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STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS COUNTY OF MCCORMICK

BRYANTAVIOUS MURRAY, Plaintiff,

vs.

JEFFREY RICE, RONALD COOK, LEROY CARTLEDGE, JAMES THOMPSON, JEREMY MCCARY, FRANK MUSIER, VERA COUNNER, and JOSEPH STEVENS, Defendants.

Case No.: 2018-CP-3500074

MOTION FOR RELIEF FROM FINAL JUDGMENT (RULE 60(b)(1), (b)(2), & (b)(4), SCRCP)

Plaintiff Bryantavious Murray ("Plaintiff"), by and through the undersigned, respectfully moves this Honorable Court, pursuant to Rules 60(b)(1), 60(b)(2), and 60(b)(4) of the South Carolina Rules of Civil Procedure ("SCRCP"), for an Order vacating the Final Judgment entered in this action on July 17, 2023. This motion is based upon the fundamental deprivation of due process, the existence of newly discovered evidence, and clear excusable neglect, as further detailed herein.

This motion is supported by the accompanying Memorandum of Law, the entire record of this case, and any evidence and argument presented at the hearing on this matter.

I. FACTUAL AND PROCEDURAL BACKGROUND

1. Plaintiff initiated this state tort action by filing a Summons and Complaint on **March 16, 2018**.
2. The case record contains a clerical error, reflecting an incorrect filing date of **August 28, 2018**, when the actual filing date was March 16, 2018. This clerical mistake has caused significant procedural confusion.
3. On **July 17, 2023**, a Final Judgment was entered in this matter against the Plaintiff.
4. Crucially, this case never proceeded to a trial on the merits. No summary judgment hearing was ever held. No hearing on the production of documents was conducted, which effectively denied Plaintiff the ability to conduct meaningful discovery, obtain essential documents including use of force policies, and pursue interrogatories to develop his case. The judgment was therefore entered without a full and fair opportunity for Plaintiff to be heard.
5. Plaintiff appealed the Final Judgment. On **October 18, 2024**, the South Carolina Court of Appeals dismissed the appeal without prejudice.
6. The Remittitur was issued on **November 5, 2024**, returning full jurisdiction over this matter to this Honorable Court.
7. This Motion for Relief was prepared for filing on **12-31-2024**. Any delay in its formal filing is attributable to intervening holidays and mail processing disruptions and not to any lack of diligence on the part of the Plaintiff.
8. During relevant periods of this litigation, Plaintiff was suffering from a medically documented mental health condition that rendered him legally incompetent. This disability entitles Plaintiff to the tolling provisions of S.C. Code § 15-3-40 and constitutes excusable neglect.
9. Since the entry of judgment, Plaintiff has obtained significant new evidence that could not have been discovered previously due to the lack of discovery. This evidence includes forty-two (42) photographs documenting physical injuries inflicted by the Defendant officers, as well as corresponding CT scans and X-rays of bodily injuries. Plaintiff is prepared to produce this evidence for the Court's inspection.
10. Plaintiff intended to present this new evidence to the Court of Appeals in a motion to reinstate the appeal on or about April 5, 2026, but now presents it to this Court, which has proper jurisdiction following the remittitur.

II. LEGAL STANDARD

Rule 60(b) of the South Carolina Rules of Civil Procedure provides that a court may relieve a party from a final judgment 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);**
- **(4) the judgment is void;**

A motion under Rule 60(b)(1) and (b)(2) must be made within a reasonable time and not more than one year after the judgment was entered. A motion under Rule 60(b)(4) must be made within a "reasonable time." *Hendricks v. State*, 387 S.C. 221, 692 S.E.2d 892 (S.C. 2010).

III. ARGUMENT

A. The Judgment is Void Under Rule 60(b)(4) for Violating Plaintiff's Constitutional Right to Due Process.

A judgment is void if the court that rendered it acted in a manner inconsistent with due process. *Sijon v. Green*, 289 S.C. 126, 345 S.E.2d 246 (1986). The Due Process Clauses of the Fourteenth Amendment to the U.S. Constitution and Article I, § 3 of the South Carolina Constitution guarantee a litigant the fundamental right to an opportunity to be heard.

Here, the Final Judgment was entered without a trial, without a summary judgment hearing, and without any hearings on discovery. Plaintiff was deprived of the basic elements of procedural due process: the right to present evidence, to cross-examine witnesses, and to make legal arguments before a neutral arbiter. The denial of discovery, including a production of documents hearing, prevented Plaintiff from obtaining the evidence necessary to prosecute his claims, including the Defendants' use of force policies and incident reports. A judgment entered under such circumstances, where a party is denied a meaningful opportunity to be heard, is a nullity. *See Frank Rish, Sr. v. Kathy Rish* (S.C. Ct. App. 2021) (a judgment of a court without jurisdiction is void).

This motion is timely. A motion to set aside a void judgment under Rule 60(b)(4) need only be brought within a "reasonable time." *McDaniel v. United States Fidelity & Guaranty Co.*, 324 S.C. 639, 478 S.E.2d 868 (Ct. App. 1996). Filing this motion shortly after the remittitur returned jurisdiction to this Court on November 5, 2024, is eminently reasonable.

1. The Incorrect Date Deprived Plaintiff of Due Process.

The clerical error reflecting an incorrect filing date of August 28, 2018, instead of the actual date of March 16, 2018, created a "timed date difference" that independently violated Plaintiff's due process rights. This error caused the court system and opposing parties to treat the case as having been filed over five months later than it actually was, fundamentally distorting the procedural timeline.

This date discrepancy was not harmless; it directly contributed to the case being improperly barred or dismissed based on an erroneous procedural timeline. The incorrect date was used to calculate deadlines, limitations, and the timeliness of Plaintiff's claims, prejudicing his ability to prosecute the action. A litigant cannot be deprived of his day in court based on a court's own clerical error. This constitutes an independent due process violation under the Fourteenth

Amendment and S.C. Const. Art. I, § 3, because the state cannot use its own erroneous records to strip a litigant of his right to be heard. Such a "good faith mistake of fact" warrants relief. *Columbia Pools, Inc. v. Galvin*, 288 S.C. 59, 339 S.E.2d 524 (Ct. App. 1986); *Manning v. City of Columbia*, 284 S.C. 433, 327 S.E.2d 329 (1985) (clerical errors are excusable neglect). A judgment rendered based on such incorrect information is void. *Sijon v. Green*, 289 S.C. 126, 345 S.E.2d 246 (1986).

B. Plaintiff is Entitled to Relief Under Rule 60(b)(2) Based on Newly Discovered Evidence of Excessive Force and Injuries.

Rule 60(b)(2) allows for relief from judgment based on newly discovered evidence. The moving party must show the evidence: (1) will probably change the result if a new trial is granted; (2) has been discovered since the judgment; (3) could not have been discovered before the judgment by the exercise of due diligence; (4) is material; and (5) is not merely cumulative or impeaching. *Lanier v. Lanier*, 364 S.C. 211, 612 S.E.2d 456 (Ct. App. 2005).

Plaintiff has discovered powerful new evidence: 42 photographs, CT scans, and X-rays documenting the severe injuries he sustained. This evidence satisfies the *Lanier* test:

1. It will **change the result** by providing direct, objective proof of excessive force, battery, and constitutional violations.
2. It was **discovered since the judgment**, as Plaintiff was unable to fully develop his case or obtain these certified records due to the procedural posture and lack of discovery.
3. It **could not have been discovered before** with due diligence because there was no trial and no discovery process through which to compel or present this evidence.
4. It is highly **material** to the core issues of liability and damages for excessive force and battery.
5. It is **not merely cumulative**, as no such graphic, medical evidence is currently in the record.

This evidence directly supports claims under the Fourth and Fourteenth Amendments, as well as S.C. Code § 23-1-250, which defines the willful use of excessive force in an objectively unreasonable manner as misconduct. *See Newkirk v. Enzor*, 240 F. Supp. 3d 426 (D.S.C. 2017) (evidence of excessive force creates a genuine issue of material fact). This evidence is essential for a just adjudication, and a new trial should be granted to consider it.

C. Plaintiff's Mental Incompetence and the Court's Clerical Error Constitute Excusable Neglect Under Rule 60(b)(1).

Rule 60(b)(1) permits relief for excusable neglect. Here, two independent grounds establish excusable neglect.

First, Plaintiff's documented mental incompetence during critical periods of this litigation constitutes excusable neglect. *See Gainey v. Gainey*, 382 S.C. 414, 675 S.E.2d 792 (Ct. App.

2009). A judgment entered against a person who is mentally incompetent and not properly represented is defective. *Rouvet v. Rouvet*, 388 S.C. 301, 696 S.E.2d 204 (Ct. App. 2010). Further, Plaintiff's disability entitled him to tolling under S.C. Code § 15-3-40, which provides that "the time of the disability is not a part of the time limited for the commencement of the action." The failure to account for this disability resulted in a fundamentally unfair judgment.

Second, the clerical error in the record reflecting an incorrect filing date of August 28, 2018, instead of the correct March 16, 2018 date, is a "good faith mistake of fact" that warrants relief. *Columbia Pools, Inc. v. Galvin*, 288 S.C. 59, 339 S.E.2d 524 (Ct. App. 1986). Such typographical errors are a classic basis for finding excusable neglect. *Manning v. City of Columbia*, 284 S.C. 433, 327 S.E.2d 329 (1985).

D. Plaintiff Has Meritorious Constitutional Claims Justifying a New Trial.

Relief under Rule 60(b) requires a showing of a meritorious defense or, in this case, meritorious claims that were never heard. Plaintiff has compelling constitutional claims that must be adjudicated.

1. **First Amendment Retaliation:** Plaintiff alleges that Defendants' use of excessive force was in retaliation for his engagement in protected speech, such as filing grievances or otherwise reporting misconduct, in violation of the First Amendment and S.C. Const. Art. I, § 2. The right to file a grievance free from retaliation is clearly established. *Booker v. S.C. Dep't of Corr.*, 855 F.3d 533, 543 (4th Cir. 2017); *Hardaway v. Myers* (D.S.C. 2020).
2. **Fourth Amendment Excessive Force:** Plaintiff alleges the Defendant officers used force greater than reasonably necessary, violating the Fourth Amendment and S.C. Code § 23-1-250. An officer who uses excessive force is liable for assault and battery. *Joe v. Kershaw County Sheriff's Office* (D.S.C. 2020); *Beaufort, Sr. v. Thompson* (D.S.C. 2021). The newly discovered medical evidence provides stark proof of the objective unreasonableness of the force used. *See Woody v. City of Isle of Palms* (D.S.C. 2023).

These meritorious claims, supported by powerful new evidence, were never heard due to the procedural deficiencies that rendered the judgment void and resulted from excusable neglect. Justice requires that the judgment be vacated so these claims may be heard on the merits.

IV. PRAYER FOR RELIEF

WHEREFORE, Plaintiff Bryantavious Murray respectfully requests that this Honorable Court enter an Order:

A. Vacating the Final Judgment entered on July 17, 2023; B. Granting Plaintiff relief from the judgment pursuant to Rule 60(b)(1), (b)(2), and (b)(4), SCRCF; C. Granting Plaintiff a new trial on all claims; D. Granting Plaintiff leave to amend his Complaint to add constitutional claims under the First, Fourth, and Fourteenth Amendments to the United States Constitution

and the corresponding provisions of the South Carolina Constitution; E. Permitting discovery to proceed, including the production of documents, responses to interrogatories, and depositions; F. Accepting into evidence the 42 use of force photographs and related CT scans and X-rays; G. Awarding Plaintiff the costs of this motion; and H. Granting such other and further relief as this Court deems just and proper.

Dated: 12-31-2024

Respectfully submitted,

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Bryantavious Murray, Pro Se [Plaintiff's Mailing Address] [Plaintiff's City, State, Zip Code]
[Plaintiff's Telephone Number] [Plaintiff's Email Address]

SC Court of Appeals

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR RELIEF FROM FINAL JUDGMENT

Plaintiff Bryantavious Murray submits this Memorandum of Law in support of his Motion for Relief from Final Judgment pursuant to Rules 60(b)(1), (b)(2), and (b)(4) of the South Carolina Rules of Civil Procedure.

I. INTRODUCTION

This case presents a trifecta of grounds justifying relief under Rule 60(b). First, the judgment is void under Rule 60(b)(4) because it was entered in violation of Plaintiff's fundamental due process rights, without a trial, hearing, or discovery. Second, Plaintiff has newly discovered evidence under Rule 60(b)(2)—graphic medical and photographic proof of excessive force—that could not have been presented earlier and which will certainly change the outcome. Third, Plaintiff's documented mental incompetence and a critical clerical error in the court record constitute clear excusable neglect under Rule 60(b)(1). Justice demands that the procedurally infirm judgment be vacated and that Plaintiff be given his day in court to present his meritorious constitutional claims.

II. ARGUMENT AND CITATION OF AUTHORITY

A. The Judgment is Void for Lack of Procedural Due Process (Rule 60(b)(4)).

A judgment is void if it is rendered in a manner inconsistent with due process. U.S. Const. amend. XIV; S.C. Const. Art. I, § 3. Due process requires, at its core, notice and an opportunity to be heard. In South Carolina, a judgment rendered without proper notice or opportunity to be heard is void and subject to attack under Rule 60(b)(4). *Sijon v. Green*, 289 S.C. 126, 345 S.E.2d 246 (1986).

The judgment here was obtained without affording Plaintiff any of the basic procedural safeguards. There was no trial. There was no summary judgment hearing. There was no discovery hearing. Plaintiff was wholly deprived of the opportunity to present his case,

challenge the Defendants' evidence, or obtain discovery on his claims. A judgment obtained in this manner is a legal nullity. The motion is timely, as a Rule 60(b)(4) motion must only be filed within a "reasonable time" after the judgment. *Hendricks v. State*, 387 S.C. 221, 692 S.E.2d 892 (S.C. 2010). Filing this motion immediately after jurisdiction was returned to this Court by the remittitur is unquestionably reasonable.

1. The Timed Date Difference Constitutes an Independent Due Process Violation.

The Court's own clerical error, which recorded the filing date as August 28, 2018, instead of the correct date of March 16, 2018, created a fundamental procedural defect that violated Plaintiff's right to due process. Due process requires not just an opportunity to be heard, but accurate procedural records to ensure that opportunity is meaningful. The incorrect date caused the case to be treated as if it were filed over five months late, creating an erroneous timeline that infected all subsequent proceedings. This "good faith mistake of fact" prejudiced Plaintiff by subjecting his claims to improper procedural bars based on incorrect calculations of timeliness. *Columbia Pools, Inc. v. Galvin*, 288 S.C. 59, 339 S.E.2d 524 (Ct. App. 1986). Because the judgment was predicated on a procedural posture that was itself the product of the Court's own error, it was rendered without proper notice and on the basis of incorrect information, rendering it void. *Sijon v. Green*, 289 S.C. 126, 345 S.E.2d 246 (1986); *Manning v. City of Columbia*, 284 S.C. 433, 327 S.E.2d 329 (1985).

B. Newly Discovered Evidence of Excessive Force Mandates a New Trial (Rule 60(b)(2)).

To obtain relief under Rule 60(b)(2), a party must show that newly discovered evidence (1) will probably change the result; (2) was discovered after the judgment; (3) could not have been discovered before the judgment through due diligence; (4) is material; and (5) is not merely cumulative. *Southeastern Housing Foundation v. Smith*, 380 S.C. 621, 670 S.E.2d 680 (Ct. App. 2008).

Plaintiff's 42 photographs and corresponding medical imaging (CT scans and X-rays) of his injuries satisfy this test. This evidence provides objective, powerful proof of excessive force, battery, and constitutional violations. It could not have been introduced before because the case was disposed of without discovery or a trial. It is the most material evidence imaginable for an excessive force claim. This evidence supports Plaintiff's meritorious claims that Defendants violated his Fourth Amendment rights and state law by using force "greater than is reasonably necessary under the circumstances." *Joe v. Kershaw County Sheriff's Office* (D.S.C. 2020); S.C. Code § 23-1-250. The new evidence creates a clear issue of material fact that can only be resolved at trial. *Newkirk v. Enzor*, 240 F. Supp. 3d 426 (D.S.C. 2017).

C. Excusable Neglect Warrants Relief Under Rule 60(b)(1).

South Carolina courts construe "excusable neglect" liberally to ensure that justice is done. The determination depends on the circumstances of each case and requires the court to consider: (1) the promptness of seeking relief, (2) the reasons for the failure to act, (3) the existence of a meritorious claim, and (4) prejudice to the other party. *Micronics, Inc. v. S.C. Dep't of Revenue*, 345 S.C. 506, 548 S.E.2d 223 (Ct. App. 2001).

Here, Plaintiff's mental incompetence during the proceedings constitutes excusable

neglect. *Gainey v. Gainey*, 382 S.C. 414, 675 S.E.2d 792 (Ct. App. 2009). The law does not punish a litigant for the effects of a disability that prevents them from protecting their own rights. Furthermore, the undisputed clerical error regarding the filing date is a "good faith mistake of fact" that independently supports relief. *Columbia Pools, Inc. v. Galvin*, 288 S.C. 59, 339 S.E.2d 524 (Ct. App. 1986). Plaintiff has meritorious constitutional claims, has acted promptly upon the return of jurisdiction, and Defendants will suffer no prejudice from having to defend these serious claims on the merits, as is required by law.

III. CONCLUSION

For the foregoing reasons, the Final Judgment is void, supported by newly discovered evidence, and resulted from excusable neglect. Plaintiff respectfully requests that the Court grant the Motion in its entirety.

Dated: 12-31-2024

Respectfully submitted,

Bryantavious Murray, Pro Se

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS COUNTY OF MCCORMICK

BRYANTAVIOUS MURRAY, Plaintiff,

vs.

JEFFREY RICE, et al., Defendants.

Case No.: 2018-CP-3500074

AFFIDAVIT OF SERVICE

PERSONALLY APPEARED BEFORE ME the undersigned, who being duly sworn, deposes and says:

1. I am the Plaintiff in the above-captioned action.
2. On this day, I have served a true and correct copy of the foregoing **Motion for Relief from Final Judgment** and **Memorandum of Law in Support** upon the Defendants in this action by depositing the same in the United States Mail, first-class postage prepaid, addressed to each Defendant at their last known address as follows:

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Jeffrey Rice [Last Known Address] [City, State, Zip Code]

Ronald Cook [Last Known Address] [City, State, Zip Code]

Leroy Cartledge [Last Known Address] [City, State, Zip Code]

James Thompkins [Last Known Address] [City, State, Zip Code]

Jeremy McCary [Last Known Address] [City, State, Zip Code]

Frank Musier [Last Known Address] [City, State, Zip Code]

Vera Counner [Last Known Address] [City, State, Zip Code]

Joseph Stevens [Last Known Address] [City, State, Zip Code]

Bryantavious Murray, Plaintiff

SWORN to before me this _____ day of _____, 2024.

Notary Public for South Carolina My Commission Expires: _____