THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Patrick W. Carr, Special Referee

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SC Court of Appeals

Circuit Court Case No. 2024-CP-07-00660
Appellate Case no. 2025-000927

JAYLEN AIKEN ..... Respondent,

v.

RICHARD EMMONS..... Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. DID THE SPECIAL REFEREE ABUSE HIS DISCRETION WHEN HE DENIED APPELLANT'S MOTION FOR RELIEF FROM JUDGMENT UNDER RULE 60(B)(1), SCRCP?

2. IN NOT FILING A MOTION TO ALTER OF AMEND THE JUDGMENT UNDER RULE 59, SCRCP, DID APPELLANT FAIL TO PROPERLY PRESERVE FOR REVIEW THE ISSUES HE NOW RAISES?

STATEMENT OF THE CASE

This matter is before the Court on Appeal from the Special Referee's denial of Appellant's Motion for Relief from Judgment. It is undisputed that Appellant was properly served with a Summons and Complaint, and failed to timely respond. (Initial Brief of Appellant, p. 2) By Order of the Honorable Carmen T. Mullen dated July 29, 2024, default was entered against Appellant, and this matter was refereed to the Special Referee.[1] (R. pp. 2-4; p. 26 ¶ 9) It is also undisputed that Appellant was properly notified of a hearing to determine Respondent's damages, and at which time a final judgment would be entered. (Initial Brief of Appellant, p. 3; R. p. 26 ¶ 9) Appellant admits to actual receipt of this notice, but failed to attend the hearing. (R. p. 26 ¶ 9, pp. 5-8) On September 3, 2024, the Special Referee entered a Final Judgment in favor of Appellant in the amount of $28,981.00. (R. pp. 5-8)

On October 4, 2024, Appellant filed a Motion for Relief from Judgment under Rule 60(b)(1) of the South Carolina Rules of Civil Procedure. R. pp. 23-24). Rule 60(b)(1) provides that "[o]n 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." Rule 60(b)(1), SCRCP. The Special Referee held a hearing on this matter on December 18, 2024, and denied Appellant's motion for relief on April 14, 2024. (R. pp. 10-12) It is from this Order that Appellant brings this Appeal.

This action arose out of an automobile collision on December 13, 2022. (R. pp. 5-8)

[1] At the time, the Office of the Master-in-Equity for Beaufort County was vacant.

Respondent, while following law enforcement's orders, attempted to pull his vehicle off of the highway. *Id.* At that time, Appellant was operating a vehicle owned by Penske Truck Leasing Co., L.P. (hereinafter "Penske"), his employer. (R. p. 25, ¶ 2) Appellant, disregarded law enforcement instructions, and his truck struck Respondent's vehicle. (R. pp. 5-8)

Appellant, while admitting that the accident investigation found him at fault, has denied liability for this collision. (R. p. 38) He does not appear to have challenged the amount of damages awarded by the Special Referee. (R. p. 43: p. 10, line 21 - p. 11, line 1)

Instead, Appellant asserts that he should be relieved from judgment because he believed that Penske's corporate counsel would respond to the Complaint. (R. p. 26, ¶10, p. 27 ¶¶ 15-16) Appellant was served with the Summons and Complaint on April 9, 2024. (R. pp. 2-4, p. 26 ¶9) According to Appellant, he turned the pleading over to his employer the next day, and was told that Penske corporate counsel would respond. (R. p. 26, ¶ 10) Appellant has presented no evidence that he took any further action to protect his rights including, but not limited to, confirming that corporate counsel would or had answered the Complaint in a timely manner. When he received notice that he was in default, and that a damages hearing had been scheduled, he chose not to attend. (R. p. 27, ¶13) Appellant has provided no reason why he could not appear at the hearing, or why no one from the Penske legal team appeared on his behalf. Likewise, Appellant has presented no evidence at all as to why the Penske legal team failed to timely respond to Appellant's Complaint.

STANDARD OF REVIEW

Rule 60(b)(1) authorizes relief from a final judgment on grounds of mistake, inadvertence, surprise or excusable neglect. Relief under this section is within the sound discretion of the trial judge, and an Appellant Court should not substitute its judgment for that of the Trial Court. See *McClurg v. Deaton*, 380 S.C. 563, 570, 671 S.E.2d 87, 91 (Ct. App. 2008), aff'd, 395 S.C. 85, 716 S.E.2d 887 (2011) An abuse of discretion arises where the judge issuing the order was controlled by an error of law or where the order is based on factual conclusions that are without evidentiary support." *BB & T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 502-03 (2006)(citing *Tri-County Ice & Fuel Co. v. Palmetto Ice Co.*, 303 S.C. 237, 242, 399 S.E.2d 779, 782 (1990)).

ARGUMENT

1. The Special Referee did not abuse his discretion in finding Appellant failed to met his burden of proving mistake, inadvertence, surprise, or excusable neglect.

The movant in a Rule 60(b) motion has the burden of presenting evidence proving the facts essential to entitle him to relief. *Bowers v. Bowers*, 304 S.C. 65, 67, 403 S.E.2d 127, 129 (Ct. App. 1991)(Quoting 49 C.J.S. Judgments § 297, at 545 (1947) ("The party who seeks to have a judgment opened or set aside must assume the burden of proving the facts essential to entitle him to the relief asked.")). In the case at bar, the Special Referee did not abuse his discretion in finding that Appellant had failed to meet his burden.

The law is clear that an attorney or insurance company's misconduct is imputable to the client. See *Williams v. Vanvolkenburg*, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct.App. 1994) (observing that an attorney's negligence in failing to answer is imputable to the defendant). At least twice in his affidavit, Appellant asserts his belief that corporate counsel would be responding to the Summons and Complaint. (R. p. 26, ¶10, p. 27 ¶¶ 15-16) Given these statements, the Special Referee's conclusion that Appellant was relying on legal counsel rather than a laymen to respond to the Summons and Complaint is well supported by the evidence presented and does not represent an abuse of discretion. See *BB & T v. Taylor*, 369 S.C. at 551, 633 S.E.2d at 502-03. Likewise, the determination that any negligence of counsel be imputed to Appellant was the correct application of law, and was not an abuse of discretion. *Id.*

Appellant presented no evidence or explanation whatsoever as to why corporate counsel failed to respond to the Summons & Complaint. Because no explanation was given for corporate counsel's failure to respond, the Special Referee did not abuse his discretion, and the decision to

deny relief should be affirmed. See *Pilgrim v. Miller*, 350 S.C. 637, 642, 567 S.E.2d 527 (Ct. App. 2002).

In *Pilgrim*, the Defendant testified she turned the summons and complaint over to her attorney the day after she received them, and upon her attorney's instruction, took the suit papers to her insurance agent who told her that her insurance carrier would "handle it from there." *Id.* at 641. No reason was given for the carrier's failure to respond. *Id.* Even under the lesser "good cause" standard of Rule 55(c), SCRCP, this Court found no abuse of discretion, and affirmed the trial court's refusal to set aside the default. *Id.* at 642. See also generally *Green v. Johnson*, 28296, Appellate Case 2024-000642, p. 8 (S.C. Aug 13, 2025)(While a defendant's health issues may, depending on relevant facts, establish a satisfactory explanation, relief is not appropriate unless the evidence presented establishes a mistake, inadvertence, surprise, or excusable neglect under Rule 60(b)(1)).

Granted, Appellant has not asserted that the Summons and Complaint even reached corporate counsel, only that he was assured at least twice that corporate counsel would be handling this matter. (R. p. 26, ¶10, p. 27 ¶¶ 15-16) Assuming *arguendo* that the Summons and Complaint was never delivered to corporate counsel, Appellant has offered no evidence of any "mistake, inadvertence, surprise or excusable neglect" upon which relief from the judgment should be granted. See *McCall v. A-T-O, Inc.*, 276 S.C. 143, 276 S.E.2d 529 (1981)(The failure to transmit the Summons and Complaint to the insurance company was not excused by confusion of corporate employees.) In *McCall*, the party seeking relief at least submitted some evidence of neglect, even if it was inexcusable. *Id.* at 145-46, 530. Appellant has submitted none. As such, the Special Referee's conclusions are supported by the record., and as a result he did not abuse his discretion, and his decision to deny relief should be affirmed. See *Pilgrim v. Miller*, 350 S.C. at 642, 567 S.E.2d 527.

2. A defendant is not excused from timely answering a Summons and Complaint by simply turning the Summons and Complaint over to his/her employer.

Appellant asserts that by turning the Summons and Complaint over to his employer, he satisfied his duty to answer or otherwise respond. In his Brief, Appellant relies almost entirely on *Roberts v. Peterson*, 292 S.C. 149, 355 S.E.2d 280 (Ct. App. 1987), a case involving an employee of the Charleston School Board, school officials, and the abolishment of governmental immunity.[2] *Id.* Appellant's reliance on *Roberts* to allege an error of law is misplaced, and is based upon a misreading of this Court's opinion in *Roberts*. *Roberts* does not stand for the proposition that Appellant may avoid his duty to act timely to respond to a summons and complaint by merely handing it over to his employer, or even upon a reasonable reliance on the employer's representations that it would respond. Had that been this Court's holding, it would have expressed it explicitly. It did not. Instead, the *Roberts* Court followed the established precedent of this State which "have been extremely reluctant to vacate default judgments and have thus resorted to more restrictive definitions." *Id.* At 152, 281.

In *Roberts*, a former student brought an action for personal injuries against her former teacher for personal injuries caused by the breaking or exploding of a glass tube during a chemical

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[2] Appellant appears to allege that the Special Referee abused his discretion by not citing to *Roberts* in his Order. (Initial Brief of Appellant, p. 7) However, the Special referee explicitly inquired during the hearing whether or not Appellant had any authority on whether or not an employer's negligence was attributable to an employee; Appellant's Counsel said that he did not. (R. p. 44, p. 14, line 21 - p. 15, line 14) Appellant only presented *Roberts* in an email several days after the deadline to submit proposed orders ran. Respondent denies that the Special Referee did not consider the **issue** of whether any negligence of Penke could be imputed to Appellant. The Special Referee specifically determined that the proper analysis was the action or inaction of corporate counsel. (R. p. 10). However, to any extent that the Special Referee failed to consider any issue, the proper remedy for Appellant was to file a motion for reconsideration; the failure to do so waives the argument. See *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000).

experiment. *Id.* at 150, 281. After being served with the suit papers, Peterson handed those papers to her school principal. *Id.* After Peterson failed to file responsive pleadings, the Trial Court entered a Default Judgment against her. *Id.*

In denying Peterson's motion to set aside the Judgment, the Trial Court imputed the school board's negligence to Peterson, and found that such negligence was not excusable. *Id.* at 150, 280-281. In reversing the Trial Court, this Court also imputed the schools board's negligent to Roberts; however, under the specific facts of the case, found the school board's negligence excusable. *Id.* at 151, 281. This Court reversed the Trial Court not simply because Peterson relied on her employer to answer the Summons and Complaint; rather, this Court found that the employer's negligence was excusable. *Id.* ("From the record we conclude that Peterson has a valid and meritorious defense but that the school authorities were negligent, but not necessarily inexcusably negligent.").

As this Court noted, the facts of *Roberts* are "**unique**". *Id.* at 152, 281 (Emphasis added). This Court specifically noted that Roberts obtained the Default Judgment on February 25, 1985, and that Order denying the motion to set aside that judgment was entered on January 22, 1986, after the South Carolina Supreme Court abolished sovereign immunity. *Id.* At 150-151, 280-281 (Quoting *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985). "[T]his situation impact[ed] on the exercise of discretion of the trial judge in the determination of whether the neglect of the Charleston school officials in this case was excusable." *Id.* at 151, 281. This Court seemed to further limit its holding to the particular facts of *Roberts*, by noting that "State and County employees now have, or should have, detailed instructions and procedures to follow when served with suit papers; this was not the situation in the case before us." *Id.*

Simply put, the *Roberts* schools official's lack of knowledge of the legal effects of the

abolition sovereign immunity was excusable. There is no similar watershed legal decision effecting the case at bar. Nor is there such change in the law which would excuse either Appellant's neglect or that of his employer such as to "impact" upon the Special Referee's discretion.

Perhaps more importantly, the year after this Court issued it's opinion in *Roberts*, it also repeated the long held rule in this State that a"[l]ack of familiarity with legal proceedings is unacceptable and the court will **not** hold a layman to any lesser standard than is applied to an attorney." *Goodson v. American Bankers Ins. Co. Of Florida*, 295 S.C. 400, 403, 368 S.E.2d 687, 689 (Ct. App. 1988)(Citing *McCall v. A-T-O, Inc.*, 276 S.C. 143, 276 S.E.2d 529 (1981)(Emphasis added))..

In *McCall*, the Trial Court set aside a judgment where some confusion in the Defendant's corporate office resulted in the Summons and Complaint never being forwarded to the insurance carrier. *McCall v. A-T-O, Inc.* 276 S.C. at 144-145 , 276 S.E.2d at 529-530. The Supreme Court concluded that the Trial Court had erred in vacating the judgment and reversed. *Id.* at 147, 531. The Court compared the confusion in the corporate office with that within the insurance carrier in *Goodson v. American Bankers Ins. Co. Of Florida*, 295 S.C. at 403, 368 S.E.2d at 689. The Court found the factual situations similar, and refused to distinguish the cases on the argument that laymen should be held to a lesser standard than a lawyer. *Id.* at 146, 530.

In *McCall*, the Respondent at least presented some evidence of mistake or neglect, even though it was found to be inexcusable. In the case at bar, Appellant presented no such evidence whatsoever. In his order denying Appellant relief from the judgment, the Special Referee addressed this lack of evidence, and correctly noted, "Rule 60 requires **a more particularized** showing of mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or 'other misconduct of an adverse party'". (R. p. 11) See *Regions Banks v.*

Owens, 402 S.C. 642, 648-49, 741 S.E. 51, 54-55 (Ct. App. 2013) (Quoting *Sundown Operating Co., Inc. V. Intedge Industries, Inc.*, 383 S.C. 601, 607-608, 681 S.E.2d 885, 888 (2009). See also *Green v. Johnson*, 28296, Appellate Case 2024-000642, p. 8 (S.C. Aug 13, 2025).

Even if Penske's employees should be held to a lower standard of care than an attorney, which is denied, Appellant has not produced any evidence which would support relief from judgment, such as evidence of a particularized showing of excusable neglect by those employees. See *Pilgrim v. Miller*, 350 S.C. at 642, 567 S.E.2d 527.

In *Roberts*, Peterson articulated facts and circumstances why the school authorities' negligence, i.e. a change in the law, was excusable. *Id.* In the case at bar, Appellant has articulated no such evidence at all as to any mistake, inadvertence or excusable neglect on the part of any Penske employee, named or unnamed. Appellant offers no explanation why counsel failed to answer, or whether counsel ever received the Summons and Compliant at all. All Appellant offers is the mere failure of counsel to answer, which in and of itself does not merit relief from judgment. See *Simon v. Flowers*, 231 S.C. 545, 551, 99 S.E. 2d 391, 394 (1957)(Negligence of an attorney may be imputed to the client. And be a basis for denial of relief.).

3. By not requesting a ruling below on whether he is entitled to relief because of "the existence of good faith mistake of fact" rather than "excusable neglect", Appellant has waived the issue.

Appellant seems to concede that he failed to prove any excusable neglect which would warrant relief from judgment, and instead pivots to suggesting that the Special Referee abused his discretion by not finding that Appellant's "belief that Penske's legal department was handling this litigation on his behalf constituted a good faith mistake of fact sufficient to warrant relief". (Initial Brief of Respondent, pp. 5, 7.) To the extent to which Appellant now argues that a "good faith mistake of fact" is a separate ground for relief than "excusable neglect", and that Appellant is entitled to relief as such, Appellant failed to preserve such argument below.

It is well settled that an issue must have been raised to and ruled upon by the trial court to be preserved for appellate review. *Staubes v. City of Folly Beach*, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000). See also *State v. Nelson*, 331 S.C. 1, 5 n. 6, 501 S.E.2d 716, 718 n. 6 (1998) ("the ultimate goal behind preservation of error rules is to insure that an issue raised on appeal has first been addressed to and ruled on by the trial court."). Additionally, "[i]f the losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellate review." *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406 at 422, 526 S.E.2d at 724; *Elam v. South Carolina Dep't of Transp.*, 361 S.C. 9, 24 n. 4, 602 S.E.2d 772, 780 n. 4 (2004). It is uncontested that Appellant failed to file a motion under Rule 59, SCRCP, seeking to alter or amend the order denying relief.

At the hearing on his motion for relief, it does not appear that Appellant argued that he should be entitled to relief under a "good faith mistake of fact", only that he should be so entitled to relief for excusable neglect. (R. 44, p. 15, lines 6-14) In his Order, the Special Referee found that Appellant had "produced no evidence of counsel's neglect, excusable or otherwise." (R. p. 10)

The Special Referee also concluded that any negligence on the part of Penske corporate counsel be imputed to Appellant. (R. p. 11) Finally, the Special Referee found that Appellant's own conduct in failing to timely respond "was his own error, which is not excusable under Rule 60(b)(1). *Id.* (emphasis added).

As such, any argument that the Special Referee failed to address a "good faith mistake of fact" as a separate ground for relief has not been preserved. See *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406 at 422, 526 S.E.2d at 724.

4. Even if the issue is preserved, Appellant has failed to show that the Special Referee abused his discretion in denying relief because the absence of a good faith mistake of fact is supported by the evidence in record.

For his proposition that the Special Referee abused his discretion by not granting relief for a "good faith mistake of fact", Appellant again cites *Roberts*. Once again, Appellant's reliance is misplaced. *Roberts* does not discuss a "good faith mistake of fact" at all. In fact, the word "mistake" only appears once in the opinion. The *Roberts* Court only used the term when discussing the larger proposition that South Carolina Courts are extremely reluctant to vacate default judgments:

> Interpretation of the Rules does present some problems. In some instances the same language has been construed differently by the respective courts. The best example is relief from judgments now found in Rule 60(b). **Mistake,** inadvertence and excusible [sic] neglect are terms used in both systems but the Federal Courts have interpreted them broadly while State Courts have been extremely reluctant to vacate default judgments and have thus resorted to more restrictive definitions. Again, State rather than Federal case law should govern in those situations. The language of the Federal model has been adopted but not necessarily its precedent. They should be persuasive only when compelled by the text, or in the absence of prior state law.

Roberts v. Peterson, 292 S.C. at 152, 355 S.E.2d at 281 (Emphasis added). See also *Sundown Operating Co.*, 383 S.C. at 608, 681 S.E.2d at 888-89 ("The different standards under the two rules underscore the clear intent to make it more difficult for a party to avoid a default once the court has entered a judgment, which carries greater finality, and often occurs later than, a clerk's entry of default.").

This Court has concluded that a mistake of fact warranted in very few circumstances, most notably when the party seeking to set aside a judgment has shown a mistake as to the date and time for a hearing, or as to the date the summons and complaint were served. See generally *Williams v. Watkins*, 384 S.C. 319, 681 S.E.2d 914 (Ct. App. 2009)(Relief granted where party complied with the instruction on the jury roster, and only notified the Magistrate that he would not be able to

appear); *Mictronics, Inc. v. S.C. Dep't of Revenue*, 345 S.C. 506, 548 S.E.2d 223 (Ct. App. 2001)(Relief granted where a party mistakenly calendered a rescheduled hearing date); *Columbia Pools, Inc. v. Galvin*, 288 S.C. 59, 339 S.E.2d 524 (Ct. App.1986)(Relief granted where attorney responding to a summons and complaint filed responsive pleadings within 30 days of the date he believe that service was perfected even though service had been made the day before.).

However, Appellant did not present any evidence that he had mistaken the date in which he was required to respond. Instead, he asserts that he reasonably relied on Penke to respond for him. (R. p. 42: p. 5, lines 18-20, p 43: p. 12, line 25 - p. 44: p. 13, line 15) Again, the reasonableness of this reliance was correctly weighed by the Special Referee under the "excusable neglect"standard. See *Bridger v. Asheville & Spartanburg R.R.*, 25 S.C. 24, 28 (1886). In *Bridger*, the South Carolina defined negligence as:

> the omission to do something which is a reasonable, and prudent man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do under all circumstances surrounding and characterizing the particular case.

Id.

As discussed above, if the Special Referee failed to address any argument as to whether Appellant's reliance on Penske provided a separate basis for relief for a "genuine mistake of fact", that issue has been waived. See *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406 at 422, 526 S.E.2d at 724. However, assuming *arguendo* that the issue was properly raised and ruled on, the decision to deny relief nevertheless has sufficient evidentiary support, Therefore the Special Referee did not abuse his discretion. See *BB & T v. Taylor*, 369 S.C. at 551, 633 S.E.2d at 502-03.

The Special Referee also addressed whether Appellant's own actions in failing to timely act

merited relief from the judgment. (R. Pp. 11-12) The Special Referee concluded that Appellant failed to explain why he failed to take any steps beyond turning the paperwork over to Penske to timely answer the Summons and Complaint. The Special Referee also found that *inter alia* that while there may be additional factors relative to Appellant's inaction prior to judgment being entered, Appellant has not presented them.

Therefore, there is ample evidence supporting the Special Referee's conclusions that any reliance on Penske to respond to the complaint was not reasonable, or that any "mistake of fact" was not "genuine." Appellant produced no explanation for why he failed to take any action after submitting the Summons and Complaint to his employer. He failed to confirm that or even inquire as to whether the pleadings had been submitted to the legal department, and/or whether Penske and it's counsel had answered the Summons and Complaint timely. According to his affidavit, Appellant took no further action between April 10, 2024, and August 17, 2024, a period of One Hundred and Twenty-Nine (129) Days. (R. pp. 25-28) Appellant further claims without elaboration that upon receiving notice of the hearing, he informed his office manager that he could not attend the August 20, 2024, hearing. (R. p. 27, ¶13) Without further explanation, the record lacks any evidence as to whether the failure to attend was willful or in good faith.

In short, Appellant has presented no evidence he took any steps after April 10, 2024, to protect himself by contacting either Penske or its corporate attorneys to confirm an answer would be timely filed on his behalf. See *Regions Bank v. Owens*, 402 S.C. at 648-49, 741. S.E.2d at 54.

5. Neither this Court nor the Trial Court need consider whether Appellant has a meritorious defense, because Applellent failed to prove mistake, inadvertence, surprise, or excusable neglect.

Appellant asserts that he is entitled to relief under the so called *Wham* factors. See *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501-02 (Ct.App.1989) (When determining whether to grant relief, the factors to consider are: (1) the timing of the motion for relief, (2) whether the party requesting relief has a meritorious defense, and (3) the degree of prejudice to the opposing party if relief is granted.) However, because Appellant failed to show a particularized and sufficient showing of mistake, inadvertence, surprise or excusable neglect under Rule 60(b)(1), this Court need not and should not address those issues. See *Regions Banks v. Owens*, 402 S.C. at 649, 741 S.E.2d at 55;*Sundown Operating Co., Inc. V. Intedge Industries, Inc*, 383 S.C. at 607–08, 681 S.E.2d at 888 (holding a court need only consider the Wham factors "[o]nce a party has put forth a satisfactory explanation for the default"); *Dixon v. Besco Eng'g, Inc.*, 320 S.C. 174, 179, 463 S.E.2d 636, 639 (Ct.App.1995) (holding the trial court is not required to make specific findings of fact on the record for each Wham factor if the record contains sufficient evidentiary support for the finding of lack of good cause).

CONCLUSION

A party has a duty to monitor the progress of his case, and a lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney. See *Hill v. Dotts*, 345 S.C. 304, 310, 547 S.E.2d 894, 897 (Ct. App. 2001). It is undisputed that Appellant was duly served with the summons and complaint. It was his duty to answer the complaint, and he must suffer the consequence of his failure to answer. See *Williams v. Ray*, 232 S.C. 373, 383-84, 102 S.E.2d 368, 373 (1958).

Given the fact there is evidence in the record that Appellant failed to properly monitor the filing of responsive pleadings, and/or sufficient evidence of a lack of mistake, inadvertence, surprise or excusable neglect on the part of Appellant, Penske and/or corporate counsel, it is clear that the Special Referee's decision to deny relief had evidentiary support and was not controlled by an error of law. As a result the Order Denying Defendant's Motion for Relief from Judgment should be affirmed. See e.g. *BB & T v. Taylor*, 369 S.C. at 551, 633 S.E.2d at 502-03.

Respectfully submitted,

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December 1, 2025
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