THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CLARENDON COUNTY
Joseph K. Coffey, Circuit Court Judge
Trial Court Case No. 2022CP1400074

Appellate Case No. 2024-000664

Mirlene Witherspoon, Respondent,

v.

Heirs of Thomas Witherspoon, Gwendolyn Jones, Nakisha Christian, P. Kathleen Witherspoon, Pearl Martin, The South Carolina Department of Revenue, and Deborah West, Defendants,

Of which Gwendolyn Jones is the Appellant.

FINAL BRIEF OF RESPONDENT

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III. **Whether the trial court acted within its discretion in finding that Jones was duly served and entering default judgment against Jones.**

STATEMENT OF THE CASE

This is a direct appeal of the granting of a default judgment against Appellant Gwendolyn Jones Dennis ("Jones" or "Appellant"). (Order of Joseph K. Coffey, May 9, 2024). Respondent Mirlene Witherspoon ("Witherspoon" or "Respondent") commenced this action on February 24, 2022, to partition certain property belonging to Witherspoon and other heirs of Thomas Witherspoon (the "Complaint"). (Complaint of Mirlene Witherspoon, February 24, 2022). At the April 9, 2024 hearing to confirm default judgment against Jones, the trial court confirmed Jones was duly served with process in this matter, based on the testimony of Jones, who was present at the hearing. (Coffey Order, p. 3, para. 10). At the same hearing, a settlement agreement was approved, granting a partition and sale, and granting the proceeds of the sale to Witherspoon, and Defendants Martin and West. (Coffey Order, p. 6, paras. 2–6).

ARGUMENT

I. Appellant's brief fails to comply with Rule 208

As an initial matter, Jones has failed to comply with the requirements of Rule 208, SCACR, governing Initial Briefs. Rule 208(b)(1) states: "[t]he brief of appellant shall contain under appropriate headings and in the order here indicated: (A) Table of Contents and Cases . . . , (C) Statement of the Case . . . , (D) Standard of Review." The rule further provides the Table of Contents and Cases shall contain the following: "A table of contents, with page references, and a

table of cases (alphabetically arranged), statutes, and other authorities cited, with references to the pages of the brief where they are cited." SCACR 208(b)(1)(A). The rule further provides the Statement of the Case shall contain "a concise history of the proceedings, insofar as necessary to an understanding of the appeal." SCACR 208(b)(1)(C). The rule further provides that "the Brief shall contain a section with the heading 'Standard of Review,' which shall concisely set forth the applicable standard of review with citations to relevant case law establishing the standard." SCACR 208(b)(1)(D). Jones's brief fails to comply with Rule 208 as follows: (1) Jones's Initial Brief does not contain a Table of Contents, and the Table of Authorities has been placed after the attached exhibits; and (2) Jones's brief does not include a Statement of the Case, nor does it provide the appropriate Standard of Review. Accordingly, this appeal should be dismissed pursuant to Rule 260, SCACR, which states: "[w]henever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court." SCACR 260(a); *see Henning v. Kaye*, 307 S.C. 436, 437–38, 415 S.E.2d 794, 794–95 (1992).

II. The granting of a default judgment may not be appealed

The granting of a default judgment may not be appealed. *Winesett v. Winesett*, 287 S.C. 332, 334, 338 S.E.2d 340, 341 (1985); *see also Stearns Bank Nat'l Ass'n v. Glenwood Falls, LP*, 375 S.C. 423, 426, 653 S.E.2d 274, 275 (2007). "The proper procedure for challenging a default judgment is to move the trial court to set aside the judgment pursuant to Rule 60(b), SCRCP. An appeal may then be taken from the denial of this motion." *Winesett*, 287 S.C. at 334, 338 S.E.2d at 341. In *Winesett*, the Supreme Court explained the justifications for this rule: (1) a defendant who does not appear and answer "has no status in court which will enable him to appeal from the judgment rendered," (2) "a party appealing a default judgment will ordinarily be precluded from

raising any issues on appeal because they were not first presented below," and (3) the appellant will often not be able to meet his burden of providing this Court with a record sufficient to permit an adequate review." *Id.* at 333, 338 S.E.2d at 341. (citing *Washington v. Hesse*, 56 S.C. 28, 29, 33 S.E. 787, 787 (1899); *Am. Hardware Supply Co., Inc. v. Whitmire*, 278 S.C. 607, 300 S.E.2d 289 (1983); *Murphy v. Hagan*, 275 S.C. 334, 271 S.E.2d 311 (1980); *Hamilton v. Greyhound Lines E.*, 281 S.C. 442, 316 S.E.2d 368 (1984); *Germain v. Nichol*, 278 S.C. 508, 299 S.E.2d 335 (1983)). The plaintiff in *Winesett* appealed from a default judgment of the Family Court terminating the former husband's obligation to pay alimony. *Id.* The Supreme Court dismissed the appeal, holding that the appeal was improper because the wife's sole remedy was to move to set aside the default judgment. *Id.* at 333, 338 S.E.2d at 341. Here, Jones failed to move to set aside the default judgment pursuant to Rule 60(b) before making this appeal, which makes the appeal improper under *Winesett*.

The justifications that were present in *Winesett* are also present here. First, although Jones did appear at the hearing, Jones did not file an answer and thus has no status in court to enable her to appeal from the judgment rendered. Second, Jones is precluded from raising her issues on appeal because she did not raise them at the trial court. An issue not raised or ruled on in the trial court may not be heard on appeal. *Murphy*, 275 S.C. at 339, 271 S.E.2d at 313 (1980); *Thompson v. O'Rourke*, 288 S.C. 13, 15, 339 S.E.2d 505, 506–07 (1986); *see also Grant v. S.C. Coastal Council*, 319 S.C. 348, 356, 461 S.E.2d 388, 392 (1995) (appellant may not bring due process claim if not argued at trial court). A party must file a post-trial motion "when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004); *see also BMW of N. Am., LLC v. Complete Auto Recon Servs., Inc.*, 399 S.C. 444, 454–55, 731 S.E.2d 902, 908 (Ct. App. 2012). "Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide the

[appellate court] with a platform for meaningful appellate review." *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014). Jones's brief argues fraud and lack of due process, neither of which was raised or ruled on at the trial court level. Accordingly, Jones failed to preserve the issues for appellate review and should be precluded from raising the issues before this Court on appeal. Third, although there is sufficient evidence on the record to permit an adequate review of the issue, the evidence supports the trial court's decision that Jones was given proper notice of the Complaint and default judgment was appropriate. Under *Winesett*, this appeal should be dismissed as improper.

III. Jones was duly served with the Complaint and default judgment was within the trial court's discretion

a. Standard of review

The matter of the entry of default judgment is a matter that lies solely within the sound discretion of the trial court. *Harbor Island Owners' Ass'n v. Preferred Island Props., Inc.*, 369 S.C. 540, 544, 633 S.E.2d 497, 499 (2006). Therefore, the circuit court's decision will not be overturned absent a clear showing of an abuse of discretion. *Roberson v. S. Fin. of S.C., Inc.*, 365 S.C. 6, 9, 615 S.E.2d 112, 114 (2005). "An abuse of discretion in setting aside a default judgment occurs when the judge issuing the order was controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support." *Id.* (quoting *In re Estate of Weeks*, 329 S.C. 251, 259, 495 S.E.2d 454, 459 (Ct. App.1997)).

b. Jones was duly served with the Complaint and default judgment was within the trial court's discretion

Jones argues that she was not properly notified of the Complaint and the Complaint is invalid because it "was fraudulently filed with misinformation" in that it misstated Jones's residency as South Carolina instead of Baltimore, Maryland. (Appellant's Br., p. 1, paras. 1–2).

Nonetheless, the trial court correctly determined that Jones was duly served with the Complaint and that default judgment was within the trial court's discretion. A default judgment may be had pursuant to Rule 55, SCRCP, when a party against whom judgment is sought "has failed to plead or otherwise defend" in the action. SCRCP 55. Service of process or waiver of that service is necessary to satisfy the due process requirements of the United States Constitution. *Roche v. Young Bros., Inc. of Florence*, 313 S.C. 356, 437 S.E.2d 560 (Ct. App. 1993), *rev'd on other grounds*, 318 S.C. 207, 456 S.E.2d 897 (1995). Here, the trial court, in its order granting default judgment, considered the relevant facts in detail and determined that Jones was duly served in accordance with due process requirements:

> On June 7, 2022, the Plaintiff filed a copy of the certified mail green card returned from the post office as to Gwendolyn Jones. The Court acknowledges that the green card filed by the Plaintiff is unsigned. Plaintiff's counsel, acknowledging the lack of signature, represented to the Court that, during the Covid epidemic, it was common to receive back from the post office unsigned green cards. However, *any doubt as to whether or not Ms. Jones was served with process was resolved by the fact that she, Ms. Jones, appeared in the Court on the hearing day (April 9, 2024) and acknowledged in response to several questions posed by the Court that she had received certified mail from the Plaintiff and provided a description of the documentation. The description provided by Ms. Jones was that of a Summons and Complaint.* The Court, therefore, determined that Ms. Jones was duly served with process in this matter.

(Coffey Order, p. 3, para. 10) (emphasis added). Based on Jones's own testimony, the trial court concluded that Jones was duly served with process when she personally received the Summons and Complaint through U.S. certified mail. Thus, the due process requirements were satisfied, rendering any notice argument by Jones meritless. Because Jones was duly served and did not plead or otherwise defend in the action, the trial court was within its sound discretion to grant default judgment against Jones, which it did.

Additionally, Jones's argument that the Complaint "was fraudulently filed with misinformation" in that it misstated Jones's residency as South Carolina instead of Baltimore,

Maryland, is without merit. (Appellant's Br., p. 1, paras. 1–2). In support, Jones has attached a court docket from a 2005 lawsuit in Maryland state court in which Jones sued Witherspoon. (*Id.* at Ex. B). The docket lists Jones's address as Baltimore, Maryland. Based on this "false information," Jones alleges, the trial court determined that Jones was on notice of the Complaint. (*Id.* at p. 2). But Jones's argument fails because the trial court relied on Jones's own testimony to determine that Jones was on notice of the Complaint. Even if, assuming *arguendo*, Jones was a resident of Baltimore, Maryland, at the time the Complaint was filed in February 2022, the alleged misstatement in the Complaint does not rise to the level of fraud upon the court. A plaintiff does not commit fraud upon the court when merely misrepresenting the address of the defendant. *Sanders v. Smith*, 431 S.C. 605, 613–15, 848 S.E.2d 604, 608–09 (Ct. App. 2020). "Fraud upon the court is a narrow and invidious species of fraud that 'subvert[s] the integrity of the [c]ourt itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication.'" *Id.* at 613, 848 S.E.2d at 608 (quoting *Perry v. Heirs at Law & Distributees of Gadsden*, 357 S.C. 42, 47, 590 S.E.2d 502, 504 (Ct. App. 2003) (first alteration in original) (quoting *Chewning v. Ford Motor Co.*, 354 S.C. 72, 78, 579 S.E.2d 605, 608 (2003))). "Like all other types of fraud, proving fraud upon the court requires showing that the perpetrator acted with the intent to defraud, for there is no such thing as accidental fraud." *Id.* at 613–14, 848 S.E.2d at 608 (quoting *Perry*, 357 S.C. at 47, 590 S.E.2d at 504–05). Jones has failed to show that Witherspoon's alleged misstatement in the Complaint, which is disputed by the record evidence, demonstrated an intent to defraud or subvert the integrity of the court. Because the record evidence reasonably supports the trial court's judgment, the trial court cannot have abused its discretion in granting a default judgment in this case, and its decision should not be disturbed.

CONCLUSION

Although it is "a matter of regret that a party should not have his day in court," where a defendant "was duly served with [a] summons and complaint[,] [i]t was his duty to answer the complaint" and "[h]e must suffer the consequence of his failure to answer." *Williams v. Ray*, 232 S.C. 373, 384, 102 S.E.2d 368, 373 (1958). For the reasons above, this Court should dismiss this appeal.

September 26, 2025

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