STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	C/A NO. 2014-CP-10-2784
	)	
Anna Manigault	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
	)	
Eric Thacker Evans	)	**ORDER GRANTING RELIEF AND RESTORING THE CASE PURSUANT TO RULE 60(b)**
	)	
Defendant.	)	
	)	

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This matter came before the Court on January 23, 2017 for a hearing on Plaintiff's Motion for Relief Pursuant to Rule 60(b), SCRCP. Present for the Plaintiff was DeVeaux Stockton and present for the Defendant was Marcy Lamar.

FACTS AND PROCEDURAL HISTORY

On April 28, 2014, Plaintiff filed a Summons and Complaint against Defendant alleging Defendant's negligence caused a motor vehicle accident on July 6, 2012, injuring the Plaintiff. Pursuant to a Court Order dated January 14, 2015 and filed on January 20, 2015, the Complaint was dismissed by The Honorable R. Markley Dennis pursuant to Rule 5(d), SCRCP giving Plaintiff ten days to show just cause why the case should be restored. Although Plaintiff had just cause, neither Plaintiff nor Defendant were aware of this Order. Service was subsequently made on June 19, 2015. Defendant filed an Answer on July 13, 2015 and an Amended Answer on February 22, 2016. The parties engaged in discovery and settlement discussions. On May 9, 2016, Defendant filed a Motion for Sanctions asserting *res judicata*. On May 20, 2016 Plaintiff filed a Motion to Restore the Case. Both the Motion for Sanctions and Motion to Restore were

denied in an Order filed by The Honorable Benjamin H. Culbertson on July 12, 2016. Plaintiff filed this Motion on July 25, 2016.

STANDARD OF REVIEW

Whether to grant or deny a motion under Rule 60(b) lies within the sound discretion of the judge and the Court's findings will not be disturbed on appeal absent an abuse of discretion. *Raby Const., L.L.P. v. Orr*, 358 S.C. 10, 17-18, 594 S.E.2d 478, 482 (2004).

ANALYSIS

Under Rule 60(b), SCRCP "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 reasons including "mistake, inadvertence, surprise, or excusable neglect." For those reasons, the motion shall be made "not more than one year after the judgment, order or proceeding was entered or taken." Here, the Motion for Relief was made more than one year after the case was dismissed. However, Rule 60(b), SCRCP "does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding." Generally, in determining whether to grant relief under Rule 60(b)(1), the Court must consider the following factors: "(1) the promptness with which relief is sought; (2) the reasons for the failure to act promptly, (3) the existence of a meritorious defense; and (4) the prejudice to the other party." *Rouvet v. Rouvet*, 388, S.C 301, 309, 696 A.W.2d 204, 208 (Ct. App. 2010).

In this case, the Court seeks to entertain independent action to relieve Plaintiff from the Order dismissing the case upon such terms that are just and equitable. Although relief was not sought within the one year, the reasons for failing to act promptly are very significant. The Order of January 20, 2015 was entered with no prior notice from the Court and was made upon the Court's own initiative upon no motion from either party. In addition, the Order dismissing the

case was entered long before Plaintiff's time had expired to properly serve Defendant with the Summons and Complaint. A timely challenge of the Order with an assertion of good cause would have likely been successful; however, *neither* party was aware of the Order. Further, the case was not dismissed with prejudice. An awareness of the Order would have provided options for Plaintiff. The reason both parties did not receive notice could have been the result of their own and/or the court's own mistake, inadvertence, or excusable neglect. Why the parties did not receive notice of the Order remains unknown and the procedural actions of the parties show they were both unaware of the Order. In fact, service of the Summons and Complaint was made timely and properly as if the case had not been dismissed and Defendant not only answered, but filed an Amended Answer, and engaged in both discovery and settlement negotiations with Plaintiff. It is unclear when Defendant became aware of the Order dismissing the case, but what is clear is that Defendant continued procedurally as if the Order did not exist and did not request sanctions until pertinent deadlines had expired for Plaintiff.

Defendant's Motion for Sanctions improperly stated to Judge Culbertson that the Complaint had been dismissed with prejudice, which it had not. Defendant's Motion also inaccurately argued Plaintiff was attempting to re-file the same lawsuit in violation of the doctrine of *res judicata*. Plaintiff simply served Defendant with the Summons and Complaint and did not re-file the lawsuit. Defendant's counsel asserted to Judge Culbertson in the Motion for Sanctions that Plaintiff knew or should have known the case had been dismissed, failing to mention Defendant was also unaware of the dismissal for quite some time and had, therefore, filed an Answer and an Amended Answer, and engaged in discovery and settlement negotiations with Plaintiff. Rather than making the timely argument that the case had been dismissed, these procedural steps were all taken in furtherance of litigation before requesting sanctions awarding

attorney's fees for those very steps Defendant's counsel chose to make after the case had been dismissed.

Allowing this case to be restored is the most equitable outcome. Defendant is not prejudiced by allowing the case to be restored and the case will continue as it should have if the January 20, 2015 Order had not disturbed its status to everyone's surprise. Plaintiff has good cause for restoring the case and would suffer extreme prejudice as a result of the unknown dismissal while Plaintiff still had time to serve Defendant or re-file within the Statute of Limitations. Plaintiff would also suffer prejudice as a result of Defendant's failing to enforce the dismissal until the Statute of Limitations and deadlines to file motions under Rules 59 and 60 SCRCP had expired. Defendant should not enjoy the fruits of delay and Plaintiff deserves her day in court.

THEREFORE, Relief from the January 20, 2015 Order is GRANTED and this case shall be restored to the active roster.

AND IT IS SO ORDERED.

The Honorable J.C. Nicholson, Jr.
Ninth Judicial Circuit

February 23, 2017
Charleston, South Carolina