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Jun 25 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

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

Appellate Case No. 2023-001497

Ronald Carl Cox, III, Appellant,

v.

Michael John Dimaggio, Respondent.

APPELLANT'S PETITION FOR REHEARING

Pursuant to Rule 221(a) of the *South Carolina Appellate Court Rules*, Appellant Ronald Carl Cox, III, respectfully submits this Petition for Rehearing on the Court's decision in *Ronald Carl Cox, III, v. Michael John Dimaggio*, Op. No. 2026-UP-284 (S.C. Ct. App. filed June 10, 2026). The Appellant, Ronald Carl Cox, III, respectfully submits that the Opinion seemed to overlook or misapprehend several points.

The Court's Opinion appears to have overlooked or misapprehended the dispositive issue presented on appeal under Rule 4(d)(1), *South Carolina Rules of Civil Procedure*. Appellant's argument has consistently been that Respondent's own manifestations and express instructions to Appellant's process server directing delivery of the Summons and Complaint to a specifically identified attorney constitutes an appointment regarding service of process. Thus, the dispositive inquiry is not whether Respondent subjectively believed he was accepting service, nor whether

the identified attorney later attempted to disclaim authority, but whether Respondent's own conduct manifested authority under Rule 4(d)(1), *South Carolina Rules of Civil Procedure*. Rather, this Court's Opinion concludes that Respondent "did not know" service was being attempted. That conclusion is difficult to reconcile with Respondent's own actions, and assertions, detailed herein below.

It is acknowledged on Court record by Respondent, that he instructed such service to Mr. McDaniel on or around May 31, 2022, the Ninety-Second Day after Appellant filed his Summons and Complaint, but claims to have misunderstood whether the papers were a criminal or civil matter. Knowledge of the nature of legal papers is not a prerequisite for valid service. The record also contains evidence of the Respondent at home the next day after his initial phone call with Appellant's process server, being heard inside with his dog and the noise of keys being moved inside; and his hanging up on Appellant's process server on a second and third phone call.

If Respondent believed legal papers were being delivered, then Respondent exercised sole control over their receipt by directing Appellant's process server to a third-party attorney. This Court's Opinion did not address the legal significance of Respondent's affirmative direction to the process server or analyzed whether those manifestations constituted such an appointment under Rule 4(d)(1), *South Carolina Rules of Civil Procedure*. If Respondent's manifestations constituted an appointment, then service was accomplished when pleadings were delivered in accordance with Respondent's express instructions.

This case differs from the more typical circumstance where an attorney is asked if they are authorized to accept service of process on behalf of their client. Here, the principal

affirmatively and expressly directed that the legal documents be sent directly to his attorney, thereby authorizing the attorney as an agent to receive them.

Further advancing Appellant's agency argument is Respondent's presentation of a voicemail recording from Appellant's process server indicating that the attorney who the Summons and Complaint were sent according to Respondent's express instructions, and that he had subsequently disclaimed service. Additionally, the voicemail recording specifically states that the communication "has nothing to do with criminal charges." Under South Carolina law, actual authority is expressly conferred upon the agent by the principal, not the agent. *See Moore v. North American Van Lines*, 423 S.E.2d 116, 310 S.C. 236 (S.C. 1992); *Shropshire v. Prahalis*, 309 S.C. 70, 419 S.E.2d 829 (Ct.App. 1992). "The principal object of service of process is to give notice to the defendant [of] the proceedings against it." *Mull v. Ridgeland Realty, LLC*, 387 S.C. 479, 485, 693 S.E.2d 27, 30 (Ct. App. 2010) (quoting *Burris Chemical, Inc. v. Daniel Const. Co.*, 251 S.C. 483, 487, 163 S.E.2d 618, 620 (1968)). "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) In this case, notice was given to the Respondent.

The trial Court recognized Appellant's evidence that Respondent instructed the process server to transmit the pleadings to Mr. McDaniel, but concluded that such service was insufficient because Mr. McDaniel later disclaimed service. Respectfully, the Court's Opinion also appears to have overlooked the dispositive issues under Rule 4(d)(1), *South Carolina Rules of Civil Procedure*, as to whether Respondent's own manifestations and instructions constituted an appointment. This Court's Opinion on this point references the South Carolina Supreme Court's addressing this principle of controlling an agent's acceptance in *Roberson v. S. Fin. of S.C., Inc.*, 365 S.C. 6, 615 S.E.2d 112 (2005). The Court in *Roberson* continues by confirming

that it is the manifestations of the principal, not the agent, that dictates proper authority for an agent to be effectively served. Appellant inquires whether Respondent, by directing the process server to transmit legal papers to Mr. McDaniel, manifested authority to receive those documents on his behalf. And that, Mr. McDaniel's subsequent attempt to disclaim service does not alter the Respondent's prior manifestation.

The subsequent attempt to disclaim authority does not resolve the issue presented. Even accepting Respondent's explanation as true, it does not resolve this issue before the Court. This dispositive issue is whether Respondent, by directing Appellant's process server to deliver the pleadings to Mr. McDaniel, manifested actual authority for service of process on his behalf under Rule 4(d)(1), *South Carolina Rules of Civil Procedure*.

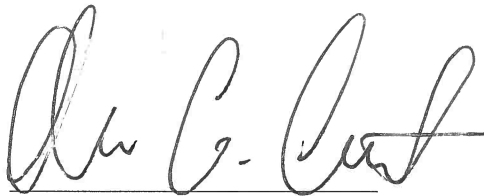
Further, Courts are instructed to "look to the circumstances surrounding the relationship and find authority which is either express or implied. *See Hamilton v. Davis* 300 S.C. 411, 389 S.E.2d 297. As stated herein, the record contains direct evidence that Respondent identified Mr. McDaniel, instructed that the pleadings be sent to him, and the Appellant complied exactly with those instructions. This evidence is significant because actual authority is created by the manifestations of the principal. Further, instructions authorizing legal process to be delivered to a third-party on behalf of a Defendant has been recognized in effecting service by Courts in South Carolina for over thirty-five (35) years. In *Humphries v. Spitz* 284 SC 521 (S.C.App 1985), the Court obtained jurisdiction over a defendant where the Summons and Complaint were given by the process server to the Defendant's sister, who had been authorized by Defendant to receive his mail. *Humphries* further supports Appellant's petition that South Carolina Court's recognize service accomplished through a third-party authorized by the party upon whom service is directed to.

In the current case, the record reflects that Respondent personally communicated with and directed Appellant's process server to transmit the Summons and Complaint to Mr. McDaniel, and Appellant complied with those instructions. It is likewise undisputed that following receipt of the pleadings, Mr. McDaniel disclaimed service.

Based on the above, the Appellant Ronald Carl Cox, III, respectfully requests that the Court grant a rehearing in this matter. Appellant respectfully submits that the Opinion overlooked the dispositive issue presented on appeal: whether Respondent's own manifestations and express instructions directing Appellant's process service to deliver the Summons and Complaint to his attorney, Mr. McDaniel, constituted an appointment authorizing receipt of service under Rule 4(d)(1), *South Carolina Rules of Civil Procedure*, given that the record reflects that Appellant followed Respondent's express instructions, and transmitted the Summons and Complaint accordingly, and because South Carolina courts look to the manifestations of the principal rather than the subsequent declarations of the agent, Appellant respectfully requests that this Court conclude that service was accomplished within the One Hundred and Twentieth Day, the Ninety-Second Day after filing, deadline pursuant to Rule 4(d)(1), reverse the Circuit Court's order dismissing the action for insufficient service of process, and remand this matter for further proceedings.

See Signature on Next Page

Respectfully submitted,
PETTUS | FARNSWORTH, LLC

A handwritten signature in black ink, appearing to read "Olivia G. Carruthers", written over a horizontal line.

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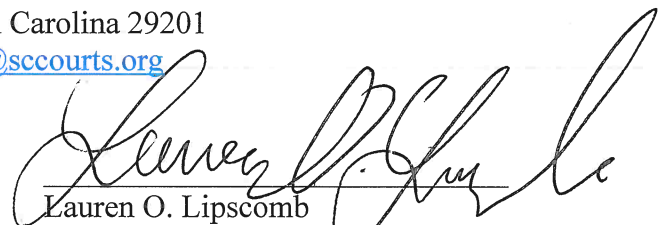
Michael John DiMaggio Respondent.

CERTIFICATE OF SERVICE

The undersigned paralegal of PETTUS | FARNSWORTH, LLC, counsel for the Appellant, does hereby certify that of the Appellant's Petition for Rehearing in the above-captioned matter was sent by electronic mail and by placing same in the United States Mail, to the below listed address this the 25th day of June, 2026.

VIA ELECTRONIC MAIL AND USPS

The South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201
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Lauren O. Lipscomb
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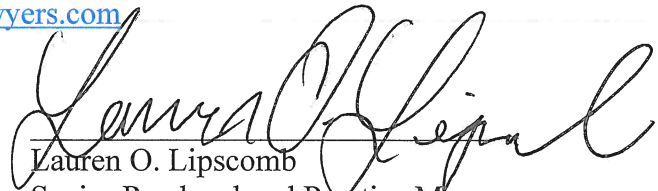
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VIA ELECTRONIC MAIL AND USPS

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June 25, 2026
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Counselors at Law**

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VIA ELECTRONIC MAIL and USPS

South Carolina Court of Appeals
The Honorable Jenny Abbott Kitchings
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Re: Ronald Cox, III v. Michael Dimaggio
Appellate Case No.: 2023-001497

Ms. Kitchings:

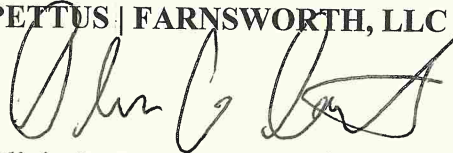
I hope this finds you well. Please find enclosed Appellant's Petition for Rehearing in the above-captioned matter. I have included Certificate(s) of Service for the same.

I have copied counsel for the Respondent, J. Kirkman Moorhead, Esq., to this correspondence.

Thank you for your assistance in this matter.

With kind regards, I remain

Yours truly,
PETTUS | FARNSWORTH, LLC



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Enclosures (*Appellant's Petition for Rehearing; Certificate of Service*)

CC: J. Kirkman Moorhead (via AIS and USPS w/ enc.)

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