



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable Benjamin H. Culbertson, Presiding Circuit Court Judge
The Honorable William H. Seals, Jr., Presiding Circuit Court Judge
The Honorable William P. Keesley, Presiding Circuit Court Judge

Circuit Court Case No. 2022-CP-22-00650
Court of Appeals Case No. 2026-000265

Frank Henderson and Antioch Group.....Appellants,

v.

Abundance Home Care and Tyrhonda Priest.....Respondents,

APPELLANTS' REPLY IN SUPPORT OF REQUEST FOR CLARIFICATION

Respondents call Appellants' request a "ruse," accuse them of playing "hide-the-ball," and forecast delay.¹ None of those characterizations answer the question at issue. The circuit court expressly directed Appellants to obtain clarification as to its authority, and Appellants have done precisely that. Following the court's direction is not gamesmanship.

The requested clarification does not predetermine any discovery dispute: the circuit court remains free to quash or narrow the subpoenas, impose appropriate protections, or deny discovery altogether. In other words: whether discovery should be permitted is distinct

¹ Notably, Respondents would not be prejudiced by purported delay, because \$2,870,060.91 – the full amount of the default judgment entered in this case – has been deposited into the registry of the circuit court pursuant to Rule 67, SCRCP.

from the question of *whether the circuit court has authority to decide* whether discovery should be permitted. The requested clarification resolves that distinction, by clarifying that the circuit court does have authority to decide whether the subpoenas should be permitted or quashed.²

I. Appellants seek the clarification the circuit court expressly requested.

Respondents characterize this request as a manufactured delay. The transcript and Judge Culbertson's Order show otherwise. The circuit court proposed a continuance so Appellants could obtain an order specifying what it could hear; then it directed: "Go back to the Court—Court of Appeals and have them itemize what I can and cannot hear." Respondents' Ex. A, at 10:5–10, 22:23–24. The circuit court's written order likewise continued the scheduled motions so that this Court could provide clarification. *See Ex. 2 to Appellants' Request for Clarification.* Appellants are following that direction — not asking this Court to adjudicate this discovery dispute in the first instance. In fact, Appellants' entire objective is to have this Court make it clear that it is for the circuit court to decide discovery disputes in the first instance.

II. Rule 60 discovery is within the circuit court's discretion, not categorically unavailable.

The narrow question for clarification is whether, in adjudicating the Rule 60(b) Motion that this Court authorized, the circuit court has authority and jurisdiction to determine whether limited discovery is justified, and to resolve Respondents' pending Motion to Quash.

² The subpoenas at issue are attached as exhibits to Appellants' Request for Clarification. One is a subpoena directed to Appellants' former attorney, who withdrew shortly before the default damages hearing, seeking her file, including her communications with Respondents' attorneys. The other is a subpoena directed to Respondents' attorneys, seeking their non-privileged communications with Appellants' former attorney. Respondents moved to quash the subpoenas, apparently arguing that Respondents hold the power to block Appellants from their own former attorney's case file and correspondence. At the hearing, Respondents argued that Judge Culbertson lacked jurisdiction to decide the Motion to Quash, or to permit the subpoenas.

Appellants believe the circuit court should be permitted to make those determinations, including any appropriate threshold showing, limitations, or protections.³

Respondents' repeated assertions that no procedural mechanism permits discovery in connection with a Rule 60 motion are incorrect. South Carolina decisions recognize that adjudicating a request for relief from judgment may require further factual development. *See, e.g., Landry v. Landry*, 430 S.C. 153, 843 S.E.2d 491 (2020) (remanding for an evidentiary hearing and determination of Rule 60 motion); *Mr. T v. Ms. T*, 378 S.C. 127, 662 S.E.2d 413, 419 (Ct. App. 2008) (discussing at length the facts to be found in an independent action to set aside judgment on Rule 60 grounds and remanding to "allow the parties to fully develop the record on the issues presented"); *see also Raby Const., LLP v. Orr*, 358 S.C. 10, 594 S.E.2d 478 (2004) ("trial court conducted an evidentiary hearing on the Rule 60(b) motion at which both Bailey and Raby testified at length").

Significantly, "Rule 60(b) is substantially the same as [former] Code § 15-27-130." *See* Note to Rule 60, SCRCF. Under § 15-27-130, the court had discretion to allow discovery to aid in determining whether relief from judgment was appropriate. For example, in *Bankers Trust of South Carolina v. Bruce*, the court reviewed proceedings to determine whether an attorney conflict required reopening a deficiency judgment under former § 15-27-130. The trial court expressly authorized that "both parties may engage in discovery" concerning the relevant foreclosure proceedings. 283 S.C. 408, 415-16, 323 S.E.2d 523 (Ct. App. 1984) (the second appeal considered "the scope of discovery and inquiry" after the case was remanded,

³ Respondents' assertion that Appellants never requested discovery-related relief overlooks Appellants' Rule 60 motion, which expressly requested that the motion to quash be heard and the requested discovery be permitted before adjudication of the Rule 60 motion. *See* Rule 60 Motion, at n.8. Whether a separate motion, additional supporting materials, or renewed subpoenas are required remains for the circuit court to determine.

in the first appeal⁴, to the trial court to “conduct a full hearing on appellants’ allegation their counsel during the foreclosure proceedings was subject to a conflict of interest and determine whether that conflict, if any, requires reopening the deficiency judgment”). Although the court ultimately affirmed the denial of relief, the proceedings refute Respondents’ assertion that post-judgment, Rule 60, discovery is categorically impermissible.

Further, Rule 60 itself is clear that a party may pursue an independent action for relief from a judgment. *Ashburn v. Apr. Rogers & S.C. Dep’t of Soc. Servs. Child Support Div.*, 420 S.C. 411, n. 1 (Ct. App. 2017); *see also* James F. Flanagan, *South Carolina Civil Procedure* 513 (3d ed. 2010) (stating our “jurisdiction permits an independent action in equity to challenge a final judgment”). It is beyond dispute that discovery would be permitted in any such stand-alone lawsuit, and it is likewise within the circuit court’s discretion to decide whether to allow or quash Appellants’ subpoenas, here.

Finally, South Carolina’s Rule 60 “is drawn from the Federal Rule.” *See*, Note to Rule 60, SCRCF. Federal decisions recognize that a court may permit appropriately supported, limited discovery when considering relief from judgment. *See Pearson v. First NH Mortg. Corp.*, 200 F.3d 30, 35, 38 (1st Cir. 1999) (recognizing discretion to permit discovery upon a colorable showing of fraud and remanding for consideration of that discretion); *Great Coastal Express, Inc. v. Int’l Bhd. of Teamsters*, 675 F.2d 1349, 1352 (4th Cir. 1982) (describing post-judgment discovery and an evidentiary hearing on a motion to set aside judgment); *H.K. Porter Co., Inc. v. Goodyear Tire & Rubber Co.*, 536 F.2d 1115, 1119 (6th Cir. 1976) (expressly acknowledging the trial judge’s right to allow post-judgment discovery on a Rule 60(b) motion in a case alleging fraud upon the court); *State v. Oudeh*, No. 23-1539 at *2 (4th Cir. May

⁴ *Bankers Trust of South Carolina v. Bruce*, 275 S.C. 35, 37 (1980).

19, 2025) (noting the trial court's discretion to allow or deny post-judgment discovery in the context of a Rule 60 motion made to set aside a judgment); *White v. Nat'l Football League*, No. 92-906 at *4-*5 (D. Minn. Feb. 4, 2015) ("While Rule 60(b) does not provide for discovery pursuant to a motion made under the Rule, courts have the discretion to allow a party to pursue post-judgment discovery when the moving party can make a 'prima facie demonstration of success on the merits' or, alternatively, a 'colorable claim.'") (internal citation omitted). These persuasive authorities further refute Respondents' categorical assertion that Rule 60 discovery is unavailable.

In short, Respondents are wrong that discovery is absolutely unavailable in the evaluation and determination of a Rule 60 motion. The rule, appellate precedent, federal authority, and fundamental due process all allow it.

This Court should clarify the scope of the circuit court's authority on remand, to permit the circuit court to decide whether Appellants' subpoenas to their former attorney and to opposing counsel (for non-privileged materials) are warranted in this instance. Alternatively, if this Court concludes that its prior order did not encompass that authority, Appellants respectfully request that the Court supplement its authorization, for that purpose.

III. The "burden of proof" is not a prohibition against *developing* proof.

Respondents recast Appellants' request for additional evidence as an admission that they have none. The transcript and record support no such concession.⁵ Instead, in addition to affidavits and other evidence, Appellants identified factual issues pertaining to their former attorney's communications with Respondents' attorneys, and they sought a ruling

⁵ See Rule 60 Motion, which is Exhibit 1 to Appellants' Request for Clarification, incorporating multiple affidavits, transcripts, and the circuit court's file-stamped envelope containing notice of the default damages hearing, stamped "RETURN TO SENDER."

concerning subpoenas bearing on that evidence. Whether the existing submissions establish grounds for relief, and whether additional evidence should be permitted, are questions for the circuit court—not conclusions to be established by Respondents’ repeated use of the words “baseless,” “unsupported,” “meritless,” and “fishing expedition.”

Appellants acknowledge their burden under *Bowers v. Bowers*, 304 S.C. 65, 67, 403 S.E.2d 127, 129 (Ct. App. 1991). But *Bowers* addresses the proof required for Rule 60 relief; it does not hold that the evidentiary record is frozen upon entry of judgment. Instead, it explains that supporting evidence is usually supplied through affidavits. And, unlike the movant in *Bowers*, Appellants did submit affidavits and exhibits, and they incorporated supporting materials into their motion. Again, requesting additional, targeted evidence—particularly through a subpoena to their own attorney—does not concede that the existing evidence is insufficient. Nor does Respondents’ bald statement that the record is “fully developed” resolve disputes concerning notice of the hearing, attorney withdrawal, and the communications underlying the amended withdrawal order. Those are matters for the circuit court to determine, and this Court should clarify that the court has the authority and jurisdiction to do so.

CONCLUSION

Appellants respectfully request clarification that, in adjudicating the Rule 60(b) motion authorized by this Court’s May 27 Order, the circuit court has authority to determine whether limited discovery is warranted and to resolve the related motion to quash/for protective order, including deciding whether the disputed subpoenas should be quashed, narrowed, or enforced.

Respectfully submitted,

FORD WALLACE THOMSON LLC

s/Ainsley F. Tillman

Ainsley F. Tillman, S.C. Bar No. 70551

Ainsley.Tillman@FordWallace.com

Robert E. Byrd, S.C. Bar No. 106284

Robert.Byrd@FordWallace.com

715 King Street

Charleston, South Carolina 29403

(843) 277-2011

Wesley D. Few, S.C. Bar. No. 15565

WESLEY D. FEW, LLC

Post Office Box 9398

Greenville, South Carolina 29605

Phone: (864) 527-5906

Email: wes@wesleyfew.com

Ryan L. Beasley, S.C. Bar No. 68307

RYAN L. BEASLEY, ATTORNEY AT LAW, P.A.

416 East North Street

Greenville, South Carolina 29601

Phone: (864) 679-7777

Email: rlb@ryanbeasleylaw.com

Attorneys for Appellants

Frank Henderson and Antioch Group

October 28, 2026
Charleston, South Carolina

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PROOF OF SERVICE

I certify that on October 28, 2026, I served Appellants' *Reply to Respondents' Return to Appellants' Request for Clarification* on Respondents by sending the same to the below-listed attorneys of record at their email addresses of record with the AIS:

R. Mills Ariail, Jr.
Law Office of R. Mills Ariail, Jr.
114-C Poinsett Highway
Greenville, SC 29609
864-232-9390 | mills@rmalawoffice.com

and

Justin D. Mihalic
Ariail Law Firm
114-C Poinsett Highway
Greenville, SC 29609
(864) 232-9390 | justin@rmalawoffice.com Attorneys for Respondents

Respectfully submitted,

FORD WALLACE THOMSON LLC

s/Ainsley F. Tillman

Ainsley F. Tillman, S.C. Bar No. 70551

Ainsley.Tillman@FordWallace.com

715 King Street

Charleston, South Carolina 29403

(843) 277-2011

Attorneys for Appellants

Frank Henderson and Antioch Group