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**Oct 03 2024**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM SUMTER COUNTY  
James C. Campbell, Sumter County Clerk of Court

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Circuit Court Case No.: 2024-CP-43-00703  
Appellate Case No. 2024-001073

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Christol Morton.....Respondent,

v.

Carolina Cutting Coring, LLC and Sean Michael Shaffer, Jr..... Appellants.

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**INITIAL BRIEF OF APPELLANTS**

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**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... ii

STATEMENT OF ISSUES ON APPEAL .....1

STATEMENT OF THE CASE.....2

ARGUMENT .....4

    I.    IS THE CLERK OF COURT’S ORDER OF REFERENCE  
          IMMEDIATELY APPEALABLE? .....4

        a.    Standard of Review .....4

        b.    Appellants’ Default Does Not Affects Its Right to Appeal the  
              Order of Reference .....4

    II.   DID THE CLERK OF COURT HAVE THE AUTHORITY TO  
          APPOINT AND SIGN AN ORDER OF REFERENCE REFERRING  
          THE CASE TO A SPECIAL REFEREE IN A COUNTY WITH A  
          SITTING MASTER-IN-EQUITY? .....5

        a.    Rule 53, SCRCP, does not allow Clerk of Courts to appoint  
              Special Referees in Counties with sitting Masters-in-Equity.....5

        b.    Abuse of the Special Referee System.....7

        c.    Plaintiff has failed to waive its jury demand.....8

CONCLUSION.....9

## TABLE OF AUTHORITIES

### Cases

<i>Lester v. Dawson</i> , 327 S.C. 263, 491 S.E.2d 240 (1997) .....	4
<i>Edwards v. Timmons</i> , 297 S.C. 314, 377 S.E.2d 97 (1988) .....	4
<i>Roche v. Young Bros., of Florence</i> , 332 S.C. 75, 504 S.E.2d 311, (1998).....	4
<i>Georgia-Carolina Bail Bonds, Inc. v. Cnty. of Aiken</i> , 354 S.C. 18, 579 S.E.2d 334, (Ct. App. 2003) .....	5

### Statutes

S.C. Code Ann. § 14-3-330(2) .....	4
S.C. Code Ann. § 14-11-60.....	5, 6, 7

### Rules

SCRCP 53 .....	5, 6, 7
SCRCP 59 .....	2
SCRCP 38 .....	8

**STATEMENT OF ISSUES ON APPEAL**

- I. IS THE CLERK OF COURT'S ORDER OF REFERENCE IMMEDIATELY APPEALABLE?**
  
- II. DID THE CLERK OF COURT HAVE THE AUTHORITY TO APPOINT AND SIGN AN ORDER OF REFERENCE REFERRING THE CASE TO A SPECIAL REFEREE IN A COUNTY WITH A SITTING MASTER-IN-EQUITY?**

## STATEMENT OF THE CASE

On April 22, 2024, Respondent filed a Summons and Complaint related to a motor vehicle accident that occurred on September 29, 2022, and demanded a jury trial. (Complaint) On June 10, 2024, counsel for Respondent filed a Motion for Entry of Default and Referral to Special Referee. (Motion to Refer) On June 12, 2024, the Clerk of Court for Sumter County signed an Order of Entry of Default and an Order of Referral to Special Referee. (Order of Default and Order of Reference) This Order of Reference was drafted by and submitted directly to the Clerk of Court by the Respondent's counsel. On June 13, 2024, the undersigned made a notice of appearance in the case for Appellants and filed a Motion to Set Aside Entry of Default and a Motion to Reconsider and Vacate the Order of Referral to Special Referee under SCRCP 59(e). (Motion to Set Aside Default and Motion for Reconsideration) On June 20, 2024, Appellants filed a Supplemental 59(e) Motion to Vacate the Order of Reference to Special Referee. (Supplemental Motion for Reconsideration) On June 24, 2024, Appellants filed a Memorandum of Law in Support of Motions for Reconsideration. (Memorandum in Support)

On June 26, 2024, Appellants timely filed a Notice of Appeal with the South Carolina Court of Appeals. Appellants filed its Notice of Appeal prior to a ruling on its SCRCP 59(e) motions, due to a disagreement between the parties regarding if the Special Referee had authority to hear the pending motions. On July 1, 2024, Respondent filed a Motion to Dismiss Appeal and to Expedite Ruling. On July 10, 2024, Appellants filed a Return to Respondent's Motion to Dismiss Appeal and to Expedite Ruling. On August 29, 2024, the Court of Appeals issued a ruling on Respondent's Motion to Dismiss. The Order granted Respondent's Motion to expedite ruling, but denied Respondent's motion to dismiss without prejudice

This case is pending in Sumter County, which has a sitting Master-In-Equity and had one at the time the case was referred to the Special Referee.

Appellants argue that the Clerk of Court for Sumter County does not have the authority to appoint and refer a case to a Special Referee in a county with a sitting Master-in-Equity. Appellants argue only a Circuit Court Judge has the authority to appoint the Special Referee if a case will be referred in a county with a sitting Master-in-Equity.

Therefore, Appellants contend the Court should vacate the Clerk of Court's Order of Reference to the Special Referee, return the case to the Circuit Court, and require Respondent to file a motion for an order of reference that will be heard and ruled on by a Circuit Court Judge.

## ARGUMENT

### I. IS THE CLERK OF COURT'S ORDER OF REFERENCE IMMEDIATELY APPEALABLE?

#### a. Standard of Review

An Order of Reference is immediately appealable because it affects the mode of trial. The South Carolina Supreme Court “has held that orders affecting the mode of trial affect substantial rights under S.C. Code Ann. § 14–3–330(2) (1977) and must, therefore, be appealed immediately.” *Lester v. Dawson*, 327 S.C. 263, 266, 491 S.E.2d 240, 241 (1997). “Moreover, the failure to timely appeal an order affecting the mode of trial effects a waiver of the right to appeal that issue.” *Id.* See *Edwards v. Timmons*, 297 S.C. 314, 377 S.E.2d 97 (1988) (where appellant did not appeal the order referring matter to master in equity, she could not complain after final order that she was deprived of her right to a trial by jury). It is clear that the law in South Carolina is that Orders of Reference must be immediately appealed or that right to appeal will be waived.

#### b. Appellants' Default Does Not Affects Its Right to Appeal the Order of Reference

A defaulting party is “...deemed to have admitted the truth of the plaintiff's allegations and to have conceded liability.” *Roche v. Young Bros.*, of Florence, 332 S.C. 75, 81, 504 S.E.2d 311, 314 (1998). A defaulting party does not lose all its rights to litigate a case. There is no case law to support a position that because Appellants are in default they have lost their “substantial right” to challenge the mode of trial.

**II. DID THE CLERK OF COURT HAVE THE AUTHORITY TO APPOINT AND SIGN AN ORDER OF REFERENCE REFERRING THE CASE TO A SPECIAL REFEREE IN A COUNTY WITH A SITTING MASTER-IN-EQUITY?**

**a. Rule 53, SCRPC, does not allow Clerk of Courts to appoint Special Referees in Counties with sitting Masters-in-Equity**

Rule 53(a) states “(a) Master and Special Referee Defined. The term “master” means the master-in-equity for the county. The term “special referee” means a member of the South Carolina Bar to whom a matter has been referred under S.C. Code Ann. § 14-11-60.”

(emphasis added). This language clearly requires special referees to be appointed in the manner that does not conflict with the requirements of S.C. Code Ann. § 14-11-60.

S.C. Code Ann. § 14-11-60 states:

In case of a vacancy in the office of master-in-equity or in case of the disqualification or disability of the master-in-equity from interest or any other reason for which cause can be shown the presiding circuit court judge, upon agreement of the parties, may appoint a special referee in any case who as to the case has all the powers of a master-in-equity. The special referee must be compensated by the parties involved in the action.  
(emphasis added)

Rule 53, SCRPC and S.C. Code Ann. § 14-11-60 must be read together to determine the proper procedures to refer cases. The clear language of Rule 53 specifically demonstrates that the General Assembly intended to incorporate the language and requirements of S.C. Code Ann. § 14-11-60 into the rule. “If a statute's language is unambiguous and clear, there is no need to employ the rules of statutory construction and this Court has no right to look for or impose another meaning.” *Georgia-Carolina Bail Bonds, Inc. v. Cnty. of Aiken*, 354 S.C. 18, 24, 579 S.E.2d 334, 337 (Ct. App. 2003). The clear and unambiguous language of S.C. Code Ann. § 14-11-60 states that the only grounds to appoint a special referee in a county with a sitting master-in-equity are: 1) “[i]n case of a vacancy in the office of master-in-equity, or 2) in case of the

disqualification or disability of the master-in-equity from interest or any other reason for which cause can be shown...” Additionally, the appointment of that Special Referee must be done only by “the presiding circuit court judge, upon agreement of the parties...” Appellants would concede that if one of the parties is in default, their consent is not needed. However, in that case, the non-defaulting party would still need to move before a circuit court judge to have a special referee appointed.

Rule 53(b), SCRCP, states “[in] an action where the parties consent, in a default case, or an action for foreclosure, some or all of the causes of action in a case may be referred to a master or special referee by order of a circuit judge or the clerk of court.” Respondent’s position is that this language gives judicial authority to clerk of courts to refer cases directly to special referees in any action where the parties consent; in a default case; or an action for foreclosure. However, before a case is referred, it must be determined if a master-in-equity or a special referee is the correct individual to have the case referred to. Due to the fact that Rule 53(a) incorporates the language of S.C. Code Ann. § 14-11-60, it would be improper for any case to be referred to a special referee in any county where there is a sitting master-in-equity, unless there has been a determination by a circuit court judge that there is a “vacancy in the office of master-in-equity or [there is a] ...disqualification or disability of the master-in-equity from interest or any other reason for which cause can be shown.” Appellants concede that circuit court judges have wide discretion for the reasons why a case would be referred to a special referee in a county with a sitting master-in-equity, but that determination must be made by a duly elected circuit court judge.

**b. Abuse of the Special Referee System**

Respondent's view of the special referee system in South Carolina appears to be that if a party is in default, Rule 53 allows the Plaintiff's attorney to appoint his own special referee anywhere in the state without any judicial oversight and regardless of whether the county where the case is pending has a sitting master-in-equity. Respondent simply needs to present a proposed order of reference to the clerk of court with his handpicked special referee, who may be unqualified to serve as a judge. In counties with a sitting master-in-equity, such a position is contrary to the clear and unambiguous language of SCRPC Rule 53 and S.C. Code § 14-11-60.

While it is true that the special referee system allows any member of the South Carolina Bar to serve as a special referee, SCRPC Rule 53 and S.C. Code § 14-11-60 are designed to provide safeguards that protect parties by making sure cases are either referred to sitting masters-in-equity who have been appointed by the Governor with the consent of the General Assembly, or to duly appointed and qualified special referees.

In enacting S.C. Code Ann. § 14-11-60, the General Assembly created a system that when a case calls for the appointment of a special referee in a county with a sitting master-in-equity, that decision of who will serve as the special referee is made by a circuit court judge. Circuit court judges have the appropriate legal experience and judicial screening background to assure that the appointment of a particular special referee has the required legal experience and qualifications to hear the particular case being referred.

Additionally, even in counties without a sitting master-in-equity, Rule 53 does not grant a Plaintiff's attorney the power to appoint the special referee to whom the case is referred. Clerk of courts should be required to appoint attorneys deemed qualified to act as special referees. A clerk of court who signs an order of reference without having any knowledge of that attorney's

qualifications to serve as a special referee violates Defendant's due process rights. This action by the clerk of court deprives Defendants of a hearing before a neutral and detached judicial officer.

**c. Plaintiff has failed to waive its jury demand**

Respondent has failed to waive its jury demand in the Complaint prior to the Order of Reference being filed. For this fact alone, the Order of Reference should be vacated. Appellants do not dispute that under Rule 38(d), SCRCP, Respondent has the right to waive her jury demand unilaterally. However, Respondent never waived her jury trial demand. Respondent may argue that by requesting the Order of Reference be signed, that sufficiently constitutes a waiver of her jury trial demand. Such an argument lacks merits. Rule 38(b) requires a party to demand a jury trial "in writing." The purpose of requiring the jury demand to be in writing is so all parties to the case can be notified and such notification may affect how Defendants choose to litigate a matter. It would be illogical to allow that same party, who was required to demand a jury trial in writing, to then waive that demand in a different way. Respondent should be required to affirmatively, and in writing, waive its jury demand prior to the mode of trial changing from a jury case to a non-jury case.

## CONCLUSION

For the above stated reason, Appellants seek an order from the court vacating the Order of Reference, returning the case to the Circuit Court, and requiring Respondent to file a motion with the Circuit Court if she wishes to refer the case to a Special Referee.

Respectfully Submitted,

**TURNER, PADGET, GRAHAM  
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**PROOF OF SERVICE**  
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The undersigned, attorney of record for the Appellants, certifies that on **October 3, 2024**, a copy of the **Initial Brief of Appellants** was served on Attorneys for Respondents, via Electronic Mail as follows:

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