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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

G.D. Morgan, Jr., Circuit Court Judge

Op. No.: 2026-UP-284
(S.C. Ct. App. filed June 10, 2026)

Ronald Carl Cox, III, Petitioner,

v.

Michael John Dimaggio, Respondent.

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for Petitioner Ronald Carl Cox, III certifies that the Petition for Rehearing was made and ruled on by the Court of Appeals on July 16, 2026.

QUESTIONS PRESENTED

- I. Did the Court of Appeals err in ruling service of process improper when a Defendant expressly instructed a process server to deliver the summons and complaint to his attorney, and the process server followed those instructions, despite Defendant's attorney attempting to deny acceptance of service?
- II. Did the Court of Appeals err in deciding whether, under South Carolina agency law, a Defendant's express instructions to a process server are sufficient to establish authority for receipt of service, notwithstanding the recipient's subsequent disclaimer of authority to accept service?
- III. Did the Court of Appeals err in deciding whether an appointment under Rule 4(d)(1) may be created contemporaneously with an attempted service of process through the Defendant's express instructions to the process server?
- IV. Did the Court of Appeals err in deciding whether Rule 4(d)(1) of the South Carolina Rules of Civil Procedure requires a Defendant to understand the precise legal nature of documents before directing that they be delivered to another person for receipt?

STATEMENT OF THE CASE

Petitioner filed the present civil action on May 31st, 2022, arising from a violent, drunken assault by Respondent, on June 1st, 2019. The assault occurred after Respondent had followed Petitioner and his date from a downtown Greenville restaurant, shouting obscenities and insults, and threats of sexual assault, and thereafter physically attacking Petitioner when Petitioner stopped and respectfully asked Respondent to stop harassing them. (R. pp 24-30).

During the several months that followed, Petitioner made diligent efforts to locate Respondent for purposes of service. After Petitioner's process servers went to several different addresses unable to find Respondent. Petitioner resorted finally to having a skip trace search done by a third party which provided Respondent's most recent address and phone number. (R. pp 45-47).

On September 1st, 2022, one of Plaintiff's process servers contacted Respondent by telephone and advised him that legal papers needed to be delivered to him. Respondent instructed the process server to send them to his attorney and provided the attorney's name. (R. pp 67). However, the day after receiving Petitioner's Summons and Complaint, Respondent's designee responded by email and suggested that he did not have authority to accept service and would not be representing Respondent in the civil matter. (R. pp 94).

Over the next eight days, Petitioner's process servers made several additional attempts to contact the Respondent by telephone. Those calls were either unanswered or answered only briefly before Respondent abruptly ended the call. Plaintiff's process servers then visited Defendant's residence and knocked on his door. Although no one answered, the process servers heard keys being moved inside near the front door and a dog barking in the residence, leading them to believe that the Respondent was inside his residence and refusing to answer the door.

The process servers then spoke with multiple neighbors confirming that Respondent resided at the address and spoke with his employer who confirmed that Respondent worked remotely from home.

On September 9th, 2022, Petitioner believed that service had been properly effectuated pursuant to the instructions of the Respondent, Petitioner, out of an abundance of caution, filed a petition in Greenville County Circuit Court for service by publication (R. pp 35). The petition was granted upon a showing of diligent efforts on October 6th, 2020, by the Honorable Letisha Verdin. (R. pp 17). The normal one hundred twenty-days for service of process was to run on September 30, 2022. With the Order filed and granted, Petitioner completed his publication under the Order issued by the Circuit Court, and notice was published in the Greenville News for three consecutive weeks beginning October 27th, 2022, continuing the week of November 3rd, 2022, and concluding the week of November 10th, 2022.

At the time, Petitioner's counsel was under a protection order by the Circuit Court and was recovering from what his surgeon called a severe cervical spinal fusion surgery. During this time, counsel found that there was an error in the Publication. In lieu of the Summons, the Court's actual Order of Publication was published, which actually provided a more detailed notice than the Summons alone. Petitioner's counsel instructed his staff to re-publish the Summons for another three consecutive weeks, those being December 27th, 2022, January 3rd, 2023, and January 10th, 2023. Just days after Petitioner's second three-weeks of publication of notice of the action, Respondent's motion to dismiss based on alleged failure to serve process was filed. (R. pp 32).

On July 24th, 2023, the Honorable G.D. Morgan, Jr., heard Respondent's Motion to Dismiss. After hearing arguments of counsel and receiving other supporting documents, that

were referenced in counsel's arguments, the court ruled in favor of Respondent. By order of September 19th, 2023, Defendant's motion to dismiss was granted for the alleged ineffective service of process. (R. pp 4).

Petitioner thereupon filed an appeal to the South Carolina Court of Appeals. No cross-appeal was filed. On June 10th, 2026, the Court of Appeals issued a unanimous unpublished opinion affirming the Circuit Court's granting of Respondent's Motion to Dismiss. Petitioner thereafter petitioned for rehearing on June 25th, 2026, and that petition was denied by order entered July 16th, 2026.

ARGUMENT

I. Did the Court of Appeals err in ruling service of process improper when a Defendant expressly instructed a process server to deliver the summons and complaint to his attorney, and the process server followed those instructions, despite Defendant's attorney attempting to deny acceptance of service?

Under Rule 4(d)(1), SCRPC, service shall be made as follows: "Upon an individual other than a minor under the age of 14 years or an incompetent person, by delivering a copy of the summons and complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, *or by delivering a copy to an agent authorized by appointment or by law to receive service of process.*"

South Carolina's rules, regarding service of process, focuses on sufficient compliance and notice, rather than technical formalities. "We have never required exacting compliance with the rules to effect service of process." *Roche v. Young Bros., Inc. of Florence*, 456 S.E.2d 897, 318 S.C. 207 (S.C. 1994)). "Rather, we inquire whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings." *Id.* at 210, 456 S.E.2d at 899. The process server is not required to ram the documents down a defendant's throat and personal service of process "should not become a game of wiles and tricks." 62B Am.Jur.2d Process § 190 (2005).

The applicable framework for determining whether an individual is authorized to receive service of process was set out by this honorable Court in *Hamilton v. Davis*, 300 S.C. 411, 389 S.E.2d 297 (Ct.App.1990). Courts must look at the circumstances surrounding the relationship and find authority which is either express or implied from the type of relationship between the defendant and the alleged agent. (citing 4A C. Wright and A. Miller, Federal Practice and Procedure, § 1097; 62 Am. Jur. (2d) Process § 47 (1972)).

Likewise, in *Humphries v. Spitz*, 327 S.E.2d 370, 284 S.C. 521 (S.C. App. 1984), the Supreme Court recognized that service may be accomplished through a third party whom the [defendant] has authorized to receive the documents on his or her behalf. There, the process server delivered the Summons and Complaint to the [defendant's] sister, and the documents ultimately reached the Defendant through another sister. The significance of *Humphries* is that the Court considered the defendant's authorization and the circumstances surrounding delivery in determining whether service was sufficient.

Rule 4(d)(1) of the South Carolina Rules of Civil Procedure ("SCRCP"), recognizes service upon an "agent authorized by appointment ... to receive service of process." The overlooked inquiry is whether Respondent conferred upon that individual authority within the meaning of Rule 4(d)(1) of the SCRCP and intended to confer such authority. *See Hamilton*.

Accordingly, the Court's should focus upon Respondent Dimaggio's own words, conduct, and intent to confer said authority, rather than merely the purported agent's own assertion or denial of authority.

Here, the record contains direct evidence that Respondent Dimaggio intended to confer authority upon Mr. Austin McDaniel to receive service of process. Consistent with *Hamilton*, Respondent's own words and conduct demonstrate that intent. Appellant's process server personally contacted Respondent Dimaggio concerning the "[l]egal papers" for Dimaggio. Respondent Dimaggio specifically identified attorney Mr. McDaniel as his agent and directed Petitioner's process server to deliver the papers to attorney McDaniel. The process server followed Respondent's express instructions and delivered the Summons and Complaint to Mr. McDaniel.

The voicemail produced by Respondent Dimaggio further corroborates this sequence of events. After attorney McDaniel declined to accept service, the process server contacted Respondent and advised him that the individual agent that Respondent previously designated, was refusing service. (R. p. 107). The voicemail is significant not because it independently shows authority directed by Respondent Dimaggio but because it corroborates the process server's account that Respondent had notice of the action, that Mr. McDaniel had been contacted pursuant to Respondent's prior direction and that Respondent was informed of Mr. McDaniel's refusal of service.

Therefore, the dispositive question under Rule 4(d)(1) of the SCRCF, is not whether Mr. McDaniel subsequently disclaimed authority. The question is whether Respondent's undisputed instructions to send legal papers to his attorney, specifically identifying McDaniel as his lawyer, and McDaniel receiving such documents, constituted service under Rule 4(d)(1). Pursuant to this Court's decision in *Hamilton v. Davis*, 300 S.C. 411, 389 S.E.2d 297 (Ct.App.1990), proper service was accomplished when the Summons and Complaint were delivered in accordance with principal Respondent's direction to send those legal documents to his agent attorney.

Additionally, the South Carolina Supreme Court has recognized that apparent authority is sufficient for an agent to accept service of process on behalf of the principal, and it is established based on manifestations by the principal, not the agent. *Roberson v. Southern Finance of South Carolina, Inc.*, 365 S.C. 6, 615 S.E.2d 112 (S.C. 2005). Accordingly, an agent's later denial of authority does not, by itself, establish that authority never existed.

This conclusion is consistent with the purpose of Rule 4 of the SCRCF. "Rule 4 serves at least two purposes. It confers personal jurisdiction on the court and assures the defendant of

reasonable notice of the action." Roche v. Young Bros., Inc. of Florence, 456 S.E.2d 897, 318 S.C. 207 (S.C. 1994).

Here, both purposes of Rule 4 were satisfied. The circumstances show that Respondent expressly authorized the identified individual to receive the Summons and Complaint on his behalf. Respondent was therefore provided actual notice of the action. Mr. McDaniel's subsequent refusal to accept service should not negate the authority Respondent had already expressly conferred. Accordingly, service was sufficiently effectuated under Rule 4(d)(1) of the *South Carolina Rules of Civil Procedure*, to confer personal jurisdiction and provide Respondent with notice.

II. Whether, under South Carolina agency law, the Respondent's express instructions to a process server are sufficient to establish authority to receive service of process, notwithstanding the agent's subsequent disclaimer of that authority.

The trial Court recognized Appellant's evidence that Respondent expressly instructed the process server to deliver the pleadings to Mr. McDaniel but nevertheless concluded that service was insufficient because Mr. McDaniel later disclaimed authority to accept service. In doing so, the trial court and Court of Appeals focused on the subsequent conduct of the purported agent rather than the legal significance of Respondent Dimaggio's own words and conduct as the principal. Under Hamilton v. Davis, 300 S.C. 411, 389 S.E.2d 297 (Ct.App.1990), courts must "look to the circumstances surrounding the relationship and find authority which is either express or implied." *Id.* The inquiry therefore centers on whether the defendant intended to confer such authority. *Id.* Here, Respondent's express instruction to the process server to deliver the pleadings to Mr. McDaniel is direct evidence of that intent. The subsequent disclaimer by Mr. McDaniel does not change the authority Respondent had already manifested.

The relevant inquiry is not whether the purported agent later claimed that he lacked authority, but whether Respondent Dimaggio's own words or conduct demonstrated an intent to confer such authority upon Mr. McDaniel to receive process. The Court record provides direct evidence of that intent; the same inquiry identified in *Hamilton*. Respondent personally communicated with the process server, specifically identified Mr. McDaniel, and instructed the process server to deliver the legal papers to him. The process server followed Respondent's instructions. This case does not depend just on an attorney-client relationship or an inference of agency. Instead, Petitioner relied upon Respondent's own express instruction concerning the delivery of the legal papers. That instruction is direct evidence that Respondent intended for Mr. McDaniel to receive the legal papers on his behalf.

Likewise, in *Humphries v. Spitz*, 284 S.C. 521 (S.C. App 1984), the Court recognized that service through a third-party authorized by the party upon whom service is directed to, can constitute proper service. The significance of *Humphries* here is not that the factual circumstances are identical, but that the authority of the recipient derives from the defendant's authorization.

Additionally, the South Carolina Supreme Court has recognized that apparent authority is sufficient for an agent to accept service of process on behalf of the principal, and it is established based on manifestations by the principal, not the agent. *Roberson v. Southern Finance of South Carolina, Inc.*, 365 S.C. 6, 615 S.E.2d 112 (S.C. 2005). Accordingly, an agent's later denial of authority does not, by itself, establish that authority never existed.

The focus remains upon the manifestations of the principal, Respondent Dimaggio, and whether Respondent Dimaggio had proper notice of the pending action. Here, Respondent Dimaggio did not merely identify Mr. McDaniel as his attorney; Respondent specifically

directed the process server to deliver the legal papers to Mr. McDaniel, and the process server followed that direction. The question therefore is whether Respondent's affirmative instruction constituted the manifestation of intent to confer authority contemplated by *Hamilton* and Rule 4(d)(1).

Thus, Mr. McDaniel's subsequent disclaimer of authority cannot be considered without first considering Respondent's express instruction that the legal papers be delivered to him. If Respondent's express instruction constituted an appointment under Rule 4(d)(1), the later disclaimer by Mr. McDaniel could not undo the authority Respondent already conferred.

III. Whether, when applying Rule 4(d)(1) of the South Carolina Rules of Civil Procedure, a defendant's appointment of an agent to receive service of process may be created contemporaneously with an attempted service of process through the defendant's express instructions to the process server.

Petitioner does not rely solely on the preexisting attorney-client relationship to establish authority. Rather, Petitioner relies on Respondent's own conduct during the attempted service. As previously stated, the process server communicated directly with the Respondent concerning legal papers requiring delivery, and Respondent identified Mr. McDaniel and expressly directed the process server to deliver the papers to him. The process server thereafter followed Respondent's instructions. Thus, Petitioner contends the appointment arose from Respondent's express direction during the service attempt itself.

South Carolina law supports this. In *Graham Law Firm, P.A. v. Makawi*, 396 S.C. 290, 721 S.E.2d 430 (S.C. 2012), the Supreme Court recognized that “[a]n individual is as competent as any other entity to confer authority on an agent.” In *Hamilton v. Davis*, 300 S.C. 411, 389 S.E.2d 297 (Ct.App.1990), the Court instructed Courts to look at the circumstances surrounding the relationship and find authority, either express or implied, from the type of relationship

between the defendant and the alleged agent. (citing 4A C. Wright and A. Miller, Federal Practice and Procedure, § 1097; 62 Am. Jur. (2d) Process § 47 (1972)). And in Roberson v. Southern Finance of South Carolina, Inc., 365 S.C. 6, 615 S.E.2d 112 (S.C. 2005), the Supreme Court further instructed Courts to recognize that apparent authority is sufficient for an agent to accept service of process on behalf of the principal, and it is established based on manifestations by the principal, not the agent's own statements. Here, Respondent's express instruction was the relevant manifestation. Respondent identified Mr. McDaniel and directed that the legal papers be delivered to him. The subsequent disclaimer by Mr. McDaniel does not answer the antecedent question of whether Respondent had already conferred the requisite authority through his own express instruction.

IV. Rule 4(d)(1) of the SCRCF does not require a defendant to understand the precise legal nature of documents before directing that they be delivered to another person for receipt.

The preceding issues address whether Respondent's express instructions established an appointment under Rule 4(d)(1) of the SCRCF, whose manifestations control the existence of that authority, and whether such an appointment may arise contemporaneously with an attempted service. A separate but related question concerns Respondent's contention that he misunderstood the nature of the legal documents being delivered. Respondent contends that he believed the documents related to a criminal matter occurring approximately three years earlier.

That contention, however, raises a distinct question: does Rule 4(d)(1) require a defendant to understand the precise nature or subject matter of legal process before authorizing another person to receive it on his behalf, and whether it can be subsequently disavowed based on a misunderstanding of the document?

Rule 4(d)(1), SCRCP, permits service by delivering a copy of the Summons and Complaint “to an agent authorized by appointment”. In Roberson v. Southern Finance of South Carolina, Inc., 365 S.C. 6, 615 S.E.2d 112 (S.C. 2005), the Supreme Court further instructed Courts to recognize that apparent authority is sufficient for an agent to accept service of process on behalf of the principal ... based on manifestations by the principal.” (citations omitted) The question, therefore, concerns the defendant’s authorization of the recipient to receive the documents, not whether the defendant correctly understood the claims or subject matter of those documents..

Here, Respondent’s own position demonstrates that he was aware legal documents were being delivered. Although Respondent claims he misunderstood what the documents concerned, the evidence shows that Respondent communicated directly with the process server, identified Mr. McDaniel, and instructed that the legal papers be delivered to him. Respondent’s alleged misunderstanding that the papers concerned a different legal matter, does not and should not alter the fact that he directed where the legal documents were to be delivered.

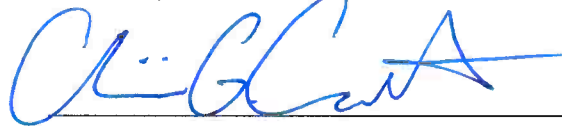
Requiring a defendant to understand the precise legal nature or subject matter of documents prior to his designation of service upon said authorized individual would impose a condition not found in the rules. Allowing a defendant to act in this regard would permit the express designation to depend solely on the defendant’s later characterization of what they claimed the documents to be concerning. The Rule instead prompts the inquiry whether the individual receiving the process was “authorized by appointment” to receive such service. A defendant’s subsequent disagreement or confusion concerning the nature of the documents, standing alone, does not negate an otherwise valid service under our Rules of Civil Procedure.

CONCLUSION

Based on the foregoing, the Petitioner Ronald Carl Cox, III respectfully requests that this Court grant his petition for a writ of certiorari, find service of process was proper, and reverse the trial court's dismissal of Appellant's complaint.

Respectfully submitted,
PETTUS | FARNSWORTH

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