

Karen D. Lundgren,  
Respondent,  
Appellant.

**MOTION TO REMAND**

THE STATE OF SOUTH CAROLINA In The Court of Appeals[In The  
Supreme Court]

APPEAL FROM DORCHESTER CIRCUIT COURT OF COMMON  
PLEAS

Circuit Court Judge Edgar Dickson

**CIVIL ACTION NO 2008-CP-18-853**

Michael G Petersen (Appellee)

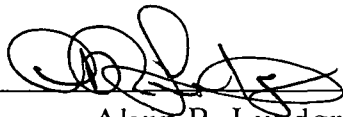
v.

Karen D. Lundgren (Appellant)

**MOTION TO REMAND**

Karen D Lundgren moves this court to remand this case back to the  
Dorchester Circuit Court of Appeals for that court to consider the Motion to  
Amend filed on August 20, 2012, based on the attached memorandum.

October 1 2012



Alvin R. Lundgren  
Attorney for Respondent  
5015 W Old Hwy Ste 200  
Mountain Green, Utah 84050  
Tel 801-876-4422  
Fax 801-876-4411

**RECEIVED**

OCT 03 2012

**SC Court of Appeals**

Other Counsel of Record:

I certify that I mailed a true and correct copy of the Notice of Appeal on October 1, 2012 to the below parties.

Melanie Maes  
Shelbourne Law Firm  
131 East Richardson Avenue  
Summerville SC 29484-0988

Wheeler Tillman  
8811 University Blvd  
North Charleston SC 29406-9839

Dated October 1, 2012



---

Alvin R. Lundgren  
Attorney for Appellant

Supreme Court

APPEAL FROM DORCHESTER COUNTY Court of Common Pleas

Circuit Court Judge Edgar Dickson

**CIVIL ACTION NO 2008-CP-18-853**

Michael G Petersen (Appellee)

v.

Karen D. Lundgren (Appellant)

**MEMORANDUM IN SUPPORT OF MOTION TO REMAND**

Appellant Lundgren moves this court to remand the Appeal filed by Appellant, and return this case to the Dorchester Circuit Court of Pleas to consider the appeal filed by Appellant on August 20, 2012.

**FACTS**

1. The Dorchester court signed an order in the above case that was filed on August 9, 2012. (See Court Actions, Exhibit A)
2. Appellant sent the Dorchester court a Motion to Amend, with a cover sheet motion and memorandum on August 16, 2012. (Exhibit B)
3. Included with the Motion to Amend was a check, signed, but without the amount filled out.
4. Appellant emailed these documents to the Dorchester Judge through court clerks Ms. Nicolette and Ms. Smith and to other counsel Ms. Maes and Mr. Tillman on August 16, 2012. (Exhibit C)

5. On or about August 20, 2012 the court clerk returned the documents Appellant sent with a "sticky note" from a court clerk that stated "we cannot accept a check without the amount filled out." (Exhibit D)
6. Appellant had previously sent signed checks with a blank amount to this court, and the clerk accepted the filing and filled out the proper filing fee. (Exhibit D)
7. Appellant returned the papers to the court and they were filed on or about August 30, 2012. (See Exhibit A)
8. SCRCF Rule 52(b) requires that a Motion to Amend be filed 10 days after written receipt of the Order.
9. Appellant received the written notice of the Order on August 13, 2012, therefore the Motion must have been filed on or before August 24, 2012. (Affidavit of Alvin R. Lundgren)
10. Appellant's motion was timely deposited with the court, and but for the clerk returning the motion, would have been docketed before the Rule 52(b) cutoff period.
11. Appellant, realizing that the foregoing might result in a denial of the Motion to Amend, and to protect her rights of appeal, sent a notice of appeal on September 6, 2012 to protect the right to appeal.
12. Appellant moved this court to accept Appellant's Motion to Amend officially as of August 20, 2012.
13. The Dorchester Circuit Judge responded that the Circuit court lost its jurisdiction upon the filing of the Notice of Appeal. The judge also

acknowledged receipt of the Appellant's Motion to Amend on **September 17, 2012** (Exhibit E)

14. This Motion was filed to request this Court to release the appeal, and return this case back to the Dorchester Circuit court requesting the Dorchester Circuit judge to consider the Appellant's Motion to Amend.

## **MEMORANDUM**

### **I. The Motion to Amend Was Served Timely.**

SCRCP Rule 59(e), provides that a "motion to alter or amend the judgment shall be served not later than 10 days after entry of the judgment." Under Rule 59(f), when such a motion is made, the time for appeal from the judgment begins to run from the time of the order granting or denying the motion.

The Motion was served timely. Rule 6 governs service of motions, "Service by mail is complete upon mailing of all pleadings and papers subsequent to service of the original summons and complaint." SCRCP Rule 6(b)(1). The Motion should be ordered to be listed with a filing date of August 20, 2012.

### **II. The Circuit Court Should Order the Motion to Amend Be Filed as of August 20, 2012.**

Rule 60(a), SCRCP, states:

Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders.

This is a clerical mistake. The court clerk had other options than returning the Motion to Amend. The clerk could have filed the Motion and returned just the check,

requesting the Appellant to fill in the amount. The clerk could have sought permission to enter the filing fee amount from a supervisor. The clerk could have telephoned the Appellant and obtained a credit card payment. Returning everything was an option but least situated to protect a part in a lawsuit.

Rule 60(b), SCRPC, states:

Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;...

This is an inadvertent mistake or excusable neglect on the part of the Appellant. The Appellant had earlier sent motions including checks with blank amounts to the court, and the clerk has filled in the amount. There was no way the Appellant could know that this one time the clerk would refuse to fill in the amount, and instead of calling for alternate payment, return the entire pleadings.

“As applied to judgments and decrees, it is a mistake or omission by a clerk, counsel, judge or printer which is not the result of exercise of judicial function.” Dion v. Ravenel, Eiserhardt Associates, 449 S.E.2d 251, 253, 316 S.C. 226 (S.C.App. 1994.) The clerk’s decision to return the Motion to Amend was the clerk’s own decision, but was not the result of any judicial function. Therefore this court has power to order the acceptance of the Motion to Amend on August 20, 2012. (Note that Judge Dickson acknowledged receipt through email as of August 17, 2012.)

“The error could have been corrected with rule 60(a) because it was a clerical error resulting in the miscalculation of the total award. And the purpose of

rule 60(b) is to avoid unnecessary appeals when errors can be easily corrected by the fact finder.”

The error here can easily be corrected by this court, and should so be corrected.

**III. RULE 1 COMPELS THE MOTION TO AMEND BE FILED DATED AUGUST 20, 2012**

SCPRC Rule 1 states: “[The rules] shall be construed to secure the just, speedy, and inexpensive determination of every action. Acceptance of the Motion to Amend as of August 20, 2012 is the only way for Appellant to be able to secure the just, speedy and inexpensive determination of this action.

**IV. THIS COURT HAS THE POWER TO RETURN THIS MATTER TO THE CIRCUIT COURT AND ORDER THE CIRCUIT COURT TO CONSIDER THE MOTION TO AMEND.**

The Court of Appeals has the power to remand any matter to the Circuit Court for that court to act as directed by the Court of Appeals. E.g., Martin v. Paradise Cove Marina. Inc., 348 S.c. 379, 559 S.E.2d 348 (Ct. App. 2001).

**CONCLUSION**

Appellant prays that this court remand this case back to the Circuit Court with instructions to that court to consider the Motion to Amend.

October 1, 2012



Alvin R. Lundgren  
Attorney for Appellant  
5015 W Old Hwy Ste 200  
Mountain Green, Utah 84050  
(801) 876-4422

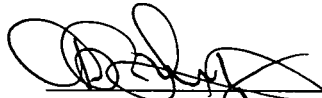
Certification

I certify that a copy of the Appellant's Motion was sent postage prepaid to the below persons on October 1, 2012

Melanie Maes  
Shelbourne Law Firm  
131 East Richardson Avenue  
Summerville SC 29484-0988

Wheeler Tillman  
8811 University Blvd  
North Charleston SC 29406-9839

Dated October 1, 2012



---

Alvin R. Lundgren

- clerk accepted the filing and filled out the proper filing fee. (Exhibit D)
7. Defendant returned the papers to the court and they were filed on or about August 30, 2012. (See Court Actions)
  8. SCRCF Rule 52(b) requires that a Motion to Amend be filed 10 days after written receipt of the Order.
  9. Defendant received the written notice of the Order on August 13, 2012, therefore the Motion must be filed on or before August 24, 2012. (Affidavit of Alvin R. Lundgren)
  10. Defendant's motion was timely deposited with the court, and but for the clerk returning the motion, would have been docketed before the Rule 52(b) cutoff period.
  11. Defendant, realizing that the foregoing might result in a denial of the Motion to Amend, and to protect her rights of appeal, sent a notice of appeal on September 6, 2012 to protect the right to appeal.
  12. Defendant moves this court to accept Defendant's Motion to Amend officially as of August 20, 2012.

## MEMORANDUM

### I. The Motion to Amend Was Served Timely.

SCRCF Rule 59(e), provides that a "motion to alter or amend the judgment shall be served not later than 10 days after entry of the judgment." Under Rule 59(f), when such a motion is made, the time for appeal from the judgment begins to run from the time of the order granting or denying the motion.

The Motion was served timely. Rule 6 governs service of motions, "Service by mail is complete upon mailing of all pleadings and papers subsequent to service of the original summons and complaint." SCRCF Rule 6(b)(1). The Motion should be ordered to be listed

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**Dorchester County  
First Judicial Circuit  
Public Index**



[Dorchester County Home Page](#) [South Carolina Judicial Department Home Page](#) [SC.GOV Home Page](#)

Switch View

**Michael G Petersen VS Karen Denkowicz Lundgren**

Case Number:	2008CP1800853	Court Agency:	Common Pleas	Filed Date:	04/01/2008
Case Type:	Common Pleas	Case Sub Type:	Torts/Other 399	File Type:	Non-Jury
Status:	Appeal	Assigned Judge:	Dickson, Edgar W.		
Disposition:		Disposition Date:		Disposition Judge:	
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties    Judgments    Tax Map Information    Associated Cases    Actions    Financials

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Lundgren, Alvin	Letter from Judge Dickson to Alvin Lundgren	Filing		09/19/2012-14:47		
Petersen, Michael G	Return to Motion Rule 52(b) and 59 (c)	Filing		09/18/2012-11:50		
Lundgren, Karen Denkowicz	Motion to Accept Filing with Memorandum	Motion		09/17/2012-12:20		
Lundgren, Karen Denkowicz	Affidavit/Affidavit of defendant's co-counsel	Filing		09/13/2012-11:09		
Lundgren, Karen Denkowicz	Appeal/Court of Appeals	Filing		09/11/2012-14:44		
Lundgren, Karen Denkowicz	Memo in Support of Defendant's Rule 52(b) and 59(e) Motions	Filing		08/30/2012-08:49		
Lundgren, Karen Denkowicz	Defendant's Rule 52(b) and 59(e) Motions to Amend Findings	Motion		08/30/2012-08:43		
Petersen, Michael G	Motion for Damages Hearing	Motion		08/09/2012-16:33		
Petersen, Michael G	Order (All Pending Motions)	Order		08/09/2012-16:33	08/09/2012-16:33	
Petersen, Michael G	Affidavit of Michael Sean Boger MD	Filing		03/09/2012-13:40		
Petersen, Michael G	Plaintiff's final disclosure of experts	Filing		02/13/2012-10:55		
Lundgren, Karen Denkowicz	Disclosure of Experts	Filing		01/26/2012-11:34		
Petersen, Michael G	Plaintiffs Initial Disclosure of Experts	Filing		12/30/2011-15:22		
Petersen, Michael G	Consent Scheduling Order	Motion		11/22/2011-16:41	11/22/2011-16:41	
Petersen, Michael G	Summons	Filing		11/02/2011-15:59		
Petersen, Michael G	Affidavit of Service on Michael G. Petersen	Filing		11/02/2011-09:48		
Petersen, Michael G	Notice of Hearing on Motion of Reference	Filing		10/03/2011-12:18		
Lundgren, Karen Denkowicz	Response to Plaintiffs Order of reference	Filing		09/28/2011-14:44		
Petersen, Michael G	Motion for Order of Reference/alternative Scheduling Order	Motion		08/29/2011-16:15	11/22/2011-16:15	
Petersen, Michael G	Certificate of Mailing Def. Answers to Shelbourne Law Firm	Filing		08/25/2011-10:09		
Lundgren, Karen Denkowicz	Affidavit/Affidavit of Karen Lungren	Filing		03/28/2011-15:04		
Lundgren, Karen Denkowicz	Defendant's memorandum	Filing		03/28/2011-14:02		
Lundgren, Karen Denkowicz	Defendant's objections to plaintiff's motion to amend	Filing		03/28/2011-14:00		

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STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER

MICHAEL G PETERSEN

Plaintiff

v.

KAREN DENKOWICZ LUNDGREN

Defendant

IN THE COURT OF COMMON  
PLEAS  
FIRST JUDICIAL COURT

CIVIL ACTION NO 2008-CP-18-853

MOTION TO ACCEPT FILING  
WITH MEMORANDUM

Defendant moves this court to accept the Defendant's Motion to Amend first received by this court on or about August 20, 2012 based on the submitted affidavits and the following.

**FACTS**

1. This court signed an order in the above case which was filed on August 9, 2012. (See Court Actions)
2. Defendant sent this court a Motion to Amend, with a cover sheet motion and memorandum on August 16, 2012. (Exhibit A, B)
3. Included with the Motion to Amend was a check, signed, but without the amount filled out.
4. Defendant emailed these documents to you through your court clerks Ms. Nicolette and Ms. Smith and to other counsel Ms. Maes and Mr. Tillman on August 16, 2012. (Exhibit C)
5. On or about August 20, 2012 the court clerk returned the documents Defendant sent with a "sticky note" from a court clerk that stated "we cannot accept a check without the amount filled out." (Exhibit D)
6. Defendant has previously sent signed checks with a blank amount to this court, and the

with a filing date of August 20, 2012.

**II. This Court Should Order the Motion to Amend Be Filed as of August 20, 2012.**

Rule 60(a), SCRCP, states:

Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders.

This is a clerical mistake. The court clerk had other options than returning the Motion to Amend. The clerk could have filed the Motion and returned just the check, requesting the Defendant to fill in the amount. The clerk could have sought permission to enter the filing fee amount from a supervisor. The clerk could have telephoned the Defendant and obtained a credit card payment. Returning everything was an option but least situated to protect a part in a lawsuit.

Rule 60(b), SCRCP, states:

Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;...

This is an inadvertent mistake or excusable neglect on the part of the Defendant. The Defendant had earlier sent motions including checks with blank amounts to the court, and the clerk has filled in the amount. There was no way the Defendant could know that this one time the clerk would refuse to fill in the amount, and instead of calling for alternate payment, return the entire pleadings.

“As applied to judgments and decrees, it is a mistake or omission by a clerk, counsel, judge or printer which is not the result of exercise of judicial function.” Dion v. Ravenel,

Eiserhardt Associates, 449 S.E.2d 251, 253, 316 S.C. 226 (S.C.App. 1994.) The clerk's decision to return the Motion to Amend was the clerk's own decision, but was not the result of any judicial function. Therefore this court has power to order the acceptance of the Motion to Amend on August 20, 2012.

"The error could have been corrected with rule 60(a) because it was a clerical error resulting in the miscalculation of the total award. And the purpose of rule 60(b) is to avoid unnecessary appeals when errors can be easily corrected by the fact finder."

The error here can easily be corrected by this court, and should so be corrected.

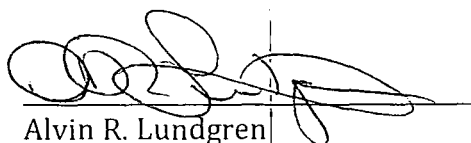
### **III. RULE 1 COMPELS THE MOTION TO AMEND BE FILED DATED AUGUST 20, 2012**

SCPRC Rule 1 states: "[The rules] shall be construed to secure the just, speedy, and inexpensive determination of every action. Acceptance of the Motion to Amend as of August 20, 2012 is the only way for Defendant to be able to secure the just, speedy and inexpensive determination of this action.

### **CONCLUSION**

Defendant prays that this court order the entry of Defendant's Motion to Amend be file dated August 20, 2012.

September 10, 2012



Alvin R. Lundgren  
Attorney for Defendant  
5015 W Old Hwy Ste 200  
Mountain Green, Utah 84050  
(801) 876-4422

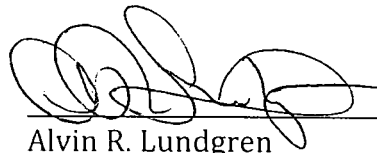
Certification

I certify that a copy of the Defendant's Motion was sent postage prepaid to the below persons on September 10, 2012

Melanie Maes  
Shelbourne Law Firm  
131 East Richardson Avenue  
Summerville SC 29484-0988

Wheeler Tillman  
8811 University Blvd  
North Charleston SC 29406-9839

Dated September 10, 2012

A handwritten signature in black ink, appearing to read 'Alvin R. Lundgren', is written over a horizontal line. The signature is stylized with several loops and a long horizontal stroke at the end.

Alvin R. Lundgren

**EXHIBIT A**

STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER

CERTIFIED COPY

IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL CIRCUIT

2012 AUG 30, AM 8:39  
CASE NO.: 2008-CP-18-853

MICHAEL G PETERSEN

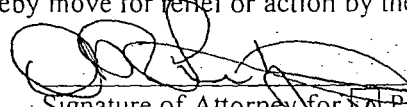
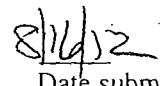
vs.

KAREN DENKOWICZ LUNDGREN

Defendant.

*Christine Williams*  
Plaintiff  
CLERK OF COURT  
DORCHESTER COUNTY

MOTION AND ORDER INFORMATION  
FORM AND COVERSHEET

Plaintiff's Attorney: MELANIE MAES, Bar No. _____ Address: 131 EAST RICHARDSON AVE. SUMMERVILLE Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: ALVIN R LUNDGREN, Bar No. _____ Address: 5015 W OLD HWY MOUNTAIN GREEN UT 84050 Phone: 801-876-4422 Fax 801-876-4411 E-mail: al@lundgren-law.com Other: _____
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input checked="" type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
<b>SECTION I: Hearing Information</b>	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES/ <input type="checkbox"/> NO	
<b>SECTION II: Motion/Order Type</b>	
<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
  Signature of Attorney for <input checked="" type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant Date submitted	
<b>SECTION III: Motion Fee</b>	
<input type="checkbox"/> PAID - AMOUNT: \$ _____ <input type="checkbox"/> EXEMPT: (check reason) <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____	
<b>JUDGE'S SECTION</b>	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
<b>CLERK'S VERIFICATION</b>	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	

STATE OF SOUTH CAROLINA CERTIFIED COPY IN THE COURT OF COMMON PLEAS  
COUNTY OF DORCHESTER FIRST JUDICIAL COURT

2012 AUG 30 AM 8:39

MICHAEL G PETERSEN

CIVIL ACTION NO 2008-CP-18-853

Plaintiff

*Cheryl Graham*  
CLERK OF COURT  
DORCHESTER COUNTY

DEFENDANT'S RULE 52(b) and 59(e)  
MOTIONS TO AMEND FINDINGS  
WITH MEMORANDUM

v.

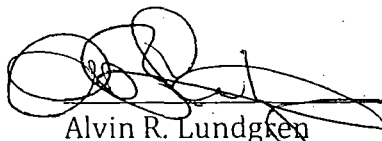
KAREN DENKOWICZ LUNDGREN

JUDGE

Defendant

Defendant moves this request the trial court to alter or amend the judgment entered August 7, 2012, and also seek "reconsideration" of issues and arguments and request the court to amend its findings and reconsider its order pursuant to SCRPC Rules 52(b) and Rule 59(e) based on the attached memorandum.

Dated August 16, 2012



Alvin R. Lundgren  
Attorney for Defendant  
5015 W Old Hwy Ste 200  
Mountain Green, UT 84050

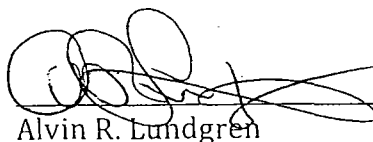
Certification

I certify that a copy of the Defendant's Rule 52(B) And 59(E) Motions To Amend Findings With Memorandum was sent postage prepaid to the below persons on August 16, 2012

Melanie Maes  
Shelbourne Law Firm  
131 East Richardson Avenue  
Summerville SC 29484-0988

Wheeler Tillman  
8811 University Blvd  
North Charleston SC 29406-9839

Dated August 14, 2012



Alvin R. Lundgren

STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER

2012 AUG 30 AM 8:39

IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL COURT

MICHAEL G PETERSEN

CIVIL ACTION NO 2008-CP-18-853

Plaintiff

*Cheryl Anderson*  
CLERK OF COURT  
DORCHESTER COUNTY

MEMORANDUM IN SUPPORT OF  
DEFENDANT'S RULE 52(b) and 59(e)  
MOTIONS TO AMEND FINDINGS  
WITH MEMORANDUM

v.

KAREN DENKOWICZ LUNDGREN

JUDGE

Defendant

This Court entered its Findings and Order on multiple motions on August 7, 2012. Defendant moves this court to amend its Findings and Order pursuant to Rules 52(b) and 59(e) of the South Carolina Rules of Civil Procedure.

In South Carolina, a motion to alter or amend a judgment must be made pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure in order to preserve error when the appellant has made an argument that the trial court has not explicitly ruled on in its trial order. The issue must be *explicitly* ruled upon. *Siau v. Kassel*, 369 S.C. 631, 632 S.E.2d 888, 894 (Ct.App. 2006) ("when an issue presented to the circuit court in a civil case is not explicitly ruled upon in the final order, the issue must be raised by an appropriate post-trial motion to be preserved for appellate review.")

Dictionary.com defines explicit:

1. *fully and clearly expressed or demonstrated; leaving nothing merely implied; unequivocal: explicit instructions*
2. *clearly developed or formulated:*

This memorandum suggests that the court's ruling was not "explicit" in context of the definition.

The following findings are requested to be amended: (The court's findings are *italicized*.)

1. *The record indicates that said [Defendant's] statements are not true and that Plaintiff does not have the STD at issue, Herpes Simplex II ("HSV" II).* Plaintiff submitted his own tests but repeatedly refused to submit to tests as demanded by Defendant. Defendant argues that Plaintiff could have taken suppressive substances to mask the diagnosis or that the testing was otherwise faulty. Without the tests requested by Defendant this question of fact is not resolved as the Plaintiff's submitted tests were self-serving. Thus there is a disputed question of fact that should have been resolved by ordering the Plaintiff to take the tests as requested by Defendant prior to making these finding of facts. The court's ruling contains no explicit consideration of whether the defendant is entitled to obtaining her own evidence as opposed to the self serving submissions of the Plaintiff, and without an opportunity for the Defendant to provide offsetting evidence.
2. *Defendant claims that her defamatory statements were protected as privileged statements. The privileges asserted by the Defendant are inapplicable to the repeated publications of the defamatory statements in this matter.* The court does not address any of the privilege claims asserted by the Defendant, instead summarily dismisses them and the case law supporting the privileges. Each alleged publication should have been analyzed in context of the asserted privilege, the facts and the law. This leaves disputed questions of fact regarding privileges with no explicit language.
3. *There is also no genuine issue as to material fact regarding Defendant' Counterclaims.* Defendant counterclaimed that she suffered assault with each outbreak of Herpes Simplex II Virus. The court did not address the counterclaim because it concluded that

the Plaintiff did not have HSV II. However, the court should reconsider this oversight as it re-evaluates whether the self serving tests should have been balanced by requiring the Plaintiff to submit to the tests demanded by Defendant.

4. *Personal jurisdiction is proper in South Carolina because the statements were published while Defendant was in South Carolina and Plaintiff's reputation was damaged in South Carolina.* There is no evidence that the statements were published in South Carolina by the Defendant. Neither is there evidence that the statements were published while the Defendant was in South Carolina. Defendant testified in her affidavits that she did not publish to her children while she was in South Carolina. That testimony was not refuted. At minimum this is a material fact in dispute. There was no explicit discussion on the jurisdictional issues.

a. There is no evidence that the statements were published while the Defendant was in South Carolina. The alleged statements include:

- i. To the parties' daughter Laura. Laura resides and has resided in Tennessee for the period covered by this lawsuit. Plaintiff does not provide evidence of any publishing in South Carolina.
- ii. To the parties' daughter Meagan – no evidence that she was the recipient of statements by the Defendant while the Defendant and Meagan were in South Carolina.
- iii. To the parties' son Steven. At the time that Defendant discussed her beliefs both Steven and the Defendant were in Utah. No evidence was

submitted opposing this fact asserted by Defendant. Steve forwarded the email containing the statements to his father. Steven may be responsible of re-publishing in South Carolina, but not the Defendant.

iv. The letter was not published while Defendant was in South Carolina.

5. *[D]efamation is a tort recognized by the State of South Carolina and therefore subject matter jurisdiction is proper and properly brought in the Court of Common Pleas.* To bring a defamation action in South Carolina there are prerequisites that are not present in this case. The court must have conclusive evidence that the alleged tort was published by Defendant while she was in South Carolina, see above.
6. The court did not consider the Defendant's arguments regarding the statute of limitations, laches and waiver. These should be addressed because they are material to the outcome of the case.
7. Summary judgment is not proper where there are questions of material fact at issue. SCRCP 56. A material fact is that fact that could alter the outcome. The questions of material fact include:
- a. Whether the Plaintiff's self serving tests would have been controverted by the Defendant's requested tests that the Plaintiff refused to take.
  - b. Whether the Defendant was in South Carolina when the alleged defamatory statements were made.
  - c. Whether the Defendant made defamatory statements that were published in South Carolina.
  - d. Whether personal jurisdiction was proper. The Defendant was not in South Carolina at the time the alleged publications occurred. Furthermore, there is no evidence that the alleged statements were delivered in South Carolina.

- e. Whether subject matter jurisdiction was proper.
- f. Therefore granting summary judgment was improper.

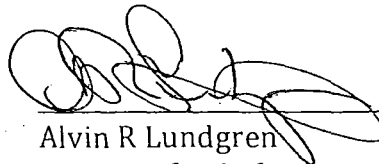
**CONCLUSION**

The court is requested to amend its findings under Rules Rules 52(b) and Rule 59(e), and with reference to the filed pleadings, affidavits and exhibits, particularly the affidavits filed by the Defendant.

**WHEREFORE**

The Defendant prays that the Court amend its findings consonant with the foregoing and in light of the evidence as submitted in this case.

Dated August 16, 2012



---

Alvin R Lundgren  
Attorney for Defendant  
5015 W Old Hwy  
Mountain Green, UT 84050

**EXHIBIT B**

Stamps.com Pro

File View Tools Favorites Help

Print Postage  
postage wizard  
stamps  
envelopes  
packages  
International  
batch  
View History  
search  
refund  
USPS pickup  
SCAN form  
Manage Account  
my account  
reports  
address book  
Buy Supplies  
online store  
Postage Balance  
\$16.66  
Buy Postage  
Home

### Search Prints

Date: Last 30 days From: 08/09/2012 To: 08/08/2012 Search: [ ] GO

[Edit Cost Code](#) [Add New Label](#) [Export](#)

<input type="checkbox"/>	Info	Print Date	Cost	Recipient	Status	Tracking #/ Insurance ID	Date Delivered	Carrier	Class/ Service	Special Service
<input checked="" type="checkbox"/>	[i]	8/16/2012	\$0.65	Clerk of Court, 5200 E Jimilton Blvd	Printed			USPS	First Class	
<input checked="" type="checkbox"/>	[i]	8/16/2012	\$0.65	Wheeler Tilman, 8311 University Blvd	Refunded			USPS	First Class	
<input checked="" type="checkbox"/>	[i]	8/16/2012	\$0.65	Melanie Maes, Shelbourne Law Firm	Printed			USPS	First Class	
<input type="checkbox"/>	[i]	8/15/2012	\$2.10	Chad Holman, 5810 Linlith, Mountain	Printed			USPS	First Class	
<input type="checkbox"/>	[i]	8/15/2012	\$0.45	John Webster, 5093 South 1500 W	Printed			USPS	First Class	
<input type="checkbox"/>	[i]	8/14/2012	\$0.45	Michael Moyal, 1825 Washington Blvd	Printed			USPS	First Class	
<input type="checkbox"/>	[i]	8/14/2012	\$0.45	Sherree Durastanti, 5966 Wasatch E	Printed			USPS	First Class	
<input type="checkbox"/>	[i]	8/10/2012	\$0.45	Marla Snow, 3319 N University Ave	Printed			USPS	First Class	
<input type="checkbox"/>	[i]	8/10/2012	\$0.45	Sixth District Court - Manly, 160 N Mi	Printed			USPS	First Class	
<input type="checkbox"/>	[i]	8/10/2012	\$0.45	William Bodel, Bladshawk Estates, 71	Printed			USPS	First Class	
<input type="checkbox"/>	[i]	8/10/2012	\$0.45	Second District Court - Morgan, PO E	Printed			USPS	First Class	
<input type="checkbox"/>	[i]	8/9/2012	\$0.65	Second District Court, 2525 Grant Av	Printed			USPS	First Class	
<input type="checkbox"/>	[i]	8/9/2012	\$0.65	Scott L Hansen, 2650 Washington Bl	Printed			USPS	First Class	
<input type="checkbox"/>	[i]	8/9/2012	\$0.45	Nationstar, BR Dept, 350 Highland D	Printed			USPS	First Class	
<input type="checkbox"/>	[i]	8/9/2012	\$2.30	John Walsh, 3191 Valley St Ste 230	Printed			USPS	First Class	
<input type="checkbox"/>	[i]	8/9/2012	\$0.45	Third District Court - SLC, PO Box 18	Printed			USPS	First Class	
<input type="checkbox"/>	[i]	8/9/2012	\$0.65	John M Webster, 5093 South 1500 W	Printed			USPS	First Class	
<input type="checkbox"/>	[i]	8/9/2012	\$0.65	Third District Ct Silver Summit, 6300	Printed			USPS	First Class	
<input type="checkbox"/>	[i]	8/9/2012	\$0.45	Third District Court, West Jordan, 9	Printed			USPS	First Class	

[Check All](#) [Uncheck All](#)

Current User: ahini

Windows Help and Support

Search Help

New Options

Select a snip type from the menu or click the New button.

### Snipping Tool

Feature any of the following types of snips:

- Free-Form Snip.** Draw a free-form shape around an object.
- Rectangular Snip.** Drag the cursor around an object to form a rectangle.
- Window Snip.** Select a window, such as a browser window or dialog box, that you want to capture.
- Full-Screen Snip.** Capture the entire screen.

When you capture a snip, it's automatically copied to the Clipboard and the mark-up window. From the mark-up window, you can annotate, save, or share the snip. The following procedures explain how to use Snipping Tool.

**How to capture a snip**

**How to save a snip of a menu**

**How to annotate a snip**

**How to save a snip**

When you capture a snip, click the Save Snip button in the mark-up window.

**How to save a snip**

In the Save As dialog box, enter a name for the snip, choose a location to save the snip, and then click Save.

**How to share a snip**

Click the Share Snip button in the mark-up window to share the snip.

Offline Help

**EXHIBIT C**

v 5.6

- Homepage
- Email
- Calendar
- Files
- Fax
- Check Email
- Compose
- Address Book
- Settings
- Tools
- Help

Search...  
 Go [Adv. Search](#)

[Move to Folder](#) Move

Unlimited Usage: 702MB

- Inbox (70)
- Bulk Mail
- Drafts (1)
- Templates
- Send Later
- Sent Items
- Trash [\[purge\]](#) (83)
- Deleted Messages (58)
- Junk E-mail (43)
- Notes
- Sent
- Sent Messages

[Sent Items](#) > Message Detail [Entire thread](#)

**Subject:** Re: Peterson v. Lundgren 08-CP-18-853  
**From:** Alvin Lundgren <al@lundgren-law.com> [\(Add as Preferred Sender\)](#)  
**Date:** Thu, Aug 16, 2012 2:27 pm  
**To:** "Dickson, Edgar W. Law Clerk (Trey M. Nicolette)" <edicksonlc@sccourts.org>, Melanie Maes <melanie@shelbournelaw.com>  
**Cc:** "Dickson, Edgar W. Secretary (Peggy Smith)" <edicksonsc@sccourts.org>

Attached is Defendant's 52(b) and Rule 59 Motion. The original and copies have been sent by USPS mail. A cover sheet as attached accompanies the Motion.

Alvin R. Lundgren  
 5015 W Old Hwy Ste 200  
 Mountain Green, Utah 84050  
 Tel (801) 876-4422  
 Fax (801) 876-4411  
[Al@lundgren-law.com](mailto:Al@lundgren-law.com)  
[www.lundgren-law.com](http://www.lundgren-law.com)

Download		Size	Action(s)
	<a href="#">Def Rule 52(b) Motion.docx.pdf</a>	169 k	<a href="#">Download</a>
	<a href="#">Karen Motion Cover.pdf</a>	73 k	<a href="#">Download</a>

**EXHIBIT D**

# ALVIN R. LUNDGREN, L.C.

A LAW FIRM

A PROFESSIONAL CORPORATION

ALVIN R. LUNDGREN  
CA. \*, KS. \*, MO. & UT.  
\*INACTIVE

5015 OLD HWY 30, STE 200  
MOUNTAIN GREEN, UT 84050  
TEL (801) 876-4422  
FAX (801) 876-4411

August 16, 2012

Carolyn Ayer  
Common Pleas  
5200 East Jim Bilton Boule  
Saint George SC 29477-807

FILED - RECORDED  
2012 AUG 20 AM 11:39  
CHERYL GRANHAM  
CLERK OF COURT  
DORCHESTER CO

Re: Petersen v.

Dear Clerk,

Enclosed is a

Please submit

cc: Melanie Maes  
Wheeler Tillman

We cannot accept  
a check without the  
amount filled out -

the fee..

Additionally, Page  
2 is completely  
blank.

Please include a SASE  
if you want a filed copy  
returned.

Judge Dickson is not a  
resident judge here - you  
should make sure you send him  
a copy  
Clerk of Court

2

**Subject:** Re: Peterson v. Lundgren 08-CP-18-853  
**Date:** Thursday, August 16, 2012 2:27:51 PM Mountain Daylight Time  
**From:** Alvin Lundgren  
**To:** Dickson, Edgar W. Law Clerk (Trey M. Nicolette), Melanie Maes  
**CC:** Dickson, Edgar W. Secretary (Peggy Smith)

Attached is Defendant's 52(b) and Rule 59 Motion. The original and copies have been sent by USPS mail. A cover sheet as attached accompanies the Motion.

Alvin R. Lundgren  
5015 W Old Hwy Ste 200  
Mountain Green, Utah 84050  
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Fax (801) 876-4411  
Al@lundgren-law.com  
www.lundgren-law.com



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TEL (801) 876-4422  
FAX (801) 876-4411

August 16, 2012

Carolyn Ayer  
Common Pleas  
5200 East Jim Bilton Boule  
Saint George SC 29477-80

FILED - RECORDED  
2012 AUG 20 AM 11:39  
CHERYL GRANHAM  
CLERK OF COURT  
DORCHESTER CO

Re: Petersen v.

Dear Clerk,

Enclosed is a

Please submit

We cannot accept a check without the amount filled out - the fee..

Additionally, Page 2 is completely blank.

Please include a SASE if you want a filed copy returned.

cc: Melanie Maes  
Wheeler Tillman

Judge Dickson is not a resident judge here - you should make sure you send him a copy  
Clerk of Court

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[ ]



State of South Carolina  
The Circuit Court of the First Judicial Circuit

Edgar Warren Dickson  
Judge

Post Office Box 1949  
151 Docket St., Suite 207  
Orangeburg, SC 29116-1949  
Phone: (803) 535-2187  
Fax: (803) 535-2188  
edicksonj@sccourts.org

September 18, 2012

Alvin R. Lundgren, Esquire  
5015 Old Hwy. 30, Suite 200  
Mountain Green, UT 84050

RE: Petersen v. Lundgren (08-CP-18-00853)

Dear Mr. Lundgren:

I have a copy of your Notice of Appeal dated September 16, 2012, that I assume you have filed properly.

Since this case is now on Appeal, I no longer have jurisdiction in this matter and cannot consider your motion.

Sincerely,

Edgar W. Dickson

EWD:pts

cc: Melanie Maes, Esquire  
Shelbourne Law Firm

Wheeler Tillman, Esquire

Carolyn Ayer  
Dorchester County Clerk of Court's Office

ASSICKWIT

Court of Appeals

APPEAL FROM DORCHESTER COUNTY Court of Common Pleas

Circuit Court Judge Edgar Dickson

**CIVIL ACTION NO 2008-CP-18-853**

Michael G Petersen (Appellee)

v.

Karen D. Lundgren (Appellant)

**AFFIDAVIT OF ALVIN R LUNDGREN IN SUPPORT OF  
MOTION TO REMAND**

I, Alvin R. Lundgren, affirm under penalty of perjury that the following is true and correct of my own knowledge and belief:

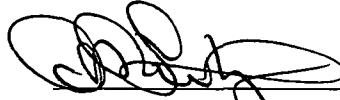
**FACTS**

1. I am an attorney licensed to practice law in the State of Utah, acting pro hac vice with co counsel Wheeler Tillman who is licensed in the State of South Carolina.
2. The Dorchester court signed an order in the above case that was filed on August 9, 2012.
3. On behalf of Appellant I sent the Dorchester court a Motion to Amend, with a cover sheet motion and memorandum on August 16, 2012.
4. Included with the Motion to Amend was a check, signed, but without the amount filled out.
5. On behalf of Appellant I emailed these documents to the Dorchester Judge through court clerks Ms. Nicolette and Ms. Smith and to other counsel Ms. Maes and Mr. Tillman on August 16, 2012.

6. On or about August 20, 2012 the court clerk returned the documents Appellant sent with a "sticky note" from a court clerk that stated "we cannot accept a check without the amount filled out."
7. I had previously sent signed checks with a blank amount to this court, and the clerk accepted the filing and filled out the proper filing fee.
8. I returned the papers to the court and they were filed on or about August 30, 2012.
9. SCRCF Rule 52(b) requires that a Motion to Amend be filed 10 days after written receipt of the Order.
10. I received the written notice of the Order on August 13, 2012, therefore the Motion must have been filed on or before August 24, 2012.
11. Appellant's motion was timely deposited with the court, and but for the clerk returning the motion, would have been docketed before the Rule 52(b) cutoff period.
12. On behalf of Appellant, realizing that the foregoing might result in a denial of the Motion to Amend, and to protect her rights of appeal, I sent a notice of appeal on September 6, 2012 to protect the right to appeal.
13. Appellant moved the Dorchester court to accept Appellant's Motion to Amend officially as of August 20, 2012.
14. The Dorchester Circuit Judge responded that the Circuit court lost its jurisdiction upon the filing of the Notice of Appeal. The judge also acknowledged receipt of the Appellant's Motion to Amend on **September 17, 2012**

15. This Motion was filed to request this Court to release the appeal, and return this case back to the Dorchester Circuit court requesting the Dorchester Circuit judge to consider the Appellant's Motion to Amend.

October 1, 2012

  
Alvin R. Lundgren

STATE OF UTAH  
COUNTY OF MORGAN

On the below date appeared Alvin R. Lundgren who being properly identified signed the foregoing affidavit before me.

Dated October 1, 2012

