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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Charleston County
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Case No. 2015-CP-10-00955
Appellate Case No. 2026-000531

Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc.
and Elizabeth A. Bushey, individually, and on behalf of all others similarly situated,

Appellants,

v.

Island Pointe, LLC; Complete Building Corporation; Tri-County Roofing, Inc.; Creekside, Inc.; American Residential Services, LLC d/b/a ARS/Rescue Rooter Charleston; Andersen Windows, Inc.; Atlantic Building Construction Services, Inc. n/k/a Atlantic Construction Services, Inc.; Builder Services Group, Inc. d/b/a Gale Contractor Services; Novus Architects, Inc. f/k/a SGM Architects, Inc.; Tallent and Sons, Inc.; WC Services, Inc., CRG Engineering, Inc.; CertainTeed Corporation; Kelly Flooring Products, Inc. d/b/a Carpet Baggers; Cornerstone Construction and Mark Malloy d/b/a Cornerstone Construction; Miracle Siding, LLC and Wilson Lucas Sales d/b/a Miracle LLC; Mark Palpoint a/ka Micah Palpoint; Elroy Alonzo Vasquez; Chris a/k/a John Doe 61; Alderman Construction; Stanley's Vinyl Fence Designs; Cohen's Drywall Company, Inc; Mosley Concrete; Hand A Framing Construction, LLC a/k/a H&A Framing Construction, LLC and d/b/a H and A Framing, LLC, H&A Construction, and Hand A Construction; JMC Construction, Inc.; JMC Construction, LLC; John Doe 1-15,

Defendants,

Of which Tri-County Roofing, Inc., is the

Appellant.

INITIAL BRIEF OF RESPONDENTS

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COUNTER-STATEMENT OF ISSUES ON APPEAL

- I. Where Plaintiffs¹ obtained a judgment against TCR² for more than \$1,000,000; where TCR appealed and, to stay execution of the judgment pending the appeal (i.e., in exchange for the benefit of preventing Plaintiffs from executing on the judgment pending the appeal), posted a \$1,000,000 surety bond to “guarantee the payment of the judgment pending the appeal;”³ where the appeal concluded with finality with Plaintiffs remaining entitled to a judgment against TCR for more than \$1,000,000, which remains unsatisfied; where, by orders filed August 28 and December 11, 2025 (collectively, the “Bond Deposit/Disbursement Orders”),⁴ the trial court directed the \$1,000,000 amount of TCR’s appeal bond to be deposited with the clerk of court and directed the clerk to disburse the funds on deposit to Plaintiffs in the event that a separate lawsuit pertaining to insurance coverage⁵ was not resolved within 120 days after August 28, 2025; where TCR did not appeal the Bond Deposit/Disbursement Orders, or even challenge them via motion under Rule 59(e), SCRCF; and where, after the 120-day disbursement trigger established by the Bond Deposit/Disbursement Orders became applicable, the clerk’s office asked the trial court to clarify the payee for the disbursement of the funds (specifically, to clarify whether the payee should be Plaintiffs’ counsel or Plaintiffs themselves), did the trial court commit reversible error in issuing, *sua sponte*, an order on December 30, 2025, “clarify[ing] that the [appeal bond] funds including accrued interest may be released to counsel of record for plaintiffs”⁶ and thereafter, by order filed February 3, 2026, denying TCR’s motion for reconsideration of and/or relief from its December 30, 2025, order under Rule 59(e) and/or 60, SCRCF?^{7 8}

¹ “Plaintiffs” refers to Plaintiffs/Respondents, Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc. and Elizabeth A. Bushey, individually, and on behalf of all others similarly situated.

² “TCR” refers to Defendant/Appellant, Tri-County Roofing, Inc.

³ S.C. Code Ann. § 18-9-130(A)(1).

⁴ As further explained below in the Counter-Statement of the Case, the August 28, 2025, order is the principal order. (Order filed 8/28/25.) Essentially, the December 11, 2025, order corrected a scrivener’s error in the August 28, 2025, order but otherwise left it unchanged.

⁵ This “coverage action” is defined below in the Counter-Statement of the Case.

⁶ (Order filed 12/30/25.)

⁷ As further explained below in the Counter-Statement of the Case, unlike TCR, Plaintiffs did appeal the Bond Deposit/Disbursement Orders (Pls.’ NOA & POS), and their appeal is pending in this Court as Appellate Case No. 2026-000077. But Plaintiffs’ appeal does not challenge the 120-day disbursement trigger. Indeed, Plaintiffs contend that, even if the Court is not inclined to agree with them as to the part of the Bond Deposit/Disbursement Orders they do challenge on appeal, at a minimum, the unchallenged 120-day disbursement trigger itself unconditionally entitles Plaintiffs to be paid the full amount of TCR’s appeal bond in partial satisfaction of judgment. And if anything, this proposition is only strengthened by the trial court’s orders of December 30, 2025, and February 3, 2026, which, respectfully, this Court should find to be completely unscathed by TCR’s appeal.

- A. Is TCR correct in asserting that the Bond Deposit/Disbursement Orders stayed disbursement of the appeal bond funds until after the coverage action is resolved?**
- B. Is TCR aggrieved by the December 30, 2025, and February 3, 2026, orders such that it has a right to appeal them?**
- C. Was TCR's motion challenging the December 30, 2025, order in fact an untimely challenge to the 120-day disbursement trigger already established by the Bond Deposit/Disbursement Orders, such that the 120-day disbursement trigger, having not been appealed by TCR, is now above reproach as the law of the case?**
- D. Are TCR's appellate arguments preserved for review in any event?**

COUNTER-STATEMENT OF THE CASE

This construction defect lawsuit was filed against TCR, as well as other parties irrelevant to this appeal, in the Charleston County Court of Common Pleas on February 13, 2015. (Summons & Compl.)⁹ It came on for a jury trial in May of 2019, the Honorable Jennifer B. McCoy presiding, and Plaintiffs obtained a verdict against TCR in the amount of \$7,000,000, including \$500,000 in punitive damages. (Verdict Form.) Post-trial proceedings resulted in TCR being allowed a setoff in the amount of \$1,670,000, and in accordance with the trial court's order filed July 23, 2019, judgment was entered in favor of Plaintiffs against TCR in the amount of \$5,330,000,¹⁰ whereupon, on October 14, 2019, TCR appealed,¹¹ contending it was entitled to a greater setoff than the trial court allowed.

⁸ This Counter-Statement of Issues on Appeal should be deemed to include the embedded questions of appealability and mootness raised herein.

⁹ The operative complaint is Plaintiffs' second amended complaint, filed November 2, 2017. (2d Am. Compl.)

¹⁰ (Order filed 7/23/19.)

¹¹ TCR's notice of appeal (TCR's NOA & POS, dated 10/14/19) timely followed the trial court's September 25, 2019, order denying TCR's motion for reconsideration of its July 23, 2019, order. (Order filed 9/25/19.)

By motion filed October 21, 2019,¹² TCR sought and, by order filed January 28, 2020,¹³ was granted a stay of execution pending its appeal on the condition that it post an appeal bond in the amount of \$1,000,000, pursuant to § 18-9-130, and on February 4, 2020, TCR posted a \$1,000,000 appeal bond executed by surety U.S. Specialty Insurance Company (“USSIC”). (Original Appeal Bond.) Years later, on February 7, 2025, while TCR’s appeal was still pending, and pursuant to a consent order filed January 2, 2025,¹⁴ this bond was replaced by a substitute bond,¹⁵ but insofar as the security provided to Plaintiffs is concerned—and, indeed, as expressly required by the aforementioned consent order allowing it¹⁶—the material terms of the substitute bond are identical to those of the original. (*Compare* Substitute Appeal Bond *with* Original Appeal Bond.)¹⁷

All told, the appeal resulted in TCR being allowed an additional setoff of \$1,500,000, i.e., a setoff of \$1,500,000 more than the \$1,670,000 the trial court had already allowed. First, by opinion filed June 28, 2023,¹⁸ this Court held that TCR was entitled to set off an additional

¹² (TCR’s Mot. to Stay Execution of J. and/or to Set an Appellate Bond, filed 10/21/19.)

¹³ (Order filed 1/28/20.)

¹⁴ (Order filed 1/2/25.)

¹⁵ (Substitute Appeal Bond.)

¹⁶ (Order filed 1/2/25 p. 5.)

¹⁷ The difference between the substitute bond and the original bond merely reflects that, during the pendency of the appeal, Plaintiffs were able to reach settlements with two of TCR’s three insurers, Builders Mutual Insurance Company (“BMIC”) and Scottsdale Insurance (“Scottsdale”), but not with Certain Underwriters of Lloyd’s, London (“Lloyd’s”). (Order filed 1/2/25.) Unlike the original bond, which states that all three of TCR’s insurers have agreed with USSIC to guarantee the bond amount (Original Appeal Bond p. 2), the substitute bond only states that Lloyd’s has agreed with USSIC to guarantee the bond amount. (Substitute Appeal Bond p. 3.)

¹⁸ *Palmetto Pointe at Peas Island Condominium Property Owners Assoc., Inc. v. Island Pointe, LLC*, 440 S.C. 190, 890 S.E.2d 603 (Ct. App. 2023).

\$500,000. Then, by opinion filed April 30, 2025,¹⁹ our Supreme Court affirmed the additional \$500,000 setoff, found TCR entitled to set off another \$1,000,000 beyond that, and remanded the case to the trial court for calculation of the judgment to be entered against TCR in light of its holding.

The remittitur was issued on June 5, 2025,²⁰ and that same day, Plaintiffs filed a motion asking the trial court, specifically, Judge McCoy, to enter judgment in accordance with the Supreme Court’s opinion and, as TCR’s appeal was concluded and the judgment to be entered against it remained unsatisfied and would certainly exceed the \$1,000,000 amount of TCR’s appeal bond, to order the bond proceeds to be immediately disbursed to Plaintiffs in partial satisfaction of the judgment. (Pls.’ Mot. for Entry of J. and Disbursement of Bond, filed 6/5/25; *see also* 7/30/25 Email from Pls. (via Weiland) to J. McCoy with Pls.’ Proposed Order & Exs. A and B thereto; Pls.’ Proposed Order & Exs. A and B thereto; 8/18/25 Email from Pls. (via Weiland) to J. McCoy Objecting to TCR’s Proposed Order and Submitting Pls.’ Modified Proposed Order; Pls.’ Modified Proposed Order.)

While it did not oppose Plaintiffs’ calculation of the judgment amount or the entry of judgment against it for the same, TCR opposed Plaintiffs’ request for disbursement of the bond proceeds, arguing that the pendency of a declaratory judgment action regarding coverage for the judgment under TCR’s insurance policies with Lloyd’s (the “coverage action”) prevented the bond funds from being disbursed and cross-moving for a stay pending the outcome of the coverage action. (TCR’s Response in Opp’n to Pls.’ Mot. for Entry of J. and Cross-Mot. to Stay, filed 7/28/25; TCR’s Mot. to Stay, filed 7/29/25; *see also* 7/30/25 Email from TRC (via

¹⁹ *Palmetto Pointe at Peas Island Condominium Property Owners Assoc., Inc. v. Island Pointe, LLC*, ___ S.C. ___, 915 S.E.2d 501 (2025).

²⁰ (Remittitur, dated 6/5/25.)

Stegmaier) to J. McCoy with Copies of TCR's Response in Opp'n and Cross-Mot. & Separate Mot. to Stay; TCR's Reply in Opp'n to Pls.' Proposed Order, filed 7/31/25; 8/15/25 Email from TCR (via Stegmaier) with TCR's Proposed Order; TCR's Proposed Order.)

Following a hearing on July 31, 2025,²¹ by order filed August 28, 2025, the trial court directed entry of judgment in favor of Plaintiffs against TCR in the amount of \$3,486,317.70, which amount is inclusive of \$1,906,317.70 in post-judgment interest accrued between July 23, 2019, and July 31, 2025. (Order filed 8/28/25.)²² The trial court did not, however, order immediate disbursement of the appeal bond proceeds to Plaintiffs in partial satisfaction of the judgment but rather ordered Lloyd's to deposit the \$1,000,000 bond amount with the clerk of court, released/cancelled the bond and discharged USSIC from its obligations thereunder, and directed the clerk to hold the deposited funds until the earlier of (a) final resolution of the coverage action or (b) 120 days from the date of the order, i.e., 120 days from August 28, 2025. (Order filed 8/28/25 pp. 5–6.)²³

²¹ (Tr. of 7/31/25 Hr'g.)

²² Again, TCR does not dispute the amount of the judgment or Plaintiffs' entitlement to its entry. (TCR's Response in Opp'n to Pls.' Mot. for Entry of J. and Cross-Mot. to Stay, filed 7/28/25 p. 2; 7/30/25 Email from TRC (via Stegmaier) to J. McCoy with Copies of TCR's Response in Opp'n and Cross-Mot. & Separate Mot. to Stay; TCR's Reply in Opp'n to Pls.' Proposed Order, filed 7/31/25 p. 1; TCR's Proposed Order pp. 3, 5.)

²³ Specifically, regarding the retention and disbursement of the funds deposited with the clerk, the trial court's August 28, 2025, order reads as follows:

4. Retention and Disbursement

The funds shall remain in the registry [of the court] until the earlier of:

- a. Final resolution (including appeals) of [the coverage action]; or
- b. 120 Days from the Issuance of this Order.

Pursuant to Rule 59(e), Plaintiffs moved the trial court to alter, amend, and/or reconsider its August 28, 2025, order (“Plaintiffs’ motion to reconsider”). (Pls.’ Mot. to Reconsider.) By order filed December 11, 2025, the trial court denied Plaintiffs’ motion to reconsider except “as to clarify that the Clerk of Court, and not TCR, may direct disbursement of funds (if/when necessary).” (Order filed 12/11/25.)²⁴ Again, the trial court’s principal order of August 28,

If Plaintiffs prevail in the coverage action, the funds and accrued interest [while on deposit with the clerk] shall be disbursed to them in accordance with that judgment. If coverage is denied in whole or in part, the funds (or applicable portion) shall be returned to the insurers.

If the coverage case is not reached within 120 days of this Order, TCR shall dis[b]urse funds.

(Order filed 8/28/25 p. 6.) The trial court’s decision to provide for the alternative of the 120-day disbursement trigger marks a notable departure from the relief that TCR sought. As reflected in the proposed order TCR submitted to the trial court, TCR wanted the clerk to hold the deposited funds pending (a) final resolution of the coverage action or (b) further order of the trial court. (TCR’s Proposed Order p. 6.) While the trial court largely adopted TCR’s proposed order, it opted against TCR’s proposed further-order-of-the-court provision in favor of the 120-day disbursement trigger and language expressly providing that, “[i]f the coverage case is not reached within 120 days of this Order, TCR shall dis[b]urse funds.” (Order filed 8/28/25 p. 6.) And subsequently, while otherwise denying Plaintiffs’ motion to reconsider, the trial court clarified that this language regarding the funds being disbursed if the coverage action was not reached within 120 days was intended to refer to “the Clerk of Court,” not “TCR.” (Order filed 12/11/25.) Accordingly, given that it has now been far more than 120 days since August 28, 2025, the operation of the 120-day disbursement trigger should itself unconditionally entitle Plaintiffs to the full amount of the bond funds (whether they are paid to Plaintiffs in the form of \$1,000,000 from USSIC or the clerk of court’s disbursement of the \$1,000,000 (plus interest) that Lloyd’s deposited pursuant to the trial court’s August 28, 2025, order). But, out of an abundance of caution, to the extent that there remains any question about whether Plaintiffs are unconditionally entitled to these funds (without regard to any question of insurance coverage for Plaintiffs’ judgment against TCR), and in light of this appeal by TCR, Plaintiffs are proceeding with their appeal (Appellate Case No. 2026-000077) to make sure their rights to the full protection and proceeds of TCR’s appeal bond are vindicated.

²⁴ As quoted above, the trial court’s order of August 28, 2025, states, “If the coverage case is not reached within 120 days of this Order, TCR shall dis[b]urse funds. (Order filed 8/28/25 p. 6 (emphasis added).) Among other things, Plaintiffs’ motion to reconsider asked the trial court to clarify that the *clerk of court*, not TCR, was to disburse the \$1,000,000 on

2025, and December 11, 2025, order on Plaintiffs’ motion to reconsider, which revised the principal order only insofar as it “clarif[ied] that the Clerk of Court, and not TCR, may direct disbursement of funds (if/when necessary),”²⁵ are collectively referred to as the “Bond Deposit/Disbursement Orders.”

In accordance with the Bond Deposit/Disbursement Orders, the \$1,000,000 bond amount was deposited with the clerk of court, and after the passage of the 120-day period established by the Bond Deposit/Disbursement Orders, Plaintiffs’ counsel contacted the clerk’s office about disbursement of the bond funds,²⁶ which prompted the clerk’s office, apparently out of an abundance of caution, to ask Judge McCoy to confirm the payee to whom the funds on deposit were to be disbursed (whether it was Plaintiffs’ counsel or Plaintiffs themselves), which in turn prompted Judge McCoy to issue, *sua sponte*, a one-sentence form order on the morning of December 30, 2026, stating simply, “Upon contact from the Clerk’s office, this order is to clarify that the funds including accrued interest may be released to counsel of record for plaintiffs.” (Order filed 12/30/25; Tr. of 1/30/26 Hr’g p. 4:3–10, p. 8:11–15, pp. 10:17–11:1.) The clerk’s office then disbursed the funds on deposit to Plaintiffs’ counsel. (Tr. of 1/30/26 Hr’g p. 8:16–24.)

deposit, plus all accrued interest, once the 120-day period expired. (Plaintiffs’ Motion to Reconsider p. 7.)

²⁵ (Order filed 12/11/25.)

²⁶ The actual 120th day after August 28, 2025, was Friday, December 26, 2025, which was a holiday. So, the last day of the 120-period established by the Bond Deposit/Disbursement Orders was Monday, December 29, 2025, pursuant to Rule 6(a), SCRCp. The other potential disbursement trigger under the Bond Deposit/Disbursement Orders (the final resolution (including appeals) of the coverage action (Order filed 8/28/25 p. 6)) had not occurred by the end of the 120-day period. Indeed, the coverage action was referred to the Charleston County Master-in-Equity by consent order filed December 29, 2025 (Order of Referenced filed 12/29/25) and remains pending before the master as of the date of this brief. Accordingly, under the plain language of the Bond Deposit/Disbursement Orders, the 120-day disbursement trigger was clearly applicable as the “earlier of” the two potential disbursement triggers. (Order filed 8/28/25 p. 6.)

On the afternoon of December 30, 2025, after the clerk’s office had already disbursed the funds on deposit to Plaintiffs’ counsel,²⁷ TCR moved, “pursuant to Rules 59(e) and 60(b) of the South Carolina Rules of Civil Procedure,” for an order “granting a stay of the disbursement of the funds held by the Clerk of Court under the Order filed December 30, 2025, and extend[ing] the applicable deadline governing the disbursement of the funds” pending the determination of the coverage action. (TRC’s Mot. filed 12/30/25; *see also* TCR’s Mem. in Supp. filed 2/2/26.)

By notice served and filed January 8, 2026, Plaintiffs’ timely appealed the Bond Deposit/Disbursement Orders. (Pls.’ NOA & POS.)²⁸

Pursuant to Rule 203(b)(1), SCACR, and Rule 59(f), SCRCP, the time for TCR to appeal the Bond Deposit/Disbursement Orders ran through Monday, January 12, 2026, which was the 30th day after December 11, 2025, as computed under Rule 263(a), SCACR, as well as Rule 6(a). But TCR did not appeal the Bond Deposit/Disbursement Orders.

Judge McCoy heard TCR’s December 30, 2025, motion on January 30, 2026. (Tr. of 1/30/26 Hr’g.) During the hearing, Judge McCoy clearly explained the simple origin and purpose of her December 30, 2025, order—which was merely to clarify the proper payee for the disbursement:

Well, good morning. And let me just start out by saying that I’m certainly not attempting to circumvent the jurisdiction of the

²⁷ (Tr. of 1/30/26 Hr’g p. 8:11–15; Email from J. Lucey to J. McCoy dated 1/28/26 [Attached to Order filed 2/3/26].)

²⁸ Again, Plaintiffs’ appeal is pending in this Court as Appellate Case No. 2026-000077. As explained therein, Plaintiffs contend that the trial court erred in denying their motion for the full \$1,000,000 amount of TCR’s appeal bond to be immediately and unconditionally disbursed to them in partial satisfaction of the judgment. As also explained therein, however, even assuming, *arguendo*, the Court is not inclined to agree with that contention, the Court should confirm that the operation of the 120-day disbursement trigger itself unconditionally entitles Plaintiffs to be paid the full amount of TCR’s appeal bond in partial satisfaction of judgment.

Court of Appeals.^[29] I just simply had a pending motion. I certainly don't want them to kick it back to the circuit level because they say there's some pending motion that needs to be ruled on.

So that's the vein through which I'm just trying to wrap this up for y'all with a bow so that they can have it all nice and neat and there's no worry that there won't be a final determination on everything that's outstanding.

So with that framework -- and I understand your position -- in no way do I think this -- your appearance this morning, Mr. Lucey, waives your position that I don't have jurisdiction, and I don't take that as such either, and we received your email and we're happy to file that if you'd like us to, to sum up your position, that's perfectly fine.

But with that, I'll just turn it over to the movant for this very narrow Motion to Reconsider, which is all I'm here for today, on the form order directing the clerk's office . . . to be able to release the fund to the attorney instead of just the plaintiffs. That was the issue that was presented to me was that it was unclear to the clerk's office whether the issuance of the money to the plaintiffs also could mean the plaintiff's attorney, and that was the only reason that issue -- the Order was issued.

(Tr. of 1/30/26 Hr'g pp. 3:11–4:10 (emphasis added).)

[T]his form Order from the Court was really just a response from the Clerk of Court seeking literally just, "Hey, Judge, it says 'plaintiffs.' We're nervous writing this million-dollar check. Can you say 'plaintiff's attorney' just to clear that up for us?" So that's literally all it was. There was no thought process other than that behind it. And that was just, "Sure. I'm happy to do that." That's not -- you know, that's fine, if that makes the Clerk of Court more comfortable. That's all.

(Tr. of 1/30/26 Hr'g pp. 10:17–11:1 (emphasis added).)

²⁹ As explained above, by the time of the of January 30, 2026, hearing on TCR's December 30, 2025, motion, Plaintiffs had already appealed the Bond Deposit/Disbursement Orders. (Pls.' NOA & POS.) And in advance of the hearing Plaintiffs' counsel had written Judge McCoy objecting to TCR's motion based on, among other things, the jurisdictional consequences of Plaintiffs' appeal. (Email from J. Lucey to J. McCoy dated 1/28/26 [Attached to Order filed 2/3/26].)

By order filed February 3, 2026, Judge McCoy denied TRC's December 30, 2025, motion. (Order filed 2/3/26.) TCR did not move for alteration, amendment, or reconsideration of this order.

By notice served March 5, 2026, this appeal by TCR of Judge McCoy's December 30, 2025, and February 3, 2026, orders follows.

STANDARD OF REVIEW

Assuming, *arguendo*, the December 30, 2025, and February 3, 2026, orders are properly appealable by TCR, and its challenge to them is not moot,³⁰ Plaintiffs do not dispute TCR's contention that an abuse of discretion standard applies. "An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion without evidentiary support." *Historic Charleston Holdings, LLC v. Mallon*, 381 S.C. 417, 434, 673 S.E.2d 448, 457 (2009).

ARGUMENT

- I. The trial court did not commit reversible error in issuing, *sua sponte*, the December 30, 2025, order "clarify[ing] that the [appeal bond] funds including accrued interest may be released to counsel of record for plaintiffs"³¹ and thereafter, by order filed February 3, 2026, denying TCR's motion for reconsideration of and/or relief from its December 30, 2025, order under Rule 59(e) and/or 60.**
 - A. Contrary to TCR's assertion, the Bond Deposit/Disbursement Orders did not stay disbursement of the appeal bond funds until after the coverage action is resolved.**

TCR's appeal rests on the premise that the trial court, in the Bond Deposit/Disbursement Orders, stayed disbursement of the bond funds until the resolution of the coverage action but then, via the December 30, 2025, order, changed course and ordered the funds to be disbursed prior to the resolution of the coverage action. And as proof that this is supposedly so, TCR

³⁰ As noted above, it was not until after the clerk's office had already properly disbursed the funds on deposit to Plaintiffs' counsel that TCR made its December 30, 2026, motion.

³¹ (Order filed 12/30/25.)

asserts that, at the time the trial court established the 120-day disbursement trigger, “the parties and the trial court understood that the coverage action would be resolved within 120 days.” (TCR’s Br. p. 10.) This is demonstrably disproved by the plain language of the August 28, 2025, order itself.

Regarding the retention and disbursement of the funds deposited with the clerk, the August 28, 2025, order expressly states:

4. Retention and Disbursement

The funds shall remain in the registry [of the court] until the earlier of:

- a. Final resolution (including appeals) of [the coverage action]; or
- b. 120 Days from the Issuance of this Order.

If Plaintiffs prevail in the coverage action, the funds and accrued interest [while on deposit with the clerk] shall be disbursed to them in accordance with that judgment. If coverage is denied in whole or in part, the funds (or applicable portion) shall be returned to the insurers.

If the coverage case is not reached within 120 days of this Order, TCR^[32] shall dis[b]urse funds.

(Order filed 8/28/25 (emphasis added).)

Without question, the August 28, 2025, order expressly established both the 120-day disbursement trigger and its applicability to require disbursement of the funds on deposit (“shall dis[b]urse funds”) if it came to pass “earlier” than the final resolution of the coverage action. Contrary to TCR’s assertion that the Bond Deposit/Disbursement Orders stayed disbursement of the bond funds until after the resolution of the coverage action based on the understanding that

³² This inadvertent reference to TCR, as opposed to the clerk of court, was corrected via the trial court’s December 11, 2025, order on Plaintiffs’ motion to reconsider.

the coverage action would be resolved within 120 days and that this plan was upset by an unforeseeable change of circumstances, the plain language of the Bond Deposit/Disbursement Orders shows just the opposite: From the beginning, it was expressly understood that the coverage action might not be resolved within 120 days, and even if it was not resolved within 120 days, the funds were to be disbursed anyway.

Indeed, TCR itself admits that the 120-day deadline was already established by the Bond Deposit/Disbursement Orders, and not the product of the December 30, 2025, order, when it states that, in the December 30, 2025, order, “the trial court *adhered* to the 120 day deadline in direct conflict with and contravention with its well-reasoned conclusion that a stay of disbursement was necessary to maintain the status quo, ‘safeguard[] the insurer’s due process rights and avoid[] the potential for disbursements that may not be recoverable.’” (TRC’s Brief p. 10 (emphasis added).) And to the extent that TCR contends that the inclusion of the 120-day disbursement trigger in the Bond Deposit/Disbursement Orders is inconsistent with other parts of those orders, it is a matter that TCR never raised to the trial court via a timely Rule 59(e) motion and cannot argue now. *Crescent Homes SC, LLC v. CJNI, LLC*, 445 S.C. 164, 181, 912 S.E.2d 389, 397 n.19 (Ct. App. 2024) (“Crescent further asserts the master made inconsistent findings as to the ROFR’s ambiguity. Crescent did not make this argument in its Rule 59(e) motion. Therefore, it is unpreserved.”); *see also Revis v. Barrett*, 321 S.C. 206, 210, 467 S.E.2d 460, 462–63 (Ct. App. 1996) (finding an argument that the trial court’s order contained a discrepancy was unpreserved when the appellants “never filed a [m]otion to [a]lter or [a]mend the [j]udgment to clarify the order, Rule 59, SCRCF, nor did they seek clarification pursuant to Rule 60(a), SCRCF”), *overruled on other grounds by Simmons v. Berkeley Elec. Coop., Inc.*, 419 S.C. 223, 797 S.E.2d 387 (2016); *Nelums v. Cousins*, 304 S.C. 306, 307–08, 403 S.E.2d 681, 681–82 (Ct.

App. 1991) (finding a trial court’s alleged failure to clarify and specify whether an easement was by necessity or was a prescriptive easement was not preserved, when the appellant had made no motion to amend the judgment).

B. TCR has no right to appeal the December 30, 2025, and February 3, 2026, orders because it is not in fact aggrieved by either of them.

Assuming, *arguendo*, the December 30, 2025, and February 3, 2026, orders fall within the categories of appealable orders under S.C. Code Ann. § 14-3-330,³³ “[o]nly a party aggrieved by an order, judgment, sentence or decision may appeal.” Rule 201, SCACR. Contrary to TCR’s assertion, the trial court’s issuance of the December 30, 2025, order did not deny it its day in court to contest disbursement. (TCR’s Br. p. 16.) The disbursement issue had already been decided by the Bond Deposit/Disbursement Orders. Indeed, TCR is not actually aggrieved by the December 30, 2025, order, as all it did was clarify the payee to whom the funds on deposit should be disbursed—given that the Bond Deposit/Disbursement Orders had already established the 120-disbursement trigger, the passage of time had already established its applicability, and, as to the one and only subject actually addressed by the December 30, 2025, order, the payee for the disbursement, Plaintiffs never argued for another payee besides Plaintiffs’ counsel. Nor, therefore, could TCR be aggrieved by the February 3, 2026, order, as all it did was leave the December 30, 2025, order unchanged.

³³ Plaintiffs are not sure what category an order of clarification for the benefit of the clerk’s office (and an order denying reconsideration of the same) is supposed to fit into.

C. TCR’s motion challenging the December 30, 2025, order was in fact an untimely challenge to the 120-day disbursement trigger already established by the Bond Deposit/Disbursement Orders, and having not been appealed by TCR, the 120-day disbursement trigger is now above reproach as the law of the case.

The issue that TCR raised via its motion challenging the December 30, 2025, order was not as to the identity of the payee to whom the clerk’s office should disburse the funds (which, again, was the only subject matter of the December 30, 2025, order) but as to whether the funds should be disbursed at all upon the expiration of the 120-day period, which was the subject matter of the Bond Deposit/Disbursement Orders. The most recent of the Bond Deposit/Disbursement Orders was filed December 11, 2025, and at that time, the deadline for a Rule 59(e) motion was 10 days, which ran through Monday, December 22, 2025. So, even if TCR’s December 30, 2025, motion had attempted to seek reconsideration of the December 11, 2025, order, it would have been too late. And, of course, it would have been all the more untimely as to the principal order filed August 28, 2025. Moreover, TCR did not appeal the Bond Deposit/Disbursement Orders, so the 120-day disbursement trigger established thereby is the law of the case. *Atlantic Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) (“[A]n unappealed ruling, right or wrong, is the law of the case.”).³⁴ And to be clear, TCR’s argument that the Court should somehow “reverse the August 28, 2025, Order pursuant to Rule 60(b)”³⁵ to excise the 120-day disbursement trigger is plainly unavailing, because, besides the fact that TCR never actually argued against the 120-day disbursement trigger at the time of the Bond Deposit/Disbursement Orders, (a) the time for TCR to have appealed the August 28, 2025, order (and, for that matter, the December 11, 2025, order) is now

³⁴ Again, Plaintiffs’ appeal of the Bond Deposit/Disbursement Orders does not challenge the 120-day disbursement trigger.

³⁵ (TCR’s Br. p. 13.)

passed³⁶ and (b) TCR's notice of appeal does not even purport to appeal it. (TCR's NOA dated 3/5/26.)

D. In any event, none of TCR's appellate arguments are preserved for review.

An appealed order comes to the appellate court with a presumption of correctness, and the burden is on the appellant to demonstrate reversible error. *McCall v. IKON*, 380 S.C. 649, 659–60, 670 S.E.2d 695, 701 (Ct. App. 2008). And the appellant's demonstration of reversible error must be based on issues/arguments that are properly preserved and presented to the appellate court for review. *See Kennedy v. S.C. Retirement Sys.*, 349 S.C. 531, 532–33, 564 S.E.2d 322, 323 (2001) (recognizing that preserving issues for appellate review is a fundamental component of appellate practice, as South Carolina appellate courts do not recognize the plain error rule); *Elam*, 361 S.C. at 25, 602 S.E.2d at 780 (noting that South Carolina's preservation requirements are "mandatory.").

"Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court." *Elam*, 361 S.C. at 23, 602 S.E.2d at 779–80. "[O]ur rules contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. A party *may* wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has

³⁶ Under Rule 59(f) and Rule 203(b)(1), the deadline for TCR to have appealed the Bond Deposit/Disbursement Orders was 30 days after the trial court's December 11, 2025, order on Plaintiffs' motion to reconsider. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 14–15, 602 S.E.2d 772, 775 (2004) ("The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice.").

been raised, but not ruled on, in order to preserve it for appellate review.” *Id.* at 24, 602 S.E.2d at 780 (emphasis in original).

Here, TCR’s motion to “reconsider” the December 30, 2025, order was not a proper motion to reconsider, because the circumstances of the *sua sponte* December 30, 2025, order—which was not issued in response to a contested motion filed by any party but rather in response to an inquiry by the clerk’s office in aid of its performance of ministerial act—were such that TCR had never presented the trial court with anything to “consider” in the first place. And the trial court’s February 3, 2026, order denying TCR’s December 30, 2025, motion did not expressly rule on any of the arguments TCR now presents to this Court on appeal. (Order filed 2/3/26.) Because TCR did not seek a ruling thereon via a Rule 59(e) motion, none of TCR’s arguments is preserved for review. *Elam*, 361 S.C. at 24, 602 S.E.2d at 780 (“A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.”) (emphasis in original).

CONCLUSION

For the foregoing reasons, and, pursuant to Rules 208(b)(2) and 220(c), SCACR, for any other reason appearing on the record, Plaintiffs ask this Honorable Court to affirm (or otherwise reject TCR’s challenge to) the trial court’s December 30, 2025, and February 3, 2026, orders.

<SIGNED ON THE FOLLOWING PAGE>

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