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May 15 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON
COUNTY

Court of Common Pleas

HONORABLE JESSICA ANN SALVINI

Circuit Court Judge

Case No. 2018-CP-1002580

Appellate Case No. 2025-01433

Elise Cromwell,

Appellant,

v.

Medical University of South
Carolina Hospital Authority
and the Medical University of
South Carolina,

Respondents.

REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS

Table of Authorities 3

Introduction..... 4

Arguments..... 5

 I. Whether Respondents misconstrue Rule 40(j) as authorizing denial of restoration based on a supposed “revival” requirement, where the rule provides tolling—not dismissal—and permits restoration beyond one year without jurisdictional bar.....5-6

 II. Whether Respondents’ statute-of-limitations framing—measuring from or after filing and treating restoration as a “new suit”—conflicts with controlling text and precedent and the case’s timely commencement.....6-7

 III. Whether the circuit court’s reliance on an automatic one-year cutoff and “extinguishment” rationale constitutes legal error and thus an abuse of discretion.....7-8

Conclusion.....9

TABLE OF AUTHORITIES*

CASES

Maxwell v. Genez, 356 S.C. 617, 612 (S.C. 2023).....6
Goodwin v. Landquest Dev. LLC, 414 S.C. 623, 779 S.E.2d 826 (Ct. App. 2015)..... 7
Town of Summerville v. City of North Charleston, 378 S.C. 107, 662 S.E.2d 40 (2008)8

STATUTES

S.C. Code Ann. § 15-3-530 (2024).....6

OTHER AUTHORITIES

Rule 40(j) SCRCP.....5, 6, 7
Rule 41 SCRCP.....7

INTRODUCTION

This reply addresses and corrects Respondents' core erroneous conclusions: (a) Rule 40(j) is not an automatic bar to restoration or a jurisdictional dismissal mechanism; (b) the statute of limitations analysis turns on timely commencement, not post-filing docket inactivity; and (c) the circuit court abused its discretion by grounding its denial on an incorrect legal premise. The case was timely commenced and never dismissed; Rule 40(j) did not extinguish claims; and the court's contrary reasoning was legal error warranting reversal and remand for restoration.

ARGUMENTS

I. Respondents' Rule 40(j) Framing Is Incorrect: The Rule Provides Tolling, Not Dismissal, and Allows Restoration Beyond One Year Without Jurisdictional Bar.

Respondents assert that because no unexpired limitations period remained when the case was stricken, Rule 40(j) could not “revive” claims at restoration, and the Circuit Court properly denied the motion. Respondents contend that Rule 40(j) operates only to extend an existing limitations period, does not revive already-expired claims, and that, after one-year, Defendants may assert limitations at the restoration hearing. That approach converts a narrow tolling feature into a substantive dismissal rule. This is incorrect for two reasons.

First, the one-year clause in Rule 40(j) does not impose a restoration deadline; it limits tolling, not the Court’s power to restore. Appellant’s Initial Brief explains that Rule 40(j) “does not require that a party move to restore the case to the docket within one-year after it has been stricken,” and the one-year language concerns only tolling. SCRCP 40(j). Respondents’ contrary reading—treating the lapse of one-year or the absence of unexpired time as a categorical restoration bar—rewrites the rule.

Second, Rule 40(j) strikes do not dismiss actions or adjudicate merits; they administratively remove cases from the active docket. Appellant’s Initial Brief details that the 2022 Rule 40(j) Order did not dismiss the case, did not adjudicate the merits, and did not require refiling; it merely removed the case from the active roster. Where a case remains pending and undismissed, restoration is available; whether any tolling benefit can be claimed is a separate, non-jurisdictional matter. Respondents’ position collapses this distinction and effectively imposes an automatic dismissal, which Rule 40(j) does not provide. Appellant’s Initial Brief argues that the Circuit Court

erred by treating Rule 40(j) as an automatic bar to restoration and by importing dismissal language that the rule does not contain.

Respondents' reliance on their authorities does not change that core point. Their quotations confirm only that Rule 40(j) tolling is conditional and limited; they do not transform the rule into a dismissal mechanism or a jurisdictional bar to restoration after one-year. *Maxwell v. Genez*, 356 S.C. 617, 612 (S.C. 2023). The Court should reject the Respondents' misreading and apply the rule as written: restoration is permitted; tolling is limited.

II. The Action Was Timely Commenced; The Circuit Court's Contrary Limitations Analysis Conflicts with the Record and Appellant's Initial Brief.

Respondents argue that the "dispositive inquiry" is whether a "viable claim existed at the time restoration was sought," characterizing a motion to restore as akin to filing a "new lawsuit." Respondents assert that Appellant's claims accrued no later than 2016; the case was filed in 2018; and the latest possible expiration was May 20, 2021; thus, no unexpired portion remained when the case was stricken in March 2022 or when Appellant sought restoration in March 2024. That framing ignores that the action was timely commenced and remained pending.

Appellant's Initial Brief identifies the accrual in 2016 as pleaded, the May 21, 2018, filing date, and the timely commencement within the applicable limitations period under § 15-3-530; it also explains that the Rule 40(j) strike did not dismiss the case. Limitations statutes govern commencement, not the pace of litigation after filing. The expiration of a limitations period after timely commencement does not retroactively invalidate a pending action or bar the Court from restoring a case that was never dismissed. Appellant's Initial Brief specifically challenges the Circuit Court's analysis that treated the statute as measuring "after Appellant filed her complaint,"

and explains why that is a clear error of law.

Respondents' "new lawsuit" equivalency improperly converts restoration into refiling. That is incompatible with the administrative nature of a Rule 40(j) strike and the undisputed fact that this action was never dismissed. Appellant's Initial Brief underscores that, had dismissal been intended, Rule 41 would govern; Rule 40(j) does not terminate jurisdiction or require refiling. SCRCP 40(j) & 41. To the extent Respondents urge an equivalency principle, it cannot override the text and structure of the procedural rules or the undisputed history of this case.

III. The Circuit Court Abused Its Discretion by Relying on an Incorrect Legal Premise—That Rule 40(j) Imposes an Automatic Restoration Bar or “Extinguishes” Timely Commenced Claims.

Respondents say the Circuit Court did not impose a one-year restoration deadline but recognized the “absence of any tolling benefit” and the expiration of limitations. Respondents characterize the Orders as denying restoration because limitations had expired and no tolling applied, and they argue Rule 6(b) cannot enlarge Rule 40(j)'s tolling framework. But the Orders' operative premise was that the lapse of one-year and the expiration of limitations categorically barred restoration, effectively treating the strike as extinguishing the action.

That premise is legally incorrect. Appellant's Initial Brief explains that the April 1, 2025, May 8, 2025, and June 18, 2025, orders denied restoration because more than one year had passed and Rule 40(j) was treated as barring restoration. But Rule 40(j) addresses tolling, not dismissal. Because “[a]n abuse of discretion occurs when a ruling rests on an error of law,” denying restoration on that basis was legal error. *Goodwin v. Landquest Dev. LLC*, 414 S.C. 623, 779 S.E.2d 826 (Ct. App. 2015). As Appellant's Initial Brief explains, restoration decisions are

discretionary, but legal questions—including the meaning of Rule 40(j) and related limitations issues—are reviewed de novo, and legal error constitutes an abuse of discretion. *Town of Summerville v. City of North Charleston*, 378 S.C. 107, 662 S.E.2d 40 (2008).

Nor do the Respondents' additional points salvage the ruling. Settlement discussions, docket management, and health or pandemic-related disruptions were proffered to show good cause and absence of prejudice, not to “revive” claims. Appellant’s Initial Brief notes that the delay followed ongoing settlement efforts, Counsel's health issues, Covid-era disruptions, and that Respondents identified witness-location difficulties during the hearing. The Circuit Court’s task was to decide restoration under the correct legal standard; because the applied legal standard was clearly erroneous and an error law—treating restoration as categorically barred—its denial must be reversed.

CONCLUSION

The Court should reject the Respondents' attempt to recast Rule 40(j) into a dismissal or revival mechanism and their effort to measure timeliness at restoration rather than commencement. This action was timely filed in 2018; the 2022 Rule 40(j) strike did not dismiss the case; and the Circuit Court's denial of restoration rested on an incorrect legal premise as explained in Appellant's Initial Brief. Appellant respectfully requests reversal and remand with instructions to restore the case to the active docket.

May 15, 2026

Respectfully submitted,

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