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STATE OF SOUTH CAROLINA  
COUNTY OF FLORENCE  
IN THE COURT OF COMMON PLEAS  
Jefferey L Vanderhall

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2011CP2102555

OCT 11 2016

Maurice Wilson

Priscilla J Ford

SC Court of Appeals  
PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for:  Plaintiff  Defendant  
 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:

ORDER INFORMATION

This order  ends  does not end the case.  
Additional Information for the Clerk: \_\_\_\_\_

FILED  
2016 JUN 20 AM 1:30  
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FLORENCE COUNTY SC

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)
		CERTIFIED: A TRUE COPY
		<i>Priscilla J Ford</i>
		CLERK OF COURT C.P. & G.S. FLORENCE COUNTY, S.C.

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.

Circuit Court Judge

Judge Code

6/20/2016

Date

For Clerk of Court Office Use Only

This judgment was entered on June 20, 2016, and a copy mailed first class or placed in the appropriate attorney's box on June 20, 2016, to attorneys of record or to parties (when appearing pro se) as follows:

State of South Carolina )  
 County of Florence )  
 Jefferey L. Vanderhall, )  
 Plaintiff, )  
 v. )  
 Maurice Wilson and Priscilla )  
 Ford, )  
 Defendants )

In the Court of Common Pleas  
 Twelfth Judicial Circuit

**RECEIVED**

OCT 11 2016

C/A # 2011-CP-21-2555

SC Court of Appeals

Order Granting Motion to  
 Set Aside the Settlement and  
 Judgment and to Appoint  
 a Guardian Ad Litem

2016 JUN 14 PM 4:37  
 CONNIE REEL-SHEARIN  
 CCOP & GS  
 FLORENCE COUNTY, SC

**FILED**

Jefferey Vanderhall has moved under Rule 60(b), SCRCF, to set aside a confessed judgment and the parties' settlement agreement. He claims that he lacked the mental capacity to sue without a Guardian Ad Litem or sue and settle without a GAL or court approval, and asks the Court to appoint him a GAL and allow the GAL to proceed against the Defendants in the reopened case. The Court heard from the parties and from State Farm, through State Farm's counsel Robert W. Whelan, Esq. The Court grants the motion.

TRUE COPY  
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 FLORENCE COUNTY, S.C.

**Background**

Maurice Wilson allegedly struck Vanderhall, then age 23, while Wilson was driving a truck allegedly owned by Priscilla Ford. Vanderhall suffered a temporary coma and is permanently paralyzed. After he came out of the coma, he sued Wilson and Ford in his name alone and litigated the suit

*[Handwritten signature]*

against them for over a year without a GAL. Vanderhall then settled for a \$7 million judgment and an assignment of Wilson's and Ford's rights against State Farm. They in turn received a covenant not to execute. The settlement documents were executed without a GAL or court approval.

Vanderhall then sued State Farm. The federal district court granted State Farm summary judgment in part because of Vanderhall's lack of mental capacity. The court stated: "Thus, a lawsuit brought on behalf of an incapacitated person is normally brought by a court-appointed representative, such as a guardian, guardian ad litem, or conservator, and a court is compelled to appoint a guardian ad litem for an incapacitated person if a lawsuit is brought without a court-appointed representative of the incapacitated person [citations omitted]. Moreover, a binding settlement involving an incapacitated person that is greater than \$2,500 can be made only with court approval [citation omitted]." *Vanderhall v. State Farm Mutual Auto. Ins. Co.*, C/A # 4:14-518 (D.S.C. filed March 30, 2015), p.5.

On June 5, 2015, Vanderhall conditionally moved this Court for a GAL and to set aside the judgment and settlement agreement with Wilson and Ford. The motion explained that Vanderhall had appealed the district court order and asked for relief from the judgment if the Fourth Circuit affirmed. On appeal, Vanderhall's counsel argued that there was no reason to believe that Vanderhall needed a GAL or court approval to settle his tort claims.

#2mc

The Fourth Circuit affirmed, reading the district court's views as referring to Vanderhall's temporary coma from the crash and not his preexisting brain damage or retardation. *Vanderhall v. State Farm Mutual Auto. Ins. Co.*, Appellate No. 15-1442 (4<sup>th</sup> Cir. filed December 3, 2015), p. 3.

Vanderhall's counsel then had Vanderhall evaluated psychologically. Alexis Sanders, Ph.D, conducted the evaluation and found that Vanderhall falls within the "Extremely Low" range in intellectual functioning and "Low" range in adaptive skills. This is consistent with a series of tests that the Florence School District One performed while Vanderhall was receiving special education services under Individualized Education Plans. Testing by the School District when Vanderhall was age 5, 8, and 11 consistently reflect that Vanderhall fell within the "Extremely Low" range of intellectual functioning and low or moderately low range of adaptive skills.

Sanders opines to a reasonable degree of certainty that Vanderhall is incapable of making or communicating decisions for himself and is an "incapacitated person" within the meaning of S.C. Code Ann. § 62-5-101.

Vanderhall's counsel has tried to return the \$25,000 policy limits that State Farm paid to settle the claims against its insureds. State Farm refused the tender. Counsel has since held the funds in trust for State Farm.

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TR

## Analysis

The Court finds that Vanderhall is mentally incompetent and was mentally incompetent when he sued Wilson and Ford without a GAL and settled with them without a GAL or court approval. The Court sets aside the judgment and settlement because the failure to appoint a GAL for mentally incompetent parties renders a judgment void. *See In re Kibler*, 53 S.C. 461, 31 S.E. 274 (1898)(reversing an order denying a motion to set aside a judgment for lack of jurisdiction because it was entered without a GAL for the incompetent party); *Ex Parte Rountree*, 51 S.C. 405, 29 S.E. 66 (1898)(affirming an order setting aside a judgment for lack of jurisdiction because a GAL was not appointed for the incompetent party).

At the hearing, State Farm, Wilson, and Ford argued that Vanderhall's counsel waited too late to have Vanderhall's competency examined and is trying to undo State Farm's summary judgment. Vanderhall's counsel argues that he had no reason to question Vanderhall's competency until the federal district court scolded him for not getting Vanderhall a GAL or court approval for the settlement. Counsel points out that he conditionally moved for a GAL, and to set aside the judgment and settlement, a little over two months later.

The Court does not need to resolve this dispute because the Supreme Court views the failure to appoint a GAL when one is needed as a defect in jurisdiction. As such, the Court has raised the issue for the first time on

appeal on its own motion. *McDow*, 276 S.C. at 511, 280 S.E.2d at 209. *McDow* further held that having legal counsel does not cure what it described as “the jurisdictional defect.” *Id.*, 280 S.E.2d at 209. The Court concludes from this that an incompetent party’s legal counsel can neither satisfy the need for a GAL nor waive the lack of a GAL or the lack of court approval of a settlement.

The Court further concludes that *McDow*, *Kibler*, and *Rountree* apply equally to those who sue as well as those being sued. Rule 17(c), SCRPC, provides for an incompetent plaintiff, stating that he “may sue by his next friend or by a guardian ad litem.” The next sentence provides that the court “shall appoint a guardian ad litem” for the incompetent or “shall make such order as it deems proper” to protect the incompetent. Rule 17(c), SCRPC (emphasis added). In context, the term “shall” denotes that a GAL is mandatory for incompetent plaintiffs as well as incompetent defendants.

If the settlement is more than \$2500, court approval is likewise required whether the settlement is “in favor of or against” the incompetent person. S.C. Code Ann. § 62-5-433(B). So the court is again required to protect incompetent persons who sue as well as those being sued.

Section 62-5-433(B) further rebuffs Wilson’s and Ford’s attempt to apply normal contract law. Normal contract rules on foolish contracts or unilateral mistakes do not apply to settlements in favor of or against the mentally incompetent. For them a court must approve a settlement for claims over

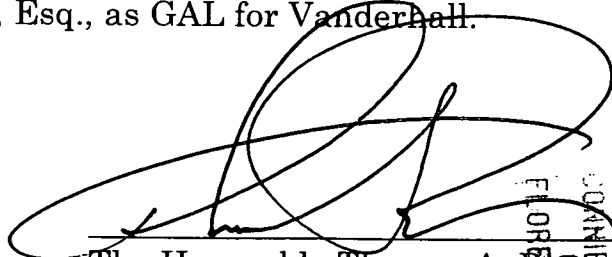
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\$2500. If the claims exceed \$25,000, like Vanderhall's claim, a court must first review a verified and detailed petition and then conclude that the settlement is in the best interests of the incapacitated person. S.C. Code Ann. § 62-5-433(b). That did not happen here. Because a court never approved the parties' settlement, there is no contract to which normal contract rules apply.

The Court lastly finds that the status quo may be restored with the following order. The Court:

- a. orders Vanderhall's counsel to release to State Farm the \$25,000 that counsel has been holding in trust for State Farm since State Farm refused counsel's tender;
  - b. sets aside the confessed judgment and covenant not to execute;
  - c. returns to Wilson and Ford the legal rights that they assigned to Vanderhall; and
  - d. appoints Marion Fowler, Esq., as GAL for Vanderhall.
- It is so ordered.

Florence, SC  
June 14<sup>th</sup>, 2016

  
The Honorable Thomas A. Greel  
Presiding Judge

JOANIE GREEL-SHEARIN  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

2016 JUN 14 PM 4:37

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CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

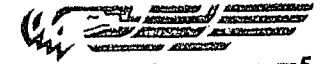
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