STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	))	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
David Pendarvis,	))	Docket No. 2012-CP-40-07125
Plaintiff,	))	
vs.	))	**ORDER**
Wilson Miranda and Glendy M. Aguilar,	)))	
Defendants.	)	

RICHLAND COUNTY
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JEANETTE W. McBRIDE
C.C.P. & G.S.

This matter came before the Court on June 18, 2013 upon Defendants' Motion to Set Aside Entry of Default. Because a judgment was entered against the Defendants at the time Defendants' Motion was filed, the Motion is more aptly a Motion for Relief from Judgment, pursuant to Rule 60, SCRCP. Present at the hearing were Barry B. George, counsel for David Pendarvis, and Caroline H. Raines, counsel for Meyvis Miranda and Wilson Orozco. After considering the law, the arguments, and all matters submitted, the Motion is **DENIED**.

Plaintiff commenced this action on October 22, 2012 and Defendants were served with the Summons and Complaint by delivery to their residence on November 1, 2012. Defendants failed to file any responsive pleadings. An Affidavit of Default was filed on January 14, 2013. A damages hearing was held on February 20, 2013, after which Plaintiff was granted a $20,000 judgment against Defendants. On March 18, 2013 Defendants filed their Motion.

The power to set aside a default judgment is addressed to the sound discretion of the trial court and will not be disturbed on appeal absent a clear showing of an abuse of discretion. *Mitchell Supply Co., Inc. v. Gaffney*, 297 S.C. 160, 162-63, 375 S.E.2d 321, 322-23 (Ct. App. 1988). An abuse of discretion arises when the court issuing the order was controlled by an error of law or when the order, based upon factual conclusions, is without evidentiary support. *Goodson v. Am. Bankers Ins. Co. of Fla.*, 295 S.C. 400, 402, 368 S.E.2d 687, 689 (Ct. App. 1988).

Rule 60(b)(1), SCRCP states, "On motion and upon such terms as 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, inadvertance, surprise, or excusable neglect..." In a Rule 60(b) motion, the movant has the burden of presenting evidence proving the essential facts to entitle

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relief. *BB&T v. Taylor*, 369 S.C. 548, 552, 633 S.E.2d 501, 503 (2006). To determine whether to grant relief under Rule 60(b)(1), the court must consider the following factors: "(1) the promptness with which relief is sought; (2) the reasons for the failure to act promptly; (3) the existence of a meritorious defense; and (4) the prejudice to the other party." *Rouvet v. Rouvet*, 388 S.C. 301, 309, 696 S.E.2d 204, 208 (Ct. App. 2010) (citing *Mictronics, Inc. v. S.C. Dep't of Revenue*, 345 S.C. 506, 510-11, 548 S.E.2d 223, 226 (Ct. App. 2001)).

As to the first factor, the Court finds that the Defendants' Motion was timely made because it was filed within one year of the default judgment. As to the second factor, the Court evaluates the reasons for Defendants' failure to act promptly. To explain the default, Defendants assert they are both native Spanish speakers and are not conversational in the English language. (Aff. ¶¶ 3.) Defendants state that they did not immediately understand Plaintiff's Summons and Complaint and that their names were misstated in the documents. (Aff. ¶¶ 4, 7.) However, statements made by Defendants in their affidavits show Defendants understood the serious nature of the legal matter and thereafter contacted their insurance company about the motor vehicle accident with the Plaintiff. (Aff. ¶¶ 5.) Moreover, the "lack of familiarity with legal proceedings is not an acceptable excuse and the court will hold a layman to the same standard as an attorney." *Rouvet v. Rouvet*, 388 S.C. 301, 309, 696 S.E.2d 204, 208 (Ct. App. 2010) (citing *Hill v. Dotts*, 345 S.C. 304, 310, 547 S.E.2d 894, 897 (Ct. App. 2001)).

As to the third factor, Defendants assert that the Plaintiff's misstatement of the parties' names establish a meritorious defense to set aside the entry of the default judgment. In the Summons, Complaint, and other court documents, Defendant Wilson Orozco's name was written as "Wilson Miranda," and Defendant Meyvis Miranda's name was written as "Glendy M. Aguilar." (Aff. ¶¶ 7.) South Carolina's case law indicates that the misstatement of a party's name does not invalidate service of process or a judgment subsequently rendered. While examining Rule 4, SCRCP, the South Carolina Supreme Court wrote: "[The Court has] never required exacting compliance with the rule to effect service of process. Rather, we inquire whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings." *Roche v. Young Bros., Inc. of Florence*, 318 S.C. 207, 210, 456 S.E.2d 897 (1995). In *Waldrop v. Leonard*, the South Carolina Supreme Court considered whether an error of a name in issuing service invalidates the service and enables a default judgment to be set aside. 22 S.C. 118, 1885 WL

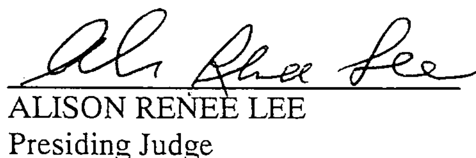
3571 (1885). After comparing the rules from various jurisdictions, the *Waldrop* Court aligned itself with the Court of Appeals of Maryland, which held:

> Where a party is served by a wrong name, and the writ is served on the party intended to be served and he fails to appear and plead the misnomer in abatement, and suffers judgment to be obtained by default against him in the erroneous name, he is concluded, and execution may be issued on the judgment in the name and levied upon the property and effects of the real defendant. *Id.* at 127.

Although the Defendants in the present case were served with a Summons and Complaint that included the wrong name, the documents were served upon the intended parties. The Defendants failed to file an answer or appear in court to address the error in the documents or the issues in the personal injury case. *See Tunstall v. The Lerner Shops, Inc.,* 160 S.C. 557, 159 S.E. 386 (1931) (a misnomer of a Defendant is immaterial, and a judgment in the action will be binding if it is duly served with process, or the defendant appears and does not plead the misnomer in abatement); *Tri-County Ice and Fuel Company, Inc. v. Palmetto Ice Company*, 303 S.C. 237, 399 S.E.2d 779 (1990) (default judgment entered against Defendant in the wrong name is valid and may be amended by changing the name). Because of Defendants' inaction, the Court issued a default and subsequent judgment against Defendants, following a damages hearing. "Where a defendant sued by a wrong name omits to plead in abatement and suffers the plaintiff to proceed to judgment, though he has never appeared to the wrong name, this Court will not interfere to set aside the proceedings." *Waldrop,* 22 S.C. at 123. Pursuant to the rule stated in *Waldrop*, the Defendants' defense is barred. As to the final factor, which considers the degree of prejudice to the Plaintiff if relief is granted, the Court finds the Plaintiff would be unduly prejudiced by further expense and delay.

Because the four factors have not been satisfied, the Court cannot grant relief to Defendants under Rule 60(b)(1). For the reasons set forth above, it is **ORDERED** that the Defendants' Motion to Set Aside Entry of Default Judgment is **DENIED.**

AND IT IS SO ORDERED.



ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
August 5, 2013