

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM MARLBORO COUNTY
Court of Common Pleas

Paul M. Burch, Circuit Court Judge
Douglas Jennings, Jr., Special Referee

Case No. 2016-CP-34-00265
Appellate Case No. 2026-000228

Levi Owens, as Personal Representative of the Estate of Christopher McLeanRespondent,

v.

Wayne Hunt.....Appellant.

INITIAL REPLY BRIEF OF APPELLANT WAYNE HUNT

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REPLY

Respondent and Appellant agree about one thing: This appeal is about whether South Carolina's nonresident motorist substitute service statute means what it says, specifically South Carolina Code § 15-9-380 – the statute through which Plaintiff sought to obtain personal jurisdiction over Defendant Hunt. *See* (Respondent's Br., p. 1). But instead of looking at the plain language of that statute or what this Court has previously said this specific statute means, Respondent asks this Court to consider hypotheticals, interpretations of other statutes with different language, Greek mythology and Proverbs. That is because the plain language of § 15-9-380 does not lead to Respondent's desired result.

Through the nonresident motorist substitute service statutes, the South Carolina General Assembly strikes a balance between due process to the nonresident motorist and ease of service for the plaintiff. Respondent seeks to upend this balance so that he receives a \$5,100,000 windfall through default from a non-resident motorist, who was not at fault for the accident at issue.

I. Respondent failed to comply with the service requirements of § 15-9-380, and, consequently, the Circuit Court did not have personal jurisdiction over Mr. Hunt when it entered the Orders at issue in this appeal.

Rule 60(b)(4) provides for relief from default when the judgment is void. Rule 60(b)(4), SCRPC ("On motion and upon such terms as are just, the court may relieve a party ... from a final judgment, order, or proceeding [because] ... the judgment is void."). "A judgment is void if a court acts without personal jurisdiction." *BB & T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 503 (2006) (holding lower court abused its discretion in denying motion to set aside default where defendant was not properly served when default was entered). "A court generally obtains personal jurisdiction by the service of a summons." *Id.* Service of the summons "confers personal jurisdiction on the court and assures the defendant of reasonable notice of the action." *Id.* at 552, 633 S.E.2d at 503.

Respondent purported to serve Mr. Hunt under a substitute service statute – South Carolina Code § 15-9-380. However, Respondent failed to comply with the service requirements of that statute before moving for other relief. As a result, every order entered before legal service of the Summons and Complaint – specifically the Entry of Default, Order of Reference, and Default Damages Judgment – is void, and the Special Referee erred by not setting aside those Orders.

A. Respondent’s interpretation of South Carolina Code § 15-9-380 ignores both its plain language and its context within the statutory framework.

(i) Respondent’s interpretation of § 15-9-380 ignores its plain language.

“The interpretation of a statute is a question of law.” *South Carolina Pub. Int. Found. v. Wilson*, 447 S.C. 203, 214, 924 S.E.2d 163, 168 (2025) (citation omitted). Contrary to Respondent’s argument, when – as here – there is no return receipt, service is accomplished “upon filing” of the affidavit of mailing and the original envelope. South Carolina Code § 15-9-380 provides:

If the defendant in any such cause shall fail or refuse to accept and receipt for certified mail containing the notice of service and copy of the process and it shall be returned to the plaintiff or the Department of Motor Vehicles, the original envelope as returned shall be retained and the notice and copy of the summons shall be sent by open mail and the envelope and affidavit of mailing with sufficient postage of such open letter shall be filed with the clerk of court in which such action is pending and ***upon the filing thereof shall have the same force and legal effect as if such process has been personally served upon such defendant.***

S.C. Code § 15-9-380 (emphasis added). Under the plain language of this statute, it is the filing of the original envelope and the Department’s affidavit of mailing that has “the same force and legal effect as if such process has been personally served upon such defendant.”

This plain language answers the two related questions of when service is effectuated and how service is effectuated – “upon the filing thereof” [when], the filing of the original envelope and the Department’s affidavit of mailing has “the same force and legal effect as if such process has been personally served upon such defendant” [how]. “Clear and unambiguous words in a statute should be

given their plain and ordinary meaning.” *Brown v. Cnty. of Berkeley*, 366 S.C. 354, 360, 622 S.E.2d 533, 537 (2005). “Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.” *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (citation omitted). Thus, the service analysis begins and ends with the plain language of the statute.

In *Free v. Buff*, the Circuit Court held that “upon filing” means “upon filing” in South Carolina Code § 15-9-380. No. 2012CP4007842, 2013 WL 8477973, at *2 (S.C. Com. Pl. Aug. 29, 2013) (“Once the affidavit of mailing is filed with the clerk, service is effected on the defendant....[A]ccording to S.C. Code Ann. § 15-9-380, service still has not been effected because the appropriate documentation has not been filed with the Clerk of Court.”). Although in an unpublished opinion, this Court affirmed the Circuit Court’s holding in *Free*. *Free v. Buff*, No. 2015-UP-162, 2015 WL 1396362, at *1 (S.C. Ct. App. Mar. 25, 2015) (stating the statutory filing requirement). Respondent’s Brief does not cite a single other South Carolina case adopting his interpretation of South Carolina Code § 15-9-380. *See* (Respondent’s Br.).

Respondent also makes the peculiar argument that service under § 15-9-380 is not accomplished “upon filing” of the required documents because the General Assembly did not use the word “effective.” (Respondent’s Br., pp. 14, 17). However, in the statute, the General Assembly used the phrase “legal effect” – “upon the filing thereof shall have the same force and legal effect as if such process has been personally served upon such defendant.” S.C. Code § 15-9-380. This is even more definitive language than the word “effective.”

Moreover, this plain language only poses a problem for the Respondent because of his own inaction. In March 2017, Respondent had the required documents from the DMV to effectuate legal

service on Mr. Hunt under § 15-9-380. (Wanda Ealy Aff. at p. 2). However, Respondent did not file them and, consequently, did not effectuate legal service.

Instead, he sought and obtained a November 16, 2017 Entry of Default, an October 22, 2018 Order of Reference appointing the Special Referee, and a November 18, 2021 \$5,100,000 Default Judgment against Mr. Hunt. Contrary to Respondent’s argument, he did not and could not have filed “proof of service on February 15, 2017” – before he had even effectuated legal service on Mr. Hunt. (Respondent’s Br., p. 40). Only in July of 2022 – after all of the foregoing – did Respondent concern himself with effectuating legal service on Mr. Hunt and the § 15-9-380 filing, which “upon filing” had the “legal effect” of service. However, post-judgment service cannot retroactively remedy a void judgment. *BB&T*, 369 S.C. at 551, 633 S.E.2d at 503 (“A judgment is void if a court acts without personal jurisdiction.”).¹

(ii) Respondent’s interpretation of § 15-9-380 also ignores its context within the framework of Article 3 (Personal or Substitute Service in State).

Respondent argues that § 15-9-350 is the substitute service statute and § 15-9-380 is merely an “additional notice” statute. (Respondent’s Br. p. 12). When these statutes are read in context, Respondent’s argument crumbles.

Section 15-9-350 states that by operating a vehicle on the public highways of this State a nonresident is deemed to have agreed that the Director of the Department of Motor Vehicles may be his attorney for service of process for actions growing out of a motor vehicle accident in this State. S.C. Code § 15-9-350. Respondent focuses on the following sentence in that statute: “Such acceptance

¹ To the extent Respondent argues that § 15-9-380 is not a service statute because it does not set a deadline for filing the required documents, the statute of limitations sets that deadline, subject to any applicable tolling rules. *See* (Respondent’s Br., p. 14); S.C. Code §§ 15-3-530; 15-3-20(B); Rule 3(a), SCRPC. The “consequence for a filing that is late or that never occurs” is lack of personal jurisdiction over the defendant and potentially a time-barred action. *See (id.)*.

or operation shall be a signification of his agreement that any such process against him shall be of the same legal force and validity as if served on him personally.” (Respondent’s Br., pp. 12-13). This merely reiterates that implied agreement. Noticeably missing from this statute are instructions on how a plaintiff affects legal service on the Director of the Department of Motor Vehicles as attorney for the non-resident motorist. What must a plaintiff do to effect legal service on the Director as attorney for the nonresident motorist? This statute does not provide that answer.

Section 15-9-370 entitled “Service on nonresident motor vehicle drivers and motor carriers” explains how a plaintiff affects legal service of process on the Director as attorney for the nonresident motorist. As Respondent admits, “Section 15-9-370 then describes the mechanics of such service.” (Respondent’s Br., p. 13). Those “mechanics of such service” are as follows:

Service of process upon the Director of the Department of Motor Vehicles, as agent of a: (a) nonresident driver under the provisions of Section 15-9-350...shall be made by leaving a copy thereof, with an appropriate fee, in the hands of the Director of the Department of Motor Vehicles or his office and such service ***shall be sufficient service upon the nonresident*** ***if*** notice of the service and a copy of the process are forthwith ***sent by certified mail*** by the plaintiff or the Director of the Department of Motor Vehicles to the defendant ***and the defendant's return receipt and the plaintiff's affidavit of compliance*** herewith are appended to the summons or other process and ***filed*** with the summons, complaint, and other papers in the cause.

S.C. Code § 15-9-370. Respondent repeatedly argues that simply leaving a copy of the summons and complaint with the Director is legal service on the nonresident motorist. (Respondent’s Br., pp. 12-25 (“The summons was served on February 9, 2017, when it was delivered to the agent....”)). However, under the plain language of this statute, that is only “sufficient service upon the nonresident **if**”: (1) notice of the service and a copy of the process are forthwith sent by certified mail to the defendant; (2) the defendant’s return receipt is received; AND (3) the defendant’s return receipt and plaintiff’s affidavit of compliance are filed in the action. *Id.* Conversely, leaving a copy of the summons and complaint with the Director is NOT “sufficient service upon the nonresident if” those

statutory requirements are unmet. Here, there was no “defendant’s return receipt.” *See* S.C. Code § 15-9-370. Consequently, “leaving a copy [of the summons and complaint], with an appropriate fee, in the hands of the Director of the Department of Motor Vehicles or his office” was NOT “sufficient service upon the nonresident.”

In a separate statute, the General Assembly set forth how service on the nonresident motorist is accomplished when there is no return receipt. Section 15-9-380 is entitled: “Procedure when nonresident motorist or motor carrier defendant does not accept and receipt for notice sent by certified mail.” S.C. Code § 15-9-380. That statute provides:

If the defendant in any such cause shall fail or refuse to accept and receipt for certified mail containing the notice of service and copy of the process and it shall be returned to the plaintiff or the Department of Motor Vehicles, the original envelope as returned shall be retained and the notice and copy of the summons shall be sent by open mail and the envelope and affidavit of mailing with sufficient postage of such open letter shall be filed with the clerk of court in which such action is pending and ***upon the filing thereof shall have the same force and legal effect as if such process has been personally served upon such defendant.***

S.C. Code § 15-9-380 (emphasis added). Under the plain language of this statute, it is the filing of the original envelope and the Department’s affidavit of mailing that has “the same force and legal effect as if such process has been personally served upon such defendant” – not leaving of a copy of the summons and complaint with the Director.

The General Assembly’s intent is made even more clear by this bifurcation of Sections 15-9-370 (when the nonresident motorist returns the receipt) and 15-9-380 (when the nonresident motorist does not return the receipt). Under § 370, service on the Director “shall be sufficient service upon the nonresident if notice of the service and a copy of the process are forthwith sent by certified mail ... and the defendant’s return receipt and plaintiff’s affidavit of compliance herewith are appended to the summons or other process and filed ... in the cause.” (emphasis added). In other words, service on the Director is not sufficient if there is no return receipt. Instead, when there is no return receipt,

Section 380 comes into play and states that service is accomplished “upon filing” of the affidavit of mailing and the original envelope.²

Contrary to Respondent’s argument, neither § 15-9-350, § 15-9-370, nor § 15-9-380 state that a plaintiff effectuates legal service on a nonresident motorist merely by leaving a copy of the summons and complaint with the Director. Section § 15-9-350 does not state at all how a plaintiff effectuates legal service on a non-resident motorist. Section § 15-9-370 states that a plaintiff effectuates legal service on a non-resident motorist by leaving a copy of the summons and complaint, with an appropriate fee, in the hands of the Director of the Department of Motor Vehicles only if the other requirements of that statute are met, including a “defendant’s return receipt.” It is indisputable that those requirements were not met in this case. Section 15-9-380 states that service is accomplished “upon filing” of the affidavit of mailing and the original envelope.

The General Assembly’s plain language created this system for legal substitute service on nonresident motorists. If Respondent has an issue with this system, his recourse is with the Legislature – not attempts to have this Court rewrite the plain language of § 15-9-380. *See* (Respondent’s Br., pp. 1-3). It is not within the Court’s authority to do so. *See, e.g., Wilson*, 447 S.C. at 217, 924 S.E.2d at

² In the same Article, the General Assembly used the same language and the same bifurcated system for service of process on nonresident aircraft operators and nonresident vessel operators. S.C. Code §§ 15-9-390; 15-9-400; 15-9-415; 15-9-416. These are all forms of interstate transportation that raise federal due process concerns. *See, e.g., World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980) (“The Due Process Clause of the Fourteenth Amendment limits the power of a state court to render a valid personal judgment against a nonresident defendant....A judgment rendered in violation of due process is void in the rendering State and is not entitled to full faith and credit elsewhere.”) (citation omitted); *Mullane v. Cent. Hanover Tr. Co.*, 339 U.S. 306, 313-14 (1950) (“An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”); *Wuchter v. Pizzutti*, 276 U.S. 13, 19, 48 S. Ct. 259, 260, 72 L. Ed. 446 (1928) (holding that state service statutes on nonresident motorists require more than implied agreement for “enforced acceptance of the service of process on a state officer” to comport with due process).

170 (“[C]ourts must be aware that their duties and responsibilities are limited to the interpretation of a statute, and we cannot rewrite a statute to suit our own policy preferences.... The importance of restraint on our part cannot be overstated.”) (citations omitted); *ArrowPointe Fed. Credit Union v. Bailey*, 438 S.C. 573, 580, 884 S.E.2d 506, 509 (2023) (“We do not sit as a superlegislature to second-guess the General Assembly's decisions....Accordingly, we cannot change the meaning of a clear and unambiguous statute.”); *Smith v. Tiffany*, 419 S.C. 548, 559, 799 S.E.2d 479, 485 (2017) (“In honoring separation of powers, we adhere to the principle that a court must not reject the legislature's policy determinations merely because the court may prefer what it believes is a more equitable result.”).

B. The cases of *Cook* and *Holman* are wholly inapplicable.

The case of *Cook v. Fed. Ins. Co.*, 263 S.C. 575, 211 S.E.2d 881 (1975) is entirely distinguishable. The *Cook* case was not an action against an out-of-state motorist to obtain a judgment against him. Rather, it was an action against insurers to collect a default judgment against an insured after that default judgment was already a final judgment. *Id.* at 579, 211 S.E.2d at 882 (“After the Cooks procured default judgments against McDaniel in the Court of Common Pleas for Clarendon County, and after Federal Insurance Company refused to pay the judgments, this action was commenced on May 29, 1972, against both Federal and Great American for the purpose of recovering the amount of the judgments procured against McDaniel.”). The lower court held that the uninsured motorist carrier was liable for the judgments, and then that insurer appealed. *Id.*

More importantly, the motorist did “not contest[] the manner of service upon him”, and the Court held that the uninsured motorist insurer could “not be heard to complain that the service [on the motorist] was not proper.” *Id.* at 583-84, 211 S.E.2d at 884 (“McDaniel has not contested the manner of service upon him.... Federal should not be heard to complain that the service was not proper.”).

Here, Mr. Hunt is the motorist and is actively contesting the alleged manner of service upon him. Thus, the *Cook* case has no bearing on this action, much less is it “controlling” as Respondent alleges.

Additionally, in *Cook*, the insurer’s purported grounds for contesting service upon McDaniel were: (1) “McDaniel was not a nonresident of South Carolina”; and (2) “McDaniel did [not] ‘fail or refuse to accept and receipt’ for the certified letter sent him by the Chief Highway Commissioner.” *Id.* at 581-84, 211 S.E.2d 883-84 (“The basic contention of Federal is that the Court of Common Pleas for Clarendon County, which entered the default judgments, lacked jurisdiction over the person of McDaniel because of improper and ineffectual service upon him of the Summons and Complaint under the nonresident motorist law, it being contended that McDaniel was not a nonresident of South Carolina.... We also agree with the lower court in its holding that McDaniel did ‘fail or refuse to accept and receipt’ for the certified letter sent him by the Chief Highway Commissioner. Our statute does not require that one refuse to accept service. The statutes in some states do require a refusal.”). Neither of these grounds are at issue in this case. Furthermore, the *Cook* case does not address the statutory noncompliance at issue in this action – i.e., failure to file the documents required by § 15-9-380. Thus, *Cook* is entirely inapplicable.

Likewise, the case of *Holman v. Warwick Furnace Co.*, 318 S.C. 201, 456 S.E.2d 894 (1995) is entirely distinguishable and wholly inapplicable. That case concerns when service is effective when the plaintiff pursues service under South Carolina Code § 15-9-245 on a foreign corporation not authorized to do business in this State. Mr. Hunt is an individual, not a foreign corporation, and Respondent did not purport to serve him pursuant to this statute. Consequently, this case is inapplicable.

Moreover, the statute at issue in *Holman* – South Carolina Code § 15-9-245 – contains starkly different wording to the statute at issue in this case. A side-by-side comparison of the two statutes makes this distinction apparent:

S.C. Code § 15-9-380 (Nonresident Motorist Service Statute)	S.C. Code § 15-9-245 (Foreign Corporation Service Statute)
If the defendant in any such cause shall fail or refuse to accept and receipt for certified mail containing the notice of service and copy of the process and it shall be returned to the plaintiff or the Department of Motor Vehicles, the original envelope as returned shall be retained and the notice and copy of the summons shall be sent by open mail and the envelope and affidavit of mailing with sufficient postage of such open letter shall be filed with the clerk of court in which such action is pending and <i>upon the filing thereof shall have the same force and legal effect as if such process has been personally served upon such defendant.</i>	(b) <i>Service of the process is made by</i> delivering to and leaving with the Secretary of State, or with any person designated to him to receive such service, duplicate copies of the process, notice or demand.... (b) Proof of service must be by affidavit of compliance with this section and filed, together with a copy of the process with the clerk of court in which the action or proceeding is pending.

Thus, the Respondent’s and Special Referee’s “additional notice” reasoning is inconsistent with the plain language of § 15-9-380 because the statute never says service on the Director is service.

The General Assembly chose a different approach for service on nonresident motorists where there is no return receipt. When the nonresident motorist does not sign a return receipt, service is effective “upon the filing” of the statutorily-required service documents with the Clerk of Court. S.C. Code § 15-9-380. The different approach taken by the General Assembly in the two different statutory provisions confirms that the Supreme Court’s decision in *Holman* does not apply here. *See also Wuchter*, 276 U.S. at 20, 4 S. Ct. at 261 (“The cases, in which statutes have been upheld providing that nonresident corporations may properly be served by leaving a summons with a state official, where the corporation has not indicated a resident agent to be served, are not especially applicable to the present issue.”).

C. Substitute/constructive service statutes, like § 15-9-380, must be strictly construed.

Modes of service on nonresident persons, other than personal service within the State, require strict compliance. This is because, at “common law, unless the defendant voluntarily submitted to the jurisdiction of the court, personal service within the state was the only means of obtaining jurisdiction in an action.” *Seubert v. Buchanan*, 250 S.C. 140, 142, 156 S.E.2d 632, 632 (1967) (citation omitted); *see also Johnson v. Baldwin*, 214 S.C. 545, 549–50, 53 S.E.2d 785, 787 (1949) (“The established general rule is that any personal judgment which a state court may render against one who did not voluntarily submit to its jurisdiction, and who is not a citizen of the state, nor served with process within its borders, no matter what the mode of service, is void, because the court had no jurisdiction over his person. Ordinarily the processes of a state court do not extend beyond its borders and jurisdiction of a non-resident in an action in personam cannot be obtained unless the defendant is found within the State or appears in the action.”) (citation omitted). “Statutes in derogation of the common law are to be strictly construed.” *Eades v. Palmetto Cardiovascular & Thoracic, PA*, 422 S.C. 196, 201, 810 S.E.2d 848, 850 (2018). While South Carolina courts may not require exacting compliance with their Rules of Civil Procedure to confer jurisdiction on a person served within the State, they must require exacting compliance with statutes that are in derogation of the common law and purport to confer jurisdiction on a nonresident through service outside the State. *See* (Respondent’s Br., p. 27 (citing *Roche v. Young Bros. of Florence*, 318 S.C. 207, 209, 456 S.E.2d 897, 899 (1995) (dealing with Rules of Civil Procedure for service with a signed return receipt))).

Moreover, the South Carolina Supreme Court has stated that “[s]ubstituted service must conform to the statute which authorized it.” *Seubert*, 250 S.C. at 142, 156 S.E.2d at 633. Respondent states that “[n]o one disputes that principle” – and yet uses the bulk of his Brief to argue that he did

not have to conform to the specific service requirements of § 15-9-380 – the very statute under which he sought to obtain substitute service on Mr. Hunt. See (Respondent’s Br., p. 26).

Appellant’s Brief cites a long line of South Carolina and United States Supreme Court cases requiring strict compliance with substitute/constructive notice statutes. Without any support, Respondent argues that those cases are inapplicable because constructive service is different than substitute service. (Respondent’s Br., pp. 25-26). However, South Carolina courts use those terms interchangeably. See *Ward v. Miller*, 230 S.C. 288, 292, 95 S.E.2d 482, 484 (1956) (referring to these types of nonresident motorist statutes as providing for “constructive or substituted service of process”). Respondent’s Brief also argues that this Court should disregard a United States Supreme Court case that used the specific words “substituted service” and required strict compliance merely because it is an older case. (*Id.* at 26); see *Settlemyer v. Sullivan*, 97 U.S. 444, 447, 24 L. Ed. 1110 (1878) (“The substituted service in actions purely *in personam* was a departure from the rule of the common law, and the authority for it, if it could be allowed at all, must have been strictly followed.”). Setting aside Respondent’s unsupported arguments to the contrary, Appellant’s prior authorities also support requiring strict compliance with § 15-9-380.

Respondent’s main contention is that Appellant’s authorities did not concern service on a statutory agent. (Respondent’s Br., p. 25). This is because Respondent did not serve Mr. Hunt through a statutory agent. Respondent served Mr. Hunt through constructive service under South Carolina Code § 15-9-380. Section 15-9-370 permits service on a statutory agent – “Service of process upon the Director of the Department of Motor Vehicles, as agent of a: (a) nonresident driver under the provisions of Section 15-9-350” – but only “if” the plaintiff obtains and files a “defendant’s return receipt.” S.C. Code § 15-9-370. It is indisputable that Respondent did not obtain a “defendant’s return receipt.” Thus, Respondent could not and did not serve Mr. Hunt through the statutory agent

provision. Instead, Respondent served Mr. Hunt through constructive service under South Carolina Code § 15-9-380 where service has “legal effect” “upon the filing” of the original envelope and the Department’s affidavit of mailing. S.C. Code § 15-9-380. Unlike § 15-9-370, nowhere in § 15-9-380 does it state that this is “Service of process upon the Director of the Department of Motor Vehicles, as agent of a: (a) nonresident driver under the provisions of Section 15-9-350”. Thus, Respondent’s statutory agent argument is without merit.³

Respondent also argues that substitute service statutes, like publication statutes, are “properly hedged with strict requirements because there is...no reasonable probability that the notice will ever reach its object.” (Respondent’s Br., p. 26). However, a plaintiff only attempts service through § 15-9-380 if the Department of Motor Vehicles has already sent the summons and complaint to the address that the plaintiff provided and that mailing has come back as undeliverable. Under such circumstances, when the summons and complaint is then sent again to that same address by open mail, it is also very unlikely “that the notice will ever reach its object”. Consequently, the General Assembly has properly hedged § 15-9-380 with strict requirements for service.

D. Respondent’s other service arguments are without merit.

Respondent argues that “Courts construing statutes identical to section **15-9-370** hold that *defects in the affidavit* of compliance are curable...” (Respondent’s Br., pp. 23-25) (emphasis added). It is indisputable that Respondent served Mr. Hunt under § 15-9-380, not § 15-9-370. Respondent could not satisfy the “defendant’s return receipt” requirement of § 15-9-370. *See* S.C.

³ For the same reason, Respondent’s argument that “Rule 4(d)(8), SCRCP, has no application to service through a statutory agent appointed by law” is irrelevant. *See* (Respondent’s Br., p. 30). Respondent did not serve Mr. Hunt “by delivering the summons and complaint to ‘an agent authorized by appointment or by law to receive service of process.’ Rule 4(d)(1), SCRCP.” (*Id.*). Respondent served Mr. Hunt through constructive service under South Carolina Code § 15-9-380 “upon the filing” of the original envelope and the Department’s affidavit of mailing.

Code § 15-9-370. Thus, it is irrelevant what courts from other jurisdictions say about their statutes that are similar to § 370, which is not the statute at issue in this appeal. Moreover, this case is not about a defect in an affidavit of compliance under § 15-9-370. It is about Respondent's failure to file the documents required by § 380 to effectuate legal service upon Mr. Hunt. Thus, the foregoing argument is inapplicable to the issues before the Court.

Respondent also argues that Mr. Hunt's due process argument is not properly preserved. Such argument fails to take into account how South Carolina treats due process and personal jurisdiction. *See* (Respondent's Br., pp. 27-29). It is irrefutable that Mr. Hunt repeatedly argued before the lower court that it lacked personal jurisdiction over him when it entered the Orders being appealed. It is also irrefutable that the Special Referee held that the lower court had personal jurisdiction over Mr. Hunt when it entered those Orders. Under South Carolina law, "our long-arm statute, which affords broad power to exercise personal jurisdiction over causes of action arising from tortious injuries in South Carolina, has been construed to extend to the outer limits of the due process clause." *Power Prods. & Servs. Co. v. Kozma*, 379 S.C. 423, 431, 665 S.E.2d 660, 664 (Ct. App. 2008). Consequently, "the determination of personal jurisdiction in South Carolina compresses into a due process assessment of minimum contacts and fair play." *Id.* Thus, under South Carolina law, a personal jurisdiction analysis is a due process analysis. Respondent's own Brief demonstrates the compression of these concepts by arguing that "technical objections to service of process" can be ignored "where the defendant was not denied due process." (Respondent's Br., p. 27). The applicable long-arm statute in this case is South Carolina Code § 15-9-380.

Also, due process considerations serve as additional authority supporting how Appellant has always argued the statute must be read. However, Respondent repeatedly argues that § 15-9-350 is the service statute and that all he had to do to effectuate legal service on a nonresident was leave a

copy of the Summons and Complaint with the Director of the Department of Motor Vehicles. That statute does not require any mailing to the nonresident. *See* S.C. Code § 15-9-350. Under Respondent's argument, any other statutory requirements are not service requirements but mere additional notice. But Respondent's argument runs directly afoul of the due process constraints set forth by the United States Supreme Court in *Wuchter v. Pizzutti*, 276 U.S. 13, 48 S. Ct. 259, 72 L. Ed. 446 (1928) ("[T]he act of a nonresident in using the highways of another state may be properly declared to be an agreement to accept service of summons in a suit growing out of the use of the highway by the owner of the automobile, but the enforced acceptance of the service of process on a state officer by the defendant would not be fair or due process unless such officer or the plaintiff is required to mail the notice to the defendant, or to advise him, by some written communication, so as to make it reasonably probable that he will receive actual notice."). Thus, § 15-9-350 is not a service statute that comports with due process, i.e., allows for personal jurisdiction over nonresidents, nor did the General Assembly intend it to be. Sections 15-9-370 and 15-9-380 are the actual service statutes setting forth the modes of service under different circumstances. Respondent's statutory interpretation does not comply with due process requirements.

II. Appellant should have also been relieved from the Entry of Default and Default Judgment in accordance with Rule 60(b)(1) of the South Carolina Rules of Civil Procedure.

Rule 60(b) provides in pertinent part:

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

(1) Mistake, inadvertence, surprise or excusable neglect;

Rule 60(b)(1), SCRCPP. In interpreting this Rule, this Court has held "that 'where there is a good faith mistake of fact, and no attempt to thwart the judicial system, there is basis for relief.'"

Micronics, Inc. v. S.C. Dep't of Revenue, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. App. 2001) (quoting *Columbia Pools, Inc. v. Galvin*, 288 S.C. 59, 61, 339 S.E.2d 524, 525 (Ct. App. 1986)). “This is consistent with South Carolina’s public policy, which promotes deciding issues on their merits, rather than on technicalities.” *Id.* South Carolina courts have repeatedly applied this public policy to set aside entries of default and default judgments. *See, e.g., id.; Caldwell v. Wiquist*, 402 S.C. 565, 575, 741 S.E.2d 583, 588–89 (Ct. App. 2013); *Melton v. Olenik*, 379 S.C. 45, 664 S.E.2d 487 (Ct. App. 2008); *Rochester v. Holiday Magic, Inc.*, 253 S.C. 147, 152, 169 S.E.2d 387, 390 (1969).

A. As an initial matter, Mr. Hunt’s affidavit is properly before this Court, just as it was before the Special Referee.

Pursuant to Rule 210 of the South Carolina Appellate Court Rules, the “Record on Appeal shall include all matter designated to be included by any party” except “matter which was not presented to the lower court or tribunal.” Rule 210(c), SCACR. On October 10, 2024, the Special Referee held a hearing on Mr. Hunt’s Motion to Set Aside. The transcript for that hearing specifically states: “Mr. Hunt has submitted an affidavit that this court has verifying that he had no notice of the lawsuit....” (October 10, 2024 Hearing Tr. 7:3-5). The Special Referee then waited more than a year after receiving Mr. Hunt’s affidavit to rule on the Motion to Set Aside. (January 5, 2026 Special Referee Order). The Special Referee’s Order specifically recognizes that Mr. Hunt filed a supporting memorandum with an affidavit, specifically addresses that affidavit, and incorporates facts from that affidavit into the analysis. (January 5, 2026 Special Referee Order). Respondent’s Brief also states: “Respondent acknowledges that the affidavit was served on Respondent’s counsel and that the special referee considered it without objection from Respondent....” (Respondent’s Br., p. 37). Thus, any argument that Mr. Hunt’s affidavit is not properly before this Court is without merit.

Nevertheless, Respondent argues without any support that “the manner in which Appellant went about his proof bears on the weight it deserves”, specifically pointing to the timing and delivery of the sworn affidavit to the Special Referee. (*Id.*). The timing or manner of providing that affidavit to the Special Referee has no bearing on whether the Special Referee should have granted the Motion to Set Aside. It is irrefutable that the Special Referee had that affidavit for over a year before he ruled on the Motion and that he also had the affidavit before the hearing on that Motion. Therefore, nothing takes away from the affidavit’s weight.

B. Respondent’s Rule 60(b)(1) argument misses the focus of the Rule and avoids addressing the relevant factors.

The Rule states the focal point: “upon such terms as are just ...” Rule 60(b)(1). Respondent gives no explanation for why it would be just to let a \$5,100,000 default judgment stand against a nonresident motorist who had no actual notice of the lawsuit and was not at fault for the accident. *See* (Respondent’s Br.). The facts of this case compel setting aside the default judgment. Appellant was driving on US-15 when the car occupied by Respondent’s decedent turned left in front of him. (Compl. ¶ 3); (Hunt Aff. ¶¶ 2-3). And no one has disputed Appellant’s affirmation that he never received notice and did not know about the lawsuit. (Hunt Aff. ¶ 4) (“I was completely unaware that a lawsuit had been filed against me until November 2, 2022, when I received documents at my current address ... from a related lawsuit.”).

“In determining whether to grant relief under Rule 60(b)(1), the court must consider the following factors: ‘(1) the promptness with which relief is sought; (2) the reasons for the failure to act promptly; (3) the existence of a meritorious defense; and (4) the prejudice to the other party.’” *Rouvet v. Rouvet*, 388 S.C. 301, 309, 696 S.E.2d 204, 208 (Ct. App. 2010) (quoting *Micronics, Inc.*, 345 S.C. at 510–11, 548 S.E.2d at 226).

As to the first factor, Appellant acted promptly in seeking relief. As to the timing of the motion for relief, a party is required to make the motion “within a reasonable time, and ... not more than one year after the judgment ... was entered....” Rule 60(b), SCRCP. Appellant was completely unaware of this lawsuit until November 2, 2022. (Def.’s Mem. in Supp., p. 6); (Hunt Aff. ¶ 4). Even before Appellant personally became aware of this lawsuit, counsel acting on his behalf filed a Motion for Appellant to be relieved from the Default Judgment and/or, in the alternative, to vacate the judgment. (Def.’s Mot. (filed October 26, 2022)). Counsel filed this Motion on October 26, 2022 – less than one (1) year after the November 18, 2021 Default Judgment. Thus, Appellant acted promptly in seeking relief and within the time limits of Rule 60.⁴

As to the second factor, through mistake, inadvertence, and/or excusable neglect, Appellant did not receive notice of the lawsuit – an undisputed fact. Appellant moved in August 2013 and failed to update his address on his driver's license prior to the auto accident that occurred later that same year. (Hunt Aff. ¶ 5). At the time of the accident and at the time of the attempted service (more than three (3) years after the accident), Appellant resided at a different address in Leland, North Carolina. (Hunt Aff. ¶ 5 (stating that Mr. Hunt lived at the Leland address from August 2013 to May 2017); *see* (Wanda Ealy Aff.) (stating that the DMV attempted to mail the Summons and Complaint to Mr. Hunt in February 2017 and March 2017). As a result, Appellant never received the suit papers that the Department of Motor Vehicles sent to his former address. (*Id.* at ¶¶ 5-11).

⁴ As to this factor, Respondent’s only argument is to feign ignorance about how counsel was retained before Mr. Hunt had personal knowledge of the lawsuit. (Respondent’s Br., p. 38 (“The record does not disclose who retained counsel or what that person knew, but it does disclose that an attorney acting on Appellant’s behalf was in a position to move for relief before Appellant himself claims to have known anything....”). The only evidence in the record is that Appellant was not aware of the suit and therefore acted promptly in filing the Motion. If Respondent wants to imply anything to the contrary, Respondent should have presented evidence to that effect at the hearing. Respondent certainly would have done so if there was any evidence of delay. There was none.

Here, there is “no evidence in the record that the mistake was anything but a good faith error.” *See Micronics, Inc.*, 345 S.C. at 511, 548 S.E.2d at 226. The accident report lists Appellant as not contributing to the accident and lists the other driver, Maisha Jacobs, as at fault for the accident. (Mem. in Supp., p. 7); (Hunt Aff. ¶ 3). According to Appellant, Maisha Jacobs pulled out in front of Appellant’s vehicle and failed to yield the right of way, causing the accident. (Hunt Aff. ¶ 2). Given these facts, Appellant could not have anticipated that the other parties involved in the accident would need an updated address for service of a lawsuit upon him.⁵ Contrary to Respondent’s argument, this was not the type of accident that would put a reasonable accident victim in his circumstances on notice that he might be sued by the at-fault motorist and at-fault motorist’s passenger, such that he would need to update his driver’s license address. *See* (Respondent’s Br., pp. 35-36 (arguing that the collision should have prompted Mr. Hunt to update his address with the DMV so that he could be sued for the accident)).⁶ Certainly, he did not anticipate the accident beforehand, and therefore his pre-accident failure to update his driver’s license in the months after his move is not any indication of an attempt to avoid service or litigation. It is the very essence of mere inadvertence or mistake.

⁵ Mr. Hunt’s testimony in his affidavit that responding law enforcement found him not at fault for the accident is admissible. (Aff. of Def. Wayne Hunt ¶ 3). Mr. Hunt’s testimony concerning the accident report is not hearsay. *See State v. Brown*, 317 S.C. 55, 63, 451 S.E.2d 888, 894 (1994) (“Evidence is not hearsay unless it is an out of court statement offered to prove the truth of the matter asserted.”). Here, this testimony is offered not for the truth of the matter asserted but to show Mr. Hunt’s state of mind – i.e., whether he could have anticipated a lawsuit being filed against him as a result of an auto accident such that he knew of the need to update his address with the North Carolina Department of Motor Vehicles.

⁶ Respondent cannot use the accident report as both a weapon and a shield – arguing that Appellant’s former address was on the accident report for purposes of service/failure to comply DMV rules but also arguing that the fact that the accident report lists Mr. Hunt as not at fault for the accident is inadmissible.

Respondent also argues that this was no mistake, inadvertence, and/or excusable neglect because: (1) Appellant “chose...not to give an accurate address to the officer at the scene”; and (2) “choose...not to provide a forwarding address to the postal service.” (Respondent’s Br., pp. 34-35). As to Appellant’s first allegation, there is no evidence in the record to support this allegation. There is no evidence that Mr. Hunt had an opportunity to present his updated address to an officer at the scene. There is also no evidence that a responding officer would have put a different address on the accident report from the one listed on a motorist’s driver’s license.

As to Appellant’s second allegation, there is no law requiring a person to provide the U.S. Postal Service with a forwarding address and no evidence in the record that Appellant did not provide the U.S. Postal Service with a forwarding address. Respondent alleges that the certified mail from the South Carolina DMV coming back “Unclaimed Unable to Forward” is evidence of this alleged fact. (Respondent’s Br., p. 34). The U.S. Postal Service only forwards mail for up to twelve months. *See* <https://www.usps.com/manage/forward.htm>. Thus, if Mr. Hunt had provided the U.S. Postal service with a forwarding address when he moved in 2013, the certified mail sent to his former address in 2017 would have still come back as “Unclaimed Unable to Forward” – making it no evidence of lack of the prior provision of a forwarding address. Regardless, this argument is a red herring. A forwarding address would have done no good. As explained above, the U.S. Postal Service only forwards mail for up to twelve months. Thus, by the time Respondent attempted service in 2017 – over three years after the accident and after Respondent moved – the U.S. Postal service would not have forwarded the mail to Respondent’s new address. *See* (Hunt Aff. ¶¶ 7-8).

With respect to the third factor, Appellant has a meritorious defense. As this Court in *Williams v. Watkins* explained:

To establish a meritorious defense, the party does not have to show he would prevail on the merits. *McClurg v. Deaton*, 380 S.C. 563, 575, 671 S.E.2d 87, 93–94 (Ct.App.2008). Rather, a meritorious defense “need be only one which is worthy of a hearing or judicial inquiry because it raises a question of law deserving of some investigation and discussion or a real controversy as to real facts arising from conflicting or doubtful evidence.” *Id.* at 575, 671 S.E.2d at 94 (quotations and citations omitted).

384 S.C. 319, 326, 681 S.E.2d 914, 917–18 (Ct. App. 2009). In this case, Appellant was not at fault for the underlying auto accident. As Plaintiff’s Complaint admits, the Respondent’s Decedent was a passenger in a vehicle “attempting to make a left turn” off US-15 onto a secondary road. (Compl. ¶ 3). It further admits that Appellant’s vehicle was traveling in the opposite direction on US-15. (*Id.*). Thus, Plaintiff’s Complaint admits that Respondent’s driver tried to turn left in front of Mr. Hunt, who was traveling in the opposite direction on US-15 and who necessarily had the right-of-way. *See (id.)*. It is also Appellant’s testimony that Maisha Jacobs, the driver of Plaintiff’s vehicle, failed to yield the right of way and turned in front of him. (Hunt Aff. ¶ 2). He has testified via affidavit that Maisha Jacobs failed to yield the right of way, causing the accident and the Plaintiff’s death. (*Id.*).

Respondent ignores his own admissions in his Complaint and then argues that Mr. Hunt’s eye-witness affidavit testimony does not satisfy the meritorious defense factor. *See* (Respondent’s Br., p. 37-39). Such argument fails to take into account that all this factor requires is a *prima facie* showing of a meritorious defense – not trial evidence of “an absolute defense.” *See Micronics*, 345 S.C. at 511, 548 S.E.2d at 226 (holding party seeking to set aside default satisfied this factor by presenting its own prehearing statement); *Thompson v. Hammond*, 299 S.C. 116, 120, 382 S.E.2d 900, 903 (1989) (stating that “[t]he complainant does not have to establish that he would prevail on the merits, but only that his defense is meritorious” and that such standard was satisfied by the defaulting parties’ own testimony); *Williams*, 384 S.C. at 326, 681 S.E.2d at 917 (holding

defaulting party “made a prima facie showing of a meritorious defense” to the plaintiff’s claims by the responses in his Answer). Mr. Hunt’s affidavit satisfies this factor.

With respect to the fourth factor, “the law favors the resolution of disputes based upon all parties having their day in court.” *Williams*, 384 S.C. at 327, 681 S.E.2d at 918 (citation omitted). With this factor, a court looks at whether the degree of prejudice the plaintiff will suffer if relief is granted is “so high as to outweigh the other factors.” *Id.* As explained above, Appellant is not liable for the auto accident at issue. Respondent has never had a proper basis for asserting liability against Appellant for the December 10, 2013 auto accident. If Respondent thinks otherwise, there will be no prejudice in setting aside the default as to Appellant and allowing Respondent to try to prove its case. This is not a small default judgment. The Special Referee awarded \$5,100,000 in damages. In light of the significant meritorious defense, the undisputed fact that Appellant was not aware of the lawsuit until after entry of the Default Judgment, and Respondent’s failure to comply with the substitute service statute, the factors all weigh substantially in favor of setting aside the default.

Appellant was driving down the highway when another vehicle turned left in front of him. Plaintiff should have never brought this action against him in the first place. *See Dibble v. Schade*, 308 S.C. 88, 93, 417 S.E.2d 104, 107 (Ct. App. 1992) (where plaintiff did not have a legitimate claim, court held that the plaintiff “suffered no prejudice by the court’s action in voiding the [default] judgment” and recognized “an overriding rule of civil procedure which says ‘what doesn’t make any difference, doesn’t matter’”) (quoting *McCall v. Finley*, 294 S.C. 1, 362 S.E.2d 26 (Ct. App. 1987)); *Nelson v. Nelson*, 428 S.C. 152, 176, 833 S.E.2d 432, 444 (Ct. App. 2019) (holding factors weighed in favor of defendant where plaintiff would suffer some prejudice but not granting the Rule 60(b) motion would result in “a windfall to [plaintiff] to which she would

not otherwise be entitled”). Additionally, any “day in court” delay the Respondent endures is largely the product of its or its counsel’s own delay. *See* (Respondent’s Br., p. 39). Respondent waited until December 8, 2016 – almost exactly three (3) years from the date of the auto accident, to file a complaint against Appellant. (Compl.). Respondent then waited another five and a half (5 ½) years to effectuate legal service upon Appellant. *Compare* S.C. Code § 15-9-380 *with* (Wanda Ealy Aff. (filed July 11, 2022)).

Moreover, Respondent never effectuated legal service on Appellant before obtaining the Entry of Default and Default Judgment. Therefore, Respondent was never entitled to default/default judgment against Appellant in the first place. *See New Hampshire Ins. Co. v. Bey Corp.*, 312 S.C. 47, 50, 435 S.E.2d 377, 378 (Ct. App. 1993).

These factors weigh in favor of setting aside the Entry of Default and Default Judgment, and the Special Referee abused his discretion by refusing to set them aside. *See Micronics, Inc.*, 345 S.C. at 512, 548 S.E.2d at 226 (“Given [plaintiff’s] good faith mistake, its swift action to try to remedy the situation, the existence of a meritorious defense, and the lack of prejudice to [the defendant], we find the [Administrative Law Judge] abused his discretion by refusing to reopen the case.”).

CONCLUSION

For the above-stated reasons and those set forth in Appellant’s Initial Brief, the Special Referee abused his discretion and should be reversed. Under the plain language of South Carolina Code § 15-9-380, service is not effective upon a nonresident motorist until the statutorily-required documents are filed with the Clerk of Court. Respondent obtained the Entry of Default, Order of Reference, and Default Judgment all before completing the § 15-9-380 filing requirement.

Consequently, the Circuit Court did not have personal jurisdiction over Appellant when it entered those Orders against him. Those Orders are void as a matter of law and should have been set aside.

Additionally, Appellant is entitled to relief under Rule 60(b)(1) for mistake, inadvertence, surprise or excusable neglect. Appellant respectfully requests that this Court reverse the Circuit Court and Special Referee and set aside the Entry of Default, Order of Reference, and Default Judgment.

Respectfully submitted,

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September 28, 2026

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM MARLBORO COUNTY
Court of Common Pleas

Paul M. Burch, Circuit Court Judge
Douglas Jennings, Jr., Special Referee

Case No. 2016-CP-34-00265
Appellate Case No. 2026-000228

Levi Owens, as Personal Representative of the Estate of Christopher McLeanRespondent,

v.

Wayne Hunt.....Appellant.

PROOF OF SERVICE

This is to certify that the undersigned counsel has caused to be served this day the **Initial Reply Brief of Appellant Wayne Hunt** via electronic mail to the address stated in the Supreme Court Order 2022-05-06-03 and in accordance with Rule 262, SCACR, and additionally via electronic mail to the following counsel of record in this matter as set forth below on the following page:

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September 28, 2026

From: [Michelle Kiser](#)
To: ["jayparker@parkerlawgroupsc.com"](#); ["Ashley Nance"](#); ["jason@luck.law"](#)
Cc: [Wesley B. Sawyer](#); [Megan Walker](#); [John M. Grantland](#); [Renee Dillon](#); ["ccartier@parkerlawgroupsc.com"](#); ["Lesley Wiggins"](#)
Subject: Levi Owens v. Wayne Hunt for Case No.: 2026-000228 (1570-0149)
Date: Monday, September 28, 2026 4:59:42 PM
Attachments: [image001.png](#)
[image002.png](#)
[Initial Reply Brief of Appellant Wayne Hunt.pdf](#)
[Proof of Service.pdf](#)
[Kitchings 09-28-26 Enclosed Appellant Hunt's Initial Reply Brief.PDF](#)

Good afternoon,

Please see the attached for service upon you correspondence, the Initial Reply Brief of Appellant Wayne Hunt, and our Proof of Service, which are being filed with the South Carolina Court of Appeals today. A copy of this message will also be filed along with the attached Proof of Service. Thank you.

Kindest regards,



Michelle L. Kiser

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September 28, 2026

Via Email

The Honorable Jenny Abbott Kitchings
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Re: Levi Owens as Personal Representative of the Estate of Christopher McLean v. Wayne Hunt
Appellate Case No.: 2026-000228
Civil Action No.: 2016-CP-34-00265
Our File No.: 1570-0149

Dear Ms. Kitchings:

Enclosed please find the Initial Reply Brief of Appellant Wayne Hunt and the Proof of Service.

By copy of this letter, I am serving same on all counsel. Thank you for your gracious consideration of this request.

Yours truly,

s/Wesley B. Sawyer

Wesley B. Sawyer

WBS/mlk

Enclosures

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