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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
The Honorable Justice Jean H. Toal and
William McGee, Circuit Court Judge(s)

Appellate Case No. 2024-001626
Case No.: 2022-CP-40-01415

Rhonda Meisner.....Appellant

v.

Grant Meisner; Grant Meisner, MD, LLC; Sheila
Robinson; Erwin Mangubat, MD; Moore, Taylor, &
Thomas, P.A.; Moore Taylor Law Firm P.A.; Moore
Bradley Myers Law Firm, PA; Tricia L. Flowers;
Flowers Consulting, LLC; Flowers Consulting, LLC;
Richard G. Whiting, Esquire; Law Offices of Richard
G. Whiting, PA.; John Doe (1-10) a fictional name
assigned to identify parties that are not yet known
or not yet determined.....Respondents

**RESPONDENTS TRICIA FLOWERS AND FLOWERS CONSULTING, LLC'S
RESPONSE TO APPELLANT'S MOTION TO STRIKE PORTIONS OF THE
DESIGNATION OF MATTER BE INCLUDED IN THE RECORD ON APPEAL
MOTION TO ACCEPT RECORD AS FILED AND MOTION TO STAY FINAL
BRIEFING SCHEDULE UNTIL COURT RULES ON MOTION TO STRIKE
DESIGNATIONS MADE OUT OF COMPLIANCE WITH SCACR RULE 210 (c)**

The above-mentioned Respondents, Tricia Flowers and Flowers Consulting, LLC
(hereinafter "the Respondents" or "these Respondents") respectfully respond to Appellant
Rhonda Meisner's ("Appellant") Motion To Strike Respondents Portions of the Designated
Matter with the following authorities and arguments:

I. Portions of the Designated Matter “that was not presented to Justice Toal” should not be stricken because all of the Respondent’s designated matters are presented to the lower court.

Rule 210(c) South Carolina Rules of Record on Appeal states. “The Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267. The Record shall not, however, include matter which *was not presented to the lower court or tribunal.*” See Ex parte McMillan, 319 S.C. 331, 335, 461 S.E.2d 43, 45 (1995) (stating an “issue conceded in the trial court cannot be argued on appeal.”); Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (“It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.”); Bayle v. S.C. Dep’t of Transp., 344 S.C. 115, 129, 542 S.E.2d 736, 743 (Ct. App. 2001) (“As a general **rule**, the objection in the trial court must have been made by the party who urges the error in the appellate court.” (quoting 4 C.J.S. *Appeal & Error* § 219 (1993))); Butler v. Sea Pines Plantation Co., 282 S.C. 113, 123, 317 S.E.2d 464, 470 (Ct. App. 1984) (“Generally, where bias and prejudice of a trial judge is claimed, the issue must be raised when the facts first become known and, [*2] in any event, before the matter is submitted for decision.”); Rule 210(h), SCACR (stating the appellate court will not consider any fact that does not appear in the record on appeal); Rule 210(c), SCACR (stating the record on appeal shall not include matter that was not presented to the lower court); State v. Carlson, 363 S.C. 586, 608, 611 S.E.2d 283, 294 (Ct. App. 2005) (stating the appellant bears the burden of presenting a sufficient **record** to allow review); Gurganious v. City of Beaufort, 317 S.C. 481, 488, 454 S.E.2d 912, 916 (Ct. App. 1995) (holding a party may not present one ground at trial and then change his theory on appeal).

In the present issue, Appellant claims following are improper designations:

“Form 4 denying Appellant’s Motion to Alter and Amend filed Sept. 6, 2024;

Order dismissing Respondent Tricia Flowers and Flowers Consulting LLC filed November 5, 2024 ¶ 2-24;

Motion to Alter and Amend pursuant to Rule 59 filed November 18, 2024;

Form 4 Denying Motion to Reconsider filed on December 27, 2024;

Appellants Appeal filed September 30, 2024;

The Transcript of the Motion to Dismiss Hearing presided over by Judge William McGee on September 17, 2024.”

(R. at Appellant’s Motion to Strike, filed on/or July 22, 2026).

Appellant’s argument fails because the records and pleadings were, in fact, presented to the lower court and common pleas tribunal in the matter of 2022-CP-40-01415. As to the procedural history related to these Respondents, they filed a Motion To Set Aside Default under the same matter on March 17, 2023, about three months after Justice The Hon. Jean H. Toal’s (“Justice Toal”) ruling on the other Defendants/Respondents’ collective Motion to Dismiss. These Respondents were not present in Justice Toal’s Motion hearing because they were not aware there was a pending lawsuit against them as they were not properly served. This is why they filed the said Motion despite there was no Order of Default. These Respondents’ Motion also arose from Appellant’s Summons and Complaint and Amended Summons and Complaint, which contained numerous allegations to these Respondents, including cause of actions for civil conspiracy, defamation, trespass, trespass after notice, invasion of privacy, false lights, abuse of process, and disclosure of private information, same that have been directed to the other Defendants/Respondents. These Respondent’s Motion was granted by Judge The Hon. Jocelyn Newman on July 11, 2023. Three (3) days later, July 14, 2023, Judge Newman entered a form 4 Order which stated:

“Plaintiff’s[Appellant] Motion For Continuance (filed on 7/3/23) is DENIED;

Plaintiff’s [Appellant] Motion For Entry of Default (filed on 3/30/23) is DENIED;

Defendant Tricia Flowers’ [Respondent] Motion to Set Aside Default (filed on 3/17/23) is GRANTED;

Plaintiff’s[Appellant] Motion to Dismiss Counterclaims (filed on 4/12/23) is DENIED.”

The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the trial judge. Roberson v. Southern Fin. of S.C., Inc., 365 S.C. 6, 9, 615 S.E.2d 112, 114, (2005) citing Thompson v. Hammond, 299 S.C. 116, 119, 382 S.E.2d 900, 902-903 (1989). The trial court's decision will not be disturbed on appeal absent a clear showing of an abuse of that discretion. Roberson citing Mitchell Supply Co., Inc. v. Gaffney, 297 S.C. 160, 162-63, 375 S.E.2d 321, 322-23 (Ct. App. 1988). On January 23, 2024, these Respondents filed Motion to Dismiss which was heard on September 17, 2024, before Judge The Hon. William McGee (“Judge McGee”). Upon reviewing the prior rulings through the Respondent’s Exhibits to Motion to Dismiss and prior rulings to acknowledge the procedural history, Judge McGee granted these Respondents’ Motion to Dismiss with prejudice. (See Order 2022CP4001415 ¶2-5, ¶13 Electronically filed on Nov. 5, 2024). Meanwhile, on September 21, 2024, Appellant filed (second) Notice of Appeal ¹ followed by another (third) appeal on January 23, 2025. On/or January 22, 2025, Appellant filed her initial brief in which she included allegations against the Respondents under civil conspiracy and abuse of process (R. at Meisner,

¹ It is important to note that Appellant’s original Notice of Appeal has been dismissed on June 6, 2023 because it was filed untimely. Thereafter, Appellant has filed numerous complex motions to no avail. After the Circuit Court’s granting these Respondent’s Motion to Set Aside and Motion to Dismiss respectively, Appellant has filed another appeal on September 21, 2024, which stated she appealed to the various court rulings, including denial of her Motion to Alter and Amend under Rule 60, Rule 52, and Rule 59. She also filed Motion to Alter and Amend for Judge McGee’s Order, which was also denied. Then on January 23, 2025, despite incorrectly dating it as 2024, Plaintiff has filed another appeal from the Court’s ruling on denying her Motion to Alter and Amend as to Judge Newman’s ruling, and denial of her Motion to Alter or Amend Judge McGee’s Order of Dismissal with prejudice.

Initial Brief p. 15, 20). While incorrectly calling them “default defendants,” she continued claiming these Respondents abused the process. *Id.* at p. 20. Therefore, because Appellant directed allegations and arguments against the Respondents in her initial brief, the Respondents respectfully assert the factual allegations that were raised to the trial court were also brought to the Court of Appeals that they are not conceded, and that they arose from common question of law and factual allegations. The records also show Appellant has also filed another (third) appeal from the Order granting the Respondents’ Motion to Dismiss by Judge McGee and denial of her Motion to Alter and Amend Judge McGee’s Order.

For the reasons hereinabove, the Respondent respectfully asserts that the record before their Motion to Dismiss stemmed from the same matter, same action, and same issues, and the Respondents properly included them in their designation of matter as they were targeted by Appellant in her brief and Appellant has filed an appeal related to this Respondents.²

II. Appellant’s Motion to Strike these Respondents’ Designation of Matter on the ground Motion to Dismiss was heard by a different judge is not preserved for the Court of Appeal’s Review therefore, should be precluded from any assertion in her appellate arguments.

Defendant asserts that Appellant did not make the above-mentioned argument in her initial brief to this court, instead made this argument in her reply brief. See Jones v. Enter. Leasing Company-Southeast, 383 S.C. 259, 269, 678 S.E.2d 819, 824, (Ct. App. 2009)(holding , the issue of ruling by a different judge is not preserved for the Court’s review and no new issues may be raised to this court by the appellant in the reply brief.); *See also* Hunter v. Staples, 335 S.C. 93, 103, 515 S.E.2d 261, 267 (Ct. App. 1999) (finding appellant was precluded from

² See also Rule 42, SCRCP, which states, “When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all matters in issue in the action; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.”

asserting an argument for the first time in its reply brief); Fields v. Melrose Ltd. P'ship, 312 S.C. 102, 106, 439 S.E.2d 283, 285 (Ct. App. 1993) (acknowledging an appellant may not use the reply brief to argue issues not argued in its brief in chief) Jones v. Enter. Leasing Company-Southeast, 383 S.C. 259, 269, 678 S.E.2d 819, 824, (Ct. App. 2009).

In the present matter, Appellant filed a Motion to Alter and Amend the Order issued by Judge McGee pursuant to SCRCP Rule 52, and Rule 59 on November 18, 2024. Briefly, she claimed the Court was wrong in setting aside the Respondents' default ³, that she had a pending appeal to Justice Toal's Motion to Dismiss, that the Respondents acted outside their duty of process serving, and that Respondent Tricia Flowers verbally assaulted her ⁴, claims that have been completely and properly unfounded by the Circuit Court. She has also filed an initial brief on January 22, 2025, in which she included the Respondents. However, she has not made the argument that the Respondent's Motion has been heard by a different judge, rather, she merely mentioned that she had "a pending appeal from Justice Toal's Ruling on December 15 and 20, 2022." Therefore, these Respondents refer to Hunter supra and assert the issue of ruling by a different judge is not preserved for the Court's review and no new issues may be raised to this court by the appellant in the reply brief.

Therefore, the Respondents believe and are informed Appellant should be precluded from asserting an argument for the first time in this Appellate Motion.

³ Appellant claims the Court erred in granting the Respondents' Motion to Set Aside because they only answered (Amended) Summons and Complaint not the initial one. However, Appellant's amended Summons and Complaint stems from the original one and it is not a distinct or separate action. Moreover, the Respondents had already filed their Answer on April 3, 2023, prior to the Motion to Set Aside hearing because there was no order of default.

⁴ These Respondents assert they have respectfully responded to Appellant's assertions in their initial brief filed on February 21, 2025, thus, they believe they do not need to repeat their brief herein verbatim for the convenience of justice and this Respond.

III. The Respondent's Designation of Matter involves a common question of law and factual allegations that was pending before the Court and Justice Toal was not specifically assigned to this case, therefore, these Respondents' Motion to Dismiss hearing before Judge McGee was a part of this matter.

Respondents acknowledge that as to a matter be heard by a different judge, Rule 43(i), SCRPC, states that “ if any motion be made to any judge and be denied, in whole or in part, or be granted conditionally, no subsequent motion upon the same state of facts shall be made to any other judge in that action.” In the present case, however, the Respondents were not a participant for the Motion to Dismiss hearing in December 2022, because they were not properly served, an argument which was presented to Judge Newman and evidently, she granted the Respondents' Motion to Set Aside Default as mentioned in the above. Therefore, at no point did they file a motion which was denied or granted on December 15 and 20, 2022. Once Judge Newman granted these Respondents' Motion to Set Aside Default in July 2023, and subsequently filed Motion to Dismiss under the same matter that involved a common question of law or fact with other Defendants/Respondents. Thereafter, the Richland County Court of Common Pleas scheduled the hearing for September 17, 2024, before Judge McGee, likely due to the fact that Justice Toal was not assigned to the motion terms for the day. However, the Respondent's Designation of Matter is related to the same question of law or factual allegations with other Defendants/Respondents Plaintiff has filed with the Richland County Court of Common Pleas.

Appellant's argument also fails because “ A denial of a Rule 12(b) motion by one judge will not preclude a party from raising the same issue at a later point in the case before a **different judge**” Cox v. Bishop Eng. High Sch., 2020 S.C. C.P. LEXIS 4872, *3 (2020)(emphasis added). Thus, rulings on Rule 12 matters **cannot be final** as to the matters involved. Id. (emphasis added).

Again, while Respondent's Motion was not denied, and Cox implies that a decision by one judge will not preclude the Respondents from raising the same issue at a later point in the case before a different judge, especially when they were not heard in the Motion to Dismiss hearing before Justice Toal. It is important to know that both Justice Toal and Judge McGee resided in the same circuit, Richland County. "[t]he motion must be granted if the facts and the inferences reasonably deducible from them show that the plaintiff could not prevail on any theory of the case." Id. at *3-5.

Appellant contends that several items suggested in the Respondents' combined designation of matter was not presented to Justice Toal such as hearings before other judges and papers filed after her involvement. The Respondents reply to this contention that Justice Toal was not specifically assigned to this matter, in fact, nothing in the record states Justice Toal was specifically assigned to Appellant's numerous civil actions in this matter. The Respondents further asserts that nothing in the record suggests that Judge McGee could not become familiar with this case. This was not designated as complex matter and assigned to one specific judge.

Therefore, Respondents respectfully asserts that Judge McGee reviewed the matter and decided that the facts and interferences reasonably deductible from them showed Plaintiff could not prevail on any theory of the case.

CONCLUSION

Therefore, for the reasons hereinabove, the Respondents Tricia L. Flowers, individually and as an owner and sole agent of Flowers Consulting LLC, respectfully requests the Court of Appeal to deny Appellant's Motion to Strike Portions of the Designation of Matter and other Motions Appellant filed under Rule 210(c) South Carolina Rules of Record on Appeal .

Respectfully Submitted,

MICHAEL C. TANNER L.L.C.

By : s/ Michael C. Tanner

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Bamberg, SC
August 24, 2026

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In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY
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CERTIFICATE OF SERVICE

Pursuant to Section (d)(1) of the Supreme Court's Order Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended April 24, 2024), the undersigned employee of Michael C. Tanner, L.L.C., counsel for Respondent Tricia L. Flowers and Flowers Consulting LLC ("The Respondent"), does hereby certify that service of The Respondent's **Response to Appellant's Motion to Strike Portions of the Designation of Matter be included in the record on Appeal, Motion to accept Record as filed and Motion to Stay Final Briefing Schedule until Court Rules on Motion to Strike Designations made out of compliance with SCACR Rule 210 (c)** in the above captioned matter was made upon Appellant by US mail and email on the 25th day of August 2026 as follows:

via email and USPS: scorequipment@gmail.com
Rhonda Meisner
PO Box 689
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MICHAEL C. TANNER, L. L. C.

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Aug 25 2026

SC Court of Appeals

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August 25, 2026

VIA EMAIL ONLY

The Honorable Jenny Abbott Kitchings

Clerk of Court

South Carolina Court of Appeals

Email: ctappfilings@sccourts.org

Re: Rhonda Meisner v. Grant Meisner; Grant Meisner, MD, LLC; Sheila Robinson; Erwin Mangubat, MD; Moore, Taylor, & Thomas, P.A.; Moore; Taylor Law Firm P.A.; Moore Bradley Myers Law Firm, PA; Tricia L. Flowers; Flowers Consulting, LLC; Richard G. Whiting, Esquire; Law Offices of Richard G. Whiting, PA.; John Doe (1-10) a fictional name assigned to identify parties that are not yet known or not yet determined.

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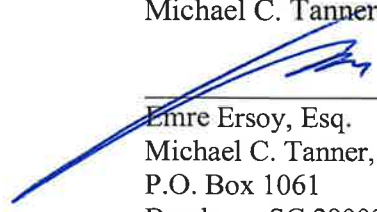
Dear Ms. Kitchings:

Pursuant to Section (b)(2) of the Supreme Court's Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As amended April 24, 2024), please find enclosed the Respondent Tricia L. Flowers and Flowers Consulting L.L.C. (the Respondent)'s Response to Appellant's Motion to Strike Portions of the Designation of Matter be included in the record on Appeal, Motion to accept Record as filed and Motion to Stay Final Briefing Schedule until Court Rules on Motion to Strike Designations made out of compliance with SCACR Rule 210 (c) for filing pursuant to Section (d)(1) of the same Supreme Court Order.

Please do not hesitate to contact me should you have any questions or concerns.

Sincerely,

Michael C. Tanner L.L.C.


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Enclosures

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