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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable James E. Chellis, Master-In-Equity

Appellate Case No. 2025-001632

Cornerstone Ventures International, LLC,

Respondent,

v.

Alvin E. Burch, Sr.,

Appellant,

RESPONDENT'S FINAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE MASTER-IN-EQUITY, IN ITS ORDER DATED JULY 28, 2025, ABUSE ITS DISCRETION IN FAILING TO GRANT RESPONDENT'S MOTION TO VACATE JUDGMENT?

STATEMENT OF THE CASE

This matter concerns whether or not to vacate a confession of judgment. As admitted by the Appellant Burch, the confession of judgment was signed by him and subsequently filed of record. The judgment arises from a failure to pay a debt. At first, in the post-judgment phase of the case, Burch attempted to fight execution on the debt by failing to produce documents as required under a Rule to Show Cause, and then by failing to testify as to assets at supplemental proceedings hearings. Following Respondent's filing of a separate lawsuit concerning real property associated with Burch in an effort to execute upon the judgment, Burch's efforts to contest the judgment became more and more radical. He filed a complaint against counsel for Respondent with the Office of Disciplinary Counsel. On March 14, 2025, more than sixteen months following the filing of the judgment, Burch filed a Motion to Vacate Judgment under Rule 60(b)(4), SCRC. The actions taken by Burch are unjustified, and the trial court correctly denied the Motion to Vacate. Furthermore, there is a problem in this state of debtors seeking to delay and re-litigate judgments against them in an effort to avoid execution and run out the ten-year clock. The Court of Appeals needs to stop debtors from abusing the judicial process and taking advantage of the ten-year clock in an effort to withhold assets from creditors.

STANDARD OF REVIEW

Appellant incorrectly states the standard of review in its brief.

The decision to grant or deny a motion for relief from judgment under SCRC 60 lies within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. *BB&T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501 (2006) citing *Coleman v. Dunlap*, 306 S.C. 491, 494, 413 S.E.2d 15, 17 (1992). Review by the Court of Appeals is limited to whether there was an abuse of discretion. "An abuse of discretion arises where the judge issuing

the order was controlled by an error of law or where the order is based on factual conclusions that are without evidentiary support.” *Id.* citing *Tri-County Ice & Fuel Co. v. Palmetto Ice Co.*, 303 S.C. 237, 242, 399 S.E.2d 779, 782 (1990).

Rule 60(b), SCRCP, requires a more particularized showing of mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or “other misconduct of an adverse party” in order for the movant to prevail. Rule 60(b), SCRCP. Under Rule 60(b)(4), a judgment is considered void only if the court lacked jurisdiction or failed to provide proper due process. *Universal Benefits, Inc. v. McKinney*, 349 S.C. 179, 183, 561 S.E.2d 659 (Ct. App. 2002). However, irregularities that do not involve jurisdiction do not render a judgment void. *Id.* citing *Thomas & Howard Co. v. T.W. Graham and Co.*, 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995). “A judgment will not be vacated for a mere irregularity which does not affect the justice of the case.” *Thomas & Howard Co.*, 318 S.C. 286 at 291.

STATEMENT OF FACTS

On April 26, 2023, Respondent Cornerstone Ventures International, LLC (“Cornerstone”) filed a lawsuit in Dorchester County against Appellant Alvin E. Burch, Sr. (“Burch”) in Case No. 2023-CP-18-00658, alleging defaults under a promissory note and personal guaranty. (R. 031). While no attorney made an appearance in the lawsuit on behalf of Burch, following Burch’s filing of a *pro se* answer on June 5, 2023 (R. 038), Burch, with the assistance of counsel, entered into a settlement agreement with Cornerstone to resolve the underlying dispute in the lawsuit. (R. 531). The settlement agreement required that certain payments be completed. The settlement agreement was secured by a confession of judgment signed by Burch. (R. 004). Following a default under the payment terms of the settlement agreement, the Confession of Judgment was filed on October 2, 2023.

The settlement agreement and confession of judgment were signed at the office of the attorney who represented Burch at the time. (June 3, 2025 Hearing, at p. 15 l. 24 – p. 16 l. 13, p. 36 l. 7-13 (R. 449-450; 470). Two attorneys witnessed the signature of the confession of judgment. (June 3, 2025 Hearing, at p. 17 l. 3 – p. 18 l. 9, p. 37 l. 5-12) (R. 451-452; 471). Burch admits that he signed the settlement agreement and the confession of judgment. (June 3, 2025 Hearing, at p. 49 l. 18-22, p. 50 l. 14 p. 51 l. 9, p. 52 l. 14-23 (R. 483-486).

A writ of execution was entered on October 5, 2023. (R. 006). A *nulla bona* return of the writ of execution was filed on November 3, 2023. (R. 011). The matter was referred to the master in equity by order filed December 28, 2023. (R. 012). A Rule to Show Cause and Order was entered February 5, 2024, setting a hearing date for March 4, 2024. (R. 014). Multiple hearings were held after this date in an attempt to get basic financial information concerning the debtor Burch. Burch continued to fail to comply with these orders over and over again.

Burch did not contest the execution of or the entry of the confession of judgment at hearings held in supplemental proceedings on March 4, 2024, April 15, 2024, August 12, 2024, or October 28, 2024. (Hearing transcripts, generally) (R. 159; 210; 260). At these hearings, testimony was taken concerning assets and the failure to produce financial records as required by the multiple Rule to Show Cause Orders issued by the Master in Equity. (R. 159; 210; 260). In fact, Burch admitted at these hearings that he started making payments under the judgment (March 4, 2024 Hearing, at p. 12. l. 17-23) (R. 170). He admits in the hearings that he executed the confession of judgment. (March 4, 2024 Hearing, at p. 8. l. 24 – p. 9 l. 3) (R. 166-167).

On November 20, 2024, Burch attempted to appeal orders issued in supplemental proceedings in Appellate Case No. 2024-002001, which concerned Burch's basic failures to produce documents as required in supplemental proceedings. (R. 47). On December 10, 2024,

Cornerstone filed a motion to dismiss the appeal. (R. 524). On January 27, 2025, the Court of Appeals dismissed this initial appeal on the grounds that the appeal concerned interlocutory orders. (R. 529).

Burch then filed his first Motion to Vacate Judgment on March 14, 2025. The motion was amended and supplemented multiple times, on April 14, 2025, May 14, 2025, and May 19, 2025. (R. 48, 82, 94, 112). In the Third Amended Motion to Vacate Judgment, Burch admits to signing the Confession of Judgment. (R. 112). The Master in Equity decided to hold an evidentiary hearing on the Motion to Vacate, which was heard on June 3, 2025. The Motion to Vacate was denied by order dated July 28, 2025. (R. 027). The full text of the July 28, 2025 order reads as follows: “Defendants [sic] Motion to Vacate Judgment originally filed April 14, 2025, and amended May 14, 2025, and May 19, 2025, are hereby denied.”

This appeal followed.

ARGUMENT

I. APPELLANT FAILS TO RAISE ANY ARGUMENTS THAT ALLOW FOR THE VOIDING OF A JUDGMENT UNDER RULE 60(B)(4), SCRPC

A judgment is not rendered void by irregularities that do not involve jurisdiction. *Ware v. Ware*, 404 S.C. 1, 11, 743 S.E.2d 817, 822 (2013). Under Rule 60(b)(4), a judgment is considered void if the court lacked jurisdiction or failed to provide proper due process. *Auto-Owners Ins. Co. v. Rhodes*, 405 S.C. 584, fn. 2, 748S.E.2d 781 (2013) (citing *Linda Mc Co. v. Shore*, 390 S.C. 543, 703 S.E.2d 499 (2010) for the proposition that “that the definition of ‘void’ under Rule 60(b)(4) only encompasses judgments from courts that failed to provide proper due process, lacked subject matter jurisdiction, or lacked personal jurisdiction”). The question is not whether the court erred, but whether it lacked subject matter jurisdiction over the defendant.

In the case at bar, Burch asserted in his Amended Notice of Appeal filed August 14, 2025 that “the judgment challenged is void for lack of jurisdiction and/or other grounds asserted in the motion.” Subject matter jurisdiction is satisfied as a breach of contract claim, occurring in Dorchester County, South Carolina under a state cause of action is within the circuit court’s jurisdiction. As stated in the Complaint and admitted in the Answer, Burch is a resident of Dorchester County, satisfying personal jurisdiction through domicile. Furthermore, Burch was afforded proper due process by private process server on April 29, 2023 to the spouse of Burch, with a copy of the Summons and Complaint. Finally, as to the Confession of Judgment, he admits to reviewing the document, having an attorney at the time of review, and signing the document.

The underlying lawsuit was filed in the county of Burch’s residence, and he filed an answer that failed to raise jurisdictional matters. He then settled the lawsuit by way of a settlement agreement, and then defaulted under that agreement, which led to the filing of the confession of judgment. Burch has not raised any argument that attacks due process, subject matter jurisdiction, or personal jurisdiction, because no such viable argument exists. The appeal therefore fails, and no further analysis is required by the Court. However, to the extent the Court entertains the positions asserted by Burch, the following arguments apply to affirm the decision of the trial court.

II. THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION WHEN IT HELD THAT THE CONFESSION OF JUDGMENT DID NOT FAIL TO MEET THE REQUIREMENTS OF S.C. CODE ANN. § 15-35-360

The movant in a Rule 60(b) motion has the burden of presenting evidence proving the facts essential to entitle him to relief. *Bowers v. Bowers*, 304 S.C. 65, 67, 403 S.E.2d 127, 129 (Ct. App. 1991). “A void judgment is one that, from its inception, is a complete nullity and is without legal effect.” *Universal Benefits, Inc. v. McKinney*, 349 S.C. 179, 183, 561 S.E.2d 659, 661 (Ct. App. 2002) (quoting *Thomas & Howard Co. v. T.W. Graham & Co.*, 318 S.C. 286, 291, 457 S.E.2d 340,

343 (1995)). “The definition of void under the rule only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction.” *Id.* (quoting *McDaniel v. U.S. Fid. & Guar. Co.*, 324 S.C. 639, 644, 478 S.E.2d 868, 871 (Ct. App. 1996)).

The requirements for a confession of judgment are set forth in S.C. CODE ANN. § 15-35-360:

Before a judgment by confession shall be entered a statement in writing must be made and signed by the defendant and verified by his oath to the following effect:

(1) It must state the amount for which judgment may be entered and authorize the entry of judgment therefor;

(2) If it be for the money due or to become due, it must state concisely the facts out of which it arose and must show that the sum confessed therefor is justly due or to become due; and

(3) If it be for the purpose of securing the plaintiff against a contingent liability, it must state concisely the facts constituting the liability and must show that the sum confessed therefor does not exceed the liability.

In his Third Amended Motion to Vacate Judgment, he admits at the outset that he met with an attorney at his office, and that he was presented with the Confession of Judgment. He admits that he signed the document in the presence of his attorney. With this admission, the requirements of any oath or verification are no longer material. The admission to signature exists. The trial court weighed this issue along with the others raised by Burch, and determined that the Rule 60 motion be denied. Such denial, based on the facts before the court, including the admitted execution of the confession of judgment, does not rise to the level of an abuse of discretion.

Each of elements (1), (2), and (3) are met by the Confession of Judgment executed by Burch. Furthermore, the trial court did not abuse its discretion in denying Burch’s motion.

Testimony was provided by two attorneys that Burch came to their office and signed the Confession of Judgment. (R. 451-452; 471). These two attorneys acknowledged that their signatures were listed as witnesses to Burch's signature, and that they would not have signed as witnesses unless they had actually witnessed Burch's signature. (R. 452-453; 471). The trial judge, in his discretion, weighed the testimony concerning the signatures, and the protocols followed in relation thereto, and determined that the evidence weighed in favor of Burch's signature taking place.

The confession of judgment also provides language that states the Burch acknowledges that he has carefully read the document and signs of his own free act. This statement serves as a verification and oath as set forth in S.C. CODE ANN. § 15-35-360.

In addition, the Confession of Judgment clearly meets the requirements of the statute. The confession makes a clear statement of the amount owed -- \$100,000. It states how the amount is due -- it is due under a settlement agreement, and if payments are not made as required under said agreement, the confession of judgment may be filed. If the liability is contingent by being based on a future default under the settlement agreement, then this final requirement is established as well. Furthermore, the trial court did not abuse its discretion by denying the motion based on a failure to show that these elements had not been met.

Appellant's first claim of error ignores the trial court's role as fact-finder that found substantial compliance with statutory requirements under S.C. CODE ANN. §15-35-360. The trial court heard evidence and concluded that the confession, signed by Appellant with the guidance of his authorized agent as part of the negotiated Settlement Agreement, substantively met the purpose of the statute. The Confession of Judgment was in writing, stated the debt, and was presented to the court as a valid resolution of the dispute.

The trial court was within its discretion to find that any technical imperfection, to the extent one even existed, did not rise to the level of a jurisdictional defect rendering the judgment void, but, at worst, an irregularity that made the judgment voidable. *See Universal Benefits, Inc. v. McKinney*, 349 S.C. 179, 183, 561 S.E.2d 659 (Ct. App. 2002) (irregularities that do not involve jurisdiction do not render a judgment void); *Thomas & Howard, Co. v. T.W. Graham & Co.*, 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995) (“A judgment will not be vacated for a mere irregularity which does not affect the justice of the case, and of which the party could have availed himself, but did not do so until judgment was rendered against him.”). The trial court committed no error of law in this conclusion and thus did not abuse its discretion. Therefore, the ruling of the trial court should be affirmed.

III. THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION WHEN IT HELD THAT IT WAS NOT IMPROPER TO ENTER THE ORDER OF REFERENCE

The Appellant misapplies Rule 53, SCRCP. No consent from a judgment debtor is required for referral in supplemental proceedings. Therefore, this argument by Appellant fails.

As a matter of explanation, the record provides why an affidavit of default was filed despite an answer being filed by Burch. As explained at the hearing, the e-filing docket did not show any filing by Burch because he filed his answer *pro se*. (June 3, 2025 Hearing, at p. 32 l. 14 – p. 33 l. 17 (R. 466-467)). The filing of the affidavit of default was a good faith mistake. Regardless, it has no consequence on the case, as the judgment rendered was not a default judgment. Instead, subsequent to the filing of the answer and the mistaken affidavit of default, the lawsuit reached a settlement with the assistance of attorneys for both parties, and then a confession of judgment was filed when Burch defaulted under the terms of the settlement agreement.

Furthermore, the issue raised by Burch was not raised by him in any of his many iterations of the motion to vacate. An issue cannot be raised for the first time on appeal; instead, it must

have been raised and ruled on by the trial judge to preserve for appellate review. *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). Therefore, this item is not subject to appellate review.

Regardless, the Order of Reference was a proper exercise of the court's administrative authority and does not implicate subject matter jurisdiction.

Appellant's assertion that the Order of Reference voided all subsequent proceedings is a broad overstatement of Rule 53(b), SCRPC. Under Rule 69, SCRPC and S.C. CODE ANN. §§ 15-39-310, *et seq.*, the normal procedure for post-judgment execution is through a referral to the master in equity or special referee.

Under Rule 53, SCRPC, a master has no power or authority except that which is given to him by the order of reference. *Smith v. Ocean Lakes Family Campground*, 315 S.C. 379, 433 S.E.2d 909 (Ct. App. 1993). When a case is referred to a master under the rule, the master is given the power to conduct hearings in the same manner as the circuit court unless the order of reference specifies or limits the master's powers. *Bunkum v. Manor Properties*, 321 S.C. 95, 467 S.E.2d 758 (Ct. App. 1996). Additionally, the Supreme Court has emphasized that the language authorizing the master to enter final judgment was descriptive of the nature of the order, not a limitation on jurisdiction. *Wachovia Bank of South Carolina, N.A. v. Player*, 341 S.C. 424, 427, 535 S.E.2d 128 (2000).

The circuit court unquestionably had jurisdiction over "the general class to which the proceedings in question belong," *Dove v. Gold Kist, Inc.*, 314 S.C. 235, 237, 442 S.E.2d 598 (1994), and the reference to the master did not divest it of that power. No consent from a judgment debtor is required for referral in supplemental proceedings. No abuse of discretion or error exists concerning the order of reference.

IV. THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION WHEN IT HELD THAT NO ERROR EXISTED CONCERNING THE SETTLEMENT AGREEMENT

The appellant brief of Burch is littered with conclusions of fact that are not supported by the record. The arguments related to the settlement agreement may very well be the biggest set of misconstrued facts in this matter. First, it is worth recalling that multiple court sessions were held in supplemental proceedings in which testimony was taken concerning the assets of the debtor Burch, in which he did not raise the issue that somehow the judgment was invalid. Rather, he did not like how the process went concerning his failed real estate venture, but he did not contest the fact that money was borrowed and money was owed.

The Confession of Judgment clearly references that it is being signed pursuant to a “Settlement Agreement.” There is no requirement that the agreement be filed with the court with the Confession of Judgment or at any other time. Burch had the opportunity to seek a production of his files from his previous counsel, and he failed to do so. He also had the opportunity to pursue discovery prior to a hearing on his motion to vacate, but he never requested a copy of the settlement agreement (or any other documents for that matter). The testimony of his former counsel provides evidence that the Settlement Agreement was signed. The Settlement Agreement contains the required counsel signatures under Rule 43(k), SCRPC. That Burch’s memory has failed him does not somehow magically make the document void.

Appellant’s argument asks this Court to re-weigh the evidence presented to the trial court, which is precisely what the abuse of discretion standard forbids. *See BB&T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501 (2006). As fact-finder in the Rule 60(b) hearing, the trial court was presented with evidence of the Settlement Agreement, including correspondence between counsel

and the larger context of the dispute, finding this evidence credible and sufficient to establish a basis for the Confession of Judgment's validity and entry.

The absence of an original copy of the Settlement Agreement is a question of weight and authenticity, not jurisdiction. The trial court's decision to rely on copies and representations before it was not without evidentiary support and thus cannot be an abuse of discretion. Appellant's due process argument fails because he received a full and fair hearing on this very issue before the trial court, which merely ruled against him on these facts.

V. THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION WHEN IT HELD THAT NO ERROR EXISTED CONCERNING THE EXECUTION OF THE CONFESSION OF JUDGMENT THROUGH COUNSEL WHO HAD NOT APPEARED IN THE LAWSUIT

Burch appears to be arguing that because he retained counsel for another matter, and not for the dispute between Cornerstone and Burch, that somehow the Confession of Judgment is void. This argument lacks any semblance of a cognizable argument that would allow for voiding the Confession of Judgment. Furthermore, the argument was not raised in the underlying motion, and therefore is not subject to appeal. *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998).

Burch is correct that he filed an answer *pro se*. He is correct that Mr. Closser never made an appearance on behalf of Burch in the lawsuit. However, there are a myriad of times when attorneys represent clients and help resolve disputes before it becomes necessary for the attorney to make an appearance in a lawsuit. Mr. Closser negotiated a settlement of this dispute on behalf of Burch. That such steps were taken are shown by Mr. Closser's testimony, the witness signatures on the Confession of Judgment, and the Rule 43(k) statement found at the end of the Settlement Agreement.

The argument also contradicts the plain language asserted in Burch's motion. He admits that he went to Mr. Closser's office to execute the Confession of Judgment. If Mr. Closser was not his attorney or somehow was not authorized to negotiate the settlement, then Burch should not have signed the document. However, he admits that execution occurred, and does not contest in the motion that it was appropriate for Mr. Closser to present him with such a document.

The Confession of Judgment was executed by Burch. Whether or not he had counsel involved does not somehow invalidate the confession. Burch's claim that Mr. Closser was unauthorized is a factual dispute that was resolved by the trial court after hearing testimony and examining the circumstances, including the interconnected nature of the business disputes raised by Burch. The record contains evidence from which the trial court could infer that Mr. Closser was acting with Appellant's apparent authority in negotiating the settlement that culminated in the Confession of Judgment.

The trial court's factual finding that the confession was a product of a negotiated settlement, and not an unauthorized act, is binding on this Court unless wholly unsupported by the evidence. Thus, the trial court's refusal to void the judgment on this basis was a proper exercise of discretion.

VI. THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION WHEN IT HELD THAT NO ERROR EXISTED CONCERNING THE ISSUANCE OF THE WRIT OF EXECUTION

The motion raised by Burch concerns whether the confession of judgment is void, and not as to whether a writ of execution is void. Appellant's final contention conflates the validity of a judgment with the improper enforcement of that judgment.

As stated in the record at the hearing, the Clerk of Court entered the writ of execution prior to the ten-day period required under Rule 62(a), SCRCP. However, whether the writ of execution

was proper or not has no effect whatsoever on the validity of the judgment itself. The alleged violation of Rule 62(a)'s automatic stay pertains to the writ of execution, not the underlying Confession of Judgment. The trial court correctly recognized that an early-issued writ does not equate to a void judgment, and acted within its discretion to remedy any procedural misstep in the enforcement process without vacating a valid underlying judgment. Furthermore, the early issuance of the writ had no negative consequences for Burch – no assets have been executed on by the sheriff (or any court for that matter), nor has he been denied any form of bond or other item that Rule 62 is intended to protect. The core function of a 60(b)(4) is to attack judgments that are void, not to handle issues related to their execution. Thus, the trial court committed no error of law in this approach.

CONCLUSION

For the foregoing reasons, the Court should **AFFIRM** the Circuit Court's order denying Appellant Burch's Motion to Vacate Judgment. The record reflects that a Confession of Judgment was signed by Burch, and that his signature was verified and under oath based on the witness signatures and the language set forth in the document. The remaining arguments of Burch fail to pass legal muster. As has been apparent since the supplemental proceedings process has begun, Burch has taken extreme efforts to block discovery of assets and execution upon the judgment. This appeal is just one more step in Burch's abuse of legal procedures in an effort to protect himself from execution under a judgment that he signed. None of the items raised by Burch meet the standard required of an abuse of judicial discretion by the trial court.

Respectfully Submitted,

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Cornerstone Ventures International, LLC,

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v.

Alvin E. Burch, Sr.,

Appellant,

RESPONDENT'S RULE 211 CERTIFICATION

The undersigned certifies that this Final Brief of Respondent Cornerstone Ventures International, LLC complies with Rule 211(b), SCACR.

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