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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.

**RETURN OF RESPONDENT TO
PETITION FOR WRIT OF CERTIORARI**

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STATEMENT OF THE CASE

Petitioner filed his Summons and Complaint on May 31, 2022, two days before the running of the three-year statute of limitations on his claims for assault and battery, negligence, and gross negligence. (R. pp. 24-31). Because Petitioner filed but did not serve within the limitations period, actual service was required under S.C. Code Ann. § 15-3-20 and Rule 3(a), SCRCF within 120 days, that is, on or before September 28, 2022.

Petitioner made no attempt at service until August 31, 2022, the 92nd day after filing. (R. p. 85). On September 1, 2022, Petitioner's process server called Respondent. (R. pp. 85-88). The trial court found, and the Court of Appeals affirmed as supported by the record, that during that call Petitioner's process server misled Respondent into believing that the contact concerned the South Carolina Victim's Compensation Fund, a wholly separate proceeding in which Petitioner and his brother had been ordered to reimburse the Fund for the medical costs of the June 1, 2019 assault, and in which Respondent's criminal attorney did have actual authority to act. (R. pp. 4-13, 87-88). Respondent did not know that any civil action against him existed and did not authorize his criminal attorney to accept service of process in any civil action. (R. pp. 87-88). Respondent's belief was corroborated by a voicemail Petitioner's process server left the following day expressly stating, "this has nothing to do with . . . criminal charges." (R. p. 107).

Petitioner's process server then emailed only the Summons, not the Complaint, to Respondent's criminal attorney. (R. p. 67). The next day, the criminal attorney advised by email that he had no authority to accept service in any civil matter. (R. pp. 45-46). Petitioner's subsequent efforts at service by publication were also untimely and defective: the operative Petition for Publication was filed on the 122nd day after filing (two days beyond the § 15-3-20 and Rule 3(a) deadline); Petitioner then erroneously published the Court's Order for Publication

rather than the Summons required by § 15-9-740; and Petitioner's corrected publication of the Summons did not conclude until the 224th day after filing. (R. pp. 37-38, 84, 90; Op. at 2-3).

The trial court granted Respondent's Motion to Dismiss on September 19, 2023. (R. pp. 4-13). The Court of Appeals unanimously affirmed on three independent grounds. Cox v. Dimaggio, Op. No. 2026-UP-284 (S.C. Ct. App. filed June 10, 2026). Rehearing was denied July 16, 2026. This Return is timely under Rule 242, SCACR.

The Court of Appeals held, on the first ground, that the trial court did not abuse its discretion in finding no service on the criminal attorney "because evidence supports that Dimaggio did not know Cox was attempting service; thus, Dimaggio could not hold the criminal attorney out as possessing apparent authority to accept service on his behalf in this civil action." Op. at 2. The Court of Appeals affirmed on two additional grounds, namely, untimely and defective service by publication (Op. at 2-3), and unpreserved Rule 60(b) plus insufficient equitable tolling showing (Op. at 3-4). The Petition challenges only the first ground.

STANDARD OF REVIEW

Certiorari to the Court of Appeals is discretionary and is not a mechanism for reweighing supported findings of fact or reapplying settled law. Rule 226, SCACR. Underlying the Court of Appeals' review, and now this Court's, is the abuse-of-discretion standard for a trial court's ruling on the validity of service of process. *Graham Law Firm, P.A. v. Makawi*, 396 S.C. 290, 294-95, 721 S.E.2d 430, 432 (2012); *Miller v. Miller*, 375 S.C. 443, 452, 652 S.E.2d 754, 759 (Ct. App. 2007). A trial court's finding of fact that is supported by the evidence is binding. *Moore v. Simpson*, 322 S.C. 518, 524, 473 S.E.2d 64, 67 (Ct. App. 1996); see also *Ex parte S.C. Dep't of Revenue*, 350 S.C. 404, 566 S.E.2d 196 (Ct. App. 2002).

ARGUMENT

I. Every question presented turns on an unchallenged factual finding, that Respondent did not know Petitioner was attempting to serve a civil summons and complaint, and that finding is supported by the record and binding on this Court.

Each of the Petition's Questions Presented is a variant of one issue: whether Respondent's instruction that Petitioner's process server contact his criminal attorney, standing alone, appointed that attorney as Respondent's agent to receive service of a civil summons and complaint. Every version of that question depends on an antecedent factual finding that the trial court made against Petitioner and that the Court of Appeals affirmed as supported by the record: Respondent did not know a civil action existed. (R. pp. 4-13, 85-88).

That finding rests on record evidence that (i) Petitioner's process server represented that he was with the "victims' fund" (R. pp. 87-88); (ii) Respondent had a prior and active connection to the South Carolina Victim's Compensation Fund arising from Petitioner's and his brother's reimbursement obligation (R. pp. 87-88); (iii) the affidavit of Petitioner's process server states only that he told Respondent he had "some legal papers for him," without identifying those papers as a civil summons and complaint (R. p. 85); and (iv) Petitioner's own process server later left a voicemail expressly stating "this has nothing to do with . . . criminal charges," which corroborates that Respondent had been operating under the belief that the earlier contact concerned a criminal matter. (R. p. 107).

The Court of Appeals expressly credited the finding: "evidence supports that Dimaggio did not know Cox was attempting service; thus, Dimaggio could not hold the criminal attorney out as possessing apparent authority to accept service on his behalf in this civil action." Op. at 2 (emphasis added). Under *Graham Law Firm, Miller, and Moore*, that finding is binding on this Court.

The Petition does not challenge the finding. It does not argue the finding lacks evidentiary support. It does not argue Respondent's affidavit is inadmissible or discredited. Instead, the Petition's Question IV attempts to render the finding legally irrelevant by asserting that Rule 4(d)(1) "does not require a Defendant to understand the precise nature of documents." Pet. at 1, 11-12. That reframing misdescribes the finding. The trial court did not find that Respondent was confused about the label of documents he otherwise knew were being served in a lawsuit; it found that Respondent was misled about the very existence of the civil action. There is a categorical difference between confusion about the classification of known process and the absence of knowledge that any process in the case at bar was being served at all.

Because every question in the Petition presupposes that Respondent knew Petitioner was attempting to serve a civil summons and complaint, and because the trial court's unchallenged and record-supported finding is to the contrary, the Petition cannot get past the abuse-of-discretion review that governs. Certiorari should be denied on this ground alone.

II. Under Rule 4(d)(1), SCRCP, and this Court's decisions in Hamilton, Moore, Roberson, and Miller, a defendant misled about the very existence of a civil action cannot form the intent to appoint an agent to receive service of that action.

Rule 4(d)(1), SCRCP authorizes service on an individual "by delivering a copy to an agent authorized by appointment or by law to receive service of process." A Rule 4(d)(1) appointment requires an act of the principal manifesting intent to confer authority upon the agent to receive service in the specific action.

This Court and the Court of Appeals have said so repeatedly. In Hamilton v. Davis, 300 S.C. 411, 389 S.E.2d 297 (Ct. App. 1990), the Court held that "[a]ctual appointment for the specific purpose of receiving process normally is expected and the mere fact a person may be considered to act as defendant's agent for some purpose does not necessarily mean that the person has

authority to receive process." "[C]laims by one to possess authority to receive process or actual acceptance of process by an alleged agent will not necessarily bind the defendant. Rather, there must be evidence the defendant intended to confer such authority." Id. In Roberson v. Southern Fin. of S.C., Inc., 365 S.C. 6, 11, 615 S.E.2d 112, 115 (2005), this Court held that "apparent authority is when the principal knowingly permits the agent to exercise authority, or the principal holds the agent out as possessing such authority." (emphasis added). Both of the operative verbs in Roberson, "knowingly permits" and "holds . . . out," describe an intentional act of the principal that presupposes the principal's knowledge of the subject matter of the agent's authority.

The Court of Appeals' decision in Moore v. Simpson, 322 S.C. 518, 473 S.E.2d 64 (Ct. App. 1996), applies the Hamilton framework to facts strikingly close to those presented here and is directly controlling. In Moore, the plaintiffs' investigator went to a law firm and physically handed the summons and complaint in an attorney malpractice action to the firm's receptionist. Id. at 520-21, 473 S.E.2d at 65. The investigator averred that he had introduced himself, had identified the documents as a summons and complaint, and that the receptionist had said she would accept service. Id. The receptionist's affidavit told the opposite story: no one had identified the folded documents to her as legal process being served on the firm or on the attorney, and she had simply placed the papers in the attorney's mailbox in the ordinary course of her receptionist duties. Id. The trial court resolved that credibility conflict against the plaintiffs and quashed service. Id. at 521, 473 S.E.2d at 65-66.

The Court of Appeals affirmed. The panel held that "[w]ithout specific authorization to receive process, service is not effective when made upon an employee of the defendant, such as a secretary," and concluded, dispositively, that "[t]here simply is no evidence Simpson or the firm intended to confer authority, either express or implied, upon the receptionist to accept service of

process." Id. at 523-24, 473 S.E.2d at 66-67. The panel applied the abuse-of-discretion standard and held that because the trial court's finding was "supported by the evidence, it is binding on this court." Id. at 524, 473 S.E.2d at 67.

The framework Moore applies is the framework the Court of Appeals applied here, and the analogy runs directly in Respondent's favor. In Moore, the alleged agent (a) actually received the documents physically, (b) worked full-time in the office of the person for whom service was attempted, and (c) was said (though disputed) to have been told the documents were a summons and complaint. Service was still quashed for want of "specific authorization" and for want of any "evidence" that the principal "intended to confer authority." Here, the alleged agent (a) never received the documents in person (the Summons alone was emailed), (b) had no ongoing employment civil representation relationship with Respondent, (c) expressly disclaimed authority to accept service in the civil case in writing on the very next day immediately upon returning to the office, and (d) received the Summons in circumstances in which Respondent himself, as the trial court found, had been misled about the very existence of a civil action. If the receptionist's employment relationship and physical receipt of the papers in Moore were insufficient to confer authority, McDaniel's more attenuated criminal defense relationship, prompt written disclaimer, and the record-supported finding of fact that Respondent did not know a civil action existed compel the same result here with even greater force.

The broader South Carolina agency framework built around Roberson reaches the same conclusion by an independent route and confirms that a knowing act of the principal is what Rule 4(d)(1) requires. Roberson holds not only that "apparent authority is when the principal knowingly permits the agent to exercise authority, or the principal holds the agent out as possessing such authority," but also that as to implied authority, "an agent has no implied

authority unless she herself believed she had such authority." 365 S.C. at 11-12, 615 S.E.2d at 115 (citing 2A C.J.S. Agency § 136 (2004)). Attorney McDaniel expressly disclaimed authority to accept service in this civil action in writing the day after Petitioner's email. (R. pp. 45-46). Under Roberson, that written disclaimer forecloses implied authority as a matter of law. As to apparent authority, Frasier v. Palmetto Homes of Florence, Inc., 323 S.C. 240, 245, 473 S.E.2d 865, 867 (Ct. App. 1996), quoting the Restatement (Second) of Agency § 27 (1958) and Muller v. Myrtle Beach Golf & Yacht Club, 303 S.C. 137, 399 S.E.2d 430 (Ct. App. 1990), holds that apparent authority requires that "the principal must intend to cause the third person to believe that the agent is authorized to act for him, or he should realize that his conduct is likely to create such belief." A principal who does not know that a civil action exists cannot intend to cause a third person to believe his attorney is authorized to accept service of that action, and cannot "realize" that his conduct is likely to be so understood. Frasier itself confirms the point on facts less sympathetic than the record here: the Court of Appeals held that the original principal's lack of knowledge that his successor was using his corporate name and forms "does not rise to the level of 'conscious and voluntary inaction' necessary to establish apparent authority." Id. at 247, 473 S.E.2d at 868. If a principal's lack of knowledge that his corporate name and receipt books were being used defeated apparent authority in Frasier, Respondent's complete lack of knowledge that any civil action existed defeats apparent authority here.

Applied to the trial court's unchallenged findings, the rule of decision is straightforward. Respondent did not know Petitioner was attempting service of a civil summons and complaint. (R. pp. 4-13, 85-88). Respondent believed the process server was contacting him about the Victim's Compensation Fund matter, in which his criminal attorney did have authority to act. (R. pp. 87-88). A defendant unaware that a civil action exists cannot "knowingly permit" or "hold

out" an agent as possessing authority to accept service of that action. And such a defendant cannot form the antecedent intent to confer authority that Hamilton requires. It follows, on the correct legal standard applied to the unchallenged facts, that Respondent did not appoint his criminal attorney to receive service of Petitioner's civil summons and complaint under Rule 4(d)(1).

Instructive federal authority, though not binding on this Court, reinforces the point on facts substantially stronger for the party attempting service than the facts here. In United States v. Ziegler Bolt & Parts Co., 111 F.3d 878 (Fed. Cir. 1997), the United States Customs Service initiated administrative enforcement proceedings against Ziegler for customs violations and sought civil penalties of \$5,926,801. Id. at 879. Attorney Matthew Yackshaw represented Ziegler throughout those administrative proceedings. Id. When Ziegler refused to pay, Customs referred the matter to the Department of Justice, which filed a civil penalty action against Ziegler in the Court of International Trade arising from the same customs violations. Id. The Government attempted service by mailing the summons, complaint, and an Acknowledgment Form to Attorney Yackshaw. Id. at 880. Yackshaw returned the Acknowledgment Form signed as "Attorney for Defendant," filed an answer, and defended the case for twenty-two months. Id. Even on those facts, the Federal Circuit affirmed the quashing of service, holding that "the mere appointment of an agent, even with broad authority, is not enough; it must be shown that the agent had specific authority, express or implied, for the receipt of service of process." Id. at 881 (quoting 2 Moore's Federal Practice ¶ 4.10). The court further held that "[a]n agent's authority to act cannot be established solely from the agent's actions; the authority must be established by an act of the principal." Id. (quoting Federal Deposit Ins. Corp. v. Oaklawn Apartments, 959 F.2d 170, 175 (10th Cir. 1992)). Broad powers to represent a client in a related regulatory proceeding,

the court explained, "alone do not create a specific authority to receive service" in the follow-on judicial action. Ziegler Bolt, 111 F.3d at 881.

The analogy runs stronger still. In Ziegler Bolt, the attorney had actively represented the defendant in the underlying regulatory proceeding that gave rise to the civil enforcement action, and had gone so far as to sign an Acknowledgment Form and file an answer purporting to act as counsel of record, yet the Federal Circuit still held that no authority to receive service had been shown. Here, Attorney McDaniel represented Respondent only in a criminal matter, never signed an acknowledgment of service, and expressly disclaimed authority to accept service in this civil action within twenty-four hours of Petitioner's attempted email. (R. pp. 45-46). If Attorney Yackshaw's much more extensive prior engagement did not confer authority in the closely related civil enforcement action, McDaniel's narrower prior engagement, coupled with his prompt written disclaimer, cannot have conferred authority here.

The specific-authority-plus-act-of-the-principal rule that Ziegler Bolt applies is likewise reflected in the leading treatises and in the Restatement. See 4A Charles A. Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1097 (2d ed. 1987) (authority to accept process "need not be explicit" but "must either be express or implied from the type of relationship between defendant and the alleged agent"); Restatement (Third) of Agency §§ 2.01, 2.03 (2006) (actual and apparent authority both require a "manifestation" by the principal, defined in § 1.03 as "conduct by which a person expresses assent that another person will act on his behalf"). Together these authorities express the settled rule that authority for service must originate in a specific and knowing act of the principal, directed toward the receipt of service of the particular proceeding at issue. A principal who does not know the proceeding exists cannot perform that act.

The same first principle animates the settled national rule that service accomplished through the plaintiff's trickery or fraud will be set aside. See Commercial Mut. Accident Co. v. Davis, 213 U.S. 245 (1909); Tickle v. Barton, 142 W. Va. 188, 95 S.E.2d 427 (1956); Comment, Jurisdiction by Trickery: Enticement for Service of Process, 7 Duke L.J. 52, 52 (1957) (relief accorded "because the court will not sanction, even inferentially, such abuse or degradation of its process"). Those authorities are not binding on this Court, but their reasoning is instructive: a court will not permit a plaintiff to accomplish service through the plaintiff's own material misrepresentation to the defendant. That principle would be hollow if a plaintiff could not directly obtain service by trickery on the defendant's person yet could indirectly obtain service by trickery through an attorney the defendant would never have designated but for having been misled about the nature of the plaintiff's contact.

Petitioner's Question III, that the appointment could arise "contemporaneously" with the attempted service, does not save the Petition. The contemporaneous act on which Petitioner relies was Respondent's telephone instruction to contact his criminal attorney, made under the belief, expressly found by the trial court, that the process server's contact concerned a criminal or Victim's Compensation Fund matter. Under Roberson, the principal's manifestation must be one of knowing permission or holding out. A manifestation made under a mistaken belief about the very existence of the proceeding for which the alleged agent is being asked to accept service is not a knowing manifestation and cannot confer Rule 4(d)(1) authority.

The Petition's reliance on Humphries v. Spitz, 284 S.C. 521, 327 S.E.2d 370 (Ct. App. 1984), and Graham Law Firm v. Makawi, 396 S.C. 290, 721 S.E.2d 430 (2012), does not aid Petitioner either. Humphries involved a defendant who knew of the action and was given the summons and complaint by his alleged agent; Makawi holds only that an individual is competent

to confer authority on an agent. Neither dispenses with the requirement that the principal know of the action for which authority is being conferred.

Separately, and independently, the attempted service on the criminal attorney was defective on its face because it consisted of an email of only the Summons; the Complaint was not served. (R. p. 67). Rule 4(d), SCRCR requires that the Summons and Complaint be served together. No written acceptance of service has ever been produced. Even had the criminal attorney possessed the requisite authority, the manner of the attempted service would have been insufficient.

III. This case presents no novel or important question of law warranting certiorari.

The Court of Appeals decided this case by unpublished opinion under Rule 220(b), SCACR. Unpublished opinions "ha[ve] no precedential value" and are appropriate for cases resolved by settled law. Rule 268(d)(2), SCACR. The Court of Appeals' opinion here is a straightforward application of Rule 4(d)(1), Hamilton, Moore, Roberson, and Makawi to the trial court's record-supported findings. It creates no conflict with any prior decision of this Court, resolves no novel question of law, and involves no manifest error. Certiorari under Rule 226, SCACR should be denied.

CONCLUSION

For the reasons set forth above, Respondent Michael John Dimaggio respectfully requests that this Court deny the Petition for Writ of Certiorari and permit the June 10, 2026 decision of the South Carolina Court of Appeals to stand.

Respectfully submitted,

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