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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM UNION COUNTY
Court of Common Pleas

Hon. Daniel Coble

Appellate Case No.: 2025-002219

Michael J. Osten & Shawntell Osten.....Respondents,

vs.

Sandra Malikowski.....Appellants.

FINAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

- I. Did the trial court abuse its discretion in declining to provide Appellant relief from the subject default judgment?
- II. Did the trial court abuse its discretion in declining to set aside the entry of default as to Appellant?

STATEMENT OF THE CASE

On March 6, 2024, Respondents filed their Complaint in the underlying action, seeking damages from Respondent related to Respondent's dogs kept at her home in Union County. (R. pp. 25-31.) Respondents' Complaint included causes of action for nuisance, negligence, and trespass.

On May 1, 2024, Appellant was personally served with Respondents' initial pleadings. (R. p. 32.) Despite having been personally served with Respondents' Summons and Complaint, Appellant failed to file an answer or any other responsive pleading.

Following the filing of an Affidavit of Default and Motion for Default Judgment, a damages hearing was held in the instant case which resulted in the filing of an Order Granting Default Judgment and Damages in favor of Respondents on March 5, 2025. (R. pp. 4-7; 33; 34-35.) An amended Order Granting Default Judgment and Damages was filed on March 11, 2025. (R. pp. 8-10.)

Said amended Order Granting Default Judgment and Damages was not appealed and is a final, subsisting order of judgment.

On July 16, 2025, Appellant filed her Motion to Vacate or Set Aside Default Judgment, the denial of which is the subject of the instant appeal. (R. pp. 39-47.) Following a hearing on said Motion on September 15, 2025, an Order Denying Defendant's Motion to Vacate or Set Aside Default Judgment was entered on October 1, 2025. (R. pp. 14-18.)

STATEMENT OF FACTS

1. On April 29, 2024, Appellant was personally served at her residence with the subject Summons and verified Complaint, along with a Notice of and Motion for Preliminary

Injunction and other documents as outlined in that Affidavit of Service filed in this matter on May 8, 2024.

2. Appellant resides or at all times relevant resided at 202 Gibert Street, Union, South Carolina.
3. Respondents' counsel's mailings to Appellant related to the instant case reflect a minor typographical error, the inclusion of a single letter 'l' rendering "Gilbert Street." This scrivener's error presumably originated from the relevant Affidavit of Service upon Appellant, as it includes an identical scrivener's error.
4. On or about May 14, 2024, Respondents issued unto Appellant a Notice of Hearing as to Respondents' Motion for a Preliminary Injunction via certified mail. (R. pp. 36-37; 68-79.)
5. Said mailing was addressed to Appellant at "202 Gilbert" Street.
6. The manner of address did not cause misdelivery. Appellant received said Notice of Hearing as evidenced by her signature upon the relevant return receipt for said Notice of Hearing. (R. pp. 36-37; 68-79.)
7. Moreover, and despite Appellant's representation to the Court that she has trouble reading and comprehending written English, Appellant retained counsel for the limited purpose of representation at the hearing upon Respondents' Motion for a Preliminary Injunction. (R. pp. 36-37; 68-79.)
8. Both Defendant and her limited appearance counsel appeared at the hearing on Plaintiff's Motion for a Preliminary injunction held on May 28, 2024. (R. pp. 36-37.). It was made clear to the court and was apparently clear to Appellant that the counsel she engaged for representation in the hearing on Respondent's Motion for a Preliminary Injunction was isolated to just that. (R. pp. 4-7.) Said counsel never filed a notice of appearance or any pleading in the instant case and did not appear outside of this isolated instance. No claim has been made by Appellant blaming her procedural default, any failure of notice, or the ultimate outcome of the matter on said counsel.
9. On August 28, 2024, mediation was scheduled in the instant case at the offices of the Anthony Law Firm, P.A. in Spartanburg with Heath Anthony, Jr., Esquire. Mr. Anthony sent notice of said mediation to Appellant at 202 Gilbert Street on or about July 29, 2024. (R. pp. 68-79.)

10. Despite this, Appellant failed to appear or otherwise engage in mediation and has testified to having never received any notice of mediation. (R. pp. 32; 68-79.)
11. On January 6, 2025, 253 days after Appellant was personally served, Respondents filed an Affidavit of Default attesting to Appellant's procedural default. (R. p. 33.)
12. On or about January 24, 2025, Respondents' counsel issued a notice of hearing to Appellant relaying that a hearing had been scheduled on Respondents' Motion for a Default Judgment and that a damages hearing was to occur. (R. pp. 36-37.) Despite having received notice, Appellant failed to appear at said hearing. (R. pp. 4-7.)
13. Appellant points to the transposition of a single letter in counsel's mailings as though it constitutes a jurisdictional defect. It does not. The address was correct in every material respect (i.e. name, street number, city, state and zip code). Appellant has produced no evidence that any mailing related to the instant case was returned undelivered or otherwise failed to reach her residence. Moreover, Respondents' counsel has represented to the court that none of the correspondence sent from his office to Appellant over the course of the instant case was returned by the United States Postal Service. Perhaps most importantly, Appellant also fails to point out how any of this is relevant to her failure to file a responsive pleading in the instant case.
14. Despite 311 days elapsing between service of the Complaint and the entry of final judgment, Appellant never filed an answer or otherwise moved to set aside the default. Appellant's silence throughout the pendency of this action belies any claim of diligence or excusable neglect.

STANDARD OF REVIEW

As to rulings under Rule 60(b) of the South Carolina Rules of Civil Procedure

The standard of review applied by the South Carolina Court of Appeals when reviewing the denial of a Rule 60(b) motion is limited to determining whether the trial court abused its discretion. The decision to grant or deny a Rule 60(b) motion lies within the sound discretion of the trial court. An abuse of discretion occurs when the trial court's order is controlled by an error of law or is based on factual conclusions that lack evidentiary support. (Curry v. Carolina Ins. Grp. of SC, Inc., 428 S.C. 60, 77, 832 S.E.2d 760, 769 (Ct. App. 2019); Southeastern Hous. Found. v. Smith, 380 S.C. 621, 636, 670 S.E.2d 680, 688 (Ct. App. 2008); Ware v. Ware, 404 S.C. 1, 10, 743 S.E.2d 817,

822 (2013); Rouvet v. Rouvet, 388 S.C. 301, 308, 696 S.E.2d 204, 208 (Ct. App. 2010); May v. May, 428 S.C. 131, 136, 833 S.E.2d 78, 80 (Ct. App. 2019)). The Court of Appeals: “will not reverse the trial court absent an abuse of discretion.” (Hillman v. Pinion, 347 S.C. 253, 255-256, 554 S.E.2d 427, 429 (Ct. App. 2001)).

This principle is consistently upheld in South Carolina case law. For example, in, *Curry v. Carolina Ins. Grp. of SC, Inc.*, the court emphasized that an abuse of discretion arises when the judge issuing the order was controlled by an error of law or when the order is based on factual conclusions without evidentiary support. (428 S.C. 60, 77, 832 S.E.2d 760, 768 (Ct. App. 2019)). Similarly, in *Southeastern Hous. Found. v. Smith*, the court reiterated that the appellate review is confined to determining whether the trial court abused its discretion. (380 S.C. 621, 636 670 S.E.2d 680, 688 (Ct. App. 2008)). This standard is also reiterated in other cases, such as *Ware v. Ware* and *Rouvet v. Rouvet* which reiterate and make clear that the appellate court will not reverse the trial court's decision absent an abuse of discretion. (404 S.C. 1, 10, 743 S.E.2d 817, 822 (2013); 388 S.C. 301, 308, 696 S.E.2d 204, 208 (Ct. App. 2010)).

Thus, the appellate court's review of a Rule 60(b) motion denial is deferential, focusing on whether the trial court's decision was legally or factually unsupported rather than substituting its own judgment for that of the trial court.

As to rulings under Rule 55(c) of the South Carolina Rules of Civil Procedure

In South Carolina, the standard of appellate review for a denial of a Rule 55(c) motion to set aside an entry of default is similarly an abuse of discretion. The Court of Appeals will not disturb the trial court's decision unless there is a clear showing that the trial court abused its discretion. An abuse of discretion occurs when the trial court's decision is controlled by an error of law or is based on factual findings that lack evidentiary support. (Roberson v. Southern Fin. of S.C., Inc., 365 S.C. 6, 9, 615 S.E.2d 112, 114 (2005)).

Under Rule 55(c) of the South Carolina Rules of Civil Procedure, a trial court may set aside an entry of default for "good cause shown" This standard is less rigorous than the standard under Rule 60(b), which governs relief from a default judgment. Rule 60(b) requires a showing of specific grounds such as mistake, inadvertence, excusable neglect, or other enumerated reasons, and the standard for granting relief is more stringent. (Sundown Operating Co. v. Intedg Indus., 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009)). The trial court's discretion in these matters is broad, and its decision will only be reversed on appeal if it is shown that the court was influenced

by an error of law or if a decision was made which was unsupported by evidence. (Roberson v. Southern Fin. of S.C., Inc., 365 S.C. 6, 9, 615 S.E.2d 112, 114 (2005).

It is important to note that Rule 55(c) and Rule 60(b) are distinct in application. Rule 55(c) applies to setting aside an entry of default, while Rule 60(b) applies to setting aside a default judgment. The appellate court will review the trial court's application of these rules separately, but the overarching standard of review remains abuse of discretion. (Beckmann Concrete Contractors, Inc. v. United Fire & Cas. Co., 360 S.C. 127, 600 S.E.2d 76 (Ct. App. 2004); Southeastern Hous. Found. v. Smith, 380 S.C. 621, 636-637, 670 S.E.2d 680, 688-689 (Ct. App. 2008)). Finally, a grant or denial of a Rule 55(c) motion is not directly appealable under *S.C. Code Ann. § 14-3-330* (1976). (Jefferson v. Gene's Used Cars, Inc., 295 S.C. 317, 368 S.E.2d 456, 456 (1988)).

ARGUMENT

I. Did the trial court abuse its discretion in declining to provide Appellant relief from the subject default judgment?¹

(A) The trial court standard of review under Rule 60(b)

The standard for obtaining relief from a default judgment is governed by *Rule 60(b) of the South Carolina Rules of Civil Procedure*. Under Rule 60(b), a party may seek relief from a final judgment for specific reasons, including: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud, misrepresentation, or other misconduct of an adverse party; (4) the judgment being void; or (5) the judgment being satisfied, released, or discharged, or where it is no longer equitable for the judgment to have prospective application. (Rouvet v. Rouvet, 388 S.C. 301, 309, 696 S.E.2d 204, 208 (Ct. App. 2010)).

Relief under Rule 60(b) is discretionary and subject to the trial court's determination, which will not be overturned on appeal absent an abuse of discretion. An abuse of discretion occurs when the trial court's decision is controlled by an error of law or is unsupported by the evidence. (Thompson v. Hammond, 299 S.C. 116, 119-120, 382 S.E.2d 900, 902-903 (1989)), To justify

¹ Appellant has elected to address his Rule 60(b) arguments across two separate sections of his brief. Respondent addresses all such claims within this single section, as the underlying factual and legal issues are sufficiently interrelated that consolidated treatment provides greater analytical clarity and avoids unnecessary repetition.

relief, the movant must demonstrate both excusable neglect and the existence of a meritorious defense. A meritorious defense need not guarantee success but must raise a legitimate issue worthy of judicial inquiry. (*Id.*)

The courts also consider additional factors when evaluating excusable neglect, including: (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 opposing party. (*Trustgard Ins. Co. v. Full Logistics, Inc.*, 442 S.C. 485, 510, 900 S.E.2d 448, 461 (Ct. App. 2023); *Stearns Bank N.A. v. Glenwood Falls, LP*, 373 S.C. 331, 341-342, 644 S.E.2d 794, 798-799 (Ct. App. 2007)). These factors reflect the policy balance between ensuring cases are decided on their merits and maintaining the finality of judgments.

It is important to note that the standard for setting aside a default judgment under Rule 60(b) is more stringent than the "good cause" standard for setting aside an entry of default under Rule 55(c), SCRCP. Once a default judgment has been entered, the court requires a more substantial justification to grant relief, emphasizing the finality of judgments. (*Sundown Operating Co. v. Intedge Indus.*, 383 S.C. 601, 608, 681 S.E.2d 885, 888-889 (2009); *ITC Commer. Funding, LLC v. Crerar*, 393 S.C. 487, 494, 713 S.E.2d 335, 338-39 (Ct. App. 2011); *Weeks v. Drawdy (In re Estate of Weeks)*, 329 S.C. 251, 259, 495 S.E.2d 454, 458-459 (Ct. App. 1997)).

Additionally, the movant bears the burden of presenting evidence to prove the facts essential to justify relief. (*Rouvet v. Rouvet*, 388 S.C. 301, 308, 696 S.E.2d 204, 208 (Ct. App. 2010)).

Addressing Rule 60(b)(4) specifically, a judgment is void if the court lacked either subject matter jurisdiction or personal jurisdiction. Subject matter jurisdiction refers to the court's authority to hear and decide cases of the general class to which the proceedings belong. For example, a family court's jurisdiction is limited to matters expressly or implicitly conferred by statute, such as divorce or child custody cases. (*Katzburg v. Katzburg*, 410 S.C. 184, 187-188, 764 S.E.2d 3, 4-5 (Ct. App. 2014)). Personal jurisdiction, on the other hand, is generally obtained through proper service of a summons. (*BB&T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 503 (2006)) If a court issues a judgment without jurisdiction over the subject matter or the parties, the judgment is void and unenforceable. (*Katzburg v. Katzburg*, 410 S.C. 184, 187-188, 764 S.E.2d 3, 4-5 (Ct. App. 2014)).

A judgment is also void if the court failed to provide proper due process. Due process requires that a party be given notice and an opportunity to be heard before a judgment affecting

their rights is rendered. A judgment entered without notice to the affected party may be ignored, as courts will not enforce such judgments. (Universal Benefits, Inc. v. McKinney, 349 S.C. 179, 182-184, 561 S.E.2d 659, 660-662) (2002)).

It is important to distinguish between a "void" judgment and a "voidable" judgment. A void judgment arises from a fundamental defect, such as lack of jurisdiction or denial of due process, and is a nullity from the outset. In contrast, a voidable judgment is one rendered in error by a court that had jurisdiction. Voidable judgments are not subject to collateral attack under Rule 60(b)(4) but may be challenged on direct appeal. (Ware v. Ware, 404 S.C. 1 (2013); Thomas & Howard Co. v. T. W. Graham & Co., 318 S.C. 286 (1995); Innovative Waste Mgmt. Inc. v. Crest Energy Partners GP, LLC, 423 S.C. 611 (2018)).

Irregularities Not Rendering a Judgment Void: Irregularities or errors that do not involve jurisdiction or due process do not render a judgment void. For instance, legal errors in the judgment itself do not meet the threshold for voidness under Rule 60(b)(4). (See Ware v. Ware, 404 S.C. 1, 11, 743 S.E.2d 817, 822 (2013); See also Thomas & Howard Co. v. T. W. Graham & Co., 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995)). "A judgment will not be vacated for a mere irregularity which does not affect the justice of the case, and of which the party could have availed himself, but did not do so until judgment was rendered against him." (Thomas & Howard Co. v. T. W. Graham & Co., 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995)).

(B) Application to the matter on appeal

i. Appellants' failure to show excusable neglect

In the instant case, Appellant has failed to provide any evidence of excusable neglect. Again, no allegation has been made that service or process was somehow defective in the instant case. Put simply, Appellant was personally served with the relevant initial pleadings on April 29, 2024, and chose not to provide an answer or other responsive pleading. Appellant claims no disability but asserts that, despite having lived in the United States from the age of 8, she has difficulty comprehending written English. (R. p. 32.) This claim seems delusory in light of her participation in Respondents' Motion for a Preliminary Injunction. Despite Defendant's claims to the contrary, the record plainly demonstrates that she is capable of comprehending the written language. Even if her claims of miscomprehension were true, Appellant clearly has the wherewithal to somehow gain understanding from others, as indicated by her present participation. Despite Appellant's attempts to obfuscate this obvious truth, it remains the essential and primary node of analysis in

the instant appeal and was the apparent catalyst for the lower court's decision. None of the distractions propounded by Appellant can be allowed to minimize this central and most important consideration.

Please recall that 253 days had passed between Appellant being served in this matter and Respondents' filing of an Affidavit attesting to her default. 311 days passed between Appellant being served and the entry of final judgment. At no time in that intervening period did Appellant make any filing in the instant case. Please also recall that Appellant was issued notice that mediation had been scheduled and was set to occur but failed to appear or otherwise engage in any settlement talks. Appellant's actions throughout the case indicate total unwillingness or disinterest in engaging with the suit. The trial court properly denied Appellant's Motion, as Defendant offered no satisfactory explanation for her failure to timely answer the Complaint, and the court certainly did not abuse its discretion in doing so.

ii. Regarding Appellant's receipt of notice as to the damages hearing.

As stated above, much of appellant's assertions revolve around Respondents' counsel's scrivener's error in adding an extraneous 'l' to correspondence forwarded to the Appellant, rendering "Gilbert" Street versus "Gibert" Street. One could say that Appellant's entire case rests upon a single lowercase 'l'. This position is entirely untenable. First, Appellant has put forth no evidence whatsoever that she did in fact not receive all notices and other correspondence issued from the office of Respondents' counsel. All available evidence heavily indicates that said mailings were delivered to the intended recipient, and that the intended recipient and that said recipient was simply indifferent as to what had been sent. Plaintiff's counsel has produced a certified mail return receipt addressed to "Gilbert" Street which was very plainly signed by the Appellant. (R. pp. 68-79.) Separately, a notice of mediation dated July 29, 2024, issued to Appellant in the instant case was in fact addressed to "Gibert" Street. Appellant nonetheless swore to the court that, even a year later, she had never received such a notice. (R. p. 32). Such incoherence suggests either an extreme indifference to the receipt of mailed correspondence or brings about issues of the Appellant's credibility.

The logical conclusion here is of course that, given that South Carolina is home to a well-known town named Gilbert, it is an entirely understandable and common error for correspondents to inadvertently write "Gilbert" Street, an error so predicable that postal workers, as rational actors familiar with the geography, routinely recognize it and deliver all such correspondence to the

correct address. It is an insulting, unbelievable insinuation to suggest otherwise, as postal delivery drivers are familiar with the streets along their routes as well as the names of those who reside along their routes. It is after all a job they perform every day.

As such, the presiding judge in the lower court had ample evidence to make a determination that Appellant had received both Respondents' Motion for Default Judgment and the Notice of Hearing thereof. (R. pp. 34-36). This is the correct decision given the facts of the case. The scrivener's error included in Respondents' counsel's correspondence was so minor and the evidence in favor of its effective delivery so one-sided that Appellant's receipt thereof should be presumed. (See State v. Langston, 275 S.C. 439, 272 S.E.2d 436 (1980); Calder v. Commercial Gas. Co., 182 S.C. 240, 188 S.E. 864 (1936)).

iii. Regarding Appellant's claims that the underlying judgment is void for lack of notice.

Appellant has asserted that judgment in the instant case is void. The Court of Common Pleas undisputedly had personal jurisdiction over Appellant as personal service of the pleadings was made upon her and service of process has not been challenged by Appellant. (R. p. 32). The Court of Common Pleas clearly had subject matter jurisdiction in the instant case, as it is the court of general jurisdiction (S.C. Const. Ann. Art. V, § 11). This leaves only a determination as to due process, which is addressed above regarding Appellant's receipt of the Notice of Hearing as to the damages hearing. On that count, Appellant requested and was afforded a review of due process, in which the lower court rightly found that Appellant was afforded notice and an opportunity to be heard.

As such, the trial court did not abuse its discretion in denying Appellant's Motion on the basis that the underlying judgment is void. The record amply supports the court's determination that Appellant was afforded notice and an opportunity to be heard,

iv. Application of the "Wham" Factors

Even if Appellant had provided sufficient justification for her failure to respond, an analysis under *Wham v. Shearson Lehman Bros.* and its progeny would similarly yield a denial. (298 S.C. 462, 465, 381 S.E.2d 499, 501 (Ct. App. 1989)).

Regarding (1) the promptness with which relief was sought— the Motion presently on appeal was not filed until 127 days had passed from the entry of the amended Judgment Order.

This is not a case where the time in which one could have filed a Rule 59(e) motion or even an appeal had just passed. Only after Respondents sought to enforce the judgment and had filed a subsequent action in furtherance of that did Appellant apparently gain the ability to comprehend the meaning of a summons and seek to have judgment in the instant case overturned. (R. pp. 14-18). This is of course all in addition to the lengthy term of notice to Appellant that she was in procedural default in the underlying case. There is ample evidence in the record to support the circuit court's finding against Appellant on this element.

As to (2) the reasons for her failure to act—as stated herein, Appellant gave no convincing reason as to why she chose to participate in Respondents' injunctive Motion but failed to otherwise engage with the instant case. Again, Respondents went through the extraordinary step of attempting to engage in mediation in the instant case despite Appellant's inaction and procedural default, and Appellant failed to act upon that as well.

As to (3) the existence of a meritorious defense—while the bar of establishing a meritorious defense is relatively low, trial judges have broad discretion in determining whether a defense 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 arising from conflicting or doubtful evidence.” Thompson v. Hammond, 299 S.C. 116, 120, 382 S.E.2d 900, 903 (1989). In the instant case, Appellant's evidence of a defense originated by affidavit, making “blanket denials that are conclusive in nature.” (R. pp. 14-18). There is no indication that the lower court's decision was controlled by an error of law or lacked evidentiary support. (Weeks v. Drawdy (In re Estate of Weeks), 329 S.C. 251, 259, 495 S.E.2d 454, 459 (Ct. App. 1997)). As such, the lower court's decision should not be disturbed.

As to (4) the prejudice to the opposing party—Granting Appellant's Motion would have also caused substantial prejudice to Respondents, who had already satisfied their fee obligations to original counsel and retained separate enforcement counsel, only to face the prospect of having the underlying judgment disturbed at this late stage.

v. Regarding Appellant's Evidentiary Assertions

As stated herein, Respondent's counsel presented a certified mail receipt signed by Appellant which indicated receipt of Appellant a Notice of Hearing as to Respondents' Motion for a Preliminary Injunction. Again, this was presented to show that the minor scrivener's error in the name of Appellant's street name did not cause misdelivery. Appellant has argued that this return

receipt is somehow inadmissible or perhaps should not have been given any weight. This assertion is made despite Appellant's refusal to either outright deny that the signature on the receipt is hers or accuse Respondents' counsel of forging the document. It should be noted that the document in question had been filed with the court since May 23, 2024, and at no point thereafter was refuted by Appellant. Appellant goes on to cite case law indicating that mere statements of counsel cannot be considered evidence. This is of course true, but it is entirely inapplicable and irrelevant to the facts of the matter on appeal.

Under South Carolina law, an attorney is not required to submit an affidavit attesting to the authenticity of a document, such as a notice of hearing, that he himself prepared, provided that the attorney's representation to the court is sufficient to meet the authentication requirements under Rule 901(a) of the South Carolina Rules of Evidence. Rule 901(a) states that the requirement of authentication or identification is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims. "The burden to authenticate . . . is not high" and requires only that the proponent "offer[] a satisfactory foundation from which the jury could reasonably find that the evidence is authentic." (Deep Keel, LLC v. Atl. Private Equity Grp., LLC, 413 S.C. 58, 64, 773 S.E.2d 607, 610 (Ct. App. 2015) *citing* United States v. Hassan, 742 F.3d 104, 133 (4th Cir. 2014)). Respondents' counsel was also the best available person to attest to having received the return receipt, as it was his office that sent the initial correspondence and to which the certified mail receipt was returned.

Moreover, Rule 4(d)(8) of the South Carolina Rules of Civil Procedure, which addresses service of initial pleadings by certified mail, allows for default judgments in instances where the certified mail receipt indicates acceptance by a defendant. The signature of a defendant showing acceptance by said party is presumptively indicative of good service. Should a defendant wish to then challenge that service, the burden then shifts to him or her to prove that it was somehow ineffective. (See Roche v. Young Bros., 318 S.C. 207, 456 S.E.2d 897 (1995)). Respondents in the instant case should be afforded a similar analysis and Appellant has failed to make any argument which would carry the burden under Rule 4(d)(8).

vi. Regarding Appellant's assertions regarding damages

Appellant's assertions regarding the amount of the judgment rendered against her are misplaced, as the analysis of this appeal does not reach the damages award. Appellant extensively cites *Renney v. Dobbs House, Inc.*, but the facts of that case are distinguishable from the matter on

appeal. (275 S.C. 562, 274 S.E.2d 290 (1981)). In *Renny*, the defaulting party had not been afforded an opportunity to participate in the damages hearing. (*Id.*) In the matter under consideration, Appellant was clearly afforded notice and an opportunity to be heard at the subject damages hearing. (R. pp. 4-7)

Moreover, a decision to grant or deny a motion for relief from judgment, “the trial court’s decision to amend an order and modify its own damages award lies with the sound discretion of the trial court.” (*Green v. Johnson*, 446 S.C. 326, 338, 919 S.E.2d 894, 900 (2025)). Appellant in the instant case failed to file a motion under Rule 52 of the South Carolina Rules of Civil Procedure requesting an amendment to the amount awarded and did not file an appeal of the judgment in the instant case. “A party may not invoke [Rule 60] where it could have pursued the issue on appeal. (*Tench v. S.C. Dep’t of Educ.*, 347 S.C. 117, 121, 553 S.E.2d 451, 453 (2001)).

In South Carolina, an award of damages cannot be successfully challenged in a Rule 60 motion unless the movant can prove one or more of the factors enumerated under Rule 60(b). For example, in *Bowers v. Bowers*, the court emphasized that the moving party must provide material evidence to support the claims for relief. (304 S.C. 65, 67, 402 S.E.2d 127, 129 (Ct. App.1991)). Similarly, in *Paul Davis Sys. v. Deepwater of Hilton Head, LLC*, the court reiterated that the movant must demonstrate the applicability of one of the qualifying grounds under Rule 60(b)(1) to obtain relief. (362 S.C. 220, 225, 607 S.E.2d 358, 360 (Ct. App. 2004)). If the movant cannot establish any of the Rule 60(b) factors, the motion will fail.

Notwithstanding the above, trial judges in South Carolina are vested with considerable discretion in determining the amount of damages. In South Carolina, the determination of damages, whether actual or punitive, is largely entrusted to the finder of fact, which in a bench trial is the judge. The trial judge is vested with considerable discretion over the amount of damages awarded, and appellate courts generally defer to the trial court’s findings unless there is an error of law or the findings are wholly unsupported by the evidence. (*Mishoe v. QHG of Lake City, Inc.*, 366 S.C. 195, 201, 621 S.E.2d 363, 366 (Ct. App. 2005)). Appellate courts in South Carolina give substantial deference to the trial court’s decisions regarding damages, intervening only when the trial court’s conclusions are unsupported by evidence or controlled by an error of law. (*Hamilton v. Reg’l Med. Ctr.*, 440 S.C. 605, 638, 891 S.E.2d 682, 700 (Ct. App. 2023)).

In the instant case, the trial judge was presented with voluminous records evidencing the extent of damages. (R. p. 101 ¶ 7-15). The transcript references both a “summary of damages”

prepared by Respondent's counsel along with a roughly 47 page "packet" of further documentation related to the damages claimed in the instant case. (*Id.*) Live testimony was taken by the real estate agent who testified that Appellant's behavior caused a diminution in value of the Respondents' home. (R. p. 106 ¶ 6-11). Testimony was taken by Respondent Michael Osten who stated that Appellant's behavior affected his sleep, caused issues with his employment as he worked from home, made him fearful of leaving his home, and affected his ability to sleep at night. (R. p. 107 ¶ 1-7) Crucially, Respondent Mr. Osten testified that the disruption was so severe that he and Co-Respondent made the decision to move, selling a home they owned outright and moving into another home, taking on a mortgage. (R. p. 107 ¶ 8-19) Respondent Mr. Osten testified that this decision would not have been made but for the disruption caused by Appellant. (*Id.*) Respondent Mrs. Osten testified to lifestyle changes she was forced to take due to Appellant's actions and discussed the anxiety she experienced because of the situation. (R. p. 108 ¶ 3-13)

Appellant makes much of the headings used for the causes of action in Respondents' Complaint, but they matter little and are not determinative. The substance of the allegations themselves is what matters. Courts in South Carolina have consistently emphasized that pleadings should be liberally construed to ensure substantial justice between the parties, and the focus is on the factual allegations and the relief to which the plaintiff may be entitled, regardless of the labels used.

For instance, in *Lawson v. Citizens & Southern Nat'l Bank*, the South Carolina Supreme Court held that a plaintiff is not required to label their cause of action, and deficiencies in labeling do not render a complaint vulnerable to a demurrer. (255 S.C. 517, 520-521, 180 S.E.2d 206, 208 (1971)). The court stated that a complaint must be liberally construed in favor of the pleader and sustained if the facts alleged, along with reasonable inferences, entitle the plaintiff to any relief under any theory of the case, even if it differs from the theory the plaintiff initially believed applied. (*Id.*).

In the instant case, Respondents' Complaint alleges "mental anguish, emotional distress," and a diminution in value of their home. (R. p. 28 ¶ 10). The pleading goes on to allege that Appellant's behavior was "negligent, grossly negligent, careless, wanton, willful, and reckless..." (*Id.* at ¶ 12). The Complaint also specifically cites Respondents' fear of their safety. (R. p. 29 ¶ 15). In its prayer for relief, the Complaint asks for, among other things, actual and compensatory damages along with punitive damages and includes the catchall "such other and further relief as

the Court deems just and proper.” (R. p. 30). As such, in looking at the allegations of the pleadings the testimony and evidence presented is directly on point with the allegations of the Complaint and logically accrue therefrom. The court was well within its bounds in assigning the damages it did and the judgment amount should be left undisturbed.

II. Did the trial court abuse its discretion in declining to set aside the entry of default as to Appellant?²

Relief from an entry of default is governed by Rule 55(c) of the South Carolina Rules of Civil Procedure. Once a default judgment is granted in a case, such as in the matter on appeal, the proper standard for analysis shifts from a Rule 55(c) analysis to a Rule 60(b) analysis under the South Carolina Rules of Civil Procedure. The distinction between these rules lies in the timing of the request for relief and the corresponding standards that apply.

Rule 55(c) applies when a party seeks to set aside an entry of default before a default judgment has been entered. The standard under Rule 55(c) is "good cause," which is a relatively lenient standard. To establish good cause, the moving party must provide an explanation for the default and demonstrate why setting aside the entry of default would serve the interests of justice. Courts also consider factors such as the timing of the motion, whether the defendant has a meritorious defense, and the degree of prejudice to the plaintiff if relief is granted. However, the trial court is not required to make specific findings on each factor if the record supports the finding of no-good cause. (Sundown Operating Co. v. Intedge Indus., 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009); Weeks v. Drawdy (In re Estate of Weeks), 329 S.C. 251, 259, 495 S.E.2d 454, 458-459 (Ct. App.1997); Top Value Homes v. Harden, 319 S.C. 302, 307, 460 S.E.2d 427 (Ct. App. 1995)).

Once a default judgment has been entered, Rule 60(b) governs the analysis. As addressed above, the standard under Rule 60(b) is more rigorous than the "good cause" standard of Rule 55(c). Relief under Rule 60(b) requires a particularized showing of one of the enumerated grounds, such as mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or other misconduct of an adverse party. Additionally, Rule 60(b) provides for

² Please note that despite Appellant's inclusion of a Statement of Issue on Appeal asking, "Did the lower court err in failing to set aside the entry of default," no discernable separate argument is made by Appellant as to that question. As such, any argument thereunder should be considered as having been abandoned. Respondents' brief will nevertheless attempt to address this issue here.

relief in cases where the judgment is void, has been satisfied, or is no longer equitable. The burden on the moving party is significantly higher under Rule 60(b) because a default judgment carries greater finality than an entry of default. (Sundown Operating Co. v. Intedge Indus., 383 S.C. 601, 608, 681 S.E.2d 885, 888 (2009); Roberson v. Southern Fin. of S.C., Inc., 365 S.C. 6, 9-10, 615 S.E.2d 112, 114 (2005); ITC Commer. Funding, LLC v. Crerar, 393 S.C. 487, 494-495, 713 S.E.2d 335, 338-339 (Ct. App. 2011); Trustgard Ins. Co. v. Full Logistics, Inc., 442 S.C. 485, 509-510, 900 S.E.2d 448, 460-461 (Ct. App. 2023)).

As such, the proper analysis in the instant case is that under Rule 60 as explained above. Despite the similar considerations in adjudging Rule 55(c) and 60 Motions, the Appellant here is not afforded the more lenient standard of review. As to the pertinent Rule 60 analysis, it is thoroughly illustrated above that the lower court acted well within its discretion in denying Appellant's Motion.

CONCLUSION

For all the foregoing reasons, the trial court acted well within its discretion in denying Appellant's Motion and allowing the default judgment to stand. The record reflects that the judgment is not void, that Appellant failed to provide a satisfactory explanation for her failure to timely answer the complaint, and presented no meritorious defense. Accordingly, the trial court's ruling should be affirmed in its entirety.

RESPECTFULLY SUBMITTED

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