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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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APPEAL FROM HORRY COUNTY

Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

H. Steven DeBerry, Circuit Court Judge

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Civil Action No.: 2022-CP-26-05492

Appellate Case No.: 2023-001580

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Rose Bernard, .....Appellant,

v.

Lucas Green; Aperture Investigations, ..... Respondents.

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RESPONDENTS' INITIAL BRIEF

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## **STATEMENT OF ISSUES ON APPEAL**

The trial court did not err in holding Appellant in default for failing to answer Respondents' Counterclaim pursuant to the Summons to Counterclaim and Amended Answer and Counterclaim served upon Appellant. Judge H. Steven DeBerry, IV properly issued the Order of Default and Order of Judgment in this case based on the supporting Affidavit and the information provided to the Court, and Judge Benjamin H. Culbertson properly issued an Order of Dismissal of Plaintiff's Motion to Dismiss/Set Aside Defendant's Default Judgment Request.

## **STATEMENT OF THE CASE**

Appellant entered into and signed an Investigative Services Agreement (the "Contract") with Respondent on May 22, 2022 and agreed to pay a retainer of \$1,500.00 and providing an initial deposit on said retainer in the amount of \$700.00. Appellant wanted to have cameras placed in her house because she believed people were breaking into her house, and she wanted camera footage and observation of these occurrences. Appellant later filed a Summons and document entitled "Motion for Review of Fraud / Breach of Contract/ Motion for Injunction (hereinafter the "Complaint") on August 26, 2022 alleging, among other things, that Respondents failed to perform under the Contract. Respondents, Lucas Green and Aperture Investigations, as Lucas Green, Registered Agent, were served with a copy of the Summons and Complaint on September 14, 2023, and Respondents duly filed an Answer on September 28, 2022. On October 19, 2022, Respondents timely filed a Summons to Counterclaim and Amended Answer and Counterclaim and served Appellant with both that same day by email and by US Mail. Respondents asserted counterclaims for breach of contract for the balance owed under the Contract and for claim and delivery for Appellant's failure and refusal to return Respondents' camera.

At a hearing on January 23, 2023, counsel for Respondents informed the Court and Appellant that Appellant had failed to answer the Counterclaim. He further informed them that he intended to file an Affidavit of Default. At the hearing Appellant admitted that she had received the documents comprised of the Summons to Counterclaim, Amended Answer and Counterclaim. On January 25, 2023, three (3) months after service of the Summons to Counterclaim Amended Answer and Counterclaim, counsel for Respondents filed an Affidavit of Default. A proposed Order of Default and Order of Judgment upon motion of Luther O. McCutchen was filed and served on Appellant on March 1, 2023. Appellant, on March 8, 2023, filed her Motion to Dismiss Defendant's Default Request. In her Motion to Dismiss Defendant's Default, request, Appellant failed to assert any grounds for setting aside the default pursuant to either Rule 55, SCRCF or Rule 60, SCRCF.

Judge DeBerry filed the Order of Default and Order of Judgment on March 9, 2023, which set forth a judgment in the amount of \$1,812.00 for the balance remaining under the Contract and the matter was heard before the Honorable Benjamin H. Culbertson on September 6, 2023. Judge Culbertson discussed the matters with Appellant and properly upheld the Order of Default and Order of Judgment. Respondents seek a determination that no error was made when Judge Culbertson upheld and affirmed the Order of Default and Order of Judgment signed by The Honorable H. Steven DeBerry, IV.

### **STANDARD OF REVIEW**

Judge Culbertson did not err in failing to set aside the default Judgment. He was not controlled by an error of law in his refusal to dismiss the Order of Default. "The lower court's determination of motions to vacate default judgments will not be disturbed absent a showing of abuse of discretion." *McCall v. A-T-O, Inc.*, 276 S.C. 143,145, 276 S.E.2d 529, 530 (S.C. 1981),

citing *Stewart v. Floyd*, 274 S.C. 437, 265 S.E.2d 254 (1980), and *Renney v. Dobbs House, Inc.* 275 S.C. 562, 274 F.2d 290, (1981). “An abuse of discretion arises in cases in which the judge was controlled by some error of law or where the order, based upon factual, as distinguished from legal, conclusions, is without evidentiary support.”

### **ARGUMENT**

This Court properly issued its Order of Default and Order of Judgment against Rose Bernard related to her failure to answer Defendants’ Summons and Counterclaim. The South Carolina Rules of Civil Procedure are clear and concise under Rules 55(b) and (d) as to the claims set forth in the Counterclaim. Prior to the Order being filed, Appellant filed a Motion to Dismiss Defendant’s Default Judgment Request. In her Motion and at the hearing on the Default Judgment, Appellant argued that her Complaint, together with her Motion for Exemption from ADR, were responsive to the Counterclaim. (Motion to Dismiss Default, p. 1; September 26, 2023 Tr., p. 8, l. 20-22). At no time prior to the filing of this Appeal did Appellant argue grounds as set forth in Rule 55, SCRCF or Rule 60, SCRCF.

In the matter of *McCall v. A-T-O, Inc.*, 276 S.C. 143, 276 S.E.2d 529 (S.C. 1981), the Appellant asserted that the trial judge erred in holding respondent’s failure to timely answer resulted from excusable neglect, and the Court agreed with the appellant’s position. The respondent in *McCall* attempted to set forth a position arguing that a layman in that case should be held to a lesser standard than an attorney who failed to answer in the matter of *Ledford v. Pennsylvania Life Ins. Co.*, 267 S.C. 671, 230 S.E.2d 900 (1976). This Court has never held a layman to a lesser standard than attorneys. *McCall*, 146, 276 S.E.2d 530 .

Further, in *Goodson v. American Bankers Ins. Co. of Florida*, 295 S.C. 400, 368 S.E.2d 687 (S.C. App. 1988), American Bankers Insurance Company of Florida asserted that the trial

judge erred in refusing to set aside a judgment due to excusable neglect under Rule 60, SCRCP claiming it had received no notice of the trial. The case goes on to state in part as follows:

Secondly, 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. (See H. Lightsey, J. Flanagan, South Carolina Civil Procedure 400 (2<sup>nd</sup> Ed.1985) and *McCall v. A-T-O, Inc.*, 276 S.C. 143, 276 S.E.2d (1981)).

*Id.* at 403, 368 S.E.2d at 689.

In addition, the case of *State v. Burton*, 356 S.C. 259, 589 S.E.2d 6 (2003), notes as follows:

We note that *Burton* was a pro se litigant. A pro se litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law.

*Id.*, at 265, n. 5, 589 S.E.2d at 9.

In Appellant's Initial Brief, she refers to Rule 55, SCRCP and/or Rule 60, SCRCP in the Statement of Issues on Appeal (Appellant Brief, p. 1), the Standard of Review (Appellant Brief, pp. 2- 4) and the Argument (Appellant Brief, p. 8, 10). Neither of these Rules is applicable to the case at hand. Appellant's Motion to Dismiss the Defendant's Default Request failed to raise any defense under either Rule and provides no meritorious defense for setting aside the default. Instead, she recites her grounds for setting aside default as follows:

1. DEFENDANTS' RESPONSE AND COUNTERCLAIM ARE THE SAME  
....
2. MY RESPONSE TO THE COUNTERCLAIM IS REDUNDANT TO MY COMPLAINT  
....
3. A PERSON'S CASE IS DECIDED BY A COURT ON ITS LEGAL AND FACTUAL MERITS  
....  
(Motion to Dismiss, pp. 1-2).

Despite Appellant having been served with a Summons to Counterclaim instructing her to answer the Counterclaim in writing and serve it upon the undersigned, Appellant admitted in the January 23, 2023 hearing before the Honorable Steven DeBerry, IV (January 23, 2023 Tr., p. 15, ll. 18-19) that she received the Summons and Counterclaim, and in her Motion to Dismiss Default Judgment Appellant admitted that she did not answer Respondents' Counterclaim. Appellant asserted that the Counterclaim was essentially the same as Respondents' Answer, and her Answer would have been the same as her Complaint (Motion to Dismiss Default, p. 1). Appellant also asserted in her Motion that she did not answer the Counterclaim because there had been no trial on the merits of her Complaint and she believed that Respondent had not directly answered her Complaint, despite having been served with both an Answer and a Summons, Amended Answer and Counterclaim. (Motion to Dismiss Default, pp. 1-2).

At the September 6, 2023 hearing, the Honorable Benjamin Culbertson gave Appellant an opportunity to speak regarding her Motion to Dismiss Default Judgment and checked the record regarding the prior proceeding and/or filings. Judge Culbertson explained to Appellant that despite her not understanding the proper wording, procedures, or filings, she is still held to the same standards as a party with an attorney. (September 6, 2023 Tr., p. 9, l. 14 – p. 10, l. 14). Further, when Appellant asked him again to dismiss Judge DeBerry's Order of Default, Judge Culbertson informed her that he could not reverse Judge DeBerry's Order, and he explained what Appellant's options would have been with regard to the Order of Default (September 6, 2023 Tr., pp. 10, 13). Judge Culbertson further explained to Appellant that there were grounds for setting aside defaults but that she had not made the proper arguments to do so. (September 6, 2023 Tr., p. 13, l. 16-25).

Appellant is required to understand and follow the Rules of Civil Procedure in order to properly respond to the Summons to Counterclaim and Counterclaim which were served upon her

and for which no response was provided for over 90 days before an Affidavit of Default was duly filed. South Carolina case law is clear that although Appellant is appearing pro se and appeared pro se in the Common Pleas action, Appellant is still required to comply with the substantive and procedural requirements of the Court. *Burton*, at 265 n. 5, 589 S.E.2d at 9 n. 5 (“A pro se litigant who knowingly elects to represent himself assumes full responsibility for complying with the substantive and procedural requirements of the law.”). 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. *Goodson*, at 403, 368 S.E.2d at 689. *See also, McCall at 146, 276 S.E.2d 530* (“This Court has never held a layman to a lesser standard than attorneys.”).

Many of the positions, recitals and citations set forth in Appellant’s Brief are neither germane nor relevant to the matters at hand. South Carolina Rules of Civil Procedure and South Carolina caselaw are duly applicable to all who are involved with the South Carolina legal system, including pro se litigants. The arguments and positions recited in the Brief of Appellant have no merit with regard to the Order of Judgment and Order of Default duly issued by Judge H. Steven DeBerry, IV based on a full understanding of all matters related to the default.

### **CONCLUSION**

Appellant was timely served with a Summons to Counterclaim and an Amended Answer and Counterclaim. The Summons set forth the requirement to answer the Counterclaim and serve a copy upon Defendant’s attorneys within thirty (30) days after service. It further set forth that if no answer was received, judgment by default would be rendered against her for the relief demanded. Appellant failed to answer the Counterclaim upon her own determination that there was no need to do so based on her perception that it would be redundant to do so.

Following Respondent's filing of the Affidavit of Default, Appellant then filed a Motion to Dismiss Defendant's Default Request and appeared at the hearing on the Motion to Dismiss the Default. Appellant raised no meritorious defense pursuant to Rule 55, SCRPC or Rule 60, SCRPC, either in her motion or at the hearing, and Appellant's Motion to Dismiss the Default was properly denied based upon the evidence presented at the Motion hearing. Judge Culbertson committed no errors of law, nor did he abuse his discretion. The Order of Default and Order of Judgment should be affirmed.

McCUTCHEN VAUGHT GEDDIE &  
HUCKS, P.A.

s/ Luther O. McCutchen, III

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January 16, 2024