

**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

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

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Oct 23 2026

SC Court of Appeals

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 The South Carolina Department of Behavioral Health and Developmental Disabilities are the Respondents.

**APPELLANT’S MOTION FOR LEAVE TO FILE A MOTION FOR RELIEF FROM
JUDGMENT PURSUANT TO RULE 60(b)(3), SCRCPP, IN THE CIRCUIT COURT**

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

Appellant Joel Ndunda, appearing pro se, respectfully moves this Court, pursuant to Rule 60(b), SCRCPP, for leave to file in the Charleston County Court of Common Pleas a motion for relief from the Order of Dismissal filed November 3, 2025, under Rule 60(b)(3), SCRCPP, on the ground of fraud, misrepresentation, or other misconduct of an adverse party. Rule 60(b) provides that “during the pendency of an appeal, leave to make the motion must be obtained from the appellate court.” Appellant respectfully asks that the Court rule on this motion before November 3, 2026.

I. THE LEAVE REQUESTED

A motion under Rule 60(b)(3) must be made not more than one year after the order was entered. The Order of Dismissal was filed November 3, 2025, and the one-year period ends November 3, 2026. Rule 6(b), SCRCP, does not permit that period to be enlarged. Respondents' own return to Appellant's July 6, 2026 motion states that "the proper procedural vehicle to seek relief from an order on the basis of fraud, misrepresentation, or other misconduct of an adverse party is a motion in the circuit court pursuant to Rule 60(b)(3), SCRCP, and where, as here, an appeal is pending, making such a motion requires first obtaining leave of this Court." (Return at 5.) Appellant seeks that leave so that the date is preserved while this appeal remains pending.

This motion does not withdraw or abandon this appeal. It does not ask the Court to decide the merits of the fraud ground, and it does not ask the Court to stay or alter the briefing schedule. Appellant asks that the grant of leave not be treated as a dismissal, abandonment, or termination of this appeal, and that the appeal remain pending on its present schedule.

II. THE GROUND FOR THE CIRCUIT COURT MOTION

The ground is documented in filings already before this Court. Respondents represented to the circuit court, in their Motion to Dismiss filed July 25, 2025, that Appellant was transported or committed "by an Order of Detention by the Charleston County Probate Court." After the circuit court's order, MUSC's records custodian certified in writing that no M-130 Affidavit for Emergency Detention exists in Appellant's records for May 1–2, 2025. That certification was filed with Appellant's Motion to Reinstate (Ex. B). Respondents' return to Appellant's July 6, 2026 motion states that the documents "cannot be located" and that Respondents "do not possess them." Respondents have not produced the M-130 Affidavit or a probate court order of detention.

III. WHY THE COURT SHOULD ACT BEFORE NOVEMBER 3, 2026

Respondents have made several requests for additional time in this appeal. Four concern their Initial Brief, which remains unfiled after the October 20, 2026 deadline this Court set, and three concerned their return to Appellant's July 6 motion. Respondents' October 20 motion asks that the Initial Brief deadline be held in abeyance while it is pending. Appellant's reply to that brief is due ten days after service under Rule 208(a)(3), SCACR. The date in Rule 60(b)(3) does not move with any of these schedules, and the time to seek leave is running out through no delay by Appellant.

IV. RESPONDENTS ARE NOT PREJUDICED

Leave to file in the circuit court does not require Respondents to respond to anything in this Court, and it does not change the briefing here. Respondents named Rule 60(b)(3) as the available vehicle. A request for leave to use it works no prejudice on them.

CONCLUSION

Appellant respectfully requests that this Court grant leave to file, in the Charleston County Court of Common Pleas, a motion for relief from the November 3, 2025 Order of Dismissal under Rule 60(b)(3), SCRCPP, and that it rule on this motion before November 3, 2026. Appellant further requests that the appeal remain pending, and that the grant of leave not be treated as a dismissal or abandonment of the appeal.

Respectfully submitted,

s/ Joel Ndunda
Joel Ndunda
Pro Se Appellant
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Charleston, South Carolina 29414
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(843) 822-4869

Date: October 23, 2026

CERTIFICATE OF SERVICE

I hereby certify that on the date indicated below, a true and correct copy of the foregoing Appellant's Motion for Leave to File a Motion for Relief from Judgment Pursuant to Rule 60(b) (3), SCRCF, in the Circuit Court was served upon counsel for Respondents by first-class United States Mail, postage prepaid, addressed to:

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: October 24, 2026

s/ Joel Ndunda
Joel Ndunda, Pro Se Appellant

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