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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

The Honorable James B. Jackson, Jr., Master-in-Equity

Case No. 2024-000642

Kacey Green and Charinrath Green, ... Respondents

v.

Mervin Lee Johnson, ... Petitioner

REPLY BRIEF TO RETURN TO PETITION FOR WRIT OF CERTIORARI

Petitioner Mervin Lee Johnson submits this Reply Brief to Respondents' Petition for Writ of Certiorari pursuant to S.C. R. App. P. 242(g).

Although the Greens correctly note in their first argument that Johnson raised the issue of the Greens' untimely appeal to the Court of Appeals in his Motion to Dismiss the Greens' Notice of Appeal, there is no way of knowing whether his argument was considered by the Court of Appeals. The court's order, dated June 28, 2021, denying Johnson's Motion to Dismiss did so without any analysis.

The Greens further err in arguing that the Clerk's failure to abide by the explicit text of *Hudson v. Hudson*, 290 S.C. 215, 216, 349 S.E.2d 341, 341–42 (1986), would cause Greens to lose their opportunity to appeal the Master's Amended Damages Order. They could have, and

indeed the rules required them, to instead timely notice their appeal when the jurisdictional bar imposed by their Rule 59(e) motion was cured by the Master's March 8, 2021, Form 4 order denying their motion. In deference to the Rules of Appellate Procedure they should have noticed their appeal within 30 days of that order. Though his efforts were repeatedly ignored by the court below, that is precisely what Johnson did.

In their second argument, the Greens reiterate that the Master erred in accepting evidence for the first time at the hearing on Johnson's Rule 59(e) motion. What the Greens fail to address, and what the Court of Appeals erred in failing to recognize, is that the limitations on presenting evidence in a motion for reconsideration do not apply so clearly in the context of a party contesting a default damages award.

Johnson simply could not have offered this evidence prior to judgment because judgment was entered by default, prior to his appearance. The rule stated in *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App 1990) stands for the proposition that a party challenging a judgment cannot use Rule 59(e) to raise arguments never before offered for the trial court's consideration. For instance, *Hickman* was a divorce action in which the wife argued that the husband's civil service retirement fund should impact the court's distribution of marital property. *Hickman*, 301 S.C. at 456, 392 S.E.2d at 482. This evidence only arose after a remand from appeal and after the wife was represented by new counsel. These limitations on evidence in Rule 59(e) motions cannot apply where the party is challenging a default judgment.

As to their fourth point, the Greens are simply incorrect. Johnson raised to the Court of Appeals the Master's failure to provide any factual findings supporting the trial court's punitive damages award. *See* Johnson's Final Brief on Appeal, § IV (C), at pp. 16-17 ("neither the Master's

June 5, 2019, order, nor his August 14, 2020, Amended Order, contain any factual findings that Johnson's misconduct was willful, wanton, or in reckless disregard of the plaintiff's rights").

CONCLUSION

For these reasons, this Court should grant Mervin Lee Johnson's Petition, issue a writ of certiorari, review the Court of Appeals' erroneous order vacating the Master-in-Equity's Amended Damages Order, and correct the court's failure to allow Johnson to defend this action on its merits.

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