

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
Eleventh Judicial Circuit

The Honorable Walton J. McLeod, IV, Circuit Court Judge

Appellate Case No. 2026-001043
Civil Action No. 2025-CP-41-00150

HUGH PARKS PRICE,

Appellant,

v.

REBECCA BARTLEY,

Respondent.

CORRECTED AND AMENDED INITIAL BRIEF OF APPELLANT

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STATEMENT OF THE ISSUES ON APPEAL

I. Did the circuit court err as a matter of law in holding that service upon Respondent—a civilian Victim’s Advocate employed by the Saluda County Sheriff’s Department, who is not a sworn or commissioned officer and holds no office established by law—was governed by Rule 4(d)(5), SCRCPP, which applies to an officer or agency of State, rather than by Rule 4(d)(1), SCRCPP, which governs service upon an individual?

II. Did Respondent waive her objection to the sufficiency of service of process where, appearing ninety-one days after her answer deadline and eighty-four days after Appellant moved for entry of default, she asked the circuit court to grant her affirmative relief—leave to answer out of time—while simultaneously contesting the court’s authority over her person?

III. Did the circuit court err in dismissing the action without resolving Appellant’s Rule 55(a) motion for entry of default, filed October 23, 2025, or his Motion to Compel Entry of Default, filed March 16, 2026, both of which were pending and unresolved when the court ruled, and where Respondent never sought relief from her default under Rule 55(c), SCRCPP?

IV. Was dismissal an abuse of discretion where Respondent received the Summons and Amended Complaint in hand, had one hundred twenty-one days of undisputed actual notice before appearing, and identified no prejudice—and does Appellant’s separate action, arising from different events, render this appeal moot?

STATEMENT OF THE CASE

This is an appeal from an order dismissing a civil tort action for insufficient service of process. Appellant Hugh Parks Price, proceeding pro se, commenced this action on July 14, 2025, by filing a Summons and Complaint in the Saluda County Court of Common Pleas, Civil Action No. 2025-CP-41-00150. (Complaint p. 2.) An Amended Complaint was filed August 12, 2025. (Amended Complaint p. 1.)

The action sounds in tort. The Amended Complaint asserts four causes of action against Respondent Rebecca Bartley: (I) defamation, libel, and slander per se; (II) civil conspiracy; (III) malicious prosecution; and (IV) abuse of process. (Amended Complaint pp. 5-7.) It seeks compensatory damages of \$72,600 or more, presumed damages on the per se claims, punitive damages, costs and fees, pre- and post-judgment interest, and injunctive relief restraining Respondent from making further false reports or statements concerning Appellant. (*Id.* at pp. 7-8.) The mode of trial demanded was trial by jury. The amount involved on appeal is the entirety of Appellant's claim, no portion of which has been adjudicated on the merits. There have been no changes in the parties by death, substitution, or otherwise.

Respondent's defense, as set forth in her Answer, consists of ten enumerated defenses: failure to state a claim upon which relief can be granted; sovereign immunity; discretionary immunity; immunity under the South Carolina Tort Claims Act; prosecutorial immunity; truth as a defense to defamation; failure to mitigate; testimonial privilege; contributory negligence; and insufficiency of service of process. (Answer pp. 1-5.)

On September 16, 2025, process server Kathrine Thomas served Respondent with the Summons and Amended Complaint at 100 Law Enforcement Way, Saluda, South Carolina 29138. A notarized Affidavit of Service reflecting delivery at 2:30 p.m. that day was filed with the court. (Affidavit of Service p. 1.) Respondent's answer was due on or before October 16, 2025. Rule 12(a), SCRCP. No responsive pleading was filed by that date.

On October 23, 2025, Appellant filed a Motion for Entry of Default, a Memorandum in Support, and a supporting Affidavit pursuant to Rule 55(a), SCRCP. (Motion for Entry of Default p. 1; Affidavit p. 1.) The Clerk of Court for Saluda County did not enter default upon the calendar.

On January 15, 2026, counsel for Respondent filed a Special Notice of Appearance; a document captioned “Notice of Motion and Motion to Dismiss or, Alternatively, for Leave to File Answer Out of Time”; and an Answer. (Motion to Dismiss p. 1; Answer p. 1.) The motion was brought “pursuant to Rule 6(b) of the South Carolina Rules of Civil Procedure,” and asserted that “good cause exists for this requested relief.” (Motion to Dismiss p. 1.) It further asserted, in a footnote, that “[t]he Sheriff must be substituted as the party defendant” under S.C. Code Ann. § 15-78-70(c). (Motion to Dismiss p. 1 n.1.) Respondent did not move under Rule 55(c), SCRCP, for relief from default, and did not respond to Appellant’s pending Rule 55(a) motion.

On March 16, 2026, Appellant filed a Motion to Compel Entry of Default. (Motion to Compel p. 1.)

A hearing on Respondent’s Motion to Dismiss was held before the Honorable Walton J. McLeod, IV, on March 26, 2026. (Tr. p. 3, line 2.) At that hearing, Appellant raised the pendency of his Rule 55(a) motion and his Motion to Compel Entry of Default. (Tr. p. 4, lines 5-20; p. 13, line 12 – p. 14, line 18; p. 20, lines 12-16.)

By Order filed April 1, 2026, the circuit court granted Respondent’s Motion to Dismiss for insufficient service of process. The dismissal was without prejudice. The Order did not address Appellant’s Rule 55(a) motion or his Motion to Compel Entry of Default. (Order of Dismissal pp. 1-3.)

Appellant served and filed his Notice of Appeal on April 27, 2026, within thirty days of the Order. Rule 203(b)(1), SCACR. Following administrative dismissal and subsequent reinstatement for good cause by order filed September 9, 2026, this Corrected and Amended Initial Brief is submitted pursuant to Rule 208, SCACR.

STANDARD OF REVIEW

The same standard of review does not govern all of the issues presented. Accordingly, pursuant to Rule 208(b)(1)(D), SCACR, a separate statement of the applicable standard of review is set forth at the start of the argument on each issue.

ARGUMENT

I. THE CIRCUIT COURT ERRED AS A MATTER OF LAW IN APPLYING RULE 4(d)(5), SCRCP, TO A CIVILIAN EMPLOYEE WHO IS NOT AN OFFICER OR AGENCY OF STATE.

Standard of Review

The construction of a rule of civil procedure is a question of law. *Wetzel v. Woodside Dev. Ltd. P'ship*, 364 S.C. 589, 594-95, 615 S.E.2d 437, 439 (2005) (construing Rule 4, SCRCP, as a matter of law and holding that the circuit court applied the wrong subsection). Whether Rule 4(d)(5), SCRCP, governs service in this action is such a question, and this Court decides it *de novo* with no deference to the circuit court's conclusion.

A. Rule 4(d)(5) applies to an officer or agency of State; Rule 4(d)(1) governs service upon an individual.

Rule 4(d)(5), SCRCP, provides for service:

Upon an officer or agency of State by delivering a copy of the summons and complaint to such officer or agency and by sending a copy of the summons and complaint by registered or certified mail to the Attorney General at Columbia.

Rule 4(d)(1), SCRCP, provides for service upon an individual “by delivering a copy of the summons and complaint to him personally.”

The two provisions serve different functions. Rule 4(d)(5) exists so that the State receives notice of actions brought against its officers and agencies as such, enabling the Attorney General to protect the State's interest. Rule 4(d)(1) governs service upon individuals. Two independent grounds establish that Rule 4(d)(1), not Rule 4(d)(5), governs here.

B. The attributes of state officership identified in *Cone v. Nettles* are absent.

In *Cone v. Nettles*, 308 S.C. 109, 112, 417 S.E.2d 523, 524 (1992), our Supreme Court held that sheriffs and their deputies are state rather than county officials. *Cone* arose under 42

U.S.C. § 1983 and identified four attributes, drawn from *Gulledge v. Smart*, 691 F. Supp. 947 (D.S.C. 1988), *aff'd*, 878 F.2d 379 (4th Cir. 1989) (table): (1) the South Carolina Constitution establishes the office and the term, S.C. Const. art. V, § 24; (2) duties and compensation are set by the General Assembly; (3) arrest powers relate to state offenses; and (4) the Governor has authority to remove a sheriff for misconduct.

Respondent possesses none of them. A civilian Victim's Advocate is a non-sworn, non-commissioned support employee who provides administrative and counseling services to crime victims. (Amended Complaint p. 1; Answer p. 1.) No provision of the South Carolina Constitution establishes the position. The General Assembly has not constituted it a state office. It carries no arrest authority and no sovereign governmental power. The Governor has no appointment or removal authority over it. Respondent is an employee, not an officer of the State.

The holding of *Cone* is confined to sworn law enforcement officers exercising the constitutional and statutory functions of the sheriff's office. Its reasoning is expressly agency reasoning: a deputy is a state official because, "as an agent of the sheriff," he is "more closely connected to the state than to the county." *Cone*, 308 S.C. at 112, 417 S.E.2d at 524. That rationale depends on the statutory relationship between a sheriff and his deputies. It does not reach an employee who is neither.

Our Supreme Court has drawn precisely this line. In *Heath v. County of Aiken*, 295 S.C. 416, 368 S.E.2d 904 (1988)—one of the two decisions the Court cites whenever it states that sheriffs and deputies are State rather than county personnel—the Court explained that a deputy "acts as his sheriff's agent under South Carolina law" by force of section 23-13-50, which empowers a deputy to perform "any and all of the duties appertaining to the office of his principal." The Court then held: "The common and statutory law which shapes the relationship between sheriff and deputy *does not carry over* to a sheriff's relationship with other department personnel." *Id.* Appellant acknowledges that *Heath* arose under section 4-9-30(7) of the South Carolina Code rather than under Rule 4, and he does not suggest it decided a service question.

He relies on it for the proposition it does decide: that the legal relationship which makes a deputy an arm of the sheriff has no application to other sheriff's department personnel.

Extending Rule 4(d)(5) to non-sworn support personnel would sweep in dispatchers, clerks, victim advocates, and custodial staff, and would require service upon the Attorney General before any civilian county employee could be sued on any claim. Nothing in the text of the rule supports that result, and no published South Carolina decision has so held.

The motion the circuit court granted rested on that unsupported extension. It asserted that Respondent "is employed by the Sheriff making her a state official," citing *Cone*. (Motion to Dismiss p. 1.) But *Cone* held that sheriffs and deputies are state officials; being *employed by* a sheriff is not the same as being one. The motion's only other authority was an unpublished memorandum opinion, which under Rule 268(d)(2), SCACR, has "no precedential value" and "should not be cited except in proceedings in which [it is] directly involved." Neither authority supplies the proposition for which it was offered.

C. The capacity designation in the pleading does not convert an employee into an officer of State.

Rule 4(d)(5) turns on what the defendant *is*, not on the capacity in which she is sued. The rule applies to "an officer or agency of State." Whether a defendant occupies such an office is a question about her position—whether the office is established by law, whether its duties and compensation are fixed by the General Assembly, whether it carries sovereign authority. A capacity designation in a caption does not create an office where none exists, and does not transform a non-sworn support employee into a constitutional or statutory officer.

Respondent is an employee of the Saluda County Sheriff's Department. She is not the Department, and Rule 4(d)(5) directs delivery "to such officer or agency"—terms that describe the office or the agency itself, not every person the agency employs. Reading the rule to reach all agency personnel would require service upon the Attorney General before any county employee could be sued, whatever the claim.

D. The sole authority offered below does not support the ruling and could not properly be cited.

Respondent's motion reduced the question to a single sentence: "Defendant is *employed* by the Sheriff making her a state official." (Motion to Dismiss p. 1.) That is the whole of the reasoning, and it contains the error. *Cone* holds that sheriffs and deputies are state officials because of the office they hold. Employment by a sheriff is not the same as holding the office of sheriff or deputy, and Respondent identified no authority extending *Cone* to non-sworn personnel.

The only case Respondent cited for dismissal was *Crowder v. Franklin*, Op. No. 2005-UP-588 (S.C. Ct. App. filed Nov. 17, 2005), an unpublished opinion. Rule 268(d)(2), SCACR, provides that such decisions "have no precedential value and should not be cited except in proceedings in which they are directly involved." Neither party here was involved in *Crowder*. Moreover, *Crowder* addressed a sheriff's department and an individually named respondent; it did not consider whether a non-sworn civilian employee is an officer of State, which is the question this case presents. Appellant has located no South Carolina decision addressing that question, and he does not suggest that one exists.

Because Respondent is not an officer or agency of State, Rule 4(d)(1), SCRCP, governed. Respondent was personally served under that subsection on September 16, 2025, service was proper, and the circuit court acquired personal jurisdiction over her.

II. RESPONDENT WAIVED ANY OBJECTION TO SERVICE BY SEEKING AFFIRMATIVE RELIEF FROM THE CIRCUIT COURT WHILE CONTESTING ITS AUTHORITY OVER HER PERSON.

Standard of Review

This Court reviews a circuit court's determination regarding waiver of a personal jurisdiction defense for abuse of discretion. *Maybank v. BB&T Corp.*, 416 S.C. 541, 566, 787

S.E.2d 498, 511 (2016). Whether the governing legal standard was correctly identified is a question of law reviewed *de novo*.

A. Rule 12(h)(1) marks the outer limits of express waiver; it does not preclude waiver by implication.

Appellant acknowledges at the outset that Rule 12(b), SCRCP, provides that “[n]o defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion.” The pleading of alternative defenses alongside a service objection does not, standing alone, effect a waiver. Appellant does not contend otherwise, and this issue does not rest on the mere number or character of the defenses Respondent pleaded.

The controlling principle is narrower. In *Maybank*, our Supreme Court adopted the federal rule that a delay in pressing a personal jurisdiction challenge “may result in waiver, even where the defense was asserted in a timely answer,” 416 S.C. at 565, 787 S.E.2d at 510, and quoted with approval the holding that Rule 12(h) “sets only the outer limits of waiver; it does not preclude waiver by implication.” *Yeldell v. Tutt*, 913 F.2d 533, 539 (8th Cir. 1990), *quoted in Maybank*, 416 S.C. at 565, 787 S.E.2d at 510. A party may therefore preserve an objection in writing and still waive it by conduct inconsistent with that reservation.

Appellant further acknowledges *Dunbar v. Vandermore*, 295 S.C. 493, 369 S.E.2d 150 (Ct. App. 1988), in which this Court declined to find waiver where a defendant obtained an extension of time after reserving a jurisdictional objection, reasoning that otherwise “there would then be no way a person could raise this objection without simultaneously waiving it.” *Dunbar* is not to the contrary. Obtaining an extension of time is a step taken to preserve the ability to respond; it asks the court to decide nothing. What Respondent did here is different in kind.

B. Respondent asked the court to exercise the very authority she denied it possessed.

Respondent did not simply object to service. She moved “pursuant to **Rule 6(b)** of the South Carolina Rules of Civil Procedure”—the rule governing enlargement of time—for an order

dismissing the Amended Complaint “or, alternatively, for Leave to File an Answer Out of Time,” and asserted that “*good cause exists for this requested relief.*” (Motion to Dismiss p. 1.) An application under Rule 6(b) asks the court to exercise its discretion over the moving party’s own deadline. A court without personal jurisdiction over a defendant cannot enlarge that defendant’s time to plead; the power to excuse a default and admit an untimely answer is an exercise of authority over the party invoking it.

At the hearing, counsel described his own position in plain terms. Having explained that he had submitted an answer together with his motion, he told the circuit court: “So I’ve kind of gone at it both ways.” (Tr. p. 8, lines 4-7.) He then set out the two paths: dismissal for improper service, or, alternatively, “the Court decides that I should be allowed to answer out of time, *not looking at the issue of whether service is or is not appropriate.*” (Tr. p. 8, lines 11-13.) He returned to the image later: “One road leads down just dismissal because he is not properly serving. The other fork in the road is to allow me to answer out of time.” (Tr. p. 10, line 24 – p. 11, line 2.) And he confirmed that he had moved in the alternative “even if he had the entry of default, to have it set aside for good cause.” (Tr. p. 19, lines 12-14.)

The second path is the one that matters. A request to answer out of time “not looking at the issue of whether service is or is not appropriate” asks the circuit court to set the jurisdictional question aside and exercise its discretion over Respondent’s deadline regardless of how that question comes out. A court without authority over a party cannot do that. Counsel did not offer the two positions as alternatives to be resolved in sequence; he offered them as independent grounds on which the court might act, and invited it to act on the second without deciding the first.

Respondent went further still. In a footnote, she asked that “[t]he Sheriff *must be substituted* as the party defendant” under S.C. Code Ann. § 15-78-70(c). (Motion to Dismiss p. 1 n.1.) A request to restructure the parties to an action is a request for substantive relief, and it is one the circuit court could not have granted without authority over the party asking for it.

Notably, the statutory provision Respondent invoked applies “[i]n the event that the employee is *individually named*”—a characterization of this action that Respondent herself supplied.

That is the distinction drawn in *Smalls v. Weed*, 291 S.C. 258, 261, 353 S.E.2d 154, 155-56 (Ct. App. 1987), where this Court held that by asserting claims the court could not reach without jurisdiction over his person, the defendant “implicitly acknowledge[d] jurisdiction of the court.” Appellant acknowledges that *Smalls* arose under the pre-Rules practice of special appearances, which Rule 12 has since eliminated. Its reasoning nonetheless survives: a party may not ask a court to act upon her while denying the court’s power to act at all.

Respondent compounded that inconsistency by remaining silent for ninety-one days after her answer deadline and eighty-four days after Appellant moved for entry of default, and by never invoking Rule 55(c), SCRCP, the rule that governs relief from the default she was in. (Motion to Dismiss p. 1; Answer p. 1.) Having asked the circuit court to relieve her of the consequences of her own delay, she may not simultaneously insist that the court was powerless over her.

The explanation Respondent offered for that delay confirms the point. Counsel represented that Appellant had filed two other actions against Sheriff’s Department personnel, that “the complaints were emailed to counsel altogether,” and that “counsel did not realize that a third complaint was included” until January 12, 2026. (Motion to Dismiss p. 2.) The default was thus attributed not to any failure of service, but to an oversight in counsel’s own office after the papers had reached him. That is a Rule 6(b) excusable-neglect argument, and Respondent presented it as one. It is not a jurisdictional objection, and it cannot be maintained alongside the contention that the circuit court never acquired authority over her person.

III. THE CIRCUIT COURT ERRED IN DISMISSING THE ACTION WITHOUT RESOLVING APPELLANT’S PENDING RULE 55(a) MOTION AND MOTION TO COMPEL ENTRY OF DEFAULT.

Standard of Review

A circuit court's ruling on matters of default under Rule 55, SCRCF, is reviewed for abuse of discretion. *Stark Truss Co. v. Superior Constr. Corp.*, 360 S.C. 503, 508, 602 S.E.2d 99, 101-02 (Ct. App. 2004). An abuse of discretion occurs where the ruling is controlled by an error of law. Whether Rule 55(a) imposes a ministerial duty is a question of law reviewed *de novo*.

Preservation

Appellant raised the default question at the outset of the hearing, before argument began, stating that "a motion for default was the initial filing as far as motions go in this case, and that was done back in October of 2025." (Tr. p. 4, lines 5-8.) The circuit court responded directly, observing that it saw the Motion to Compel Entry of Default on the public index and asking the clerk whether default had been entered: "Okay. Well, no default was entered, I guess. Is that fair, Madam Clerk?" (Tr. p. 4, lines 12-20.) Appellant returned to the question in his opening, arguing that Respondent's motion "is procedurally premature and should not be heard before the default issue." (Tr. p. 13, lines 12-15.) He argued the ministerial nature of the clerk's duty and the absence of any Rule 55(c) motion. (Tr. p. 13, line 16 – p. 14, line 18.) The court again addressed the point on the record. (Tr. p. 14, line 19 – p. 15, line 2.) Appellant closed by asking the court to find the Motion to Dismiss "procedurally improper and premature because the pending default motion has not been resolved." (Tr. p. 20, lines 12-16.)

The issue was therefore raised to and addressed by the circuit court, and is preserved. *See I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) (a party must present the issue to the lower court and obtain a ruling). To the extent this Court concludes that the Order's silence on the two pending motions left the issue without a ruling sufficient to preserve it independently, their pendency remains properly before the Court as part of the relief requested on remand, and as context bearing on whether dismissal was an appropriate exercise of discretion under Issue IV.

A. Entry of default under Rule 55(a) is a ministerial act.

Rule 55(a), SCRCP, provides that when a party against whom a judgment for affirmative relief is sought “has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default upon the calendar (file book).” The act is ministerial. *Thynes v. Lloyd*, 294 S.C. 152, 153-54, 363 S.E.2d 122, 123 (Ct. App. 1987) (entry of default is “a purely ministerial act which the clerk was required to perform once the default was made to appear by the affidavit”); *Stark Truss*, 360 S.C. at 509, 602 S.E.2d at 102.

Appellant made that showing on October 23, 2025. Respondent had been personally served on September 16, 2025; her time to respond expired October 16, 2025; and she had filed nothing. (Affidavit p. 1.) The Clerk nonetheless did not enter default.

B. Rule 55(e) governs default judgment, not entry of default.

Rule 55(e), SCRCP, provides that “[n]o judgment by default shall be entered against the State of South Carolina or an officer or agency thereof . . . unless the claimant establishes his claim to relief by evidence satisfactory to the Court.” By its terms the provision addresses the *judgment*, and the actor it identifies is the Court, not the clerk. Rule 55(a) contains no comparable exception.

That structural distinction is settled: “while a clerk may make an entry of default, a judge is required to enter a default judgment,” and “[t]he entry of default is an official recognition of the failure to appear or otherwise respond, but it is not a judgment by default.” *Wetzel v. Woodside Dev. Ltd. P’ship*, 364 S.C. 589, 615 S.E.2d 437 (2005). Rule 55(e) therefore supplies no basis for withholding the threshold ministerial act. Appellant has consistently acknowledged, including in the memorandum filed in support of his Rule 55(a) motion, that Rule 55(e) governs any subsequent default judgment and that he would be required to establish his claim by evidence satisfactory to the court at that stage. That acknowledgment concerns the second step. It does not excuse the clerk from performing the separate and antecedent ministerial duty imposed by Rule 55(a), and it is not a basis for leaving the motion unresolved indefinitely.

C. The circuit court dismissed without resolving the pending motions.

Two motions bearing on Respondent's default were pending and unresolved when the circuit court ruled: the Rule 55(a) motion filed October 23, 2025, and the Motion to Compel Entry of Default filed March 16, 2026. (Motion for Entry of Default p. 1; Motion to Compel p. 1.) The Order of Dismissal addressed neither. (Order of Dismissal pp. 1-3.)

Appellant does not contend that an entry of default existed to be set aside. The circuit court observed at the hearing that none had been entered, and Appellant agreed. (Tr. p. 14, line 19 – p. 15, line 3.) That is precisely the difficulty. The clerk's duty under Rule 55(a) arose on October 23, 2025, when the supporting affidavit was filed; the duty was ministerial; and it was never performed. The consequence of that omission cannot be that the omission becomes unreviewable. A defendant does not improve her position by the clerk's failure to record a default she had in fact incurred.

The orderly course was to resolve the threshold question of the clerk's duty before reaching a dismissal sought by the party who had failed to answer. Appellant asked the circuit court to take that course, in those terms, at the hearing. (Tr. p. 13, lines 12-15; p. 20, lines 12-16.) The court did not reach it. This Court should direct the circuit court to rule upon both pending motions on remand.

IV. DISMISSAL WAS AN ABUSE OF DISCRETION WHERE RESPONDENT HAD ACTUAL NOTICE AND SUFFERED NO PREJUDICE, AND THE APPEAL IS NOT MOOT.

Standard of Review

The decision to dismiss is reviewed for abuse of discretion. *McComas v. Ross*, 368 S.C. 59, 626 S.E.2d 902 (Ct. App. 2006).

A. South Carolina does not require exacting compliance with the service rules.

Rule 4, SCRCP, serves two purposes: it confers personal jurisdiction and assures the defendant of reasonable notice of the action. *Roche v. Young Bros., Inc., of Florence*, 318 S.C. 207, 209, 456 S.E.2d 897, 899 (1995). Our Supreme Court has “never required exacting compliance with the rules to effect service of process.” *Id.* at 209-10, 456 S.E.2d at 899. The inquiry is “whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings.” *Id.* at 210, 456 S.E.2d at 899.

Both objectives were fully served. Process server Kathrine Thomas placed the Summons and Amended Complaint directly into Respondent’s hands at her place of employment. (Affidavit of Service p. 1.) Respondent has never disputed receipt. She had one hundred twenty-one days of actual notice before appearing, and upon appearing was able to mount a ten-defense response. (Answer pp. 1-5.) She has identified no evidentiary or practical prejudice of any kind.

Dismissal is a severe sanction. This Court has reversed a dismissal as “too harsh a sanction” where the record did not warrant it, and has looked to whether less drastic measures would suffice. *McComas*, 368 S.C. 59, 626 S.E.2d 902. Where the core notice objectives of Rule 4 were met in full and no prejudice is claimed, terminating the action over a disputed question of which subsection applied was an abuse of discretion.

B. The appeal is not moot.

Respondent contends this appeal is moot because Appellant filed a separate action, Case No. 2026-CP-41-00059. A case is moot where a judgment “will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court.” *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006). That standard is not met.

First, the two actions arise from different events. Case No. 2026-CP-41-00059 addresses conduct occurring in 2024 and later; the instant action arises from conduct in 2023. (Amended Complaint pp. 2-5.) Second, reversal would have immediate practical effect: it would restore

Appellant's pending Rule 55(a) motion and Motion to Compel Entry of Default, which exist only on this docket and cannot be litigated in a separate action. Where a decision "may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot." *Curtis v. State*, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001).

C. The dismissal, though styled "without prejudice," forecloses refiling of the 2023 claims.

South Carolina law is clear that the label does not preserve the claim: "[w]hen an action is dismissed without prejudice, the statute of limitations will bar another suit if the statute has run in the interim." *Davis v. Lunceford*, 287 S.C. 242, 335 S.E.2d 798 (1985). Appellant's defamation and tort claims are governed by the two-year limitations period of S.C. Code Ann. § 15-3-550(1). The conduct underlying this action occurred in 2023.

The practical consequence is that this dismissal operates as a final adjudication of claims that have never been heard on the merits. Appellant does not contend that the running of the limitations period alters the standard of review, and he is aware of no South Carolina decision so holding. He contends only that the actual consequences of the order are a proper consideration in assessing whether dismissal—rather than quashing service, or permitting re-service—was a reasonable exercise of discretion on this record, where the defect asserted was a disputed question of which subsection of Rule 4 applied, where notice was complete, and where no prejudice was shown.

CONCLUSION

For the foregoing reasons, Appellant Hugh Parks Price respectfully requests that this Court:

1. Reverse the Order of Dismissal filed April 1, 2026;
2. Remand with instructions to deny Respondent's Motion to Dismiss, to rule upon Appellant's pending Motion for Entry of Default under Rule 55(a), SCRCPP, and Motion to Compel Entry of Default, and to allow this action to proceed; and
3. Grant such other and further relief as this Court deems just and proper.

Respectfully submitted,



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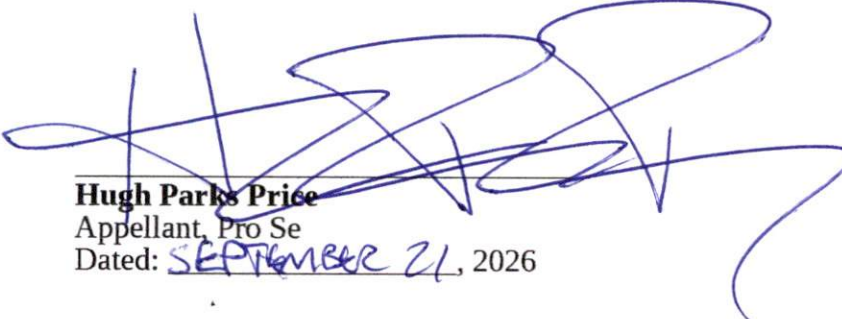
Ward, South Carolina
Dated: SEPTEMBER 21, 2026

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I served a true and correct copy of the foregoing Corrected and Amended Initial Brief of Appellant upon counsel for Respondent by depositing a copy of the same in the United States Mail, first-class postage prepaid, addressed as follows:

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SC Court of Appeals


Hugh Parks Price

Appellant, Pro Se

Dated: SEPTEMBER 21, 2026