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Jan 29 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Bentley Price, Circuit Court Judge

Case No. 2024-000071

RONALD SOLES,Respondent,

v.

IOAN GHERMAN d/b/a USA AUTO TRANSPORT LLC, and
JASON BROCKMAN d/b/a JNJ TRANSPORT, LLC,Defendants,

Of whom JASON BROCKMAN d/b/a JNJ TRANSPORT, LLC is theAppellant.

THE APPELLANT’S RETURN TO THE RESPONDENT’S MOTION TO DISMISS APPEAL
AS UNTIMELY

The Respondent’s Motion relies upon erroneous conclusions of law. The Respondent states in Paragraph 3 of the Motion that,

“Rule 203 of the South Carolina Appellate Court Rules, which sets forth a notice of appeal shall be filed and served upon the Respondents within thirty, (30), days after the entry of the order or judgment.”

In reality, Rule 203(b)(1) states that a Notice of Appeal shall be served on all respondents within thirty, (30), days after the entry of the Order or judgment. Rule 203(b)(1) also states that a Rule 59 Motion stays the time for appeal and shall run from receipt of written notice of entry of the Order granting or denying such Motion. This Motion was timely made, and both Orders were appealed within the time limit required by Rule 203. The Appellant received a copy of the Order Denying this post-trial Motion on December 6, 2023. The Notice Of Appeal was served upon the Respondent on January 4th, 2024. It was due on January 5th, 2024. It was filed 8 days after it was served upon counsel for the Respondent.

Apparently, counsel for the Respondent assumes that the Notice of Appeal must be filed and served upon the Respondent within thirty days after the entry of the Order or judgment. However, Rule 203(d)(1)(B) states,

“The notice of appeal shall be filed with the clerk of the lower court and with the clerk of the appellate court within ten (10) days after the notice of appeal is served.” (Emphasis added).

All other requirements of Rule 203, as they relate to this appeal have also been met. (Please see the attachments to this return.) Therefore, the Respondent’s Motion should be denied, and the Appellant respectfully requests the same.

Respectfully submitted,

Dated: January 29th, 2024
Greenville, South Carolina

s/Ward Benjamin McClain, Jr.
W. Benjamin McClain, Jr., Esquire
W. Benjamin McClain, Jr., L.L.C.
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Attorney for the Appellant, Jason Brockman

Other Counsel of Record:
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stoneycraven.com
Attorney for Respondent

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egodwin@tonnsenbach.com

Attorneys for Defendant, Ioan Gherman
d/b/a USA Auto Transport, LLC

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Jan 12 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Bentley Price, Circuit Court Judge

Case No. 2022-CP-23-05403

RONALD SOLES,Respondent,

v.

IOAN GHERMAN d/b/a USA AUTO TRANSPORT LLC, and
JASON BROCKMAN d/b/a JNJ TRANSPORT, LLC,Defendants,

Of whom JASON BROCKMAN d/b/a JNJ TRANSPORT, LLC is theAppellant.

NOTICE OF APPEAL

Jason Brockman d/b/a JNJ Transport, LLC appeals the Order of the Honorable Bentley Price dated November 15th, 2023, filed for record November 17th, 2023, and received by Appellant on November 17th, 2023, and the Order Denying Defendants’ Motion For Reconsideration of the Honorable Bentley Price dated December 6th, 2023, filed for record December 6th, 2023, and received by the Appellant on December 6th, 2023.

Respectfully submitted,

Dated: December 29th, 2023
Greenville, South Carolina

s/Ward Benjamin McClain, Jr.
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Attorney for the Appellate Jason Brockman

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Attorneys for Defendant Ioan Gherman
d/b/a USA Auto Transport, LLC

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Bentley Price, Circuit Court Judge

Case No. 2022-CP-23-05403

RONALD SOLES,Respondent,

v.

IOAN GHERMAN d/b/a USA AUTO TRANSPORT LLC, and
JASON BROCKMAN d/b/a JNJ TRANSPORT, LLC,Defendants,

Of whom JASON BROCKMAN d/b/a JNJ TRANSPORT, LLC is theAppellant.

PROOF OF SERVICE

I certify that I have served the Notice Of Appeal on the attorney for the Respondent,
James Stone Craven, via his AIS email, pursuant to the Order of The Supreme Court Of South
Carolina dated August 25, 2021.

Respectfully submitted,

Dated: January 4th, 2024
Greenville, South Carolina

s/Ward Benjamin McClain, Jr.
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Attorney for the Appellate Jason Brockman

Other Counsel of Record:
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Attorney for Respondent

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egodwin@tonnsenbach.com
Attorneys for Defendant Ioan Gherman
d/b/a USA Auto Transport, LLC



Ward McClain <mcclainwb@gmail.com>

Re.: Notice Of Appeal; 2022-CP-23-05403

1 message

Ward McClain <mcclainwb@gmail.com>

Thu, Jan 4, 2024 at 5:16 PM

To: James Craven <stoney@stoneycraven.com>

Cc: James Craven <jamesstonecraven@gmail.com>, Adam Bach <abach@tonnsenbach.com>

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4 attachments



Notice Of Appeal.pdf

96K



Order Dated November 15, 2023 and Filed For Record November 17, 2023.pdf

350K



Order Denying Defendants' Motion For Reconsideration Dated December 06, 2023 and Filed For Record December 06, 2023.pdf

415K



Proof Of Service - Attorney for the Respondent.pdf

97K

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Jan 12 2024

SC Court of Appeals

**LETTER TO THE APPELLATE COURT CLERK
FILING THE NOTICE OF APPEAL**

January 12th, 2024

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re.: Ronald Soles vs. Ioan Gherman d/b/a USA Auto Transport, LLC and Jason Brockman
d/b/a JNJ Transport, LLC;
Civil Case No.: 2022-CP-23-05403

Dear Ms. Kitchings:

Enclosed herein for filing is a notice of appeal in the above case. Also enclosed are the following:

- (1.) Proof of service of the notice of appeal on the respondent.
- (2.) A copy of the Orders which are to be challenged on appeal.
- (3.) A filing fee will be sent via U.S. Mail.

Sincerely,

s/Ward Benjamin McClain, Jr.
W. Benjamin McClain, Jr., Esquire
W. Benjamin McClain, Jr., L.L.C.
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Attorney for the Appellant Jason Brockman

Other Counsel of Record:

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Attorney for Respondent

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Emily R. Godwin S.C. Bar No.: 103708
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egodwin@tonnsenbach.com
Attorneys for Defendant Ioan Gherman
d/b/a USA Auto Transport, LLC

- (2) Defendants Ioan Gherman and USA Auto Transport, LLC shall answer or otherwise respond to the complaint within fifteen (15) days of the date of this order;
- (3) That Plaintiff Ronald Soles is granted damages in the amount of seven thousand two hundred and fifty dollars (\$7250.00) against defendant Jason Brockman d/b/a JNJ Transport, LLC;
- (4) That Plaintiff Ronald Soles is granted attorney's fees in the amount of three thousand seven hundred and twelve dollars and fifty cents (\$3712.50) against defendant Jason Brockman d/b/a JNJ Transport, LLC: and
- (5) That Defendant Jason Brockman d/b/a JNJ Transport's motion to stay the proceedings is moot.

AND IT IS SO ORDERED.

Official Court block on following page



Greenville Common Pleas

Case Caption: Ronald Soles vs. Ioan Gherman , defendant, et al

Case Number: 2022CP2305403

Type: Order/Set Aside Judgment

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CASE NO.: 2022-CP-23-05403

Ronald Soles,

Plaintiff,

vs.

Ioan Gherman d/b/a
USA Auto Transport LLC and
Jason Brockman d/b/a
JNJ Transport, LLC,

Defendants.

**ORDER DENYING DEFENDANTS'
MOTION FOR RECONSIDERATION**

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SC Court of Appeals

The Defendants' filed a Motion for Reconsideration pursuant to Rule 59(e), SCRPC, on November 27, 2023, asking this Court to reconsider the Court's Order dated and filed on November 17, 2023.

STANDARD OF REVIEW

Motions for reconsideration will not be granted absent "highly unusual circumstances." U.S. ex rel. Becker v. Washington Savannah River Co., 305 F.3d 284, 290 (4th Cir. 2002) (stating that simple disagreements with the court's ruling will not support Rule 59(e) relief).¹ Courts have recognized three circumstances in which a court should grant a Rule 59(e) motion: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993). Importantly, a motion for reconsideration is not a vehicle to re-litigate previously raised issues or "to raise argument or present evidence that could have been presented prior to the entry of judgment." Dash v. Mayweather, C/A No. 3:10-1036-

¹ Rule 59 is substantially the same as the Federal Rule. See Elam v. S.C. Dep't of Transp., 361 S.C. 9, 21, 602 S.E. 2d 772, 779 (2004) ("Rule 59(e) in the South Carolina and federal rules of civil procedure is practically identical.").

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 consideration of the issues raised in Defendants’ Motion, the Court hereby DENIES Defendants’ Motion for Reconsideration

AND IT IS SO ORDERED.

ELECTRONIC SIGNATURE PAGE TO FOLLOW



Greenville Common Pleas

Case Caption: Ronald Soles vs. Ioan Gherman , defendant, et al

Case Number: 2022CP2305403

Type: Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
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APPEAL FROM GREENVILLE COUNTY
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Case No. 2024-000071

RONALD SOLES,Respondent,

v.

IOAN GHERMAN d/b/a USA AUTO TRANSPORT LLC, and
JASON BROCKMAN d/b/a JNJ TRANSPORT, LLC,Defendants,

Of whom JASON BROCKMAN d/b/a JNJ TRANSPORT, LLC is theAppellant.

PROOF OF SERVICE

I certify that I have served The Appellant’s Return To The Respondent’s Motion To Dismiss Appeal As Untimely on the attorney for the Respondent, James Stone Craven, via his AIS email, pursuant to the Order of The Supreme Court Of South Carolina dated May 6, 2022.

Respectfully submitted,

Dated: January 29th, 2024
Greenville, South Carolina

s/Ward Benjamin McClain, Jr.
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Attorney for the Appellate, Jason Brockman

Other Counsel of Record:
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Attorneys for Defendant, Ioan Gherman
d/b/a USA Auto Transport, LLC



Ward McClain <mcclainwb@gmail.com>

Re.: Ronald Soles v. Jason Brockman (2) // 2024-000071

1 message

Ward McClain <mcclainwb@gmail.com>






Mon, Jan 29, 2024 at 5:25 PM

To: James Craven <stoney@stoneycraven.com>

Cc: James Craven <jamesstonecraven@gmail.com>, Adam Bach <abach@tonnsenbach.com>

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5 attachments

-  **The Appellant's Return To The Respondent's Motion To Dismiss Appeal As Untimely.pdf**
102K
-  **Soles v. Gherman - NOA.pdf**
354K
-  **Soles v. Gherman - OR.pdf**
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