THE STATE OF SOUTH CAROLINA
In The 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

Appellant Case No. 2015-002074

Sharon Denise Anderson..... Respondent,

v.

Linda Jenkins Holmes..... Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

On January 30, 2015, Sharon Denise Anderson (hereinafter referred to as "Respondent") filed a Summons and Complaint in the Court of Common Pleas for Beaufort County, South Carolina against, Linda Jenkins Holmes (hereinafter referred to as "Appellant"). On February 6, 2015, Beaufort County Sheriff's Department served a copy of the Summons and Complaint on Appellant, Linda Jenkins Holmes. The Summons and Complaint were served on the Appellant at her address, which was 39 Ball Park Road, St. Helena Island, South Carolina 29920. The Respondent filed a Motion for Entry of Default against the Appellant, Linda Jenkins Holmes on April 3, 2015. An Entry of Default Judgment against the Appellant was ordered, adjudged and granted on April 8, 2015 by the Honorable Jerri Ann Roseneau. A Copy of the Motion for Entry of Default, Order of Entry of Default and Notice of the Hearing for Damages were served upon the Appellant on April 22, 2015. The Honorable Jerri Ann Roseneau referred the case to the Honorable Marvin H. Dukes, III on May 7, 2015. On May 8, 2015, the damages hearing was held before The Honorable Marvin H. Dukes, III. Appellant failed to appear at the damages hearing. The Court found the testimony of the Respondent to be credible and awarded ***Forty Thousand Two Hundred Seventy-Five and 17/100 Dollars ($40, 275.17)*** in total damages.

On June 1, 2015, Appellant filed a Motion to set aside the default judgment pursuant to Rules 55(c) and 60(b) of the South Carolina Rules of Civil Procedures. Appellant's Memorandum in Support of Setting Aside the Default Judgment alleged that the Court should set aside the Default Judgment on the following grounds: 1) good cause existed to set aside the entry of default and/or default judgment; 2) any default was due to mistake and/or excusable neglect; 3) the motion to set aside default was made in a reasonable time after the discovery of the default; 4) Appellant was

improperly and/or insufficiently served; 5) Appellant was improperly placed into default without proper notice or service; and 6) valid defenses exist to Respondent's claims.

On August 26, 2015, a hearing on the motion to set aside the default judgment was held before the Honorable Marvin Dukes, III. After reviewing the evidence presented and hearing oral arguments, the Court denied Appellant's Motion to Set Aside the Default Judgment. The order denying Appellant's motion to Set Aside the Default Judgment was signed on September 11, 2015

Appellant received a copy of the Order on September 11, 2015 and filed a Notice of Appeal on September 23, 2015.

FACTS

This matter arose out of an automobile accident that occurred on October 7, 2013, in Beaufort, South Carolina. On October 21, 2013, Respondent mailed a Letter of Representation to Appellant's insurance company, Omni Insurance Company (hereinafter referred to as "Omni"). Omni acknowledge receipt of the Letter of Representation on November 8, 2013. On March 11, 2014, the Respondent mailed a demand letter to Omni. Respondent also mailed Omni two invoices regarding her property damage. The property damage was assessed at ***Nine Hundred Eighty Five and 21/100 Dollars ($985.21)*** by Joe Rivers at 843 Kustoms Body Shop and ***Eight Hundred Twenty and 59/100 Dollars ($820.59)*** by Dale Porter of Everett Smith & Associates, an adjuster hired by Omni Insurance Company. (See Exhibits "A" and "B" from Plaintiff's Memorandum in Opposition to Defendant's Motion to Set Aside A Default Judgment). Omni tendered a check to Respondent in the amount of ***Three Hundred Twenty Two and 10/100 Dollars ($322.10)*** for the property damage, which was woefully less than both invoices. (See Exhibit "C" from Plaintiff's Memorandum in Opposition to Defendant's Motion to Set Aside A Default Judgment). At said

time, Respondent informed Omni that litigation would be forthcoming regarding the property damage.

On April 23, 2014, verbal communications began between Omni and Clifford Bush, III, regarding Respondent's bodily injuries. During said discussion, Omni offered to settle the matter for ***Two Thousand Six Hundred Sixty Eight and 33/100 Dollars ($2,668.33)*** which was an amount less than the medical bills. Mr. Bush informed Omni's adjuster that he did not have the authority to accept an offer for less than the medical bills. Moreover, he informed the adjuster that he would not negotiate or counter-offer any offer that started less than the medical bills. On May 8, 2014, an adjuster from Omni called the Law Offices of Clifford Bush III, LLC, to inform Mr. Bush of a new offer in the amount of ***Three Thousand Two Hundred and 00/100 Dollars ($3,200.00)*** to settle the matter. (See Exhibit "D" from Plaintiff's Memorandum in Opposition to Defendant's Motion to Set Aside A Default Judgment). Mr. Bush again informed Omni that his client would not accept an offer for less than her medical bills. He also informed the adjuster again that he would not negotiate or counter-offer. Thereafter, he informed the adjuster that the case would be transferred to Fatima Alexis Zeidan, Esquire for litigation. (See Exhibit "E" from Plaintiff's Memorandum in Opposition to Defendant's Motion to Set Aside A Default Judgment). On July 10, 2014, Cheryl Brooks an adjuster with Omni called the Law Office of Clifford Bush III, LLC, and made an offer for ***Five Thousand Five Hundred and 00/100 Dollars ($5,500.00).*** Mr. Bush informed Ms. Brooks that the amount was not enough to cover the Plaintiff's damages and, again, no counter-offer was extended. On September 18, 2014, Ms. Brooks extended another offer for ***Five Thousand Five Hundred One and 00/100 Dollars ($5,501.00)*** to settle the case thereby increasing her offer by ***One Dollar ($1.00)***. Mr. Bush told Ms. Brooks she was negotiating in bad faith and asked whether she would accept service on behalf of the Appellant. Ms. Brooks

stated that she absolutely would not accept service. Respondent's attorney informed Ms. Brooks that a lawsuit would be filed and he would like to speak to her supervisor regarding the unprofessional manner in which she handled the case. Ms. Brooks was unwilling to give the full name and phone number of her supervisor. After further discussions, Ms. Brooks reluctantly said Justin was her supervisor and agreed to transfer the call. However, Ms. Brooks failed to transfer Mr. Bush to her supervisor. (See Exhibit "F" from Plaintiff's Memorandum in Opposition to Defendant's Motion to Set Aside A Default Judgment).

On October 16, 2014, Mr. Bush called Ms. Brooks again to obtain her supervisors' contact information but she failed to return the call. On November 9, 2014, Mr. Bush left another message for Ms. Brooks to obtain her supervisor's contact information but again she refused to return the call. No calls were ever returned as well as all communications stopped with the Omni and Mr. Bush as of December 1, 2014. On January 30, 2015, Fatima Alexis Zeidan, Esquire filed a lawsuit on behalf of the Respondent. On February 6, 2015, Beaufort County Sheriff's Department served a copy of the Summons and Complaint on Appellant, Linda Jenkins Holmes. The Respondent filed a Motion for Entry of Default against the Appellant, Linda Jenkins Holmes on April 3, 2015. An Entry of Default Judgment against the Appellant was ordered, adjudged and granted on April 8, 2015 by the Honorable Jerri Ann Roseneau. A Copy of the Motion for Entry of Default, Order of Entry of Default and Notice of the Hearing for Damages were served upon the Appellant on April 22, 2015. On May 8, 2015, a hearing regarding damages was held before The Honorable Marvin H. Dukes, III. The Appellant failed to appear at the hearing. The Court found the testimony of the Respondent along with the evidence presented credible and awarded ***Forty Thousand Two Hundred Seventy-Five and 17/100 Dollars ($40, 275.17)*** in total damages.

STANDARD OF REVIEW

Courts in this state have a long history of recognizing that the decision to set aside an entry of default or a default judgment lies solely within the sound discretion of the trial court. Richardson v. P.V., Inc., 383 S.C. 616, 682 S.E.2d 263, 265 (2009) and Melton v. Olenik, 379 S.C. 45, 50, 664 S.E.2d 487, 489–90 (Ct.App.2008). Likewise, Courts have acknowledged the standard for granting relief from an entry of default under Rule 55(c) of the South Carolina Rules of Civil Procedures is "good cause." Id. Whenever the trial court is trying to decide whether "good cause" exist, the court must consider the following factors: 1) the timing of the defendant's motion for relief; 2) the reasons for the failure to act promptly; 3) whether the defendant has a meritorious defense; and 3) the degree of prejudice to the plaintiff if relief is granted. Sundown Operating Co. v. Intedge Indus., Inc., 383 S.C. 601, 606, 681 S.E.2d 885, 888 (2009). In Sundown Operating Co., the court held the decision whether to set aside an entry of default or a default judgment will not be disturbed on appeal absent a clear showing of an abuse of discretion. Id. at 607, 681 S.E.2d 888. An abuse of discretion occurs when the judge issuing the order was controlled by some error of law or when the order based upon factual, as distinguished from legal conclusions, is without evidentiary support. Id. Moreover, the party seeking relief from the entry of default under Rule 55(c) must provide an explanation for the default and give reasons why vacating such order would serve the interest of justice. Id.

The standard for granting relief from a default judgment under Rule 60(b) is more rigorous than the "good cause" standard established in Rule 55(c). Id. Rule 60(b) requires a more particularized showing of mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation or other misconduct of an adverse party. Sundown Operating Co. v. Intedge Indus., Inc., 383 S.C. 601, 606, 681 S.E.2d 885, 888 (2009). The different standard under the two rules underscore the clear intent to make it more difficult for a party to avoid a

default once the court has entered a judgment, which carries greater finality and often occurs later than a clerk's entry of default. Wells Fargo Bank, NA v. Turner, 378 S.C. 147, 150, 662 S.E.2d 424, 425 (Ct. App. 2008). Mictronics, Inc. v. S.C. Dep't of Revenue, 345 S.C. 506, 510–11, 548 S.E.2d 223, 226 (Ct.App.2001). "The movant in a Rule 60(b) motion has the burden of presenting evidence proving the facts essential to entitle him to relief." Bowers v. Bowers, 304 S.C. 65, 67, 403 S.E. 2d 127, 129 (Ct.App.1991).

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).

ARGUMENTS

I. WHETHER THE TRIAL COURT'S DECISION TO DENY APPELLANT'S MOTION TO SET ASIDE THE DEFAULT JUDGMENT SHOULD BE AFFIRMED BECAUSE THE APPELLANT FAILED TO ESTABLISH MISTAKE, INADVERTENCE, SURPRISE, AND EXCUSABLE NEGLECT, AS REQUIRED BY RULE 60(b)(1)?

Where the appellant was duly served with the summons and complaint, the appellant has a duty to answer the complaint. "Therefore, he must suffer the consequence of his failure to answer." Hill v. Dotts, 345 S.C.304, 547 S.E.2d 894, 897 (Ct. App.2001). Black's Law Dictionary Sixth Edition, defines mistake as an unintentional act, omission, or error arising from ignorance, surprise, imposition, or misplaced confidence. It goes on to define inadvertence as heedlessness, lack of attention, want of care; carelessness; failure of a person to pay careful and prudent attention to the progress of a negotiation or a proceeding in court by which his rights may be affected. Last, surprise is defined as an unforeseen disappointment against which ordinary prudence would not have afforded protection. This Court has defined excusable neglect as the failure to take the proper

steps at the proper time, not in consequence of the party's own carelessness, inattention, or willful disregard of the process of the court, but in consequence of some unexpected or unavoidable hindrance or accident, or reliance on the care and vigilance of his counsel or on the promises made by the adverse party. Goodson v. American Bankers Ins. Co., 295 S.C. 400, 402, 368 S.E.2d 687, 689 (Ct. App.1988). Generally, "the neglect of the attorney is the neglect of the client, and... no mistake, inadvertence, or neglect attributable to the attorney can be successfully used as a ground for relief, unless it would have been excusable if attributable to the client.' " Stearns Bank Nat'l Ass'n v. Glenwood Falls, LP, 373 S.C. 331, 342, 644 S.E.2d 793, 798 (Ct.App.2007) (quoting Simon v. Flowers, 231 S.C. 545, 551, 99 S.E.2d 391, 394 (1957)). In addition, lack of familiarity with legal proceedings is not an acceptable excuse and the court will hold a layman to the same standard as an attorney. Hill v. Dotts, 345 S.C. 304, 310, 547 S.E.2d 894, 897 (Ct.App.2001). For the purposes of the motion to set aside a judgment, "excusable neglect" is that neglect which might have been the act of a reasonably prudent person under the circumstance. Tri- County Ice and Fuel Co. v. Palmetto Ice Co., 303 S.C. 237, 399 S.E.2d 779, 782 (1990).

The Appellant failed to establish mistake, inadvertence, surprise or excusable neglect as required by Rule 60(b)(1) SCRCP before the lower court. It is understandable that under proper circumstances, an insurer may be entitled to an order setting aside a default judgment where the insurer is involved in ongoing negotiation with a claimant but is not informed that the summons and complaint were served. McClurg v. Deaton, 380 S.C. 563, 671 S.E.2d 87 (2010). In this case, negotiations ended before the lawsuit was filed. Unlike, in McClurg v. Deaton, Respondent's attorney never agreed to delay filing suit or continued negotiations once the lawsuit was filed Id. In fact, it is evident that negotiations ended once Respondent's counsel refused to counteroffer and informed Omni that the case was being transferred to the litigation department. Omni was

informed on several occasions that a lawsuit would be filed and they refused to accept service. In this case, Respondent's Attorney and Omni cease all negotiations regarding settlement on the case as of September 18, 2014. Unlike, the attorney in McClurg, there was no letter from Clifford Bush, Esquire or Fatima Alexis Zeidan, Esquire stating "If I haven't heard from you by that time, I will file suit and serve the Defendant and send you a courtesy copy of the pleading." 380 S.C. 563, 671 S.E.2d 87 (2008). Moreover, in the McClurg, case Zurich contracted the attorney, who agreed to delay filing suit until Zurich reviewed the settlement demand. In addition, the parties were exchanging telephone messages regarding settlement, but did not reach an agreement on the matter. Here, the parties had far reached the point of negotiating a settlement. As the phone records indicate, Respondent's attorneys did not counter any of the offers from Omni because they were less than the medical bills. (See Defendant's Supplement Memorandum, filed August 26, 2015, Exhibit G, Omni Records). The progression of negotiation in this case is as such, Respondent's attorney mailed the demand letter to Omni on March 11, 2014. On April 23, 2014, Respondent's attorney and Omni started discussing settlement. Between April 23, 2014 and September 19, 2014, the parties negotiated the claim without resolution. There were no communication exchanged regarding the settlement of the matter and the parties never spoke again, during or after the lawsuit was filed. Appellant was notified on several occasions that a lawsuit would be filed. First, when Omni paid Respondent less than the invoices required for the repairs to her property damage. Second, when they offered her less than her medical bills to settle the case. The last communication with Omni and Respondent's attorney occurred on September 18, 2014, when Respondent's attorney informed Ms. Brooks she was negotiating in bad faith and asked her whether she would accept service on behalf of the Appellant. Ms. Brooks stated that she absolutely would not accept service. Mr. Bush informed Ms. Brooks that a lawsuit would be filed

and that he would like to speak to her supervisor regarding the unprofessional manner in which she handled the case. Thereafter, on January 30, 2015, Fatima Alexis Zeidan, Esquire filed a lawsuit on behalf of the Respondent. On February 6, 2015, Beaufort County Sheriff's Department served a copy of the Summons and Complaint on Appellant, Linda Jenkins Holmes.

The Appellant failed to produce any evidence, information or affidavit as to why she did not respond to the Summons and Complaint. The Appellant failed to answer the complaint and did not appear at the damages hearing. There has been no evidence presented to show the Appellant was not able to appear for reasons such as an unintentional act, omission, or error arising from ignorance, surprise, imposition, or misplaced confidence. Furthermore, no conversations occurred between anyone from Omni and Clifford Bush, III or Fatima Alexis Zeidan, Esquire after September 18, 2014. Thus, it is fair to assume that negotiations ceased at such time. In fact, Omni's phone record clearly indicates there were no conversations that took place regarding negotiation of the claim after September 18, 2014. (See Defendant's Supplement Memorandum, filed August 26, 2015, Exhibit G, Omni's Records). The mere fact that Omni alleges that it made several unanswered calls after being informed about the lawsuit does not constitute negotiations. Based on the forgoing, this Court should affirm the trial court's decision to deny the Motion to Set Aside the Default Judgment. The Appellant failed to establish mistake, inadvertence, surprise or excusable neglect therefore, the trial court's decision should not be reversed.

II. WHETHER THE TRIAL COURT'S DECISION TO DENY APPELLANT'S MOTION TO SET ASIDE THE DEFAULT JUDGMENT SHOULD BE AFFIRMED BECAUSE THE APPELLANT FAILED TO ESTABLISH A MERITORIOUS DEFENSE AS REQUIRED BY RULE 60(b)?

Rule 60(b)(1) requires the existence of a meritorious defense Mitchell Supply Co., Inc. v. Gaffney, 297 S.C. 160, 163, 375 S.E.2d 321, 323 (Ct. App. 1988). Bowers v. Bowers, 304 S.C. 65, 66, 403 S.E.2d 127, 129 (Ct. App.1991. With respect to the meritorious defense factor, the

Appellant must make a proper showing he is entitled to relief based upon one of the specified grounds and he must also make a prima facie showing of a meritorious defense. Stearns Bank Nat'l Ass'n v. Glenwood Falls, LP, 373 S.C. 331, 342, 644 S.E.2d. 885, 888 (2009). 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. A meritorious defense is one which is offered and alleged by the party proceeded against in an action or suit, as a reason in law or fact why the Plaintiff should not recover or establish what he seeks.

Appellant failed to establish a meritorious defense. The Respondent gave testimony and provided documentation justifying the relief granted by the court (See Exhibit "A," "B" and "G" from Plaintiff's Memorandum in Opposition to Defendant's Motion to Set Aside A Default Judgment). The amount of relief given is a question of fact for a jury. In this case, the trial judge granted the relief he deemed appropriate. The trial judge's decision should not be disturbed on appeal absent an abuse of discretion. . BB&T v. Taylor, 369 S.C. 548, 552, 633 S.E.2d 501, 503 (2006). An action in tort for damages is an action at law Judy v. Judy, 383 S.C. 1, 6, 677 S.E.2d 213, 216 (Ct.App.2009). "In a law case, the credibility and weight to be accorded evidence is solely for the fact finder to determine." Hanna v. Palmetto Homes, Inc., 300 S.C. 535, 537, 389 S.E.2d 164, 165 (Ct.App.1990); see Parsons v. Georgetown Steel, 318 S.C. 63, 67, 456 S.E.2d 366, 368 (1995) (stating the credibility and weight of testimony is for the trier of fact). Opposing counsel acknowledges that there were damages and medical expenses. (See Appellant's Memorandum to Set Aside the Default Judgment) This alone establishes that the Respondent was

entitled to relief. The Appellant failed to establish a question of law deserving of an investigation or real controversy to the essential fact arising from doubtful evidence. Therefore, this court should affirm the trial court's decision to deny the Motion to Set Aside because the Appellant failed to establish a meritorious defense. Appellant, merely raises the issue of lost wages and property damages as a meritorious defense. There is no evidence as in McClurg, to suggest that the accident was the result of anyone other than Appellant. Even if the Appellant's bare argument is evidence of a defense to the amount of damages, it was not preserved for the record; therefore, the issue is not properly before the appellate court for review. ("Allegations in a Complaint denied in an answer are evidence of nothing."). Arguments of counsel are also not evidence. *See* McManus v. Bank of Greenwood, 171 S.C. 84, 89, 171 S.E. 473, 475 (1933) ("This court has repeatedly held that statements of fact appearing only in argument of counsel will not be considered."); Gilmore v. Ivey, 290 S.C. 53, 348 S.E.2d 180 (Ct.App.1986).

III. WHETHER THE TRIAL COURT'S DECISION TO DENY APPELLANT'S MOTION TO SET ASIDE THE DEFAULT JUDGMENT SHOULD BE AFFIRMED BECAUSE THE APPELLANT FAILED TO SATISFY THE FOUR FACTORS EXAMINE BY THE COURT TO SET ASIDE DEFAULT JUDGMENTS?

Whenever the trial court is trying to decide whether "good cause" exist, the court must consider the following factors: 1) the timing of the defendant's motion for relief; 2) the reasons for the failure to act promptly; 3) the defendant has a meritorious defense; and 4) the degree of prejudice to the plaintiff if relief is granted. Sundown Operating Co. v. Intedge Indus., Inc., 383 S.C. 601, 606, 681 S.E.2d 885, 888 (2009).

1. Timing of defendant's motion for relief

The issue of whether a party makes a Rule 60 motion within a timely manner is a matter addressed to the trial judge's sound discretion and this court will not disturb that determination absent abuse of discretion. McDaniel v. U.S. Fid. & Guar. Co., 324 S.C. 639, 644, 478 S.E.2d

868, 871 (Ct.App.1996). On January 30, 2015, Fatima Alexis Zeidan, Esquire filed a lawsuit on behalf of the Respondent. On February 6, 2015, Beaufort County Sheriff's Department served a copy of the Summons and Complaint on Appellant, Linda Jenkins Holmes. The Respondent filed a Motion for Entry of Default against the Appellant, Linda Jenkins Holmes on April 3, 2015. An Entry of Default Judgment against the Appellant was ordered, adjudged and granted on April 8, 2015 by the Honorable Jerri Ann Roseneau. A Copy of the Motion for Entry of Default, Order of Entry of Default and Notice of the Hearing for Damages was served upon the Appellant on April 22, 2015. On May 8, 2015, the damages hearing was held before The Honorable Marvin H. Dukes, III. The Appellant failed to appear at the hearing. The Court found the testimony of the Respondent along with the evidence presented credible and awarded ***Forty Thousand Two Hundred Seventy-Five and 17/100 Dollars ($40, 275.17)*** in total damages. On June 1, 2015, Appellant filed a Motion to set aside the default judgment pursuant to Rules 55(c) and 60(b) of the South Carolina Rules of Civil Procedures. In this case, the issue of filing of the motion for relief was not addressed with the trial court and should not be addressed before this court. Therefore, this matter should not be reviewed.

2. The Reasons for the failure to act promptly

The issue of whether a party makes a Rule 60 motion within a timely manner is a matter addressed to the trial judge's sound discretion and his court will not disturb that determination absent abuse of discretion. McDaniel v. U.S. Fid. & Guar. Co., 324 S.C. 639, 644, 478 S.E.2d 868, 871 (Ct.App.1996). The reason for the failure of the Appellate to act promptly was never addressed before the trial court and should not be addressed before this court. Therefore, this matter should not be reviewed.

3. Existence of a meritorious defense

To establish that he has a meritorious defense, a complainant need not show that he would prevail on the merits, only that his defense is meritorious. Thompson v. Hammond, 299 S.C. 120, 382 S.E.2d at 903(1989). A meritorious defense need only be one "worthy of a hearing or judicial inquiry because it raises a question of law deserving of some investigation or a real controversy as to real facts arising from conflicting or doubtful evidence." Id. (quoting Graham v. Town of Loris, 272 S.C. 442, 248 S.E.2d 594 (1978)). The movant in a Rule 60 (b) motion has the burden of presenting evidence proving the facts essential to entitle him to relief. BB&T v. Taylor, 369 S.C. 548, 552, 633 S.E.2d 501, 503 (2006). An action in tort for damages is an action at law." Judy v. Judy, 383 S.C. 1, 6, 677 S.E.2d 213, 216 (Ct.App.2009). *147 "In a law case, the credibility and weight to be accorded evidence is solely for the fact finder to determine." Hanna v. Palmetto Homes, Inc., 300 S.C. 535, 537, 389 S.E.2d 164, 165 (Ct.App.1990; see Parsons v. Georgetown Steel, 318 S.C. 63, 67, 456 S.E.2d 366, 368 (1995) (stating the credibility and weight of testimony is for the trier of fact).

As stated above, the Appellate does not have a meritorious defense. Instead, the Appellate presented mere intrinsic evidence to the trial court. This state has recognized the distinction between intrinsic evidence and extrinsic evidence. Extrinsic evidence as used in reference to judicial proceeding is fraud collateral or external to the matter. On the other hand, intrinsic evidence is not valid grounds for setting aside a judgment when a party has been given notice of action and has an opportunity to present his case and to protect himself but has unreasonably neglected to do so. Mr. G v. Mrs. G, 320 S.C. 305, 465 S.E.2d 101 (1995) . In this case, the Appellant did not present her case and protect herself. Appellant merely presented an intrinsic evidence argument but failed to establish a meritorious defense. The admission of evidence is a matter addressed to the sound discretion of the trial court. Gamble v. Int'l Paper Realty Corp. of

S.C., 323 S.C. 367, 373, 474 S.E.2d 438, 441 (1996). On appeal, this court will not disturb a trial court's evidentiary rulings absent a clear abuse of discretion. Hofer v. St. Clair, 298 S.C. 503, 513, 381 S.E.2d 736, 742 (1989).

4. Prejudice to the other party

The Appellant merely states that there is no prejudice to Respondent. The movant in a Rule 60(b) SCRCP motion has the burden of presenting evidence proving the facts essential to entitle him to relief. BB&T v. Taylor, 369 S.C. 548, 552, 633 S.E.2d 501, 503 (2006). Setting aside the default judgment would be prejudicial to the Respondent. This case started on October 7, 2013. The Respondent has been forced to wait for relief regarding this matter for more than two and one half years. She has accumulated medical bills that have damaged her credit. Prolonging this matter will only continue to damage her credit. Mere allegations, denied by the other party, are not evidence. Griffin v. Van Norman, 302 S.C. 520, 397 S.E.2d 378, 379 (Ct.App.1990). The Appellant has not established how a reversing the trial court's decision will not prejudice the Respondent. Moreover, this matter was never addressed before the trial court and should not be addressed before this court.

CONCLUSION

For all the reasons stated herein, this Court should affirm the trial court's decision to deny the Motion to Set Aside the Default Judgment.

LAW OFFICE OF CLIFFORD BUSH, III, LLC

By: _____

April 22, 2016

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