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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton B. Newman, Circuit Court Judge

Appellate Case No. 2023-001289

Tasha Jones and Shaniqua Thompson, ... Respondents,

v.

Lyndon Southern Insurance Company,
Safe Choice Insurance, LLC, and
Jupiter Managing General Agency, Inc, Defendants,

Of which

Lyndon Southern Insurance Company is the .... Appellant.

PETITION FOR REHEARING

Appellant Lyndon Southern Insurance Company ("Lyndon") petitions for rehearing of this Court's Order of January 21, 2026, dismissing this appeal for lack of appellate jurisdiction. *See* Rule 220(a), SCACR. In dismissing the appeal, the Court failed to consider that:

- Lyndon followed this Court's instructions in filing status reports while the appeal was held in abeyance, including a final status report attaching the circuit court's order on post-trial motions;
- There has never been any doubt that Lyndon intended to appeal both the jury's verdict and the denial of Lyndon's post-trial motions;

- Contrary to routine practice, the Court failed to alert Lyndon to any deficiency or to raise any question concerning appellate jurisdiction and even issued an order setting the deadline for Lyndon's initial brief and designation of matter to the record on appeal, which then triggered the deadlines set by the Rules for Respondents' initial brief and Lyndon's initial reply brief, all of which deadlines were followed by both Lyndon and Respondents;
- Respondents suffered no prejudice; and
- Lyndon's appeal is meritorious.

This Court's dismissal of the appeal, based on a belated and unexplained determination that Lyndon somehow erred by following the Court's instructions, represents the kind of hyper-technical, form-over-substance application of procedural rules that this Court and the Supreme Court have rightly rejected. This Court should grant rehearing, exercise appellate jurisdiction, and decide the appeal on its merits.

BACKGROUND

This appeal arises out of a claim for uninsured motorist ("UM") benefits under an automobile insurance policy issued by Lyndon. Respondents are Tasha Jones, the contracting party and "named insured" under the policy, and Shaniqua Thompson, an "insured person" under the policy's UM provision. Respondents' claims for breach of contract and bad faith were tried to a jury on June 21-22, 2023, and the verdict was entered on the docket on June 23, 2023. On July 3, 2023, Lyndon timely filed a motion to alter or amend the judgment pursuant to Rule 59(e), SCRCP, as well as other post-trial motions.

On July 14, 2023, the circuit court entered a Form 4 order. At that time, the only matters pending before the court were Lyndon's post-trial motions and Respondents' motion for attorneys' fees and costs. The Form 4 order states:

> The Court directed verdict in favor of the Plaintiffs as to Breach of Contract and submitted to the jury the issue of the amount of actual damages as to Breach of Contract.
>
> The jury awarded the following relief:
>
> As to Breach of Contract, the jury awarded actual damages to Plaintiff Jones in the amount of $50,300 and to Plaintiff Thompson in the amount of $50,000.
>
> As to Bad Faith Refusal to Pay, the jury awarded consequential damages to Plaintiff Jones in the amount of $75,000 and to Plaintiff Thompson in the amount of $75,000.
>
> As to Punitive Damages, the jury awarded punitive damages in the sum of $350,000 to Plaintiff Jones and $350,000 to Plaintiff Thompson.

(R. p. 12.) Additionally, the box for "This order ends the case" was checked. (*Id.*) Lyndon therefore understood the Form 4 order as a ruling on its post-trial motions and accordingly filed a timely notice of appeal on August 11, 2023. (R. p. 165.) Lyndon's notice of appeal referenced both the jury verdict and the Form 4 order:

> Lyndon Southern Insurance Company appeals the jury verdict entered on June 23, 2023 (attached hereto as Exhibit A) and the Form 4 Order and Judgment of the Honorable Clifton B. Newman dated July 14, 2023 (attached hereto as Exhibit B). Appellant received written notice of the Form 4 Order and Judgment on July 14, 2023.

(*Id.*) Both the verdict form and the Form 4 order were attached to the notice of appeal.

On August 21, 2023, Respondents moved to remand the case to the circuit court, contending that Lyndon's post-trial motions remained pending. In its return to the motion to remand, Lyndon noted that "[i]f the circuit court intended its July 14, 2023 Form 4 order to be a denial of Lyndon's post-trial motion, then Lyndon's notice of appeal was due on or before August 13, 2023," and Lyndon's August 11 filing of its notice of

appeal was both proper and jurisdictionally required. But Lyndon also recognized the possibility that the July 14 order was a belated entry of judgment on a "separate document" pursuant to Rule 58(a)(2), SCRCP, in which case Lyndon's Rule 59(e) motion and other post-trial motions remained pending. Accordingly, Lyndon agreed that a remand would be appropriate for clarification.

By order dated January 2, 2024, this Court "remand[ed] this case to the trial court for the limited purpose of ruling on Appellant's post-trial motions to the extent they remain pending." The Court directed Lyndon to file periodic status reports with the Court and concluded by stating:

> This appeal will be held in abeyance pending the circuit court's resolution of the pending motions.

In accordance with the Court's instruction, Lyndon filed status reports on January 11, February 6, February 27, and March 18, 2024.

The circuit court issued an order on the post-trial motions on March 27, 2024. (R. pp. 15-39.) On April 4, 2024, Lyndon Southern filed a final status report *to which the circuit court's order on post-trial motions was attached*. The status report concluded:

> Accordingly, Appellant Lyndon Southern respectfully requests that this Court enter an order removing the appeal from abeyance. Since the trial transcript has been received, Lyndon Southern's understanding is that its initial brief and designation of matter to the record on appeal would be due 30 days from the entry of such an order. In the event the Court believes a different deadline should apply, Lyndon Southern respectfully requests the Court's guidance as to the applicable filing deadline(s).

By letter dated April 23, 2024, Lyndon confirmed that the transcript had been received.

The Court responded on April 26, 2024, with a letter instructing the parties that Lyndon's "appellant's initial brief and designation of matter are due within 30 days from the date of this letter." The Court did not indicate any deficiency in Lyndon's status report, such as by sending a deficiency letter or by asking the parties to submit memoranda regarding appellate jurisdiction.

Briefing was completed in December 2024. Although Respondents argued that Lyndon had failed to preserve the issues for appellate review by not filing a successive motion pursuant to Rule 59(e), SCRCP (Respondents' Br. at 19-24),[1] and that Lyndon's "post-trial motions" were untimely,[2] they made no arguments concerning the existence of appellate jurisdiction.

On January 21, 2026, the Court issued an unpublished opinion dismissing for lack of appellate jurisdiction on the grounds that Lyndon should have filed a new or amended notice of appeal after the circuit court ruled on Lyndon's Rule 59(e) and other post-trial motions.

[1] Such a motion was unnecessary, and in fact would have been improper. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 20, 602 S.E.2d 772, 778 (2004) (holding that a successive motion under Rule 59(e), SCRCP, is improper "where the trial judge's ruling on the first Rule 59(e) motion does not result in a substantial alteration of the original judgment").

[2] Respondents' timeliness argument erroneously failed to distinguish between the different requirements applicable to a motion to alter or amend under Rule 59(e), SCRCP, for which—unlike Rule 50(e) and Rule 59(b)—does not require the court's permission to file a motion within 10 days of entry of judgment. (Reply Br. at 4-5.) Lyndon's Rule 59(e) motion was timely filed.

ARGUMENT

I. Any Error by Lyndon Was Non-prejudicial and Does Not Justify Dismissal

It is undisputed that Lyndon timely filed and served its notice of appeal within 30 days of the circuit court's entry of its July 14, 2023 Form 4 order, which appeared to be a ruling on Lyndon's post-trial motions. That filing established appellate jurisdiction with this Court. *See* Rule 203, SCACR; *Conner v. City of Forest Acres*, 348 S.C. 454, 461, 560 S.E.2d 606, 609 (2002).

Respondents' motion to remand contended that Lyndon's appeal was premature. This Court has declared that "in the event timely post-trial motions are filed under Rule 59, simultaneously with or subsequent to the filing of a Notice of Appeal . . . the appeal shall be dismissed without prejudice." *Hudson v. Hudson*, 290 S.C. 215, 216, 349 S.E.2d 341, 341–42 (1986) (footnote omitted); *see Bauknight v. Pope*, No. 2020-UP-216, 2020 WL 3989494, at *1 (S.C. Ct. App. July 15, 2020) (dismissing appeal without prejudice based on *Hudson*); *cf. State v. Baucom*, 340 S.C. 339, 341, 531 S.E.2d 922, 923 (2000) (noting that prior, premature appeal had been dismissed without prejudice); *Majstorich v. Gardner*, 361 S.C. 513, 517 & n.3, 604 S.E.2d 728, 730 & n.3 (Ct. App. 2004) (same). If this Court had dismissed Lyndon's appeal without prejudice as premature, Lyndon obviously would have been required to re-establish appellate jurisdiction by filing a new or amended notice of appeal.

Instead of dismissing, however, the Court held Lyndon's appeal in abeyance, meaning that the Court retained jurisdiction while awaiting clarification of the status of Lyndon's post-trial motions. In furtherance of its continuing jurisdiction, the Court

directed Lyndon to file periodic status reports. Lyndon duly did so, up to and including its final status report, which was filed within 30 days of entry of the circuit court's order on Lyndon's post-trial motions and which attached the circuit court's order.

To the extent Lyndon's final status report should have been labeled an "amended notice of appeal," any error does not justify dismissal. "Both this Court and the supreme court have held clerical errors in the notice of appeal do not destroy an appeal." *Paschal v. Price*, 380 S.C. 419, 441, 670 S.E.2d 374, 386 (Ct. App. 2008); *see State v. Scott*, 351 S.C. 584, 587, 571 S.E.2d 700, 701-702 (2002) (holding that "non-prejudicial clerical errors in the notice are not detrimental to the appeal"). Provided the respondent is actually served with a timely notice of appeal—as occurred in this case with Lyndon's August 11, 2023 filing of its notice of appeal—this state's appellate courts will generously forgive technical errors. *See, e.g.*, *Scott*, 351 S.C. at 587, 571 S.E.2d at 701-02 (notice of appeal filed with the clerk of the wrong county); *Weatherford v. Price*, 340 S.C. 572, 578, 532 S.E.2d 310, 313 (Ct. App. 2000) (exercising jurisdiction although the appellant "did not 'technically' appeal from the trial court's original order by referring to it in the Notice of Appeal"); *Charleston Lumber Co. v. Miller Housing Corp.*, 318 S.C. 471, 478, 458 S.E.2d 431, 435-36 (Ct. App. 1995) (holding failure to identify, in notice of appeal, one of a series of cases tried together was a mere clerical error not requiring dismissal, reasoning that "[Respondent] does not allege any prejudice as a result of the omission, and there can be no doubt that [Respondent] had notice that [Appellants] had appealed all cases").

Where there is no prejudice (as there is none here), this Court and the Supreme Court have excused even fundamental mistakes. In *Fechter v. Ortner*, for example, this

Court exercised jurisdiction even though the notice of appeal *neither referenced nor attached* the underlying substantive order, instead referencing and attaching only the order denying reconsideration. Op. No. 2024-UP-000446, 2024 WL 4040379, at *1 (S.C. Ct. App. Sept. 4, 2024). In issuing its ruling, the Court relied on the Supreme Court's order in *In re Estate of Hinson*, No. 2011-MO-039 (S.C. Dec. 19, 2011), which it described as "reversing dismissal of appeal where dismissal was based on petitioner's failure 'to serve and file a notice of appeal from the final order granting respondent's motion for summary judgment' and petitioner had 'served and filed a notice of appeal from a subsequent order denying his Rule 59(e), SCRCP, motion, without any mention of the earlier order.'" *Fechter*, 2024 WL 4040379, at *1 n.1.[3]

The decisions of this Court and the Supreme Court in this area demonstrate that the core question is whether the respondent is "adequate[ly] . . . inform[ed]" of the issues on appeal. *Pittman v. Stevens*, 364 S.C. 337, 342, 613 S.E.2d 378, 380 (2005) (rejecting preservation challenge where the notice of appeal referenced one jury charge but not another, because the notice otherwise complied with Rule 203 and "was adequate to inform [the respondent] that the appellants were appealing the trial court's denial of the new trial motion"); *see also Atkins v. Wilson*, 417 S.C. 3, 18, 788 S.E.2d 228, 236 (Ct. App. 2016); *Gibson v. Gibson*, 283 S.C. 318, 321 n.1, 322 S.E.2d 680, 682 n.1 (Ct. App. 1984).

The only error that will not be excused is one that deprives the respondent(s) of notice and the opportunity to defend the appeal, as occurred in *Connor*. In that case, the

[3] The order in *Estate of Hinson* does not appear to be available online or on C-Track.

notice of appeal named only the City as a respondent; the two individual defendants were not named as respondents and were not served with the notice of appeal. The Supreme Court held that the error was not merely clerical because the individuals were prejudiced by the lack of notice, and it accordingly dismissed the appeal. *See id.* at 461-62, 560 S.E.2d at 609-10.

Notably, the *Connor* Court faulted the appellant for failing to recognize and correct the error as soon as the Court of Appeals notified her that the case caption should reflect only the City as the respondent. *See id.* at 462, 560 S.E.2d at 610. The Court contrasted Connor's inaction to the circumstances of *Moody v. Dickerson*, where the notice of appeal was corrected soon after the error was discovered and there was no evidence the additional parties were misled or prejudiced. 54 S.C. 526, 531, 32 S.E. 563, 565 (1899).

Here, unlike in *Connor* or *Moody*, Lyndon could not have corrected any error because it never had any notice that its final status report—the very document the Court instructed Lyndon to file—was somehow inadequate. Even though this Court routinely notifies appellants of errors in the notice of appeal by sending deficiency letters,[4] Lyndon remained in the dark until this Court issued its decision dismissing the appeal.

Lyndon plainly intended to appeal both the jury's verdict and the denial of its Rule 59(e) and other post-trial motions. Its notice of appeal identified and attached both the

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[4] Samples of such deficiency letters are attached hereto as **Exhibit A**. By means of deficiency letters, the Court of Appeals invites correction of even major errors such as the failure to attach the order being appealed or to name one or more of the respondents. (*See id.*)

jury verdict and the July 14, 2023 Form 4 order (which Lyndon understood as being the circuit court's denial of its post-trial motions). This Court did not dismiss the appeal but rather held it in abeyance and instructed Lyndon to file periodic status reports. Lyndon diligently and fully complied with this obligation, including by filing a final status report informing the Court that a ruling had been issued on the post-trial motions; attaching the order to the status report; and asking the court to remove the appeal from abeyance and proceed with briefing. This Court subsequently sent the parties a letter setting the due date for Lyndon's initial brief and designation of matter. The Court did not issue a deficiency letter or otherwise indicate that there was any question or concern regarding appellate jurisdiction.

Under these circumstances, Lyndon's final status report effectively served the function of an amended notice of appeal: it informed the Court of the circuit court's ruling on the post-trial motions, attached a copy of the order, and made plain its intention to appeal that order. *Cf. Smith v. Barry*, 502 U.S. 244, 248-249 (1992) (holding that an appellate brief may serve as the function equivalent of a notice of appeal). Any error by Lyndon was merely clerical in nature and should not result in dismissal of the appeal.

II. Procedural Unclarity Does Not Justify Dismissal

In addition to overlooking nonprejudicial clerical errors, the appellate courts of this state will also forgive errors that result from a lack of procedural clarity. For example, in *CRM of the Carolinas, LLC v. Steel*, the Supreme Court excused a failure to timely serve the notice of appeal because, when the notice was filed, "there was no appropriate guidance" on whether e-filing constituted proper service of the notice of appeal.

No. 2024-MO-011, 2024 WL 1759232, at *2 (Apr. 24, 2024); *see also Matter of Martel*, No. 2023-UP-254, 2023 WL 4231338, at *3-4 (June 28, 2023) (excusing failure to serve the notice of appeal on the Office of the Attorney General where "the process for appealing an order of contempt could be better delineated," the State had actual knowledge of the appeal shortly after the notice was filed, and the State "was in no way prejudiced by any failure of service"). Just such a lack of procedural clarity exists here.

As noted above, this Court has made clear that a premature notice of appeal should be dismissed without prejudice. *See Hudson*, 290 S.C. at 216, 349 S.E.2d at 341–42 (1986); *Baucom*, 340 S.C. at 341, 531 S.E.2d at 923 (2000) (noting that prior, premature appeal had been dismissed without prejudice). Here, however, the Court did not dismiss Lyndon's appeal without prejudice, but rather held the appeal in abeyance pending resolution of the post-trial motions.

Had this Court followed its established procedure by dismissing Lyndon's appeal without prejudice, Lyndon's obligation to file a new or amended notice of appeal would have been clear. However, neither this Court nor the Supreme Court has provided guidance as to what should happen when a premature appeal is held in abeyance. Unlike dismissal, holding an appeal in abeyance does not extinguish appellate jurisdiction, a fact that is evidenced by the Court's instruction here for Lyndon to submit periodic status reports. Following Lyndon's submission of its final status report, the Court confirmed receipt of the trial transcript and set a deadline for filing and service of Lyndon's initial brief and designation of matter—all of which is consistent with Lyndon already having filed and served its notice of appeal.

It bears noting that the federal courts long ago recognized the procedural "trap for an unsuspecting litigant who files a notice of appeal before a posttrial motion, or while a posttrial motion is pending" and avoided it by amending Federal Rule of Appellate Procedure 4 to provide that a premature notice of appeal becomes ripe when the post-trial motion is ruled upon *without the need to file a new or amended notice of appeal*. *See* Fed. R. App. P. 4(a)(4)B)(i) & adv. committee note to 1993 amendment. While not controlling of South Carolina courts, the federal approach suggests that the procedural unclarity here—where the appeal was not dismissed but rather was held in abeyance, similar to how a federal appeal would be suspended pending resolution of post-trial motions—should not work to Lyndon's detriment. Instead, the Court should recognize that in the absence of guidance for appeals held in abeyance, and in light of Lyndon's compliance with the Court's instructions and the absence of any prejudice, Lyndon should not be penalized for failing to file a notice of appeal in an appeal that was already pending.

III. Lyndon's Appeal Is Plainly Meritorious

The settled policy of the courts of this State is to prefer resolution of matters on their merits. *See, e.g.*, *Caldwell v. Wiquist*, 402 S.C. 565, 575, 741 S.E.2d 583, 588 (Ct. App. 2013) (recognizing "the policy of our state to resolve cases on the merits"); *Mictronics, Inc. v. S.C. Dep't of Revenue*, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. App. 2001) (recognizing "South Carolina's policy favoring the disposition of issues on their merits rather than on technicalities"). Thus, as this Court and the Supreme Court have both consistently recognized, "rules of appellate procedure should not be interpreted to create a trap for the unwary." *Clark v. Aiken Cty.*, 366 S.C. 102, 108, 620 S.E.2d 99, 102 (Ct. App. 2005); *In re*

Nov. 4, 2008 Bluffton Town Council Election, 385 S.C. 632, 641, 686 S.E.2d 683, 688 (2009) (recognizing "the principle that courts should not interpret procedural rules to create a trap for unwary lawyers"); *see also Swing v. Swing*, 445 S.C. 340, 345, 914 S.E.2d 158, 161 (2025) ("[C]ivil procedure and appellate rules should not be . . . interpreted to create a trap for the unwary lawyer.") (quoting *Elam*, 361 S.C. at 25, 602 S.E.2d at 780).[5]

Lenience with respect to technical or clerical errors is warranted when, as in this case, there is no prejudice and the appeal is meritorious. *See Hodge v. Shea*, 252 S.C. 601, 613, 168 S.E.2d 82, 87 (1969) (refusing to dismiss appeal where it "is clearly meritorious and the departures by appellant from the rules of this court in the preparation of it were entirely inadvertent, more of form than substance, and did not prejudice either the court or counsel in understanding the issues raised"); *see also Atkins*, 417 S.C. at 18, 788 S.E.2d at 236 (holding that appellants had perfected appeal despite failing to name the Town of Chapin as a respondent where there was no prejudice and "[t]o hold otherwise would place form over substance when doing so would not serve the interests of justice"); *Gibson v. Gibson*, 283 S.C. 318, 321 n.1, 322 S.E.2d 680, 682 n.1 (Ct. App. 1984) (reaching merits of appeal, even though the appellant's brief violated rules for assignments of error, because "the issues sought to be raised by the [appellant] may be readily determined and the appeal is meritorious").

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[5] *Cf. Cone v. State*, 443 S.C. 487, 494, 905 S.E.2d 368, 372 (2024) ("Appellate courts should not apply preservation rules 'in a technical manner as if this is some sort of game of 'gotcha' elevating form over substance to trap trial lawyers so as to prevent the appeal of a legitimate issue.'") (quoting *State v. Morales*, 439 S.C. 600, 609, 889 S.E.2d 551, 556 (2023)).

As the Court is aware, the verdict arises out of a breach of contract and bad-faith action brought by Respondent Tasha Jones—the named insured in the automobile insurance contract with Lyndon—and Respondent Shaniqua Thompson—who was a passenger in Ms. Thompson's car at the time of the accident but who has never been, and has never claimed to be, a named insured or otherwise a party to the insurance contract. The jury awarded damages for breach of contract for Ms. Jones in the amount of $50,300 and for Ms. Thompson in the amount of $50,000. (R. p. 10 (Verdict).) The jury further awarded each Respondent $75,000 on the bad faith claim. (R. p. 11.) Finally, the jury awarded each Respondent $350,000 each in punitive damages. (*Id.*) The total judgment against Lyndon amounted to $950,300. As explained more fully in its Opening and Reply Briefs, the jury's verdict in this matter should be reversed on multiple grounds.[6]

First, Ms. Thompson is legally barred from any recovery because she is not a party to the insurance contract between Lyndon and Respondent Tasha Jones. The settled law of South Carolina is that "a third person not in privity of contract with the contracting parties does not have a right to enforce the contract." *Hardaway Concrete Co. v. Hall Contracting Corp.*, 374 S.C. 216, 225, 647 S.E.2d 488, 492 (Ct. App. 2007). Likewise, while the named insured (here, Ms. Jones) may have a cause of action for "bad faith refusal to pay first party benefits due under an insurance contract . . . this cause of action does not extend to a person who is not a party to or a named insured under the insurance

[6] In emphasizing the following points requiring vacatur of the jury's verdict as a matter of law, Lyndon does not abandon any of the other grounds for reversal argued in its Opening and Reply Briefs.

contract." *Carter v. Am. Mut. Fire Ins. Co.*, 279 S.C. 368, 370, 307 S.E.2d 227, 227 (1983); *see Kleckley v. Nw. Nat'l Cas. Co.*, 338 S.C. 131, 134, 526 S.E.2d 218, 219 (2000) ("A tort action for an insurer's bad faith refusal to pay benefits *does not extend to third parties who are not named insureds*." (emphasis added)). As a matter of law, the verdict in favor of Ms. Thompson must be vacated in its entirety.

Second, Ms. Jones's bad-faith claim fails as a matter of law. The circuit court found that Lyndon acted in bad faith by failing to pay benefits under the UM provisions of the policy, by "requir[ing]" Ms. Jones "to file suit [*i.e.*, the John Doe action] to recover benefits," and then by refusing to pay the entire amount of the John Doe judgment upon Ms. Jones's demand. (R. p. 24; *see* R. p. 21.) However, the uncontradicted evidence established that Lyndon promptly responded to the claim and that it was Ms. Jones, not Lyndon, who abandoned settlement efforts. And, Lyndon did not improperly "require" Ms. Jones to file the John Doe action; that obligation is imposed by *statute*. *See* S.C. CODE ANN. § 38-77-180; *Lawson v. Porter*, 256 S.C. 65, 68-69, 180 S.E.2d 643, 644 (1971). Finally, Lyndon never had an opportunity to settle within policy limits because Ms. Jones's demands were always well above policy limits. *See Founders Ins. Co. v. Richard Ruth's Bar & Grill LLC*, No. 2:13-cv-03035-DCN, 2016 WL 3219538, at *7 (D.S.C. June 8, 2016).

Third, even if the bad-faith verdict for Ms. Jones is not vacated, the punitive damages award must either be reversed or reduced to comply with the statutory cap on punitive damages. Reversal of the entire punitive damages award is required because it is unsupported by any evidence whatsoever. *See Ralph v. McLaughlin*, 432 S.C. 640, 651, 856 S.E.2d 154, 160 (2021) (holding that punitive damages award cannot be based on mere

speculation). At a minimum, the punitive damages verdict should be reformed to comply with the statutory cap on punitive damages. *See* S.C. CODE ANN. § 15-32-530(A).

For the foregoing reasons, the verdict against Lyndon should be vacated in its entirety as a matter of law. In the interests of justice, these issues should have been addressed on their merits.

CONCLUSION

As this Court recognized in an opinion by then-Judge (now Justice) Hill, "the practice of law is challenging enough without having to endure the overbearing enforcement of technicalities when prejudice is absent from the scene." *Jordan v. Hartford Fin. Grp., Inc.*, 435 S.C. 501, 506, 868 S.E.2d 400, 403 (Ct. App. 2021). This is not a case where Lyndon has willfully or recklessly disregarded the Appellate Court Rules or failed to correct an error that has been brought to its attention. Nor is it a case where, due to Lyndon's procedural error, Respondents were prejudiced by a lack of notice. Rather, Lyndon followed the Court's instructions and there was never any indication of any procedural misstep. Moreover, while Respondents have suffered no prejudice whatsoever, dismissal of the appeal leaves Lyndon unjustly saddled with a judgment infected by multiple legal errors.

For these reasons, Lyndon respectfully asks the Court to grant rehearing and resolve this appeal on its merits.

Respectfully submitted,

s/*Kirsten E. Small*

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Attorneys for Appellant Lyndon Southern Insurance Company

Greenville, South Carolina
February 19, 2026

Exhibit A

Samples of Deficiency Letters Regarding Notices of Appeal

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
CHIEF DEPUTY CLERK

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COLUMBIA, SOUTH CAROLINA 29211

1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
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December 5, 2023

Athena L. Irland
186 Dolly Dimples Trail
Huger SC 29450

Re: Athena Irland v. Brandy Culp
Appellate Case No. 2023-001852

Dear Ms. Irland:

Upon reviewing your notice of appeal, the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or this matter will be dismissed:

- The notice of appeal does not comply with Rule 267, SCACR. Specifically, the notice of appeal is not correctly formatted. You must serve and file an amended notice of appeal substantially in the format shown by Form 1 in Appendix C to part II of the SCACR. A copy of this form has been enclosed for your convenience.
- The notice of appeal fails to include a statement of when you received written notice of entry of the order or judgment from which this appeal is taken.

Very truly yours,

Catherine Harrison, deputy

CLERK

cc: Jesse Sanchez, Esquire
Daniel Scott Slotchiver, Esquire
Stephen Michael Slotchiver, Esquire

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

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August 18, 2021

Marion L. Driggers
3497 Hebron Rd.
Lake City SC 29560

Re: South Carolina Farm Bureau v. Marion Driggers
Appellate Case No. 2021-000835

Dear Mr. Driggers:

Upon reviewing your notice of appeal, the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and each deficiency must be corrected within ten (10) days of the date of this letter or this appeal will be dismissed:

- The notice of appeal fails to include a statement of the date you received written notice of entry of the order or judgment from which this appeal is taken.
- A proof of service has not been provided. You must serve and file a proof of service substantially in the format shown by Form 7 in Appendix C to part II of the SCACR.
- You must provide proof of filing a copy of your notice of appeal with the clerk of the lower court.
- The notice of appeal does not specify who the respondent(s) are. You must serve and file an amended notice of appeal that specifies the respondent(s).

Very truly yours,

Catherine Hammond, deputy

CLERK

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
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1220 SENATE STREET
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August 20, 2020

Nelson L. Bruce
144 Pavilion Street
Summerville SC 29483

Re: Wilmington Savings Fund v. Nelson L. Bruce (2)
Appellate Case No. 2020-001130

Dear Mr. Bruce:

Upon reviewing your notice of appeal, the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and each deficiency must be corrected within ten (10) days of the date of this letter or this appeal will be dismissed:

- The notice of appeal fails to include a statement of when you received written notice of entry of the order or judgment from which this appeal is taken.
- A proof of service has not been provided. You must serve and file a proof of service substantially in the format shown by Form 7 in Appendix C to part II of the SCACR.

Very truly yours,

V Claire Allen
CLERK

cc: William S. Koehler, Esquire

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

August 12, 2020

Mr. Patrick John Frawley, Esquire
PO Box 489
Lexington SC 29071-0489

Mr. Evan Markus Gessner, Esquire
PO Box 489
Lexington SC 29071-0489

Re: Diane Connell v. Lexington County Health Services District, Inc.
Appellate Case No. 2020-001089

Dear Counsel:

Upon reviewing your notice of appeal, the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and these deficiencies must be corrected within ten (10) days of the date of this letter or your appeal will be dismissed:

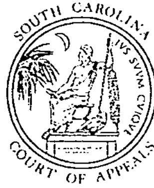
- The notice of appeal fails to include a statement of when you received written notice of entry of the order or judgment from which this appeal is taken.
- The required filing fee has not been submitted. The correct filing fee is $250.00.

Very truly yours,

V Claire Allen

CLERK

cc: Robert Fredrick Goings, Esquire
Jessica Lee Gooding, Esquire



The South Carolina Court of Appeals

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January 13, 2020

Mr. Bert Glenn Utsey, III, Esquire
PO Box 30968
Charleston SC 29417

Re: April Brooke Cox v. State Farm
Appellate Case No. 2020-000034

Dear Counsel:

Upon reviewing your notice of appeal, the following deficiency has been noted under the South Carolina Appellate Court Rules (SCACR), and this deficiency must be corrected within ten (10) days of the date of this letter or your appeal will be dismissed:

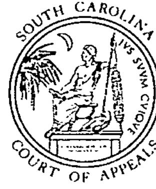
- Pursuant to Rule 203(e)(1)(E), SCACR, the names, mailing addresses, and telephone numbers of all attorneys of record and the names of the party or parties represented by each must appear on the notice of appeal.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Frederick W. Riesen, III, Esquire
Timothy Alan Domin, Esquire



The South Carolina Court of Appeals

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June 05, 2019

Mr. Lane Douglas Jefferies, Esquire
32 Ann Street
Charleston SC 29403

Mr. Eric Marc Poulin, Esquire
32 Ann Street
Charleston SC 29403

Mr. Roy T. Willey, IV, Esquire
32 Ann Street
Charleston SC 29403

Mr. Kenneth Thomas David, Esquire
32 Ann Street
Charleston SC 29403

Re: Lauren Egan v. Dockstreet at the Market Common, Inc
Appellate Case No. 2019-000918

Dear Counsel:

Upon reviewing your notice of appeal, the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or your appeal will be dismissed:

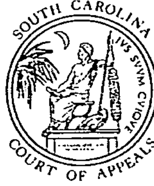
- The accompanying proof of service is not in compliance with the SCACR. You must provide a proof of service showing service of the notice of appeal as required by Rule 262(b), SCACR.
- You must provide an amended notice of appeal which includes the names, mailing addresses, and telephone numbers of all attorneys of record and the names of the party or parties represented by each.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Joseph DuRant Thompson, III, Esquire



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March 22, 2019

Sara Jefferies
PO Box 161606
Boiling Springs SC 29316

Re: Sara Jefferies v. Milliken and Company
Appellate Case No. 2019-000460

Dear Ms. Jefferies:

Upon reviewing your notice of appeal, the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or your appeal will be dismissed:

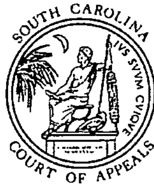
- The notice of appeal is not accompanied by the order(s) and/or judgment(s) challenged on appeal.
- A proof of service showing that a copy has been timely served on the South Carolina Workers' Compensation Commission has not been provided as required by Rule 203(b)(6), SCACR.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Jeffrey Scott Jones, Esquire



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November 21, 2018

Anthony Bernard Burnside
1037 Highway 101 South
Gray Court SC 29645

Re: TM Properties, LLC v. Anthony Bernard Burnside
Appellate Case No. 2018-002059

Dear Counsel:

Upon reviewing your notice of appeal, the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and must be corrected within ten (10) days of the date of this letter or your appeal will be dismissed:

- The caption/title does not comply with Rule 267(a), SCACR. Specifically, it must include the name and title of the judge and resemble the example shown in Appendices to Part II, Appendix C, SCACR.
- The required filing fee has not been submitted. The correct filing fee is $250.00.
- A proof of service upon the respondent has not been provided. You must serve and file a proof of service substantially in the format shown by Form 7 in Appendices to Part II, Appendix C, SCACR.
- You must provide proof of having filed the notice of appeal with the clerk of the lower court as required by Rule 203(d)(1)(A), SCACR.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Thomas J. Thompson, Esquire

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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COLUMBIA, SOUTH CAROLINA 29201
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FAX: (803) 734-1839
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November 21, 2017

Louise Legare-Gardner
Post Office Box 3443
Bluffton SC 29910

Re: Deutsch Bank v. Louise Legare-Gardner
Appellate Case No. 2017-002286

Dear Ms. Gardner:

Upon reviewing your notice of appeal, the following deficiency has been noted under the South Carolina Appellate Court Rules (SCACR), and must be corrected within ten (10) days of the date of this letter or your appeal will be dismissed:

- The notice of appeal is not accompanied by the order(s) and/or judgment(s) challenged on appeal.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Suzanne E. Brown, Esquire
William S. Koehler, Esquire
Genevieve Speese Johnson, Esquire
Wesley D. Dail, Esquire
Bradford Meekin Stokes, Esquire

The South Carolina Court of Appeals

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October 24, 2017

Delbert R. Tangeman
104 Riverside Lane
Duncan SC 29334

Re: Wells Fargo Bank, N.A. v. Betty Tangeman
Appellate Case No. 2017-002200

Dear Mr. Tangeman:

Upon reviewing your notice of appeal, the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or your appeal will be dismissed:

- The notice of appeal is not accompanied by the order(s) and/or judgment(s) challenged on appeal.
- The required filing fee has not been submitted. The correct filing fee is $100.00
- You must provide proof that you have filed a copy of the notice of appeal with the lower court clerk of court.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: John Brian Kelchner, Esquire

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
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September 02, 2016

Mrs. Deborah J Butcher, Esquire
PO Box 486
Manning SC 29102

Re: The State v. Brittany E. Epps
Appellate Case No. 2016-001806

Dear Counsel:

Upon reviewing your notice of appeal, the following deficiency or deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter:

- The caption/title does not comply with Rule 267(a), SCACR. Specifically, the county listed does not correlate to the county number in the case number.

Very truly yours,

Jenny Abbott Kitchings

CLERK

cc: Robert Michael Dudek, Esquire
Kimberly Veronica Barr, Esquire
John Benjamin Aplin, Esquire
Alan McCrory Wilson, Esquire

The South Carolina Court of Appeals

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August 16, 2016

Mr. Joe S. Dusenbury, Jr., Esquire
314 Clearview Drive
Columbia SC 29212

Mr. Adam Tremaine Silvernail, Esquire
PO Box 7995
Columbia SC 29202

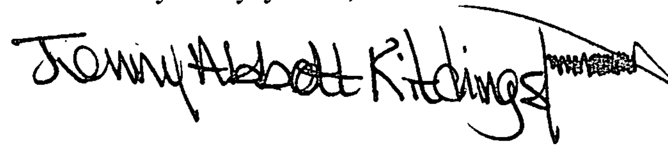
Re: Joseph S. Dusenbury, Jr. v. Joseph S. Dusenbury, Jr.
Appellate Case No. 2016-001662

Dear Counsel:

Upon reviewing your notice of appeal, the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or your appeal will be dismissed:

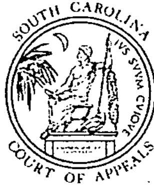
- The caption/title does not comply with Rule 267(a), SCACR. Specifically, it must contain the names, mailing addresses, and telephone numbers of all attorneys of record and the names of the party or parties represented by each.
- The notice of appeal is not accompanied by the order(s) and/or judgment(s) challenged on appeal. The copies were not signed.

Very truly yours,



CLERK

cc: Carlos W. Gibbons, Jr., Esquire
Timothy D. Harbeson, Esquire
Thornwell F. Sowell, III, Esquire



The South Carolina Court of Appeals

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February 24, 2016

Ms. Tawny Danielle Mack, Esquire
Mccorkle & Johnson, LLP
319 Tattnall Street
Savannah GA 31401

Re: James Chisolm v. America's Home
Appellate Case No. 2016-000294

Dear Counsel:

Upon reviewing your notice of appeal, the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or your appeal will be dismissed:

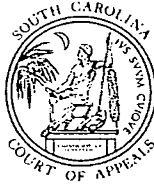
- The notice of appeal is not accompanied by the order(s) and/or judgment(s) challenged on appeal.
- The required filing fee has not been submitted. The correct filing fee is $100.00.

Very truly yours,

Jenny Abbott Kitchings

CLERK

cc: Dean Britton Bell, Esquire



The South Carolina Court of Appeals

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FAX: (803) 734-1839
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June 09, 2015

Shedrick Wigfall, #90323
McCormick Correctional Institution
386 Redemption Way
McCormick SC 29899

Re: Shedrick Wigfall v. The State
Appellate Case No. 2015-001190

Dear Mr. Wigfall:

Upon reviewing your notice of appeal, the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or your appeal will be dismissed:

- The accompanying proof of service is not in compliance with the SCACR. Specifically, your proof of service does not include the date that you actually served the notice of appeal on the respondent. Your proof of service should be substantially in the format shown by Form 7 in Appendix C to part II of the SCACR.
- You have not included a copy of the order that you are appealing.
- The required filing fee has not been submitted. The correct filing fee is $100.00.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Courtney Edwards Lowell, Esquire

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

February 26, 2015

Raymond Edward Chestnut
P.O. Box 1000
Lewisburg PA 17837

Re: The State v. Raymond Edward Chestnut
Appellate Case No. 2015-000042

Dear Mr. Chestnut:

Upon reviewing your notice of appeal, the following deficiency or deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or your appeal will be dismissed:

- The notice of appeal is not accompanied by a redacted copy of the order(s) and/or sentencing sheet(s) challenged on appeal.
- The notice of appeal fails to include a statement of when you received written notice of entry of the order or judgment from which this appeal is taken.

Very truly yours,

Jenny Abbott Kitchings

CLERK

cc: Alan McCrory Wilson, Esquire
Salley W. Elliott, Esquire
Robert Michael Dudek, Esquire

RECEIVED
Feb 19 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton B. Newman, Circuit Court Judge

Appellate Case No. 2023-001289

Tasha Jones and Shaniqua Thompson, ... Respondents,

v.

Lyndon Southern Insurance Company,
Safe Choice Insurance, LLC, and
Jupiter Managing General Agency, Inc, Defendants,

Of which

Lyndon Southern Insurance Company is the .... Appellant.

PROOF OF SERVICE

I certify that I have served the foregoing **Petition for Rehearing** on Respondents Tasha Jones and Shaniqua Thompson by emailing a copy of the same to the following counsel of record for Respondents, using the email addresses listed below:

Dietrich Andre' Lake, dietrich@thelakelawfirm.org

February 19, 2026 s/*Kirsten E. Small*