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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Daniel Coble, Circuit Judge

Appellate Case No.: 2024-002139

Vanessa Hollaway……Respondent,

Vs.

Legrantt Nesbitt……Appellant

INITIAL BRIEF OF APPELLANT

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STATEMENT OF THE ISSUES ON APPEAL

1. Whether the Circuit Court abused its discretion in denying the Appellant's Motion for Relief pursuant to Rules 17, 55, and 60 of the South Carolina Rules of Civil Procedure.

2. Whether service of process upon an incarcerated individual found to be mentally incompetent, and an incapacitated individual requires the appointment of a Guardian Ad Litem.

3. Whether the Judgment of Default is void.

4. Whether the Appellant was denied due process of law as guaranteed by the United States and South Carolina Constitutions.

Statement of The Case

Appellant was arrested and charged with Attempted Murder (X2), resisting arrest, Discharging firearms, pointing and presenting a firearm, and possession of a weapon during a violent crime involving the Respondent. The Appellant granted his sister, Twanda P. Nesbitt, a Durable Power of Attorney, appointing her as his attorney-in-fact on June 20, 2020 which was filed on January 18, 2021 in Book R 2707 at page 431 in the Clerk of Court's office for Richland County, South Carolina as a matter of public record. (R pp.) The Lexington County Court of General Sessions referred the Appellant to the Department of Mental Health for an evaluation to determine his competency to stand trial. In April 2022, the Appellant was evaluated and was determined to lack competence to stand trial. The Court issued a Finding of Present Lack of Competence, but likely to become Competent with Treatment, and the Court by Order of May 23, 2022, ordered the Appellant's hospitalization for treatment. The Court of General Sessions for Lexington County, pursuant to § 44-23-410, et seq. thereafter Ordered that the Appellant be reevaluated by the South Carolina Department of Mental Health. The Appellant was reevaluated by the South Carolina Department of Mental Health on or about November 29, 2022, and found to be not currently competent to stand trial, and unlikely to become competent in the foreseeable future. By Order of February 3, 2023, the Court of General Sessions determined that the Appellant was incompetent to stand trial and unlikely to become competent in the foreseeable future and issued its order: Finding of Lack of Competence to Stand Trial for the Foreseeable Future, and Ordered the commencement of Probate Commitment Proceedings (R pp.). The Appellant was diagnosed as suffering from Schizophrenia, PTSD, Alcohol Disorder and Depressive Disorder.

On February 22, 2023, the Solicitor's office filed a Petition for Judicial Admission in the Lexington County Probate Court (R pp.). The Appellant was again examined by two (2) examiners and found to be mentally ill as he lacked sufficient insight or capacity to make responsible decisions with respect to treatment and he was thereafter committed to a State Mental Health facility. The Probate Court issued its Order on June 2, 2023, and determined that the Appellant was an 'incapacitated' individual (R pp.).

Ms. Holloway filed a Summons and Complaint against the Appellant seeking damages arising from the incident of October 20, 2019 (R pp.). The Appellant was served with the Summons and Complaint on April 6, 2022 (R pp.), by the Lexington County Sheriff's Department while the Appellant was awaiting trial as a pretrial detainee at the Lexington County Detention Center. Ms. Holloway was granted the Entry of Default on May 18, 2022 (R pp.). On May 24, 2022, a Request for Default Damages hearing was filed and served on the Appellant, again, by the Lexington County Sheriff's Department, at the Lexington County Detention Center on May 26, 2022 (R pp.).

A Notice of Damages Hearing was served on Appellant on March 7, 2023 by the Lexington County Sheriff's Department as Appellant was still incarcerated at the Detention Center (R pp.).

The Circuit Court held a damages hearing on March 23, 2023, and awarded the Respondent actual damages of $750,000.00 and punitive damages of $900,000.00 by Default Judgment filed on May 8, 2023 (R pp.).

The Appellant filed a Motion for Relief from Judgment pursuant to Rule 17, Rule 55, and Rule 60(b) of the South Carolina Rules of Civil Procedure on January 23, 2024 (R pp.).

The Court of Common Pleas issued its Order Denying Defendant's Motion for Relief from Default on November 20, 2024 (R. pp.). The Appellant timely filed his Notice of Appeal on December 18, 2024 (R. pp.).

Standard of Review

A denial of a motion under Rule 60(b) is within the sound discretion of the circuit court. See *Bowman v. Bowman*, 357 S.C. 146, 151, 591 S.E.2d 654, 656 (Ct. App.2004) (Holding a Rule 60(b) motion is subject to abuse of discretion review); Sullivan v. Hawker Beechcraft Corp., 397 S.C. 143, 153, 723 S.E.2d 835, 840 (Ct. App.2012) (holding a Rule 15 motion is subject to abuse of discretion review). Because both motions are subject to the sound discretion of the circuit court, they "will rarely be disturbed on appeal. The [circuit court's] finding will not be overturned without an abuse of discretion or unless manifest injustice has occurred." Sullivan, 397 S.C. at 153, 723 S.E.2d at 840 (quoting *Berry v McLeod*, 328 S.C. 435, 450, 492 S.E.2d 794, 803 (Ct. App.1997)). "an abuse of discretion occurs when the [circuit court]'s ruling is based upon an error of law or, when based upon factual conclusions, is without evidentiary support." *Fontaine v. Peitz*, 291 S.C. 536, 538, 354 S.E.2d 565, 566(1987).

Argument

The Appellant submits that the Circuit Court abused its discretion and based its decision upon an error of law and fact and that manifest injustice has occurred. The Appellant moved for an Order setting aside the Entry of Default and the Judgment by Default on January 23, 2024, pursuant to Rule 17, Rule 55, and Rule 60 of the South Carolina Rules of Civil Procedure. The Appellant is entitled to relief from the Entry of Default, and the Judgment by Default.

Rule 55 (b)(2) provides in pertinent part:

> (2) all other cases
>
> In all other cases, the party entitled to a judgment by default shall apply to the Court therefore, but no judgment by default shall be entered against a minor or incompetent person unless represented in the action by a Guardian *Ad litem* who has appeared therein… (emphasis added).

Rule 60(b) of the South Carolina Rules of Civil Procedure provides in pertinent part:

60(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc:

> 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, inadvertence, surprise, or excusable neglect;
> 2. newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
> 3. fraud, misrepresentation, or other misconduct of an adverse party;
> 4. the judgment is void;

The Appellant was served with the pleadings, the Entry of Default, and the Notice of Damages Hearing, all while he was incarcerated at the Lexington County Detention Center, Lexington, South Carolina, awaiting trial on his criminal charges. He was served with the Notice of Damages Hearing on March 7, 2023. At this point, the Appellant had twice been found incompetent to stand trial after examination by medical examiners at the Department of Mental Health. He was found to lack competence, but likely to become competent with

treatment after evaluation in April 2022. The Court of General Sessions issued its Finding of Lack of Competence but Likely to Become Competent with Treatment on May 23, 2022, and after the Appellant was reevaluated on November 29, 2022, the Court issued its second Finding of Lack of Competence to Stand Trial for the Foreseeable Future by Order filed February 3, 2023.

The Entry of Default by the Clerk of Court was entered on May 16, 2022, in violation of SCRCP Rule 55 (b)(2) which mandates that no entry of default shall be entered against an incompetent person unless represented by a Guardian *Ad litem*. The Appellant had been twice evaluated, and twice determined to be incompetent, according to the reports filed by the Department of Mental Health, and by Orders of the Lexington County Court of General Sessions filed on May 23, 2022 and on February 3, 2023. (R pp.)

That on February 3, 2023, the Court of General Sessions for Lexington County, South Carolina issued its Finding of Lack of Competence to Stand Trial for the Foreseeable Future, and Ordered the commencement of Probate commitment proceedings. (R pp.)

The Lexington County Solicitor's Office initiated a Petition for Judicial Commitment on February 22, 2023 in the Probate Court for Lexington County. The Appellant was found to be an incapacitated individual by the Probate Court on June 2, 2023 and was thereafter committed to the South Carolina Department of Mental Health. (R pp.)

Both the Entry of Default and the entry of the Judgment by Default should be set aside as void. A judgment of a court without subject matter jurisdiction or personal jurisdiction is void and constitutes grounds for the court to vacate the judgment under Rule 60 (b)(4). Thomas & Howard Co., Inc. vs. T.W. Graham & Co., 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995); Rule 60 (b)(4) (stating a court may relieve a party from a final judgment if the

judgment is void). "A void judgment is one that, from its inception, is a complete nullity and is without legal effect and must be distinguished from one which is merely "voidable."" Thomas & Howard Co., 318 S.C. at 291, 457 S.E.2d at 343 (1995) (citation omitted).

In the instant case, Respondent obtained a default judgment against an individual who was not only incarcerated, but was found to be mentally incompetent by the Court of General Sessions on May 23, 2022 and again on February 3, 2023, and then found to be incapacitated by the Probate Court on June 2, 2023. According to the South Carolina Rules of Civil Procedure, a Guardian *Ad litem* should have been appointed, or at the very least, his attorney-in-fact notified of the proceedings. Ms. Nesbitt's Durable Power of Attorney was a matter of public record, and there is no record evidence that she was ever notified of the damages hearing.

These procedural flaws deprived Appellant of his day in court, and deprived this Court of jurisdiction, and the Judgment by Default is therefore void.

In determining 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 reason for the failure to act promptly (3) the existence of a meritorious defense and (4) the prejudice to the other party. Tobias vs. Rice, 655 S.E. 2d 216 (Ct. App. 2008).

The language of Rule 60 specifically excludes Motions under Rule 60 (b)(4) from the one-year limitation and indicates these Motions must be brought within a reasonable time. Perry vs. Heirs at Law of Gadsden, 590 S.E., 2d 502 (Ct. App. 2003).

The Appellant's attorney-in-fact only recently discovered the Judgment by Default and acted in a reasonable period of time. There will be no prejudice to the Respondent to set aside the Judgment by Default and the Appellant has a meritorious defense.

"Under Rule 60 (b)(4) and (5), the court may grant a party relief from judgment if the party makes a motion seeking the relief within a reasonable time." The Smith Companies of Greenville, Inc. vs. Hayes, 311 S.C. 358 S.E.2d 900, 902 (Ct. App. 1993).

This Judgment by Default is void and must be set aside. "A void judgment is one that, from its inception, is a complete nullity and is without legal effect." "The definition of void under the rule only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction." "Generally, a person against whom a judgment or order is taken without notice may rightly ignore it and may assume that no court will enforce it against his person or property." "Belle Hall Plantation Homeowner's Ass., Inc. vs. Murray, __S.C._, _S.E.2d_ (Ct. App. 2017), 2017 WL 510553, at *5 (S.C. Ct. App. Feb. 8, 2017). Katzburg vs. Katzburg, 410 S.C.184, 187, 764 S.E.2d 3, 5 (Ct. App. 2014), reh'g denied (Sept. 18, 2014).

Rule 60 (b)(4), SCRCP provides that the court may relieve a party or his legal representation from a final judgment, order, or proceeding if the judgment is void. "The definition of "void" under the rule only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction." Linda Mc Company, Inc. vs. Shore, 390 S.C. 543, 553, 703 S.E.2d 499, 503 (2010). See also: McDaniel vs. US Fidelity & Guaranty Co., 324 S.C. 639, 478 S.E.2d 868, 871 (Ct. App. 1996). In this case, the Appellant was denied due process as required by the South Carolina Constitution and the United States Constitution.

The Order and Judgment by Default is void for lack of Personal Jurisdiction. SCRCP 60 (b)(4) provides the Court may relieve a party from a judgment which is void for lack of personal, jurisdiction, or subject matter jurisdiction or in circumstances in which the Court's

action amounts to a plain usurpation of power constituting a violation of due process. US vs. Boch Oldsmobile, Inc. 909 F2d 657, 661 (1st Cir 1990). Where Rule 60 (b)(4) is property invoked on the basis that the underlying judgment is void "relief is not a discretionary matter, it is mandatory…" Orner vs. Shalala, 30 F3d 1307, 1310 (10th Cir 1994).

As the Court of Appeals stated in Rouvet v Rouvet 696 S.E.2d 204, (Ct. App 2010):

> "Where a court adjudicates the rights of a person who is not mentally competent without appointing a guardian ad Litem, any judgment rendered by the court adverse to the person who is not competent is defective. S.C. Dep't of Soc. Servs. v. McDow, 276 S.C. 509, 511, 280 S.E.2d 208, 209 (1981) (based on S.C. Code Ann. § 15-5-310 (repealed)). Before divesting a person who is not competent of any rights, a court must proceed in strict compliance with the law." *Id.*

The Respondent's failure to request the appointment of a Guardian ad Litem, or to advise the trial judge of Appellant's circumstances of incapacitation and incompetence, or even contact the Appellant's attorney-in-fact, deprived the Appellant of proper due process; the opportunity to have his day in court, and deprived the Court of personal jurisdiction. The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. "Procedural '[d]ue process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses.'" *Moore v. Moore*, 376 S.C. 467, 473, 657 S.E.2d 743, 746 (2008) (alteration in original) (quoting *Clear Channel Outdoor v. City of Myrtle Beach*, 372 S.C. 230, 235, 642 S.E.2d 565, 567 (2007)). "Due process is a flexible concept, and the requirements of due process in a particular case are dependent upon the importance of the interest involved and the circumstances under which the deprivation may occur." *S.C. Dep't of Soc. Servs. v. Beeks*,

325 S.C. 243, 246, 481 S.E.2d 703, 705 (1997). "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful matter." *Id*.

The terms, mental incompetence, mental incapacity, and incapacitated individual are often used interchangeably. In South Carolina, the determination of incompetence to stand trial and the determination of incapacity are decided by the Courts after evaluations by medical examinations by qualified professionals.

An incapacitated person is: "Any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person or property. S.C. Code Ann. 62-5-101(1) (Supp.1992). In *MURRAY BY MURRAY v. MURRAY,* 426 S.E.2d 781 (1993) the Court found that "An 'incapacitated person' is: Any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person or property" (S.C. Code Ann. 62-5-101(1)).

As the South Carolina Supreme Court stated in *Thompson v. Moore*, 88 S.E.2d 354(1955):

> "The term 'mentally incompetent' is difficult of exact definition. Mental incompetency 'in its ordinary meaning imports mental deficiency so great as to render one unable to comprehend or transact the ordinary affairs of life.' Edge v. Dunean Mills, 202 S.C. 189, 24 S.E.2d 268, 271. It is not necessary that it be proved that the subject is a lunatic or that he has been previously adjudged insane. It must be shown, however, by credible evidence that the subject, because of mental impairment, has become incapable of managing his own affairs, whether from age, disease, or affliction. See 44 C.J.S., Insane Persons, 2, p. 39.
>
> South Carolina has enacted a comprehensive statutory scheme for the care, treatment, and protection of mentally ill persons See § 44-17-410 et. sec. S.C. Code of laws of 1976, as amended. § 44-23-410 et. seq. SC Code of Laws of 1976 as amended, requires the appointment

of two (2) medical examiners to determine competency to stand trial. Pursuant to § 44-23-460, the legal criteria for determining competence to stand trial is "a person… is not fit to stand trial because the person lacks the capacity to understand the proceedings against him or to assist is his own defense as a result of a lack of mental capacity."

The record is clear that Appellant was incarcerated throughout the entire litigation. The Summons and Complaint, Entry of Default, and Notice of the Damages Hearing, were all served upon Appellant by the Lexington County Sheriff Department while he was detained at the Lexington County Detention Center. The Appointment of a Guardian Ad Litem was required by Rule 17(d)(4) of the South Carolina Rules of Civil Procedure. The Entry of Default and the Default Judgment were filed against the Appellant in disregard of Rule 55(b)(2), Rule 17(c), Rule 17(d)(4), and Rule 17(d)(5) of the South Carolina Rules of Civil Procedure.

The record is also clear that the Appellant was determined to be an incompetent individual, and unable to stand trial on May 23, 2022 and again on February 3, 2023 prior to either the damages hearing, or the Judgment by Default being filed. Rule 17(d)(5) mandates that a Guardian ad Litem be appointed for an incompetent individual. The lower Court erred in holding that the Order of the Probate Court finding the Appellant was an "incapacitated individual" on June 2, 2023 was the crucial finding which would have required the appointment of a Guardian Ad Litem to protect the interests of an individual who was not only incarcerated, but found to be incompetent to stand trial twice by the Lexington County Court of General Sessions, and found to be incapacitated and ordered to be placed in the custody of the Department of Mental Health.

Rule 17 of the South Carolina Rules of Civil Procedure provides in pertinent part:

(C) Minor or Incompetent Persons. Whenever a minor or incompetent person has a representative, such as a general guardian, committee, conservator, or other like fiduciary, the representative may sue or defend on behalf of the minor or incompetent person. If a minor or incompetent person does not have a duly appointed representative he may sue by his next friend or by guardian ad Litem. The court shall appoint a guardian ad Litem for a minor or incompetent person not otherwise represented in an action or shall make such order as it deems proper for the protection of the minor or incompetent person. A person imprisoned outside this State shall appear by guardian ad Litem in an action by or against him; but if imprisoned in this State, and not a minor or incompetent, the court may, in its discretion appoint a guardian ad Litem or order him to be brought personally to the trial to testify in accordance with Rule 43(a).

(D) Guardians Ad Litem. Guardians ad Litem appearing in the courts of this State, or before any agency, board or commission from which an appeal to the courts of this State shall lie, shall be qualified and appointed in accordance with the provisions of this rule.

(d)(1) Who May Appoint. Guardians ad Litem may be appointed by the court in which the action is pending, the judge of probate, the clerk of court, or the master-in-equity of the county wherein the minor or incompetent or imprisoned person resides, or in the county in which the action is pending or is to be filed.

(d)(4) Imprisoned Persons. The Guardian ad Litem for an imprisoned person shall be appointed upon application of such person or of a relative or friend. If application be made by a relative or friend, notice thereof must first be given to such imprisoned person.

(d)(5) Incompetent Persons. The Guardian ad Litem for an incompetent person shall be appointed upon the application of his guardian or committee or of a relative or friend. If application be made by a relative or friend, notice thereof must be first given to the incompetent person's guardian if he has one; if he has none, then to the person with whom such incompetent person resides.

As the Court of Appeals explained at length in Gossett v. Gilliam, 452 S.E.2d 6 (ct. App. 1994):

Rule 17(c) provides in relevant part that if a party is imprisoned in this State, 'the court may, in its discretion appoint a guardian ad Litem or order [the party] to be brought personally to the trial to testify in accordance with Rule 43(a).' Rule 17(d)(4) provides: "The guardian ad Litem for an

imprisoned person shall be appointed upon application of such person or of a relative or friend." Also Rule 17(d)(6) states that if "no application for appointment of a guardian ad Litem be made by or in behalf of minor, imprisoned or incompetent party within thirty (30) days after service of the summons upon such party, then the guardian ad Litem may be appointed upon application of any party to the action…"

Rules 17(c) and 17(d) serve as a procedural protection for prisoners, who although not mentally deficient or legally incompetent, nevertheless are burdened with the physical restraint of imprisonment. Matter of Bishop, 272 S.C. 306, 251 S.E.2d 748 (1979).

In the Reporter's Note following Rule 17, it is pointed out that Rule 17(c) retains the provision of S.C. Code Ann. 15-5-320 (1976) (repealed Act 100, July 1985) which required the appointment of a guardian ad Litem for imprisoned persons. It further states the Rule "narrows existing practice by providing for a guardian ad Litem only when the person is imprisoned outside the State" and that "in most common civil cases involving prisoners, post-conviction relief proceedings, a guardian would not be required for an in-state prisoner who is normally represented by appointed or retained counsel." (Emphasis ours). A different situation exists, however, when a suit is filed against an incarcerated person who is not represented by counsel. Where a prisoner is sued, a lawyer will ordinarily represent the plaintiff which places the prisoner at a considerable disadvantage. Because of the attendant restrictions of incarceration, it is often difficult for a prisoner to secure counsel or the appointment of a guardian ad Litem prior to the expiration of the time for filing responsive pleadings. See generally Craigo v. Marshall, 175 W.Va. 72, 331 S.E.2d 510 (1985).

While we agree with the trial judge that Rule 17(c) does not mandate the appointment of a guardian ad Litem for an instate prisoner named as a defendant in a civil action, we note that, as recognized in the last portion of 17(c), the prisoner's rights must be protected through alternate procedures. Thus, the appointment of a guardian ad Litem is discretionary if the court determines the alternative procedure of bringing *8 the prisoner to trial is more feasible and adequately protects his rights, the Court should evaluate whether a guardian ad Litem is essential for the protection of the incarcerated defendant's rights under the particular circumstances of the pending action. If, for example, the prisoner has made an informed decision to not contest the suit, there is no need for a guardian ad Litem. Additionally, where the prisoner is represented by competent counsel, the appointment of a guardian ad Litem would be superfluous. See Green v. Boney, 233 S.C. 49, 103 S.E.2d 732 (1958) (prisoner represented by counsel waived his right to a guardian ad Litem under 15-5-320 where he entered answer and counterclaim without mentioning the appointment of a guardian); see also Cobb v. Garlington, 100 S.C. 51, 84 S.E. 302 (1915) (an incarcerated defendant waived his right to the

> appointment of a guardian ad Litem where counsel of his own choosing appeared for him). However, where an adverse judgment against the prisoner will affect present or future property rights, the court should ensure either that a guardian ad Litem is appointed or that the inmate is at least brought to court prior to the entry of a default judgment against him for a determination of whether the appointment of a guardian ad Litem is essential for the protection of the prisoner's rights. The spirit of the law demands no less. 452 S.E.2d 6,8 (ct. App.1994) (Emphasis added).

He was incarcerated throughout the proceedings and found to be mentally incompetent twice by the Court of General Sessions and once by the Probate Court. The Appellant was not represented by counsel, or a Guardian ad Litem. He was not present at the damages hearing, and did not waive his right to counsel or his right to appear. No one contacted Appellant's attorney-in-fact, even though she was his duly appointed attorney-in-fact which was a matter of public record. Appellant should have been appointed a Guardian ad Litem pursuant to Rule 17(c) as he was incarcerated, and all of the Affidavits of Service verified he was served at the Lexington County Detention Center. He should have been appointed a Guardian ad Litem pursuant to Rule 17(d) as he was twice declared to be incompetent/incapacitated by the Court of General Sessions, and once by the Lexington County Probate Court. No Judgment by Default should have been issued without the appointment of a Guardian ad Litem for Appellant." "...the spirit of the law demands no less..." Gossett , Supra. 452 S.E. 2d 8 (Ct.App. 1994) (R pp.)

Conclusion

For all of the foregoing reasons, this Court should reverse the Order of the Circuit Court, void the Judgment by Default, and remand this case for the Appointment of a Guardian ad Litem and new trial.

Respectfully Submitted,

Columbia, South Carolina
July 17, 2025

s/ Herbert E. Buhl, III

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Vanessa Holloway, Respondent,

v.

Legrantt Nesbitt, Appellant.

CERTIFICATE OF SERVICE

I, Herbert E. Buhl, III, Attorney for Appellant, do certify that I have this day served a copy of the attached Initial Brief of Appellant on Counsel of Record listed below by causing same to be deposited in the United States mail, postage prepaid, and by email addressed as follows:

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