

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-10-02580

Elise Cromwell,)
Plaintiff,)

**Plaintiff's Motion for
Reconsideration to Restore Case**

v.)
Medical University of South Carolina)
Hospital Authority and the Medical)
University of South Carolina,)
Defendants.)

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SC Court of Appeals

Now comes Plaintiff, Elise Cromwell, by and through her undersigned Counsel, hereby request that this Court move to reconsider Plaintiff's Motion to Reinstate her case on the grounds that Plaintiff can demonstrate "good cause" as to why her case was not restored within one-year time limitation. The grounds for this motion are fully set forth in Plaintiff's Memorandum of Law in Support of this reply, which is filed contemporaneously herewith and incorporated herein by reference.

I. PROCEDURAL HISTORY

This case comes before the Court on May 21, 2018, when Plaintiff filed her Complaint. Defendants later filed their Motion to Dismiss on July 11, 2018, in lieu of an Answer. Defendants additionally filed their Memorandum of Law in support of their Motion to Dismiss on November 29, 2018. Subsequently, an Order was rendered on December 18, 2018, denying the Defendants' Motion to Dismiss. Defendants later filed a Motion to Alter/Amend on January 8, 2019. Plaintiff later files a Memorandum in Opposition to such Motion on January 22, 2018. Subsequently, Defendants' Motion to Alter/Amend is denied as well. Defendants then filed their

Answer on February 20, 2019, upon which they amended on March 21, 2019. Defendants subsequently filed their Motion/Judgment on the Pleadings on April 8, 2019, which an Order was rendered on September 9, 2019, for lack of prosecution. Defendants then filed a Motion to Restore such Motion/ Judgment on the Pleadings along with their Motion for Summary Judgment on September 30, 2019, and October 4, 2019. Defendants then filed their initial Proposed Scheduling Order on October 23, 2019, which was granted the same day. Defendants later filed is second Proposed Scheduling Order on March 4, 2020, which was granted on March 5, 2020. Defendants later filed their third Proposed Scheduling Order on May 12, 2021, which was granted the same day. The Plaintiff subsequently requested an Order of Protection from the Court on August 4, 2020, which was granted on August 11, 2021. A third Amended Consent Scheduling Order was filed by Defendants on November 9, 2021. Defendants subsequently filed is second Motion for Summary Judgment on February 10, 2022. A final scheduling order was submitted by the Defendants and was granted on February 24, 2022. Pursuant to such an order, Defendants filed an Order to Strike according to 40j, which was granted on March 22, 2022. Plaintiff subsequently filed a Motion to Reinstate such case according to 40j on March 20, 2024. Defendants subsequently filed a Memorandum in Opposition to Plaintiff's Motion to Restore on September 17, 2024. On December 3, 2024, a Consent Order to Continue a Motion to Restore Hearing was filed by Defendants on September 19, 2024. An additional Consent Order to Continue a Motion to Restore Hearing was filed by Defendants on December 3, 2024. Subsequently, a Joint Motion to Continue was filed by Plaintiff on January 24, 2025. Plaintiff pursuant to a Motions Roster Publication on March 24, 2025, subsequently filed a Reply to Defendants' Motion in Opposition to Reinstate Case on March 28, 2025. Subsequently, Defendants filed their reply to Plaintiff's Motion in Opposition to Reinstate Case as well on

March 28, 2025. Thereafter, an Order on Plaintiff's Motion to Reinstate Case pursuant to Rule 40j was given by the Honorable Judge Salvini, denying such restoration of Plaintiff's case on May 8, 2025. Plaintiff hereby files this Motion for Reconsideration of the May 8, 2025, Order denying Plaintiff's Motion to Reinstate.

II. Facts

Plaintiffs rely solely upon the facts as stated in their well-pled Complaint.

III. LEGAL STANDARD

“Rule 40j does not require that a party move to restore the case to the docket within one year after it was stricken. Instead, the unambiguous language provides that if the claim is restored within one year after it is stricken, the statute of limitations is tolled for that period.” *Maxwell v. Genez*, 356, S.C. 617, 621, (S.C. 2023). “Rule 40j now requires all adverse parties to consent to the dismissal in writing, but the consent also operates to toll the statute of limitations for one year after the case is stricken from the docket as to each consenting party.” language in *Graham v. Dorchester County Sch. Distr.*, 399 S.C. 121, 125, 528 S.E.2d 80, 82 (Ct. App. 2000). “A party can move to restore a case to the docket more than one year after the claim was stricken without running afoul of Rule 40(j); the party simply cannot take advantage of the one-year tolling period provided by the rule. *Maxwell*, 356, S.C. 617, at 621. “When by these rules or by notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the time may be extended by written agreement of counsel for an additional period not exceeding the original time provided in these rules, or the court for cause shown may at any time in its discretion (1) with or without written motion or notice order the period enlarged if request therefore is made before the expiration of the period as originally prescribed or extended or (2)

upon motion made after the expiration of the specified period, for good cause shown, permit the act to be done. . . “ *Id.* Furthermore, as stated in *Maxwell*, Rule 40j does not have a deadline as to when a motion to restore must be filed. *Maxwell*, 356, S.C. 617, at 622.

II. Plaintiff can demonstrate “good cause” as to why her Motion to Restore was not filed within a one-year timeframe.

1. *Defendants’ actions during the timeframe of March 22, 2022, until March 20, 2024, were contradictory to restoring Plaintiff’s case.*

During the timeframe in which Plaintiff’s case was stricken from the docket on March 22, 2022, until March 20, 2024, when Plaintiff filed is Motion to Restore its case, Plaintiff and Defense Counsel had consented to mediation of this case. In addition, Defense Counsel before that time never opposed Plaintiff’s Motion to Restore. As a direct result of Defense Counsel’s actions, this caused Plaintiff’s Counsel to rely on continued negotiations between Defense Counsel and the ultimate decision that the case would be restored to the docket around March of 2024. Furthermore, during this timeframe of March 22, 2022, and March 20, 2024, when Plaintiff’s Counsel and Defense Counsel were negotiating this case and were attempting to mediate this case, Defense Counsel faced difficulty locating witnesses for Defendant MUSC, who had moved out of state. This alone prolonged negotiations for this case for months while Defense Counsel attempted to locate such witnesses. Based on Rule 40j “good cause” exception, Plaintiff asserts that Defense Counsel’s actions during this timeframe excessively prolonged Plaintiff’s case to where Plaintiff’s Counsel was not certain of restoring such case until March 20, 2024, based on Defense Counsel’s actions. Finally, Plaintiff asserts that she would be severely prejudiced by the acts of Defense Counsel if Plaintiff’s Motion to Reinstate is denied.

2. *Plaintiff's Counsel faced extenuating medical circumstances during the period that Plaintiff's case should have been restored.*

During the timeframe that Plaintiff's case should have been restored, Plaintiff's Counsel on record incurred extenuating medical emergencies during the year 2022, including COVID during the time Plaintiff's case should have been restored. COVID also affected all staff members of the firm during 2022, leaving the firm understaffed for some time. Plaintiff believes under the *Maxwell v. Genez* "good cause" findings a Rule 40j case to not be restored in one year, Plaintiff has demonstrated with extenuating medical circumstances a "good cause" as to why Plaintiff's Counsel did not file a Motion to Restore until March 20, 2024 for the reasons stated above Plaintiff asserts that Plaintiff would be severely prejudiced by the unplanned medical issues of Plaintiff's Counsel and staff if Plaintiff's Motion to Restore is denied. In addition, the willingness of Defense Counsel to continue to negotiate with Plaintiff's Counsel on this matter shows specifically that Defendant would not be prejudiced by the restoration of this case to the docket with a specific scheduling order issued by the Court allowing both parties to seek Discovery which was never done in this case by Defendants continuous Motions to Dismiss which each time was denied by the Court and subsequent negotiations by the Defense and Plaintiff.

III. CONCLUSION

Based on the foregoing reasons of Defense Counsel's actions of prolonging Plaintiff's case and extenuating medical circumstances affecting Plaintiff's Counsel in 2022, Plaintiff believes she has demonstrated a "good cause" finding under the conclusions of *Maxwell v. Genez* that allows Plaintiff to file its Motion to Restore after the one-year timeframe. Therefore, the

Court should reconsider the Order of May 8, 2025, and Plaintiff's case should be restored to allow negotiations and settlement of such case.

[SIGNATURE ON FOLLOWING PAGE]

Respectfully Submitted,

s/Donald Gist

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May 16, 2025

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NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Order/Motion to Reconsider is Denied

CASE NO: 2018CP1002580

Elise A Cromwell VS Medical University of South Carolina Hospital Authority , defendant, et al

This judgment was entered on the 18th day of June, 2025, and notice mailed first class on Friday, June 20, 2025, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at <http://clerkofcourt.charlestoncounty.org> or obtain a copy in person at the Clerk of Court's Office during regular Charleston County business hours.