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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Mikell R. Scarborough, Master-In-Equity

Appellate Court Case No. 2026-000507

Laura Schaible and Russell Schaible Respondents,

v.

Ilonka Sonja Taylor and David Abdo Appellants.

**RESPONDENTS' RETURN TO APPELLANTS' MOTION FOR LEAVE TO FILE
RULE 60(b)(4) MOTION WITH THE LOWER COURT**

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Respondents Laura Schaible and Russell Schaible respectfully submit this Return in opposition to Appellants' Motion for Leave to File a Rule 60(b)(4) Motion in the Lower Court.

STATEMENT OF THE CASE

This appeal arises from a judgment entered after trial in favor of Respondents in the Charleston County Court of Common Pleas, Case No. 2025-CP-10-03402. The trial was conducted before the Master-in-Equity on October 22, 2025, and the final Order and Judgment was entered on January 13, 2026. "This matter came before the Court for a trial on October 22, 2025. ... The Court ... hereby makes the following Findings of Fact and Conclusions of Law."

After entry of the final order, Appellants moved for reconsideration and to supplement their pleadings. The post-trial motions were denied, and Appellants then filed their notice of appeal. On April 1, 2026, Appellants filed the present motion in this Court seeking leave, during the pendency of this appeal, to file a Rule 60(b)(4), SCRCPP, motion below asserting that the Master-in-Equity lacked subject matter jurisdiction. Appellants further seek a stay of all appellate deadlines while their proposed Rule 60 motion is litigated below. "Appellants ... move this Court for leave to file a motion under Rule 60(b)(4), SCRCPP ... Appellants further request that this Court stay all deadlines for briefing, designating the matter to be included in the record on appeal, and serving and filing the record on appeal ..."

The motion should be denied. The issue Appellants seek to present is a legal issue apparent on the existing record and can be addressed in the ordinary course of this appeal. A limited remand would not simplify matters; it would delay a pending appeal and invite piecemeal review.

STATEMENT OF RELEVANT FACTS

Respondents filed the original action in January 2018 under Case No. 2018-CP-10-00440.

On December 7, 2023, the case was struck pursuant to Rule 40(j) of the SCRCP, as reflected in Appellants' own motion. "On December 7, 2023, the Master in Equity issued an order striking the action pursuant to Rule 40(j) of the SCRCP (the 'Dismissal Order')."

On December 2, 2024, Respondents timely moved to restore the case to the docket pursuant to Rule 40(j). "The Court struck this case from the docket according to Rule 40(j), SCRCP, on December 7, 2023. ... The Plaintiffs move to restore this civil action to the Court's docket as provided by Rule 40(j)."

The record contains an Amended Consent Order Restoring Case to the Docket Pursuant to Rule 40(j), dated June 11, 2025. On its face, the order recites that the motion to restore was timely and that Defendants consented. It further provides that the case is restored and that the Clerk of Court shall issue a new case number and restore the case to the docket of the Master-in-Equity, "to which the case had been referred by prior order of this Court dated February 12, 2021." "The Motion is timely, made within one (1) year of the date this action was stricken. The Defendants consent to the Motion. ... IT IS ORDERED THAT the case is hereby restored, and the Clerk of Court shall issue a new case number and restore the case to the docket of the Master in Equity for Charleston County, to which the case had been referred by prior order of this Court dated February 12, 2021."

The notice of electronic filing for that amended consent order identifies the document as filed in Common Pleas and states it was filed "by or on behalf of: Mikell Scarborough." Document(s) Submitted: Amended Consent Order Restoring Case to Docket ... Filed by or on behalf of: Mikell Scarborough."

The final Order and Judgment entered in the 2025 case number expressly acknowledged the procedural history of the matter and stated that the original action had been dismissed and then restored under the 2025 case number. "This case originated in January 2018 with Case No.: 2018-CP-10-0440. Due to difficulty in getting the matter to trial (the case had been settled at one time, but that

settlement failed), the Court dismissed the original action and the case was restored with its 2025 Case Number.”

After the trial and the adverse final order, Appellants moved for reconsideration and to supplement their pleadings. In those filings, Appellants did not prevail on their post-trial challenges. They then filed this appeal. Only after filing the appeal did they seek leave to pursue a new collateral Rule 60(b)(4) motion below.

ARGUMENT

I. Leave should be denied because the issue the Appellants seek to raise may be addressed on the present appellate record.

Rule 60(b) of the SCRCP provides that during the pendency of an appeal, leave to file a Rule 60 motion must be obtained from the appellate court. That requirement does not mean leave should be granted as a matter of course. The question is whether a remand would materially advance the disposition of the case.

Appellants’ proposed Rule 60(b)(4) motion presents a legal argument based entirely on existing orders and docket history. No additional evidence, factual development, or credibility determinations are needed. The Court of Appeals can review the same procedural record in the ordinary course of this appeal.

Because the issue is already part of the appellate record, a remand would not promote efficiency. It would interrupt the appeal, require separate proceedings below, and create the prospect of a second appeal from any Rule 60 order. Such a course would multiply proceedings rather than simplify them.

South Carolina law recognizes that leave may be appropriate where a lower-court ruling on a Rule 60 motion could truly eliminate the need for appellate review. See *Hudson v. South Carolina*

Department of Highways & Public Transportation, 324 S.C. 245, 478 S.E.2d 839 (1996). Here, however, Appellants seek only the opportunity to launch a collateral challenge to orders that are already before this Court in substance and effect.

II. Appellants are attempting to use Rule 60(b) as a substitute for direct appellate review.

South Carolina appellate courts have repeatedly held that Rule 60 relief is not a substitute for appeal. See *Smith Companies of Greenville, Inc. v. Hayes*, 311 S.C. 358, 359, 428 S.E.2d 900, 902 (Ct. App. 1993)(relief from judgment under Rule 60 should not be considered a substitute for appeal from a final judgment, particularly when it is clear the party seeking relief could have litigated at trial and on appeal the claims he now makes by motion); see also *Tench v. South Carolina Department of Education*, 347 S.C. 117, 121, 553 S.E.2d 451, 452 (2001) (a party may not invoke this rule where it could have pursued the issue on appeal).

That principle applies with particular force here. Appellants' proposed argument does not rest on newly discovered evidence or any post-judgment development. It rests on procedural events known to them before trial, during trial, and certainly before they filed their post-trial motions and notice of appeal. If Appellants believed the Master-in-Equity lacked authority to preside over the restored case, they could have presented that contention in the lower court before trial or squarely raised it in their post-trial proceedings and then pursued it on appeal.

Instead, Appellants litigated through trial, filed post-trial motions, noticed an appeal, obtained an extension of appellate deadlines, and only then asked this Court to halt the appeal so they could present a new Rule 60(b)(4) motion below. That is exactly the sort of piecemeal use of Rule 60 that South Carolina law disfavors.

III. Appellants have not shown a sufficiently clear voidness theory to justify interrupting the appeal.

A master's authority is defined by the order of reference. See *Bunkum v. Manor Properties*, 321 S.C. 95, 467 S.E.2d 758 (Ct. App. 1995); *First Citizens Bank & Trust Co. v. Taylor*, 431 S.C. 149, 847 S.E.2d 249 (Ct. App. 2020). The order of reference clearly established subject matter jurisdiction before the Master in Equity.

The June 11, 2025, amended consent order expressly restored the case and directed the Clerk to restore it to the docket of the Master-in-Equity, expressly referencing the prior order of reference. "IT IS ORDERED THAT the case is hereby restored, and the Clerk of Court shall issue a new case number and restore the case to the docket of the Master in Equity for Charleston County, to which the case had been referred by prior order of this Court dated February 12, 2021." Appellants consented to that order. "The Defendants consent to the Motion." I CONSENT: s/ Jennifer K. Williams ... Counsel for Defendants"

That procedural history materially distinguishes this case from authorities where a master indisputably acted outside the scope of any operative reference. Here, the record contains an order restoring the case to the Master-in-Equity's docket in connection with the earlier reference.

Further, and notably, the final judgment itself reflects that the lower court treated the matter as a restored continuation of the earlier action, clearly before the Master in Equity, now proceeding under the new case number. "This case originated in January 2018 with Case No.: 2018-CP-10-0440 ... the case was restored with its 2025 Case Number."

IV. The requested stay of all appellate deadlines should be denied.

Appellants also ask this Court to stay all deadlines for briefing, designation of matter, and preparation of the record. That request is unsupported.

The Court has already extended Appellants' initial briefing and designation deadline to May 6, 2026. "The time for serving and filing the appellants' initial brief and designation of matter is hereby extended until May 6, 2026." Appellants have therefore already received scheduling relief. To stay the appeal entirely would only further postpone the resolution of a case that began in 2018 and was tried in 2025.

Respondents respectfully submit that the appeal should continue. The existing record can be compiled, the issues can be briefed, and the Court can decide the merits in an orderly and efficient manner.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that this Court:

1. **deny** Appellants' Motion for Leave to File Rule 60(b)(4) Motion with the Lower Court;
2. **deny** Appellants' request to stay appellate deadlines; and
3. grant such other and further relief as this Court deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Respondents' Return to Appellants' Motion for Leave to File Rule 60(b)(4) Motion with the Lower Court in the above-referenced case have been served upon the following by emailing a digital copy this 10th day of April, 2026, to:

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