

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM SALUDA COUNTY
Court of Common Pleas

Honorable Walton J. McLeod, IV, Circuit Court Judge

Case No. 2025-CP-41-00150

Appellate Case Number: 2026-001043

Hugh Parks Price,

Appellant,

v.

Rebecca Bartley,

Respondent.

**RETURN OF APPELLANT IN OPPOSITION TO RESPONDENT'S MOTION TO
DISMISS**

Appellant Hugh Parks Price, appearing pro se, submits this Return in opposition to Respondent's Motion to Dismiss filed August 31, 2026, pursuant to Rule 240(c), SCACR, and this Court's Order filed September 9, 2026, which directs that any response be filed by September 10, 2026.

PRELIMINARY STATEMENT

Appellant begins with the matter that requires no argument. Respondent is correct that two of the six case citations appearing in Appellant's Initial Brief do not exist. Appellant withdraws both. He does not defend them. He does not attribute the error to any legal research service. He

does not ask this Court to overlook it. Appellant failed to verify those two citations against the reporters before filing, that obligation was his, and the failure is his alone.

Contemporaneously with this Return, Appellant has filed a Motion for Leave to File a Corrected Initial Brief that removes both citations and substitutes verified authority for the propositions they were offered to support. Appellant respectfully asks this Court to permit that correction and pledges that every authority in any future filing will be verified against the primary source before submission.

What remains for decision is whether an acknowledged and curable citation error warrants dismissal of an appeal that this Court reinstated on September 9, 2026 upon an express finding of good cause, and whose Initial Brief this Court has accepted as filed. It does not. Nor is this appeal moot. The action Respondent identifies is a separate lawsuit pleading separate incidents, and the claims dismissed below are now time-barred, so reversal is the only route by which they can be heard on their merits at all.

ARGUMENT

I. APPELLANT WITHDRAWS THE TWO DEFECTIVE CITATIONS AND HAS MOVED TO CORRECT THE BRIEF.

A. The two citations are withdrawn without qualification.

First. The Initial Brief cited *Lawson v. Family Dollar Stores, Inc.*, 387 S.C. 368, 375, 692 S.E.2d 656, 659 (Ct. App. 2010), at page 5, for the proposition that a substantive answer to the merits constitutes a general appearance waiving objection to service. No such decision exists. Volume 387 of the South Carolina Reports at the cited page falls within *Friends of the Earth v. Public Service Commission*, 387 S.C. 360, 692 S.E.2d 910 (2010), an unrelated decision. The

parallel citation, 692 S.E.2d 656, is occupied by *Harris v. Commonwealth*, 56 Va. App. 253, 692 S.E.2d 656 (2010), a decision of the Court of Appeals of Virginia. The two citations do not correspond to one another, and neither corresponds to any South Carolina decision. The citation is withdrawn.

Second. The Initial Brief cited *R.F.P. v. S.C. Department of Social Services*, 417 S.C. 419, 428, 790 S.E.2d 11, 16 (Ct. App. 2016), at page 7, for the proposition that entry of default is a ministerial act. No such decision exists. Volume 417 of the South Carolina Reports at that location contains In the *Matter of Allocco*, 417 S.C. 417, 790 S.E.2d 388 (2016), an unrelated matter. No decision was located at 790 S.E.2d 11. The citation is withdrawn.

Appellant states plainly that he did not independently verify these two citations against the reporters before filing his brief. He should have done so. He offers the Court no excuse for not having done so.

B. The propositions those citations were offered to support are established by verified authority.

The withdrawal of a defective citation does not leave the underlying arguments unsupported. Both propositions are addressed by real, published South Carolina authority, which the corrected brief substitutes.

On the ministerial character of entry of default, this Court has held that entry of default is a ministerial act which the clerk is required to perform once default is made to appear by the affidavit of the moving party. *Stark Truss Co. v. Superior Construction Corp.*, 360 S.C. 503, 602 S.E.2d 99 (Ct. App. 2004) (citing *Thynes v. Lloyd*, 294 S.C. 152, 153–54, 363 S.E.2d 122, 123 (Ct. App. 1987)). See also *Wetzel v. Woodside Development Ltd. Partnership*, 364 S.C. 589, 615 S.E.2d 437 (2005) (distinguishing the clerk's entry of default under Rule 55(a), SCRCPP, from the judicial

act of entering default judgment). This authority states the proposition advanced in the Initial Brief more directly than the withdrawn citation purported to.

On the effect of Respondent's appearance, Appellant has verified the governing law and, in candor to this Court, narrows the argument accordingly. Under Rule 12(h)(1), SCRCP, the defense of insufficiency of service of process is preserved when raised by motion or in a responsive pleading, and this Court has held that the pre-Rules doctrine treating a general appearance as an automatic waiver of that objection did not survive the adoption of the Rules. *Dunbar v. Vandermore*, 295 S.C. 493, 369 S.E.2d 150 (Ct. App. 1988). Dunbar also recognizes, however, that Rule 12 marks the outer limit of express waiver and does not preclude waiver by implication, and that a defendant who seeks relief beyond the jurisdictional objection may thereby acknowledge the court's jurisdiction over her person. *Id.*; *Smalls v. Weed*, 291 S.C. 258, 353 S.E.2d 154 (Ct. App. 1987). Issue II of the corrected brief is confined to that narrower ground, and its statement of the issue is conformed to it. Appellant discloses this narrowing to the Court rather than leaving it to be discovered.

C. The remaining authorities have been verified, and one further correction is made.

Appellant has verified every remaining authority in the Initial Brief against the primary sources. *Cone v. Nettles*, 308 S.C. 109, 417 S.E.2d 523 (1992), *Hafer v. Melo*, 502 U.S. 21 (1991), and *Kentucky v. Graham*, 473 U.S. 159 (1985), are correctly cited and correctly characterized.

Appellant further identifies, on his own initiative and without prompting from Respondent, that the Initial Brief cited *Crowder v. Franklin*, No. 2005-UP-588 (S.C. Ct. App. Nov. 17, 2005). That decision is genuine, but it is unpublished, and Rule 268(d)(2), SCACR, provides that unpublished opinions have no precedential value and should not be cited except in proceedings in

which they are directly involved. The corrected brief removes the citation. The proposition it was offered to support is established by Hafer and Graham, which the brief already cites.

II. THE CITATION ERROR IS NOT A GROUND FOR DISMISSAL UNDER RULE 269 OR RULE 208, SCACR.

A. Respondent's own characterization of the brief defeats the frivolousness ground.

Respondent concedes in the same paragraph in which it seeks dismissal that Appellant's brief "facially appears to contain coherent arguments and all the elements listed in SCACR 208." That concession is fatal to Section III of the motion. Rule 269, SCACR, is directed at appeals, petitions, motions, and returns that are without merit or interposed for delay. An appeal presenting four preserved questions of law, in a brief that opposing counsel describes as coherent and complete in its elements, is not frivolous because two of its six citations were not verified. Frivolousness is a judgment about the substance of a litigant's position. It is not a judgment about the accuracy of a table of authorities.

B. Rule 269 requires ten days' notice, which has not issued.

Rule 269, SCACR, permits the appellate court to impose sanctions upon its own motion or that of a party, after ten days notice. No such notice has issued in this appeal, and Respondent's motion is not styled as a motion for sanctions. Appellant addresses the point solely to make clear that he does not dispute the facts on which any such notice would rest, and that he has acted to cure the defect at the first opportunity following its identification.

C. The decision Respondent relies upon declined to dismiss on far greater noncompliance.

Respondent quotes *Henning v. Kaye*, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992), for the observation that the Appellate Court Rules are not mere technicalities. Respondent omits what

the Supreme Court did next. Confronting what it described as the appellant's numerous violations of the Rules, and stating that it would have been completely justified in dismissing the appeal on that basis, the Court declined to dismiss and reached the merits. Henning is therefore authority for the proposition that this Court should correct rather than dismiss, and Appellant has already moved to make that correction.

D. This Court has accepted the brief, and the defect is being cured within the time already set.

By Order filed September 9, 2026, this Court accepted the Initial Brief and Designation of Matter as filed and directed Appellant to serve them on Respondent within ten days. The corrected brief will be served within that same period. Dismissing an appeal for the form of a brief the Court has just accepted, when the deficiency is acknowledged and cured within the window the Court itself established, would impose the most severe sanction available for a defect that costs the Court and Respondent nothing.

E. Rule 208 supplies no remedy of dismissal for an inaccurate entry.

The requirement of a table of authorities appears at Rule 208(b)(1)(A), SCACR. The Initial Brief contains a Table of Authorities. Respondent's objection is that two entries in it were wrong, not that the table was omitted or that the brief lacks any required element. Rule 208 prescribes the contents of a brief; it does not make an erroneous citation a dismissible defect. The ordinary and proportionate remedy is correction, which Appellant seeks.

Appellant observes, without seeking any relief on account of it and without any suggestion of bad faith, that Respondent's motion repeatedly captions the underlying action as "Parks v. Bartley" when the action is, and has always been, Price v. Bartley. Appellant raises this only to make a single point: error in a filing is not the same thing as frivolousness in an appeal. Appellant asks that the same understanding be extended to him.

III. THE APPEAL IS NOT MOOT.

Appellant does not dispute Respondent's statements of the governing law. A moot case is one in which a judgment would have no practical legal effect upon an existing controversy because an intervening event has rendered effectual relief impossible. *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006). Applied to this record, that standard defeats Respondent's motion rather than supporting it.

A. Case No. 2026-CP-41-00059 is not a re-filing of this action.

Appellant did not re-file the complaint that was dismissed below. Case No. 2026-CP-41-00059 is a separate action between the same two parties arising from separate incidents and pleading claims that are independent of those asserted in Case No. 2025-CP-41-00150. The two actions share a plaintiff and a defendant. They do not share a subject matter.

Respondent's contrary assertion rests on nothing this Court can evaluate. Respondent has not attached the complaint in 2026-CP-41-00059, has not attached the Amended Complaint in this action, and has not compared them. Respondent has also misidentified the very action on which its mootness argument depends, captioning it "*Parks v. Bartley*". As the moving party, Respondent bears the burden of establishing the intervening event that would render relief impossible. An unsupported characterization of a pleading that is not before this Court does not carry that burden.

B. Reversal would have concrete practical effect.

Two consequences follow from reversal that cannot be obtained in any other proceeding.

First, reversal would restore Appellant's Motion for Entry of Default, filed October 23, 2025 under Rule 55(a), SCRCF, together with its supporting memorandum and affidavit. That motion has never been ruled upon. It exists only in Case No. 2025-CP-41-00150. It cannot be transported into a separate action arising from different facts. The relief Appellant seeks on this

appeal, in part, is a ruling on a motion that has been pending on the circuit court's docket for more than ten months. That is a practical legal effect within the meaning of Sloan.

Second, the claims dismissed below can no longer be brought in a new action. The conduct pleaded in the Amended Complaint occurred in 2023 and 2024. The limitations period for libel and slander in South Carolina is two years. S.C. Code Ann. § 15-3-550(1). Appellant contends that the limitations period on the claims pleaded in this action has run and that he is therefore unable to re-plead them. Where that is so, a dismissal styled "without prejudice" is without practical consequence: the plaintiff cannot reinstitute the action, and the dismissal operates with the finality of one entered with prejudice. *Mende v. Conway Hospital, Inc.*, 304 S.C. 313, 404 S.E.2d 33 (1991); *McComas v. Ross*, 368 S.C. 59, 626 S.E.2d 902 (Ct. App. 2006). Respondent's argument depends entirely on the premise that Appellant has an alternative forum for these claims. He does not. If this appeal is dismissed, the claims are extinguished without ever having been examined.

C. Neither of Respondent's authorities reaches this situation.

Sloan v. Friends of the Hunley concerned a Freedom of Information Act request that had been fully satisfied before the appeal was heard, so that nothing remained to be ordered. Neither case involved a dismissal without prejudice followed by the expiration of the limitations period, and neither involved a dispositive motion left pending and unresolved in the court below. Even were mootness otherwise present, this Court retains jurisdiction over questions capable of repetition yet evading review and over decisions carrying collateral consequences for the parties. *Curtis v. State*, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001).

IV. SECTION II OF THE MOTION HAS BEEN RESOLVED BY THIS COURT'S ORDER OF SEPTEMBER 9, 2026.

Section II of Respondent's motion argues that Appellant's motion to reinstate was untimely under Rule 260(a), SCACR. This Court has already considered and decided that question. By Order filed September 9, 2026, after expressly quoting Rule 260(a) and noting that no return to the motion to reinstate had been filed, this Court granted the motion, reinstated the appeal, and accepted the Initial Brief and Designation of Matter as filed. Respondent, which had the opportunity to oppose reinstatement while that motion was pending and did not do so, raised the objection for the first time on August 31, 2026. The ground is now moot.

V. APPELLANT CONSENTS TO THE RELIEF SOUGHT IN SECTION IV OF THE MOTION.

Appellant does not oppose Respondent's request that briefing deadlines be suspended and that Respondent's brief be due seven days after disposition of the motion to dismiss. Appellant has never filed any motion, pleading, or brief in this or any related matter for the purpose of delay, and he consents to the enlargement so that both parties may be heard in an orderly sequence.

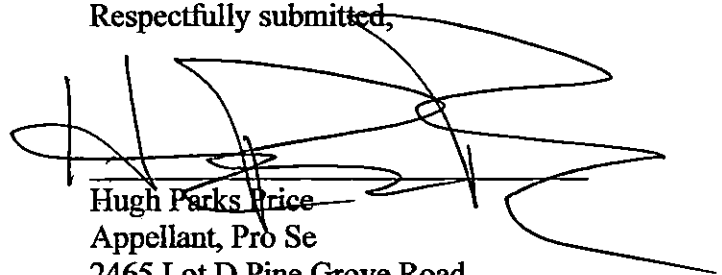
CONCLUSION

Appellant has acknowledged his error, withdrawn the defective citations, verified every remaining authority, identified a further citation defect Respondent did not raise, and disclosed a narrowing of one argument that his own verification required. He asks nothing of this Court that it has not already indicated a willingness to grant, and he asks for no indulgence beyond the opportunity to have four preserved questions of law decided on their merits.

For the foregoing reasons, Appellant respectfully requests that this Court deny Sections I, II, and III of Respondent's Motion to Dismiss; grant Section IV of that motion; grant Appellant's

contemporaneously filed Motion for Leave to File a Corrected Initial Brief; and allow this appeal to proceed to decision on the merits.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'Hugh Parks Price', is written over the typed name and address.

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Dated: September 8, 2026

10, 2026

CERTIFICATE OF SERVICE

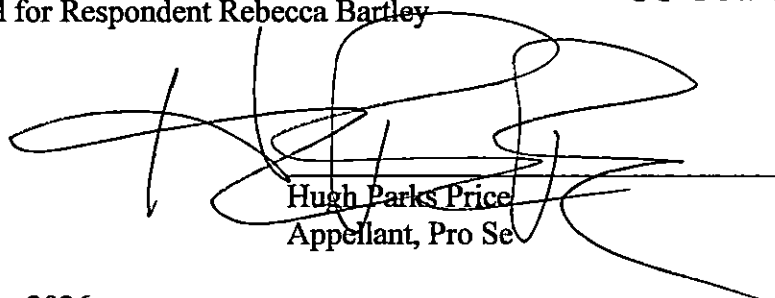
I hereby certify that on the date set forth below I served a true and correct copy of the foregoing Return of Appellant in Opposition to Respondent's Motion to Dismiss upon counsel for Respondent by first-class United States mail, postage prepaid, and by electronic mail, addressed as follows:

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Hugh Parks Price
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Dated: September 10, 2026