

THE STATE OF SOUTH CAROLINA
SOUTH CAROLINA COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS
JOCELYN NEWMAN, CIRCUIT COURT JUDGE

Appellate Case No: 2026-001144

Renee Wicks, Respondent,

v.

ER Construction, LLC; OJC LLC; Richard McDaniel, individually and d/b/a ER Construction
And Kenneth L. Edwards, individually, Defendants, of which Kenneth L. Edwards is the
Appellant.

INITIAL BRIEF OF APPELLANT

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B

Statement of Issues on Appeal

- I. DID THE LOWER COURT ERR IN GRANTING AN ORDER OF DEFAULT, AFFECTING A SUBSTANTIAL RIGHT OF APPELLANT, MADE UPON A SUMMARY APPLICATION IN THIS ACTION AFTER JUDGMENT?
- II. DID THE LOWER COURT ERR IN DENYING APPELLANT RELIEF FROM JUDGMENT BASED ON RESPONDENT'S CERTIFICATE OF SERVICE ADDRESSED TO A NON-EXISTENT ADDRESS AND BASED ON THE ABSENCE OF PROVIDING APPELLANT NOTICE OF THE DATE, TIME AND PLACE OF THE OPPORTUNITY TO BE HEARD ON THE CLAIM FOR UNLIQUIDATED DAMAGES?

Statement of the Case

1. Respondent commenced this action on July 12, 2024 by the filing of a Summons and Complaint against ER Construction, LLC; OJC LLC; Richard McDaniel, individually and d/b/a ER Construction; and Kenneth L. Edwards, individually, Defendants, of which Kenneth L. Edwards is the Appellant.
2. Respondent alleged causes of actions for Breach of Contract, Breach of Warranty for workmanlike Service, Negligence/ Gross Negligence/ Negligence per se, Veil Piercing/Alter Ego/ Amalgamation/ Single Business Enterprise and judgment against Defendants for an award for actual, consequential, resulting, and punitive damages in an amount to be determined by the trier of fact; for costs, and any further relief this Honorable Court may deem just and proper.
3. **ON AUGUST 14, 2024, Respondent served Appellant, Kenneth L. Edwards, with filed Summons and Complaint.**
4. **ON SEPTEMBER 6, 2024, APPELLANT, KENNETH L. EDWARDS, individually and personally served, Respondent's Attorney with ANSWER, Affirmative Defenses, and Third-Party Cross Complaint against Richard McDaniel, individually, d/b/a ER Construction, LLC, OJC, LLC.**
5. Appellant, Kenneth L. Edwards, raised and pled, FOR A FIRST DEFENSE, (General Objections Applicable to all allegations), FOR A FIRST AND AFFIRMATIVE DEFENSE, (Statute of Limitation), FOR A SECOND AND AFFIRMATIVE DEFENSE, (Rule 12 (b) (6)), FOR A THIRD AND AFFIRMATIVE DEFENSE,(Statute of Limitation), FOR A FOURTH AND AFFIRMATIVE DEFENSE, (Release), FOR A FIFTH AND AFFIRMATIVE DEFENSE, (Estoppel), FOR A SIXTH AND AFFIRMATIVE DEFENSE, (Failure of Consideration), FOR A SEVENTH AND AFFIRMATIVE DEFENSE, (Agreement is not fully Integrated), EIGHT AFFIRMATIVE DEFENSE AND BY WAY OF CROSS-COMPLAINT AGAINST DEFENDANTS, RICHARD MCDANIEL, individually, ER CONSTRUCTION, LLC and OJC, LLC. and NINTH AFFIRMATIVE DEFENSE, (Reservation of Additional Defenses) and Request for Dismissal of Complaint against Appellant, Kenneth L. Edwards.
6. **ON SEPTEMBER 24, 2024, Respondent's Attorney E-filed ENTRY OF DEFAULT against APPELLANT, KENNETH L. EDWARDS, stating in his AFFIDAVIT OF DEFAULT, "It being made to appear that Defendant, Kenneth L. Edwards, Individually, was served with the Summons and Complaint in the above-captioned matter on August 14, 2024, has failed to file an answer or responsive pleading in this matter. "**

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7. **On February 26, 2025, Respondent's Attorney scheduled a Motion Hearing for Damages for March 26, 2025. NOTICE OF MOTION SCHEDULING, dated February 26, 2025, was never served on APPELLANT, KENNETH L. EDWARDS, by mail Notice to Kenneth L Edwards, P.O. Box 1563, Hollywood, S.C 29449.**
8. **ON AUGUST 11, 2025, APPELLANT, KENNETH L. EDWARDS, received from the Charleston County Sheriff's Office NOTICE OF JUDGMENT HAS BEEN FILED WITH THE CLERK OF COURT FOR CHARLESTON COUNTY. AN EXECUTION AGAINST PROPERTY HAS BEEN RECEIVED IN THIS OFFICE FOR SERVICE.**
9. **Subsequently, Appellant filed and served Notice of Motion to set aside Default and Memorandum of Law in Support of Motion to Set Aside Default.**
10. **On April 22, 2026, Defendant Kenneth Edwards' Motions from Relief/from Default (filed on 10/22/2025 and 12/2/2025) DENIED.**
11. **On May 14, 2026, Appellant, Kenneth L. Edwards, timely filed and served Respondent with NOTICE OF APPEAL**
12. **On June 8, 2026, Appellant Kenneth L, Edwards timely file and serve Initial Brief.**

D

Standard of Review

Both issues are governed by the same standard of appellate review.

The power to set aside a default lies solely within the sound discretion of the trial court and will not be disturbed on appeal absent a clear showing of an abuse of discretion.

Richardson v. P.V., Inc., 383 S.C. 610, 682 S.E.2d 263 (2009); *Roberson v. Fin. of S.C.*, 365 S.C. 6, 615 S.E.2d 112, (2005); *Frank Ulmer Lumber Co. v. Patterson*, 272 S.C. 208, 250 S.E. 2d 121 (1978). An abuse of discretion in setting aside a default judgment occurs when the judge issuing the order was controlled by some error of law or when the order, based upon factual, as distinguished from legal, conclusions is without evidentiary support. *Hill v. Dotts*, 345 S.C. 304, 547 S.E. 2d 894 (Ct App. 2001); *In re Estate of Weeks*, 329 S.C. 251, 495 S.E. 2d 454 (Ct App. 1997).

Thus, an abuse of discretion is highly deferential to the trial court. See, e.g., *State v. Lyles*, 379 S.C. 328, 665 S.E. 2d 201 (Ct. App 2008) (“We review a trial court’s decision regarding Rule 403 SCRE, pursuant to the abuse of discretion standard and are obligated to give great deference to the trial court’s judgment.”) A lower court has abused its discretion when its ruling is either controlled by an error of law or based on factual conclusion lacking evidentiary support. See, e.g., *Wilson v. Dallas*, 403 S.C. 411, 743 S.E. 2d 746 (2013).

More specifically, An abuse of discretion occurs when the trial court’s ruling is based upon an error of law, such as application of the wrong legal principle; or, when based upon factual conclusions, the ruling is without evidentiary support ; or when the trial court is vested with discretion, but ruling reveals no discretion was exercised; or when the ruling does not fall within the range of permissible decisions applicable in a particular case, such that it may be deemed arbitrary and capricious. *State v. Allen*, 370 S.C. 88, 634 S.E. 2d 653 (2006)

It is not always easy to determine when and if a trial judge has abused his discretion. Overly simplified, abuse of discretion involves the extent of disagreement. When an appellate court is in agreement with a discretionary ruling or is only mildly in disagreement, it says that the trial judge did not abuse his discretion. On the other hand, when the appellate court is in substantial or violent disagreement, it says that there has been an abuse of discretion. *Rish v. Rish*, 296 S.C. 14, 370 S.E. 2d 102 (Ct App. 1988), See also *State v. Corey D.*, 339 S.C.107, 529 S.E. 2d 20 (2000) (stating an abuse of discretion may be found if the conclusions reached by the lower court are without reasonable factual support).

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ARGUMENT I

ISSUE: DID THE LOWER COURT ERR IN GRANTING AN ORDER OF DEFAULT, AFFECTING THE SUBSTANTIAL RIGHT OF THE APPELLANT, MADE UPON A SUMMARY APPLICATION IN THIS ACTION AFTER JUDGMENT?

STATEMENT OF FACTS RELEVANT TO THE ISSUE FOR REVIEW;

Respondent's Attorney alleges that a construction contract by and between Respondent and Defendant Contractor was executed on March 16, 2021; that on March 21, 2021, a Project and Cost Breakdown was executed; and that on June 18, 2021, a construction permit was applied for from the City of Charleston under the name of Appellant, for work at the residence, located and situated at 56 Dunnemann Ave. Charleston, S.C. 29403. Further, in paragraph 12 of Plaintiff's Complaint, Respondent alleges on or about June 28, 2021, a Homeowner/Contractor Agreement was entered into by and between Respondent and Contractor listed as ER Construction, LLC. However, RECORDS FROM THE CITY OF CHARLESTON PERMIT CENTER, (ENCLOSED HEREIN RECORD ON APPEAL), REFLECTS PERMIT WAS NEVER ISSUED FOR 56 DUNNEMANN AVE. CHARLESTON, S.C 29403, under the name of APPELLANT. The record reflects Respondent filed her action for breach of contract on July 12, 2024, after expiration of the statute of limitation. Moreover, on page 2 line 9 of the investigation report, dated February 24, 2024, states: "I do not have any information concerning the working relationship between the contractor and Kenneth Edwards." (ENCLOSED HEREIN RECORD ON APPEAL)

Pursuant to the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects, codified at section 40-59-810 et.seq. Respondent served Appellant on March 20, 2024, with the Notice and Opportunity to Cure. Appellant provided Respondent with Answer on March 28, 2024, corroborating line 9 on page 2 of Respondent Investigation Report, dated February 24, 2024, again, stating: "I do not have any information concerning the working relationship between the Contractor and Kenneth Edwards."

In addition, the lower court did not inquire, prior to Order of Default, whether or not, section 40-59-810 was complied with or whether or not Title 15-36-100, S.C. Code of Laws, 1976, as amended, was complied with before the ENTRY OF DEFAULT.

In considering the totality of the circumstances, the lower court made factual conclusions without the evidentiary-support.

Respondent served Appellant with a Summons and Complaint on August 14, 2024.

Appellant hand-delivered the Answer, Affirmative Defenses, and Cross-Complaint to Respondent's Attorney at his Office, 1058 East Montague Ave, N. Charleston, S.C on September 6, 2024, having been totally frustrated, after numerous unsuccessful attempts, and efforts to upload the document through the S.C E-Filing System. Then and there, Respondent's Attorney refused to provide receipt and acknowledgement of the Answer, Affirmative Defenses and Cross-Complaint, stating that he would upload the document through his system. Appellant relied on the honesty, integrity, professional courtesy, and misrepresentations of the Respondent's Attorney, that Respondent's Attorney would upload the Answer in the SC E-Filing system. However, on 9/24/24, Respondent's Attorney filed ENTRY OF DEFAULT, telling the lower court, Appellant, Kenneth L. Edwards failed to Answer and file a responsive pleading. Thus, the frustrations of the S.C E-filing system, the absent Proof of Return, the late filing on August 20, 2025 of the Answer, Affirmative Defenses and Cross-Complaint, in the wrong Existing Case No: 2025CP1004653, and under all these consolidated crisis, they all triggered the entry of Order of Default. Respondent's attorney failed to advise the lower court of the hand-delivered Answer to his office on September 6, 2024 and proceeded with Entry of Default on September 24, 2024.

DISCUSSION/ CITING AUTHORITIES

In any event, the Supreme Court in *Ayer v. Chassereau* (S.C. 1882) 18 S.C. 597, in regards to Orders giving Judgment by default, stated: "An Order refusing leave to the Defendant to file his Answer and giving judgment by Default against him is appealable." The court further stated that the Order of the Circuit Court involved a legal right and was, therefore, appealable under section 11 of the code of procedure.

"A final judgment must: dispose of the cause, or a distinct branch thereof, as to all the parties, reserving no further question or directions for future determination. It must finally dispose of the whole subject matter or be a determination of the particular proceedings or action, leaving nothing to be done but to enforce by execution what has been determined. In other words, a final judgment is one which operates to divest some right in such a manner as to put it beyond the power of the court making the Order to place the parties in their original condition after the expiration of the term; that it must put the case out of the court, and must be final in all matters within the pleadings." *Link v. School District of Pickens Cnty.*, 302 S.C. 1, 393 SE2d 176 (1990).

Thus, if a judgment determines applicable law, while leaving open the questions of fact, it is not a final judgment. *Mid-State Distributors, Inc.*, 310 S.C 330, 426 S.E. 2d 777

(1993). In that case the Supreme Court declared an Order “involving the merits” is one that must finally determine some substantial matter forming the whole or a part of some cause of action or defense. *Edwards v. Sun Com*, 369 S.C. 91, 631 S.E. 2d 529 (2006).

Further, the court has found that the phrase, “necessarily affecting the judgment” has the equivalent meaning as the phrase “involving the merits,” and that the General Assembly meant to use these phrases interchangeably in section 14-3-330 (1). *Link*, 302 S.C. 1, 393 S.E. 2d 176.

Also in *Thorton v. S.C Elec & Gas Corp.* 392 S.C. 297, 705 S.E. 2d 475 (Ct App 2001), the Court stated: (a narrow construction of section 14-3-330 (2) requires the appellate court to focus on the effect of the order not the label given to the motion or the order granting it).

In *Mc Lauglin v. Strickland*, 279 S.C 513, 309 S.E. 2d 787 (Ct Appeals 1983), the court found: (that an order that effectively foreclose a party from contesting the case on the merits affects a substantial right and is immediately appealable). This well-established exception to the rule usually involves a denial of a party’s right to a particular mode of trial. *Hagood*, 362 S.C. 191, 607 S.E. 2d 707. Orders denying a party’s right to a mode of trial must be appealed immediately, and a party runs the risk of waiving the right to appeal if that party fails to so immediately appeal. *Shah v. Richland Mem I Hospital*, 350 S.C 139, 564 S.E. 2d 681 (Ct App 2002).

More cogent and convincing, Appellant raised meritorious defenses (General Objections Applicable to All Allegations) on page 1, line 1 of Answer.

Appellant raised meritorious defenses on page 2, paragraph 3 of the Answer.

Appellant raised meritorious defense (Statute of Limitations) on page 2, paragraph 7 of the Answer.

Appellant raised meritorious defense (Rule 12 (b) (6) on pages 2 and 3, paragraphs 8,9, and 10.

Appellant raised meritorious defense (Release) on page 3, paragraph 14 of Answer.

Appellant raised meritorious defense (Estoppel) on page 3, paragraph 16 of Answer.

Appellant raised meritorious defense (Failure of Consideration) pages 3and 4, paragraph 18 of Answer.

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Appellant raised meritorious defense (Agreement is not Fully Integrated) page 4, paragraphs 23, 24 of Answer.

Appellant raised meritorious defense (Reservation of Additional Defenses) page 5, paragraph 25 of Answer.

Finally, the Record reflects City of Charleston PERMIT shows no issue date for address: 56 Dunnemann Ave. Charleston S.C. 29403. Thus, Respondent proceeds to sacrifice Appellant as Scapegoat.

For the reasons stated, this court should reverse the judgment of the circuit court.

ARGUMENT II

ISSUE: DID THE LOWER COURT ERR IN DENYING APPELLANT RELIEF FROM JUDGMENT BASED ON RESPONDENT'S CERTIFICATE OF SERVICE ADDRESSED TO A NON-EXISTENT ADDRESS AND BASED ON THE ABSENCE OF PROVIDING APPELLANT NOTICE OF THE DATE, TIME, AND PLACE, OF THE OPPORTUNITY TO BE HEARD ON THE CLAIM FOR UNLIQUIDATED DAMAGES?

STATEMENT OF FACTS RELEVANT TO THE ISSUE FOR REVIEW

THE LOWER COURT STATES: "Edwards argues that the judgment was based on fraud, but he has not made the requisite showing, See Sanders v. Smith , 431 S.C 605, 613, 848 S.E. 2nd 604, 608 (Ct. App 2020) ("A claim of fraud upon the court requires proof by clear and convincing evidence.") He has shown only that his address has no mail receptacle (i.e. "NMR"), a problem of his own making. His claim of mistake similarly fails, as no explanation for the entry of default is offered. Finally, Edwards does not challenge the judgment amount, only the entry itself which happened on 9/24/24. Thus the motion is not timely as to the entry of default. "

DISCUSSION/ CITING AUTHORITIES

On Friday May 8, 2026, Sydney Elise Lyons, Charleston County GIS Technician, by clear and convincing evidence, provided undisputable evidentiary support that the **"NON-EXISTENT ADDRESS" 4532 HWY 162, HOLLYWOOD, S.C 29449 WAS DELETED BACK IN APRIL OF 2015 AND NO OTHER ADDRESS HAS EXISTED ON THAT LOT EVER SINCE.**"(EXHIBIT ENCLOSED IN RECORD ON APPEAL) RESPONDENT'S ATTORNEY ON FEBRUARY 26, 2025, CERTIFIED IN HIS CERTIFICATE OF SERVICE THAT A COMPLETE COPY OF RESPONDENT'S MOTION FOR DAMAGES HEARING WAS SERVED ON APPELLANT, KENNETH L. EDWARDS, BY PLACING SAME WITH THE UNITED STATES POSTAL SERVICE, POSTAGE PREPAID AND MAILING TO ADDRESS: 4532 HWY 162 HOLLYWOOD, S.C 29449.

Rule 5 SCRCP: provides notice of any trial or hearing on unliquidated damages shall also be given to parties in default. Thus, the judgment amount is moot. Appellant, Kenneth L. Edwards, was never provided with Notice, date, time, place and opportunity to

heard on the entire matter before the lower court. The lower court made factual conclusions; that “he has shown only that his address has no mail receptacle (“NMR”); a problem of his own making, without the evidentiary support of that fact.

For these reasons, this court should reverse the judgment of the lower court.

Further, Respondent’s Attorney continues to proceed with this matter against Appellant, Kenneth L. Edwards, when the City of Charleston **PERMIT**, shows no issue date for permit for construction work at address: **56 Dunnemann Ave. Charleston, S.C. 29403. [City of Charleston Permit in Record on Appeal]. Thus, Respondent has no basis for claim Against Appellant, Kenneth L. Edwards.**

Finally, Respondent on February 26, 2025, scheduled a Motion Hearing before the Court for Wednesday, March 26, 2025 at 2:40 P.M. NO NOTICE OF MOTION SCHEDULING, dated February 26, 2025 was provided to Appellant, Kenneth Edwards, P.O. Box 1563, Hollywood, S.C 29449.

The record reflects NOTICES OF MOTION SCHEDULING, dated November 13, 2024; February 18, 2025; and January 20, 2026. were provided to APPELLANT, Kenneth Edwards, P.O. Box 1563, Hollywood, S.C 29449. {ENCLOSED IN RECORD ON APPEAL}.

In conclusion, Both the 5th and 14th Amendments protect against the deprivation of “life, Liberty, and property” without due process of law.” Due process of Law requires the Respondent to provide Appellant NOTICE OF MOTION SCHEDULING. Respondent has Failed to comply with due process of law.

The landmark U.S. Supreme Court Case, Pennoyer v. Neff, 95 U.S. 733, 24 L. Ed. 565 “Due Process of Law” implies the right of persons affected thereby to present before the tribunal which pronounces judgment upon the question of life, liberty or property, in its most comprehensive sense, to be heard by testimony or otherwise, and to have the right of controverting, by proof of every material fact which bears on the question of right in the matter involved. If any question of fact or liability be conclusively presumed, against him,

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this is not due process of law." Due Process of law is the Law of the Land. The lower court did not afford Appellant Due Process of Law.

For the reason stated, this court should reverse the judgment of the lower court.

CONCLUSION

On March 16, 2021, Respondent became the victim of a scam by a Defendant, proposing as a building contractor. Respondent relied on the misrepresentations of the Defendant "scam artist". Respondent entered into feigned agreements with the Defendant "scam artist." Respondent initially expended thousands of dollars to the "scam artist" in reliance on a promise to renovate and remodel Respondent's home, located and situated at 56 Dunnemann Ave. Charleston, S.C 29403.

Then and there, Defendant "scam artist" made application, in the name of Appellant, Kenneth Edwards, with the City of Charleston for a construction permit at 56 Dunnemann Ave. Charleston, S.C.29403. As heretofore stated, the City of Charleston PERMIT was never issued. {City of Charleston PERMIT enclosed in Record}.

However, the record subsequently reflects Defendant "scam artist" proceeded to further engage in construction negotiations and feigned agreements with Respondent on June 10 and June 18, 2021. Defendant "scam artist" continued to pilfer money from Respondent after engaging in construction services at the Respondent's home. Defendant scam artist discontinued work and abandoned the premises.

Respondent on March 20, 2024, served Appellant with Notice and Opportunity to Cure. Appellant responded on March 28, 2024. {Notice and Answer enclosed in Record}.

On July 20, 2024, Respondent, after the expiration of the Statute of Limitations, filed in the Charleston County Court of Common Pleas, an action for breach of contract against Appellant. On September 6, 2024, Appellant hand-delivered to Respondent's Attorney, a copy of the Answer, Affirmative Defenses and Cross-Complaint, at 1058 East Montague Ave, N. Charleston, S.C. On September 24, 2024, Respondent's Attorney filed an Affidavit of Default against Appellant. Order of Default was granted on Motion to Set Aside the Default and Motion for relief from the Judgment were denied on April 22, 2026.

Notice of Appeal was filed on May 14, 2026. Today, Appellant is being pursued and sacrificed by the Respondent as the "SCAPEGOAT". For the reasons stated this Court should reverse the judgment of the circuit and remand the case for hearing on the merits.

RESPECTFULLY SUBMITTED

June 9, 2026

s/Kenneth L. Edwards, PRO SE APPELLANT

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
SOUTH CAROLINA COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS
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ER Construction, LLC; OJC LLC; Richard McDaniel, individually and d/b/a ER Construction

And Kenneth L. Edwards, individually, Defendants, of which Kenneth L. Edwards is the
Appellant.

PROOF OF SERVICE

I certify that I have served the Initial Brief on Respondent by depositing a copy of it in the United States Mail, postage prepaid, on June 9, 2026, addressed to her attorney of record, C. Brandon Belger, 1050 E. Montague Ave. suite C, N. Charleston, S.C 29407, by certified mail, return receipt requested.

June 9, 2026

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