

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS
R. Keith Kelly, Circuit Court Judge

Appellate Case No.: 2015-000701
Circuit Court Case No.: 2014-CP-42-02846

RECEIVED

NOV 28 2016

SC Court of Appeals

Paula Rose, Respondent,

v.

Charles Homer Rose, II, Appellant.

PETITION FOR REHEARING

Kim R. Varner
Varner & Segura
304 Pettigru Street
Greenville, SC 29601
(864) 271-2232

J. Falkner Wilkes
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292

Counsel for Appellant

PETITION

This Court's decision overlooks the trial court's failure to adequately consider the parties' spousal relationship as a major factor underlying the Appellant's default. The nature of the parties' special relationship as spouses is essential to the analysis of this case. The impact of the Respondent's actions on the Appellant must be evaluated in light of their relationship.

As found by the trial court, the Appellant was hospitalized near the end of his time for filing an answer. (R. p. 2; R. p. 50). The record shows that during the period of time that Mr. Rose was in the hospital, Mrs. Rose came to visit him regularly. (R. p. 50). Photographs taken of the parties together at the hospital show the parties appearing to have reconciled their differences. (R. 36-40; 50). In light of clear evidence of what appears to be their reconciliation prior to the default, the parties' special relationship as spouses explains Mr. Rose's subsequent delay in filing an answer and establishes good cause under Rule 55.

Although novel, the existence of the spousal relationship is a necessary consideration in the analysis of the facts. Here, the family court failed to address clear evidence that shortly before Mr. Rose's default, the parties appear to have reconciled their differences. The photographs in evidence are

consistent with Mr. Rose's testimony that throughout his hospitalization and convalescence, Mrs. Rose was repeatedly assuring him that she was dropping the lawsuit. (R. p. 20-21; 23-27; 33-34; 35; 50). These photographs indisputably support Mr. Rose's belief that the parties' had resolved their differences and establishes an elevated basis for Mr. Rose's reliance on Mrs. Rose's assurances that she would not pursue the claim. Due to the parties' spousal relationship, Mr. Rose's reliance on Mrs. Rose's assurances, and his delay in filing an answer were entirely reasonable and thus constitute good cause.

The standard for granting relief from an entry of default under Rule 55 is "good cause." Rule 55(c), SCRCF. "This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice." Sundown Operating Co. v. Intedge Indus., Inc., 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009). Here Mr. Rose, as a husband, relied on the representations of Mrs. Rose, as his wife, in delaying the filing of his answer. Mrs. Rose's actual intent in leading Mr. Rose to believe they were reconciling their differences and that she would not pursue the civil case is not important. The issue is whether Mr. Rose's belief and reliance were

reasonable so as to establish good cause is the issue. Here, due to the marital relationship, Mr. Rose's interpretation and reliance on Mrs. Rose's actions were entirely reasonable.

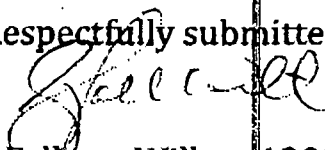
If Mrs. Rose never intended a reconciliation the result is the same as misrepresentations and fraud are each relevant in determining whether good cause has been shown under Rule 55(c), SCRCP. See *New Hampshire Ins. Co. v. Bey Corp.*, 312 S.C. 47, 50, 435 S.E.2d 377, 378-79 (Ct.App. 1993). The end result, which has been overlooked, is that Mr. Rose was not afforded an opportunity to litigate the merits of the case based on his reliance of his wife's assurances. A result that would not have happened but for the marital relationship.

Application of default in the present case is similar to cases involving extrinsic fraud, which "induces a person not to present a case or deprives a person of the opportunity to be heard." *Chewing v. Ford Motor Company*, 354 S.C. 72, 579 S.E.2d 605 (2003) (*citing Hilton Head Ctr. of South Carolina v. Public Serv. Comm'n*, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987)). Here, Mr. Rose lost his ability to defend based on his reliance on his wife's assurances that she would not pursue the case. The result is simply inequitable.

CONCLUSION

Appellant moves the Court to reconsider its decision and grant a rehearing in this case.

Respectfully submitted,


J. Falkner Wilkes, 12893
114 Whitsett Street
Greenville, SC 29601
Counsel for Appellant

November 26, 2016.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

NOV 28 2016

SC Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS
R. Keith Kelly, Circuit Court Judge

Appellate Case No.: 2015-000701
Circuit Court Case No.: 2014-CP-42-02846

Paula Rose, Respondent,

v.

Charles Homer Rose, II, Appellant.

CERTIFICATE OF SERVICE

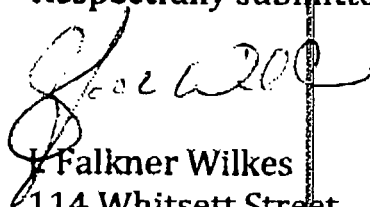
I certify that on the 26th day of November, 2016, I served a copy of the Appellant's Petition for Rehearing and Certificate of Service on the Respondent by placing a copy of same in the U. S. Mail, first class postage prepaid, addressed to counsel of record as indicated below, and by facsimile or other means if indicated:

Charles J. Hodge
T. Ryan Langley
Hodge & Lanley Law Firm, P.C.
PO Box 2765
Spartanburg, SC 29304-2765
via facsimile also to: (864) 585-6485
Attorneys for Respondent

and to:

Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201
via facsimile also to: (803) 734-1839

Respectfully submitted,



J Falkner Wilkes
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292

Kim R. Varner
Varner & Segura
304 Pettigru Street
Greenville, SC 29601

Counsel for Appellant