

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Maite Murphy, Circuit Court Judge

Appellate Case No.: 2015-001718
Circuit Court Case No.: 2015-CP-38-001718

RECEIVED

MAY 02 2016

SC Court of Appeals

Wanda Mack,

Appellant,

v.

Carmen Gates,

Respondent.

RECORD ON APPEAL

Steven D. Murdaugh
R. Alexander Murdaugh
Peters, Murdaugh, Parker, Eltzroth
& Detrick, P.A.
P.O. Box 1164
Walterboro, SC 29488
(843) 549-9544
ATTORNEYS FOR APPELLANT

James B. Lybrand, Jr.
McDonald, McKenzie, Rubin,
Miller, & Lybrand, P.A.
P.O. Box 58
(803) 252-0500
ATTORNEYS FOR RESPONDENT

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State of South Carolina
The Circuit Court

Maité Murphy
Judge

5200 E. Jim Bilton Boulevard
Post Office Box 802
St. George, SC 29477
Phone: (843) 832-0391
Fax: (843) 832-0392
mmurphyj@sccourts.org

MEMORANDUM

To: Orangeburg County Clerk of Court (Ms. Mulligan-Green)
From: William Crantford, Law Clerk
Subject: Mack v. Gates, 2010-CP-38-00670
Date: June 8, 2015

Enclosed please find a Form 4 denying Plaintiff's motion to reconsider. This motion was heard on June 1, 2015.

Thanks,
William

[Handwritten signature]
2015 JUL - 8 AM 11:55
FILED
WILLIAM CRANTFORD
CLERK OF COURT
ORANGEBURG, SC
©

00000001

Wanda Mack

Carmen Gates

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or
	<input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court; Plaintiff's Motion to Reconsider is hereby denied.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Wanda Mack
 Circuit Court Judge

2166
 Judge Code

6/8/15
 Date

FILED IN 2010
 COUNTY OF ORANGEBURG, SC
 CLERK OF COURT
 A 11:55

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF ORANGEBURG)

Wanda Mack)

Plaintiff)

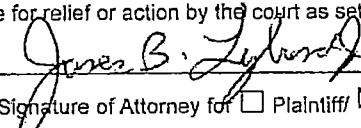
CASE NO. 2010-CP-38-00670)

v.)

ORDER INFORMATION)
FORM AND COVER SHEET)

Carmen Gates)

Defendant)

Plaintiff's Attorney: Steven D. Murdaugh Peters, Murdaugh, Parker, Eltzroth & Detrick P.O. Box 1164 Walterboro, SC 29488 phone: fax: e-mail: other:	Defendant's Attorney: JAMES B. LYBRAND, JR. P. O. Box 58 Columbia, SC 29202 phone: 252-0500 fax: 929-3530 e-mail: other:
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I AND III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II AND III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete Sections II and III)	
SECTION I: Hearing Information	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES / <input checked="" type="checkbox"/> NO	
SECTION II: Motion Type	
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Order / Order Denying Plaintiff's Motion to Restore I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	12/1/2014 Date submitted
SECTION III: Motion Fee	
<input checked="" type="checkbox"/> PAID - AMOUNT: \$25.00 <input type="checkbox"/> Other: _____	
JUDGE'S SECTION	JUDGE _____ CODE: _____ Date: _____
CLERK'S VERIFICATION	
Collected by: <u>Shante Zene</u> Date Filed: <u>12-3-14</u> <input checked="" type="checkbox"/> MOTION FEE COLLECTED: <u>\$ 25.00</u> <input type="checkbox"/> CONTESTED - AMOUNT DUE: _____	

SCCA/233 (11-03)

ATTEST: TRUE COPY

Winnif B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

MAILED

12/10/14 Shante

00000004

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Wanda Mack,

Plaintiff(s),

v.

Carmen Gates

Defendant(s).

IN THE COURT OF COMMON PLEAS

CASE NO.: 2010-CP-38-00670

ORDER

ATTEST: TRUE COPY

Winnifia B. Clark

CLERK OF COURT

ORANGEBURG COUNTY, SC

FILED FOR RECORD
2014 DEC -3 PM 1:11

This matter came before me on October 6, 2014 for argument of Plaintiff's Motion to Restore this action to the active general docket pursuant to Rule 40 (j) SCRPC. The motion was filed on February 19, 2013. Present at the hearing was Steven O. Murdaugh, counsel for Plaintiff, and James B. Lybrand, Jr., counsel for Defendant.

This action arises from an automobile accident occurring on March 10, 2009. Plaintiff filed her Complaint on May 12, 2010. Defendant filed her Answer on June 3, 2010. Discovery in the case was conducted and the case was mediated unsuccessfully. On September 29, 2011, Plaintiff sent Defendant a signed Consent Order striking the case under Rule 40(j) SCRPC. Defendant signed the consent and mailed the original Order on October 6, 2011 to Judge Edgar W. Dickson for filing. Defense counsel copied Plaintiff's counsel with his October 6 letter to Judge Dickson. On October 23, 2011, Judge Dickson signed the Order striking the case under Rule 40(j). The Order was filed on October 28, 2011. Defense counsel received a clocked copy of the filed Order from the Orangeburg Clerk's office a few days later.

On or about February 19, 2013, Plaintiff filed her motion to restore this case pursuant to Rule 40(j). Plaintiff sent defense counsel a letter and proposed Consent Order to Restore. On

February 26, 2013 defense counsel advised Plaintiff that he could not consent to restoring the case since the motion to restore had not been filed within one (1) year as provided in Rule 40(j). Counsel for Plaintiff submitted an Affidavit stating that he had never received a copy of the filed Order. The parties submitted documents (attached hereto) for the court's consideration.

Rule 40 (j) SCRCP governs the restoration of cases and provides as follows:

"A party may strike its complaint, counterclaim, cross-claim or third party claim from any docket one time as a matter of right, provided that all parties adverse to that claim, counterclaim, cross-claim or third party claim agree in writing that it may be stricken, and all further agree that if the claim is restored upon motion made within 1 year of the date stricken, the statute of limitations shall be tolled as to all consenting parties during the time the case is stricken, and any unexpired portion of the statute of limitations on the date the case was stricken shall remain and begin to run on the date that the claim is restored. A party moving to restore a case stricken from the docket shall provide all parties notice of the motion to restore at least 10 days before it is heard. Upon being restored, the case shall be placed on the General Docket and proceed from that date as provided in this rule." (emphasis added)

Here, it is undisputed that Plaintiff did not file her Motion to Restore within one (1) year from the date her case was stricken which was October 28, 2011. Her motion was not filed until or about February 19, 2013. Rule 40 (j) SCRCP does not require a plaintiff in all cases to file a motion to restore within one year of the case being stricken; however, the rule clearly provides that a Plaintiff must move to restore the case within the one (1) year period if Plaintiff seeks to take advantage of the statute of limitations tolling feature provided in the rule. Maxwell v. Genez, 356 S.C. 617, 591 S.E.2d 26 (2003); Graham v. Dorchester County School Dist., 339 S.C. 121, 125, 528 S.E.2d 80, 82 (SCAPP 2000). The striking of a case under Rule 40 (j) does not stop the running of the applicable statute of limitations. The statute of limitations ran on

The Affidavit of Plaintiff's counsel (paragraph 15) notes that neither Plaintiff nor her counsel were given a copy of the Order striking the case. Presumably, Plaintiff argues that her

failure to receive a copy excuses her failure to timely move to restore the case. This argument lacks merit. Plaintiff consented to the Order striking the case and Plaintiff was copied with the October 6, 2011 letter to Judge Dickson submitting the Order for filing. Accordingly, Plaintiff was on notice in early October 2011 that the case was being stricken and thereafter had ample time and opportunity to inquire from the court as to the status of the case. Prior to January or February 2013, Plaintiff apparently did not inquire about or request a copy of the Order from the Clerk of Court or Defense counsel. Plaintiff was certainly aware, before receiving a filed copy, that she would need to restore the case. Nonetheless, it was not until approximately February 2013, sixteen (16) months after the Order had been filed, that Plaintiff sought a copy of the Order.

Our Supreme Court has held that the time limits outlined in Rule 40(j) may not be extended under any "good cause" theory outlined in Rule 6(b) SCRCF. See, Maxwell, 591 S.E.2d at 28 (2003). The Court in Maxwell held as follows:

"Rule 40(j) does not require that a party move to restore the case to the docket within one year after it was stricken. Instead, the unambiguous language provides that, if the claim is restored within one year after it is stricken, the statute of limitations is tolled for that period.

. . .


A party can move to restore a case to the docket more than one year after the claim was stricken without running afoul of Rule 40(j); the party simply cannot take advantage of the one year tolling period provided by the rule.

. . .

Rule 6(b) is not applicable to Rule 40(j). The language of Rule 6(b) specifies it applies when there is a deadline . . . Rule 40(j) does not have a deadline during which a motion to restore must be filed. Accordingly, Rule 6(b) is inapplicable." Maxwell, 591 S.E. 2d at 28.

The one year period of time to file a motion to restore applies only when a party seeks to take advantage of the tolling of a statute of limitations. Here, Plaintiff failed to move to restore within the one (1) year period after Judge Dickson's Order striking the case. As such, Plaintiff cannot take advantage of the tolling period thereby making restoration of the case improper. Accordingly, Plaintiff's Motion to Restore must be denied.

AND IT IS SO ORDERED.


Honorable Maité Murphy
Presiding Judge
First Judicial Court

Orangeburg, South Carolina

November 25, 2014

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)
)
 Wanda Mack,)
)
 Plaintiff,)
)
 -vs-)
)
 Carmen Gates,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 CIVIL ACTION NO: 2010-CP-38-00670

ORDER STRIKING CASE UNDER
 RULE 40(J)

2010 OCT 28 A 11:10

FILED FOR
 WANDA MACK
 CLERK OF COURT
 ORANGEBURG, SC

Upon motion of the undersigned counsel for Plaintiff by and with the consent of the undersigned counsel for Defendant.

IT IS HEREBY ORDERED that this action shall be stricken from the active docket with leave to restore pursuant to Rule 40(j) SCRCP.

IT IS FURTHER ORDERED that while the case remains in an inactive status, the parties are allowed to continue with all forms of discovery provided for and authorized under the South Carolina Rules of Civil Procedure and to pursue mediation.

AND IT IS SO ORDERED.

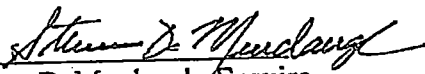
K.E.W. Dickson
 Chief Administrative Judge

Orangeburg, South Carolina
 O.C.
 September 23, 2011

ATTEST: TRUE COPY
Wanda B. Clark
 CLERK OF COURT
 ORANGEBURG COUNTY, SC

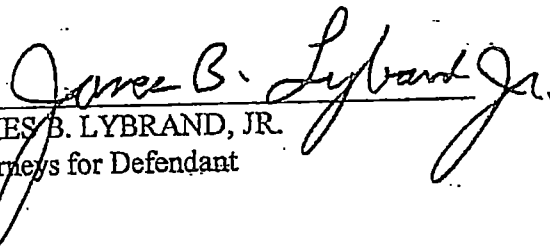
I SO MOVE:

Peters, Murdaugh, Parker, Eltzroth, & Detrick, PA
P. O. Box 1164
Walterboro, SC 29488

By: 
Steven D. Murdaugh, Esquire
Attorney for Plaintiff

I CONSENT:

McDONALD, McKENZIE, RUBIN,
MILLER AND LYBRAND, L.L.P.
POST OFFICE BOX 58
1704 MAIN STREET, 2nd FLOOR
COLUMBIA, SOUTH CAROLINA 29202
(803) 252-0500

BY: 
JAMES B. LYBRAND, JR.
Attorneys for Defendant

00000010

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)
WANDA MACK,)
Plaintiff,)
-vs-)
CARMEN GATES.)
Defendant.)

IN THE COURT OF COMMON PLEAS
C/A NO.: 2010-CP-38- 00670

COMPLAINT
(Jury Trial requested)

2010 MAR 12 4 11:56
CLERK OF COURT
ORANGEBURG COUNTY, SC

The plaintiff complaining that the defendant alleges:

1. That the wreck that is the subject of this action occurred in Orangeburg County, South Carolina; that the defendant is a resident of the State of South Carolina.

2. On March 10, 2009, the plaintiff was a passenger in a vehicle traveling East on Highway 6 in Orangeburg, South Carolina when the defendant failed to yield the right of way and collided with the vehicle in which the plaintiff was a passenger causing her to be injured as set forth hereafter.

3. That the above injuries were the direct and proximate result of the defendant's negligent and reckless conduct in the following particulars:

- a) In failing to keep proper lookout;
- b) In not keeping her vehicle within her lane of travel;
- c) In failing to stop, slow or turn her vehicle to avoid colliding with the plaintiff;
- d) In traveling too fast for the conditions then and there existing;
- e) In failing to act as a reasonably prudent person would under the same or similar circumstances.

4. That as a direct and proximate result of the aforementioned negligent and reckless conduct of the defendant, the plaintiff has been injured in the following particulars: that she has

ATTORNEY: TRUE COPY
Janna P. Mack
CLERK OF COURT
ORANGEBURG COUNTY, SC

been forced to suffer serious personal injuries and mental anguish; that she has been caused to lose the enjoyment of life; that she has been caused to incur doctor and medical bills; that she has been caused to lose wages; that her injuries are permanent and pursuant to §19-1-150 of the South Carolina Code of Laws she will continue to incur damages into the future.

WHEREFORE, the plaintiff prays for judgment for both actual and punitive damages and for whatever additional and further relief this court deems just and proper.

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: 

R. Alexander Murdaugh
P.O. Box 457
Hampton, SC 29924
(803) 943-2111

ATTORNEYS FOR PLAINTIFF

Hampton, South Carolina
April 29, 2010

00000013

STATE OF SOUTH CAROLINA)

COUNTY OF ORANGEBURG)

Wanda Mack,)

Plaintiff,)

-vs-)

Carmen Gates,)

Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NUMBER: 2010-CP-38-00670

ANSWER
(Jury Trial Demanded)

The Defendant for her Answer alleges:

FOR A FIRST DEFENSE

1. That the defendant is a minor under the age of eighteen years and lacks the legal capacity to sue or be sued and, therefore, this matter should be dismissed.

FOR A SECOND DEFENSE

1. That she denies each and every allegation contained in the Complaint not hereinafter specifically admitted or explained.

2. That paragraph one (1) is denied as to the county in which the accident occurred. Paragraph one (1) is admitted insofar as it alleges that the defendant is a resident of the State of South Carolina.

3. That paragraph two (2) of the Complaint is admitted insofar as it can be construed to allege that on the date set forth, the Plaintiff was a passenger in a vehicle traveling on Highway 6 that was involved in a very, very minor accident with a vehicle being operated by the Defendant. The remaining allegations of paragraph two (2) are denied.

4. That paragraphs three (3) and four (4) of the Complaint are denied.

FOR A THIRD DEFENSE

1. The Defendant would show that the impact between the two vehicles was of such a minor nature that it could not have caused the injuries and damages of which the Plaintiff complains.

FOR A FOURTH DEFENSE

1. The Defendant would show that the Plaintiff's claim for punitive damages is violative of the constitutions of both the United States of America and the State of South Carolina.

FOR A FIFTH DEFENSE

1. The Defendant would show that the Plaintiff's injuries, if any, were a direct and proximate result of the sole and/or intervening negligence, willfulness, wantonness, and gross negligence of a unnamed third party and, therefore, the Plaintiff cannot recover damages against the Defendant.

WHEREFORE having fully answered, the Defendant prays that the Complaint be dismissed with costs.

McDONALD, McKENZIE, RUBIN,
MILLER AND LYBRAND, LLP
1704 Main Street, 2nd Floor
Post Office Box 58
Columbia, South Carolina 29202
(803) 252-0500
(803) 929-3530 fax

BY: 

DAMON C. WLODARCZYK
ATTORNEYS FOR DEFENDANT

Columbia, South Carolina
June 3, 2010

STATE OF SOUTH CAROLINA)

COUNTY OF ORANGEBURG)

Wanda Mack,)

Plaintiff,)

-vs-)

Carmen Gates,)

Defendant.)

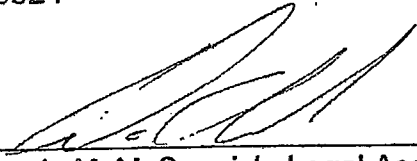
IN THE COURT OF COMMON PLEAS

CASE NUMBER: 2010-CP-38-00670

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that a copy of the Defendant's ANSWER, INTERROGATORIES TO PLAINTIFF and REQUEST FOR PRODUCTION OF DOCUMENTS were served upon the attorney for the Plaintiff by depositing said paper(s) in the United States Mail, Columbia, South Carolina, on the 3 day of June, 2010, with the first class postage duly affixed and a return address clearly indicated on the envelope, addressed as follows:

R. Alexander Murdaugh, Esquire
Peters, Murdaugh, Parker, Eltzroth, & Detrick, PA
PO Box 457
Hampton, SC 29924

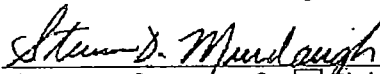

Angela M. McCormick, Legal Assistant to
DAMON C. WLODARCZYK
ATTORNEY FOR THE DEFENDANT

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)
)
 WANDA MACK,)
) Plaintiff,)
)
 vs.)
)
 CARMEN GATES)
) Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2010-CP-38-00670

**MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET**

Plaintiff's Attorney: Steven D. Murdaugh, Bar No. 75971 Address: 123 Walter Street Post Office Box 1164 Walterboro, SC 29488 Phone: (843) 549-9544 Fax (843) 549-9546 E-mail: SMurdaugh@pmped.com	Defendant's Attorney: James B. Lybrand, Jr. Address: Post Office Box 58 Columbia, SC 29202 Phone: (803) 252-0500 Fax E-mail: _____ 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)	
SECTION I: Hearing Information	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES/ <input type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
<div style="display: flex; justify-content: space-between;"> <div style="text-align: center;">  Signature of Attorney for <input type="checkbox"/> Plaintiff/ <input type="checkbox"/> Defendant </div> <div style="text-align: center;"> 2/19/2013 Date submitted </div> </div>	
SECTION III: Motion Fee	
<input checked="" type="checkbox"/> PAID – AMOUNT: \$25.00 <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, SCRCP) <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: _____	
JUDGE'S SECTION	JUDGE CODE _____
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED – AMOUNT DUE: \$ _____	

CERTIFICATE OF SERVICE

This is to certify that I, *Tamika D. Simmons*, with the Law Firm of Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A., Attorneys for the Plaintiff(s), have this date forwarded via facsimile and the U.S. Postal Service, a true and correct copy of the within *Plaintiff's Notice of Motion and Motion to Restore Pursuant to Rule 40(j)* with first class postage prepaid to:

James B. Lybrand, Jr.
McDonald, Mckenzie, Rubin, Miller and Lybrand, L.L.P.
Post Office Box 58
Columbia, SC 29202

ATTORNEYS FOR DEFENDANT

RE: *Wanda Mack v. Carmen Gates*
C/A No.: 2010-CP-38-00670

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: *Tamika D. Simmons*
Tamika D. Simmons

February 19, 2013
Walterboro, South Carolina

2013 FEB 21 11:53

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF ORANGEBURG)

WANDA MACK,)

CASE NO.
2010-CP-38-00670

Plaintiff,)

v.)

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

CARMEN GATES,)

Defendant.)

Plaintiff's Attorney:
Steven D. Murdaugh, Bar No. 75971
Address: 123 Walter Street
Post Office Box 1164
Walterboro, SC 29488
Phone: (843) 549-9544 Fax: (843) 549-9546
E-mail: smurdaugh@pmped.com

Defendant's Attorney:
James Lybrand, Jr.,
Address:
PO Box 58
Columbia, SC 29202
Phone: (803) 252-0500 Fax:
E-mail: other:

2014 DEC 12 P 1:29

- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
- FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Reconsider and to Amend or Alter
Estimated Time Needed: 30 minutes Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

- Written motion attached
- Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Steven D. Murdaugh 12/12/14
Signature of Attorney for Plaintiff / Defendant Date submitted

SECTION III: Motion Fee

- PAID - AMOUNT: \$25.00
- EXEMPT:
 - Rule to Show Cause in Child or Spousal Support
 - (check reason) Domestic Abuse or Abuse and Neglect
 - Indigent Status State Agency v. Indigent Party
 - Sexually Violent Predator Act Post-Conviction Relief
 - Motion for Stay in Bankruptcy
 - Motion for Publication Motion for Execution (Rule 69, SCRCF)
 - 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: _____
- Other: _____

JUDGE'S SECTION

- Motion Fee to be paid upon filing of the attached order.
- Other: _____

JUDGE _____

CODE: _____

Date: _____

CLERK'S VERIFICATION

Date Filed: _____

Collected by: _____

- MOTION FEE COLLECTED: _____
- CONTESTED - AMOUNT DUE: _____

of the filed order from the Orangeburg Clerk of Court's office a few days later. Plaintiff nor Plaintiff's Counsel ever received written notice that the Order had been entered into the record by the Clerk of Court.

On February 19, 2013, Plaintiff filed a Motion to Restore the case pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure. Plaintiff sought the consent of Defense Counsel to restore the matter. Defense Counsel advised Plaintiff's Counsel that he could not consent to restore the case since the Motion to Restore had not been filed within one (1) year after the case had been stricken as provided in Rule 40 (j) of the South Carolina Rules of Civil Procedure. Counsel for the Plaintiff submitted an affidavit stating that Plaintiff nor Plaintiff's Counsel had ever received written notice that the order had been entered into the record.

On October 6, 2014, a hearing was held to consider the Plaintiff's Motion to Restore the case to the active general docket pursuant to Rule 40 (j) of the South Carolina Rules of Civil Procedure. On November 25, 2014, Judge Murphy signed an Order denying Plaintiff's Motion to Restore. In making its ruling, the Court relies on the holding in *Maxwell v. Genez*, which in part states that "in order for a Plaintiff to take advantage of the statute of limitations tolling feature that the Plaintiff must move to restore the case within the one (1) year period after the case has been stricken." *Maxwell v. Genez*, 356 S.C. 617, 591 S.E.2d 26 (2003). In making this ruling, the Court further assumes that the case was stricken on October 28, 2011, which is the date the order was entered into record by the Clerk of Court. The Court also held that Plaintiff's argument that because Plaintiff failed to receive a copy of the signed order or any written notice that the order had been filed, the motion was not timely filed and therefore lacked merit.

The order denying Plaintiff's Motion to Restore overlooks the premise of the Plaintiff's argument that the one (1) year period to restore the case after the case was stricken did not begin to run on October 28, 2011, the date the order was entered into the record. By its plain language, Rule 203 (b) of the South

Carolina Appellate Court Rules requires that a party must receive written notice of the entry of the order. SCACR 203 (b), *Upchurch v. Upchurch* 367 S.C. 16, 24; 624 S.E. 2d 643, 647 (2006), (See also *Coker v. Cummings*, 381 S.C. 45, 52; 671 S.E. 2d 383, 387)

In *Upchurch*, the Supreme Court held that the Appeals Court erred in dismissing Wife's appeal of a Family Court Order as untimely. The order was signed by the Judge and the Judge's Administrative Assistant sent a letter attaching the original signed order to the Clerk of Court for entry into the record. The letter enclosing the signed order was carbon copied to the Husband and Wife's attorney. However, the wife nor the wife's attorney ever received written notice from the Clerk of Court that the order had been entered into the record. The Supreme Court held that the time to appeal pursuant to 203 (b), of the SCACR, begins to run when written notice that the order has been entered into the record by the Clerk of Court has been received. Accordingly, the Court held that the letter from the Judge's Administrative Assistant was not sufficient notice of entry of Judgment. *Id.* 367 S.C. 16, 24; 624 S.E. 2d 643, 647.

In the instant case, the Plaintiff nor Plaintiff's attorney ever received written notice that the order had been entered into the record by the Clerk of Court. In fact, unlike in *Upchurch*, Plaintiff nor Plaintiff's attorney ever received a signed copy of the Judge's Order. Based on the Supreme Court's holding in *Upchurch* and the Court's interpretation of the South Carolina Appellant Court rules, the Plaintiff's one year period of time to file her Motion to Restore would not begin until the Plaintiff received written notice that the order has been entered into the record. The Plaintiff has never received written notice that the order has been entered into the record.

Therefore, the Plaintiff respectfully requests that the Court reconsider its Judgment denying Plaintiff's Motion to Restore the above action to the active general docket and amend its order allowing Plaintiff to proceed with her claims against the Defendant.

Respectfully Submitted,

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: *Steven D. Murdaugh*
Steven D. Murdaugh
123 Walter Street
Post Office Box 1164
Walterboro, SC 29488
(843) 549-9544

ATTORNEYS FOR PLAINTIFF

December 12, 2014
Walterboro, South Carolina

CERTIFICATE OF SERVICE

This is to certify that I, *Tamika D. Simmons*, with the Law Firm of Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A., Attorneys for the Plaintiff(s), have this date forwarded via facsimile and the U.S. Postal Service, a true and correct copy of the within *Plaintiff's Notice of Motion and Motion to Reconsider and to Amend or Alter* with first class postage prepaid to:

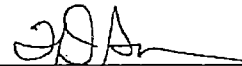
James B. Lybrand, Jr.
McDonald, McKenzie, Rubin, Miller and Lybrand, L.L.P.
Post Office Box 58
Columbia, SC 29202

ATTORNEYS FOR DEFENDANT

RE: *Wanda Mack v. Carmen Gates*
C/A No.: 2010-CP-38-00670

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: _____



Tamika D. Simmons

December 12, 2014
Walterboro, South Carolina

2014 DEC 12 P 11:29
FILED
CLERK OF COURT
WALTERBORO
SOUTH CAROLINA

ATTORNEY GENERAL COPY

LAW OFFICES
PETERS, MURDAUGH, PARKER, ELTZROTH & DETRICK

PROFESSIONAL ASSOCIATION

123 WALTER STREET
POST OFFICE BOX 1164

WALTERBORO, SOUTH CAROLINA 29488

TELEPHONE: (843) 549-9544

TOLL FREE: (800) 943-2113

FAX: (843) 549-9546

WWW.PMPED.COM

RANDOLPH MURDAUGH, SR.
(1887-1940)

RANDOLPH MURDAUGH, JR.
(1915-1995)

J. ROBERT PETERS, JR.
(1927-2008)

OTHER OFFICES:

101 MULBERRY STREET EAST
POST OFFICE BOX 457

HAMPTON, SC 29924

TELEPHONE (803) 943-2111

FAX (803) 943-3943

690 NORTH GREEN STREET

POST OFFICE BOX 2500

RIDGELAND, SC 29936-2500

TELEPHONE: (843) 726-6131

FAX: (843) 726-6057

JOHN E. PARKER
J. PAUL DETRICK
DANIEL E. HENDERSON
MARK D. BALL
RANDOLPH MURDAUGH, IV
R. ALEXANDER MURDAUGH
BERT G. UTSEY, III
RANDOLPH MURDAUGH, III
GRAHAME E. HOLMES
LEE D. COPE
LEAGUE B. CREECH
STEVEN D. MURDAUGH
WILLIAM F. BARNES, III
AUSTIN HOWELL CROSBY
RONNIE L. CROSBY
MATTHEW V. CREECH

CLYDE A. ELTZROTH, JR.
(INACTIVE)

October 9, 2015

Steven D. Murdaugh
E-mail: smurdaugh@pmped.com

VIA FACSIMILE & U.S. MAIL: (803) 734-1839

The Honorable Jenny Abbott Kitchings
Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: *Wanda Mack v. Carmen Gates*
Civil Action No.: 2010-CP-38-00670
Appellate Case No: 2015-001718

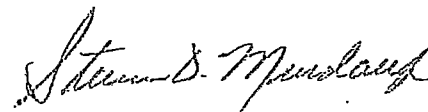
Dear Mrs. Kitchings:

You will find enclosed a copy of the Transcript of Record with regards to the above referenced matter.

By copy of this letter, I have forwarded a copy of same to counsel of record.

With kind regards, I am

Very Truly Yours,



Steven D. Murdaugh

SDM/tds

cc: James B. Lybrand, Jr. (w/enclosures)

Honorable Winnifa B. Clark, Clerk

Enclosures as stated

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No exhibits were introduced

PROCEEDINGS

1
2 THE COURT: This is the Mack versus Gates case?

3 MR. LYBRAND: Yes, Your Honor.

4 THE COURT: Are you ready to proceed?

5 MR. MURDAUGH: Yes, ma'am.

6 THE COURT: And whose motion is this?

7 MR. MURDAUGH: It's our motion, Judge.

8 THE COURT: Okay.

9 MR. MURDAUGH: Judge, this deals with -- it
10 originally came to you as a motion to restore. And I
11 think that it was dealt with under the terms of a 40(j).
12 And the one thing that I think is different in this and
13 this is a motion to reconsider a prior order denying a
14 motion to restore pursuant to 40(j) because the motion to
15 restore was determined was not filed within one year.
16 But the order did not address one of the primary
17 arguments that we have.

18 Judge, just so you'll know where we are I want to
19 give you a little bit of history in this case. I
20 initially -- I represent Ms. Wanda Mack and Steve
21 Murdaugh works with me. I started out handling this case
22 and Mr. Murdaugh took over the handling of it and was
23 working with a young man named Damon Wozniak [phonetic]
24 with Mr. Lybrand's firm. They went on and did discovery,
25 you know they were working on the case. Mr. Lybrand came

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1 into the case down the road fairly late in the game. I
2 think a mediation was set at that time. They mediated it
3 and tried to settle it but there were some issues that
4 Mr. Lybrand was not up to speed on and Mr. Lybrand
5 proposed and requested a 40(j) in this case to enable him
6 to get there was an issue that would enable him to get up
7 on.

8 Hence, this case was handled a little bit
9 differently than a 40(j) normally would. Normally the
10 plaintiff does the 40(j), we send the paperwork, we pay
11 the filing fee, the order comes back to us under the case
12 management systems that everyone is using now, it gets
13 logged in and the time is set. In this case because it
14 was Mr. Lybrand's request as evidenced by the fact that
15 Mr. Lybrand paid the filing fee for the 40(j) order, the
16 40(j) order apparently went back to Mr. Lybrand.

17 Now when this problem arose we went and got a copy
18 of the clerk's file and there was nothing in the clerk's
19 file to indicate -- you couldn't tell that it was sent to
20 anyone. Nonetheless from reading some of the documents
21 I'm assuming that perhaps it got sent to Mr. Lybrand. I
22 don't know that; it may not have even gotten sent to him.
23 I'm not sure about that. Nonetheless the order was not
24 served so therefore it didn't get entered into -- the
25 deadline didn't get entered. Judge, this is a clear

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1 liability wreck case. It's a failure to yield the right
2 of way. It is a -- she's got about 8,000 dollars in
3 bills. It's a pretty routine case that it really is just
4 a dispute over the value. And at this point a dispute as
5 to whether the defendant is going to pay it or we're
6 going to pay it by virtue of where the case stands now.

7 Judge, the one thing that I think got overlooked is
8 because Mr. Lybrand requested it and paid the filing fee
9 as I said we didn't get served with a copy of the order.
10 So the case got stricken from the roster pursuant to
11 40(j). What we're doing is moving to restore it, Judge.
12 Our position is that because we never were served with
13 the order that the 40(j) in reality is not effective.
14 There is no 40(j). So we're just saying that the case
15 should be restored irrespective of a 40(j) do you...

16 THE COURT: I see what you're saying, however did
17 you consent to the 40(j)?

18 MR. MURDAUGH: Yes ma'am, we did.

19 THE COURT: All right. And you knew the judge
20 signed the 40(j).

21 MR. MURDAUGH: Judge, I assume you know for
22 purposes I'll assume that we would have known that a
23 judge was going to sign the 40(j) order, yes ma'am.

24 THE COURT: Sure. And certainly with due diligence
25 you can check the clerk's records to see if it was filed

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1 whether or not you were served with it or not to follow
2 up on that. Are you following where I'm going?

3 MR. MURDAUGH: I do understand that, Judge. But
4 the only thing that I take issue with that Judge is I
5 don't think that the onus -- the law doesn't place an
6 onus on someone to go and -- I mean that's the purpose of
7 service and that's you know -- I want to quote you the
8 language from the case dealing with the ultimate final
9 order and purpose of appeal. I couldn't find a case that
10 was directly on point in dealing with 40(j)'s. But an
11 appeal and time to appeal is an ultimate you know one of
12 the ultimate issues as far as time goes.

13 And there is a case Judge Upchurch v Upchurch and
14 what it says is that basically it says it's irrelevant,
15 not irrelevant but the time isn't when it is filed and it
16 says that written -- and again it's talking about an
17 appeal but I think that's analogous to this situation it
18 says that time begins to run when written notice that the
19 order has been entered into the record is received.

20 And Judge it just goes back to purely from an
21 equitable standpoint we agreed to do a 40(j) at Mr.
22 Lybrand's request and a) I think legally that time
23 doesn't begin to run until that written notice of that
24 order is served on us so that the 40(j) in effect never
25 took effect until we got the 40(j) order number one. But

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1 from an equitable standpoint, Judge it is not just in
2 this case for that burden to be placed on us to go out
3 and seek and affirmatively go and check and look that up.

4 THE COURT: All right. Thank you Mr. Murdaugh.

5 MR. MURDAUGH: Thank you, Judge.

6 THE COURT: Mr. Lybrand?

7 MR. LYBRAND: Thank you, Your Honor. May it please
8 the court?

9 THE COURT: Yes, sir.

10 MR. LYBRAND: Your Honor, just some clarifications
11 and Mr. Murdaugh is right that I got involved in the case
12 a little bit on the tail end but was involved in it and
13 was up to speed enough to go to a mediation. We mediated
14 the case and I take a little bit of difference in some of
15 the characterizations but my recollection -- I don't know
16 that these are major or significant.

17 When we got to mediation the biggest stumbling block
18 that we had, Steve Murdaugh and I, was verification of a
19 significant lost wage claim that his client intended to
20 present when we were mediating the case in the summer,
21 late in the summer when there was an approaching term of
22 court. And because of the claim being made and without
23 back up documentation on the wage claim and the fact we
24 were going to have to get that to evaluate the case my
25 take on it was it was more of a mutual agreement that we

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1 would 40(j) the case because it would benefit both of us.
2 It would allow Mr. Murdaugh time to get the information
3 we needed in order to evaluate the case. I don't know
4 that that's a whole lot and clearly I drew the order. I
5 sent it to Mr. Murdaugh for his signature and then I sent
6 it to Judge Dixon for signing and filing.

7 And I think the record is clear that I copied Mr.
8 Murdaugh with my letter transmitting the original order
9 to Judge Dixon with both of our signatures on it saying
10 here's the signed, here's our consent to the order please
11 file it. Of course, they always want the defense lawyers
12 to pay the fees on these things and we get paid for
13 drawing them so it's always well, you get paid for
14 drawing the order why don't you draw it? Fine; I'll draw
15 it.

16 I believe the record indicates that the order
17 striking the case was signed by Judge Dixon sometime
18 around the 23rd of October, 2011 and was filed within
19 five or six days thereafter. I did get in fact a copy of
20 the order sent back to me by the Clerk of Court as I
21 think is outlined in an affidavit that I previously
22 submitted. So I simply had notice from the court that
23 the case had been 40(j)'d. There was an order striking
24 the case. I simply waited to get information from Mr.
25 Murdaugh. And what happened thereafter is sometime in

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1 January or February of 2013 I received a motion to
2 reconsider -- excuse me, the motion to restore the case
3 which had clearly been stricken by Judge Dixon's order.
4 The problem that I was faced with in terms of dealing
5 with my client was I'm not in a position obviously to
6 consent to potentially opening up a case that might be
7 time barred regrettably and unfortunately time barred
8 when there is a settlement demand that exceeds my
9 carrier's policy limits and my client's policy limits.
10 And to this day I've never gotten a demand below the
11 policy limits.

12 So I was put in the unenviable position of having to
13 raise whatever I thought was appropriate in this case.
14 And Your Honor as we argued to you back in I believe
15 October or November and let me address this. The
16 Upchurch case that Mr. Murdaugh cites and also the
17 language in the motion to reconsider the Upchurch case
18 was a domestic -- was a Family Court divorce action that
19 was actually dealing with issues in that case that was
20 appealed to the South Carolina Court of Appeals. And in
21 their motion to reconsider they cite as applicable legal
22 authority the South Carolina Appellate Court Rules or
23 clearly under Rule 101 of the South Carolina Appellate
24 Court Rules it says that part two of those rules, which
25 is 203, which is I think the rule they're going under,

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1 part 203 governs the practice and procedure in appeals,
2 petitions, and motions in the Supreme Court and the Court
3 of Appeals. Well that's not what we have here. We don't
4 have a -- this was a motion on a notice of intent to
5 appeal in a matter that was pending in the Court of
6 Appeals. It was attempting to be pending and filed in
7 the Court of Appeals.

8 Here we simply have an action that never has been
9 out of the Court of Common Pleas and is clearly governed
10 by the South Carolina Rules of Civil Procedure, is
11 clearly governed by Rule 40(j) and as indicated in one of
12 the cases I've cited the Maxwell v Genez case our court
13 says that in interpreting the meaning of the South
14 Carolina Rules of Civil Procedure the court applies the
15 same rules of construction used to interpret statutes.

16 If a rule's language is plain, unambiguous, conveys
17 a clear meaning and interpretation is unnecessary and the
18 stated meaning should be enforced. The language of Rule
19 40(j) in terms of restoration and the procedure and what
20 happens is clear and unambiguous. A party is allowed to
21 take advantage of a tolling feature on the statute of
22 limitations. But in order to take advantage of that
23 tolling feature the motion to restore has to be made
24 within one year. There is no leeway allowed on that.
25 And simply put it is undisputed here that this motion to

1 restore was not made within the one year time of Judge
2 Dixon's order. I don't know what, if anything, Mr.
3 Murdaugh did or did not receive from the Clerk's office.
4 I can infer as I did in my affidavit I received a clocked
5 filed copy of the 40(j). At a minimum plaintiff's
6 counsel was aware that the order had been signed and
7 submitted to Judge Dixon with a cover letter saying
8 here's the order please file it.

9 So there was certainly some notice that the process
10 of 40(j) in the case was underway as early as October of
11 2011. And Your Honor I'll just defer to the arguments
12 that I had made in my memorandum when we were before you
13 last November or December.

14 THE COURT: Thank you Mr. Lybrand. Anything
15 further Mr. Murdaugh?

16 MR. MURDAUGH: Yes ma'am, briefly Judge. I just
17 want to point out and make sure that I'm conveying our
18 position adequately. There is no dispute the rules, I
19 can't specifically remember the rule, the Rules of Civil
20 Procedure require that orders be served all right. And
21 because we couldn't find anything on point I can't think
22 of anything that could be more applicable Judge than the
23 finality issue for a notice of appeal in addressing when
24 they become effective. And so for us to agree for Mr.
25 Lybrand's request to 40(j) this and Judge I have an email

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1 where Mr. Lybrand proposes we do a 40(j) would you agree
2 to this and emailed to Steve Murdaugh. And I can't think
3 of another case where a defendant has paid for a 40(j) in
4 my career. But anyway I certainly take Mr. Lybrand at
5 his word that he has but we haven't Judge.

6 So we've got an order than goes -- he requests a
7 40(j) and we agree to it, the order goes back to him by
8 admission and is not served on us Judge. And the rules
9 require that an order be served number one and in looking
10 at the time I can't find anything else other than the
11 finality for a notice of appeal which requires that
12 written notice and service of the final order. So Judge
13 we aren't disputing -- we aren't asking for an
14 enlargement of time under the 40(j). What we're saying
15 is because that order never got served there wasn't a
16 40(j).

17 And I think in this situation with all the facts
18 present justice would dictate that the case be put on the
19 roster as though it was never 40(j)'d because that order
20 wasn't filed and let it be litigated rather than because
21 it wasn't served in effect me or my law firm paying this
22 clear liability case simply because the order was not
23 served. And if there is any particular question Your
24 Honor that you have I'll be glad to answer any of them.

25 THE COURT: Thank you Mr. Murdaugh. I'll certainly

1 review the record and the rules and notify you of the
2 ruling.

3 MR. MURDAUGH: May I pass up some materials?

4 THE COURT: Sure.

5 MR. MURDAUGH: I'd like to pass up the email from
6 Mr. Lybrand; I'd like to pass up the Upchurch case.

7 [Whereupon, Mr. Murdaugh provides documents to the
8 court]

9 MR. MURDAUGH: I think that's it.

10 MR. LYBRAND: Your Honor, I may need to get -- I
11 don't know exactly if I could get counsel maybe later on
12 today to mail me copies of whatever -- I have the copy of
13 the Upchurch case, any communications that he is asking
14 the court to look at because I may have communications
15 that I might want to send.

16 THE COURT: Sure. If you want to review real quick
17 what he's handing me and then I'll leave the record open
18 if you want to submit anything later today.

19 MR. LYBRAND: Okay.

20 [Whereupon, Mr. Lybrand reviews documents]

21 MR. LYBRAND: Yes, I may be doing that Your Honor.

22 THE COURT: All right.

23 MR. LYBRAND: And Your Honor, one final point if I
24 might I don't think it is outcome determinative of who
25 requests the 40(j). To me that is immaterial. The rule

1 is there and whether it's the plaintiff, whether it's the
2 defendant, whether it is jointly, and whether who pays
3 for it I think is immaterial. The thrust of the position
4 is the case was going to be 40(j)'d by consent of both
5 parties. And once that happened either by request of one
6 party or both parties or jointly Rule 40(j) was known to
7 both sides so.

8 THE COURT: Thank you Mr. Lybrand.

9 MR. MURDAUGH: Thank you, Judge.

10 THE COURT: Thank you. Y'all have a good day.

11 MR. LYBRAND: Thank you, Judge.

12 *****END OF TRANSCRIPT OF RECORD*****
13
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C E R T I F I C A T E

1
2 I, the undersigned, Joyce C. Rueger, Official
3 Circuit Court Reporter for the Ninth Judicial Circuit of
4 the State of South Carolina, do hereby certify that the
5 foregoing is a true, accurate, and complete Transcript of
6 Record of the proceedings had and evidence introduced in
7 the trial of the captioned case, relative to appeal, in
8 the Court of Common Pleas for Orangeburg County, South
9 Carolina on the 1st day of June, 2015.

10 I do further certify that I am neither of kin,
11 counsel, nor interest to any party hereto.

12
13 September 21, 2015

14
15
16 _____
17 Joyce C. Rueger, CVR-M
18 Court Reporter
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON)
)
WANDA MACK,)
)
Plaintiff,)
)
vs.)
)
CARMEN GATES,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2010-CP-38-00670

**AFFIDAVIT OF ATTORNEY
STEVEN D. MURDAUGH**

**A FALSE STATEMENT CONCERNING THE FACTS CONTAINED IN THIS
AFFIDAVIT MAY SUBJECT THE PERSON MAKING THE FALSE STATEMENT TO
CRIMINAL PENALTIES AS PROVIDED BY LAW.**

PERSONALLY APPEARED BEFORE ME, Steven D. Murdaugh the undersigned, who
upon being duly sworn, deposes and says:

1. That I am at least eighteen (18) years of age.
2. That I am the Attorney for the Plaintiff, Wanda Mack, in the above action.
3. That the above-referenced matter involves a motor vehicle accident that occurred on
March 10, 2009.
4. That the Plaintiff, Wanda Mack, filed a Summons and Complaint with the
Orangeburg County Clerk of Court related to the above-referenced matter on May 12,
2010.
5. That Attorney Damon C. Wlodarczyk with the law firm of McDonald, McKenzie,
Reuben, Miller and Lybrand, LLP, filed and answered on behalf of the Defendant on
June 3, 2010.

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6. That Attorney Damon C. Wlodarczyk represented the defendant from June 3, 2010 until October 21, 2010.
7. That on October 21, 2010 our office was copied on a letter written by Attorney Wlodarczyk to the Orangeburg County Clerk of Court notifying the Court that he was switching law firms and that Attorney James B. Lybrand, Jr. would be representing the defendant.
8. That plaintiff received discovery responses from Attorney Wlodarczyk dated October 27, 2010 after the date of his letter of October 21, 2010.
9. That after the discovery responses were received from Attorney Wlodarczyk, the deposition of the plaintiff Wanda Mack was scheduled for December 9, 2010; Attorney James B. Lybrand, Jr. attended the deposition on behalf of defendant.
10. The parties continued to engage in discovery from the date of the plaintiff's deposition until July 27, 2011 when the parties entered into mediation with Attorney J. Reaves McLeod from the law firm of McLeod, Frasier & Cone, LLC, acting as the mediator; the parties were not able to resolve the dispute at mediation.
11. After mediating the case, the parties identified certain issues that required additional discovery; due to the nature of the information to be discovered and the fact that Attorney Lybrand had not been involved in the case since its inception, the parties mutually agreed that it would be appropriate to strike the case under Rule 40 (j).
12. That on September 29, 2011, my office mailed a proposed Consent Order striking the case under Rule 40 (j) to Attorney Lybrand.

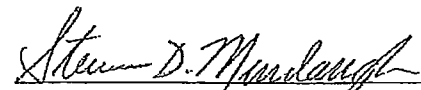
13. That on October 6, 2011, my office was copied on a letter sent to the Honorable Edgar W. Dickson, Judge of the First Judicial Circuit, from Attorney Lybrand enclosing the original signed Order striking the case under Rule 40 (j) and enclosing a return envelope for the Court to return the signed Order to Attorney Lybrand.
14. That after submitting the proposed order, Attorneys for the plaintiff and defendant continued to conduct discovery and exchange information.
15. That plaintiff nor plaintiff's Attorney ever received a signed copy of the Order striking the case under Rule 40 (j) from the Court or from Attorney Lybrand.
16. That Attorneys for the plaintiff contacted Attorney Lybrand sometime in January 2013 to inquire about restoring the case to the docket.
17. After initially consenting to restore the case, Attorney Lybrand contacted me to inform me that he had learned that the Order striking the case was signed on October 23, 2011 and that he would be unable to consent to restore the case under Rule 40 (j).
18. That upon learning the information, I went to the Orangeburg County Clerk of Court's Office to retrieve a copy of the signed Order; the file contained a copy of the October 6, 2011 letter from Attorney Lybrand to the Honorable Edgar Dickson enclosing a copy of the Order and the return envelope. The file also included a Form 4 noting that the action was stricken under Rule 40 (j) as well as a Motion and Order Information Cover Sheet signed by Attorney Lybrand which was filed October 28, 2011 and a copy of the signed Order striking the case under Rule 40 (j) which was dated October 23, 2011.

19. Based on my review of the file in the Orangeburg County Clerk of Court's Office it appeared that there was an email from the Clerk of Court's Office to Attorney Lybrand's office on October 13, 2011 notifying Mr. Lybrand that the case appears on the roster; Mr. Lybrand sent a response email also on October 13, 2011 which stated that the case had been stricken under Rule 40 (j): A hand written note appeared at the bottom of the email which stated that a Form 4 had been prepared for the Judge to sign that it was sent up on October 14, 2011 and that the case would be taken off the roster.


20. I am informed and believe that the attorney for the plaintiff nor the attorney for the defendant receive a signed copy of the Order striking the case under Rule 40 (j) from the Clerk of Court's Office.

21. I acknowledge that, after being placed under oath, I make the above declaration of my own knowledge and belief and the statements herein are true to the best of my knowledge and belief. I further recognize, declare, and verify, under the penalty of perjury, that the foregoing is true and correct.

AS TO ANYTHING FURTHER, THE AFFIANT SAITH NOT.


Steven D. Murdaugh, Esquire

SWORN TO AND SUBSCRIBED
before me this 14th day of June 2013


Notary Public for the State of South Carolina
My Commission Expires: 10-23-22

CERTIFICATE OF SERVICE

This is to certify that I, Tamika D. Simmons, with the Law Offices of Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A., have this date served a true and correct copy of the *Affidavit of Attorney Steven D. Murdaugh* via U.S. Postal Service, first class postage prepaid to:

*James B. Lybrand, Jr.
McDonald, McKenzie, Rubin, Miller and Lybrand, L.L.P.
Post Office Box 58
Columbia, SC 29202*

*Re: Wanda Mack v. Carmen Gates
C/A No.: 2010-CP-38-00670*

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

By: *Tamika D. Simmons*
Tamika D. Simmons

Walterboro, South Carolina
June 17, 2013

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McDONALD, McKENZIE, RUBIN, MILLER AND LYBRAND, L.L.P.
ATTORNEYS AT LAW

ROBERT A. MCKENZIE
HYMAN S. RUBIN, JR.
BEN N. MILLER III
JAMES B. LYBRAND, JR.
RONALD E. ALEXANDER
KEVIN T. BROWN
JOHN F. MCKENZIE
AMANDA N. PITTMAN

POST OFFICE BOX 58
COLUMBIA, SOUTH CAROLINA 29202

2ND FLOOR, 1704 MAIN STREET
COLUMBIA, SOUTH CAROLINA 29201
www.mlrml.com

HEYWARD E. McDONALD
1925-2000

TELEPHONE (803) 252-0500
FAX (803) 929-3530

*CERTIFIED MEDIATOR AND ARBITRATOR
*ALSO ADMITTED IN TEXAS

February 26, 2013

VIA FAX (843) 549-9546

Steven D. Murdaugh, Esquire
Peterson, Murdaugh, Parker, Eltzroth, & Detrick, PA
P. O. Box 1164
Walterboro, SC 29488

Re: Wanda Mack v. Carmen Gates
Civil Action No: 2010-CP-38-00670

Dear Steve:

I will need to discuss with you the restoration issue on this case. After getting your motion and your request for our consent (which I called you about a few weeks ago) I pulled the file and saw where the case had been stricken under Rule 40(j) on October 28, 2011. Under the rule the case must be restored within one year and in looking through the file, I can't find any motion or request from your office about restoring the case until early 2013. Please check your file and let me know if I have overlooked something. I certainly have authority to consent to restoring cases when the request is timely made but if the request is beyond the time limits called for in the rules, that is something that I have to discuss with my client.

Please check your file and get back with me as soon as possible.

With kind regards,

McDonald, McKenzie, Rubin,
Miller and Lybrand, LLP

James B. Lybrand, Jr.

JBLjr/pa

2014 DEC -31 PM 1:12
FILED FOR REPT
WINDY
CLERK
ORANGE 11100

000000047

LAW OFFICES
PETERS, MURDAUGH, PARKER, ELTZROTH & DETRICK
PROFESSIONAL ASSOCIATION

JOHN E. PARKER
J. PAUL DETRICK
DANIEL E. HENDERSON
MARK D. BALL
RANDOLPH MURDAUGH, IV
RONNIE L. CROSBY
R. ALEXANDER MURDAUGH
BERT G. UTSEY, III
RANDOLPH MURDAUGH, III
GRAHAME E. HOLMES
LEE D. COPE
MATTHEW V. CREECH
LEAGUE B. CREECH
STEVEN D. MURDAUGH
WILLIAM F. BARNES, III

CLYDE A. ELTZROTH, JR.
(INACTIVE)

123 WALTER STREET
POST OFFICE BOX 1164
WALTERBORO, SOUTH CAROLINA 29488
TELEPHONE: (843) 549-9544
TOLL FREE: (866) 943-2113
FAX: (843) 549-9546
WWW.PMPED.COM

January 26, 2012

RANDOLPH MURDAUGH, SR.
(1887-1940)
RANDOLPH MURDAUGH, JR.
(1915-1995)
J. ROBERT PETERS, JR.
(1927-2008)

OTHER OFFICES:
101 MULBERRY STREET EAST
POST OFFICE BOX 457
HAMPTON, SC 29924
TELEPHONE (803) 943-2111
FAX (803) 943-3943

110 WEST WILSON STREET
POST OFFICE BOX 2500
RIDGELAND, SC 29936-2500
TELEPHONE: (843) 726-6131
FAX: (843) 726-6057

Email: smurdaugh@pmped.com

James B. Lybrand, Jr., Esquire
MCDONALD, MCKENZIE, RUBIN, MILLER
AND LYBRANT, LLP
Post Office Box 58
Columbia, SC 29202


Re: Wanda Mack vs. Carmen Gates
Civil Action No.: 2010-CP-38-00670

Dear Jim:

Enclosed for service upon you as attorney for the Defendant, you will find Plaintiff's First Supplemental Answers to Interrogatories and Plaintiff's First Supplemental Responses to Requests for Production. Please recall, you had requested documentation regarding the lost wage claim following the mediation. I believe the enclosed documents will sufficiently address any questions as to that issue.

Please give me a call after you have reviewed the enclosed. I would like to discuss the possible settlement of this action prior to proceeding with additional discovery and scheduling depositions. I look forward to hearing from you.

Sincerely,



Steven D. Murdaugh

SDM/hcb
Enclosures

McDONALD, McKENZIE, RUBIN, MILLER AND LYBRAND, L.L.P.
ATTORNEYS AT LAW

ROBERT A. MCKENZIE
HYMAN S. RUBIN, JR.
BEN N. MILLER III
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RONALD E. ALEXANDER
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HEYWARD E. McDONALD
1925-2000

TELEPHONE (803) 252-0500
FAX (803) 929-3530

†CERTIFIED MEDIATOR AND ARBITRATOR
*ALSO ADMITTED IN TEXAS

October 6, 2011

The Honorable Edgar W. Dickson
190 Gibson Street, Suite 207
Orangeburg, SC 29115

Re: Wanda Mack -vs- Carmen Gates
Case Number: 2010-CP-38-00670

Dear Judge Dickson:

Following up my conversation with you at the roster meeting on October 3, enclosed you will find the original and copies of an Order striking this case under Rule 40(j). I would be most appreciative if you could sign the Order and have it filed with the Orangeburg Clerk of Court. I am attaching a return envelope which the Clerk's office may use to return filed and clocked copies to me. If anything further is needed, please let me know.

With Kind Regards,

McDonald, McKenzie, Rubin,
Miller and Lybrand, L.L.P.

James B. Lybrand, Jr.

JBLjr\pa
Enc.

cc: Steven D. Murdaugh, Esquire

2011 DEC -3 PM 1:12
FILED FOR FILING
WITH CLERK OF COURT
ORANGEBURG, SC

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LAW OFFICES
PETERS, MURDAUGH, PARKER, ELTZROTH & DETRICK

PROFESSIONAL ASSOCIATION

JOHN E. PARKER
J. PAUL DETRICK
DANIEL E. HENDERSON
MARK D. BALL
RANDOLPH MURDAUGH, IV
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TELEPHONE: (843) 549-9544
TOLL FREE: (866) 943-2113
FAX: (843) 549-9546
WWW.PMPED.COM

September 29, 2011

RANDOLPH MURDAUGH, SR.
(1887-1940)
RANDOLPH MURDAUGH, JR.
(1915-1995)
J. ROBERT PETERS, JR.
(1927-2008)

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Email: smurdaugh@pmped.com

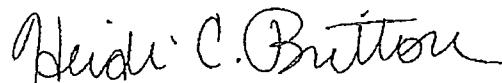
James B. Lybrand, Jr., Esquire
MCDONALD, MCKENZIE, RUBIN, MILLER
AND LYBRANT, LLP
Post Office Box 58
Columbia, SC 29202

Re: Wanda Mack vs. Carmen Gates
Civil Action No.: 2010-CP-38-00670

Dear Attorney Lybrand:

I enclose proposed Order Striking Case Under Rule 40(J) with Attorney Murdaugh's signed consent. We are continuing to work on getting the documentation regarding the lost wages claim and will be in further touch once we obtain same. In the meantime, please do not hesitate to call should you have any questions or concerns.

Sincerely,



Heidi C. Britton,
Legal Assistant to
Steven D. Murdaugh

/hcb
Enclosure

STATE OF SOUTH CAROLINA)

COUNTY OF ORANGEBURG)

Wanda Mack,)

Plaintiff,)

-vs-)

Carmen Gates,)

Defendant.)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2010-CP-38-00670

ORDER STRIKING CASE UNDER
RULE 40(J)

Upon motion of the undersigned counsel for Plaintiff by and with the consent of the undersigned counsel for Defendant.

IT IS HEREBY ORDERED that this action shall be stricken from the active docket with leave to restore pursuant to Rule 40(j) SCRPC.

IT IS FURTHER ORDERED that while the case remains in an inactive status, the parties are allowed to continue with all forms of discovery provided for and authorized under the South Carolina Rules of Civil Procedure and to pursue mediation.

AND IT IS SO ORDERED.

Chief Administrative Judge

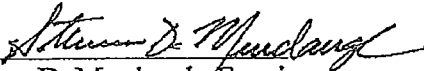
Orangeburg, South Carolina

September ____, 2011

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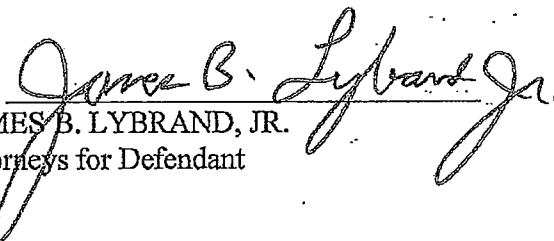
I SO MOVE:

Peters, Murdaugh, Parker, Eltzroth, & Detrick, PA
P. O. Box 1164
Walterboro, SC 29488

By: 
Steven D. Murdaugh, Esquire
Attorney for Plaintiff

I CONSENT:

McDONALD, McKENZIE, RUBIN,
MILLER AND LYBRAND, L.L.P.
POST OFFICE BOX 58
1704 MAIN STREET, 2nd FLOOR
COLUMBIA, SOUTH CAROLINA 29202
(803) 252-0500

BY: 
JAMES B. LYBRAND, JR.
Attorneys for Defendant

00000052

Steve Murdaugh

From: James Lybrand <lybrand@mrmml.com>
Sent: Tuesday, September 20, 2011 2:36 PM
To: Steve Murdaugh
Subject: Gates v. Mack

Importance: High

Steve,

I would propose that we 40 j this case to get us by the October 3 term of court in Orangeburg. I have not heard anything on this since our mediation back in July. Would you agree to do this? Otherwise, someone will need to request another continuance from Judge Dickson.

Jim.

.....
James B. Lybrand, Jr.
McDonald, McKenzie, Rubin, Miller & Lybrand, LLP
Attorneys at Law
1704 Main Street
P.O. Box 58
Columbia, S.C. 29202
Tel. 803.252.0500
Direct Dial 803.223.6156
Fax 803.929.3530
Email lybrand@mrmml.com

McLEOD FRASER & CONE LLC

W. J. McLEOD, JR.
(1906-1994)
DONALD H. FRASER
PEDEN B. McLEOD
GEORGE W. CONE

THOMAS I. HOWARD
J. REAVES McLEOD

ATTORNEYS AT LAW
111 E. WASHINGTON ST.
P.O. DRAWER 230
WALTERBORO, S.C. 29488-0003

TELEPHONE
(843)549-2516

TELECOPIER
(843)549-2306

July 28, 2011

Steven D. Murdaugh, Esquire
Peters Murdaugh Parker Eltzroth & Detrick
Post Office Box 1164
Walterboro, SC 29488

Re: Wanda Mack vs. Carmen Gates
Case No.: 2010-CP-28-0670
MFC File No.: 34181-11

Dear Steve:

I would like to first thank you for allowing me to serve your mediation needs, your consideration is greatly appreciated. I regret that we were unable to reach an agreement in this matter but I hope to be able to continue the mediation at a later date so that we can resolve this matter. In the event that this case may settle without the need of further mediation, I am enclosing my bill for services rendered thus far. If you have any questions concerning the enclosed, please do not hesitate to contact me. Again, thank you for allowing me to serve you in this matter.

Very truly yours,


J. Reaves McLeod

JRM/jeb
enclosures

AUG 1 2011

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McDONALD, McKENZIE, RUBIN, MILLER, AND LYBRAND, L.L.P.
ATTORNEYS AT LAW

ROBERT A. MCKENZIE
HYMAN S. RUBIN, JR.
BEN N. MILLER, III
JAMES B. LYBRAND, JR.†
RONALD E. ALEXANDER
KEVIN T. BROWN
JOHN F. MCKENZIE*
DAMON C. WLODARCZYK
B. REYNOLDS ELLIOTT

POST OFFICE BOX 58
COLUMBIA, SOUTH CAROLINA 29202

2ND FLOOR, 1704 MAIN STREET
COLUMBIA, SOUTH CAROLINA 29201

www.mmrml.com

October 21, 2010

HEYWARD E. McDONALD
1925-2000

TELEPHONE (803) 252-0500

FAX (803) 929-3530

†CERTIFIED MEDIATOR AND ARBITRATOR
*ALSO ADMITTED IN TEXAS

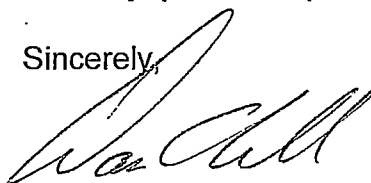
The Honorable Lisa W. Mizell
Orangeburg County Clerk of Court
Post Office Drawer 9000
Orangeburg, SC 29116

RE: Wanda Mack -vs- Carmen Gates
C/A Number: 2010-CP-38-00670
Our File Number: V10-0448

Dear Ms. Mizell:

This letter is to inform the court that James B. Lybrand, Jr., of my firm will be representing the Defendant in the above captioned case as I will be switching law firms in the near future. Please note Mr. Lybrand as the attorney of record for the Defendant and remove my name from the case. If you have any questions, please give me a call.

Sincerely,



DAMON C. WLODARCZYK.

DCW/amm

cc: R. Alexander Murdaugh, Esquire
Peters, Murdaugh, Parker, Eltzroth, & Detrick, PA
PO Box 457
Hampton, SC 29924

Mr. Ryan Poles
Claim Number: 40-8455-108



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