THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Patrick W. Carr, Special Referee

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

JAYLEN AIKEN,……...…Respondent,

v.

RICHARD EMMONS,…….……Appellant.

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FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. WHETHER THE SPECIAL REFEREE ERRED IN DENYING APPELLANT'S MOTION FOR RELIEF FROM JUDGMENT?

STATEMENT OF THE CASE

This case arises from a motor vehicle accident involving Appellant and Respondent that occurred on December 13, 2022 in Dorchester County. (R. p. 14, at ¶¶ 3–5). As set forth in the Affidavit of Richard Emmons, Appellant is employed by Penske Truck Leasing Co., L.P. ("Penske"). (R. p. 25, at ¶ 2). Appellant is employed to drive Penske vehicles from one location to another, and the motor vehicle accident at issue here occurred in the course of his work for Penske. (*Id.* at ¶¶ 2–3).

Respondent alleges that on the date of the accident, Appellant was operating a Penske truck traveling south on Highway 165 in Dorchester County, directly behind Respondent. (R. p. 14, at ¶ 4). Respondent alleges further that "as [he] slowed his vehicle, in preparation to pulling off the roadway, [Appellant] did attempt to pass [Respondent], striking the [Respondent]. (*Id.* at ¶ 5). At hearing before the Special Referee, Respondent testified that prior to the accident, he was being directed by law enforcement. (R. p. 5). Respondent testified further that, following law enforcement's order, Respondent "began to prepare to pull off the highway. [Appellant] disregarded law enforcement's order and his vehicle suddenly collided with [Respondent]'s vehicle." (*Id.*).

In his affidavit, Appellant acknowledges operating a Penske truck traveling south on Highway 165 behind Respondent's vehicle. (R. p. 25, at ¶ 3). Appellant testified, however, that Respondent's vehicle pulled off the roadway onto the shoulder, and then suddenly and without warning "made a U-turn, apparently to travel in the opposite direction." (*Id.*). As a result, the two vehicles collided. (*Id.*).

Photographs of both vehicles taken by Appellant and attached to his affidavit corroborate Appellant's version of events, depicting damage to the front driver-side of Respondent's vehicle that is not facially consistent with the allegation that Appellant struck Respondent's vehicle while

attempting to pass it. (*See* R. pp. 29–37). Appellant also testified, without challenge from Respondent, that he received no citation in connection with the accident, a fact wholly inconsistent with the allegation that Appellant disregarded an order from law enforcement and thereafter caused a collision as a result. (*See* R. p. 26, at ¶ 5).

Respondent initiated this action on March 28, 2024 by filing a Summons and Complaint in the Court of Common Pleas that asserted a single cause of action for negligence against Appellant. (R. p. 15, at ¶¶ 7–9).

Appellant's daughter passed away on April 3, 2024, and Appellant was away from home attending to her funeral arrangements in New York state until April 9, 2024. (R. p. 26, at ¶¶ 7–8). Upon his return on April 9, Appellant received service of the Summons and Complaint in this case. (*Id.* at ¶ 9; R. p. 17). The next day – April 10, 2024 – Appellant gave the papers he was served to his office manager at Penske, Isaac Wilson. Appellant asked Mr. Wilson if he should retain counsel, but Mr. Wilson assured him that "Penske's legal team" would handle the case. (R. pp. 26–27, at ¶ 10).

In May 2024, Appellant returned to New York and was on FMLA secured leave from Penske to attend to his daughter's affairs. (R. p. 27, at ¶ 12). In the meantime, Respondent filed an Affidavit of Default, an Affidavit of Non-Military Service, and a Request for Entry of Default on June 26, 2024. (R. pp. 18–22). The Court of Common Pleas entered an Order of Reference on July 29, 2024, finding Appellant to be in default and referring this matter to Patrick W. Carr as Special Referee for hearing on damages. (R. pp. 2–4). The Order of Reference specifies that appeal from any order or judgment issued by the Special Referee shall be taken directly under Rule 53(e), SCRCP. (R. p. 2).

Respondent mailed notice of an August 20, 2024, hearing before the Special Referee to Appellant's "last known address" on July 31, 2024. (R. p. 5). Appellant did not receive that notice at his location in New York state, however, until August 17, 2024. (R. p. 27, at ¶ 12). Appellant immediately contacted his manager at Penske, Mr. Wilson, and informed him that he was unable to return to South Carolina in time for the August 20 hearing. (*Id.* at ¶ 13). On August 19, 2024, Appellant contacted the office of Respondent's counsel to request a postponement of the August 20 hearing, which request was declined. (*Id.* at ¶ 14). Also on August 19, 2024, Appellant was contacted by Chris Carney in Penske's Human Resources Department. Mr. Carney again assured Appellant that the matter would be handled by "Penske's legal department." (*Id.* at ¶ 15).

On August 20, 2024, this matter was heard by the Special Referee. (R. p. 5). Neither Appellant nor any representative of Penske was present. (*See id.*). Following the August 20 hearing, the Special Referee's Final Order and Judgment was entered on September 3, 2024, which entered judgment in favor of Respondent against Appellant in the amount of $28,981.00. (R. pp. 7–8). In September 2024, Appellant returned home to South Carolina and learned of the judgment entered against him. (R. p. 27, at ¶ 16).

Appellant filed a motion under Rule 60(b), SCRCP, for relief from the Final Order and Judgment on October 4, 2024, along with a detailed supporting affidavit. (R. pp. 23–39). A hearing on Appellant's motion for relief was held before the Special Referee on December 18, 2024. (R. pp. 40–46). During that hearing, Respondent introduced no evidence challenging or contradicting the testimony set forth in Appellant's supporting affidavit. (*See id.*). At the close of the hearing, the Special Referee requested that both parties submit proposed orders on Appellant's motion for relief from judgment. (R. p. 45, at 19:10 – 20:12). Respondent submitted a proposed order denying Appellant's motion for relief on January 17, 2025. (R. pp. 47–50).

Appellant submitted a proposed order granting his motion for relief, along with case law cited in that proposed order, on January 21, 2025. (R. pp. 51–60).

The Special Referee's Order denying Appellant's motion for relief was entered on April 14, 2025. (R. pp. 10–12). On May 14, 2025, Appellant timely filed and served a Notice of Appeal of the April 14, 2025, order denying his motion for relief from the September 3, 2024, Final Order and Judgment.

STANDARD OF REVIEW

"Relief under Rule 60(b)(1), SCRCP, lies within the sound discretion of the [circuit court] and will not be reversed on appeal absent an abuse of discretion." *Williams v. Watkins*, 384 S.C. 319, 324, 681 S.E.2d 914, 916 (Ct. App. 2009) (citation omitted). "An abuse of discretion arises where the judgment is controlled by an error of law or is based on factual conclusions that are without evidentiary support." *Id.* (citation omitted).

ARGUMENT

Rule 60(b)(1), SCRCP, 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… mistake, inadvertence, surprise, or excusable neglect[.]" "'This rule is an appropriate remedy for good faith mistakes of fact if all other applicable factors are met.'" *Williams*, 384 S.C. at 324, 681 S.E.2d at 917 (quotation omitted).

"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." *Id.* (citations omitted). However, "[i]n order to gain relief under Rule 60(b)(1), SCRCP, a party must first show a good faith mistake of fact has been made[.]" *Id.*

Here, in denying Appellant's motion for relief from judgment, the Special Referee failed to apply controlling precedent from this Court establishing that Appellant's reliance on his employer's assurance that it would properly answer and defend Respondent's action is a good faith mistake of fact that warrants relief from judgment under Rule 60(b), SCRCP. *See Roberts v. Peterson*, 292 S.C. 149, 355 S.E.2d 280 (Ct. App. 1987). Because this legal error represents an abuse of discretion, and because Appellant has shown that the factors determining whether to grant relief under Rule 60(b)(1) otherwise weigh in his favor, this Court should reverse the Special Referee's order denying Appellant's motion for relief and remand this case for further proceedings in the Court of Common Pleas.

I. Under Controlling South Carolina Law, Appellant Demonstrated the Existence of a Good Faith Mistake of Fact That Warrants Relief From Judgment Under Rule 60(b)(1).

Based on Appellant's undisputed testimony, his belief that Penske's legal department was handling this litigation on his behalf constituted a good faith mistake of fact sufficient to warrant relief under Rule 60(b)(1), SCRCP, as a matter of law. In *Roberts v. Peterson*, 292 S.C. 149, 355 S.E.2d 280 (Ct. App. 1987), this Court reversed the trial court's denial of a motion for relief from judgment entered against an employee where the defendant's employer was negligent in failing to timely notify its attorney or insurer of a pending claim against that employee.

In *Roberts*, a schoolteacher was sued by a former student for personal injuries caused by a breaking or exploding glass tube during a chemistry experiment. *Id.* at 150, 355 S.E.2d at 280. The defendant schoolteacher handed the suit papers to her school principal, but the school authorities failed to timely notify the school attorney or insurance company. *Id.* A default judgment was entered against the schoolteacher, and her motion for relief from judgment was subsequently denied. *Id.*

This Court reversed the trial court's denial of her motion for relief. *Id.* at 150, 355 S.E.2d at 281. Conceding that the school authorities were negligent, the Court of Appeals noted the lack of evidence regarding insurance coverage in the record, and the schoolteacher's resulting lack of recourse for the judgment as against her employer or her employer's insurer. *Id.* at 151, 355 S.E.2d at 281. The Court of Appeals further noted the longstanding imputation of an attorney or insurer's negligence to a defaulting litigant under South Carolina law, but distinguished those situations from the negligence of "an employer… whose business is… not litigation," finding the employer's negligent failure to act "more excusable…than the cases involving attorneys or insurance companies." *Id.* Finally, the Court of Appeals recognized "the general rule in this country that when an employee hands suit papers to his/her employer and the employer fails to properly answer the suit papers, the courts grant relief to the defaulting defendant in the interest of trying cases on their merits." *Id.* (citations omitted).

Here, as in *Roberts*, Appellant gave the suit papers to his manager at Penske, Mr. Isaac Wilson. (R. pp. 26–27, at ¶ 10). Appellant specifically asked Mr. Wilson if he should retain counsel, but Mr. Wilson assured him that "Penske's legal team" would handle the case. (*Id.*). Appellant was further assured by a member of Penske's Human Resources Department, Mr. Chris Carney, that Penske's legal department was handling this matter. (R. p. 27, at ¶ 15). As was also the case in *Roberts*, there is no evidence in the record here of any errors and omissions or other insurance coverage extending protection to Appellant for his employer's mistake, and no evidence that Appellant has any direct recourse against his employer that he would not reasonably fear could adversely affect his continued employment.

In sum, Appellant has shown a good faith mistake of fact indistinguishable from the mistake of fact made by the employee in *Roberts* that this Court found sufficient to merit relief

from judgment in that case. The order denying Appellant's motion for relief, however, includes no mention of *Roberts*, and no reasoning that would distinguish the result in this case from the result reached by this Court under near-identical facts. (*See* R. pp. 10–12). The Special Referee's failure to apply *Roberts* here was legal error, and thus an abuse of discretion that warrants relief from this Court.

II. Appellant is Entitled to Relief From Judgment Under the Remaining Factors Applied in Analyzing a Motion for Relief Under Rule 60(b)(1).

Following Appellant's showing that a good faith mistake of fact was made, the analysis turns to the factors in determining whether to grant relief under Rule 60(b)(1), SCRCP. *See Williams*, 384 S.C. at 324, 681 S.E.2d at 917. As to the timing of Appellant's motion for relief, "a party is required to make the motion 'within a reasonable time, and… not more than one year after the judgment… was entered[.]'" *Id.* at 326, 681 S.E.2d at 917 (quoting Rule 60(b), SCRCP). Here, the record reflects that Appellant sought relief as soon as he learned that the August 20 hearing had taken place in his absence and that a judgment had been entered against him. (*See* R. p. 27, at ¶ 16). The Final Order and Judgment was entered on September 3, 2024, and Appellant secured counsel and filed his motion for relief from that judgment on October 4, 2024. Appellant has thus made his motion within the allotted time. (R. pp. 5–9; R. pp. 10–12).

As to the meritorious defense factor, Appellant made a prima facie showing of a meritorious defense to Respondent's claim in support of his motion for relief. "To establish a meritorious defense, the party does not have to show he would prevail on the merits." *Williams*, 384 S.C. at 326, 681 S.E.2d at 917 (citation omitted). "Rather, a meritorious defense 'need be only one which is worthy of a hearing or judicial inquiry because it raises a question of law deserving of some investigation and discussion or a real controversy as to real facts arising from conflicting or doubtful evidence.'" *Id.* at 326, 681 S.E.2d at 918 (quotation omitted).

The Complaint alleges that on the date of the accident, Appellant was operating a Penske truck traveling south on Highway 165 in Dorchester County, traveling directly behind Respondent. (R. p. 14, at ¶ 4). The Complaint further alleges that when Respondent "slowed his vehicle, in preparation to pulling off the roadway, [Appellant] did attempt to pass [Respondent], striking the [Respondent]. (*Id.* at ¶ 5). Respondent testified at the damages hearing before the Special Referee that prior to the accident, he was being directed by law enforcement. (R. p. 5). Respondent further testified further that he followed law enforcement's order and "began to prepare to pull off the highway," but asserted that Appellant "disregarded law enforcement's order and his vehicle suddenly collided with [Respondent]'s vehicle." (*Id.*).

In contrast, Appellant's affidavit acknowledges that Appellant was operating a Penske truck traveling south on Highway 165 behind Respondent's vehicle. (R. p. 25, at ¶ 3). Appellant testified, however, that Respondent's vehicle pulled off the roadway onto the shoulder, and then suddenly and without warning "made a U-turn, apparently to travel in the opposite direction." (*Id.*). As a result, the two vehicles collided. (*Id.*).

Photographs of both vehicles taken by Appellant and attached to his affidavit corroborate Appellant's version of events, depicting damage to the front driver-side of Respondent's vehicle that is not facially consistent with the allegation that Appellant struck Respondent's vehicle while attempting to pass it. (R. pp. 29–37). Appellant also testified, without rebuttal or contrary evidence from Respondent, that he received no citation in connection with the accident. (R. p. 26, at ¶ 5). That Appellant received no citation flatly contradicts Respondent's testimony that Appellant disregarded an order from law enforcement and thereafter caused a collision as a result.

This conflicting evidence creates a genuine and disputed issue of fact regarding liability for the Respondent's claim—was the accident caused by the actions of Appellant, or by the actions

of Respondent? Indeed, the evidence submitted by Appellant is sufficient to withstand a motion for summary judgment on the issue of liability. As such, Appellant has more than met his burden to present a prima facie showing of a meritorious defense. It is the province of the jury, and not the Special Referee, to determine the true facts of the matter, and whether or not Respondent is in fact entitled to the damages awarded to him from Appellant by the Special Referee.

Finally, any degree of prejudice Respondent might suffer if Appellant is denied relief from the Special Referee's judgment is insufficient to outweigh the other factors favoring relief under Rule 60(b)(1), SCRCP. Respondent, through his counsel, was on notice of Appellant's desire to be heard in this matter prior to the August 20 hearing, when Appellant contacted the office of Respondent's counsel on August 19, 2024 to request a postponement of that hearing. (R. p. 27, at ¶ 14). Respondent was also on notice of Appellant's near-immediate motion for relief from the judgment entered following that hearing, putting Respondent on notice of the need to preserve and maintain evidence in support of his claim. (*See* R. pp. 23–24). There is thus limited prejudice in requiring Respondent to proceed with a trial on the merits, particularly in light of the strong policy of South Carolina "favoring the disposition of issues on their merits rather than on technicalities." *Mictronics, Inc. v. S.C. Dep't of Revenue*, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. App. 2001). This Court should therefore reverse the Special Referee's order denying Appellant's motion for relief from judgment, and remand this case to the Court of Common Pleas for precisely such a disposition on the merits.

CONCLUSION

For the reasons stated herein, this Court should reverse the Special Referee's order denying Appellant's motion for relief from judgment, and remand this matter to the Court of Common Pleas.

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December 16, 2025

/s/ Matthew Anderson

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