

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE 9TH JUDICIAL CIRCUIT
CASE NO: 2024-CP-10-01224

Leticia Gutierrez Medina individually, and
as Parent and Natural Guardian for L.D.M.,
a minor under the age of 18 years,

Plaintiffs,

v.

Adrian Rasheed White,

Defendant.

ORDER



INTRODUCTION

This matter came before me on Defendant's Motion to Set Aside and Void Judgment Pursuant to Rule 60 and Plaintiff's Motion to Strike the Answer of State Farm Mutual Automobile Insurance Co. the underinsured motorist carrier ("State Farm"). The parties extensively briefed and submitted arguments on the record during a hearing held on December 4, 2024. Gus A. Anastopoulo appeared and argued on behalf the Plaintiffs, Michael Ferri appeared and argued on behalf of the Defendant Adrian Rasheed White, and Peggy Urbanic appeared and argued on behalf of State Farm. Defendant White was also present for the hearing. For the reasons below Defendant's Motion is DENIED in its entirety, and Plaintiff's Motion is GRANTED.

FACTUAL BACKGROUND

Plaintiff's Complaint alleges that On October 6, 2023, Plaintiffs were traveling south on Ashley Phosphate Road in North Charleston when they were struck from behind by Defendant. Both Plaintiffs were injured as a result of the collision. On March 6, 2024, Plaintiffs filed suit naming Defendant Adrian Rasheed White as the Defendant.

Plaintiffs' Summons and Complaint was duly served on Defendant on April 4, 2024, via private process server Floyd Dotter at 22 Rosemont Street. The process server's affidavit indicates that Defendant confirmed his identity and accepted service while seated in a silver sedan matching the description of the vehicle involved in the underlying accident. Defendant failed to appear, plead, or otherwise defend within thirty (30) days after service. Upon Plaintiff's motion, an Order for Entry of Default was entered by the Clerk of Court on May 17, 2024. After a hearing on damages held on August 22, 2024, the Court entered judgment against Defendant in the amounts of \$223,785.34 for Leticia Gutierrez Medina and \$101,064.52 for L.D.M. Defendant White filed his Motion to Set Aside and Void the Default Judgment on September 24, 2024 under Rule 60(b)(1), (2), (3), (4), and (5). At the hearing, the Defendant's primary argument was that the Defendant had not been properly served and thus, the judgment was void.

I. DEFENDANT'S MOTION TO SET ASIDE AND VOID JUDGMENT

South Carolina Rules of Civil Procedure Rule 60(b) requires a more particularized showing of mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or "other misconduct of an adverse party." Rule 60(b), SCRPC. Relief from a default judgment is intended to be more rigorous than relief from an entry of default and requires both excusable neglect and a meritorious defense. *Rodriguez v. Gutierrez*, 391 S.C. 323, 331, 705 S.E.2d 94, 99 (Ct. App. 2011).

A. Service of Process Was Valid

There is a presumption of proper service when the rules of service are followed. *Fassett v. Evans*, 364 S.C. 42, 47, 610 S.E.2d 841, 844 (Ct. App. 2005). A valid return of service creates a legal presumption of proper service which cannot be impeached or overcome by a mere denial. Here, the process server's affidavit and detailed job notes establish that Defendant confirmed his

identity during a phone call, agreed to meet at 22 Rosemont Street, and was served while seated in a silver sedan matching the description of the vehicle involved in the underlying accident. The court finds Defendant's mere denial of service and unsubstantiated claims regarding his work schedule are insufficient to overcome the presumption of proper service. The minor discrepancy regarding Defendant's weight estimation does not invalidate service, particularly given that the process server noted Defendant remained seated in his vehicle during the interaction.

B. Defendant Has Failed to Assert a Meritorious Defense

A meritorious defense is more than merely a factor to consider under South Carolina Rules of Civil Procedure 60(b); it is a mandatory requirement. In particular, our courts have held that to obtain relief from a default judgment under Rule 60(b)(1) or 60(b)(3), SCRCP the movant must make a prima facie showing of a meritorious defense. *Stearns Bank Nat'l Ass'n v. Glenwood Falls, LP*, 373 S.C. 331, 341, 644 S.E.2d 793, 798 (Ct.App.2007). The moving party must present evidence proving facts essential to entitle him to relief and cannot rely on "mere conclusory statements that a claim or a defense is meritorious." *Holland v. Virginia Lee Co., Inc.*, 188 F.R.D. 241, 250 (W.D. Va. 1999).

Defendant collided into the back of Plaintiffs' vehicle while they were stopping for traffic. The court finds Defendant's failure to maintain a safe distance and proper control of his vehicle violates numerous statutory and common law rules of the road and is inherently negligent. Defendant claims a third vehicle contributed to the collision; however, law enforcement's investigation did not attribute any contribution to a third vehicle in causing the collision. No third vehicle has been identified nor has Defendant produced any independent witnesses to substantiate a defense that a third vehicle contributed to the crash. Defendant has only presented conclusory arguments regarding an alleged third vehicle's involvement. Furthermore, the Court finds

Defendant's vague assertions challenging the extent of Plaintiffs' damages do not constitute a meritorious defense under Rule 60, SCRCP.

Therefore, I find that Defendant has failed to present evidence proving facts essential to establish a meritorious defense as required under Rule 60, SCRCP. For the foregoing reasons, Defendant's Motion to Set Aside and Void Judgment Pursuant to Rule 60 is hereby DENIED in its entirety.

II. PLAINTIFF'S MOTION TO STRIKE THE ANSWER OF STATE FARM

A. State Farm Was Properly Served and Failed to Timely Appear

Service on the South Carolina Department of Insurance is the exclusive method to serve an insurance company in South Carolina pursuant to S.C. Code Ann. § 38-5-70 and § 15-9-270 S.C. Code Ann. § 38-77-160 requires an insurer to appear within thirty days after service of process.

State Farm was properly served as the underinsured motorist carrier through the South Carolina Department of Insurance on July 26, 2024. State Farm did not make an appearance until September 3, 2024, well after the statutory deadline of August 26, 2024. Therefore, the court finds State Farm failed to file an Answer, Demurrer, or Notice of Appearance within thirty (30) days of service as required by S.C. Code Ann. § 38-77-160.

B. State Farm Has Waived Their Right to Appear and Defend

The right to appear and defend is not absolute but rather an "option to assume control of the defense." *Williams v. Selective Insurance Co. of the Southeast*, 315 S.C. 532, 535, 446 S.E.2d 402, 404 (1994). Failure to timely appear constitutes a waiver of the known right to appear and defend. *Sanford v. S.C. Ethic Comm'n*, 385 S.C. 483, 496, 685 S.E.2d 600, 607 (2009).

The court finds State Farm has waived its right to appear and defend in this action by failing to comply with the statutory deadline set forth in S.C. Code Ann. § 38-77-160. For the forgoing reasons Plaintiff's Motion to Strike State Farm's Answer is hereby GRANTED.

IT IS SO ORDERED.

Dated: _____

_____, South Carolina

The Honorable Marvin H. Dukes, III



Charleston Common Pleas

Case Caption: Leticia Gutierrez Medina , plaintiff, et al VS Adrian Rasheed White ,
defendant, et al
Case Number: 2024CP1001224
Type: Order/Other

So Ordered

s/Marvin H. Dukes III #2785