

**RECEIVED**

**Sep 24 2024**

**SC Court of Appeals**

**THE STATE OF SOUTH CAROLINA**

---

**APPEAL FROM HORRY COUNTY**  
**Alan D. Clemmons, Master in Equity**

---

**Appellate Case No. 2024-001318**

---

**Court of Common Pleas in Horry County Case No. 2023-CP-26-02193**

---

**BENJAMIN SHIRLEY, Appellant**

**v.**

**CHRISTOPHER MARTIN AND**  
**STEPHANIE MARTIN, Respondents**

)  
)  
)  
)  
)  
)

**From Horry County**

---

**PLAINTIFF-APPELLANT'S INITIAL BRIEF**

---

TABLE OF CONTENTS

	PAGE
TABLE OF AUTHORITIES/CASES.....	3
ISSUES PRESENTED.....	4
STATEMENT OF THE CASE.....	4
STATEMENT OF GROUNDS FOR APPELLATE REVIEW.....	6
STANDARD OF REVIEW.....	6
ARGUMENT.....	7
I. UNDER A <i>DE NOVO</i> STANDARD OF REVIEW, THE MASTER IN EQUITY WRONGLY ASSESSED THE ISSUE OF LIABILITY DURING THE DAMAGES HEARING AND IMPROPERLY CONSIDERED EVIDENCE OF A CO-DEFENDANT, STEPHANIE MARTIN, WHEN THE CIVIL MATTER WAS REFERRED TO THE MASTER IN EQUITY ONLY AS TO CHRISTOPHER MARTIN, WHO WAS THE SOLE PARTY IN DEFAULT.....	7
II. UNDER A <i>DE NOVO</i> STANDARD OF REVIEW, THE MASTER IN EQUITY IMPROPERLY DETERMINED THE CIVIL CASE BETWEEN THE OTHER RESPONDENT, STEPHANIE MARTIN, WHEN THE CIVIL CASE WAS REFERRED TO THE MASTER IN EQUITY ONLY AS BETWEEN THE APPELLANT AND THE RESPONDENT, CHRISTOPHER MARTIN.....	9
III. UNDER AN ABUSE OF DISCRETION STANDARD OF REVIEW, THE MASTER IN EQUITY IMPROPERLY DENIED THE PLAINTIFF-APPELLANT’S RULE 60 MOTION WHEN THE MASTER IN EQUITY FAILED TO ADDRESS THE MERITS OF THE RULE 60(B) MOTION AND SOLELY DECIDED THE MOTION BASED ON THE MASTER IN EQUITY’S PRIOR RULING ON A 59(G) MOTION.....	10
CONCLUSION.....	13

**TABLE OF AUTHORITIES**

**CASES**

**PAGE**

---

<u>Raby Const., L.L.P. v. Orr,</u> 358 S.C. 10, 594 S.E.2d 478 (2004).....	7, 8
<u>Roche v. Young Bros., of Florence,</u> 332 S.C. 75, 504 S.E.2d 311 (1998).....	8, 9
<u>Williams v. Watkins,</u> 384 S.C. 319, 681 S.E.2d 914 (Ct. App. 2009).....	11

**STATUTES**

**PAGE**

---

<i>S.C. App. Ct. R. 201</i> .....	7
<i>S.C.R.Civ.P. 53</i> .....	10
<i>S.C.R.Civ.P 60</i> .....	11, 13
<i>S.C.R.Civ.P. 59</i> .....	13

**OTHER AUTHORITIES**

**PAGE**

---

Email between Plaintiff’s counsel and the Staff Attorney for the Master in Equity.....	11
Damages Hearing Transcript.....	8, 12
Master in Equity’s Order for Plaintiff’s Rule 60 Motion.....	10
Proposed Order for Order of Reference.....	9
Masters Decree and Judgment.....	7, 8, 9
Rule 60(b) Motion Ruling.....	11

### **ISSUES PRESENTED**

- I. UNDER A *DE NOVO* STANDARD OF REVIEW, DID THE MASTER IN EQUITY IMPROPERLY ASSESS THE ISSUE OF LIABILITY DURING THE DAMAGES HEARING AND IMPROPERLY CONSIDER EVIDENCE OF A CO-DEFENDANT, STEPHANIE MARTIN, WHEN THE CIVIL MATTER WAS REFERRED TO THE MASTER IN EQUITY ONLY AS TO CHRISTOPHER MARTIN, WHO WAS THE SOLE PARTY IN DEFAULT?**
- II. UNDER A *DE NOVO* STANDARD OF REVIEW, DID THE MASTER IN EQUITY IMPROPERLY DETERMINE THE CIVIL CASE BETWEEN THE APPELLANT AND THE OTHER RESPONDENT, STEPHANIE MARTIN, WHEN THE CIVIL CASE WAS REFERRED TO THE MASTER IN EQUITY ONLY AS BETWEEN THE APPELLANT AND THE RESPONDENT, CHRISTOPHER MARTIN?**
- III. UNDER AN ABUSE OF DISCRETION STANDARD OF REVIEW, DID THE MASTER IN EQUITY IMPROPERLY DENY THE PLAINTIFF-APPELLANT'S RULE 60 MOTION WHEN THE MASTER IN EQUITY FAILED TO ADDRESS THE MERITS OF THE RULE 60 MOTION AND SOLELY DECIDED THE MOTION BASED ON THE MASTER IN EQUITY'S PRIOR RULING ON A 59(G) MOTION?**

### **STATEMENT OF THE CASE**

This appeal stems from a civil case, Case No. 2023-CP-26-02193, involving a contract with the Respondents for the painting of the Respondents's home from back in January of 2023. Unable to receive just compensation for his services, the Appellant then filed a civil suit against the Respondents for their failure to abide by the terms of the contract. Having received no answer from the Respondent, Christopher Martin, the Appellant then filed an Order of Reference solely for the Respondent, Mr. Martin, which was approved on October 3, 2023. The case against the other Respondent, Stephanie Martin, remained within the jurisdiction of the Court of Common Pleas in Horry County. On the day of February 7, 2024, the Damages Hearing was held for the referred matter of Benjamin Shirley v. Christopher Martin. And again, the Respondent,

Christopher Martin, failed to appear at the Damages Hearing, only the other Respondent, Stephanie Martin, appeared for the hearing. However, the hearing was not intended to be a resolution of any matter between her, Stephanie Martin, and the Appellant, yet the Master in Equity somehow found it incumbent upon him to provide a judgment in that hearing that included the case that was still pending against Stephanie Martin in the Court of Common Pleas. During the Damages Hearing, the court allowed the other Respondent, Stephanie Martin, to place herself on the stand and testify as to the facts of the case when she was not the one on trial that day or in that venue. The Court's ruling in the Judgment from the Damages Hearing also considered the other Respondent's, Stephanie Martin's, testimony and proffering of other evidence.

Following the Damages Hearing, the Master in Equity provided a Judgment that found in favor of the Respondents, despite the lack of appearance of the required Respondent, Christopher Martin, for purposes of the Damages Hearing and the pending matter in the Court of Common Pleas against the other Respondent, Stephanie Martin.

Later, the Appellant filed a Rule 59(g) Motion on March 5, 2024 with the Clerk of Court in Horry County. After several weeks had passed, hearing nothing about a possible ruling on the motion, the Staff Attorney for the Master in Equity reached out to the Plaintiff's counsel to explain that the Staff Attorney was reviewing older cases and recognized that there was a pending motion, the Rule 59(g) Motion, which the Master in Equity had not ruled on at that time. The Master in Equity then issued a ruling denying the Appellant's Rule 59(g) Motion due to a failure to serve a copy on the Master in Equity in this matter. Prior to the Court's denial of the Motion, the Appellant filed a Rule 60 Motion due to excusable neglect or mistake on the part of the Appellant for its failure to provide the Court a copy of the Rule 59(g) Motion within the

allotted time. The Court only provided a ruling as to the Rule 59(g) Motion. After learning the Court failed to issue a ruling on the Rule 60 Motion and without considering the merits of the Rule 60 Motion, the Master in Equity swiftly denied the Appellant's Rule 60 Motion due to the same reasons provided in the Court's ruling as to the Rule 59(g) Motion. Now, the Appellant is seeking relief from the South Carolina Court of Appeals in this matter due to the aforementioned issues raised in this Brief.

### **STATEMENT OF GROUNDS FOR APPELLATE REVIEW**

The Appellant appeals from a final judgment of the Master in Equity of Horry County, South Carolina. *S.C. App. Ct. R. 201*.

### **STANDARD OF REVIEW**

The standard of review applicable to determining whether the Master in Equity improperly considered evidence during the course of the Damages Hearing on February 7, 2024 is *de novo* since this matter is a question of law because the Court's decision making in a damages hearing for a default is governed by Rule 55 of the South Carolina Rules of Civil Procedure and case law.

As for the issue of whether the Master in Equity improperly made a ruling in this matter with its Judgment in favor of the other Respondent, Stephanie Martin, the issue is to be governed by a *de novo* standard of review because it is a question of law since this subject deals with Rule 53 of the South Carolina Rules of Civil Procedure.

And finally, the standard of review to be applied in determining whether the Master in Equity improperly denied the Appellant's Rule 60 Motion is an abuse of discretion standard. Based on the South Carolina Supreme Court's decision in Raby Const., L.L.P. v. Orr, 358 S.C. 10, 594 S.E.2d 478 (2004), the decision of whether to grant or deny a motion under Rule 60(b)

lies within the sound discretion of the judge, so the standard of review is limited to determining whether there was an abuse of discretion. Raby, 358 S.C. 10, at 17, 594 S.E.2d 478, at 482.

### ARGUMENT

**I. UNDER A *DE NOVO* STANDARD OF REVIEW, THE MASTER IN EQUITY WRONGLY ASSESSED THE ISSUE OF LIABILITY DURING THE DAMAGES HEARING AND IMPROPERLY CONSIDERED EVIDENCE OF A CO-DEFENDANT, STEPHANIE MARTIN, WHEN THE CIVIL MATTER WAS REFERRED TO THE MASTER IN EQUITY ONLY AS TO CHRISTOPHER MARTIN, WHO WAS THE SOLE PARTY IN DEFAULT.**

The Court should reverse the master in equity's decision because the court, under a *de novo* standard of review, wrongly assessed the issue of liability during the damages hearing and improperly considered evidence when the court allowed the presentation of evidence by the Defendant, Stephanie Martin, and based its ruling in the Judgment on that Defendant's evidence.

In Roche v. Young Bros., of Florence, 332 S.C. 75, 504 S.E.2d 311 (1998), the South Carolina Supreme Court expressed the manner in which a damages hearing is conducted when a party is considered to be in default. A defaulting party is "deemed to have admitted the truth of the plaintiff's allegations and to have conceded liability." Id. at 81. Regarding the present case, the Respondent, Christopher Martin, conceded on the issue of liability because of his default. While the other Respondent, Stephanie Martin, did not concede on the issue of liability, given that she was not in default, the damages hearing was solely for Christopher Martin because of the Order of Reference. However, the master in equity found in favor of the other Respondent, Stephanie Martin, due to "Plaintiff's failure to complete the painting of the Martin home in a good and workmanlike manner." *Master's Decree and Judgment*. The court went on to state that "Mrs. Martin presented credible evidence that Plaintiff's work product was not consistent with a professional who has purported to have the knowledge, skill and experience to perform such tasks." Id. These statements served as the reasoning for the court's decision for damages against Mrs. Martin, but it would be impossible to think that this basis does not also serve as the reason for why the court would limit the amount of damages against the Co-Defendant, Mr. Martin, to only the

initial deposit as well. The court concluded that “Plaintiff’s compensation shall also be limited to the initial deposit of \$2,500.00 and no additional damages are awarded against Mr. Martin.” *Id.* One would imagine that when a Plaintiff offers damages nearly four times that amount, the award of damages against the defaulting party, who was not present for the hearing, would have otherwise been more favorable, if the court was truly considering evidence that was properly offered to the tribunal.

Additionally, when a party is considered to be in default, “that party is limited to cross-examining witnesses and objecting to evidence.” *Roche* at 81-82. In the case *sub judice*, the master in equity permitted the other Respondent, Mrs. Martin, who was not in default and had no relation to the damages hearing, to proffer evidence by testifying and providing various documents to support the assertion that the Respondent, Mr. Martin, was not liable for any damages in this case. However, the Respondent, Mr. Martin, did not appear for the damages hearing, nor was he represented by any counsel, but was timely served with notice of the hearing. Despite these facts, the court found it appropriate for the other Respondent, Mrs. Martin, to offer evidence. *Damages Hearing Transcript*, p. 25, l. 6-12, p. 34, l. 5-25, and p. 35, l. 1-25. The defaulting party, as it has already been mentioned, is expressly restricted to only cross-examination and objections to the Plaintiff’s proffer of evidence. The master in equity still allowed for the direct examination of Stephanie Martin, the other Respondent, and the offering of various photos and other documents to be turned over to the master in equity. *Id.* at p. 34, l. 5-25, p. 35, l. 1-25. These allowances by the court are blatantly contrary to the case law surrounding the circumstances for how the court shall conduct a damages hearing with a defaulting party. Due to these departures from the letter of the law, the Court should reverse the lower court’s judgment.

In summary, the Court should determine that the master in equity did in fact wrongly consider the issue of liability during the damages hearing and improperly considered evidence of a co-defendant, Mrs. Martin, when the civil matter was referred to the master in equity only as to the Mr. Martin, who was the sole party in default.

**II. UNDER A *DE NOVO* STANDARD OF REVIEW, THE MASTER IN EQUITY IMPROPERLY DETERMINED THE CIVIL CASE BETWEEN THE OTHER RESPONDENT, STEPHANIE MARTIN, WHEN THE CIVIL CASE WAS REFERRED TO THE MASTER IN EQUITY ONLY AS BETWEEN THE APPELLANT AND THE RESPONDENT, CHRISTOPHER MARTIN.**

The Court should reverse the master in equity's ruling because the court, under a *de novo* standard of review, improperly decided a still pending civil case between the other respondent, Stephanie Martin, when the civil case only had an Order of Reference for the matter between the Appellant and the Respondent, Mr. Martin.

In Rule 53 of the South Carolina Rules of Civil Procedure, the rule provides that "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 court judge or the clerk of court." The statute also states that the "clerk shall provide the master or special referee with a copy of the order of reference." *S.C.R.Civ.P. 53*.

On October 3, 2023, in the matter of Benjamin Shirley v. Christopher Martin and Stephanie Martin, the Plaintiff's Proposed Order of Reference with the Defendant, Christopher Martin, in Default was approved by the Court of Common Pleas to have only the Defendant, Christopher Martin, referred to the master in equity. *Proposed Order of Reference*. Mr. Martin was referred because he was in default for having not answered the Complaint and Summons within the statutory time. All the while, the matter as between the Plaintiff, Mr. Shirley, and the Co-Defendant, Stephanie Martin, remained in the Court of Common Pleas.

The master in equity's Judgment did rule in favor of the Defendant, Stephanie Martin, and established that the "Plaintiff's compensation shall be limited to the initial deposit of \$2,500.00 according to evidence presented in the court record." *Masters Decree and Judgment*. By making such a ruling, the master in equity did wrongfully determine a matter that was never before it.

Therefore, the Court should reverse the lower court's ruling due to the master in equity settling a case in which the Court of Common Pleas never relinquished jurisdiction, given that the Order of Reference only referred the case between the Plaintiff, Mr. Shirley, and the Defendant, Mr. Martin, to the master in equity.

**III. UNDER AN ABUSE OF DISCRETION STANDARD OF REVIEW, THE MASTER IN EQUITY IMPROPERLY DENIED THE PLAINTIFF-APPELLANT'S RULE 60 MOTION WHEN THE MASTER IN EQUITY FAILED TO ADDRESS THE MERITS OF THE RULE 60(B) MOTION AND SOLELY DECIDED THE MOTION BASED ON THE MASTER IN EQUITY'S PRIOR RULING ON A 59(G) MOTION.**

The master in equity did, under an abuse of discretion standard of review, improperly deny the Plaintiff-Appellant's Rule 60 Motion when the master in equity failed to address the merits of the rule 60 motion and solely decided the motion based on the master in equity's prior ruling on a 59(g) Motion.

Under Rule 60(b) of the South Carolina Rules of Civil Procedure, "on motion and upon such terms are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect. Furthermore, the "motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken." *S.C.R.Civ.P. 60(b)*.

Here, the Plaintiff-Appellant made the mistake of not providing a copy of the 59(g) Motion with the master in equity, yet the Plaintiff-Appellant did in fact file such motion with the court on March 5, 2024, which was within the ten days of the Judgment from the Damages Hearing. Thus, the court did have or should have had notice from the Clerk of Court in Horry County about the filing of the 59(g) Motion. After contacting the master in equity's office, the Appellant learned that the court never received any such motion related to 59(g), so the Appellant, recognizing the mistake, did file a Rule 60(b), which does contemplate such excusable acts.

On June 17, 2024, the master in equity did provide a ruling on the Rule 59(g) Motion, denying the motion due to the absence of a copy being offered to the court. The master in equity never made a ruling

on the Rule 60(b) motion until July 16, despite the Rule 60(b) Motion having been filed on May 2, 2024. In the court's ruling on the 60(b) motion, the court stated that the Rule 60(b) Motion "did not address the merits of the case as did the previously denied 59(g) motion." *Rule 60(b) Motion Ruling*.

In order to gain relief under Rule 60(b)(1) of the South Carolina Rules of Civil Procedure, a "party must first show a good faith mistake of fact has been made." Williams v. Watkins, 384 S.C. 319, 681 S.E.2d 914 (Ct. App. 2009). Here, the Plaintiff-Appellant made the good faith mistake that due to the filing of the motion with the Clerk of Court for Horry County, the clerk's office would also provide a copy of the Plaintiff's motion to the judge as well, given that it is local practice for the clerk to do so, at least in the present jurisdiction, when filing any sort of other motion with the clerk's office, whether in general sessions or court of common pleas. Based on this mistake, the Plaintiff would argue that this misunderstanding is a good faith mistake of fact.

The factors for determining whether to grant relief in a Rule 60(b) Motion are the following: the timing of the motion for relief, whether the party requesting relief has a meritorious defense, and the degree of prejudice to the opposing party if relief is granted. *Id.* at 324.

Here, the timing of the motion was prompt upon learning that the master in equity never received any such copy of the Plaintiff's Rule 59(g) Motion. The Plaintiff learned on April 29, 2024 in an email from the staff attorney for the master in equity that the judge never received a copy, and then the Plaintiff swiftly filed the Rule 60(b) Motion on May 2, 2024. *Email from Staff Attorney for the Master in Equity*. Thus, the timing was reasonable for the subsequent Rule 60(b) Motion.

As for the second element, the Plaintiff's meritorious defense may not have been contained in the Rule 60(b) Motion, but the master in equity's ruling on that motion does concede that the former 59(g) Motion did address the merits. When both these motions are read in conjunction together, it is clear that the Plaintiff did in fact have several meritorious defenses in this matter, which include the following: (1) the damages hearing was one only as to damages, rather than the merits of the case, including liability,

and (2) the court disregarded how the damages hearing was intended only for the Respondent, Christopher Martin, and decided a case that is within the jurisdiction of the court of common pleas. Based on these facts, the Plaintiff did in fact have a meritorious defense(s) because the master in equity violated several provisions of law in making its decision that day during the damages hearing.

And finally, the degree of prejudice is minimal, if not non-existent, in this case. Given that there has been no loss of any material or evidence that the Defendants would have been able to offer in this case, given that the Defendants did provide all the relevant evidence they had in their possession during the hearing. The Defendant, Stephanie Martin, offered around fifty-seven photographs to the court, which the court ordered into evidence. *Damages Hearing Transcript*, p. 34, l. 8-24. She stated on the record that those fifty-seven documents already filed with the court were “pretty much the same thing” as the ones she had brought to court that day for the damages hearing. *Id.* at p. 35, l. 10. Thus, there would be no prejudice in terms of the evidence that could be offered by the Defendants. *S.C.R.Civ.P. 60*. Furthermore, the Defendants were pro-se in this matter, so they would not incur any additional costs in legal fees if the court found it appropriate to grant the relief sought.

Despite the satisfaction of the elements for a Rule 60(b) Motion, the court still denied the Plaintiff’s Motion. While the judge does have discretion when determining a Rule 60(b) motion, the judge’s ruling was almost solely based on improper timing of providing the judge with a copy of the 59(g) Motion that was previously filed. And when the Rule 59(g) Motion is read in conjunction with the Rule 60(b) Motion, which are inherently related because the latter motion is based on a mistake with the former, then the Plaintiff does clearly have a meritorious defense, as previously explained.

When examining the South Carolina Rules of Civil Procedure, sometimes there are additional notes provided by the legislature in order to provide some clarity about the rules and the purposes behind them. Rule 59, specifically subsection (g), was added as an amendment to the original rule in an effort to “help insure that the judge is promptly notified that the motion has been filed.” *S.C.R.Civ.P. 59*. A failure to notify the judge, as is required by the rule, does not prevent the court from being informed of a motion, as

the clerk's office does manage any and all filings related to motions. The clerk's office does indeed notify the judge of pending or outstanding motions by distributing the motions and notices thereof to the necessary parties, including the court. Prior filings in the present case, after the matter between Benjamin Shirley and Christopher Martin was referred to the master in equity, went through the clerk's office, which has notified the court in the past. It should not have thus been fatal to the Rule 59 Motion then for failure to file an additional copy with the court, nor should it have been fatal for the same reason in the Rule 60 Motion. Thus, the Court should find for this additional reason that the master in equity abused its discretion in its ruling on the Rule 60 Motion.

Therefore, the Court should find that the lower court abused its discretion when denying the Plaintiff's Rule 60(b) Motion because of the master in equity's failure to consider the Plaintiff's meritorious defense and Rule 60(b) Motion more broadly as a separate motion on its own merits rather than decide it based on the same reasoning as the court did for the Rule 59(g) Motion. Additionally, the Court should determine that the legislative notes for Rule 59(g) does explain that the failure to provide an additional copy to the judge should not be fatal the motion such that the master in equity did abuse its discretion in denying the Plaintiff's Rule 60(b) Motion on the same grounds. The Appellant respectfully requests that the Court overturn the lower court's ruling on the Rule 60(b) Motion due to the above-mentioned argument.

#### **IV. CONCLUSION**

For the foregoing reasons, the Plaintiff respectfully requests that this Court reverse the master in equity's decision in the Judgment from the Damages Hearing, as well as the Ruling from the Rule 60(b) Motion.

Respectfully submitted,

MASSEY LAW FIRM, LLC

By: s/Kenneth B. Massey

Kenneth B. Massey, S.C. Bar No. 8153

200 Elm St.

Conway, SC 29526

(843) 488-3777

kblainemassey@yahoo.com

Attorney for Plaintiff-Appellant, Benjamin Shirley

Conway, South Carolina

September 11 2024