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Apr 10 2026

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas**

**Honorable Judge George M. McFaddin, Jr., Circuit Court Judge
Honorable Judge Jennifer B. McCoy, Circuit Court Judge**

Appellate Case No. 2026-000201

Cheryl Carter, Pro Se..... Appellant,

v.

McElveen Buick GMC, Inc. Respondent.

**RESPONDENT’S MOTION TO DISMISS FOR FRIVOLOUS APPEAL AND TO
PRESERVE MOTION FOR SANCTIONS.**

JOHNSTON LAW, LLC

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TABLE OF AUTHORITIES

CASES

Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007)..... 3

RULES

Rule 269, SCACR..... 3

Rule 38, F.R.A.P 3

STATUTES

28 U.S.C.A §1915(e)(2)(B)(i)..... 1, 3

INTRODUCTION

Respondent McElveen Buick-GMC, Inc., by and through undersigned counsel, moves this Court to dismiss Appellant's appeal as frivolous. Respondent recognizes the Court's prior administrative order denying an earlier motion to dismiss while permitting Appellant to order transcripts out of time; nevertheless, the Court retains authority to dismiss an appeal that remains frivolous notwithstanding temporary allowances. Specifically, 28 U.S.C.A §1915(e)(2)(B)(i) allows dismissal of frivolous appeals at any stage of the proceeding.

The appeal presents no reasonably arguable basis in fact or law, fails to demonstrate any reversible error, and needlessly prolongs litigation that the circuit court resolved on well-established grounds.

HISTORY OF THE CASE

This case arises from a Complaint the Circuit Court dismissed under Rule 12(b)(6), SCRCF, by a Form 4 order entered April 22, 2025, ending the case.¹ See Exhibit A. Appellant later sought relief from that final judgment, but the Circuit Court denied her motion after hearing arguments on September 15, 2025. On November 10, 2025, the Circuit Court issued a Form 4 Order wherein Plaintiff's Motion for Relief from Judgment was DENIED. The Form 4 Order memorializing the denial reflects entry and mailing consistent with Rule 77(d). This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on

¹ Upon review of the file and existing law, I grant Defendant's SCRCF 12(b) Motion and respectfully dismiss Plaintiff's complaint. This order ends the case. DISPOSITION TYPE ... ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRCF

11/10/2025.² See Exhibit B. On November 19, 2025, the Court also entered a Formal Order by Electronic Filing. See Exhibit C.

ARGUMENT

Appellant's appeal is frivolous because it is predicated on threshold defects, she created and on arguments that the Circuit Court already rejected for want of any cognizable Rule 60 basis. Plaintiff's motion fails to identify, argue, or substantiate any specific ground for relief recognized under Rule 60(a) or Rule 60(b), SCRPC. The Motion does not allege clerical error under Rule 60(a), nor does it assert facts supporting mistake, newly discovered evidence, fraud, voidness, satisfaction, prospective inequity, or any other reason justifying relief under Rule 60(b).

Likewise, Plaintiff provided no affidavits, evidentiary support, or legal authority demonstrating entitlement to extraordinary relief from a final judgment. Absent a properly pled and supported Rule 60 ground, the Court lacks a basis to disturb the final judgment. The record further shows Appellant acknowledged electronic notice and elected email service, undercutting her premise that lack of mailed notice warrants Rule 60 relief. Plaintiff argued that she was not properly served a copy of the Judgment entered by the Court, however, Plaintiff acknowledged that she did receive an electronic copy, and the Court system reflected Plaintiff's choice for emailed service.

Appellant's underlying merits positions lack substance. The Circuit Court's dismissal rested on settled Rule 12(b)(6) standards, and Appellant's theories relied on inapposite or outdated authority. Under South Carolina Rules of Civil Procedure, a complaint is subject to

² -Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp ... The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

dismissal when it “fails to state facts sufficient to constitute a cause of action.” Rule 12(b)(6) SCCRP. According to the South Carolina Supreme Court, dismissal under Rule 12(b)(6) is appropriate if the facts alleged and inferences reasonably deducible from them, viewed in the light most favorable to the Plaintiff, do not entitle the Plaintiff for relief on any theory. *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007).

Respondent recognizes the Court’s prior administrative order denying an earlier motion to dismiss while permitting Appellant to order transcripts out of time; nevertheless, the Court retains authority to dismiss an appeal that remains frivolous notwithstanding temporary allowances. Specifically, 28 U.S.C.A §1915(e)(2)(B)(i) allows dismissal of frivolous appeals at any stage of the proceeding. Appellant’s continued inability to articulate reversible error from the denial of Rule 60 relief—especially after the circuit court found no cognizable Rule 60 ground—confirms this appeal lacks any reasonably arguable legal position.

For these reasons, Respondent respectfully submits the appeal is frivolous and should be dismissed.

PRESERVATION OF MOTION FOR SANCTIONS SHOULD THIS COURT GRANT DISMISSAL

Pursuant to Federal Rule of Appellate Procedure 38 and South Carolina Appellate Court Rule 269, Respondent respectfully preserves and requests the right to move for sanctions, including costs and fees associated with defending this frivolous appeal, to be presented by separate motion on a schedule set by the Court. This request is grounded in Appellant’s repeated noncompliance with mandatory appellate rules and the absence of any colorable basis to overturn the Circuit Court’s orders. Appellant’s pattern of untimeliness is prejudicial to the Respondent in this matter and does not align with the integrity of practice in this Court.

CONCLUSION

Respondent requests that the Court dismiss this appeal as frivolous and reserve Respondent's right to file a separate motion for sanctions, including an appropriate award of costs and fees, upon entry of dismissal.

Respectfully Submitted,

JOHNSTON LAW, LLC

/s/ Victoria W. Kurtz

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Attorney for Respondent

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.



Berkeley Common Pleas

Case Caption: Cheryl Carter VS McElveen Buick GMC, Inc.

Case Number: 2025CP0800615

Type: Order/Electronic Form 4

So Ordered

S/George M. McFaddin, Jr., #2759

Electronically signed on 2025-04-22 11:20:06 page 3 of 3

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Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.



Berkeley Common Pleas

Case Caption: Cheryl Carter VS McElveen Buick GMC, Inc.
Case Number: 2025CP0800615
Type: Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

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EXHIBIT C

**STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY**

CHERYL CARTER

Plaintiffs,

vs.

MCELVEEN BUICK-GMC, Inc.

Defendant.

**IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT**

CASE NO.: 2025-CP-08-00615

ORDER

BACKGROUND

This matter came before the Court on Plaintiff's Motion to Set Aside Judgment. On April 22, 2025, this Court entered judgment in favor of McElveen Buick GMC, Inc. and dismissed this case pursuant to Rule 12(b)(6). On June 10, 2025, Plaintiff filed a Motion to Set Aside Judgment. The Court heard the motion on September 15, 2025, with Victoria W. Kurtz appearing on behalf of McElveen Buick-GMC, Inc. and Cheryl Carter appearing pro-se. Having considered the motion, any response, the record, and the arguments of counsel and the parties, the Court issues the following Order.

LEGAL STANDARD

Rule 60(a)–(b), South Carolina Rules of Civil Procedure, governs relief from judgments or orders. Under Rule 60(a), the Court may correct clerical mistakes arising from oversight or omission. Under Rule 60(b), the Court may relieve a party from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud, misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or

it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. Motions under Rule 60(b) must be made within a reasonable time, and for reasons (1), (2), and (3), not more than one year after the judgment, order, or proceeding was entered or taken.

ANALYSIS

Plaintiff's motion fails to identify, argue, or substantiate any specific ground for relief recognized under Rule 60(a) or Rule 60(b), SCRCP. The motion does not allege clerical error under Rule 60(a), nor does it assert facts supporting mistake, newly discovered evidence, fraud, voidness, satisfaction, prospective inequity, or any other reason justifying relief under Rule 60(b).

Plaintiff argued that she was not properly served a copy of the Judgment entered by the Court, however, Plaintiff acknowledged that she did receive an electronic copy, and the Court system reflected Plaintiff's choice for emailed service.

Plaintiff likewise provided no affidavits, evidentiary support, or legal authority demonstrating entitlement to extraordinary relief from a final judgment. Absent a properly pled and supported Rule 60 ground, the Court lacks a basis to disturb the final judgment. Accordingly, Plaintiff has not met the burden required to obtain relief under Rule 60, SCRCP.

CONCLUSION

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiff's Motion to Set Aside Judgment is DENIED.

AND IT IS SO ORDERED.

Jennifer B. McCoy

Dated: November 17, 2025



Berkeley Common Pleas

Case Caption: Cheryl Carter VS McElveen Buick GMC, Inc.
Case Number: 2025CP0800615
Type: Order/Other

So Ordered

s/Jennifer B. McCoy #2764

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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
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APPEAL FROM CHARLESTON COUNTY
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Honorable Judge George M. McFaddin, Jr., Circuit Court Judge

Honorable Judge Jennifer B. McCoy, Circuit Court Judge

Appellate Case No. 2026-000201

Cheryl Carter, Pro Se..... Appellant,

v.

McElveen Buick GMC, Inc. Respondent.

PROOF OF SERVICE

The undersigned certifies that the Respondent’s Motion for Dismissal for Frivolous Appeal and to Preserve Motion for Sanctions were served on Appellant via e-mail and first-class mail on April 10, 2026 as follows:

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