

STATE OF SOUTH CAROLINA

In The Court of Appeals

17076

APPEAL FROM ANDERSON COUNTY

Court of Common Pleas

Ellis B. Drew, Jr., Master in Equity

Case No.: 2012-CP-04-01526

Appellate Case No 2012-210846

Green Tree Servicing, LLC, etcRespondent,

Corrie A. Martin.....Appellant.

MOTION TO ALLOW PETITION FOR REHEARING

Clifford F. Gaddy, Jr.
408 N. Church St., Suite B
Greenville, South Carolina 29601
(864) 250-5155
Attorney for Petitioner

B. Lindsay Crawford, III
Theodore von Keller
Sara C. Hutchins
Post Office Box 4216
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(803) 790-2626
Attorneys for the Respondent

RECEIVED
DEC 20 2013
SC Court of Appeals

Appellant hereby moves that the South Carolina Court of Appeals allow Appellant's Petition for Rehearing to be filed and heard by the South Carolina Court of Appeals.

The grounds for this Motion are:

The Court of Appeals filed its Opinion on November 20, 2013, which affirmed the Supplemental Order of Anderson County Master-In-Equity, Ellis B. Drew, Jr., denying Appellant Corrie Martin's Motion to Set Aside Judgment pursuant to Rule 60(b) SCRPC.

The undersigned attorney for Appellant Corrie Martin served Theodore von Keller, Esquire, attorney for Respondent Green Tree Servicing, LLC, with a Petition for Rehearing on December 4, 2013 by placing the Petition for Rehearing in the United States Postal Service in an envelope addressed to Theodore von Keller, Esquire.

The undersigned deposited in the United States Postal Service, his letter dated December 4, 2013, enclosing the Petition for Rehearing, addressed to:

The Honorable Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

The Court of Appeals received the Petition for Rehearing on December 9, 2013.

By letter dated December 11, 2013, the Court of Appeals returned the Petition for Rehearing as untimely filed explaining that the Petition for Rehearing was due to be filed on or before December 5, 2013, fifteen days after the date of filing of the Opinion of the Court of Appeals on November 20, 2013. The Court of Appeals received the Petition for Rehearing on December 9, 2013, which is nineteen days after the filing of the Court of Appeals Opinion on November 20, 2013.

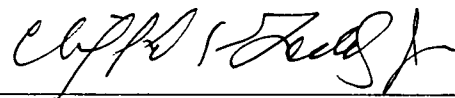
Even though the Petition for Rehearing in the United States Postal Service reached the South Carolina Court of Appeals on the 19th day following the filing of the Decision of the Court of Appeals, the Appellant accomplished service of its Petition for Rehearing upon Respondent's attorney Theodore von Keller on December 4, 2013 by depositing the Petition for Rehearing on December 4, 2013 with the United States Postal Service.

For the convenience of the Court a copy of the Opinion of the Court in this case is attached together with a copy of the Petition for Rehearing.

For the reasons stated above the undersigned requests the Court to grant Appellant's Motion to Allow her Petition for Rehearing to be filed and heard by the South Carolina Court of Appeals.

Respectfully submitted,

December 19, 2013



Clifford F. Gaddy, Jr.
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(864) 250-5155

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM ANDERSON COUNTY

Court of Common Pleas

Ellis B. Drew, Jr., Master in Equity

Case No.: 2012-CP-04-01526

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Green Tree Servicing, LLC, etcRespondent,

Corrie A. Martin.....Appellant.

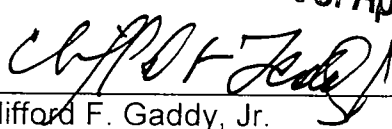
CERTIFICATE OF SERVICE

I hereby certify that I served the Respondent's Attorney Theodore Von Keller with a copy of the **Appellant's Motion to Allow Petition for Rehearing** by placing a copy thereof in an envelope deposited in the United States Mail on December 19, 2013 with proper postage attached thereto addressed to:

Theodore Von Keller, Esquire
Sara C. Hutchins, Esquire
Crawford & Von Keller, LLC
Post Office Box 4216
Columbia, SC 29240

Attorneys for the Respondent

December 19, 2013


Clifford F. Gaddy, Jr.
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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM ANDERSON COUNTY

Court of Common Pleas

Ellis B. Drew, Jr., Master in Equity

Case No.: 2012-CP-04-01526

Green Tree Servicing, LLC, etcRespondent,

Corrie A. Martin.....Appellant.

PETITION FOR REHEARING

Clifford F. Gaddy, Jr.
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(803) 790-2626
Attorneys for the Respondent

Appellant Corrie Martin hereby Petitions for a Rehearing of the subject case on the following grounds:

FIRST GROUND FOR REHEARING:

1. Appellant Corrie Martin filed a Motion pursuant to Rule 60(b) SCRPC to set aside a mortgage foreclosure (Green Tree Servicing, LLC etc. v Corrie Martin, et al; 2010-CP-04-03548) in which the home of Corrie Martin was sold at public auction. The Motion came on for hearing before Ellis B. Drew, Jr., Master-In-Equity for Anderson County.

2. Master-In-Equity Ellis B. Drew, Jr. denied the Motion under Rule 60(b) SCRPC on the grounds that the Motion was not filed with a reasonable time. The Order did not recite facts supporting this conclusion.

3. Corrie Martin appealed the denial of the Rule 60(b) Motion. While the appeal was pending in the South Carolina Court of Appeals, Appellant Corrie Martin filed a Complaint against Green Tree Servicing, LLC, etc. assigned C.A. #: 2012-CP-04-01576. The Complaint alleged in its first cause of action that the Court lacked jurisdiction in the mortgage foreclosure action (C.A. #: 2010-CP-04-03548) because Corrie Martin was not served with a copy of the Summons and Complaint.

4. In the Corrie Martin vs. Green Tree Servicing, LLC, (C.A. # 2012-CP- 04-01576) Defendant Green Tree Servicing, LLC filed a Motion for Summary Judgment pursuant to Rule 60(b) SCRPC based upon the last paragraph which required Corrie Martin to obtain the leave of the Court of Appeals to file her suit.

5. Circuit Court Judge Lawrence McIntosh issued an Order directing Corrie Martin to file her application with the Court of Appeals asking for leave to proceed with her suit.

6. Corrie Martin filed an Application to the Court of Appeals to allow her suit challenging the jurisdiction of the Court in the prior mortgage foreclosure. The Court of Appeals denied the Application for Leave to allow the suit of Corrie Martin against Green Tree.

7. The Court of Appeals did not comment upon or assign any reason in its decision filed on September 16, 2013, for its refusal to grant leave to Corrie Martin to proceed with her suit alleging that the Court of Commons Pleas lacked jurisdiction in the mortgage foreclosure case.

8. In its opinion filed November 20, 2013, the Court of Appeals did not address or comment upon its denial of the Application of Corrie Martin to proceed with her suit alleging that the Court of Commons Pleas did not have jurisdiction in the mortgage foreclosure suit against Corrie Martin.

9. Service of a Summons and Complaint is a critical requirement of litigation. Service of a Summons upon a Defendant is required by Rule 4 SCRPC. It is black letter elementary law and needs no citation of authority that a Summons and Complaint must be served upon a Defendant before a Court will have jurisdiction over the suit.

10. If a party to a lawsuit represents in a Complaint that the Court did not have jurisdiction to render a judgment because no Summons and Complaint were served,

that allegation deserves to be addressed by an Appellate Court, as opposed to treating the allegation with indifference and silence.

11. A party attacking a judgment on the grounds that the Court lacked jurisdiction in awarding the judgment deserves a hearing affording a review of the evidence supporting the allegations or disproving the allegations.

12. Corrie Martin is entitled to a judicial fact finding hearing regarding facts concerning whether she was served with a Summons and Complaint and what knowledge she had, if any, of the foreclosure proceedings, in which her home was sold at public auction.

SECOND GROUND FOR REHEARING:

13. The second ground upon which the Court of Appeals should grant a rehearing is whether the facts support a finding by the Master-In-Equity that Corrie Martin did not file a Motion pursuant to Rule 60(b) SCRPC in a reasonable time. The Master's opinion did not give facts to support his conclusion that Corrie Martin did not file the Motion under Rule 60(b) SCRPC in a reasonable time. The facts are that upon finding a Sheriff's eviction notice upon the door of her home in June 2011, Ms. Martin went immediately to the Sheriff's Office where she was directed to go to the Clerk of Court's office where a clerk helped her review the file. She learned for the first time that Green Tree Servicing, LLC had commenced a foreclosure proceeding. She retained an attorney promptly. He wrote a letter to attorneys for Green Tree Servicing, LLC. Upon no action occurring, beyond a letter being written, she asked for a release of her file and retained attorney Andrew Gaines, who after about three months of inactivity and in

response to telephone calls to him from Corrie Martin, a Motion to Set Aside Judgment pursuant to Rule 60(b) SCRPC was filed.

14. The Court of Appeals is not required to set forth reasons why it deems that the decision of a Trial Judge was appropriate under the circumstances; the position of Corrie Martin is that she acted as rapidly as she knew how to retain an attorney to set aside her mortgage foreclosure, it would be desirable that the Court of Appeals explain how she failed to act within a reasonable time.

For the reasons stated above, the Court of Appeals should grant the Appellant's Petition for Rehearing.

Respectfully submitted,



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December 4, 2013

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Green Tree Servicing, LLC, f/k/a Green Tree Financial
Servicing Corporation, a Limited Liability Company
under the laws of the State of Delaware, Respondent,

v.

Corrie Ann Martin, the South Carolina Department of
Revenue, the United States of America by and through its
agency the Internal Revenue Service, and Anderson Area
Medical Center, Inc., n/k/a Anmed Health, Plaintiffs,

Of whom Corrie Ann Martin is the Appellant.

Appellate Case No. 2012-210846

Appeal From Anderson County
Ellis B. Drew, Jr., Master-In-Equity

Unpublished Opinion No. 2013-UP-425
Submitted October 1, 2013 – Filed November 20, 2013

AFFIRMED

Clifford F. Gaddy, Jr., of Cliff Gaddy Law, of Greenville,
for Appellant.

Theodore von Keller, B. Lindsay Crawford, III, and Sara Christine Hutchins, all of Crawford & von Keller, LLC, of Columbia, for Respondent.

PER CURIAM: Corrie Ann Martin appeals the master-in-equity's denial of her Rule 60(b), SCRCF, motion, arguing the master erred in (1) relying upon an order that was later vacated, and (2) finding her motion was not filed within a reasonable time. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the master erred in relying upon an order that was later vacated: *Pye v. Estate of Fox*, 369 S.C. 555, 564, 633 S.E.2d 505, 510 (2006) ("It is well settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the [master] to be preserved.").
2. As to whether the master erred in finding Martin's Rule 60(b) motion was not filed within a reasonable time: Rule 60(b)(1), SCRCF ("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 . . . mistake, inadvertence, surprise, or excusable neglect . . ."); Rule 60(b), SCRCF ("[A Rule 60(b)(1)] motion shall be made within a *reasonable time* . . . not more than one year after the judgment, order or proceeding was entered or taken." (emphasis added)); *Se. Hous. Found. v. Smith*, 380 S.C. 621, 639, 670 S.E.2d 680, 690 (Ct. App. 2008) ("[T]he reasonable time limit is discretionary and should be determined under the facts and circumstance of each case." (internal quotation marks omitted)); *Perry v. Heirs at Law of Gadsden*, 357 S.C. 42, 46, 590 S.E.2d 502, 504 (Ct. App. 2003) ("A party seeking to set aside a judgment pursuant to Rule 60(b) has the burden of presenting evidence entitling him to the requested relief.").

AFFIRMED.¹

SHORT, WILLIAMS, and THOMAS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.