

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

RECEIVED

NOV 09 2015

SC Court of Appeals

**APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas**

**Marvin H. Dukes, III, Master In Equity
And Special Circuit Court Judge**

C.A. No.: 2015-CP-07-00218

Appellate Case No. 2015-002074

Sharon Denise Anderson..... Respondent,

v.

Linda Jenkins Holmes..... Appellant.

RESPONDENT'S MEMORANDUM ON THE ISSUE OF APPEALABILITY

LAW OFFICE OF CLIFFORD BUSH, III, LLC

Jasmine D. Wyman
Clifford Bush, III
P. O. Box 6194
Beaufort, SC 29906
(843) 379-9500
Attorneys for Respondent

Respondent Sharon Anderson, by and through the undersigned attorney, submits the following memorandum of law.

BACKGROUND

This case arises out of a car accident that happened in Beaufort County on October 7, 2013. Counsel for Respondent engaged in settlement discussions with Omni Insurance Company, Defendant's insurance carrier, over the course of several months. Counsel for Respondent then, to no avail, issued a demand on March 11, 2014.

Counsel for Respondent subsequently filed a Summons and Complaint and served Appellant with a copy on January 30, 2015. No Answer was received within thirty days and Counsel for Respondent filed a Motion for Entry of Default against Appellant on April 3, 2015. The Beaufort County Clerk of Court entered default as to Appellant on April 8, 2015. The matter was then referred to special circuit court Judge Marvin H. Dukes, III on May 7, 2015. A damages hearing was held on May 8, 2015. Judge Dukes entered default judgment in favor of Respondent and issued an Order on Damages on May 14, 2015. Counsel for Appellant filed a Motion to Set Aside Default Judgment, pursuant to Rule 60(b), on June 4, 2015. Judge Dukes issued a Form 4 Order denying the motion on September 11, 2015 and Counsel for Appellant filed a Notice of Appeal on September 28, 2015.

ARGUMENT

I. THE APPEAL SHOULD BE DISMISSED BECAUSE COUNSEL FOR APPELLANT DID NOT PROPERLY PRESERVE THE ISSUES FOR APPEAL.

“The purpose of Rule 59(e), SCRPC, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits.” *Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992) (internal quotations omitted). Under this rule, the

motion to alter or amend must be served within ten days of receipt of written notice of the entry of the order or judgment. *Canal Ins. Co. v. Caldwell*, 338 S.C. 1, 5, 524 S.E.2d 416, 418 (1999).

A. Counsel for Appellant did not file a Rule 59(e) Motion to Alter or Amend before filing the Notice of Appeal.

When argument is made before the trial judge but not address in final order, a Rule 59(e) motion is necessary to preserve the issue for appellate review. *Hancock v. Wal-Mart Stores, Inc.* 355 S.C. 168, 171, 584 S.E.2d 398, 399 (Ct. App. 2003). “The losing party must first try to convince the lower court it has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred.” *I’On, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2008). “This principle underlies the long-established preservation requirement that the losing party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments.” *Id.* “Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, laws, and arguments.” *Id.* “It prevents a party from keeping an ace card up his sleeve-intentionally or by chance- in the hope that an appellate court will accept that ace card and, via reversal, give him another opportunity to prove his case.” *Id.*

Furthermore, “[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.” *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). “If a party is unsure whether he properly raised all issues *and obtained a ruling*, he *must* file a Rule 59(e) motion or an appellate court may later determine the issue or argument is not preserved for review.” *Id.* at 25, 602 S.E.2d at 780 (emphasis added). The issue is not preserved for appellate review since the trial court was never afford the opportunity to rule on the clarity of its order because Appellant made no motion pursuant to Rule 59(e), as required. *Nelson v. Cousins*, 304 S.C. 306, 307-08, 403 S.E.2d 681, 681-82 (Ct.

App. 1991). “When a trial court makes a general ruling on an issue, but does not address the specific argument raised by a party, that party must make a motion asking the trial court to rule on the issue in order to preserve it for appeal.” *Cowburn v. Leventis*, 366 S.C. 20, 40, 619 S.E.2d 437, 449 (Ct. App. 2005). When a trial court makes a general ruling on an issue, but does not address the specific argument raised by the appellant and the appellant does not make a motion to alter or amend pursuant to obtaining a ruling on the argument, the appellate court cannot consider the argument on appeal. *Historic Charleston Holdings, LLC v. Mallon*, 365 S.C. 524, 617 S.E.2d 388 (Ct. App. 2005), *rev’d on other grounds*, 381 S.C. 417, 673 S.E.2d 448 (2009).

Judge Dukes issued a Form 4 Order denying Appellant’s Motion to Set Aside Default Judgment. The Form 4 Order neither explicitly rejected Appellant’s arguments nor provided any reasoning as to why the court denied Appellant’s motion. The Form 4 Order was a general denial of all the arguments advanced by counsel for Appellant. To ensure that the issues and arguments were properly preserved for appeal, counsel for Appellant was required to file a motion pursuant to Rule 59(e). The filing of the Rule 59(e) motion would have afforded Judge Dukes the opportunity to reconsider, explain, or clarify his ruling. In the very least, such motion would have preserved the issues and arguments for appeal.

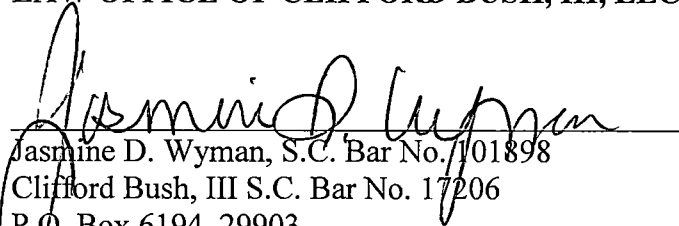
Counsel for Appellant did not file a Rule 59(e) Motion, therefore, the appeal should be dismissed.

CONCLUSION

The issues raised and arguments made by counsel for Appellant were not properly preserved and the appeal should be dismissed.

Respectfully Submitted,

LAW OFFICE OF CLIFFORD BUSH, III, LLC

A handwritten signature in cursive script, appearing to read "Jasmine D. Wyman", is written over a horizontal line.

Jasmine D. Wyman, S.C. Bar No. 101898

Clifford Bush, III S.C. Bar No. 17206

P.O. Box 6194, 29903

28 Old Jericho Road

Beaufort, South Carolina 29906

(843) 379-9500

ATTORNEYS FOR RESPONDENT

November 6, 2015
Beaufort, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

NOV 09 2015

SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master In Equity
And Special Circuit Court Judge

C.A. No.: 2015-CP-07-00218

Appellate Case No. 2015-002074

Sharon Denise Anderson..... Respondent,

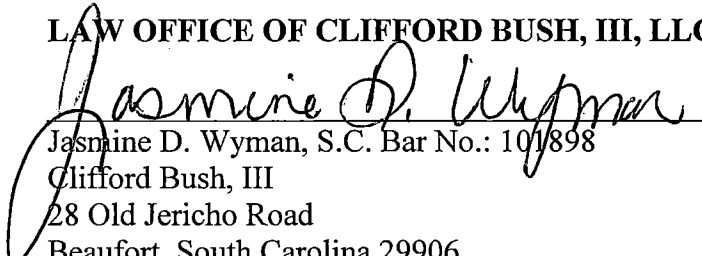
v.

Linda Jenkins Holmes..... Appellant.

PROOF OF SERVICE

I certify that I have served a copy of Respondent's Memorandum on the Issue of Appealability on counsel for Appellant by depositing a true and accurate copy in the United States mail, postage prepaid, addressed to Helen F. Hiser, Esquire and Megan McNeely, Esquire at McAngus Goudelock & Courie, LLC, P.O. Box 650007 Mount Pleasant, South Carolina 29465.

LAW OFFICE OF CLIFFORD BUSH, III, LLC


Jasmine D. Wyman, S.C. Bar No.: 101898

Clifford Bush, III

28 Old Jericho Road

Beaufort, South Carolina 29906

P. (843) 379-9500

Attorneys for Respondent

November 6, 2015

CBIII

Serving Throughout South Carolina

Law Office of Clifford Bush III, LLC

CLIFFORD BUSH, III
Attorney at Law

cbush@lawofficeofcbushiii.com
www.lawofficeofcbushiii.com

November 6, 2015

RECEIVED

NOV 09 2015

SC Court of Appeals

VIA U.S. MAIL

Jenny Abbott Kitchings
Clerk of Court, SC Court of Appeals
P.O. Box 11629
Columbia, SC 29201

Re: Sharon Denise Anderson vs. Linda Jenkins Holmes
C.A. No.: 2015-CP-07-00218 (Beaufort County)
Appellate Case No.: 2015-002074
Our Case No.: 12375

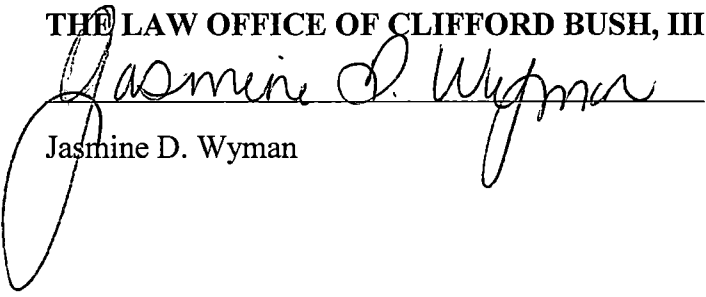
Madam Clerk:

Enclosed please find one original and one copy of Respondent's Memorandum on the Issue of Appealability in the above referenced matter. Please return a clocked copy in the enclosed self-addressed, postage prepaid envelope.

I thank you for your assistance regarding this matter.

Respectfully,

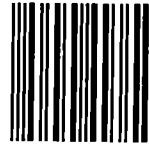
THE LAW OFFICE OF CLIFFORD BUSH, III


Jasmine D. Wyman

cc: Helen F. Hiser, Esquire, McAngus Goudelock & Courie, LLC
Megan McNeely, Esquire, McAngus Goudelock & Courie, LLC



1000



29211

U.S. POSTAGE
PAID
BEAUFORT, SC
29906
NOV 06, 15
AMOUNT

\$3.45

R2304H109033-05



02 1P
0000252517 NOV 06 2015
MAILED FROM ZIP CODE 29903

RECEIVED

NOV 09 2015

SC Court of Appeals

CBIII

*Serving
throughout
South Carolina*

The Law Office of Clifford Bush III,
Attorney at Law
128 Old Jericho Road
Beaufort, South Carolina 29906

Jenny Abbott Kitchings
Clerk of Court, SC Court of Appeals
P. C. Box 11629
Columbia, South Carolina 29201

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS. FOLD AT DOTTED LINE

CERTIFIED MAIL®



7015 0640 0002 8030 7052