

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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May 14 2025

SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Circuit Court Judge

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May 19 2025

SC Court of Appeals

Case No.: 2024-CP-10-1224

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

v.

Adrian Rasheed White

Defendant


State Farm Mutual Automobile Insurance Company,
The Underinsured Motorist Carrier

Appellant

NOTICE OF APPEAL

Pursuant to Rule 203, SCACR, State Farm Mutual Insurance Company, appearing in the name of the Defendant pursuant to § 38-77-160, hereby timely appeals the Order of the Court denying Appellant's Motion to Set Aside Default. The Order was issued on February 20, 2025, with Appellant receiving notice of entry on that same day. Appellant filed a Motion to Reconsider, which the Court denied on April 16, 2025.

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 SC Court of Appeals

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

Adrian Rasheed White

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Hon. Marvin Dukes, III	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

Defendants' White and State Farm Mutual Automobile Insurance Co. separately bring these Motions to Reconsider this Court's Order dated February 20, 2025. The motions were filed on March 3, 2025. After careful review and consideration, both motions are **DENIED**.

AND IT IS SO ORDERED

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$

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FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE
(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The “Information for the Judgment Index” section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the “Judgment in Favor of” column, enter the name of the party to whom the judgment is awarded. In the “Judgment Against” column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the “Judgment Amount” column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate “N/A” in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section “For the Clerk of Court Office Use Only” should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through “Circuit Court Judge” and indicate “Arbitrator” in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title “Circuit Court Judge” below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the “Judgment Amount To Be Enrolled” box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.



Charleston Common Pleas

Case Caption: Leticia Gutierrez Medina , plaintiff, et al VS Adrian Rasheed White ,
defendant, et al
Case Number: 2024CP1001224
Type: Order/Form 4

So Ordered

s/Marvin H. Dukes III #2785

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

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May 14 2025

SC Court of Appeals

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.

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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, SCRPC.

Therefore, I find that Defendant has failed to present evidence proving facts essential to establish a meritorious defense as required under Rule 60, SCRPC. 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

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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

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THE STATE OF SOUTH CAROLINA
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APPEAL FROM CHARLESTON COUNTY
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Leticia Gutierrez Medina individually and as Parent and
Natural Guardian for L.D.M., a minor under the age of 18 years, Respondent

v.

Adrian Rasheed White

Defendant

State Farm Mutual Automobile Insurance Company,
The Underinsured Motorist Carrier

Appellant

PROOF OF SERVICE

I certify that I have served State Farm Mutual Automobile Insurance Company's Notice of Appeal and Proof of Mail by electronic mail or by US Mail, sufficient postage prepaid, on May 14, 2025 addressed as follows:

Pleading(s): Notice of Appeal, Order Denying Motion to Set Aside Default and Order Denying Motion to Reconsider

Served: Gus Anastopoulos, Esq.
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April 14, 2025



Maragret M. Urbanic