THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Court of Common Pleas
Eugene P. Warr, Jr., Circuit Court Judge

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SC Court of Appeals

Appellate Case No. 2026-000211
Circuit Court Case No. 2025-CP-10-03621

Joel Ndunda,

Appellant,

v.

Brandi Pfeil, LP-A, Crisis Intervention Employee, individually and officially; Caitlin McGarty, Crisis Intervention Employee, individually and officially; South Carolina Department of Behavioral and Developmental Disabilities, Office of Mental Health; and Charleston Dorchester Mental Health Center,

Defendants,

Of which Brandi Pfeil, Caitlin McGarty, and Charleston Dorchester Mental Health Center are the Respondents.

APPELLANT'S NOTICE OF RETRACTION REGARDING APPELLANT'S RETURN

IN

OPPOSITION TO RESPONDENTS' MOTION TO STAY

TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS:

Appellant Joel Ndunda, appearing pro se, respectfully submits this notice to retract a single statement in Appellant's Return in Opposition to Respondents' Motion to Stay Deadline for Initial Brief of Respondents, or, Alternatively, for Extension of Deadline to August 31, 2026, filed August 25, 2026.

That Return stated, in comparing Respondents' two requested forms of relief: "Appellant respectfully submits that a fixed date serves the interests of both parties and this Court more directly than a stay of undefined duration, and that Respondents' own motion supplies the more appropriate form of relief as an alternative to the one Appellant opposes." Appellant retracts, specifically, the statement that "Respondents' own motion supplies the more appropriate form of relief as an alternative to the one Appellant opposes." Appellant does not agree, and did not intend to state, that any procedural mechanism proposed by Respondents is proper or appropriate. Appellant's position, as set forth in Appellant's Motion for Summary Reversal and Vacatur of the Order of Dismissal on the Ground of Extrinsic Fraud on the Tribunal or, in the Alternative, to Supplement the Record Pursuant to Rule 212, SCACR (the "Subject Motion"), is that this Court's inherent authority to vacate a judgment procured by fraud upon the tribunal exists independent of, and is not conditioned upon, any procedural vehicle or accommodation Respondents propose. Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 245–46 (1944); Chewning v. Ford Motor Co., 354 S.C. 72, 80, 579 S.E.2d 605, 609 (2003). The retracted statement is withdrawn in full and should not be considered part of Appellant's position on any matter before this Court.

Appellant further notes that today is September 15, 2026. The August 31, 2026 date Respondents proposed and Appellant declined to oppose has itself now passed without a brief having been filed and without this Court having ruled on Respondents' motion. Respondents' characterization of that date as relief that would work no undue prejudice does not account for its passage. Rule 60(b)(3), SCRCP, the alternative vehicle Respondents' own Return identifies, must be made not more than one year after the judgment was entered, a period that expires November 3, 2026. Appellant is not, by this notice, moving for leave to file such a motion. Appellant respectfully requests only that, if this Court does not grant the relief requested in the Subject Motion, this Court permit Appellant the opportunity to seek that leave within the time limits prescribed by Rule 60(b), SCRCP, so that the continued pendency of motions in this appeal does not, by its own duration, foreclose relief Respondents' own filings represent as available.

Respectfully submitted,

s/ Joel Ndunda
Joel Ndunda
Pro Se Appellant
4015 Laurelwood Drive
Charleston, South Carolina 29414
geospatial02@outlook.com
(843) 822-4869

Date: September 15, 2026

CERTIFICATE OF SERVICE

I hereby certify that on the date indicated below, a true and correct copy of the foregoing Appellant's Notice of Retraction Regarding Appellant's Return in Opposition to Respondents' Motion to Stay was served upon counsel for Respondents by first-class United States Mail, postage prepaid, addressed to:

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Zachary Meade Kern, Esquire
Brian Lee Quisenberry, Esquire
Stephen Lynwood Brown, Esquire
Russell Grainger Hines, Esquire
Clement Rivers, LLP
P.O. Box 993
Charleston, South Carolina 29402

Date: September 16, 2026

s/ Joel Ndunda
Joel Ndunda, Pro Se Appellant

JOEL NDUNDA
4015 LAURELWOOD DR
CHARLESTON, SC 29414

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JENNY ABBOT KITCHINGS
SC COURT OF APPEALS
1220 SENATE STREET
COLUMBIA, SC 29201

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