 18, 2023 Order). The default case was referred for all purposes related to the default to the Special Referee by the Hampton County Clerk of Court on January 20, 2023. (Jan. 20, 2023 Order).

On March 24, 2023, Wright formally appeared in this action and filed a Motion to Set Aside Default. Counsel for Wright argued that there was good cause to set aside the default because there was "difficulty delivering legal papers to her homeowners insurance company" and because the insurance company did not receive any alerts or reminders that a lawsuit was pending because of the installation of a new electronic file management system. (Mot. to Set Aside Default 3). Counsel also argued that the Motion was promptly filed after learning of the entry of default, that Wright had certain meritorious defenses, and that setting aside the default would not prejudice Youngblood because there was no lost evidence or unavailable witnesses. (*Id*. at 3-4). Neither of the last two arguments were supported by evidence in the form of an affidavit or testimony. Counsel for Wright did file an affidavit in support of the Motion setting forth that Wright notified her insurer of the Summons and Complaint on March 3, 2022, and that her insurer did not make any efforts to obtain counsel until July 29, 2022. (Nettles Aff. ¶¶ 3, 9).

The Motion to Set Aside Default was heard on May 2, 2023, by the Special Referee concurrently with a hearing to determine the amount of Youngblood's damages pursuant to Rule 55(b)(2), SCRCP. No court reporter was present, and no transcript was made of the hearing. On June 1, 2023, the Special Referee signed and filed an Order (1) denying the Motion to Set Aside Default, finding that the

supporting affidavit was based on hearsay and that it demonstrated inexcusable neglect, (2) finding that Wright had admitted liability in failing to timely answer, and (3) awarding $632,773.80 in actual damages to Youngblood. Wright did not file a Rule 59(e), SCRCP Motion for Reconsideration. This Appeal followed on June 16, 2023.

STANDARD OF REVIEW

"The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the trial court." *Richardson v. P.V., Inc.*, 383 S.C. 610, 614, 682 S.E.2d 263, 265 (2009). "The trial court's decision will not be disturbed on appeal absent a clear showing of an abuse of that discretion." *Roberson v. S. Fin. Of S.C., Inc.*, 365 S.C. 6, 9, 615 S.E.2d 112, 114 (2005). An abuse of discretion occurs when the trial court's decision is unsupported by the evidence or controlled by an error of law. *State v. King*, 422 S.C. 47, 54, 810 S.E.2d 18, 22 (2017). A trial court's findings of fact will also not be disturbed on appeal unless they are shown to be wholly unsupported by the evidence or unless it appears the findings were the result of an error of law. *Butler Contracting, Inc. v. Court Street, LLC*, 369 S.C. 121, 127-28, 631 S.E.2d 252, 255-56 (2006).

ARGUMENT

I. Wright's argument that her affidavit in support of setting aside default did not consist of inadmissible hearsay is not preserved for appellate review.

Wright argues that the Special Referee erred in finding that her attorney's affidavit was inadmissible hearsay because its contents are an exception to the hearsay rule under Rule 803(6), SCRE. The record does not demonstrate that this

argument was raised by Wright to the Special Referee and therefore it is not preserved for review. "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." *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). The record must show that the issue was raised in the trial court, and the appellant has the burden of providing an adequate record on appeal. *Solley v. Navy Fed. Credit Union, Inc.*, 397 S.C. 192, 213-14, 723 S.E.2d 597, 608 (Ct. App. 2012).

Wright's argument that the affidavit is subject to Rule 803(6), SCRE, appears to be raised for the first time in her Brief. Nowhere within her Motion to Set Aside Default does it mention the potential hearsay nature of the affidavit, or how the affidavit would fall within an exception to the hearsay rule. (Mot. to Set Aside Default). Since no transcript was made of the hearing, the Court cannot discern whether the issue was raised to the Special Referee at the hearing. *See, e.g., Averette v. Browning*, Opinion No. 2005-UP-016 (S.C. Ct. App. filed Jan. 13, 2005). And after the Special Referee's Order found that the affidavit was based upon hearsay, Wright never filed a Rule 59(e), SCRCP motion raising the argument that the contents of the affidavit were subject to a hearsay exception. *See Noisette v. Ismail*, 304 S.C. 56, 58, 403 S.E.2d 122, 124 (1991) ("When a trial court makes a general ruling on an issue but does not address the specific argument raised by a party, that party must make a Rule 59(e) motion asking the trial court to rule on the issue in order to preserve it for appeal."). The issues of whether the affidavit was based on inadmissible hearsay,

and whether the Special Referee excluded the affidavit from consideration or erred in doing so, are not preserved for review.

Even if the issues were preserved, the Special Referee did not err in finding that the affidavit was based on inadmissible hearsay. Rule 803(6), SCRE, provides that **records** of regularly conducted activity are not subject to the hearsay rule. Rule 803(6), SCRE. Nowhere does it state that an affidavit containing testimony supposedly based upon such records falls under the exception, especially when the affiant attesting to such records has not been qualified as an expert or custodian of the records. Additionally, even if the Special Referee erred in finding that the affidavit contained inadmissible hearsay, it would be of no consequence, as the Special Referee also found that the affidavit did not establish good cause to set aside the default, did not explain why the Complaint was not answered within thirty days, and supported a reasonable inference that Wright's insurer was negligent in failing to seek an extension or file a motion to file a late answer.

II. There is evidence in the record supporting the Special Referee's finding that Wright's insurer acted with neglect and failed to demonstrate good cause to set aside the default.

The Special Referee was well within his discretion to deny the Motion to Set Aside Default, as his decision is supported by a reasonable interpretation of the evidence in the record. Rule 55(c) states that "[f]or good cause shown the court may set aside an entry of default . . . ." Thus, the standard for granting relief from an entry of default is "good cause." The standard requires a court considering whether to grant relief for good cause to engage in a two-step analysis.

First, the party seeking relief must provide a **satisfactory explanation** for the default and give reasons why setting aside the default "would serve the interests of justice." *Sundown Operating Co., Inc. v. Intedge Indus., Inc.*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009). Wright incorrectly argues without citing authority that a simple explanation for how the default occurred is sufficient, and that the reason for the default does not have to be justifiable or excusable. (Appellant's Br. 5). Under Wright's reasoning, even an explanation of "I forgot to answer" would be sufficient to demonstrate good cause. This logic would effectively eradicate the Rule 55 requirement for a showing of good cause.

Under *Sundown* a "satisfactory" explanation must be provided, and it is not an abuse of discretion for a trial court to find that the failure to forward or obtain pleadings, to recognize and abide by deadlines, and to properly communicate between an insured, insurer, and the insurer's internal departments does not satisfy the good cause standard. *See Campell v. City of N. Charleston*, 431 S.C. 454, 462, 848 S.E.2d 788, 792-93 (Ct. App. 2020) (finding that the failure to forward or open an e-mail did not satisfy the good cause standard and citing examples). Negligence of an insurance company cannot constitute good cause to relieve an insured from the entry of default. *Richardson v. P.V., Inc.*, 383 S.C. 610, 618-19, 682 S.E.2d 263, 267 (2009).

Second, the trial court must consider three factors if a satisfactory explanation is provided: (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 the relief is granted. *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499,

502 (Ct. App. 1989). Wright again incorrectly argues that proof of only one of these factors is necessary to show good cause, citing *Sundown*. (Appellant's Br. 5). The cited passage of *Sundown* does not state that only one of the factors must be proven; instead, it states that proof of one of the Rule 60(b), SCRCP factors, which is a much higher standard, is sufficient to satisfy Rule 55(c)'s requirement of good cause. *Sundown*, 383 S.C. at 608, 681 S.E.2d at 889. As will be explained below, it was within the Special Referee's discretion to determine that the failure to timely answer in this case was not excusable neglect, and there is no evidence of any mistake; therefore, it was incumbent upon Wright to provide some other satisfactory explanation for the default and to satisfy the *Wham* factors, but she failed to do so.

The burden is on the party seeking relief to provide an explanation for the default, and if no reasonable explanation exists for vacation of default, the trial court need not make specific findings of fact for each *Wham* factor. *Limehouse v. Hulsey*, 397 S.C. 49, 70, 723 S.E.2d 211, 222 (Ct. App. 2011). Since the record does not contain an explanation for why an answer to the Complaint was not filed within thirty days and does not contain a satisfactory explanation for why Wright's insurer did not expeditiously hire an attorney to file a motion to file a late answer or to set aside default immediately upon receiving notice of the proceedings, and because Wright did not present prima facie evidence of a meritorious defense to the Special Referee, it was well within the Special Referee's discretion to deny Wright's Motion to Set Aside Default.

A. <u>The record does not contain evidence providing a satisfactory explanation for the default</u>.

Under Rule 55(c), SCRCP, the party seeking relief must provide a satisfactory explanation for the default and give reasons why setting aside the default "would serve the interests of justice." *Sundown*, 383 S.C. at 607, 681 S.E.2d at 888. Failing to answer a complaint merely because a defendant relies on another to answer for him or to properly assess pleading deadlines does not constitute good cause. *See Sundown*, 383 S.C. at 609, 681 S.E.2d at 889 (finding that the failure of an insurance agent to answer a complaint for defendant was not good cause); *Regions Bank v. Owens*, 402 S.C. 642, 648, 741 S.E.2d 51, 54 (Ct. App. 2013) (finding that an elderly defendant with a limited education who mistakenly believed that counsel would be retained for him to answer the complaint did not constitute good cause); *Stark Truss Co., Inc. v. Superior Const. Corp.*, 360 S.C. 503, 602 S.E.2d 99 (Ct. App. 2004) (finding failure of an insurance company to answer when it gave its defense to another defendant intending to have it answer on both parties' behalf did not constitute good cause); *Pilgrim v. Miller*, 350 S.C. 637, 641-42, 567 S.E.2d 527, 529 (Ct. App. 2002) (finding that the neglect of an attorney and insurance company to answer the complaint on behalf of defendant was not good cause) *opinion vacated on other grounds; see also Hill v. Dotts*, 345 S.C. 304, 310, 547 S.E.2d 894, 897 (Ct. App. 2001) ("[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.").

In *Sundown*, 383 S.C. at 605, 681 S.E.2d at 887, the defendant forwarded the summons and complaint to its insurance agent, who then failed to retain counsel to

answer the complaint before the 30-day period for filing a responsive pleading had expired. The plaintiff then moved for and was granted an entry of default. *Id.* The defendant sought to have the default lifted, arguing that it should not be held responsible for its insurance agent's failure to answer the complaint. *Id.* at 605-06, 681 S.E.2d at 887. The trial court found that this excuse did not meet the Rule 55(c) standard. *Id.* at 606, 681 S.E.2d at 887.

The Supreme Court of South Carolina agreed that the defendant's argument was without merit, stating that "the law is clear that an attorney or insurance company's misconduct is imputable to the client." *Id.* at 609, 681 S.E.2d at 889 (citing *Williams v. Vanvolkenburg*, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct. App. 1994); *Roberts v. Peterson*, 292 S.C. 149, 151, 355 S.E.2d 280, 281 (Ct. App. 1987). The court noted that a defendant "may not be relieved from the entry of default *solely* because it relied to its detriment on a negligent insurance agent." *Id.* (citation omitted).

In *Regions Bank*, 402 S.C. at 644, 741 S.E.2d at 52, a group of individual defendants borrowed money from the plaintiff in order to purchase a tract of land. The defendants defaulted under the promissory note and the plaintiff bank filed a mortgage foreclosure action. *Id.* All defendants were personally served with the foreclosure proceedings, but only one of the individual defendants, Paddy, filed a timely answer. *Id.* at 645, 741 S.E.2d at 52. After having the case referred to a master, the plaintiff filed an affidavit of default against the remaining defendants. *Id.*

One of the defendants, Owens, filed a motion to set aside entry of default and for leave to file a late answer. *Id.*, 741 S.E.2d at 53. Owens asserted that Paddy had

misrepresented he would answer on the behalf of both of them. *Id.* Instead, Paddy only hired a lawyer to represent himself. *Id.* at 646, 741 S.E.2d at 53. At the time, Paddy had a limited power of attorney signed by Owens for the purpose of allowing Paddy to make decisions related to the property under foreclosure. *Id.* Paddy admitted that he told Owens he had "hired a lawyer in that county to take care of whatever we had to do on this foreclosure and to keep me abreast of what was going on." *Id.* The master denied Owens' motion to set aside entry of default, finding that his mistaken belief that Paddy would answer the complaint on his behalf did not meet the good cause standard under Rule 55(c). *Id.* at 647, 741 S.E.2d at 53. The master based the decision on the absence of any evidence in the record that Paddy ever suggested to Owens that he had hired an attorney for Owens and the fact that Owens failed to take steps to protect himself. *Id.*, 741 S.E.2d at 53-54.

The Court of Appeals found that the master did not abuse his discretion in refusing to grant Owens relief. Owens maintained that he was a 79-year-old with a limited education who had complete trust in Paddy, relying on him because Paddy had his power of attorney, allowing him to act on Owen's behalf regarding the property. *Id.* at 648, 741 S.E.2d at 54. The court found that Owens did not take any steps to protect himself by following up with Paddy or Paddy's attorney to confirm an answer would be filed on his behalf. *Id.* at 648-49, 741 S.E.2d at 54-55. The court also noted that a defendant's mistaken belief that a fellow defendant would file an answer on his behalf does not meet the good cause standard. *Id.* at 649-650, 741 S.E.2d at 55 (citing *Pilgrim*, 350 S.C. 637, 567 S.E.2d 527) ("[T]he proposition for which *Pilgrim*

stands was not overturned by the court and remains the law of this state.") In other words, if the reliance on one's own attorney is insufficient to show good cause in the event of the attorney's failure to timely respond to the pleadings, then reliance on another defendant and his attorney is equally insufficient. *Id.*

Here, an answer to Youngblood's Complaint was not filed within thirty days of service. (Nettles Aff. ¶ 3). No explanation for this is contained in the record. (*See generally* Nettles Aff.). Additionally, the affidavit submitted by Wright's counsel in support of setting aside the default does not explain why Wright's insurer did not immediately procure local counsel to apply to the Circuit Court for permission to file a late answer or to seek an extension to answer from the undersigned. While the affidavit does supply an explanation for why Wright's insurer did not receive reminders or alerts concerning the claim in the weeks following the provision of notice, it is unsatisfactory and wholly fails to explain why an attorney was not hired to seek immediate relief for the default on March 3, 2022 (the date Wright notified her insurer) or why Wright's insurer failed to diligently and actively monitor the progress of the case regardless of whether its claim management system was cloud-based or had properly set-up alerts.

Wright has argued that a good faith "mistake" is a sufficient basis to set aside default, and that the "mere missed-calendaring" of a date is a good faith error and a basis to set aside default. (Appellant's Br. 5). First, this argument ignores that it is Wright's burden to prove the Special Referee's findings were an abuse of discretion. While it may have been appropriate for the Special Referee to find good cause existed

to set aside default under these circumstances, it is not Wright's burden to prove this on appeal; rather, Wright must prove that the Special Referee abused his discretion in finding that there was not good cause. Just because he could have found good cause existed to set aside the default does not necessarily lead to the conclusion that he could not have found that good cause did not exist to set aside the default.

Second, the cases cited by Wright in support of this argument are factually distinguishable from the present circumstances. *Columbia Pools, Inc. v. Galvin* concerned a mistakenly conveyed and incorrect date of service which led to the untimely filing of an answer. *Galvin*, 288 S.C. 59, 60, 339 S.E.2d 524, 524-25 (Ct. App. 1986). No mistake of law or fact concerning the date of service is detailed or attested to in the affidavit submitted by Wright in support of her motion to set aside default. In *Microtronics, Inc. v. South Carolina Department of Revenue*, the Court of Appeals held that a mistake concerning the date of a hearing satisfied Rule 60(b), SCRCP where the party who failed to appear immediately sought relief from its mistake. *Microtronics,* 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. App. 2001). Here, Wright's insurer knew at the latest on March 3, 2022, that she had been served with Youngblood's lawsuit and it failed to take any steps to immediately file a responsive pleading or motion, or to apply to the Circuit Court for permission to file a late answer. Further, even after her insurer received a copy of the Summons and Complaint from the undersigned on July 21, 2022, a motion to file a late answer or any responsive pleading or motion was not filed until March 24, 2023. (Nettles Aff. ¶

6; Mot. to Set Aside Default). There is no evidence that Wright's insurer immediately sought legal assistance and relief for the failure to answer the Complaint.

There is no evidence in the record that the insurer followed up with Wright seeking a copy of the Summons and Complaint. There is no evidence that Wright's insurer ever tried to obtain a copy of the Summons and Complaint from the public index. In short, Wright has offered no evidence that any steps were taken by her insurer to actively monitor the status of the case, to insure that legal representation was immediately retained on her behalf, or to protect her from an entry of default until nearly six months after Wright had been served and nearly five months after it was notified by Wright of the lawsuit.

B. The *Wham* factors weigh in favor of affirming the Special Referee's findings.

In the alternative, if the Court finds that it was an abuse of discretion for the Special Referee to find that good cause did not exist to set aside the default, the factors delineated by this Court in *Wham* dictate that it was still within the Special Referee's discretion to deny Wright's Motion. As explained above, after determining that the defendant has provided a satisfactory explanation for its failure to timely answer the complaint, a trial court is required to consider three factors: (1) the timing of the motion for relief; (2) whether the defendant had a meritorious defense; and (3) the degree of prejudice to the plaintiff if the relief was granted. *Wham*, 298 S.C. at 465, 381 S.E.2d at 502. "The trial court need not make specific findings of fact for each factor if there is sufficient evidentiary support on the record for the finding of

the lack of good cause." *Dixon v. Besco Eng'g, Inc.*, 320 S.C. 174, 179, 463 S.E.2d 636, 639 (Ct. App. 1995).

The timing of Wright's Motion to Set Aside Default reasonably supports a conclusion that she should not have been granted relief from default. No appearance on Wright's behalf was made in this action nor were any steps taken to seek relief or protection from the Circuit Court or Special Referee until almost fourteen months after she was served, almost thirteen months after the insurer was notified of the proceedings, eight months after the insurer secured representation for Wright, and a month after Wright's counsel learned of the entry of default. (Aff. of Service; Nettles Aff. ¶¶ 5-7, 14; Mot. to Set Aside Default). Professional courtesies and settlement negotiations aside, it was incumbent upon Wright's insurer to immediately seek counsel to formally appear and file motions requesting permission to file an answer immediately after learning of the pending litigation, and the evidence in the record contains no valid explanation for why these steps were not taken. Wright's insurer did not make diligent efforts to effectively protect her in a timely fashion, even after it was fully aware of the proceedings.

The second *Wham* factor required the Special Referee to consider whether the defendant has a meritorious defense. Wright was required to make a prima facie showing of a meritorious defense. *See Graham v. Town of Loris*, 272 S.C. 442, 453, 248 S.E.2d 594, 599 (1978) ("[A] meritorious defense . . . need be only one which is worthy of a hearing or judicial inquiry because it raises . . . a real controversy **as to real facts** arising from conflicting or doubtful evidence."). Under Rule 60(b), a

defendant must make a prima facie showing of a meritorious defense to be relieved of a default judgment. *McClurg v. Deaton*, 380 S.C. 563, 574, 671 S.E.2d 87, 93 (Ct. App. 2008). Although the standard for relief under Rule 55(c) is less rigorous than under Rule 60(b), the meritorious defense factor would be superfluous unless it required a prima facie showing. Otherwise, a defendant in default could simply pick a defense out of a hat and name it in its motion for relief, regardless of how tenuously it was connected to the actual facts underlying the action. Making a prima facie showing of a meritorious defense allows courts to make an informed decision on whether lifting the default is worth the judicial resources that would be expended in continuing to litigate the action.

Wright argues that she has meritorious defenses including the status of Youngblood at the time he was injured, an open and obvious defense, and comparative negligence. (Appellant's Br. 6). However, Wright failed to introduce in the record or demonstrate to the Special Referee through affidavits or other evidence that Youngblood was aware of the hazardous condition, what its appearance consisted of, that he was a trespasser or licensee at the time of his injury, or that he was not exercising due care at the time of his injuries. Without providing prima facie factual evidence of its claimed defenses, Wright left the Special Referee unable to determine whether any of the defenses could actually be meritorious.

As to the third factor, if the default was lifted, Youngblood would have been highly prejudiced. The events giving rise to this action occurred on April 14, 2020. Default was entered against Wright on January 18, 2023. Lifting the default would

have started the proceedings anew. Youngblood would have had to incur additional expenses – subpoenas, depositions, mediation, filing fees – to get the case to trial. In addition to expense, lifting the default would have also increased the amount of time to bring this matter to a close. The delay caused by the insurer's conduct would make it more difficult for Youngblood to obtain the evidence needed to prove his case, primarily due to the effect the lapse of time would have had on the condition of the defect as well as the effect it would have had on the memory of witnesses. Because Wright's insurer failed to timely obtain representation on her behalf, Youngblood did not have the traditional discovery mechanisms available to investigate and document his claim, including the condition and appearance of Wright's property. This prejudice to Youngblood greatly outweighs lifting the default against Wright, in light of the fact that it was Wright's own insurer's negligence and inaction that led to the failure to timely answer the Complaint.

III. Wright's argument that expert testimony was required to prove Youngblood suffered permanent injuries is not preserved for review.

Wright argues that the Special Referee erred in finding that Youngblood suffered from permanent injuries and in basing his default judgment award on this finding. Much like Wright's hearsay argument, the record does not contain any evidence that this argument was raised by Wright to the Special Referee and therefore is not preserved for review. Since no transcript was made of the hearing, the Court cannot discern whether the argument was raised to the Special Referee at the hearing or whether any objections to the introduction of such testimony were made by counsel for Wright. And after the Special Referee made his finding

concerning permanent injury and awarded damages, Wright never filed a Rule 59(e), SCRCP motion asking the Special Referee for a ruling that lay testimony cannot support a claim for permanent injuries. This issue is therefore not preserved for the Court's review.

IV. Even if the record demonstrated that Wright's argument concerning the permanency of Youngblood's injury was raised to and ruled upon by the Special Referee, expert medical testimony is not required to prove permanent injuries.

Wright's argument that Youngblood was required to prove the permanency of his injuries through expert testimony or admitted medical records is not supported by South Carolina law. Future damages are recoverable in a negligence action when they are "reasonably certain to result in the future from the injury." *Haltiwanger v. Barr*, 258 S.C. 27, 32, 186 S.E.2d 819, 821 (1972). However, future damages are not required to be supported to a reasonable degree of medical certainty in order to be recoverable.

In *Wilder v. Blue Ribbon Taxicab Corp.*, the plaintiff filed a negligence action against a taxi company and its driver following a motor vehicle collision. *Wilder*, 396 S.C. 139, 142, 719 S.E.2d 703, 705 (Ct. App. 2011). The plaintiff obtained a default judgment against the defendants which included an award for future damages due to the ongoing nature of her injuries. *Id.* at 144, 148, 719 S.E.2d at 706, 708. This Court held that the plaintiff's testimony that she was continuing to experience pain nearly three years after the accident was sufficient evidence in itself to support a finding of permanent injuries and an award for future damages. *Id.*

The Special Referee found that Youngblood had suffered permanent injuries because he had a significant limitation in raising his right arm. (June 1, 2023 Order 3). This finding was established by Youngblood's testimony under oath at the damages hearing. (*Id.*). Youngblood's testimony that he continued to experience limitations over three years after the fall supported the Special Referee's finding on permanent injury. *Wilder*, 396 S.C. at 148, 719 S.E.2d at 708. Thus, even without the support of medical records or expert medical testimony, the Court should affirm the Special Referee's finding of permanent injuries and award of future damages based on Youngblood's testimony.

CONCLUSION

For the foregoing reasons, the Court should affirm the Special Referee's denial of Appellant's Motion to Set Aside Default, the default judgment, and the award of damages to Respondent.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

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November 14 ,2023
Hampton, South Carolina

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APPEAL FROM HAMPTON COUNTY
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Walter H. Sanders, Jr., Special Referee

Appellate Case No. 2023-001001

Donald Youngblood…… ……..……...Respondent,

-v-

Sheila Wright……..……..…..……...Appellant.

PROOF OF SERVICE

This is to certify that I, ***John E. Parker, Jr.*** with the Law Firm of Parker Law Group, LLP, have this date emailed, a true and correct copy of the within ***Respondent's Initial Brief and Designation of Matter*** to:

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November 14 ,2023
Hampton, South Carolina

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Via Email: ctappfilings@sccourts.org
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Re: Donald Youngblood v. Sheila Wright
Appellate Case No. 2023-001001

Dear Ms. Kitchings:

Please find enclosed for filing Initial Brief of Respondent and Respondent's Designation of Matter to Be Included in the Record on Appeal and Proof of Service in the above reference matter.

By copy of this letter, I am serving copies on all counsel of record by email only.

With kind regards, I am

PARKER LAW GROUP, LLP

By:_____
John E. Parker, Jr.

JAY/cc
Enclosures as stated.

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