

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GEORGETOWN COUNTY  
Court of Common Pleas

The Honorable Benjamin H. Culbertson, Presiding Circuit Court Judge  
The Honorable William H. Seals, Jr., Presiding Circuit Court Judge  
The Honorable William P. Keesley, Presiding Circuit Court Judge

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Circuit Court Case No. 2022-CP-22-00650  
Court of Appeals Case No. 2026-000265

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Frank Henderson and Antioch Group.....Appellants,

v.

Abundance Home Care and Tyrhonda Priest.....Respondents,

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**REPLY IN SUPPORT OF APPELLANTS’  
REQUEST FOR LEAVE TO MAKE MOTIONS PURSUANT TO RULE 60, SCRPC**

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Appellants Frank Henderson and Antioch Group hereby respectfully reply to the Respondents’ *Response in Opposition to Appellants’ Request for Leave to Make Motions Pursuant to Rule 60, SCRPC*. Appellants’ Request for Leave should be granted and this case remanded without prejudice so that the lower court may hear and decide—in the first instance—Appellants’ Rule 60 Motions, as expressly required by the rules of procedure.

There are two driving forces behind Appellants’ Request for Leave to this Court. The first is simply that such a request is mandatory under the rules of civil procedure, which state: “During the pendency of an appeal, leave to make the motion must be obtained from the appellate court.” Rule 60, SCRPC. The second driving force is that Appellants’ request is made in the interest of efficiency and judicial economy. Although appellate jurisdiction

currently resides with this Court, the lower court is the proper court to correct, in the first instance, errors in its judgment. It would be inefficient and a waste of this Court's (and the parties') resources to slog through the appeal of a judgment and receivership that are apparently void *ab initio*. This is why the rules and the law permit—and indeed require—Appellants to request permission from this Court to return to the lower court for the filing of a motion under Rule 60, SCRCF.

The design and intended mechanism of the rules of court permit a party to seek relief from a judgment under Rule 60, SCRCF, “within a reasonable time,” which foreseeably could include the time period in which an appeal might be pending. Motions under Rule 60, SCRCF, do not stay the time for filing the notice of appeal, but the filing of a notice of appeal does prohibit the lower court from hearing a Rule 60 Motion. *See* Rule 241, SCACR. This is why a litigant must seek leave of the appellate court to return to the lower court “during the pendency of an appeal.” Rule 60, SCRCF; *see also Hudson v. South Carolina Dept. of Highways and Public Transp.*, 324 S.C. 245, 246, 478 S.E.2d 839, 840 (1996) (“The reason for such a requirement is clear: An appellate court should not needlessly expend its limited time and resources processing and deciding an appeal from an order or judgment which [could be] set aside.”).

The gist of Respondents' argument is that jurisdiction resides with this Court now, and therefore this Court and the parties are obligated to endure an appeal on the merits of the judgment – regardless of whether the judgment may be void for want of due process. Respondents criticize Appellants for timely filing a Notice of Appeal, claiming it was somehow a nefarious plan “to circumvent the normal appellate record by later attempting to introduce new affidavit testimony.” (Response at p. 30). Candidly, Appellants served their

Notice of Appeal because the thirty-day deadline set forth in Rule 203, SCACR, is stringent, non-negotiable, and jurisdictional. Motions under Rule 60 do not toll the deadline. *See* Rule 203(b)(1), SCACR. If Appellants had not served their Notice of Appeal, there is little doubt that Respondents would have argued Appellants had forfeited their right to appeal. This was not a risk Appellants were willing to take, and particularly not with the series of pre-and-post-trial orders and judgments that were being issued by the circuit court in rapid succession.<sup>1</sup>

Respondents dedicate tens of pages of their Return to reciting at length what Respondents perceive to be the strengths of their case, including summarily stating that Appellants “had proper notice of the Damages Hearing, failed to attend, and now being dissatisfied with the Judgment against them, seek what is effectively a ‘do-over’ of the case in this appeal by appealing the Judgment and every intermediate order issued by the Court going back to May 22, 2025.” (Return at p. 17). Putting aside Respondents’ derogatory characterizations, Appellants do not dispute that they indeed have appealed the Judgment and the numerous intermediate orders necessarily affecting it – as they are entitled to do under the law. *See* S.C. Code § 14-3-430 (“the court may review any intermediate order involving the merits and necessarily affecting the order appealed from.”). However, Appellants absolutely dispute that proper service/notice was given and that due process occurred – which is why they have requested leave to make a motion for relief from the (void) judgment pursuant to Rule 60, SCRCF.

Neither the rules of procedure nor judicial economy is served by protracted

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<sup>1</sup> The orders on appeal are set forth within Appellants’ Notice of Appeal. It has become increasingly clear that proper service and due process were absent—particularly as to the Final Judgment and Order Appointing Receiver.

arguments to this Court on the merits of a Rule 60 motion. As indicated by the signatures of undersigned counsel on their filings with this Court, Appellants have a good-faith basis to believe that a Rule 60 motion is appropriate at this time. The grounds for the motion include that the judgment below is void for lack of due process. Without bogging down the Court with too much detail: the judgment is the product of a Rule 55(b)(2) default damages hearing, for which notice must have been provided pursuant to Rule 5(a), SCRC<sup>2</sup>. **Notice of the hearing was not given to Appellants.** This reality has very recently been fortified by the clerk of court for Georgetown County, who has just e-filed a returned envelope containing the Notice of Hearing for the default judgment – addressed to Appellant Frank Henderson – which was stamped by the Postal Service:

RETURN TO SENDER  
ATTEMPTED – NOT KNOWN  
UNABLE TO FORWARD



<sup>2</sup> **Appellants were not represented by an attorney.** As Respondents acknowledge on page 11 of their Return, *Respondents' counsel collaboratively drafted the proposed order whereby Appellants' attorney ostensibly was relieved of her duties to Appellants*, notwithstanding that no Motion to Withdraw was ever filed by Appellants' attorney, nor was a hearing ever held, at which a court surely would have discerned that the attorney's final-hour withdrawal would have a material adverse effect on Appellants' interests, among other problems. See Rule 11(b), SCRC ("An attorney may be changed by consent, or upon cause shown, and upon such terms as shall be just, **upon application**, by order of the Court, **and not otherwise**. Written notice of change of attorney must be served as provided by Rule 5." (emphasis added); see also Rule 407, SCACR at Rule 1.16; see also, Elizabeth Scott Moise, *Gone but Not Forgotten: Motions to Withdraw as Counsel*, SC Lawyer (Jan. 8, 2015), [available here](#).

(See Exhibit 1, clerk of court's filing and NEF).

In addition to failure of due process resulting in a void judgment, Appellants will alternatively argue that the judgments should be vacated and set aside because the judgments are the product of fraud, excusable neglect, and concealed evidence. To that end, Appellants have amassed multiple supporting affidavits, including the testimony of: (1) Justin Lee, the Vice President of CCNB bank, (2) attorney Adam Bach, (3) accountant John Marshall Looper, (4) Summer Lee, a mortgage broker with Geneva Financial, LLC, and (5) Frank L. Henderson.<sup>3</sup>

Respondents dedicate most of their Return to arguments about the supposed merits of their projected, straw-man grounds for Appellants' Rule 60 motion. Respondents proclaim that Appellants have not provided "rationale as to the basis of their Rule 60 Motion, but rather make general and conclusory statements alleging voidness, mistake, fraud, abandonment of counsel, and new evidence." (Return at p. 17). **Respondents misunderstand the purpose of Rule 60's appellate court leave requirement.**

The intent behind the rule's requirement is not to foist onto the Court of Appeals the responsibility of adjudicating the strengths and weaknesses of the grounds for Appellants' Rule 60 motion. Respondents' argument asking this Court to consider the merits of Appellants' Rule 60 Motion has been rejected by the United States Supreme Court in a case cited by South Carolina's Comment to Rule 60, SCRCP: "It has also been argued that the appellate leave requirement protects the finality of the judgment and allows the appellate court to screen out frivolous Rule 60(b) motions. . . .[however] we have confidence in the

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<sup>3</sup> This Court may take notice of these affidavits and their numerous exhibits, which were e-filed with the circuit court, Georgetown County Case No. 2022CP2200650.

ability of the district courts to recognize frivolous Rule 60(b) motions. **Indeed, the trial court 'is in a much better position to pass upon the issues presented in a motion pursuant to Rule 60(b).'**” *Standard Oil Co of California v. United States*, 429 U.S. 17, 18-19 (1976) (emphasis added) (cleaned up); see also Comment to Rule 60, SCRCP (“leave to make the motion need not be obtained from any appellate court except during such time as an appeal from the judgment is actually before the appellate court. This permits the motion to be made before the trial court.”). This makes sense – if the Court of Appeals was meant to hear and decide motions pursuant to Rule 60, SCRCP, then the rule would say so. Instead, the clear intent is for remand to the circuit court to consider and decide such motions in the first instance. This Court should disregard Respondents’ arguments on the supposed merits of Appellants’ motion for relief from judgment, and it should grant Appellants’ Request.

#### CONCLUSION

For the reasons above, as well as those in Appellants’ Request for Leave to Make Motions Pursuant to Rule 60, SCRCP, and its exhibits, Appellants respectfully request this Court to grant Appellants’ Request and remand without prejudice to permit Appellants to file – and the circuit court to hear and decide – such a motion, as well as for a hearing on their post-trial motions.

This is an urgent matter, particularly due to the active and ongoing receivership over unserved non-parties. Appellants respectfully request that this Court hear and rule on it as swiftly as practicable.

[signature appears on the next page]

Respectfully submitted,

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*Attorneys for Appellants*

*Frank Henderson and Antioch Group*

March 23, 2026

Charleston, South Carolina



**\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING [NEF]**

**A filing has been submitted to the court RE:** 2022CP2200650

**Official File Stamp:** 03-17-2026 10:01:27 AM  
**Court:** CIRCUIT COURT  
Common Pleas  
Georgetown

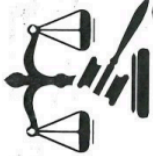
**Case Caption:** Frank Henderson , plaintiff, et al VS Infinity Home Care , defendant, et al  
**Document(s) Submitted:** Filing/Other Filing/Other  
**Filed by or on behalf of:** Cynthia Kinder

This notice was automatically generated by the Court's auto-notification system.

**The following people were served electronically:**

- Lewis W. Tollison, III
- Robert Mills Ariail, Jr. for Tyrhonda Priest et al
- Ainsley Fisher Tillman for Frank Henderson et al
- Ryan Lewis Beasley for Frank Henderson et al
- Wesley D. Few for Frank Henderson et al
- Justin David Mihalic for Tyrhonda Priest et al

**The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:**



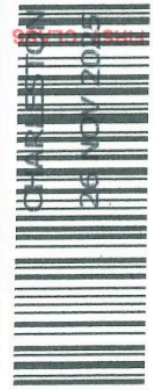
3/13

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Georgetown County Clerk of Court  
Common Pleas Court  
PO Box 479 Georgetown, SC 29442

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CHARLESTON SC 294



7P 94  
26 NOV 2025 AM 3:1  
775 9010445  
0008028371 NOV 25 2025

7011 0470 0003 4637 9754

RETURN RECEIPT  
REQUESTED

Frank Henderson  
14 Antioch Dr  
Greenville, SC

NIXIE 296 SE 1 0103/11/26

RETURN TO SENDER  
ATTEMPTED - NOT KNOWN  
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ANK  
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29605-350214

BC: 29442047979 \*2927-04912-26-21

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Street, Apt. No., or PO Box No.: 14 Antioch Drive  
City, State, ZIP+4: Greenville, SC 29605

PS Form 3800, August 2006

See Reverse for Instructions

7011 0470 0003 4637 9754

**RECEIVED**

**Mar 23 2026**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
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The Honorable Benjamin H. Culbertson, Presiding Circuit Court Judge  
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**PROOF OF SERVICE**

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I certify that on March 23, 2026, I served Appellants' *Reply in Support of Appellants' Request for Leave to Make Motions Pursuant to Rule 60, SCRCP* on Respondents by sending the same to the below-listed attorneys of record at their email addresses of record with the AIS:

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Respectfully submitted,

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