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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM MARLBORO COUNTY
Court of Common Pleas

Paul M. Burch, Circuit Court Judge
Douglas Jennings, Jr., Special Referee

Case No. 2016-CP-34-00265
Appellate Case No. 2026-000228

Levi Owens, as Personal Representative of the Estate of Christopher McLean …...…Respondent,

v.

Wayne Hunt……...……..……...….....Appellant.

INITIAL BRIEF OF APPELLANT WAYNE HUNT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page Number

CASES

STATUTES AND OTHER AUTHORITIES

STATEMENT OF ISSUE ON APPEAL

I. Whether the Special Referee abused his discretion when he refused to set aside prior orders – including a default judgment of $5,100,000 – that were entered against Appellant before the Circuit Court had personal jurisdiction over him and, in doing so, applied an incorrect legal standard?

II. Whether the Special Referee abused his discretion when he refused to set aside a default and default judgment on the basis of mistake, inadvertence, surprise or excusable neglect when it was undisputed that Appellant did not have notice of the lawsuit, he promptly moved to set aside the default, and the subject accident was caused by another driver turning left in front of him?

STATEMENT OF THE CASE

This appeal arises out of a December 10, 2013 automobile collision when a vehicle turned left in front of a vehicle operated by Appellant Wayne Hunt on U.S. Highway 15 in Marlboro County. Respondent's decedent was a passenger in a vehicle operated by non-party Maisha Jacobs. Jacobs failed to yield the right of way while turning left off of Highway 15 onto a secondary road and pulled out in front of Appellant Hunt, causing the collision. Three years later, Respondent filed suit against Appellant. Instead of attempting personal service, Respondent attempted substitute service via the nonresident motorist service statute, South Carolina Code § 15-9-380. Critical to this appeal, that statute states that certain documents "shall be filed with the clerk of court … and ***upon the filing thereof*** shall have the same force and legal effect as if such process has been personally served upon such defendant." S.C. Code § 15-9-380 (emphasis added). Respondent did not file the service documents before moving for default, obtaining default, having the case referred to a special referee, or obtaining a $5,100,000 default judgment against Appellant. Because those Orders predated service, they are void. The Special Referee erred by denying a Motion to Set Aside those Orders.

The Special Referee also applied incorrect legal standards by:

a) broadly construing Section 380 when South Carolina's Supreme Court has held that this type of statute must be strictly construed and strictly followed; and

b) holding that substitute service is effected merely by service on the Director of the Department of Motor Vehicles contrary to the plain language of the statute, the structure of the other statutes in the same chapter, and United States Supreme Court precedent.

Appellant also moved to have the Orders set aside under Rule 60(b)(1) on the basis of mistake, inadvertence, surprise or excusable neglect. Just a few months before the auto accident at issue, Appellant moved, and he had not yet updated his address on his driver's license. He did not receive the Summons and Complaint that the DMV sent to his prior address – and no one contends otherwise. As a result, he was unaware of this lawsuit. Once the lawsuit and the default judgment were discovered, Appellant promptly sought relief and provided the Circuit Court with evidence to support his meritorious defense – that the vehicle in which Respondent's decedent was a passenger illegally turned left in front of him, causing the accident. The Special Referee erroneously denied that Motion. This appeal timely followed.

FACTUAL AND PROCEDURAL BACKGROUND

A. Respondent is injured as a passenger when the driver of his car turns left in front of Appellant.

On December 10, 2013, Respondent's decedent Christopher McLean was a passenger in a vehicle that collided with a vehicle operated by Appellant. (Compl. ¶ 3). The Complaint alleges that Decedent was a passenger in a vehicle "attempting to make a left turn" off of US-15 onto a secondary road and that Appellant's vehicle was traveling in the opposite direction on US-15. (*Id.*). Appellant avers – and the accident report confirms – the Maisha Jacobs – the driver of the car in which McLean was riding – failed to yield, causing the collision. (Hunt Aff. ¶¶ 2-3).

B. Respondent files suit on the eve of the statute of limitations and attempts service via the nonresident motorist substitute service statute.

On December 8, 2016 – nearly three (3) years from the date of the auto accident, Respondent filed his Complaint against Appellant. (Compl.). Respondent attempted substitute service on

Appellant through the South Carolina Department of Motor Vehicles. South Carolina's nonresident substitute service statutes provide two alternatives for service. South Carolina Code § 15-9-370 addresses service in situations where the Director of the Department of Motor Vehicles sends a copy of the process and notice of the service via certified mail to the defendant and the defendant actually receives the certified mail and signs the return receipt. South Carolina Code § 15-9-380 alternatively addresses the process for service when a nonresident does not accept and sign receipt for notice sent by certified mail. There is no dispute in this case that the second statutory provision is at issue, which states:

> If the defendant in any such cause shall fail or refuse to accept and receipt for certified mail containing the notice of service and copy of the process and it shall be returned to the plaintiff or the Department of Motor Vehicles, the original envelope as returned shall be retained and the notice and copy of the summons shall be sent by open mail and the envelope and affidavit of mailing with sufficient postage of such open letter ***shall be filed with the clerk of court*** in which such action is pending ***and upon filing thereof*** shall have the same force and legal effect as if such process has been personally served upon such defendant.

S.C. Code § 15-9-380 (emphasis added). Thus, by the plain language of the statute, service is effectuated "upon filing" with the Clerk of Court the original envelope and the Department of Motor Vehicles' affidavit of mailing.

On February 9, 2017, the Department received the Summons and Complaint in this action. (Wanda Ealy Aff. ¶ 4). On February 10, 2017, the Department sent a copy of the Summons and Complaint by certified mail to the address furnished by Respondent's counsel – 1667 NC Highway 210, Rocky Point, North Carolina 28457. (*Id.* at ¶ 5). However, at that time, Appellant did not reside at that address. (Hunt Aff. ¶ 8). As a result, the Post Office Department returned this copy of the Summons and Complaint to the South Carolina Department of Motor Vehicles with it marked "Return To Sender Unclaimed Unable To Forward." (Wanda Ealy Aff. ¶ 5).

In accordance with Section 15-9-380, the Department of Motor Vehicles then sent a copy of the Summons and Complaint by open mail to the same address provided by Respondent's counsel. (Wanda Ealy Aff. ¶ 6). Because he did not reside there, Appellant did not receive the open mail. (Hunt Aff. ¶¶ 8-11).

On March 10, 2017, the Department of Motor Vehicles sent Respondent's counsel, Alex Murdaugh, the affidavit of mailing, the original envelope, and the unsigned return receipt card for filing in accordance with § 15-9-380. (Wanda Ealy Aff. at p. 2). Although § 15-9-380 states that these items "shall be filed with the clerk of court in which such action is pending", Respondent did not file them in March or April of 2017. *See* (Public Index); S.C. Code § 15-9-380 (emphasis added). Instead, on November 16, 2017 – eight months after the Department of Motor Vehicles provided him with the affidavit, Respondent's counsel filed his own Affidavit of Default seeking an entry of default against Respondent and attaching the original (February 10, 2017) letter from the Department of Motor Vehicles. (Aff. of Default). The Affidavit of Default did not reference the March 10, 2017 affidavit from the Department of Motor Vehicles or the March 10, 2017 letter from the Department of Motor Vehicles to Appellant. Instead, it alleged that the Summons and Complaint were served upon Appellant "by the South Carolina Department of Motor Vehicles on February 10, 2017, as shown by the Acceptance of Service in this case". (*Id.*). There was no "Acceptance of Service" in this case. *See* (Public Index).

The Department of Motor Vehicles' February 10, 2017 "Return To Sender Unclaimed Unable To Forward" mailing does not qualify as legal service upon a defendant. *See* S.C. Code §§ 15-9-370 & 15-9-380; *see also* Rule 4(d)(8), SCRCP (stating that if service is made by certified mail, that service "shall not be the basis for the entry of a default or a judgment by default unless the record contains a return receipt showing the acceptance by the defendant").

C. Despite Respondent's failure to comply with the nonresident motorist substitute service statute, the Circuit Court enters default, refers the case to a special referee, and the Special Referee enters a default judgment of $5,100,000.

Even though the Circuit Court had not received proof of substitute service as required by South Carolina Code § 15-9-380 (or Section 370 for that matter[1]), the Circuit Court entered default against Appellant on November 16, 2017. (Entry of Default).

Thereafter, counsel for Respondent moved to refer the matter to a special referee in order to determine the amount of damages. (Order of Reference). On October 22, 2018, the Circuit Court issued an Order of Reference, referring the matter to Douglas Jennings, Jr. to determine the amount of damages. (*Id.*). At that time, Respondent still had not filed the items required by § 15-9-380 to effectuate legal service upon Appellant, and Appellant was unaware of the legal proceedings. *See* (Public Index).

On November 4, 2021, Respondent's counsel filed an Affidavit of Service stating that he had mailed a notice of hearing to the same 1667 NC Highway 210 address. (November 4, 2021 Aff.). On November 18, 2021, the Special Referee entered a default judgment award against Appellant in the amount of Five Million One Hundred Thousand ($5,100,000) Dollars. (November 18, 2021 Order). At that time, Respondent still had not filed the items required by § 15-9-380 to effectuate legal service upon Appellant, and Appellant was unaware of the legal proceedings. *See* (Public Index).

On July 11, 2022 – (a) more than (4) years after the November 16, 2017 Entry of Default; (b) more than three (3) years after the October 22, 2018 Order of Reference appointing the Special Referee; and (c) more than seven (7) months after the November 18, 2021 Default Judgment –

[1] South Carolina Code § 15-9-370 states service "shall be sufficient … if notice of the service and a copy of the process are forthwith sent by certified mail … and the defendant's return receipt and the plaintiff's affidavit of compliance herewith are appended to the summons or other process and filed with the summons, complaint, and other papers in the cause." Thus, the Respondent's Affidavit of Service filed with the Circuit Court would also have failed to satisfy Section 370 because it did not include "the defendant's return receipt".

Plaintiff filed the Department of Motor Vehicles' Affidavit. *Compare* S.C. Code § 15-3-530(5); Rule 3(a)(2), SCRCP; S.C. Code § 15-9-380 *with* (Wanda Ealy Aff. (filed July 11, 2022)).

D. Upon discovery of the lawsuit, Appellant's counsel promptly moves to set aside the Orders, and, despite the Respondent's failure to comply with the substitute service statute and the strong showing of mistake, inadvertence or excusable neglect, the Special Referee denies that Motion.

On October 26, 2022, Appellant filed a Motion to be Relieved from the Default Damages Judgment and/or in the Alternative to Vacate the Judgment. (October 26, 2022 Mot.). The grounds for the Motion included: (1) Rule 12(b)(2) lack of jurisdiction over the person; (2) Rule 12(b)(4) insufficiency of process; (3) Rule 12(b)(5) insufficiency of service of process; and (4) Rule 60(b). (*Id.*). The Motion stated that it would be further supported by the pleadings, correspondence, affidavits, the contents of the court file and a memorandum of law. (*Id.* at p. 1). Thereafter, Appellant filed a Memorandum of Law in Support of this Motion. (Mem. in Supp.). In the Memorandum, Appellant argued that service was not effective until at least July 11, 2022 because Section 15-9-380 requires filing for effective service under that substitute service statute. (*Id.* at pp. 3-4). Appellant also argued that the default judgment was void for lack of personal jurisdiction. (*Id.* at pp. 4-5).

Furthermore, Appellant argued the default judgment should be set aside under Rule 60(b) for mistake, inadvertence, surprise or excusable neglect. (*Id.* at pp. 5-7). Citing his Affidavit, Appellant stated he never received the Summons and Complaint and was completely unaware of the lawsuit until November 2, 2022. (*Id.* at p. 6); (Hunt Aff. ¶¶ 4, 6). Appellant did not live at the North Carolina address when the DMV attempted service there. (*Id.*). By the time Respondent attempted service at this address more than 3 years after the accident, Appellant had not lived at that address for several years. (*Id.*).

Moreover, Appellant affirmed his meritorious (and obvious) defense: Maisha Jacobs, the driver of Respondent's vehicle, pulled out in front of him while she was attempting to make a left

turn. (Mem. in Supp., p. 7); (Hunt Aff. ¶ 1). Maisha Jacobs failed to yield the right of way and is responsible for the accident and the resulting death. (Mem. in Supp., p. 7). Investigative materials gathered further confirm Appellant's account and list Maisha Jacobs as the contributing party to the accident. (*Id.*); (Hunt Aff. ¶ 2). These investigative materials also list Appellant as without fault. (*Id.*). In his Memorandum, Appellant also asserted that lack of service is a meritorious defense in and of itself. (Mem. in Supp., p. 7).

Despite the pending Motion, the Court entered a Writ of Execution on June 2, 2023, which was returned *nulla bona* on February 28, 2024. On February 29, 2024, Appellant filed a Motion to Stay Execution of Judgment. (Mot. to Stay Execution of Judgment). At that time, more than a year and a half after its filing, the Circuit Court still had not heard or ruled upon Appellant's Motion to be Relieved from the Default Damages Judgment and/or in the Alternative to Vacate the Judgment. Thereafter, Respondent filed a "Motion for Supplemental Proceedings" seeking an order requiring Appellant to appear before the Court and answer under oath concerning his property. Appellant filed a Response in Opposition. (Hunt Resp. in Opp.).

On March 20, 2024, the Special Referee, in an email to the Clerk of Court, stated that it was his position that the Order of Reference by this Court was "limited to the purpose of determining the amount of damages", and that he no longer had jurisdiction as Special Referee to hear and decide upon the various pending motions filed by both parties. *See* (May 28, 2024 Hearing Tr. 16:5-17:14; 18:8-19). It was the Special Referee's recommendation that the unresolved pending motions, which included Appellant's Motion to Be Relieved from Default Damages Judgment, should be heard by the presiding Circuit Court Judge. (*Id.*).

On May 28, 2024, the Circuit Court held a hearing on Appellant's Motion to Be Relieved from Default Damages Judgment And/Or Vacate Judgment. (*Id.*). However, before rendering a

decision on the Motion, the presiding judge of the Circuit Court, Judge Burch, ordered both parties to prepare briefs on whether he had jurisdiction to hear the pending motions after referring the matter to the Special Referee. (*Id.*). After the parties filed those briefs, the Circuit Court entered a form 4 Order declaring that "this Court does not have jurisdiction over this matter." (July 24, 2024 Form 4 Order).

On October 10, 2024, the Special Referee held a hearing on the: (1) Appellant's Motion to be Relieved from the Default Damages Judgment and/or in the Alternative to Vacate the Judgment; (2) Appellant's Motion to Stay Execution of Judgment; and (3) Respondent's Motion for Supplemental Proceedings. (October 10, 2024 Hearing Tr.). At the hearing, counsel for Appellant argued that the Entry of Default, Order of Reference, and Default Damage Judgment were all void because Respondent did not comply with the substitute service statute, Section 15-9-380, before the entry of any of those Orders. (*Id.* at 6:16-7:11). He argued that by Section 15-9-380's plain wording, service is only effective upon filing the required documents, which did not occur until July 2022. (*Id.* at 12:25-13:3; 15:15-18:6). As counsel explained at the hearing:

> [T]here was no reason why 15-9-380 could not have been complied with in 2017. It wasn't. And they tried to fix it in 2022 and the law isn't retroactive. You can't have retroactive service. You – you – and you have to have service to have jurisdiction. And service did not begin until everything under 15-9-380 was filed – required to be filed. And that did not happen until July of 2022.

(*Id.* at 19:19-20:2). He argued that this lack of service resulted in the Circuit Court not having personal jurisdiction over Appellant. (*Id.* at 9:21-10:11).

After the hearing, the Special Referee did not rule on those Motions. Rather, he issued a Form 4 Order requiring the "parties to submit this case to mediation as soon as practicable." (November 8, 2024 Order). The Order further stated that "[a]ll pending rulings will be taken under advisement and held in abeyance until a report of mediation is submitted to this Court." (*Id.*). The parties did not reach

any agreement in this required mediation. Thereafter, the Special Referee denied Appellant's Motion to vacate the default judgment. (January 5, 2026 Special Referee Order).

Contrary to the plain language of South Carolina Code § 15-9-380, the Special Referee held that "service was effective and complete upon delivery of the suit papers to the Director of the SCDMV." (*Id.* at p. 18). The Special Referee further interpreted South Carolina Code § 15-9-380 contrary to its plain language as follows:

> This Court interprets the quoted language from section 15-9-380 as a requirement for the plaintiff to file the affidavit of mailing and envelope, which must be requested from the SCDMV, at some point after the failed receipt as proof of *additional* notice….The statute does not purport to serve as a jurisdictional requirement.

(*Id.* at p. 7) (emphasis in orig.). Thus, the Special Referee found that the statute includes two steps: (1) service, which is immediate upon the Director of the Department of Motor Vehicles' receipt of the Summons and Complaint; and (2) "additional notice", which takes place when (and if) the Director of the Department of Motor Vehicles sends the service documents to the defendant. (*Id.*). The Special Referee also held that substitute service statutes are to be liberally construed and did not require strict compliance with the statute. (*Id.* at p. 5).

The Special Referee's Order also denied Appellant relief under his additional ground – mistake, inadvertence, surprise, or excusable neglect under Rule 60(b)(1), SCRCP. (*Id.* at pp. 15-18). The Special Referee did not address any post-suit mistake, inadvertence or neglect. Instead, the Special Referee merely held that Appellant's pre-accident failure to update his new address on his license precluded any finding of mistake, inadvertence or excusable neglect. This appeal timely followed.

STANDARD OF REVIEW

"[T]he plaintiff has the burden to establish that the Court has personal jurisdiction over the defendant." *Jensen v. Doe*, 292 S.C. 592, 594, 358 S.E.2d 148, 149 (Ct. App. 1987) (citing *Yarborough & Co. v. Schoolfield Furniture Indus., Inc.*, 275 S.C. 151, 153, 268 S.E.2d 42, 43 (1980)); *see also Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 150, 723 S.E.2d 835, 839 (Ct. App. 2012) ("[T]he party seeking to invoke personal jurisdiction over a nonresident defendant via our long-arm statute bears the burden of proving the existence of personal jurisdiction."). The plaintiff also has "the burden to show that service of process was correctly made." *Jensen*, 292 S.C. at 594, 358 S.E.2d at 148.

"Determining the proper interpretation of a statute is a question of law, and this Court reviews questions of law de novo." *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008).

"The power to set aside a default judgment is addressed to the sound discretion of the trial court and will not be disturbed on appeal absent a clear showing of an abuse of discretion." *Melton v. Olenik*, 379 S.C. 45, 50, 664 S.E.2d 487, 489–90 (Ct. App. 2008). "An abuse of discretion arises when the court issuing the order was controlled by an error of law or when the order, based upon factual conclusions, is without evidentiary support." *Id.* at 50, 664 S.E.2d at 490.

ARGUMENT

The Special Referee erred when he refused to set aside orders that were entered before service was effected. The plain language of the nonresident motorist substitute service statute states that service is effected "upon filing" of certain documents with the clerk of court. A court obtains personal jurisdiction over a defendant via service, and an order entered against a defendant at a time when the

court lacks personal jurisdiction is void as a matter of law. Therefore, the Entry of Default, Order of Reference, and Default Judgment are void for lack of jurisdiction and should have been set aside.

Additionally, Appellant sought relief under Rule 60(b)(1) for mistake, inadvertence, surprise or excusable neglect. Given the evidence presented, the factors for relief under this rule weighed heavily in favor of granting relief, particularly given the evidence of a meritorious defense – the car in which Respondent was a passenger illegally turned left in front of Appellant. Consequently, the Special Referee abused his discretion by not granting relief under Rule 60(b)(1) and setting aside the Entry of Default and Default Judgment.

I. The Circuit Court abused its discretion when it refused to set aside the Orders entered against Appellant before the Court obtained personal jurisdiction over him.

Rule 60(b)(4) provides for relief from default when the judgment is void. Rule 60(b)(4), SCRCP ("On motion and upon such terms as are just, the court may relieve a party ... from a final judgment, order, or proceeding [because] ... the judgment is void."). "A judgment is void if a court acts without personal jurisdiction." *BB & T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 503 (2006) (holding lower court abused its discretion in denying motion to set aside default where defendant was not properly served when default was entered). "A court generally obtains personal jurisdiction by the service of a summons." *Id*. Service of the summons "confers personal jurisdiction on the court and assures the defendant of reasonable notice of the action." *Id.* at 552, 633 S.E.2d at 503.

In this case, the Entry of Default, Order of Reference, and Default Damages Judgment were all entered before legal service of the Summons and Complaint. As a result, each of those Orders is void, and the Special Referee and the Circuit Court erred by not setting aside those Orders.

A. Under the plain language of South Carolina Code § 15-9-380, service is not effective until filing of the statutorily-required documents with the Clerk of Court, which did not occur until July 11, 2022.

"It is axiomatic that statutory interpretation begins (and often ends) with the text of the statute in question." *Smith v. Tiffany*, 419 S.C. 548, 555, 799 S.E.2d 479, 483 (2017) (citations omitted). "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute." *Id.* "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Id.*; *see also Brown v. Cnty. of Berkeley*, 366 S.C. 354, 360, 622 S.E.2d 533, 537 (2005) ("Clear and unambiguous words in a statute should be given their plain and ordinary meaning.").

Respondent attempted to serve Appellant with substitute service through the South Carolina Department of Motor Vehicles. (Wanda Ealy Aff. ¶ 4). South Carolina's General Assembly has promulgated several, interrelated statutes for substitute service on nonresident motorists. South Carolina Code § 15-9-350 states that nonresident motorists who accept the rights and privileges of driving in South Carolina consent to the appointment of the Director of the Department of motor Vehicles as their "true and lawful attorney upon whom may be served all summons or other lawful process in any action or proceeding against him growing out of any accident or collision" in which he or she is involved.

Then, South Carolina Code Sections 15-9-370 and 15-9-380 address what that service looks like. Section 370 discusses service in those situations where the Director of the Department of Motor Vehicles sends the copy of the Summons and Complaint to the nonresident motorists and receives a return receipt. On the other hand, Section 380 – the provision at issue in this case – addresses how to

accomplish service when the Department of Motor Vehicles does not receive a signed return receipt. If the notice and process are returned undelivered:

> the original envelope as returned shall be retained and the notice and copy of the summons shall be sent by open mail and the envelope and affidavit of mailing with sufficient postage of such open letter ***shall be filed with the clerk of court*** in which such action is pending ***and upon the filing thereof*** shall have the same force and legal effect as if such process has been personally served upon such defendant.

S.C. Code § 15-9-380 (emphasis added).

For its part, the Department followed those procedures. It sent a copy of the Summons and Complaint by certified mail to the address furnished by Respondent's counsel – 1667 NC Highway 210, Rocky Point, North Carolina 28457. (Wanda Ealy Aff. ¶ 5). The Post Office Department returned this copy of the Summons and Complaint to the South Carolina Department of Motor Vehicles with it marked "Return To Sender Unclaimed Unable To Forward." (*Id.*). In accordance with Section 15-9-380, the Department of Motor Vehicles sent a copy of the Summons and Complaint by open mail to the same address provided by Respondent's counsel. (*Id.* at ¶ 6).

But Respondent's counsel did not file the statutorily-required documents with the Clerk of Court. On March 10, 2017, the Department of Motor Vehicles sent Respondent's counsel, Alex Murdaugh, the affidavit of mailing, the original envelope, and the unsigned return receipt card for filing in accordance with § 15-9-380. (*Id.* at p. 2). Therefore, on March 10, 2017, Respondent's counsel had the ability to effectuate legal service upon Appellant. All he had to do was file the documents with the Clerk of Court. *See* S.C. Code § 15-9-380 (stating the documents "shall be filed with the clerk of court" and "upon the fling thereof" shall have the same effect as personal service). However, he did not. *See* (Public Index); S.C. Code § 15-9-380 (emphasis added).

Instead, without filing the required documents – and thus, without service – Respondent's counsel chose to file the prior, returned letter without the affidavit and without the other statutorily-

required materials and represented to the Court that there was an "Acceptance of Service." At the same time, Respondent moved for entry of default. After obtaining the default, Respondent moved for an order of reference and then moved for entry of default judgment. He did all of these things – and obtained orders granting those requests – before completing statutory substitute service. Only after all of these Motions were granted and only after the Special Referee entered a $5,100,000 Default Judgment against Appellant did Respondent effectuate legal service upon Appellant by filing the statutorily-required documents with the Clerk of Court. *Compare* S.C. Code § 15-9-380 *with* (Wanda Ealy Aff. (filed July 11, 2022)).

Post-judgment service cannot retroactively remedy a void judgment. Orders – including the Entry of Default, Order of Reference, and Default Judgment here – are "void if a court acts without personal jurisdiction." *BB&T*, 369 S.C. at 551, 633 S.E.2d at 503. The Supreme Court in *BB&T* voided a default judgment in that case despite significant evidence that the defendant in that case attempted to avoid service. There is no such evidence in this case.

The statutory language is clear: service is effected upon filing with the Clerk of Court. Respondent did not complete the § 15-9-380 substitute service requirements until **July 11, 2022 –** (a) more than (4) years after the November 16, 2017 Entry of Default; (b) more than three (3) years after the October 22, 2018 Order of Reference appointing the Special Referee; and (c) more than seven (7) months after the November 18, 2021 Default Judgment.

B. The substitute service statute must be strictly followed, and the Special Referee erred in holding that the statute is to be broadly construed and relying on case decisions interpreting a different substitute service statute with different wording.

South Carolina Code § 15-9-380 is a substitute service statute. Under South Carolina law, substitute service statutes, also known as constructive service statutes, are to be strictly construed. *See, e.g., Caldwell v. Wiquist*, 402 S.C. 565, 572, 741 S.E.2d 583, 587 (Ct. App. 2013) ("[S]tatutes authorizing constructive service of process must be strictly construed and exactly followed to give the

court jurisdiction to enter a final judgment.") (citation omitted); *Settlemier v. Sullivan*, 97 U.S. 444, 447, 24 L. Ed. 1110 (1878) ("The substituted service in actions purely *in personam* was a departure from the rule of the common law, and the authority for it, if it could be allowed at all, must have been strictly followed."); *Earle v. McVeigh*, 91 U.S. 503, 504, 23 L. Ed. 398 (1875) ("[I]n cases where constructive notice is allowed, the duty of the moving party is fulfilled if he ***complies in every respect*** with the law, usage, or rule of practice, as the case may be, which prescribes that mode of service.") (emphasis added). This is because, at "common law, unless the defendant voluntarily submitted to the jurisdiction of the court, personal service within the state was the only means of obtaining jurisdiction in an action." *Seubert v. Buchanan*, 250 S.C. 140, 142, 156 S.E.2d 632, 632 (1967) (citation omitted). When service is accomplished through statutory substitute means, "[s]ubstituted service must conform to the statute which authorized it." *Id.* (finding that where substitute service statute was not followed, service was improper even "if the summons comes into the possession of the defendant by other means").

The Special Referee erred by broadly construing the statute. (January 5, 2026 Order, p. 5) (holding "substitute service statutes should be given a liberal construction so long as the statutes' requirements are substantially or sufficiently complied with"). The above-cited line of cases from the United States Supreme Court, the South Carolina Supreme Court, and this Court require strict construction of and compliance with substitute service statutes.

The Special Referee compounded those errors by finding that receipt of the Summons and Complaint by the Director of the Department of Motor Vehicles <u>is</u> service, and that the mailing to the defendant is merely "additional notice." (*Id.* at p. 7). That reading is inconsistent with both the plain language of the statute and case law addressing the Due Process requirements of the statute.

The Special Referee's "additional notice" reasoning is inconsistent with the plain language of the statute because the statute never says service on the Director is service. The Special Referee relied on the South Carolina Supreme Court's decision in *Holman v. Warwick Furnace Company*, 318 S.C. 201, 456 S.E.2d 894 (1995), to hold that service is accomplished when the Director of the Department of Motor Vehicles receives the Summons and Complaint. But the Supreme Court in *Holman* interpreted South Carolina Code § 15-9-245, which contains starkly different wording. A side-by-side comparison of the two statutes makes this distinction apparent:

S.C. Code § 15-9-380 (Nonresident Motorist Service Statute)	S.C. Code § 15-9-245 (Foreign Corporation Service Statute)
If the defendant in any such cause shall fail or refuse to accept and receipt for certified mail containing the notice of service and copy of the process and it shall be returned to the plaintiff or the Department of Motor Vehicles, the original envelope as returned shall be retained and the notice and copy of the summons shall be sent by open mail and the envelope and affidavit of mailing with sufficient postage of such open letter shall be filed with the clerk of court in which such action is pending and ***upon the filing thereof shall have the same force and legal effect as if such process has been personally served upon such defendant***.	(b) ***Service of the process is made by*** delivering to and leaving with the Secretary of State, or with any person designated to him to receive such service, duplicate copies of the process, notice or demand…. (b) Proof of service must be by affidavit of compliance with this section and filed, together with a copy of the process with the clerk of court in which the action or proceeding is pending.

The General Assembly chose a different approach for service on nonresident motorists where there is no return receipt. When the nonresident motorist does not sign a return receipt, service is effective "upon the filing" of the statutorily-required service documents with the Clerk of Court. The different approach taken by the General Assembly in the two different statutory provisions confirms that the Supreme Court's decision in *Holman* does not apply here. *See also Wuchter v. Pizzutti*, 276 U.S. 13, 20, 4 S. Ct. 259, 261 (1928) ("The cases, in which statutes have been upheld providing that nonresident corporations may properly be served by leaving a summons with a state official, where

the corporation has not indicated a resident agent to be served, are not especially applicable to the present issue.").

The General Assembly's intent is made even more clear by its bifurcation of Sections 15-9-370 (when the nonresident motorist returns the receipt) and 15-9-380 (when the nonresident motorist does not return the receipt). Section 370 states service on the Director "shall be sufficient service upon the nonresident ***if notice*** of the service and a copy of the process are forthwith sent by certified mail … ***and*** the defendant's return receipt and plaintiff's affidavit of compliance herewith are appended to the summons or other process and filed … in the cause." (emphasis added). In other words, service is not sufficient if there is no return receipt. Instead, when there is no return receipt, Section 380 comes into play and states that service is accomplished "upon filing" of the affidavit of mailing and the original envelope.

The plain meaning of the statute is bolstered by historical constitutional challenges to substitute service on nonresident motorists. The United States Supreme Court has made clear that a statute can state that operation of a vehicle by a nonresident motorist in a state constitutes authorization for the Secretary of State or a similar state official to serve as an agent for service of process. *Wuchter*, 276 U.S. at 18, 4 S. Ct. at 260. But a statute that merely permits service on the state official is constitutionally deficient. *Id.* ("but the enforced acceptance of the service of process on a state officer by the defendant would not be fair or due process unless such officer or the plaintiff is required to mail the notice to the defendant ….."). Thus, the Special Referee's conclusion that the mailing requirement is mere "additional notice" is inconsistent with the constitutional limitations set forth in *Wuchter*.

In sum, the statute must be strictly construed and strictly followed. The General Assembly used clear language, stating that service is effective upon the filing of the service documents with the

Clerk of Court. Because the Entry of Default, Order of Reference, and the $5,100,000 Default Judgment were all entered prior to the statutory filing, those Orders are void for lack of jurisdiction. The Special Referee erred by failing to grant the Motion to Set Aside.

C. This Court previously addressed a nearly identical set of facts and affirmed setting side of the default based on lack of personal jurisdiction.

In a very similar case, *Free v. Buff*, the Plaintiff was involved in an auto accident and filed suit against the driver. No. 2012CP4007842, 2013 WL 8477973, at *1 (S.C. Com. Pl. Aug. 29, 2013). The defendant moved to dismiss the action for lack of personal jurisdiction. *Id.* The plaintiff attempted to serve the purported driver through the South Carolina Department of Motor Vehicles ("SCDMV") in accordance with South Carolina Code § 15-9-370. *Id.* at *1. "The Summons and Complaint was returned to the SCDMV marked 'unclaimed'", and the SCDMV then sent the pleadings to the defendant by open mail in accordance with South Carolina Code § 15-9-380. *Id.* The court granted the defendant's motion to dismiss, finding the court lacked personal jurisdiction over the defendant, and explained:

> Where a defendant fails to accept and sign the receipt for certified mail from the SCDMV, as occurred in this case, S.C. Code Ann. § 15-9-380 provides that the pleadings shall be sent by open mail and an affidavit of mailing with the original unclaimed envelope shall be filed with the clerk of court. **Once the affidavit of mailing is filed with the clerk, service is effected on the defendant.**
>
> **Service has not been effected on Defendant in this case because no affidavit of mailing with the original unclaimed envelope has been filed with the Clerk of Court as required by the statute**.
>
> ***
>
> **…[A]ccording to S.C. Code Ann. § 15-9-380, service still has not been effected because the appropriate documentation has not been filed with the Clerk of Court.**

Id. at *2 (emphasis added) (dismissing pursuant to Rule "12(b)(2)" for lack of jurisdiction over the person). Pursuant to South Carolina Code § 15-9-380, this Court affirmed the trial court's decision in

favor of the defendant. *Free v. Buff*, No. 2015-UP-162, 2015 WL 1396362, at *1 (S.C. Ct. App. Mar. 25, 2015) (stating the statutory filing requirement).

The Special Referee erroneously distinguished *Free* by finding that Respondent in this case eventually filed the requisite service documents. But the question is not whether service was eventually effected. The key defect is that service was effected after the Entry of Default, after the Order of Reference, and after the $5,100,000 Default Judgment. Because those Orders were entered before service took place, they are void for lack of jurisdiction, and that fatal defect cannot be remedied post hoc.

When a plaintiff purports to serve a defendant in accordance with Section 15-9-380, the court lacks personal jurisdiction over that defendant unless and until the plaintiff fulfills the statutory filing requirement. Only then – "upon the filing thereof" – is service effective. S.C. Code § 15-9-380.

D. The prior Orders are void because the Circuit Court lacked personal jurisdiction over Mr. Hunt when it entered those Orders.

"A judgment is void if a court acts without personal jurisdiction." *Ex parte S.C. Dep't of Revenue*, 350 S.C. 404, 407, 566 S.E.2d 196, 198 (Ct. App. 2002) (cleaned up); *BB & T*, 369 S.C. at 551, 633 S.E.2d at 503 (same) (setting aside default judgment where court did not obtain personal jurisdiction over defendant and reversing denial of motion to set aside). The definition of "void" under Rule 60(b)(4) encompasses judgments from courts which lacked personal jurisdiction. *Ware v. Ware*, 404 S.C. 1, 11, 743 S.E.2d 817, 822 (2013). "A void judgment is one that, from its inception, is a complete nullity and is without legal effect." *Id.* (citation omitted).

This Court should reverse the lower court's decision and vacate the Orders entered before the Respondent complied with the legal service requirements of Section 15-9-380.[2] As explained above, service is not effective under Section 15-9-380 until the documents required by that statute are filed with the court. Here, Respondent did not file the required documents until after the Entry of Default, Order of Reference, and Default Judgment. Consequently, the Circuit Court did not have personal jurisdiction over Appellant when it entered those Orders, and those Orders should have been vacated. The Special Referee erred by refusing to vacate those Orders.[3]

In another similar case, *New Hampshire Ins. Co. v. Bey Corp.*, the Circuit Court entered default against a defendant. 312 S.C. 47, 50, 435 S.E.2d 377, 378 (Ct. App. 1993). The defendant appeared at the default judgment hearing and informed the special referee that it had never been properly served. The special referee found the defendant had been properly served and also found the defendant voluntarily appeared by appearing at the default judgment hearing. The special referee refused to set aside the default and entered default judgment against the defendant. This Court reversed the special referee, explaining:

> [B]ecause the special referee's assertion of personal jurisdiction over Bey was based on erroneous findings that Bey had been properly served with process and had made a voluntary appearance at the foreclosure hearing, his merit findings must be disregarded. *See Mobley v. Bland*, 200 S.C. 448, 459, 21 S.E.2d 22, 26 (1942) (to have jurisdiction over the entire case, the court must have both personal and subject-matter jurisdiction); 21 C.J.S. Courts § 39

[2] This is an even more compelling case than *Buff*. In *Buff*, the defendant admitted that she received the copy of the summons and complaint that came by open mail. 2013 WL 8477973, at *1. Here, there is no evidence that Mr. Hunt ever received the summons and complaint sent by open mail.

[3] Moreover, Rule 5(d) of the South Carolina Rules of Civil Procedure states: "Proof of service shall be filed within ten (10) days after service of the summons and complaint." Rule 5(d), SCRCP. It also states that failure to do so may result in dismissal of the lawsuit by the court on its own initiative or upon the application of any party. *Id.* To the extent Respondent alleges that he served Mr. Hunt before July 11, 2022, Respondent failed to comply with Rule 5(d), and his Complaint should be dismissed on this basis. *See* (Public Index).

> (1990) (jurisdiction of the person is essential to the power of a court to determine a legal controversy). ***We, thus, hold the special referee abused his discretion in failing to relieve Bey of its default.***

Id. at 51, 435 S.E.2d at 379 (emphasis added).

Likewise, Respondent had not effectuated legal service on Appellant when the Circuit Court entered the Entry of Default and Order of Reference or when the Special Referee awarded the $5,100,000 Default Judgment. *Compare* (November 18, 2021 Order) *with* (July 11, 2022 Aff.) *and* S.C. Code § 15-9-380. Here, the Special Referee's "assertion of personal jurisdiction over [Appellant] was based on erroneous findings that [Appellant] had been properly served with process." *See New Hampshire Ins. Co.*, 312 S.C. at 51, 435 S.E.2d at 379; (November 18, 2021 Order, p. 2 (holding that "the Summons and Complaint were properly served upon Defendant Wayne Hunt on February 10, 2017")). Consequently, the Special Referee's "merit findings must be disregarded", and "the special referee abused his discretion in failing to relieve [Appellant] of [his] default." *See New Hampshire Ins. Co.*, 312 S.C. at 51, 435 S.E.2d at 379; *see also Roberson v. S. Fin. of S.C., Inc.*, 365 S.C. 6, 12, 615 S.E.2d 112, 115 (2005) ("Here, the special referee's determination that service was proper should be reversed as it is unsupported by the evidence….Because we find service was improper, we need not address the remaining issues as the default judgment is void."); *Trico Eng'g Consultants v. Kozlowski*, No. 2010-UP-511, 2010 WL 10085832, at *2 (S.C. Ct. App. Nov. 23, 2010) (holding Circuit Court erred in failing to grant relief under Rule 60(b)(4) when the plaintiff failed to comply with the specific substitute service requirements before default judgment).

Because there was no personal jurisdiction, all three Orders should have been set aside.[4]

[4] Because the Order of Reference was entered when the Circuit Court lacked personal jurisdiction, the Order of Reference should be set aside and the case should proceed in the Circuit Court, not before a special referee.

II. Appellant should have also been relieved from the Entry of Default and Default Judgment in accordance with Rule 60(b)(1) of the South Carolina Rules of Civil Procedure.

Rule 60(b) provides in pertinent part:

> On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:
>
> (1) Mistake, inadvertence, surprise or excusable neglect;
>
> ***

Rule 60(b)(1), SCRCP. In interpreting this Rule, this Court has held "that 'where there is a good faith mistake of fact, and no attempt to thwart the judicial system, there is basis for relief.'" *Mictronics, Inc. v. S.C. Dep't of Revenue*, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. App. 2001) (quoting *Columbia Pools, Inc. v. Galvin*, 288 S.C. 59, 61, 339 S.E.2d 524, 525 (Ct. App. 1986)). "This is consistent with South Carolina's public policy, which promotes deciding issues on their merits, rather than on technicalities." *Id.* South Carolina courts have repeatedly applied this public policy to set aside entries of default and default judgments. *See, e.g., id.*; *Caldwell*, 402 S.C. at 575, 741 S.E.2d at 588–89; *Melton*, 379 S.C. 45, 664 S.E.2d 487; *Rochester v. Holiday Magic, Inc.*, 253 S.C. 147, 152, 169 S.E.2d 387, 390 (1969).

The Rule states the focal point: "upon such terms as are just …" Rule 60(b)(1). The facts of this case compel setting aside the default judgment. Appellant was driving on US-15 when the car occupied by Respondent's decedent turned left in front of him. (Compl. ¶ 3); (Hunt Aff. ¶¶ 2-3). And no one has disputed Appellant's affirmation that he never received notice and did not know about the lawsuit. (Hunt Aff. ¶ 4) ("I was completely unaware that a lawsuit had been filed against me until November 2, 2022, when I received documents at my current address … from a related lawsuit.").

"In determining whether to grant relief under Rule 60(b)(1), the court must consider the following factors: '(1) the promptness with which relief is sought; (2) the reasons for the failure to act promptly; (3) the existence of a meritorious defense; and (4) the prejudice to the other party.'" *Rouvet v. Rouvet*, 388 S.C. 301, 309, 696 S.E.2d 204, 208 (Ct. App. 2010) (quoting *Mictronics, Inc.*, 345 S.C. at 510–11, 548 S.E.2d at 226).

As to the first factor, Appellant acted promptly in seeking relief. As to the timing of the motion for relief, a party is required to make the motion "within a reasonable time, and ... not more than one year after the judgment ... was entered...." Rule 60(b), SCRCP. Appellant was completely unaware of this lawsuit until November 2, 2022. (Def.'s Mem. in Supp., p. 6); (Hunt Aff. ¶ 4). Even before Appellant personally became aware of this lawsuit, counsel acting on his behalf filed a Motion for Appellant to be relieved from the Default Judgment and/or, in the alternative, to vacate the judgment. (Def.'s Mot. (filed October 26, 2022)). Counsel filed this Motion on October 26, 2022 – less than one (1) year after the November 18, 2021 Default Judgment. Thus, Appellant acted promptly in seeking relief and within the time limits of Rule 60.[5]

As to the second factor, through mistake, inadvertence, and/or excusable neglect, Appellant did not receive notice of the lawsuit – an undisputed fact. Appellant moved in August 2013 and failed to update his address on his driver's license prior to the auto accident that occurred later that same year. (Hunt Aff. ¶ 5). At the time of the accident and at the time of the attempted service, Appellant resided at a different address in Leland, North Carolina. (Hunt Aff. ¶ 5 (stating that Mr. Hunt lived at the Leland address from August 2013 to May 2017); *see* (Wanda Ealy Aff.) (stating that the DMV attempted to mail the Summons and Complaint to Mr. Hunt in February 2017 and

[5] The Special Referee never addressed timeliness, meritorious defense, or prejudice because he found no satisfactory explanation for the failure to appear.

March 2017). As a result, Appellant never received the suit papers that the Department of Motor Vehicles sent to his former address.[6] (*Id.* at ¶¶ 5-11).

Here, there is "no evidence in the record that the mistake was anything but a good faith error." *See Mictronics, Inc.*, 345 S.C. at 511, 548 S.E.2d at 226. The accident report lists Appellant as not contributing to the accident and lists the other driver, Maisha Jacobs, as at fault for the accident. (Mem. in Supp., p. 7); (Hunt Aff. ¶ 3). According to Appellant, Maisha Jacobs pulled out in front of Appellant's vehicle and failed to yield the right of way, causing the accident. (Hunt Aff. ¶ 2). Therefore, Appellant could not have anticipated that the other parties involved in the accident would need an updated address for service of a lawsuit upon him. Certainly, he did not anticipate the accident beforehand, and therefore his pre-accident failure to update his driver's license in the months after his move is not any indication of an attempt to avoid service or litigation. It is the very essence of mere inadvertence or mistake.

With respect to the third factor, Appellant has a meritorious defense. As this Court in *Williams v. Watkins* explained:

> To establish a meritorious defense, the party does not have to show he would prevail on the merits. *McClurg v. Deaton*, 380 S.C. 563, 575, 671 S.E.2d 87, 93–94 (Ct.App.2008). Rather, a meritorious defense "need be only one which is worthy of a hearing or judicial inquiry because it raises a question of law deserving of some investigation and discussion or a real controversy as to real facts

[6] The Special Referee also reasoned that Appellant should have provided the U.S. Postal Service with a forwarding address. However, there is no law requiring a person to do so. Moreover, a forwarding address would not have done any good. The U.S. Postal Service only forwards mail for up to twelve months. *See* https://www.usps.com/manage/forward.htm. Thus, by the time Respondent attempted service in 2017 – over three years after Respondent moved – the U.S. Postal service would not have forwarded the mail to Respondent's new address. *See* (Hunt Aff. ¶¶ 7-8). Nonetheless, the Special Referee placed significant reliance on his conclusion – not based on any evidence in the record – that Appellant did not provide the postal service with a forwarding address. *See generally* (January 5, 2026 Order, pp. 3, 16, 17, & 18).

> arising from conflicting or doubtful evidence." *Id.* at 575, 671 S.E.2d at 94 (quotations and citations omitted).

384 S.C. 319, 326, 681 S.E.2d 914, 917–18 (Ct. App. 2009). In this case, Appellant was not at fault for the underlying auto accident. As Plaintiff's Complaint admits, the Respondent's Decedent was a passenger in a vehicle "attempting to make a left turn" off the highway onto a secondary road. (Compl. ¶ 3). It is Appellant's testimony that Maisha Jacobs, the driver of Plaintiff's vehicle, failed to yield the right of way and turned in front of him. (Hunt Aff. ¶ 2). He has testified via affidavit that Maisha Jacobs failed to yield the right of way, causing the accident and the Plaintiff's death. (*Id.*). Moreover, investigative materials gathered to date confirm Appellant's account and list Maisha Jacobs as the contributing party to the accident. (Hunt Aff. ¶ 3). These investigative materials also list Appellant as without fault for the accident. (*Id.*). Therefore, the meritorious defense factor is satisfied.

With respect to the fourth factor, "the law favors the resolution of disputes based upon all parties having their day in court." *Williams*, 384 S.C. at 327, 681 S.E.2d at 918 (citation omitted). With this factor, a court looks at whether the degree of prejudice the plaintiff will suffer if relief is granted is "so high as to outweigh the other factors." *Id.* As explained above, Appellant is not liable for the auto accident at issue. Respondent has never had a proper basis for asserting liability against Appellant for the December 10, 2013 auto accident. If Respondent thinks otherwise, there will be no prejudice in setting aside the default as to Appellant and allowing Respondent to try to prove its case. This is not a small default judgment. The Special Referee awarded $5,100,000. In light of the significant meritorious defense, the undisputed fact that Appellant was not aware of the lawsuit until after entry of the Default Judgment, and the failure to comply with the substitute service statute, the factors all weigh substantially in favor of setting aside the default.

Appellant was driving down the highway when another vehicle turned left in front of him. Plaintiff should have never brought this action against him in the first place. *See Dibble v. Schade*, 308 S.C. 88, 93, 417 S.E.2d 104, 107 (Ct. App. 1992) (where plaintiff did not have a legitimate claim, court held that the plaintiff "suffered no prejudice by the court's action in voiding the [default] judgment" and recognized "an overriding rule of civil procedure which says 'what doesn't make any difference, doesn't matter'") (quoting *McCall v. Finley*, 294 S.C. 1, 362 S.E.2d 26 (Ct. App. 1987)); *Nelson v. Nelson*, 428 S.C. 152, 176, 833 S.E.2d 432, 444 (Ct. App. 2019) (holding factors weighed in favor of defendant where plaintiff would suffer some prejudice but not granting the Rule 60(b) motion would result in "a windfall to [plaintiff] to which she would not otherwise be entitled"). Additionally, any "day in court" delay the Respondent endures is largely the product of its or its counsel's own delay. Respondent waited until December 8, 2016 – almost exactly three (3) years from the date of the auto accident, to file a complaint against Appellant. (Compl.). Respondent then waited another five and a half (5 ½) years to effectuate legal service upon Appellant. *Compare* S.C. Code § 15-9-380 *with* (Wanda Ealy Aff. (filed July 11, 2022)).

Moreover, Respondent never effectuated legal service on Appellant before obtaining the Entry of Default and Default Judgment. Therefore, Respondent was never entitled to default/default judgment against Appellant in the first place. *See New Hampshire Ins. Co.*, 312 S.C. at 50, 435 S.E.2d at 378.

These factors weigh in favor of setting aside the Entry of Default and Default Judgment, and the Special Referee abused his discretion by refusing to set them aside. *See Mictronics, Inc.*, 345 S.C. at 512, 548 S.E.2d at 226 ("Given [plaintiff's] good faith mistake, its swift action to try to remedy the situation, the existence of a meritorious defense, and the lack of prejudice to [the

defendant], we find the [Administrative Law Judge] abused his discretion by refusing to reopen the case.").

CONCLUSION

For the above-stated reasons, the Special Referee abused his discretion and should be reversed. Under the plain language of South Carolina Code § 15-9-380, service is not effective upon a nonresident motorist until the statutorily-required documents are filed with the Clerk of Court. Respondent obtained the Entry of Default, Order of Reference, and Default Judgment all before completing the § 15-9-380 filing requirement. Consequently, the Circuit Court did not have personal jurisdiction over Appellant when it entered those Orders against him. Those Orders are void as a matter of law and should have been set aside. Moreover, because the Order of Reference was entered before the Circuit Court had personal jurisdiction over Appellant, the Circuit Court, and not the Special Referee, should have decided Appellant's Motion for relief from those Orders and should have granted such Motion in Appellant's favor.

Additionally, Appellant is entitled to relief under Rule 60(b)(1) for mistake, inadvertence, surprise or excusable neglect. Appellant inadvertently failed to update his address on his driver's license when he moved a few months before the accident. This resulted in his lack of actual notice of this lawsuit. Given his evidence of a meritorious defense and South Carolina's strong public policy of deciding issues on their merits, the Entry of Default, Order of Reference, and Default Judgment should have also been set aside on this basis.

Appellant respectfully requests that this Court reverse the Circuit Court and Special Referee and set aside the Entry of Default, Order of Reference, and Default Judgment.

Respectfully submitted,

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