

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
L. Casey Manning, Circuit Court Judge

Case No. 2015-CP-40-05106
Appellate Case No. 2016-002043

RECEIVED

JUN 13 2017

SC Court of Appeals

RECEIVED

JUN 16 2017

SC Court of Appeals

Pearline Williams.....Respondent

v.

Larita Hipp and Michelle Masaryk..... Defendants,

Of Whom Michelle Masaryk is the.....Appellant.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

PEARLINE WILLIAMS,

Plaintiff,

-vs-

LARITA HIPP AND MICHELLE
MASARYK

Defendants.

IN THE COURT OF COMMON PLEAS

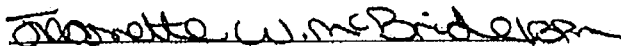
DOCKET NO.: 2015-CP-40-05106

ORDER FOR SERVICE BY PUBLICATION

RICHLAND COUNTY
FILED
2015 NOV 13 PM 3:40
JEANNETTE W. McBRIDE
C.C.P. & G.

After reading the Affidavit of Jerry Reardon, Esquire, attorney for the Plaintiff, it is hereby ordered that Defendant Masaryk be served by publication as authorized by Section 15-9-10 of the South Carolina Code of Laws Ann. (1976, as amended), and that a copy of the Summons and Complaint be forthwith deposited in the mail addressed to the last known address of the Defendant, or served upon the Defendant personally, if the same can be had, and that said publication shall be inserted in "The Columbia Star", a daily newspaper of the County of Richland, State of South Carolina, not less than once a week for three (3) consecutive weeks.

AND IT IS SO ORDERED.


RICHLAND COUNTY CLERK OF COURT

Columbia, South Carolina

11-13, 2015.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

PEARLINE WILLIAMS,

Plaintiff,

-vs-

LARITA HIPPI and MICHELLE MASARYK,

Defendants.

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2015-CP-40-05106

ORDER OF DEFAULT

JERETTE W. HIGGINS
C.C.P. & C.S.C.

2016 FEB 26 AM 9:51

RICHLAND COUNTY
FILED

It appears from the Affidavit of Service that the Summons and Complaint in this action were served on Defendant Masaryk by publication for the weeks of November 27, 2015, December 4, 2015, and December 11, 2015. It also appears from the Affidavit of Plaintiff's attorney that no Answer to the Complaint has been received by the Plaintiff's attorney and that Defendant Masaryk has not otherwise appeared. Furthermore, it appears that Defendant Masaryk is not entitled to relief under the Soldiers and Sailors' Relief Act and that Plaintiff's damages are unliquidated.

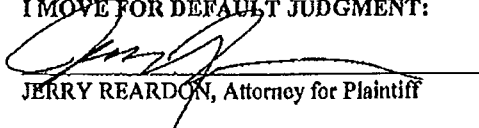
NOW, ON MOTION of Plaintiff's attorney, it is Ordered and Adjudged that the Defendant Masaryk is in default. The Plaintiff is awarded judgment against Defendant Masaryk pursuant to Rule 58 of the South Carolina Rules of Civil Procedure for damages to be determined at a hearing held in accordance with applicable law. The Clerk of Court is directed to schedule a hearing during the next available non-jury term at which the extent of Plaintiff's damages shall be determined. The Clerk shall also prepare the appropriate Form 4 for filing and service.


ALISON RENEE LEE
CHIEF ADMINISTRATIVE JUDGE
FIFTH JUDICIAL CIRCUIT

Columbia, South Carolina

Feb. 25, 2016.

I MOVE FOR DEFAULT JUDGMENT:


JERRY REARDON, Attorney for Plaintiff

ROA_000004

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
PEARLINE WILLIAMS,

Plaintiff,

-vs-

LARITA HIPP and MICHELLE MASARYK,
Defendants.

IN THE COURT OF COMMON PLEAS

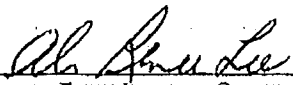
DOCKET NO.: 2015-CP-40-05106

ORDER OF DEFAULT

RICHLAND COUNTY
FILED
2016 MAR -8 AM 11:29
JEROME W. REARDON
Clerk of Court & G.S.

It appears from the Affidavit of the Columbia Star that the Summons and Complaint in this action were served on the Defendant Michelle Masaryk by publication for three (3) consecutive weeks ending on December 11, 2015. It also appears from the Affidavit of Plaintiff's attorney that no Answer to the Complaint has been received by the Plaintiff's attorney as required by the Summons in this action, and that Defendant Michelle Masaryk has not otherwise appeared. Furthermore, it appears that Defendant Masaryk is not entitled to relief under the Soldiers' and Sailors' Relief Act and that Plaintiff's damages are unliquidated.

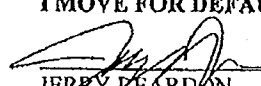
NOW, ON MOTION of Plaintiff's attorney, it is Ordered and Adjudged that Defendant Masaryk is in default. Plaintiff is awarded judgment against Defendant Masaryk pursuant to Rule 58 of the South Carolina Rules of Civil Procedure for damages to be determined at a hearing held in accordance with applicable law. The Clerk of Court is directed to schedule a hearing during the next available non-jury term at which the extent of Plaintiff's damages shall be determined. The Clerk shall also prepare the appropriate Form 4 for filing and service.


JUDGE FOR FIFTH JUDICIAL CIRCUIT

Columbia, South Carolina

March 3,
~~January 11~~, 2016.

I MOVE FOR DEFAULT JUDGMENT:


JERRY REARDON
Attorney for Plaintiff

ROA_000005

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

PEARLINE WILLIAMS

PLAINTIFF,

-vs-

LARITA HIPP and MICHELLE MASARYK,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

DOCKET NO. 2015-CP-40-05106

ORDER AWARDING DAMAGES
AGAINST DEFENDANT MASARYK

This matter was before me for a Damages Hearing on March 22, 2016 subsequent to a Default Judgment entered against Defendant Masaryk on February 25, 2016. Plaintiff and her counsel were present at the hearing. Defendant Masaryk was not present. Plaintiff entered into evidence a letter sent to Defendant Masaryk by open mail and certified mail to Defendant Masaryk's last known address which documented the time and date of this hearing.

After review of the documents entered into evidence and a reflection upon the testimony of the Plaintiff, I make the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. On December 18, 2014 Defendants and Plaintiff were travelling on Leaphart Road in Columbia, South Carolina, when Defendants caused a multi-vehicle accident.
2. Plaintiff was transported from the accident scene by EMS to Lexington Medical Center. She was examined for back, neck, chest, and shoulder injuries and prescribed pain medication.
3. Due to continued complaints of back, neck, chest, and shoulder pains Plaintiff was treated by Dr. Bonham for three months of chiropractic care including electrical stimulation,

ultrasound, hot/cold packs, and adjustments.

4. Plaintiff incurred medical expenses in the amount of Eight Thousand Five Hundred Ninety-Five Ten and 63/100 Dollars (\$8,595.63).

5. Plaintiff testified she sustained back, neck, chest, and shoulder injuries with associated pain, headaches, and loss of activities. Plaintiff testified that she continues to experience shoulder and back pains on a weekly basis and takes over the counter medications and hot baths for relief.

6. I find Plaintiff's testimony was very credible and believable.

7. I find Plaintiff sustained permanent injuries to her back, neck, and shoulders which required medical treatment as a direct result of the wreck with Defendant Masaryk.

8. I find Plaintiff incurred pain, suffering, and loss of activities as a direct result of the wreck with Defendant Masaryk.

CONCLUSIONS OF LAW

1. Plaintiff's medical treatment was reasonable, necessary, and proximately related to the injuries he suffered as a result of the wreck with Defendant Masaryk.

2. Plaintiff sustained substantial pain, suffering, and loss of enjoyment of life as a direct result of the wreck on December 18, 2014 with Defendant Masaryk.

3. Proper notice of the hearing to determine the damages was given to Defendant J Masaryk.

4. As a direct and proximate result of wreck on December 18, 2014 with Defendant Masaryk, Plaintiff has suffered actual damages.

Therefore, it is hereby **ORDERED** that the Plaintiff is awarded actual damages in the amount of \$ TWENTY-FIVE THOUSAND (\$25,000.00) to be paid by Defendant Masaryk.

AND IT IS SO ORDERED.


THE HONORABLE CASEY MANNING
FIFTH JUDICIAL CIRCUIT

Richland, South Carolina

March 24, 2016.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

PEARLINE WILLIAMS

PLAINTIFF,

-VS-

LARITA HIPP and MICHELLE MASARYK,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

DOCKET NO. 2015-CP-40-05106

ORDER AWARDING DAMAGES
AGAINST DEFENDANT MASARYK

2016 MAR 23 AM 11:23
FILED
RICHLAND COUNTY
CLERK OF COURT

This matter was before me for a Damages Hearing on March 22, 2016 subsequent to a Default Judgment entered against Defendant Masaryk on February 25, 2016. Plaintiff and her counsel were present at the hearing. Defendant Masaryk was not present. Plaintiff entered into evidence a letter sent to Defendant Masaryk by open mail and certified mail to Defendant Masaryk's last known address which documented the time and date of this hearing.

After review of the documents entered into evidence and a reflection upon the testimony of the Plaintiff, I make the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. On December 18, 2014 Defendants and Plaintiff were traveling on Leaphart Road in Columbia, South Carolina, when Defendants caused a multi-vehicle accident.
2. Plaintiff was transported from the accident scene by EMS to Lexington Medical Center. She was examined for back, neck, chest, and shoulder injuries and prescribed pain medication.
3. Due to continued complaints of back, neck, chest, and shoulder pains Plaintiff was treated by Dr. Bonham for three months of chiropractic care including electrical stimulation,

ultrasound, hot/cold packs, and adjustments.

4. Plaintiff incurred medical expenses in the amount of Eight Thousand Five Hundred Ninety-Five Ten and 63/100 Dollars (\$8,595.63).

5. Plaintiff testified she sustained back, neck, chest, and shoulder injuries with associated pain, headaches, and loss of activities. Plaintiff testified that she continues to experience shoulder and back pains on a weekly basis and takes over the counter medications and hot baths for relief.

6. I find Plaintiff's testimony was very credible and believable.

7. I find Plaintiff sustained permanent injuries to her back, neck, and shoulders which required medical treatment as a direct result of the wreck with Defendant Masaryk.

8. I find Plaintiff incurred pain, suffering, and loss of activities as a direct result of the wreck with Defendant Masaryk.

CONCLUSIONS OF LAW

1. Plaintiff's medical treatment was reasonable, necessary, and proximately related to the injuries he suffered as a result of the wreck with Defendant Masaryk.

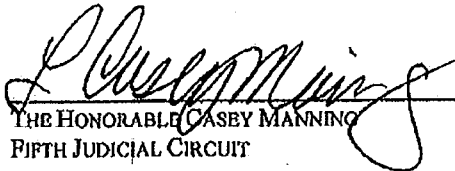
2. Plaintiff sustained substantial pain, suffering, and loss of enjoyment of life as a direct result of the wreck on December 18, 2014 with Defendant Masaryk.

3. Proper notice of the hearing to determine the damages was given to Defendant J. Masaryk.

4. As a direct and proximate result of wreck on December 18, 2014 with Defendant Masaryk, Plaintiff has suffered actual damages.

Therefore, it is hereby **ORDERED** that the Plaintiff is awarded actual damages in the amount of \$ Forty-Five Thousand (\$45,000.00) to be paid by Defendant Masaryk.

AND IT IS SO ORDERED.


THE HONORABLE CASEY MANNING
FIFTH JUDICIAL CIRCUIT

Richland, South Carolina

March 22, 2016.

DESTATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
PEARLINE WILLIAMS,
Plaintiff,

-vs-

LARITA HIPPI AND MICHELLE
MASARYK

Defendants.

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2015-CP-40-05106

ORDER DENYING DEFENDANT
MASARYK'S MOTION TO SET ASIDE
DEFAULT JUDGMENT

RICHLAND COUNTY
FILED
JUL 22 AM 9:16
JANETTE W. MCBRIDE
J.C.C.P. & G.S.

FACTS

Plaintiff was involved in a wreck with both Defendants on December 18, 2014. Suit was filed against both Defendants on August 20, 2015. Defendant Hipp settled with Plaintiff and is no longer a party to this action. Service on Defendant Masaryk was attempted on September 2, 2015 at her address as set forth on both the accident report and her driver's license of 1300 Longcreek Drive, apartment 713. Defendant Masaryk no longer resided at 1300 Longcreek Drive, apartment 713, as stated by the current occupier of apartment 713. An affidavit of non-service was filed by the process server which stated after a 'due and diligent search' the process server was unable to effect service. Plaintiff requested and received a signed Order for Publication by the Richland County Clerk of Court on November 13, 2015. Plaintiff published notice of the suit with the Columbia Star for three consecutive weeks (the weeks of November 27, December 4, December 11) as confirmed by affidavit of service by the Columbia Star. Plaintiff filed an Order of Default which was signed by the Honorable Allison Lee on

SCANNED

March 3, 2016 and filed on March 8, 2016.

A damages hearing was held on March 22, 2016. An Order Awarding Damages Against Defendant Masaryk and a Form 4 Judgment both date stamped March 23, 2016 was issued by this court awarding Forty-Five Thousand Dollars (\$45,000.00). *(Multiple Orders awarding damages against Defendant Masaryk were issued by this Honorable Court on March 21, 2016 and March 23, 2016. Upon review of the record, a clerical error occurred resulting in multiple Orders being recorded and granting damages against Defendant Masaryk. The Order date stamped March 23, 2016 in the amount of Forty-Five Thousand Dollars (\$45,000.00) is the binding and correct Order and judgment as reflected in the transcript.)*

Defendant filed a motion to set aside any and all Orders awarding damages against Defendant Masaryk. Defendant sets forth two arguments to set aside the default judgment. First, Defendant argues that Plaintiff's affidavit of due diligence filed to obtain an Order of service by publication fails to comply with the requirements set forth in S.C. Code Section 15-9-710. Secondly, Defendant argues that the notice by publication in this matter is factually insufficient to satisfy both South Carolina's policy to resolve cases on the merits and the Constitutional requirements of due process.

ARGUMENT OF PARTIES

Defendant argues that Plaintiff failed to comply with S.C. Code Section 15-9-710 and cites *Caldwell v. Wiquist* to support her position. 402 S.C. 565 (Ct. App. 2013). In *Wiquist*, the Plaintiff attempted service on a Defendant. Defendant was not found at his last known address. An affidavit of non-service was filed stating "ADDRESS VACANT". The affidavit requesting service by publication stated "The Defendant who is a non-resident of Beaufort County, South

Carolina, cannot be served a copy of the Summons in Beaufort County and it is necessary and proper to serve her by publication.” A default judgment was entered against Defendant. Defendant filed a motion to set aside the default judgment alleging the affidavit requesting service by publication failed to comply with S.C. Code Section 15-9-740 (a companion statute addressing service by publication). The trial court denied Defendant’s motion and Defendant appealed. The Court of Appeals overruled the trial court and set aside the default judgment for failure to comply with S.C. Code Section 15-9-740. The Court stated that the affidavit filed by the process server only indicated that Defendant could not be served in Beaufort County and contained no information regarding whether or not Defendant could be found in the State of South Carolina. The Court found that the affidavits requesting publication were defective on their face because they clearly displayed that Plaintiff tried to serve Defendant *only* in one county. Furthermore, the affidavits did not contain *any* statements regarding the due diligence and *did not even contain the phrase ‘due diligence’*. The Court of Appeals concluded that the affidavit requesting publication must include some factual basis upon which the court issuing the order of service by publication can find that the defendant cannot, after due diligence, be found within the state.

Plaintiff argues that she complied with all requirements set forth in S.C. Code Sections 15-9-710 and 15-9-740. Plaintiff filed an affidavit of non-service which states as follows-- ‘Resident stated, he does not know defendant, his/her whereabouts or contact information. He moved into apartment 6 months ago.’ Furthermore, the affidavit of non-service states ‘After due and diligent search, undersigned was unable to effect service.’ (*Exhibit #1*). Plaintiff filed an affidavit for publication which stated in part ‘that after due diligence, the Defendant cannot be

found...and that this affidavit is made for the purposes of serving Defendant by publication.’ Plaintiff argues that the Court of Appeals in *Wiquist* overturned the default judgment due to Plaintiff’s failure to state *any* facts regarding service and due diligence. Plaintiff further argues the scope of *Wiquist* is limited to the facts in that case where Plaintiff only searched one county for Defendant’s residence and *specifically* stated such in his affidavit of service. Plaintiff Williams asserts that the affidavit of her process server *as well as* the affidavit for publication both provide ample facts to support a finding that Plaintiff used due diligence in her attempt to obtain Defendant Masaryk’s proper address and whereabouts in the State of South Carolina. Furthermore, as supported by Defendant’s affidavit filed with her Motion to Set Aside the Default Judgment, Defendant had *moved out of state* at the time of attempted service; therefore, service could not have been obtained on Defendant *within the state (Exhibit #2)*. Additionally, Plaintiff filed an affidavit from her process server stating he performed a ‘skip trace’ (internet search) for all possible addresses of Defendant and no addresses came back for Defendant *(Exhibit #3)*.

Defendant’s second argument to this Court is that Plaintiff’s notice by publication is factually insufficient to satisfy South Carolina’s policy to resolve cases on its merits and the Constitutional requirements of due process. Defendant cites and relies on multiple cases including *Roberts* supporting the argument that Plaintiff must take multiple and sufficient steps to locate the Defendant. *Jacob v. Roberts*, 223 U.S. 261, 267, 32 S. Ct. 303, 305-306, 56 L. Ed. 429 (1912). Defendant also argues Plaintiff must publish the notice of publication in a statewide newspaper. Defendant alleges Plaintiff failed to conduct a proper search for Defendant to satisfy due process. Defendant argues the newspaper that published service on Defendant does not

cover a large enough area of the State of South Carolina and therefore does not satisfy the definition of requirement of service per S.C. Code Section 15-9-740.

Plaintiff argues her process server took all necessary steps to locate Defendant and properly published notice to Defendant in a newspaper as required per S.C. Code Section 15-9-710. Plaintiff argues her process server used due diligence in an attempt to located Defendant in the State of South Carolina. Plaintiff further argues that due process was satisfied when she published the notice to Defendant in the newspaper as required and in compliance with S.C. Code Section 15-9-740.

FINDINGS

1. I find Plaintiff provided ample evidence to this Court that due diligence was used in her attempt to locate and serve Defendant in the State of South Carolina.
2. I find Plaintiff's affidavit of non-service on Defendant includes all necessary facts concerning the process server's efforts to locate the Defendant and supports a finding of due diligence by the process server in his attempts to locate Defendant in the State of South Carolina.
3. I find Plaintiff's affidavit requesting service by publication provided documentation of due diligence and complied with all statutory requirements set forth in S.C. Code Section 15-9-740.
4. I find that Plaintiff's process server's subsequent affidavit stating he performed a 'skip trace' which documented Defendant did not have a South Carolina address at the time of attempted service, coupled with Defendant's affidavit that she moved out of state, further supports the court's finding that due diligence was used by Plaintiff.
5. I find Plaintiff's notice of publication and use of the newspaper to publish notification to

Defendant is in compliance with S.C. Code Section 15-9-710 and satisfies all due process and South Carolina requirements regarding service and notice.

6. I find Plaintiff complied with all statutory requirements as set forth in S.C. Code Section 15-9-710 in serving Defendant by publication.

7. I find the Richland County Clerk of Court properly issued an Order for Publication to Plaintiff based on the facts as set forth in Plaintiff's process server's affidavit of non-service and Plaintiff's affidavit requesting service by publication.

8. I find Defendant has failed to provide evidence that the default judgment entered against Defendant was void, and therefore the motion to set aside the default judgment fails to satisfy Rule 60(b)(4) SCRCF.

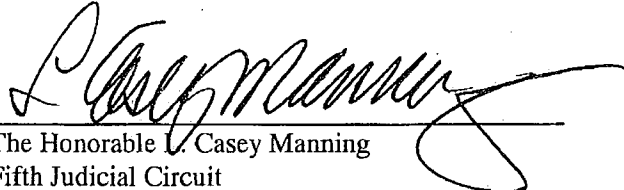
9. I find the default judgment against the Defendant for Forty-Five Thousand Dollars (\$45,000.00) is affirmed.

THEREFORE, Defendant's motion to set aside the default judgment is hereby **DENIED** and Plaintiff's award and default judgment of Forty-Five Thousand Dollars (\$45,000.00) is hereby **AFFIRMED**.

AND IT IS SO ORDERED.

Richland, South Carolina

July 20, 2016


The Honorable Casey Manning
Fifth Judicial Circuit

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

PEARLINE WILLIAMS,

Plaintiff,

vs-

LARITA HIPPI AND MICHELLE MASARYK

Defendants.

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2015-CP-40-05106

ORDER DENYING DEFENDANT MASARYK'S
RULE 59(e) MOTION TO ALTER OR AMEND

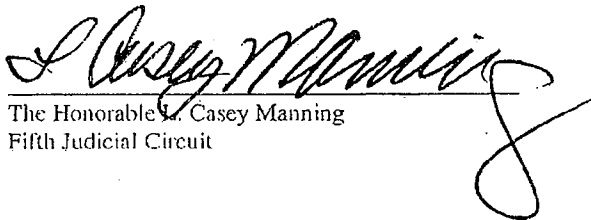
FILED
2016 SEP 14 AM 11:19
MICHELLE W. MCGRIDE
C.C.P. & G.S.

This matter comes before the Court upon the filing of Defendant Masaryk's Rule 59(e) Motion to Alter or Amend requesting the Court grant Defendant Masaryk relief from this Court's Order Denying Defendant Masaryk's Motion to Set Aside Default Judgment dated July 22, 2016.

The Court concludes that Defendant has not presented or raised any grounds to grant the Rule 59(e) motion. The Court has considered all arguments of the Defendant and denies Defendant's Rule 59(e) Motion to Alter or Amend the Order Denying Defendant Masaryk's Motion To Set Aside Default Judgment. Any and all arguments presented by Defendant not specifically addressed in this Order are hereby denied.

THEREFORE, Defendant Michelle Masaryk's Rule 59(e) Motion to Alter or Amend is hereby DENIED.

AND IT IS SO ORDERED.


The Honorable L. Casey Manning
Fifth Judicial Circuit

Richland, South Carolina

September 14, 2016

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2015CP4005106

Pearline Williams

Larita Hipp

Michelle Masaryk

PLAINTIFF(S)

DEPENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant or ☐ 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.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Dismissal); ☐ 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:

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
		\$
		\$
		\$
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

Date

For Clerk of Court Office Use Only

This judgment was entered on the 28 day of Mar, 2016 and a copy mailed first class or placed in the appropriate attorney's box on this 28 day of Mar, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Gerald Eugene Reardon

Robert Lesley Brown

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Clerk of Court

SCRPC Form 4C (10/2011)

ROA_000019

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

PEARLINE WILLIAMS,

Plaintiff,

vs.

LARITA HIPP and MICHELLE MASARYK,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2015 CP 400 5106

(Please Print)
Jerry Reardon
SC Bar#13739
1329 Blanding Street
Columbia, SC 29201

Telephone #: (803) 978-6114
Fax #: (803) 978-6112
Email: jerry@jerryreardonlaw.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action Is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|--|--|
| ☐ Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | ☐ Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
☐ Notice/ File Med Mal (230)
☐ Other (299) | ☐ Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☒ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | ☐ Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| ☐ Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | ☐ Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Other (799) | ☐ Administrative Law/Relief
☐ Reinstatement Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture (840)
☐ Other (899) | ☐ Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)

☐ Zoning Board (970)
☐ Administrative Law Judge (980)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| ☐ Special/Complex/Other
☐ Environmental (600) ☐ Pharmaceuticals (630)
☐ Automobile Arb. (610) ☐ Unfair Trade Practices (640)
☐ Medical (620) ☐ Out-of State Depositions (650)
☐ Other (699) | | | |

Submitting Party Signature: _____

Date: 8/14/15

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

SCCA / 234 (03/09)

ROA_000020

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
PEARLINE WILLIAMS,

Plaintiff,

-vs-

LARITA HIPP and MICHELLE MASARYK,
Defendants.

IN THE COURT OF COMMON PLEAS

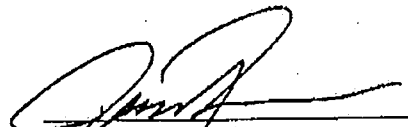
DOCKET NO.:

SUMMONS
(JURY TRIAL DEMANDED)

RICHLAND
2015 AUG 20 PM 4:35
JERRY REARDON
CCP & EC

TO: THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action of which a copy is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscribers at their office, 1329 Blanding Street, Columbia, South Carolina, within thirty (30) days after the service thereof, exclusive of the date of such service and if you fail to answer, appear, or defend, judgment by default will be rendered against you for the relief demanded in the Complaint.



JERRY REARDON
Attorney for Plaintiff
Law Office of Jerry Reardon
1329 Blanding Street
Columbia, South Carolina 29201
(803) 978-6114 | (803) 978-6112(f)

Columbia, South Carolina

August 14, 2015.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

PEARLINE WILLIAMS,

Plaintiff,

-vs-

LARITA HIPP and MICHELLE MASARYK,

Defendants.

IN THE COURT OF COMMON PLEAS

DOCKET NO.:

COMPLAINT
(JURY TRIAL DEMANDED)

2015 AUG 20 PM 4:35
RICHLAND COUNTY
FILED
CLERK OF COURT

Plaintiff would respectfully show:

1. Plaintiff is a resident of the County of Lexington, State of South Carolina.
2. Defendant Larita Hipp is a resident of the County of Lexington, State of South Carolina.
3. Defendant Michelle Masaryk is a resident of the County of Richland, State of South Carolina.
4. On or about December 18, 2014, Plaintiff was driving on Leaphart Road when Defendant Michelle Masaryk and Defendant Hipp caused a multiple car collision. Plaintiff's vehicle was struck in the rear by Defendant Hipp.
5. As a result, Plaintiff's vehicle was damaged, which will cause Plaintiff to have to spend money for its repair, will cause the vehicle to depreciate in value, and will cause Plaintiff to lose the use of the vehicle for a period of time.
6. As a result, Plaintiff suffered great physical harm and injury to the head, body and limbs, specifically the neck and back, which has caused, and will in the future cause, Plaintiff to undergo much physical pain, suffering, mental anguish, emotional distress and impairment of health and bodily

efficiency, and has caused, and will in the future cause, Plaintiff to have to spend money for medical services, and has caused, and will in the future cause, Plaintiff to lose money in the nature of wages or earnings.

7. Defendant Hipp was negligent, careless, reckless, and grossly negligent at the time and place aforementioned in the following particulars:

- a. In failing to maintain a proper lookout;
- b. In failing to maintain proper control of the vehicle;
- c. In driving too fast for conditions;
- d. In failing to apply the brakes, if any she had;
- e. In failing to yield the right of way;
- f. In failing to take evasive action so as to avoid this collision;
- g. In failing to observe the road and traffic conditions then and there prevailing; and
- h. In such further particulars as may be shown at trial.

All of which were the direct and proximate cause of the injuries and damages suffered by Plaintiff, said acts being in violation of the Statute and Common Laws of the State of South Carolina.

8. Defendant Masaryk was negligent, careless, reckless, and grossly negligent at the time and place aforementioned in the following particulars:

- a. In failing to maintain a proper lookout;
- b. In failing to maintain proper control of the vehicle;
- c. In driving too fast for conditions;
- d. In slamming on her brakes;
- e. In stopping too quickly;

- f. In failing to take evasive action so as to avoid this collision;
- g. In failing to observe the road and traffic conditions then and there prevailing; and
- h. In such further particulars as may be shown at trial.

All of which were the direct and proximate cause of the injuries and damages suffered by Plaintiff, said acts being in violation of the Statute and Common Laws of the State of South Carolina.

9. Plaintiff is informed and believes that Plaintiff is entitled to judgment in this matter as set out below.

WHEREFORE, Plaintiff prays for judgment for actual and punitive damages in amounts determined by a jury, for the costs of this action, and for such other and further relief as the Court may deem just and proper.


JERRY REARDON
Attorney for Plaintiff
Law Office of Jerry Reardon
1329 Blanding Street
Columbia, South Carolina 29201
(803) 978-6114 | (803) 978-6112(f)

August 14, 2015.

AFFIDAVIT OF NON-SERVICE

FILE NO:

STATE OF SOUTH CAROLINA
COUNTY OF: RICHLAND

IN THE COURT: COMMON PLEAS
DOCKET NUMBER: 2015-CP-40-05106

PLAINTIFF: PEARLINE WILLIAMS

VS

DEFENDANT: LARITA HIPP and MICHELLE MASARYK

SERVICE OF PROCESS ON: MICHELLE MASARYK

ADDRESS OF SERVICE: 1300 LONGCREEK DR. APT. 713, COLUMBIA, SC 29210

DATE & TIME OF NON-SERVICE: 9-2-2015, 6:19 P.M.

DOCUMENTS: PLAINTIFF'S INTERROGATORIES TO THE DEFENDANT, PLAINTIFF'S REQUEST
FOR PRODUCTION OF DOCUMENTS, SUMMONS AND COMPLAINT

AFTER DUE AND DILIGENT SEARCH, UNDERSIGNED WAS UNABLE TO EFFECT SERVICE.

COMMENTS: RESIDENT STATED, HE DOES NOT KNOW DEFENDANT, HIS/HER
WHEREABOUTS OR CONTACT INFORMATION. HE MOVED INTO APARTMENT 6 MONTHS
AGO.

PROCESS SERVER, UNDERSIGNED DECLARES THAT THE FOREGOING IS TRUE AND
CORRECT AND THAT THE DEPONENT IS OVER THE AGE OF 18 AND IS NOT A PARTY TO
NOR INTERESTED IN THIS ACTION.

SIGNATURE OF PROCESS SERVER

NAME OF PROCESS SERVER: MARK WEAGHINGTON

SWORN TO BEFORE ME THIS

8

DAY OF

September, 2015

NOTARY PUBLIC FOR SOUTH CAROLINA

COMMISSION EXPIRATION: 07/02/2023

RICHLAND COUNTY
FILED
2015 SEP -8 PM 1:38
JENNIFER W. STONE
C.C.P. & G.S.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
PEARLINE WILLIAMS,

Plaintiff,

-vs-

LARITA HIPP AND MICHELLE
MASARYK,

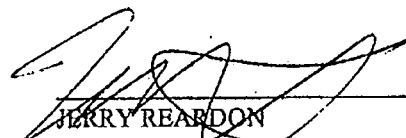
Defendants.

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2015-CP-40-05106

AFFIDAVIT

PERSONALLY APPEARED before me, Jerry Reardon, Esquire, who first being duly sworn, says that he is a practicing attorney with the Law Office of Jerry Reardon, LLC in the City of Columbia, State of South Carolina, and that he is the attorney for Plaintiff in the above captioned case that after due diligence, the Defendant cannot be found and that Defendant is a proper party in the within action, which action is now pending praying for monetary relief, and that Defendant is entitled to due notice of said action to defend Defendant's rights, if any Defendant has, and that this Affidavit is made for the purposes of serving Defendant by publication.


JERRY REARDON
Attorney for Plaintiff

SWORN to before me this _____, 2015.
 Charles Uary
Notary Public
South Carolina
My Commission Exp:
August 27, 2023

Notary Public for South Carolina
My Commission Expires:

PEARLINE WILLIAMS,
Plaintiff,
vs.
LARITA HIPPI and
MICHELLE MASARYK,
Defendants.
TO THE DEFENDANT(S)
ABOVE NAMED:
YOU ARE HEREBY SUM-
MONED and required to
answer the Complaint in
this action of which a copy
is herewith served upon
you, and to serve a copy of
your Answer to the said
Complaint on the sub-
scribers at their office, 1329
Blanding Street, Columbia,
South Carolina, within
thirty (30) days after the
service thereof, exclusive of
the date of such service and
if you fail to answer,
appear, or defend, judg-
ment by default will be ren-
dered against you for the
relief demanded in the
Complaint.
Columbia, South Carolina
August 14, 2015.
NOTICE
RE: PEARLINE
WILLIAMS VS. LARITA
HIPPI and MICHELLE
MASARYK DOCKET NO:
2015-CP-40-05106
TO: THE ABOVE NAMED
O O - D E F E N D A N T,
MICHELLE MASARYK
YOU WILL PLEASE
TAKE NOTICE that the
original Summons and
Complaint in the above-
entitled action was filed in
the 5th Judicial Circuit
Court of Common Pleas on
the 20th day of August,
2015, the object and prayer
of which is to obtain a mon-
etary judgment against you
and other relief as set forth
in the Complaint.
JERRY REARDON
Attorney for Plaintiff
LAW OFFICE OF JERRY
REARDON, LLC
1329 Blanding Street
Columbia, South Carolina
29201
(803) 278-6114 (x)
Columbia, South Carolina
November 18, 2015.

THE COLUMBIA STAR

COLUMBIA, SOUTH CAROLINA

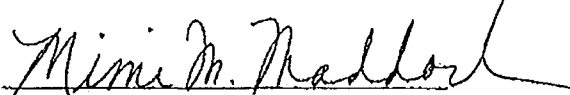
State of South Carolina
County of Richland

Personally appeared before me,
MIMI M. MADDOCK,
PUBLISHER OF THE COLUMBIA STAR,
who makes oath that the advertisement

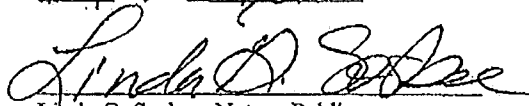
SUMMONS, NOTICE
Pearline Williams
vs. Larita Hipp and Michelle Masaryk

a clipping of which is attached hereto, was printed in
THE COLUMBIA STAR, a weekly newspaper of general circulation
published in the City of Columbia, State and County aforesaid, in the issues of

November 27, December 4, and 11, 2015


Mimi M. Maddock, Publisher

Sworn to before me on this
18th day of Dec. 2015.


Linda G. Sosbee, Notary Public
My commission expires February 1, 2021

RECEIVED
2015 DEC 15 AM 11:56
JANET L. W. HARRIS
C.C.P. & G.S.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

PEARLINE WILLIAMS,

Plaintiff,

-vs-

LARITA HIPPI and MICHELLE MASARYK,

Defendants.

IN THE COURT OF COMMON PLEAS

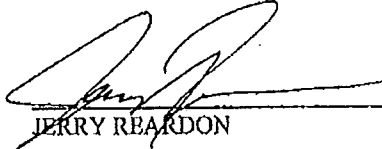
DOCKET NO.: 2015-CP-40-05106

AFFIDAVIT OF DEFAULT

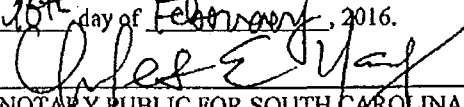
RICHLAND COUNTY
FILED
2016 FEB 26 AM 9:51
JERRY REARDON
C.P. & S.S.

PERSONALLY APPEARED before me, Jerry Reardon, Esquire, who, first being duly sworn, says that he is a practicing attorney with Law Office of Jerry Reardon in the City of Columbia, State of South Carolina, and that he is the attorney for Plaintiff in the above-entitled action; that the Summons and Complaint was served upon Defendant Masaryk by publication for the weeks of November 27, 2015, December 4, 2015, and December 11, 2015, as it appears by the Affidavit of Service (a copy of which is attached hereto), that Defendant Masaryk has failed to answer or to make an appearance in said action, and that Defendant Masaryk is now in default. To my knowledge, Defendant Masaryk is not a member of the Armed Forces and is not entitled to relief under the Soldiers and Sailor's Relief Act.

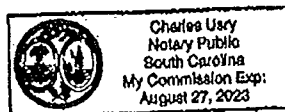
The damages in this matter are unliquidated. A hearing should be scheduled to determine the amount of damages due Plaintiff. I hereby request that judgment by default be entered for Plaintiff and that a non-jury hearing be scheduled as allowed by law.


JERRY REARDON

SWORN to before me this
10th day of February, 2016.


NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: August 27, 2023



STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

PEARLINE WILLIAMS,

Plaintiff,

-VS-

LARITA HIPP and MICHELLE MASARYK,

Defendants.

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2015-CP-40-03106

RICHLAND COUNTY
FILED
2016 MAR -8 AM 11:34
JERETTE W. MOSELEY
C.C.P. & C.O.

AFFIDAVIT OF DEFAULT

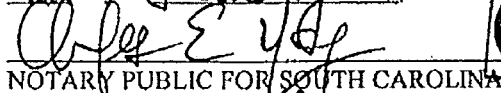
PERSONALLY APPEARED before me, Jerry Reardon, Esquire, who, first being duly sworn, says that he is a practicing attorney with Law Office Of Jerry Reardon, LLC., in Columbia, State of South Carolina, and that he is the attorney for Plaintiff in the above-entitled action; that the Summons and Complaint were served upon the Defendant Michelle Masaryk by publication for three consecutive weeks ending on December 11, 2015, as appears by the Affidavit (a copy of which is attached hereto), but that said Defendant Michelle Masaryk has failed to answer or to make an appearance in said action, and that Defendant Michelle Masaryk is now in default. To my knowledge, the Defendant Michelle Masaryk in default is not a member of the Armed Forces and is not entitled to relief under the Soldiers and Sailor's Relief Act.

The damages in this matter are unliquidated. A hearing should be scheduled to determine the amount of damages due Plaintiff. I hereby request that judgment by default be entered for Plaintiff and that a non-jury hearing be scheduled as allowed by law.

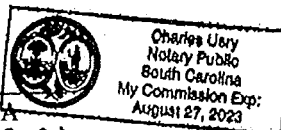

JERRY REARDON

SWORN to before me this

11th day of January, 2016.


NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: August 27, 2023



STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Pearline Williams,

Plaintiff,

vs.

Larita Hipp and Michelle Masaryk,

Defendants.

IN THE COURT OF COMMON PLEAS

Case Number:
2015-CP-40-05106

AFFIDAVIT OF
KIM CUERVO

JEANNETTE W. MORRIS
C.C.P. & G.S.

2016 JUN 14 PM 4:30

RICHLAND COUNTY
FILED

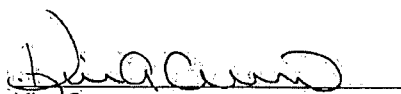
PERSONALLY APPEARED BEFORE ME, Kim Cuervo, who being duly sworn deposes and states:

1. I am employed as the community manager at The Hollows Apartments, located at 1300 Longcreek Drive, Columbia, SC, 29210. I have been the community manager at this location since March 2014.
2. I was employed as the community manager in November 2014.
3. I recall Ms. Michelle Masaryk was a tenant at The Hollows Apartments. I recall Ms. Masaryk moved out of her apartment, no. 713, at The Hollows in November 2014.
4. I have examined and recognize what is marked as Exhibit 1 to this Affidavit.
5. Exhibit 1 consists of two pages. One page is an email I wrote and sent to Ms. Masaryk on November 17, 2014, after a walk-through of her old apartment, no. 713, was completed. The second page is a print-out of Ms. Masaryk's final water bill for water used at apartment 713, which I attached to my email as proof of the charges due.
6. As community manager at The Hollows Apartments, I am responsible for acquiring and maintaining the contact information of our tenants when they move from The Hollows. Getting this contact information is not only standard operating procedure for The Hollows, but it is actually required by the South Carolina Landlord-Tenant Act. The

COPY

former tenant's contact information is acquired and maintained for various reasons, including, for example, the mailing of refund checks to the former tenant.

7. Following standard operating procedure, I recall I asked Ms. Masaryk for and she provided me the address of her new apartment when she moved out from The Hollows in November 2014.
8. In relation to giving this Affidavit, I was asked to check if Ms. Masaryk's contact information from November 2014 was still in The Hollows database. I did so and confirmed that it is. Exhibit 2 is Ms. Masaryk's Move-Out Statement which reflects the forwarding address she provided in November 2014. I printed this Statement on June 8, 2016.
9. The contact information on Ms. Masaryk's Move-Out Statement, which is used to mail closing balance information, includes a personal phone number and the address of 101 Saluda Pointe Drive, Apt. 225, Lexington, SC 29072.
10. I have no recollection of anyone coming to The Hollows property management office on or about September 2, 2015, to inquire about obtaining any of Ms. Masaryk's contact information.


Kim Cuervo

SWORN to before me this

9 day of June, 2016.



Notary Public for South Carolina

My Commission expires: 9-9-18

Michelle,

NINA GUERRERO
Community Manager
F: 803.798.2255
F: 803.772.2689
thollowsmanager@hipliving.com
1300 Long Creek Drive • Columbia, SC 29210
www.thelivingapartments.com

PROPERTY NO.	13770		
CUSTOMER ACCOUNT	000350570-001		
CUSTOMER NAME	MICHELLE MASARYK		
SERVICE ADDRESS	1300 LONGCREEK DR APT #713		
BILLING PERIOD	10/31/2014-11/10/2014	BILL DAYS	10
BILLING DATE	11/17/2014		

**NWP Services
Corporation**

FINAL BILL

SERVICE TYPE	DESCRIPTION	AMOUNT
Allocated Sewer Service		\$10.01
Allocated Water Service		\$0.86
Final Bill Fee		\$6.00
Service Fee		\$4.02
Trash/Debris Fee		\$3.00

PREVIOUS BILL	PAYMENTS	CREDITS	CURRENT CHARGES	LATE FEE	NET AMOUNT DUE
\$0.00	(\$0.00)	\$0.00	\$30.28	\$0.00	\$30.28
The Resident Utility Charge Per Day = \$1.04			THIS BILL IS DUE AND PAYABLE UPON RECEIPT Please make payments at the Property Office prior to move-out. THIS final bill does not include rent or other property management charges. Please follow-up with your property manager with any questions related to additional charges that might be due. DO NOT SEND PAYMENT TO NWP		

BILLING INFORMATION:

This bill you have received is from NWP Services Corporation, a provider of billing services, and is not from the retail public utility. You are responsible for the payment of the net amount due. Your bill shows the beginning and ending dates for each billing period and the amount of the bill.

If you have questions regarding your final bill, please contact the property office. If you have any questions regarding prior billing information, please contact our Customer Service Department.

Your account has been closed. Please make your final payment to the property office prior to moving out.

E-mail inquiries to: residentservices@nwp80.com
Be sure to include your name and account number in your e-mail.

Written inquiries to:
NWP Services Corporation
ATTN: Customer Service
P.O. Box 10001
Irvine, CA 92623-0001

For Service, Conservation, Billing, and Other Information,
Please Call Toll Free: (800) 670-0455
HOURS: 8:00 AM - 6:00 PM PST, Mon - Fri
24 Hour Access to Billing and Payment Information
Web Site: www.nwpsmart.com

EXHIBIT 1
CUERVO-AFFIDAVIT

ROA_000033

Move Out Statement

Date: 06/09/2016

Code	10054820	Property	1080	Lease From	07/21/2014
Name	Michelle Masaryk	Unit	0713	Lease To	07/20/2015
Address	101 Saluda Pointe Dr. Apt. 225	Status	Past	Move In	07/21/2014
		Rent	690.00	Move Out	11/18/2014
City	Lexington, SC 29072			Notice	11/04/2014
Telephone	(0)-() - (11)				

Date	Description	Charge	Payment	Balance	Chg/Rec
	Balance as of 11/01/2014			0.00	
11/01/2014	Pest Control (11/2014)	3.00	0.00	3.00	3762724
11/01/2014	Monthly Pet Rent (11/2014)	20.00	0.00	23.00	3762725
11/01/2014	Rent (11/2014)	670.00	0.00	693.00	3762726
11/01/2014	Trash Revenue (11/2014)	6.00	0.00	699.00	3795768
11/01/2014	Water & Sewer (11/2014)	41.23	0.00	740.23	3795957
11/01/2014	Service Fee RUB (11/2014)	4.02	0.00	744.25	3796146
11/04/2014	chk# 107	0.00	167.05	277.20	2384835
11/06/2014	Late Charges	75.00	0.00	352.20	3806255
11/06/2014	PAID ON STH	-75.00	0.00	277.20	3807064
11/18/2014	:Security Deposit credit	-100.00	0.00	177.20	3834637
11/18/2014	Rent (11/2014) Credit 12 days	-268.00	0.00	(90.80)	3834638
11/18/2014	Monthly Pet Rent (11/2014) Credit 12 days	-8.00	0.00	(98.80)	3834639
11/18/2014	Pest Control (11/2014) Credit 12 days	-1.20	0.00	(100.00)	3834640
11/18/2014	Water/Sewer	88.81	0.00	(11.19)	3834641
11/18/2014	Replace 1 blind :Write Off by Charge Ctl# 3834662	20.00	0.00	8.81	3834642
11/18/2014	:Write Off Charge Ctl#3834642	-8.81	0.00	0.00	3834662

This is an attempt to collect a debt.

EXHIBIT 2
CUERVO AFFIDAVIT

ROA_000034

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Pearline Williams,

Plaintiff,

vs.

Larita Hipp and Michelle Masaryk,

Defendants.

IN THE COURT OF COMMON PLEAS

Case Number:
2015-CP-40-05106

AFFIDAVIT OF
MICHELLE MASARYK

RICHLAND COUNTY
FILED
2016 JUN 14 PM 1:30
JEANETTE MCGRIDE
C.C.P. 2015

PERSONALLY APPEARED BEFORE ME, Michelle Masaryk, who being duly sworn,
deposes and states:

1. I am a Defendant in the above captioned action.
2. I am 29 years of age and since August 10, 2015, I have been employed as a 1st grade elementary school teacher at Bodkin Elementary School in Pasadena, Maryland.
3. I was involved in an automobile accident in the City of West Columbia, South Carolina on December 18, 2014, which is the subject of this action. At that time I was employed as a 1st grade elementary school teacher at Forest Lake Elementary School in Columbia, South Carolina.
4. At the time of the accident, I resided at 101 Saluda Pointe Drive, Apt. 225, Lexington, SC 29072. I moved to 101 Saluda Pointe on November 16, 2014.
5. Prior to moving to 101 Saluda Pointe Drive, Apt. 225, I resided at 1300 Longcreek Drive, Apt. 713, Columbia, SC, 29210, which is the address appearing on my South Carolina driver's license on the date of the accident.
6. I completed an online change of address form with the US Postal Service when I moved from my apartment at 1300 Longcreek Drive to my apartment at 101 Saluda Pointe. Mail

COPY

was forwarded, and I received mail forwarded by the USPS from the Longcreek address to my Saluda Pointe address after my move on November 16, 2014.

7. I also provided my new Saluda Pointe address information to the property management office at the apartments on Longcreek. The property management office also had my email address and my cell number.
8. On August 4, 2015, I moved my permanent residence from 101 Saluda Pointe Drive, Apt. 225, Lexington, SC 29072, to 1029 Meandering Way, Odenton, Maryland, 21113, where I have lived continuously to the present. I moved to Maryland to accept the teaching position which I now hold.
9. As with my prior move, I completed an online change of address form with the US Postal Service when I moved from my apartment at 101 Saluda Pointe to 1029 Meandering Way, Odenton, Maryland. Mail was forwarded, and I received mail forwarded by the USPS from the Saluda Pointe address to the Meandering Way address after my move on August 4, 2015.
10. Additionally, I notified my employer (Richland District Two/Forest Lake Elementary) at the end of July or beginning of August 2015 that I was moving to Maryland to accept a teaching position there. I gave them the name and address of my new employer in Maryland.
11. I notified the cable company, Time Warner, in August 2015 of my upcoming move in order to terminate service and billing at the Saluda Pointe apartment.
12. The Saluda Pointe property management was also informed in August 2015 of my upcoming move. Due to a separate issue, I was not released from my Saluda Pointe lease until December 3, 2015. Resolution of this separate issue, in addition to the

existence of a live lease, required I stay in contact with the Saluda Pointe property management.

13. I contacted the electric company, SCE&G, to terminate services at 101 Saluda Pointe Drive in October 2015.

14. Since moving to Maryland, I have not owned nor had any interest in any real or personal property in the state of South Carolina.

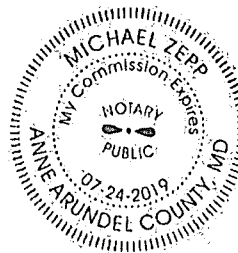
15. At the time of the automobile accident of December 18, 2014, I was operating my vehicle in a westerly direction on SC Road 30 [Leaphart Road] near the City of West Columbia. Traffic in front of me was stopped, so I slowed to a full stop as well. I was at a complete and full stop, not moving at all, when suddenly and without warning an automobile driven by the Defendant Larita Hipp crashed into the rear of my vehicle, causing my vehicle to be pushed forward into the rear of the vehicle operated by the Plaintiff, which was directly in front of me.

16. I learned about the default judgment against me when I received a call from GEICO on March 30, 2016. I never received any mail from either the Richland County Clerk's Office or attorney Jerry Reardon.

Michelle Masaryk
Michelle Masaryk

SWORN to before me this
8th day of June, 2016

Michael Zepp
Notary Public for Maryland
My Commission expires: 07-24-19



STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

PEARLINE WILLIAMS,
PLAINTIFF,

vs.

LARITA HIPPI AND MICHELLE
MASARYK,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO. 2015-CP-40-05106

AFFIDAVIT OF
MARK WEAGHINGTON

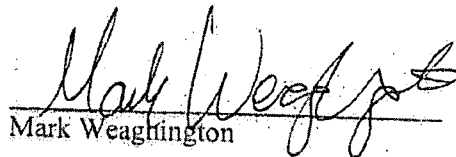
RICHLAND COUNTY
FILED
2016 JUN 21 PM 4:50
JEANNETTE W. MORRIS
C.C.P. & G.S.

PERSONALLY APPEARED BEFORE ME, Mark Weaghtington, who being duly sworn,
deposes and says:

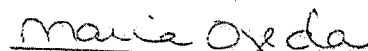
1. I am over the age of eighteen (18) and give this affidavit of my own personal knowledge and belief.
2. I have been a process server for eight years.
3. On September 2, 2015, I went to 1300 Longcreek Drive, apartment 713 in Columbia, South Carolina, which was Defendant Masaryk's residence as stated on an accident report dated December 18, 2014. It was my intention to serve Defendant Masaryk the summons and complaint captioned Pearline Williams -vs- Larita Hipp and Michelle Masaryk, 2015-CP-40-05106.
4. Upon knocking at the door, I spoke to the resident of apartment 713, who indicated he had been living there for approximately six (6) months and that Defendant Masaryk did not live in apartment 713.
5. Upon learning that Defendant Masayrk did not reside at 1300 Longcreek Drive, apartment 713, I performed a 'skip trace' (internet data search) on or about September 3, 2015, using Defendant Masaryk's 1300 Longcreek Drive address and her date of birth (8-26-86). My search did not reveal any other addresses linked to Defendant Masayrk.

6. I informed attorney Jerry Reardon of my failed attempt to serve Defendant Masayrk and of the skip trace results. I completed an affidavit of non-service dated September 8, 2015.

FURTHER DEPONENT SAYETH NOT.


Mark Weaghtington

SWORN TO before me this 21
Day of June 2016.


Notary Public for South Carolina
My Commission Expires: 8-8-2021

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Pearline Williams,

Plaintiff,

vs.

Larita Hipp and Michelle Masaryk,

Defendants.

IN THE COURT OF COMMON PLEAS

Case Number:
2015-CP-40-05106

MOTION TO SET ASIDE DEFAULT
JUDGMENT RULE 60(b)

TO: JERRY REARDON, ATTORNEY FOR PLAINTIFF:

PLEASE TAKE NOTICE that the Defendant, Michelle Masaryk, through her undersigned attorney, on the tenth day after service hereof at 10:00 a.m. or as soon thereafter as counsel may be heard will move before the judge, Court of Common Pleas for Richland County, Sixth Judicial Circuit, at the Richland County Courthouse, Columbia, South Carolina for an Order of the Court pursuant to Rule 60(b) of the *South Carolina Rules of Civil Procedure*, as applicable, relieving this Defendant from an entry of default and final judgment; and granting the Defendant an extension of time within which to Answer the Plaintiff's Complaint.

This Motion is made on the ground that the final judgment herein has been rendered through this Defendant's mistake, inadvertence or excusable neglect and that the judgment is void.

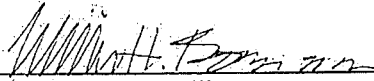
The undersigned attorney certifies that consultation with opposing counsel to resolve the matter herein would serve no useful purpose.

Dated this the 1st day of April, 2016.

[Signature Page to Follow]

RICHLAND COUNTY
FILED
2016 APR -5 AM 11:00
JEANETTE W. MCBRIDE
C.C.P. & S.

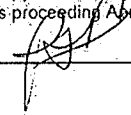
ROGERS TOWNSEND & THOMAS, PC

By: 
William H. Bowman, III
P. O. Box 100200, Columbia, SC 29202
(803)771-7900; bbowman@rtt-law.com
Attorney for Defendant Michelle Masaryk

Columbia, South Carolina
April 1, 2016

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing pleading was mailed to all counsel of record in this proceeding April 1, 2016.



RICHARD COUNTY
FILED
2016 APR -5 AM 11:58
JEANNETTE W. MCBRIDE
Clerk & S.S.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Pearline Williams,

Plaintiff,

vs.

Larita Hipp and Michelle Masaryk,

Defendants.

IN THE COURT OF COMMON PLEAS

Case Number:
2015-CP-40-05106

DEFENDDANT MASARYK'S
AMENDED
MOTION TO SET ASIDE DEFAULT
JUDGMENT RULE 60(b)

TO: JERRY REARDON, ATTORNEY FOR PLAINTIFF:

PLEASE TAKE NOTICE that the Defendant, Michelle Masaryk, through her undersigned attorney, hereby amends her Motion to Set Aside Default Judgment pursuant to South Carolina Rule of Procedure 60(b), previously filed with this Court on April 1, 2016 to include as additional grounds and authority: the default judgment is void per SCRPC Rule 60(b)(4) because the affidavit requesting service by publication is facially defective and the use of service by publication in this matter has violated Defendant Masaryk's Constitutional rights to due process; Caldwell v. Wiquist, 402 S.C. 565, 741 S.E.2d 583 (Ct.App.2013); U.S. Const. amend. XIV, § 1; S.C. Const. art. 1, § 22; U.S. v. Borromeo, 945 F.2d 750 (4th Cir.1991); any other related authority as may be applicable; and such memoranda, evidence, including affidavits, or argument as may be presented to the Court.

The undersigned attorney certifies that consultation with opposing counsel to resolve the matter herein would serve no useful purpose.

Dated this the 27th day of April, 2016.

[Signature Page to Follow]

ROGERS TOWNSEND & THOMAS, PC

By: William H. Bowman, III
William H. Bowman, III
P. O. Box 100200, Columbia, SC 29202
(803)771-7900; bbowman@rtt-law.com
Attorney for Defendant Michelle Masaryk

Columbia, South Carolina
April 27, 2016

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing pleading was mailed to all
counsel of record in this proceeding April 27, 2016.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Pearline Williams,

Plaintiff,

vs.

Larita Hipp and Michelle Masaryk,

Defendants.

IN THE COURT OF COMMON PLEAS

DOCKET NUMBER: 15-CP-40-05106

DEFENDANT
MASARYK'S
MEMORANDUM
IN SUPPORT OF
ORIGINAL AND AMENDED
MOTIONS TO SET ASIDE
DEFAULT JUDGMENT

Defendant Michelle Masaryk, hereinafter "Ms. Masaryk," filed with this Court Motions to Set Aside Default Judgment and Motion to Dismiss on April 3, 2016 and as Amended on May 5, 2016. She now submits this Memorandum in support of thereof. Ms. Masaryk moves to set aside three separate Judgments and Orders Awarding Damages ordered in default judgment against her on March 21, 2016 (file stamp date), again on March 23, 2016 (file stamp date), and again on March 28, 2016 (file stamp date). The two Orders Awarding Damages against Ms. Masaryk are identical in typed text, but the amount of damages awarded is drastically different. The Order filed March 21, 2016 awards \$25,000 in damages, the Order filed March 23, 2016 awards \$45,000 in damages. There is also a Form 4 Judgment file stamped March 28, 2106 awarding \$45,000 in damages. Ms. Masaryk is uncertain as to why there are three separate damage award judgments filed against her in this single matter.¹

¹ It is Ms. Masaryk's position that setting aside, voiding, and dismissing all three (3) Orders and Judgments Awarding Damages, as well as voiding the Order(s) of Default file stamped 2/26/16 and 3/8/16, would be wholly dispositive of the issue of inconsistent and/or duplicative verdicts. As such, she does not set out a separate argument on it at this time.

Ms. Masaryk submits that the Form 4 Judgment and the two Orders Awarding Damages against her, and the underlying default judgment(s), are each and all void pursuant to South Carolina Rules of Civil Procedure Rule 60(b)(4), because (1) the Plaintiff's affidavit of due diligence filed to obtain an Order of service by publication fails to comply strictly with the requirements of S.C. Code § 15-9-710 and is therefore facially defective, and (2) notice by publication in this matter is factually insufficient to satisfy both this State's policy to resolve cases on the merits and the Constitutional requirements of due process.

FACTS

The following are the relevant facts² of this matter:

1. Plaintiff Williams filed a Summons and Complaint in Richland County on August 20, 2015. Plaintiff alleged Defendants Masaryk and Hipp were negligent in the operation of their respective automobiles, such negligence being the proximate cause of a motor vehicle accident on December 18, 2014 in which Plaintiff alleges she incurred property damage and bodily injury.
2. On or about November 13, 2015, Plaintiff's attorney filed an Affidavit requesting service by publication based on the one attempt of personal service made upon Ms. Masaryk. An Affidavit of Non-Service executed by the private process server, which memorialized one attempt of personal service at Ms. Masaryk's 1300 Longcreek apartment. It also averred he spoke only with the current resident of that apartment. The Affidavit of Non-Service was filed with counsel's affidavit.
3. An Order for Service by Publication was signed and filed by the Richland County Clerk of Court on November 13, 2015.
4. An Affidavit from the Columbia Star was filed December 15, 2015, stating the Notice of the Summons filed in Plaintiff's action was published in the Columbia Star in the issues dated November 27, December 4, and December 11, 2015.

² All references to documents in this Fact section are in the Court's file.

5. Affidavits of Default were filed by Plaintiff on February 26, 2016 and March 8, 2016. These Affidavits are almost identical, the exception being that in February 26th filing, the Columbia Star publication dates are listed by actual date, while in the March 8th filing the publication dates are lumped together in a phrase, "... by publication for three consecutive weeks ending on December 11, 2015..."

6. Orders of Default executed by the Honorable Alison Lee were filed on February 26, 2016 and March 8, 2016. Again, these Orders are almost identical, and their differences mirror those of the Affidavits as noted in ¶ 5 above.

7. An Order Awarding Damages by default against Ms. Masaryk was executed by the Honorable L. Casey Manning on March 21, 2016. It was file stamped on March 21, 2016, as well. This Order sets the amount of damages against Ms. Masaryk at \$25,000.00. The Order states that the damages hearing was held on March 22, 2016.

8. A second Order Awarding Damages by default against Ms. Masaryk was executed by the Honorable L. Casey Manning on March 22, 2016. It was file stamped on March 23, 2016. This second Order sets the amount of damages against Ms. Masaryk at \$45,000.00, \$20,000.00 more than in the first Order. The Order states that the damages hearing was held on March 22, 2016.

9. A Form 4 Judgment in a Civil Case was executed by the Honorable L. Casey Manning on March 22, 2016. It was file stamped March 28, 2016. This Form 4 Judgment sets the amount of damages against Ms. Masaryk at \$45,000.00.

APPLICABLE STANDARDS

S.C. R. Civ. Proc. 60(b)(4) states:

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

...
(4) the judgment is void;

The decision to deny or grant a motion made pursuant to Rule 60(b), SCRPC is within the sound discretion of the trial judge, but an abuse of that discretion occurs when the

order of the court is controlled by an error of law or where the order is based on factual findings that are without evidentiary support. *Ware v. Ware*, 404 S.C. 1, 10, 743 S.E.2d 817, 822 (S.C. 2013).

ARGUMENT

I. Plaintiff's failure to comply with the mandatory requirements of S.C. Code § 15-9-710 voids the default judgment.

S.C. Code § 15-9-710 governs when service by publication may be had. The prefatory language of § 15-9-710 states:

When the person on whom the service of the summons is to be made cannot, after due diligence, be found within the State and (a) that fact appears by affidavit to the satisfaction of the court or judge thereof, the clerk of court of common pleas, the master, or the probate judge of the county in which the case is pending and (b) it in like manner appears that a cause of action exists against the defendant in respect to whom the service is to be made or that he is a proper part to an action relating to real property in this State, the court, judge, clerk, master, or judge of probate may grant an order that the service be made by publication of the summons in any one or more of the following cases: ... (Emphasis added.)

In the opinion of *Caldwell v. Wiquist*, the Court of Appeals of South Carolina held expressly and explicitly that an Affidavit requesting service by publication that fails to support with facts its statement that the sought-after defendant could not be located after alleged due diligence, constitutes a jurisdictional failure to comply with the mandatory requirements of the statute, rendering the resulting default judgment void. 402 S.C. 565, 741 S.E.2d 583 (Ct.App. 2013).

Mr. and Mrs. Caldwell, plaintiffs in the opinion, each filed a Summons and Complaint in Beaufort County alleging property damage and personal injury sustained in a

motor vehicle accident the proximate cause of which allegedly was Wiquist's negligence. Upon filing, the Caldwells delivered the Summonses and Complaints (one for each plaintiff) to the Beaufort County Sheriff's Department (BCSD), for service upon Wiquist. *Id.*, 402 S.C. at 568, 741 S.E.2d at 585. The BCSD thereafter "executed affidavits of non-service on Wiquist at her last known address that was listed on the traffic collision report, providing the explanation: "ADDRESS VACANT." *Id.* The record in *Caldwell* further showed that the "Caldwells did not attempt to serve Wiquist with the summonses and complaints by mail directed to the address for Wiquist that was listed on the traffic collision report." *Id.*

The Caldwells then filed affidavits requesting service by publication, and the Clerk of Court for Beaufort County entered orders for service by publication. Affidavits were later filed stating that the required notice was published in *The Island Packet* and *The Beaufort Gazette*, and motions for default judgments and default hearings followed. Default judgments and damages were entered in favor of the Caldwells. Defendant Wiquist received notice of the default hearings after the mailed notice of the hearings was forwarded to her then-current address by the US postal service.³ *Id.*, 402 S.C. at 568 - 569, 741 S.E.2d at 585.

Wiquist argued the Orders of Service by Publication did not comply with S.C. Code § 15-9-740 (a companion statute also addressing service by publication). The Court of Appeals, in agreeing the Caldwells failed to comply with the mandatory requirements of the service by publication statutes, acknowledged it has traditionally been held that "where a

³ The Affidavit of Ms. Masaryk, attached as Exhibit I, states she changed her address with the USPS both times she moved and she received forwarded mail from the USPS, first from The Hollows apartments at 1300 Longcreek, and then from the 105 Saluda Pointe apartments. Ms. Masaryk also states she left her contact information with both apartment complexes.

party contests the validity of an order of publication based on a lack of diligence in attempting to locate the party, ... the trial court is 'without authority to overrule the finding of the clerk of court.'" *Id.*, 402 S.C. at 569, 741 S.E.2d at 585–586 (citation omitted). The Court, however, distinguished the Wiquist matter from other opinions, noting that in those cases, the affidavits requesting service by publication "included at least *some* facts concerning efforts to locate the defendant" in the State of South Carolina. *Id.*, 402 S.C. at 570, 741 S.E.2d at 586 (emphasis in original). The Court of Appeals then analyzed the affidavits requesting service by publication filed by the Caldwells to demonstrate their deficiencies.

First, the Caldwells' affidavits stated: "The Defendant who is a non-resident of Beaufort County, South Carolina, cannot be served a copy of the Summons in Beaufort County, and it is necessary to serve her by publication." *Id.*, 402 S.C. at 571, 741 S.E.2d at 587. S.C. Code § 15-9-710 is not limited to a county of non-service; it mandates due diligence to locate within the State. Second, the affidavits requesting service by publication did not contain any statements regarding due diligence undertaken to find the defendant in the State of South Carolina, only in the county of Beaufort. *Id.* Plaintiff Williams's Affidavits also have no facts supporting any effort to locate Ms. Masaryk anywhere other than at 1300 Longcreek and Richland County. As a result of these deficiencies in the affidavits requesting service by publication, the Court of Appeals found that the Caldwells' affidavits were "facially defective" under S.C. Code § 15-9-710. *Id.*

The Court of Appeals then analyzed several South Carolina opinions which have required strict compliance with publication statutes in order for service by publication to be

valid.⁴ These opinions included *Riker v. Vaughn*, 23 S.C.187, 189 (1885)(South Carolina Supreme Court finds that the failure of the plaintiff to secure an order for service by publication, the only statutory method upon which a non-resident-minor could be made a party defendant, rendered service fatally incomplete, even though the minor defendant acknowledged service); *Du Bose v. Du Bose*, 90 S.C. 87, 89, 72 S.E. 645, 646 (1991)(South Carolina Supreme Court finds that the order of publication was invalid because it was not signed by the clerk on the front as required by the publication statute, noting the "rule that the statutory requirements as to constructive service by publication must be strictly carried out"); and *Ray v. Pilot Fire Ins. Co.*, 128 S.C. 323, 324, 121 S.E. 779, 779-780 (1924)(South Carolina Supreme Court finds that the affidavit requesting service by publication was "fatally defective, under the North Carolina law, on its face, in that it [did] not show that due diligence was used to find the defendant" within the state). The Court of Appeals also reviewed opinions of other jurisdictions, including North Carolina, Florida, Maryland, Mississippi, and California, which all held that not only was strict compliance with the statute governing service by publication and due diligence required, but that "[a]ffidavits devoid of averments of facts showing that due diligence was exercised to make service have consistently been held to be insufficient, and orders for service by publication based (upon such affidavits) have uniformly been held to have been beyond jurisdiction and void."

⁴ The South Carolina Supreme Court and Court of Appeals have consistently held that strict compliance with statutory requirements is a condition precedent necessary for jurisdiction (the power of a court to grant or deny a requested relief) to attach. See, for example, *Criterion v. Hoffman*, 258 S.C. 282, 188 S.E.2d 459 (S.C.1972), for an analysis and holding that procedural requirements prescribed by UM statute are mandatory, and strict compliance with them is a prerequisite to recovery.

Quoting from, *Calvin Mem'l Corp. v. Requa*, 5 Cal.App.3d 345, 85 Cal.Rptr. 107, 113.

(1970). The Caldwell Court then stated:

While not controlling, we find these cases persuasive. Based on the foregoing, we find the affidavit must include some factual basis upon which the court issuing the order of service by publication can find that the defendant cannot, after due diligence, be found within the state. It is the existence of this factual basis that our appellate courts have found make the order for service by publication unreviewable, absent fraud or collusion. Accordingly, the trial court erred as a matter of law in denying Wiquist's motions to set aside default judgment because the affidavits requesting service by publication did not meet the statutory requirements, and were therefore, facially defective.

Caldwell, 402 S.C. at 574-575, 741 S.E.2d at 588 (emphasis added).

In Ms. Masaryk's case, the Clerk of Court's file⁵ shows there was one attempt at personal service, by a private process server, reflected in an Affidavit of Non-Service with the following information:

Service of Process on: Michelle Masaryk.
Address of Service: 1300 Longcreek Dr., Apt. 713, Columbia, SC 29210.
Date and time of Non-Service: 9-2-2015, 6:19 p.m.
After due and diligent search, undersigned was unable to effect service.
Documents...
Comments: Resident stated, he does not know defendant, his/her whereabouts or contact information. He moved into apartment 6 months ago.

⁵ Ms. Masaryk objects and takes exception to the Affidavit of the process server, Mr. Mark Weaghtington, filed June 21, 2016. It is an attempt to retroactively supplement the information that might have been appropriate to include in the Plaintiff's Affidavits filed in support of the request for service by publication. However, not only is the information still inadequate under the *Caldwell* standards (*quality* of attempted service means as much, and in some instances, more than quantity), but to include it now as relevant to the determination of whether Plaintiff's Affidavits complied with the law back in November 2015 could lead to factual findings that are without evidentiary support.

Plaintiff Williams's Affidavit of Non-Service is in substance no different from the Affidavit of Non-Service executed by the Beaufort County Sheriff's Department, stating they went to the address on the collision report and no one (not the Defendant, and no one with her contact information) was there at that address.⁶ There is no evidence in the Clerk of Court's file demonstrating personal service on Ms. Masaryk was attempted in any other way prior to the filing of the Affidavit requesting service by publication.

Plaintiff Williams's Affidavit requesting service by publication on Ms. Masaryk states, in relevant part, only:

... that after due diligence, the Defendant cannot be found and that the Defendant is a proper party..., and that this Affidavit is made for the purposes of serving Defendant by publication.

The Order for Service by Publication granting Plaintiff William's request, states importantly, "... that said publication shall be inserted in 'The Columbia Star', a daily newspaper of the County of Richland, State of South Carolina, not less than once a week for three (3) consecutive weeks." (Emphasis in original.)

Again, Plaintiff Williams's Affidavit requesting service by publication is in substance no different from the Caldwell's Affidavits which stated Wiquist could not be served in Beaufort County (because she could not be served at her last known address) and had no factual statements showing what acts of due diligence were undertaken to find Wiquist in the State of South Carolina, as opposed to the county of her last known address. In fact, Plaintiff's Affidavit itself contains less "information" in this regard than did the

⁶ The Affidavit of Kim Cuervo, attached as Exhibit 2, avers Ms. Masaryk's contact information was available in The Hollows' database as recently as June 8, 2016. A quick walk from apartment 713 to the complex office would have at least informed the Plaintiff's process-server of the existence of additional contact information, even if more effort would be needed to secure it.

Caldwells'. Further, Plaintiff Williams's Order for Service by Publication itself states that the publication in which service was to be made was a daily newspaper published in Richland County.⁷

Like the Caldwell's documentation, Plaintiff Williams's Affidavits are facially defective because they contain and provide no factual basis "upon which the court issuing the order of service by publication [could] find that the defendant cannot, after due diligence, be found within the state." Plaintiff Williams's failure to comply strictly with the statutory requirements of due diligence mandated by S.C. Code §15-9-710 means that the court lacked jurisdiction to give both an Order allowing service by publication and an Order awarding damages and requires that the default judgment entered against Ms. Masaryk be set aside as void.

II. Plaintiff's notice by publication in this matter is factually insufficient to satisfy both this State's policy to resolve cases on the merits and the Constitutional requirements of due process.

The Caldwell Court explicitly recognized in its remaining analysis that requiring strict compliance with the factual due diligence requirements of S.C. Code § 15-9-710 is woven together with two deeper principles: one, this State's policy to resolve matters on the merits, and two, the Plaintiff's responsibility to comply with the Constitutional requirements of due process. *Id.*, 402 S.C. at 575-577; 741 S.E.2d at 588-589. Plaintiff Williams's failure to provide any factual basis for requesting and securing an Order granting service by publication violates both these tenets.

⁷ It appears the Columbia Star is distributed in zip codes overlapping into Lexington County, per its "newsstand location" PDF, the tab for which is found at http://www.thecolumbiastar.com/news/2016-06-17/Front_Page. However, The Columbia Star is not a state-wide publication.

The entire issue that service by publication be made after Plaintiff has made and demonstrated a true and meaningful due diligence search for the Defendant is inextricably intertwined with Constitutional due process and this State's and this Country's age-old policy of resolving cases on the merits. One leads to the other and to the other. A true and meaningful and factually diligent attempt to locate a defendant heightens the possibility that the defendant will indeed be found, even if not at the last known address on the collision report. Further and in-depth inquiry has the potential to unearth that person, that tidbit of information that would set the searching plaintiff on the right path to finding, and thus properly serving a defendant. Further and in-depth inquiry by a plaintiff has the goal of actually locating the defendant, so that the defendant may then decide how he wants to defend or otherwise protect his rights, as accorded by Due Process and the 14th Amendment of the U.S. Constitution. It is absolutely true that a defendant may not always be found, but that is not the point. The point is, a defendant has the Constitutional right to be heard in matters brought against him, and the only way a defendant gets to exercise that Constitutional right is by being given timely notice of that opportunity. When a plaintiff tries to serve a defendant essentially only in the county of the defendant's last known address, and then makes a facially deficient and defective affidavit (one that does not factually support any meaningful effort to make personal service) requesting service by publication, and then makes that service by publication in a local newspaper that is 95% limited to the defendant's county of last known address⁸, there can be no doubt and no

⁸ A copy of the Columbia Star's distribution locations, printed out June 22, 2016, shows newsstands in 11 Columbia area zip codes. (Exhibit 3.) Eight cover Richland County zip codes; three (29033, 29169, and 29210) overlap or otherwise cover Lexington County. The address used by Plaintiff Williams to attempt personal service, 1300 Longcreek Dr., Columbia, SC 29210, is actually in Richland County.

argument that the plaintiff has managed to create her own reality of non-service and that defendant's Constitutional rights to be heard and defend have been egregiously violated.

The elements of due process are so basic to our legal system, so enmeshed in our daily thought process, that quotes and authority are almost unneeded. However, here are some in order to set the stage for the opinions still to be discussed:

"Undoubtedly, as contended by the [defendants], the essential element of due process of law is the opportunity to be heard, and a necessary condition of such opportunity is notice." *Jacob v. Roberts*, 223 U.S. 261, 265, 32 S.Ct. 303, 305, 56 L.Ed. 429 (1912);

"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.... [n]otice by publication is not sufficient with respect to an individual whose name and address are known or easily ascertainable." *Robinson v. Hanrahan*, 409 U.S. 38, 39-40, 93 S.Ct. 30, 31, 34 L.Ed.2d 47 (1972);

"The law disfavors default judgments as a general matter"; and "failure to afford notice to an interested party violates 'the most rudimentary demands of due process of law.'" *Tazco, Inc. v. Director, Office of Workers Compensation Program, US DOL*, 895 F.2d 949, 950 (4th Cir.1990);

"Furthermore, our decision to reverse the trial court's refusal to set aside the default judgments is consistent with the policy of our state to resolve cases on the merits. To avoid resolving litigation by default, strict compliance with the publication statutes is appropriate." *Caldwell v. Wiquist*, 402 S.C. 565, 575, 741 S.E.2d 583, 588 (Ct.App. 2013);

In the opinion of *Jacobs v. Roberts*, the Supreme Court of the United States detailed what efforts to locate a defendant for personal service constitute due diligence. Yes, the Court DID find that the plaintiffs in that case DID exercise due diligence, but one look at the list of efforts which was detailed on the plaintiffs' Affidavit requesting service by publication shows how the Court came to this conclusion:

We have set out the affidavit. It shows inquiry of the whereabouts of [defendants] of their former neighbors and other residents of San Diego. One of them replied that he had not heard of them, of their residence or postoffice address, for over twenty-five years. Another also had not heard from them and did not believe they were in the state. Inquiry was also made of nineteen county officers and three state officers, sheriffs, county clerks, tax collectors, county and state assessors, county and state, and of the postmasters of the state. Neighbors, residents, and officers, who in the intercourse and business life would most almost necessarily come into contact with [defendants], had no knowledge of them.... We think [defendants] were afforded due process."

Jacob v. Roberts, 223 U.S. 261, 267, 32 S.Ct. 303, 305-306, 56 L.Ed. 429 (1912).

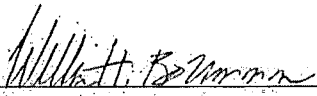
Plaintiff Williams' effort of one attempted service, plus one contemporaneous conversation with the new resident at Ms. Masaryk's old apartment, pales in comparison to *Jacob* and was woefully inadequate. Ms. Masaryk and her Constitutional rights never stood a chance in the face of Plaintiff's *pro forma* attempts, *pro forma* affidavit, and it was error for the court to grant a default judgment and (multiple) damages awards against her. All the Orders and default judgment(s) at issue in this case should be voided for lack of jurisdiction and the matter dismissed.

CONCLUSION

Plaintiff Williams failed to meet her responsibility of providing Constitutional due process when she failed to comply strictly with the requirements of S.C. Code § 15-9-710 and exercise and demonstrating meaningful due diligence when securing an Order permitting service by publication on Defendant Masaryk. Constitutional due process rights necessitate more than just a perfunctory, *pro forma* filling in of the blanks. – Ms. Masaryk deserves to be given the opportunity to present her defenses against Plaintiff's allegations, and she should not be denied that simply because she no longer lived at the address on the collision report and simply because the words "due diligence" were included in a court

filing. This Court should void the default judgment(s) and the multiple damages awards entered against Ms. Masaryk and dismiss this matter for lack of jurisdiction.

ROGERS TOWNSEND & THOMAS, PC

By: 

William H. Bowman, III

P. O. Box 100200, Columbia, SC 29202

(803)771-7900; bbowman@rtt-law.com

Attorney for uninsured motorist carrier GEICO

Columbia, South Carolina
June 27, 2016

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Pearline Williams,

Plaintiff,

vs.

Larita Hipp and Michelle Masaryk,

Defendants.

IN THE COURT OF COMMON PLEAS

Case Number:
2015-CP-40-05106

AFFIDAVIT OF
MICHELLE MASARYK

RICHLAND COUNTY
FILED
2016 JUN 14 PM 1:30
JEANETTE HOSBRIDGE
Clerk & S.

PERSONALLY APPEARED BEFORE ME, Michelle Masaryk, who being duly sworn,
deposes and states:

1. I am a Defendant in the above captioned action.
2. I am 29 years of age and since August 10, 2015, I have been employed as a 1st grade elementary school teacher at Bodkin Elementary School in Pasadena, Maryland.
3. I was involved in an automobile accident in the City of West Columbia, South Carolina on December 18, 2014, which is the subject of this action. At that time I was employed as a 1st grade elementary school teacher at Forest Lake Elementary School in Columbia, South Carolina.
4. At the time of the accident, I resided at 101 Saluda Pointe Drive, Apt. 225, Lexington, SC 29072. I moved to 101 Saluda Pointe on November 16, 2014.
5. Prior to moving to 101 Saluda Pointe Drive, Apt. 225, I resided at 1300 Longcreek Drive, Apt. 713, Columbia, SC, 29210, which is the address appearing on my South Carolina driver's license on the date of the accident.
6. I completed an online change of address form with the US Postal Service when I moved from my apartment at 1300 Longcreek Drive to my apartment at 101 Saluda Pointe. Mail



COPY

ROA_000058

was forwarded, and I received mail forwarded by the USPS from the Longcreek address to my Saluda Pointe address after my move on November 16, 2014.

7. I also provided my new Saluda Pointe address information to the property management office at the apartments on Longcreek. The property management office also had my email address and my cell number.
8. On August 4, 2015, I moved my permanent residence from 101 Saluda Pointe Drive, Apt. 225, Lexington, SC 29072, to 1029 Meandering Way, Odenton, Maryland, 21113, where I have lived continuously to the present. I moved to Maryland to accept the teaching position which I now hold.
9. As with my prior move, I completed an online change of address form with the US Postal Service when I moved from my apartment at 101 Saluda Pointe to 1029 Meandering Way, Odenton, Maryland. Mail was forwarded, and I received mail forwarded by the USPS from the Saluda Pointe address to the Meandering Way address after my move on August 4, 2015.
10. Additionally, I notified my employer (Richland District Two/Forest Lake Elementary) at the end of July or beginning of August 2015 that I was moving to Maryland to accept a teaching position there. I gave them the name and address of my new employer in Maryland.
11. I notified the cable company, Time Warner, in August 2015 of my upcoming move in order to terminate service and billing at the Saluda Pointe apartment.
12. The Saluda Pointe property management was also informed in August 2015 of my upcoming move. Due to a separate issue, I was not released from my Saluda Pointe lease until December 3, 2015. Resolution of this separate issue, in addition to the

existence of a live lease, required I stay in contact with the Saluda Pointe property management.

13. I contacted the electric company, SCE&G, to terminate services at 101 Saluda Pointe Drive in October 2015.

14. Since moving to Maryland, I have not owned nor had any interest in any real or personal property in the state of South Carolina.

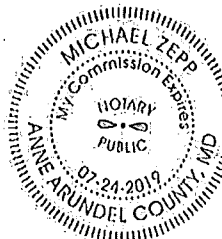
15. At the time of the automobile accident of December 18, 2014, I was operating my vehicle in a westerly direction on SC Road 30 [Leaphart Road] near the City of West Columbia. Traffic in front of me was stopped, so I slowed to a full stop as well. I was at a complete and full stop, not moving at all, when suddenly and without warning an automobile driven by the Defendant Larita Hipp crashed into the rear of my vehicle, causing my vehicle to be pushed forward into the rear of the vehicle operated by the Plaintiff, which was directly in front of me.

16. I learned about the default judgment against me when I received a call from GEICO on March 30, 2016. I never received any mail from either the Richland County Clerk's Office or attorney Jerry Reardon.

Michelle Masaryk
Michelle Masaryk

SWORN to before me this
24th day of June, 2016.

Michael Zepp
Notary Public for Maryland
My Commission expires: 07-24-19



STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Pearline Williams,

Plaintiff,

vs.

Larita Hipp and Michelle Masaryk,

Defendants.

IN THE COURT OF COMMON PLEAS

Case Number:
2015-CP-40-05106

AFFIDAVIT OF
KIM CUERVO

2016 JUN 14 PM 3:30
RICHLAND COUNTY
FILED
JEANETTE W. HARRIS
CLERK, C.P. & S.S.

PERSONALLY APPEARED BEFORE ME, Kim Cuervo, who being duly sworn deposes and states:

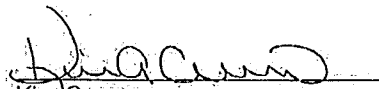
1. I am employed as the community manager at The Hollows Apartments, located at 1300 Longcreek Drive, Columbia, SC, 29210. I have been the community manager at this location since March 2014.
2. I was employed as the community manager in November 2014.
3. I recall Ms. Michelle Masaryk was a tenant at The Hollows Apartments. I recall Ms. Masaryk moved out of her apartment, no. 713, at The Hollows in November 2014.
4. I have examined and recognize what is marked as Exhibit 1 to this Affidavit.
5. Exhibit 1 consists of two pages. One page is an email I wrote and sent to Ms. Masaryk on November 17, 2014, after a walk-through of her old apartment, no. 713, was completed. The second page is a print-out of Ms. Masaryk's final water bill for water used at apartment 713, which I attached to my email as proof of the charges due.
6. As community manager at The Hollows Apartments, I am responsible for acquiring and maintaining the contact information of our tenants when they move from The Hollows. Getting this contact information is not only standard operating procedure for The Hollows, but it is actually required by the South Carolina Landlord-Tenant Act. The



COPY

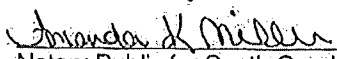
former tenant's contact information is acquired and maintained for various reasons, including, for example, the mailing of refund checks to the former tenant.

7. Following standard operating procedure, I recall I asked Ms. Masaryk for and she provided me the address of her new apartment when she moved out from The Hollows in November 2014.
8. In relation to giving this Affidavit, I was asked to check if Ms. Masaryk's contact information from November 2014 was still in The Hollows database. I did so and confirmed that it is. Exhibit 2 is Ms. Masaryk's Move-Out Statement which reflects the forwarding address she provided in November 2014. I printed this Statement on June 8, 2016.
9. The contact information on Ms. Masaryk's Move-Out Statement, which is used to mail closing balance information, includes a personal phone number and the address of 101 Saluda Pointe Drive, Apt. 225, Lexington, SC 29072.
10. I have no recollection of anyone coming to The Hollows property management office on or about September 2, 2015, to inquire about obtaining any of Ms. Masaryk's contact information.


Kim Cuervo

SWORN to before me this

9 day of June, 2016


Notary Public for South Carolina
My Commission expires: 9-9-18

„Nichtelle,

KIRA GUENZO
Community Manager
F 603.798.2255
F 803.772.2689
thollows@nashville.com
1300 Long Creek Drive • Columbus, SC 29210
www.thollowsapartments.com

PROPERTY NO.	13770		
CUSTOMER ACCOUNT	000300570-001		
CUSTOMER NAME	MICHELLE MAGARYK		
SERVICE ADDRESS	1300 LONGCREEK DRAPT 11713		
BILLING PERIOD	10/11/2014-11/10/2014	BILL DAYS	10
BILLING DATE	11/17/2014		

NWP Services Corporation

FINAL BILL

SERVICE TYPE	DESCRIPTION	AMOUNT
Allocated Sewer Service		\$10.01
Allocated Water Service		\$0.00
Final Bill Fee		\$0.00
Service Fee		\$1.02
Transfer Fee		\$3.00

PREVIOUS BILL	PAYMENTS	CREDITS	CURRENT CHARGES	LATE FEE	NET AMOUNT DUE
\$0.00	(\$0.00)	\$0.00	\$30.20	\$0.00	\$30.20
The Resident Utility Charge per Day is \$1.04			THIS BILL IS DUE AND PAYABLE UPON RECEIPT Please make payment at the Property Office prior to moving out. THIS BILL DOES NOT INCLUDE YOUR PROPERTY MANAGEMENT CHARGES. Please follow up with your property manager with any questions related to additional charges that might be due. DO NOT SEND PAYMENT TO NWP.		

BILLING INFORMATION:

This bill you have received is from NWP Services Corporation, a provider of billing services, and is not from the retail public utility. You are responsible for the payment of the net amount due. Your bill shows the beginning and ending dates for each billing period and the amount of the bill.

If you have questions regarding your final bill, please contact the property office. If you have any questions regarding your billing information, please contact our Customer Service Department.

Your account has been closed. Please make your final payment to the property office prior to moving out.

E-mail Inquiries: residents@nwp.com
Go to www.nwp.com to inquire about your final bill and receive information about your final bill.

Write Inquiries To:
NWP Services Corporation
ATTN: Customer Service
P.O. Box 10001
Mojave, CA 92023-0001

For Service, Conservation, Inquiry, and Other Information:
Please Call Toll Free: (800) 670-0465
HOURS: 8:00 AM - 6:00 PM PST Mon - Fri
24 Hour Access to Billing and Payment Information
Web Site: www.nwp.com

EXHIBIT 1
CUERVO AFFIDAVIT

ROA_000064

Move Out Statement

Date: 06/08/2016

Codo	10054820	Property	1080	Lease From	07/21/2014
Name	Michelle Masaryk	Unit	0713	Lease To	07/20/2015
Address	101 Saluda Pointe Dr. Apt 225	Status	Past	Move In	07/21/2014
		Rent	690.00	Move Out	11/18/2014
City	Lexington, SC 29072			Notice	11/04/2014
Telephone	(0) () (11)				

Date	Description	Charge	Payment	Balance	Chg/Rec
	Balance as of 11/01/2014			0.00	
11/01/2014	Pest Control (11/2014)	3.00	0.00	3.00	3762724
11/01/2014	Monthly Pet Rent (11/2014)	20.00	0.00	23.00	3762725
11/01/2014	Rent (11/2014)	670.00	0.00	693.00	3762726
11/01/2014	Trash Revenue (11/2014)	6.00	0.00	699.00	3795768
11/01/2014	Water & Sewer (11/2014)	41.23	0.00	740.23	3795957
11/01/2014	Service Fee RUB (11/2014)	4.02	0.00	744.25	3796146
11/04/2014	chk# 107	0.00	467.05	277.20	2384835
11/06/2014	Late Charges	75.00	0.00	352.20	3806255
11/06/2014	PAID OH Still	-75.00	0.00	277.20	3807064
11/10/2014	Security Deposit credit	-100.00	0.00	177.20	3834637
11/10/2014	Rent (11/2014) Credit 12 days	-268.00	0.00	(90.80)	3834638
11/10/2014	Monthly Pet Rent (11/2014) Credit 12 days	-0.00	0.00	(90.80)	3834639
11/18/2014	Pest Control (11/2014) Credit 12 days	-1.20	0.00	(100.00)	3834640
11/18/2014	Water/Sewer	88.81	0.00	(11.19)	3834641
11/18/2014	Replaco 1 blind iWrite Off by Charge Cui# 3834662	20.00	0.00	0.01	3834642
11/18/2014	iWrite Off Charge Cui#3834642	-0.01	0.00	0.00	3834662

This is an attempt to collect a debt.

EXHIBIT 2
CUERVO AFFIDAVIT

ROA_000065

Columbia ★ Star

Distribution Outlets

29201
 Andrews Auto
 Columbia Eye Clinic
 Carolina Occupational Health
 Mack's Restaurant
 Nathan's Restaurant
 Clarion Townhouse
 Constan Carwash
 Christopher Towers
 USC Humanities Bldg.
 Columbia Arthritis
 Carolina Cardiac
 Red Cross
 Bank of America Plaza
 USC Tech Center
 Villa Ironco
 1728 Main St.
 Main St. @Blanding
 Army/Navy Store
 Main St. @Hampton
 Main St. @Washington
 Arcade Mall
 Main St. @Gervais
 Assembly St. @Gervais
 Gervais/Assembly Parking Garage
 Fancy That Bistro
 Hampton Place Cafe
 Sumter St. @Hampton
 Sumter @YMCA
 Palmetto Pulmonary
 Olive Grill Restaurant
 Chamber of Commerce
 Strom Thurmond Bldg.
 Assembly St. Post Office
 Hampton St Book Props
 Downtown Library
 AT&T Building
 AFLAC Building
 Maurice Bessingers
 Lizard's Thicket
 Ho Name Deli
 Historic Columbia Foundation
 Eastern States
 Sumter St. @Pendleton
 Carolina Cafe
 Rembert Pennis Bldg.
 Blatt Bldg.
 Brown Bldg.
 Mellow Mushroom
 912 Lady St.
 Gervais St. @Lincoln
 Trustus Theater
 Colonial Life Center
 Todd & Moore
 Palmetto Pig
 Amtrak
 Stronghold Gym
 Seawell's
 Bernie's Restaurant
 Heathwood Hall
 Doc's BBQ
 Green's
 CC Pickson Co.

29205
 Devine Foods
 Midlands Health
 Earth Fare
 Preher HS
 Mad Platter
 Midas
 Bethel AME Church
 Columbia Peridontal
 College Mart
 Finlay House
 Kings Hair
 Pawley's Front Porch
 Skeebo's Exxon
 Samuel's Deli
 Andy's Deli
 DiPrato's Deli
 Sen. Isadore Lurie Center
 Cock 'n Bull
 Rosewood Market
 5th Avenue Deli
 Ole Timey Meat Market
 Medicine Mart
 Long's Prugs
 Piggly Wiggly
 Lizard's Thicket
 Salinas Multiservices
 Jiffy Lube
 China Buffet
 Eggroll Chen
 Chocolate Nirvana
 LaBrasca's Pizza
 Bolangle's
 Maurice Bessinger's
 Shandon UMC
 Mill Creek Pet Center
 Five Rivers Market
 Grilled Teriyaki
 Delaney's, Revente
 Harden St. @Devine
 Yesterday's Restaurant
 Hair Design
 Groucho's Deli

29204
 Richland District One
 Richland County
 Suddeth Automotive
 Allen University
 Capital Supply
 Uncle Bob's
 Quicktrip
 Burger King
 Columbia Mental Health
 BP Cornerstop
 A Cut Above
 The Other Store
 Sato
 Progressive Physical Therapy
 Casa Linda Restaurant
 Dr. Hatties Green
 Zesto's
 Morganelli's

29204
 Lizard's Thicket
 The Pizza Joint
 Miyo's Restaurant
 Hair Doodles
 Forrest & Grant Photo
 Carolina Verrnatology
 Middleburg Plaza
 Mousetrap Restaurant
 Forest Pines
 Pruitt Nursing Home
 Providence Hospital
29208
 Pent Middle School
 Richland District Two
 Chic Styles
 Los Puentes Grocery
 McDonalds
 Pho Viet Restaurant
 Midas
 Mini-Mari
 Little Panda
 Pancho's
 Wynnsong Theaters
 Golden Corral
 Chiropractic Wellness Center
 Cheri's Barber Shop
 Scout & Molly's
 First Citizens
 Groucho's Deli
 4711-A Forest Drive
 Cardinal Newman School
 Village Idiot Pizza
 Atria
 Yummy Chinese
 4250 Cleaners
 Sara & Susie's Grooming
 Supplies
 Columbia's Cleaners
 Agape
29223
 Pick Pys Mercedes
 Lizard's Thicket
 Columbia Spine & Joint
 Magnolia Manor
 NHC Rehabilitation Center
 Uncle Bob's
 Albert's Deli
 Happy Pets
 ABC Hair & Nails
 Maurice Bessinger's
 Nick's Restaurant
 Sub Station II
 Vary's Restaurant
 Katie & Irwin Kahn JCC
 Palmetto Orthopedic
 9400 Two Hoot Rd.
 Enbers
 Wildwood Pawns
 Jimmy's Mart
 UPS Store

29223
 Schiano's Old Tyme Pizza
 Spring Valley HS
 OMO Music Center
 Army National Guard Office
 Plantation Storage
 Palmetto Pediatrics
 Groucho's Deli
 P's Wings
 Landy's Pharmacy
 Space Place Storage
 The Waterford
 Life Care Center
 LH Pig BBQ
29209
 Hampton Hill Athletic Club
 Columbia's Cleaners
 Hammond School
 Shoney's
 Uncle Bob's
 McDonald's
 Big T BBQ
 Clito
 BP Convenience Store
 Lizard's Thicket
 Bolangle's
 Chick-til-A
 Petsense
 Pizza Palace
 7-Up Mini-Mart
 Curls & Swirls Beauty Shop
 Mill Creek Greenhouses
 PCP Food Mart
 Cheapway Gas Station
 Shell Gas Station
 ABC
 Vacuums, etc.
29203
 Finklin Pharmacy
 4100 N. Main
 Columbia College
 NCBA
 Angelo's Zesto
 The Vino Garage
 South University
 Providence NE Hospital
29033
 P's Wings
 Midas
 Kenny's Auto Supply
 Shuman-Owens Supply
 La Fiesta
 Maurice Bessinger's
 Semm Brothers
 VB Hook & Co.
 George's Southside
 Southern Seafood & Diet
 Tacos & More
 Jiffy Lube
 Tony's Pizza

29033
 Sub Station II
 Lizard's Thicket
29169
 Three Rivers Antiques
 Bill's Pickin Parlor
 Outdoorwood Furniture
 What-a-Burger
 Still Hopes
 Agape
 West Metro Chamber
 Creative Sewing
 Agalin & Agalin
 Compton's Kitchen
 Quality Inn
 Backyard Cafe
 Health Directions
 Anedissys
 Firehouse Subs
 America's Value Inn
 Mai Thai Cuisine
 Orecan Gardens
 Happy China Buffet
 Lizard's Thicket
 Jiffy Lube
 Sunset Carwash
 Jaret's Jungle
 Laurel Crest
 Eggroll Station
 Espresso & Wine Bar
 Cafe Strudel
 Carolina Lodge
 Lizard's Thicket
 A-One Express BP
 Lexington County Library
29210
 Midas
 2 Bingers Restaurant
 Jiffy Lube
 Lizard's Thicket
 Raceway Gas Station
29081
 Peking Gourmet
 Long's Prugs
 Horse & Garden Ace Hardware
 Wippowill Cafe
 Mr. Punky's
 Ringo's Produce
 PLK Eastover
 Margaret's Restaurant
 Lower Richland Barber Shop
 Lower Richland HS
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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Pearline Williams,

Plaintiff,

vs.

Larita Hipp and Michelle Masaryk,

Defendants.

IN THE COURT OF COMMON PLEAS

Case Number: 2015-CP-40-05106

DEFENDANT MICHELLE MASARYK'S

RULE 59(e)

MOTION TO ALTER OR AMEND

RICHLAND COUNTY
FILED
2016 JUN -8 AM 10:22
CLERK OF COURT
J. C. P. & D. S.

YOU WILL PLEASE TAKE NOTICE THAT at such time and place as is set by the court, pursuant to Rule 59(a) and (e), SCRPC, Defendant Michelle Masaryk, by and through her undersigned counsel, will move the court for Relief from the attached Order filed on July 22, 2016, and received by the undersigned counsel on July 25, 2016.

This motion is based on the following grounds:

1. The Order Denying Ms. Masaryk's Motions to Set Aside Default Judgment creates and utilizes a legal interpretation of S.C. Code §15-9-710 not written in the plain, ordinary, and literal text of the statute, which is outside the bounds of the doctrine of statutory construction and interpretation, and which also goes against the applicable common law precedent, in violation of the doctrine of *stare decisis*.

2. The Order Denying Ms. Masaryk's Motions to Set Aside Default Judgment accepts and considers as evidence an Affidavit filed June 21, 2016 describing additional alleged due diligence, such Affidavit being evidence inadmissible at a June 2016 hearing determining whether Plaintiff's service by publication documentation in November 2015 was legally sufficient at that time. Common law precedent interpreting S.C. Code §15-9-710 has not reviewed such after-created evidence to determine whether a plaintiff's information at the time

of obtaining a service by publication order was adequate. To do so creates a manifest injustice to the defendant.

3. Plaintiff failed to present probative evidence that her factual situation of attempted due diligence is materially different, and therefore distinguishable from the case precedent of *Caldwell v. Wiquist*, 402 S.C. 565, 741 S.E.2d 583 (Ct.App.2013), in which the South Carolina Court of Appeals found that plaintiff's service by publication was "facially defective" and therefore unacceptable to permit service by publication.

4. Plaintiff failed to present evidence that her *pro forma* submission to the Clerk of Court in November 2015 complied, under the factual circumstances of this matter, with Constitutional Due Process requirements, factually described, established, accepted, and followed by the common law precedent both of this State and of the Federal courts. The Order Denying Ms. Masaryk's Motions to Set Aside Default Judgment outlines "findings of fact" that are conclusory and circular and fail to show factually how Plaintiff has met her Constitutional burdens.

5. The Order Denying Ms. Masaryk's Motions to Set Aside Default Judgment applies an erroneous legal interpretation of the two different money judgment amounts handwritten in the three different judgments executed by the hearing court, to identify the differences as "scrivener's errors". As such, one amount is arbitrarily selected over the other.

ROGERS TOWNSEND & THOMAS, PC

By: William H. Bowman, III
William H. Bowman, III
P. O. Box 100200, Columbia, SC 29202
(803)771-7900; bbowman@rtt-law.com
Attorney for Defendant Michelle Masaryk

Columbia, South Carolina
August 4, 2016

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Pearline Williams,

Plaintiff,

vs.

Larita Hipp and Michelle Masaryk,

Defendants.

IN THE COURT OF COMMON PLEAS

Case Number: 2015-CP-40-05106

DEFENDANT

MICHELLE MASARYK'S
MEMORANDUM IN SUPPORT OF
MOTION TO ALTER OR AMEND

2016 AUG - 8 AM 10:20
FILED
RICHLAND COUNTY
CLERK OF COURT
JENNIFER W. MOORE
P. 2 C.S.

Defendant Michelle Masaryk submits this Memorandum in support of her Motion to Alter or Amend the Order Denying Defendant's Motion to Dismiss, pursuant to Rules 59(a) and 59(e) of the *South Carolina Rules of Civil Procedure* on grounds that the Court has committed clear errors of law and fact in its findings and conclusions.

FACTS¹

1. Plaintiff Williams filed a Summons and Complaint in Richland County on August 20, 2015.
2. On or about November 13, 2015, Plaintiff's attorney filed an Affidavit requesting service by publication based on one attempt of personal service made upon Ms. Masaryk. An Affidavit of Non-Service was executed by the private process server and memorialized one attempt of personal service at Ms. Masaryk's 1300 Longcreek apartment. It also averred he spoke only with the current resident of that apartment. The Affidavit of Non-Service was filed with counsel's affidavit.
3. Counsel's Affidavit requesting an Order for Service by Publication did not aver any facts additional to that of the process server's Affidavit.
4. An Order for Service by Publication was signed and filed by the Richland County Clerk of Court on November 13, 2015.

¹All references to documents in this Fact section are in the Court's file.

5. An Affidavit from the Columbia Star was filed December 15, 2015, stating the Notice of the Summons filed in Plaintiff's action was published in the Columbia Star in the issues dated November 27, December 4, and December 11, 2015.

6. Affidavits of Default were filed by Plaintiff on February 26, 2016 and March 8, 2016.

7. Orders of Default executed by the Honorable Alison Lee were filed on February 26, 2016 and March 8, 2016.

8. An Order Awarding Damages by default against Ms. Masaryk was executed by the Honorable L. Casey Manning on March 21, 2016. It was file stamped on March 21, 2016, as well. This Order sets the amount of damages against Ms. Masaryk at \$25,000.00.

9. A second Order Awarding Damages by default against Ms. Masaryk was executed by the Honorable L. Casey Manning on March 22, 2016. It was file stamped on March 23, 2016. This second Order sets the amount of damages against Ms. Masaryk at \$45,000.00.

10. A Form 4 Judgment in a Civil Case was executed by the Honorable L. Casey Manning on March 22, 2016. It was file stamped March 28, 2016. This Form 4 Judgment sets the amount of damages against Ms. Masaryk at \$45,000.00.

APPLICABLE STANDARDS

S.C. R. Civ. Proc. 59(a) and (c) state the grounds and mechanism for which a motion to alter or amend can be made and decided:

"A new trial may be granted ... (2) in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in the court of the State. On a motion for a new trial in an action tried without a jury, the court may reopen the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment."

In deciding a Motion to Alter or Amend under any of these grounds,

"A Rule 59(e) motion to alter or amend a judgment may be granted for three reasons; (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or a manifest injustice."

King v. Marriott Intern., Inc., 520 F.Supp.2d 744, 746 (D.S.C. 2007)²

S.C.R. Civ. Pro. 59(e) simply provides that such a motion shall be served not later than 10 days after receipt of written notice of the entry of the Court's Order.

**ERRONEOUS FINDINGS OF FACT AND CONCLUSIONS OF LAW OF WHICH THE
DEFENDANT MOVES FOR AMENDMENT OR ALTERATION**

The Defendant contends the following are errors of fact or law in the Court's Order Denying Ms. Masaryk's Motions to Set Aside Default Judgment entered on July 22, 2016, and craves correction of same:

1. All Findings, entries 1 – 9, in Order Denying Defendant Masaryk's Motions to Set Aside Default Judgment entered on July 22, 2016, appearing at pages 5 – 6 inclusive.
2. That Plaintiff's process server's subsequent Affidavit filed June 21, 2016 is admissible and can be considered now as evidence that Plaintiff was duly diligent in locating Defendant in November 2015.
3. That Defendant's move from one address in South Carolina, or from South Carolina itself, has any bearing on whether Plaintiff was duly diligent in locating Defendant for service.
4. Any conclusion, finding, or implication that the applicable statute or statutes are not to be strictly construed according to both the plain and ordinary, but literal language of the statute and in keeping with established precedent interpreting same.
5. Any conclusion, finding, or implication that the doctrine of *stare decisis* is not recognized in South Carolina and that *Caldwell v. Wiquist*, 402 S.C. 565, 741 S.E.2d 583 (Ct.App. 2013) is not the precedent by which this matter is controlled.

² *F.R. Civ. Pro.* 59(a) utilizes the same grounds as *S.C. R. Civ. Proc.* 59(a) for determining when a motion to alter or amend may be granted: "After a nonjury trial, the court, on motion for a new trial, open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones, and direct the entry of a new judgment."

6. Any conclusion, finding, or implication that the facts of this case are in substance not close enough to the facts of *Caldwell* to warrant a finding that Defendant has proved the Default Judgment is void and to warrant vacating of all Orders awarding Damages to Plaintiff Williams.

7. Any conclusion, finding, or implication that the Court awarding damages made three scrivener's errors in the written judgment Orders, and any conclusion, finding, or implication that Plaintiff can now choose which damage award suits her best.

ARGUMENT

The Order Denying Ms. Masaryk's Motions to Set Aside Default Judgment (hereinafter, "Order"), as drafted, disregards the plain and clear language of the primarily applicable statute, S.C. Code §15-9-710³, and fails to comply with the doctrine of *stare decisis* regarding construction of statutes by the courts, the precedent established by the South Carolina Court of Appeals in *Caldwell v. Wiquist* regarding facially defective affidavits requesting service by publication and the case law preceding it, and the precedent established by cases such as *Jacobs v. Roberts*, a Supreme Court of the United States opinion, and other precedent regarding service by publication and compliance with Constitutional Due Process. These errors of law warrant not only the amendment and alteration of the Order, but ultimately the conclusion that all orders of default judgment and awards in this case must be voided and set aside.

The finding of *any* fact that contemplates that Plaintiff Williams was duly diligent, complied with S.C. Code §15-9-710, obtained a proper Order of Publication, met her Constitutional Due Process requirements, or any of the Findings/Conclusions of which Defendant requests amendment and alteration, rests on an interpretation of S.C. Code §15-9-710 that is erroneous and does not comply with this State's long-standing precedent that statutes be construed according to its plain and ordinary, but literal meaning.

"The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature." *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). "When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning." *Id.* In interpreting a statute, "[w]ords must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or

³ S.C. Code §15-9-740 is also implicated to the extent it directs service by publication and post-publication matters.

expand the statute's operation." *Id.* at 499, 640 S.E.2d at 459. Further, "the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect." *S.C. State Ports Auth. v. Jasper County*, 368 S.C.388, 398, 629 S.E.2d 624, 629 (2006). Accordingly, we "read the statute as a whole" and "should not concentrate on isolated phrases within the statute." *CFRE, L.L.C. v. Greenville County Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011).

Centex Intern., Inc. v. South Carolina Dept. of Revenue, 406 S.C. 132, 139, 750 S.E.2d 65, 69 (S.C. 2013) (citations in original).

S.C. Code § 15-9-710 states plainly that if the defendant "cannot, after due diligence, be found within the State...", then [a court] "may grant an order that the service be made by the publication of the summons..." The Order, as drafted, has re-written this provision to read: "...cannot, after due diligence, be found at the last known address listed in the traffic report and/or on the defendant's driver's license." All of the facts presented by the Plaintiff show she limited her initial (pre-service by publication request) due diligence search for Ms. Masaryk to her last known address. The process server, who carries a substantial burden in this matter, states, in the only factual paperwork filed with the Richland County Clerk of Court in November 2015, only that he went only to Ms. Masaryk's address as it appeared on the accident report. Even if the process server's late-submitted affidavit were admissible evidence, which Ms. Masaryk maintains it is not⁴, the information provided therein shows only that his Google search left him with no information other than Ms. Masaryk's last known address. So, even with the late-created evidence, Plaintiff is still left with one effort to serve Defendant prior to requesting service by publication, solely at her last known address. Due diligence aside, S.C. Code §15-9-710 obviously contemplates by its plain and literal wording a State-wide search *even before going to the Clerk and the court to seek an order of publication*.

The South Carolina Court of Appeals in *Caldwell v. Wiquist* spent a significant portion of its opinion detailing South Carolina Supreme Court opinions that required strict compliance (that is,

⁴ Ms. Masaryk objects and takes exception to the Affidavit of the process server, Mr. Mark Weaghington, filed June 21, 2016. It is an attempt to retroactively supplement the information that might have been appropriate to include in the Plaintiff's Affidavits filed in support of the request for service by publication back in November 2015. Further, relevant precedential opinions such as *Ingle v. Whitlock*, *Jacob v. Roberts*, *Wachovia Bank of S.C. v. Player*, and *Caldwell v. Wiquist* did not review any evidence additional to that which was filed at the time service by publication was requested from the Clerk in determining due diligence or the sufficiency of the affidavit.

plain and ordinary; but literal construction of) with the service by publication statutes. See, *Caldwell*, 402 S.C. at 572, 741 S.E.2d at 587; and Defendant Masaryk's Memorandum in Support of Motions to Set Aside Default Judgments, submitted to the Court at the prior hearing. Additionally, the Order's interpretation of S.C. Code §15-9-710 that allows a plaintiff to limit her initial (pre-service by publication request) search for a defendant to that person's last known address fails to apply and follow the doctrine of *stare decisis* as it applies specifically to statutes and legislative intent:

"The doctrine of *stare decisis* enjoys particular efficacy in the context of challenges concerning the construction of statutes and determination of legislative intent. As noted by the Court:

It is manifestly in the public interest that the law remain permanently settled. Especially is this so in the construction of statutes, for if any change in the statutory law is desired, the General Assembly may readily accomplish it."

Wehle v. South Carolina Retirement System, 363 S.C. 394, 403, 611 S.E.2d 240, 244 (S.C. 2005), quoting *Powers v. Powers*, 239 S.C. 423, 427, 123 S.E.2d 646, 647 (S.C. 1962).

Thus, the Order, as drafted, not only does not use the plain and ordinary language of the specific statute(s) involved, but it also does not follow the case law interpreting how statutes are to be construed by our courts in general. This is error:

The Order, as drafted, also disregards the doctrine of *stare decisis* as it applies to intermediate appellate opinions specifically. *Caldwell v. Wiquist* is a published South Carolina Court of Appeals opinion from 2013 that has not been negatively treated in any way by the South Carolina Supreme Court. As the South Carolina Bankruptcy Court stated in *In re Kingsmore*,

"The Court of Appeals decision was effective when it was entered, and a decision by an intermediate appellate court in South Carolina is the law of South Carolina unless that decision is subsequently reversed or overruled."

In re Kingsmore, 295 B.R. 812, 816 -817 (S.C. Bkruptcy 2002), citing to, *Hamby v. Hamby*, 315 S.C. 518, 445 S.E.2d 656, 657 (S.C. 1994).

As regards the lack of due diligence exercised by the Plaintiff and the facially defective affidavit requesting service by publication, *Caldwell v. Wiquist* is clearly applicable to and sets the

precedent for this matter. Indeed, the facts of *Caldwell* so closely parallel in substance⁵ those of this matter, that one could almost exchange one for the other. A table of these facts is helpful for a one on one comparison:

Caldwell v. Wiquist	Williams v. Masaryk
Plaintiffs deliver Summonses and Complaints to Beaufort County Sheriff's Department (BCSD) for service upon Wiquist.	Plaintiff delivers Summons and Complaint to private process server Weaghtington for service upon Masaryk.
BCSD attempt service and "thereafter execute affidavits of non-service on Wiquist at her last known address that was listed on the traffic collision report, providing the explanation: 'ADDRESS VACANT'" <i>Caldwell</i> , 741 S.E.2d at 585.	Process Server Weaghtington attempts service and thereafter executes an affidavit of non-service on Masaryk at her last known address, as listed on the traffic report, 1300 Longcreek Dr., Apt. 713, Columbia, SC 29210, providing the comment: "Resident stated, he does not know defendant, his/her whereabouts or contact information. He moved into apartment 6 months ago."
Record shows Plaintiffs "did not attempt to serve Wiquist with the summons and complaint by mail directed to the address that was listed for Wiquist on the traffic collision report." <i>Id.</i>	Record shows Plaintiff did not attempt to serve Masaryk with the summons and complaint by mail directed to the address that was listed for Masaryk on the traffic collision report.
Plaintiffs then file affidavits requesting service by publication on Wiquist and the Clerk of Court for Beaufort County entered orders for service by publication. <i>Id.</i>	Plaintiff then files an affidavit requesting service by publication on Masaryk and the Clerk of Court for Richland County entered orders for service by publication.
Plaintiffs' affidavits requesting service by publication state: "The Defendant who is a non-resident of Beaufort County, South Carolina, cannot be served a copy of the Summons in Beaufort County, and it is necessary to serve her by publication." <i>Id.</i> , 741 S.E.2d at 587.	Plaintiff's affidavit requesting service by publication states, in relevant part: "Personally appeared before me, Jerry Reardon, ... and that he is the attorney for Plaintiff in the above-captioned case, that after due diligence, the Defendant cannot be found and that the Defendant is a proper party..., and that this Affidavit is made for the purposes of serving Defendant by publication."
The <i>Caldwell</i> opinion does not state if the Clerk of Court for Beaufort County directed in which publications the service by publication notice was to appear, but S.C. Code §15-9-740 states that the publication in which the notice is to appear is "to be designated by the officer before whom the	Plaintiff Williams's Order for Service by Publication states, "...that said publication be inserted in ' The Columbia Star ', a daily newspaper of the County of Richland, State of South Carolina..." (bold in original Order).

⁵ The term "in substance" is used because the facts of the two cases are not exact mirrors, but are so alike at each step of the alleged due diligence and service by publication processes presented that they are materially the same.

application is made".	
Affidavits are later filed stating that the required notice was published in <i>The Island Packet</i> and <i>The Beaufort Gazette</i> , and ultimately default judgment damages are awarded to the Plaintiffs.	Affidavits are later filed stating that the required notice was published in <i>The Columbia Star</i> , and ultimately default judgment damages are awarded to the Plaintiffs.

The Order, as drafted, seems to state that, because Plaintiff Williams's process server's affidavit of non-service included the phrase "due diligence", her factual situation is so markedly different from the *Caldwell* opinion (where the phrase was never used) that it is not only distinguishable, it is controlling. The Order also erroneously states that the Caldwell court overturned the default judgment "due to the Plaintiffs' failure to state any facts regarding service and due diligence". Both of these statements are erroneous. It is obvious from the chart above that the *Caldwells* did *something* to attempt service on Wiquist and they also detailed what they tried to do in their Affidavits – they did exactly what Plaintiff Williams did. And *vice versa*. Both sets of plaintiffs tried to serve their defendant at her last known address as it appeared on the collision report – and the South Carolina Court of Appeals still held these *facts* did not amount to due diligence such that service by publication was warranted. Use of the phrase "due diligence" does not automatically make anything any party did duly diligent. The fact that the *Caldwells* used wording that said defendant could not be served in Beaufort County and Plaintiff Williams did not does not change the fact that what Plaintiff Williams did is identical to what the *Caldwells* did, and that is, tried to serve Ms. Masaryk only in the county of last known address.

Additionally, the Order, as drafted, states that service within the State could not have been obtained anyway, because Ms. Masaryk had moved out of the State by the time personal service was being attempted, implying therefore Plaintiff did all she could do. First, Plaintiff did not know in November 2015 that Ms. Masaryk had moved out of the state; it should have had no impact on how she proceeded.⁶ Second, given that Plaintiff Williams tried to serve Ms. Masaryk only at the address appearing on the collision report, it made no difference where Ms. Masaryk was residing. She could have been living in the apartment next door, but for Plaintiff Williams's

⁶ Indeed, if Plaintiff wishes to proceed under the out-of-state resident set of facts, then the Plaintiff would have to show compliance with different subsections of S.C. Code §15-9-710 that might apply, specifically subsections (2) or (4). Plaintiff's documentation regarding service by publication does not comply with these subsections, and any finding that Plaintiff did comply, back in November 2015, would be based on non-existent evidence.

purposes, all that mattered was that she was not at the address listed on the collision report and that the current resident did not have any information available on her (or, as in *Caldwell*, "Address Vacant"). That for Plaintiff, was enough to seek service by publication. Plaintiff Williams wants the form to control over the substance, but this is precisely the nature of due diligence and Constitutional Due Process — they are **substantive** concepts and rights, not simply words. In failing to apply the factual as well as the analytical precedent of *Caldwell v. Wiquist* on the issues of due diligence and a facially defective affidavit requesting service by publication, the Court committed an error of law that requires amendment and alteration of all the resulting relevant factual findings and conclusions of law.

The Order, as drafted, completely glosses over the issue of Constitutional Due Process. The Order states, "Defendant cites and relies on multiple cases including *Roberts* supporting the argument that Plaintiff must take multiple steps and sufficient steps to locate the Defendant", and then goes on to find simply that because Plaintiff filled out the form, the substance of what was (not) done does not matter. This vague result, however, overlooks the precedent ("multiple cases") cited which gives scrutiny to what steps actually constitute due diligence and due process in the context of service by publication. The Order, as drafted, ignores the factual precedent set by opinions like *Jacob v. Roberts*, which detailed that the Affidavit requesting service by publication in that case listed inquiry of neighbors, nineteen county officers, three state officers, sheriffs, county clerks, county and state tax collectors, assessors, and postmasters. *Jacob v. Roberts*, 223 U.S. 261, 267, 32 S.Ct. 303, 305-306, 56 L.Ed. 429 (1912). Based on the evidence of these extensive efforts, the *Jacob* court *did* find that the defendants in that case were afforded due process; the list included in the affidavit requesting service by publication showed clearly that due diligence was taken seriously. Another opinion in which the court *did* find that due diligence was shown, as required, in the affidavit requesting service by publication is *Ingle v. Whitlock*, 282 S.C. 391, 318 S.E.2d 367 (S.C. 1984). The South Carolina Supreme Court held that the affidavit submitted satisfied the Clerk of Court and the Supreme Court found no error where the

"... affidavit attached to the petition [requesting service by publication] recited that the professional process server diligently attempted to locate [defendant] at his last known address and another address; contacted mail carriers who delivered mail to [defendant]; contacted [defendant's] stepmother; made several neighborhood inquiries and contacted Duke Power Company, Spartanburg Water Works and Correctional Release Center, all to no avail."

Id., 282 S.C. 391, 392, 318 S.E.2d 367, 368.

Opinions like *Ingle* and *Jacob* are not simply “multiple cases” that can be disregarded. These cases, and many like them, are opinions of the highest appellate courts in South Carolina and our nation. They are the precedent that the doctrine of *stare decisis* requires courts coming after them look to and follow. And so, in recognizing and analyzing cases like *Ingle*, *Yates*, *Wachovia Bank* (all from South Carolina and cited in *Caldwell*), and numerous additional opinions from other, like-minded jurisdictions, the *Caldwell* court determined and held:

Based on the foregoing, we find the affidavit must include some factual basis upon which the court issuing the order of service by publication can find that the defendant cannot, after due diligence, be found within the state. It is the existence of this factual basis that our appellate courts have found make the order for service by publication unreviewable, absent fraud or collusion. Accordingly, the trial court erred as a matter of law in denying Wiquist’s motions to set aside default judgment because the affidavits requesting service by publication did not meet the statutory requirements, and were therefore, facially defective.

Caldwell, 402 S.C. at 574-575, 741 S.E.2d at 588 (emphasis added).

The precedent reviewed by the *Caldwell* court, the precedent of cases like *Ingle* and *Jacob*, all detail a comparatively long list of efforts to locate the defendant recited in the affidavit requesting service by publication that supports a court factual finding of due diligence. The Order states that a plaintiff “must take multiple steps and sufficient steps to locate the Defendant” as if it is error. What is error is the failure of the Plaintiff to take those “multiple steps” and the failure of the Order to apply the precedent to interpret those facts.

On a separate issue, that of the multiple Orders awarding Damages to the Plaintiff, in differing amounts and executed on different days, the difference in amount is no scrivener’s error. Black’s Law Dictionary (10th ed. 2014) defines “scrivener’s error” as

“**clerical error** (18c). An error resulting from a minor mistake or inadvertence and not from judicial reasoning or determination; esp., a drafter’s or typist’s technical error that can be rectified without serious doubt about the correct reading.... Also termed scrivener’s error.”

Thus,

“...an error that is ‘decisional or judgmental’ instead of ‘mechanical or technical’ is not a scrivener’s error.” *Handelsman v. Handelsman*, 366 Ill.App.3d 1122, 1135, 304 Ill.Dec. 406, 852 N.E.2d 862 (2006) (quoting *Schaffner v. 514 West Grant Place Condominium Ass’n*, 324 Ill.App.3d 1033, 1040, 258 Ill.Dec. 580, 756 N.E.2d 854 (2001)). “An error that is the deliberate or conscious result of the exercise of judicial or professional judgment, or a misapprehension of the law or the facts, will not qualify as a scrivener’s error.” *Handelsman*, 366 Ill.App.3d at 1135, 304 Ill.Dec. 406, 852 N.E.2d 862. [A]n alleged error that is decisional or judgmental instead of mechanical or technical is not a “scrivener’s error”; an error that is the deliberate or conscious result of the exercise of judicial or professional judgment, or a misapprehension of the law or facts, will not qualify as a scrivener’s error.”

Fifth Third Bank, N.A. v. Rosen, 2011 WL 4469495 (Ill.App. 1 Dist. 2011)(citations in original).

See, also, U.S. v. Gibson, 356 F.3d 761, 766 n.3 (7th Cir.Ct.App. 2004)(holding that an error as to whether a count of conspiracy was included in the maximum sentence as calculated was “not one of transcription, but of legal knowledge or analysis” and, therefore, not a “mere scrivener’s error.”)

The amount of damages in the three orders are all handwritten in by the hearing judge. These are not typographical errors. Even if they were, the fact there are three separately filed Orders/Judgments with different amounts would still not rise to the level of a scrivener’s error for this reason: the damages hearing judge, as the finder of fact and determiner of the applicable law, uses his judicial judgment to determine the amount of damages to which he believes a plaintiff is entitled. For this reason alone, all the Orders awarding Default Judgment Damages should be voided, as to pick one Order (amount) over the other is both arbitrary and manifestly unjust.

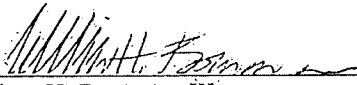
CONCLUSION

The Order Denying Ms. Masaryk’s Motions to Set Aside Default Judgment, as drafted, errs in its findings and conclusions because S.C. Code §15-9-710 is not interpreted according its plain and ordinary, but literal language, and is not interpreted according to the precedent of South Carolina and federal courts, because the case law precedent relating to affidavits requesting service by publication has not been followed according to the doctrine of *stare decisis*, and for other failings

as detailed in this memorandum. To not void the default judgment and damages awards based on these erroneous findings of fact and conclusions of law imposes a manifest injustice on the Defendant, violates her Constitutional Due Process rights, and violates this State's concurrent policy to resolve cases on their merits.

The Court should alter and amend its findings and judgment; set aside the default; and permit the case to proceed on its merits.

ROGERS TOWNSEND & THOMAS, PC

By: 
William H. Bowman, III
P. O. Box 100200, Columbia, SC 29202
(803)771-7900; bbowman@rtt-law.com
Attorney for Defendant Michelle Masaryk

Columbia, South Carolina
August 4, 2016

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March 16, 2016

VIA CERTIFIED & REGULAR MAIL

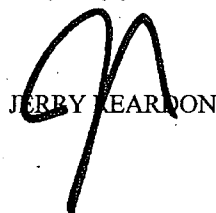
Michelle Masaryk
 1300 Longcreek Dr., Apt. 713
 Columbia, SC 29210

Re: *Notice of Damages Hearing (2:00 PM on March 22, 2016)*
Pearline Williams vs. Larita Hipp and Michelle Masaryk
Docket Number: 2015-CP-40-05106

Dear Ms. Masaryk:

Pursuant to the Motions Roster and Rule 5(a) of the South Carolina Rules of Civil Procedure, please be advised that at 2:00 PM on March 22, 2016, a damages hearing is scheduled to be held before Judge Manning, at the Richland County Judicial Center located at 1701 Main Street, Columbia, South Carolina 29202 in Courtroom 2-E.

Very truly yours,


 JERRY PEARSON

GER/gep



Law Office of Jerry Reardon

1722 Main Street, Ste 302
P.O. Box 7464
Columbia, South Carolina 29202
(803) 602-5242(o) | (803) 602-5243(f)
www.jerryreardonlaw.com | greg@jerryreardonlaw.com



March 16, 2016

VIA CERTIFIED & REGULAR MAIL

Michelle Masaryk
1300 Longcreek Dr., Apt. 713
Columbia, SC 29210

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JERRY REARDON

GER/gep

1 STATE OF SOUTH CAROLINA) IN COMMON PLEAS
2 COUNTY OF RICHLAND) COURT
3)
4 PERLINE WILLIAMS,)
5) TRANSCRIPT
6 -V-) OF
7) RECORD
8 LARITA HIPPI & MICHELLE MASARYK,) 2015-CP-40-05106
9 DEFENDANT.)

10

11 MARCH 22, 2016

12 RICHLAND, SOUTH CAROLINA

13

14 B-E-F-O-R-E:

15 HONORABLE CASEY L. MANNING, JUDGE;

16

17 A-P-P-E-A-R-A-N-C-E-S:

18 FOR THE STATE:

19 GERALD E. REARDON, ESQ.

20 FOR THE DEFENDANT:

21 ROBERT L. BROWN, ESQ.

22

23

24

25

1	I-N-D-E-X	
2		PG.
3	Examination of Perline Williams	
4	Direct by Mr. Reardon	5
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6	Certificate of Reporter	10
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1	E-X-H-I-B-T-S	
2	NO.	PG.
3	1. MEDICAL BILLS.	5
4	2. NOTICE.	5
5	3. COPY OF SIGNATURE CARD.	5
6	4. COPY OF SIGNATURE CARD CERTIFICATE ENVELOPE.	5
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1 (The following proceedings were held on
2 March 22, 2016.)

3 THE COURT: All right. Williams vs. Hipp?

4 MR. REARDON: Yes, Your Honor.

5 THE COURT: Mr. Brown, your name is on this case?

6 MR. BROWN: Yes, sir, you asked us to bring --

7 THE COURT: I know that, but your name is on the
8 next case.

9 MR. REARDON: He filed a motion to compel on the
10 second defendant. We settled out on that defendant, so this
11 is a default only against the Defendant, Michelle Masaryk,
12 Your Honor.

13 THE COURT: All right.

14 MR. REARDON: One of those days.

15 THE COURT: You're going to proceed with this
16 first?

17 MR. REARDON: Yes, Your Honor.

18 THE COURT: All right. Go ahead.

19 MR. REARDON: I call Pearline Williams to the
20 stand, Your Honor.

21 THE COURT: Come around, Mrs. Williams.

22 THE CLERK: Face the Judge. Put your left hand on
23 the Bible and raise your right.

24 THEREUPON,

25 PEARLINE WILLIAMS,

1 after having been duly sworn, testified as follows:

2 THE COURT: Please take a seat. Tell us your full
3 name and spell your last name for the record.

4 THE WITNESS: Pearline Williams.

5 (WHEREUPON, Court's Exhibit Nos. 1
6 through 4 were marked for
7 identification.)

8 MR. REARDON: Your Honor, this is Ms. Williams.

9 We're here for a default damages hearing. Your Honor, I've
10 marked four exhibits for the Court's record where we have
11 sent by certified mail regular delivery to the Defendant,
12 Michelle Masaryk, at 1300 Long Creek Drive, Apartment 713,
13 Columbia, 29210, the notice of the damages hearing by
14 certified mail regular U.S. mail. Exhibits 1 through 3
15 document that, Your Honor. She has not appeared in the case
16 at this point. She was served by publication. And we're
17 asking you here to listen to Ms. William and determine her
18 damage amount.

19 THE COURT: All right, sir.

20 DIRECT EXAMINATION

21 BY MR. REARDON:

22 Q. Ms. Williams, state your date of birth?

23 A. 11/22/45.

24 Q. And where do you live?

25 A. Cayce, South Carolina.

- 1 Q. All right.
- 2 A. 20 Groover Circle --
- 3 Q. I'm sorry?
- 4 A. I live 20 Groover Circle, Cayce, South Carolina.
- 5 Q. What do you do here in Columbia for a living?
- 6 A. I am a trainer.
- 7 Q. Okay.
- 8 A. At the Burton Center.
- 9 Q. What kind of work is that?
- 10 A. That is the type of work where I train, I assist for
- 11 the disabled.
- 12 Q. So you take care of the disabled?
- 13 A. Special needs, more like teaching.
- 14 Q. All right. And you were in an automobile accident on
- 15 December 18th of 2014, correct?
- 16 A. Correct.
- 17 Q. Multi-car collision, correct?
- 18 A. Correct.
- 19 Q. And you were taken by EMS to Lexington Medical Center?
- 20 A. Correct.
- 21 Q. And there was a substantial amount of property damage
- 22 done to your car; is that correct?
- 23 A. Correct.
- 24 Q. It was totaled?
- 25 A. Yes.

- 1 Q. The back end was knocked off?
- 2 A. Yes.
- 3 Q. The front end was pushed in?
- 4 A. Yes.
- 5 Q. And you were taken to Lexington Medical Center for
- 6 back, neck, chest and shoulder injuries?
- 7 A. Correct.
- 8 Q. You were X-rayed and given pain medication?
- 9 A. Yes.
- 10 Q. Did you followup with a Dr. Bonham for about three
- 11 months of chiropractic care?
- 12 A. Correct.
- 13 Q. And he treated you once again for the back, neck, chest
- 14 and shoulder injuries?
- 15 A. Yes.
- 16 Q. And your bills combined from this accident are
- 17 \$8,595.63?
- 18 A. Yes.
- 19 MR. REARDON: Your Honor, that's Exhibit No. 1.
- 20 THE COURT: All right sir.
- 21 BY MR. REARDON:
- 22 Q. And are you still having issues with your shoulder,
- 23 back and neck?
- 24 A. Yes, I'm having issues with shoulder, back and neck.
- 25 Q. All right.

1 A. Continuously.

2 Q. And as result, you take pain medication?

3 A. Yes, I take hot bath and showers and I'm on BioFreeze.

4 Q. Okay. And you have been doing that ever since the
5 accident back in --

6 A. Continuously, three or four times a day.

7 Q. So we're a year and a half and your injuries are still
8 consistent?

9 A. Yes.

10 Q. Do you consider these to be permanent injuries?

11 A. It's a permanent injury.

12 Q. And as a result, do you have problems around the house
13 doing housework?

14 A. Yes.

15 Q. Do you have problems doing work at your job?

16 A. Yes.

17 Q. And as far as activities around the home, outside the
18 home, are you still having pain while you perform
19 those?

20 A. Very painful, yes.

21 Q. And these are permanent injuries; is that correct?

22 A. Yes.

23 MR. REARDON: Your Honor, that's all I have. I'd
24 pass up to you Exhibits 1 through 4, Your Honor.

25 THE COURT: All right. Anything else?

1 MR. REARDON: Nothing, Your Honor.

2 THE COURT: All right. You may step down, Ms.

3 Williams.

4 Any proposal?

5 MR. REARDON: Your Honor, I would ask \$25,000,

6 Your Honor.

7 THE COURT: How much?

8 MR. REARDON: \$25,000. Your Honor, can I amend

9 what I'm asking for. Because there's another defendant in

10 another settlement outside of the 25, it's going to be a

11 total judgment. I think there might be some offset. Could

12 I ask the Court award \$40,000.

13 THE COURT: Well, after I've already filled in the

14 blank.

15 MR. REARDON: That's okay.

16 THE COURT: Just give me another sheet, I will do

17 it later.

18 MR. REARDON: All right.

19

20

21

22 END OF PROCEEDINGS

23

24

25

1 COUNTY OF RICHLAND)

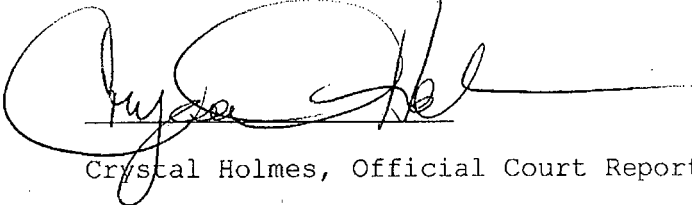
2 CERTIFICATE OF REPORTER

3 I, Crystal Holmes, hereby certify that I reported
4 the preceding case entitled Pearline Williams Vs. Larita
5 Hipp and Michelle Masaryk, Case No. 2015-CP-40-5106, at the
6 Richland County Courthouse, March 22, 2016.

7 I FURTHER CERTIFY that the foregoing pages 1
8 through 10 constitute a true, accurate and full transcript
9 of said hearing.

10 I FURTHER CERTIFY that I am not employed by any of
11 the parties hereto and I have no financial interest in the
12 outcome of said case.

13 IN WITNESS WHEREOF, I have heretofore set my hand
14 and seal at Richland County on this 26th day of November,
15 2016.

16 
17 Crystal Holmes, Official Court Reporter

18

19

20

21

22

23

24

25

RECEIPT FOR EXHIBITS

Case No. 2015-CP-40-5106
 Plaintiff: Perline William
 Defendant: Laria Hopp
 Date Trial Started: 3/22/16

Judge Manning
 Plt's Atty. Gerald E. Rendon
 Def's. Atty. _____
 Date Trial Ended: _____

Received of Crydell Holmes, Court Reporter for the above case, these exhibits:
PC

	Clerk of Court Use
✓1 ~~Notice~~ Medical Bills	✓
✓2 Notice	✓
✓3 Copy of Signature Card not Signed	✓
✓4 Copy of Certified Mail envelope.	✓
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This 24 day of March 2016.

Page 1 of 1

By: Rebecca Stephen

Richland County Clerk of Court

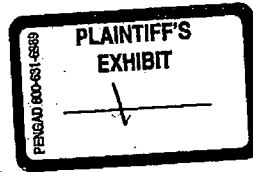
Clerk should retain white copy in Civil cases, yellow copy in Criminal cases.

Revised 3/96

ROA_000093

PEARLINE WILLIAMS' MEDICAL EXPENSES

LEXINGTON COUNTY EMS	\$578.68
LEXINGTON MEDICAL CENTER	\$2,074.00
DR. GREG BONHAM	<u>\$5,942.95</u>
TOTAL	\$8,595.63



Lexington County EMS

116 Prides Way Drive
Lexington, SC 29072
(803) 957-7111 or (800) 533-3915

Services Provided By: Lexington County EMS
Tax ID: 576000379

Account: 17 / 658297
Phone: (803) 764-3977

WILLIAMS, PEARLINE

20 Groover Cir
Cayce, SC 29033-1739

Run No: 14035921
To: Lexington Medical Center

Date Of Service: 12/18/2014

<u>Code</u>	<u>Description</u>	<u>Qty</u>	<u>Charge</u>	<u>Pmt / Adj</u>	<u>Date Posted</u>
LX01	Resident Transport	1.0	543.00		
LX49	Mileage	3.2	35.68		
Run Totals:			578.68	0.00	578.68

JJC

Lowcountry Billing Services is a contracted EMS billing provider

1/21/2015 4:18:47PM

ROA_000095

YOUR STATEMENT

Thank you for allowing us to serve your health care needs. Your insurance company has processed your claim and the balance is your responsibility. Please pay the balance in full or contact Customer Service for payment arrangements.

SUMMARY OF CHARGES

REV CODE	DESCRIPTION	AMOUNT
0450	EMERGENCY ROOM - GENERAL CLASSIFICATION	1,036.00
0637	PHARMACY - EXTENSION OF 025X - SELF-ADMINISTRABLE DRUGS (B)	5.00
0981	PROFESSIONAL FEES - EMERGENCY ROOM	1,033.00

INSURANCE INFORMATION

BLUE CROSS STATE - BCBS STATE HEALTH PLAN ZCS43939923

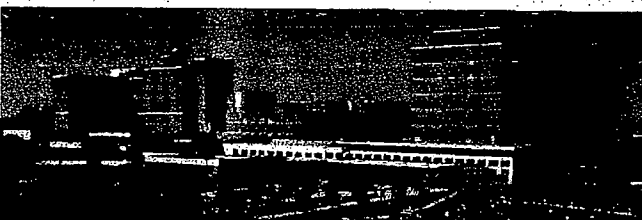
ACCOUNT SUMMARY

Statement Date:	04/23/15
Patient Name:	Pearline Williams
Date of Service:	12/18/2014-12/18/2014
Account Number:	20103066
Total Charges:	\$2,074.00
Insurance Payments:	\$-353.80
Insurance Adjustments:	\$-1,481.70
Other Adjustments:	\$0.00
Patient Payments:	\$0.00
Other Payments:	\$0.00
Charges Transferred from Other Accts:	\$0.00

This is your balance: **\$238.46**

QUESTIONS

Billing questions or an itemized bill request?
Call your customer service representative at (803) 791-2300 or (877) 835-0975, Monday-Friday, 8:00am to 7:00pm. See back of this form for more information.



PLEASE RETAIN THE ABOVE PORTION FOR YOUR RECORDS

PLEASE DETACH AND RETURN THIS PORTION WITH YOUR PAYMENT.

☐ Check box if below address is incorrect and indicate change(s) on reverse side. Or visit our website @ www.LexMed.com.

Lexington Medical Center
2720 Sunset Boulevard
West Columbia, SC 29169

RETURN SERVICE REQUESTED



008947
0101

PEARLINE WILLIAMS
20 GROOVER CIR
CAYCE, SC 29033-1739

PAGE 1 of 1

For online payments, go to www.LexMed.com . For mail in payments, detach and return this portion with payment or payment information.		
☐ MasterCard	☐ VISA	☐ Discover
Card Number		Security Code
Signature		Exp. Date
Payment Due Date 05/08/15	Statement Date 04/23/15	Account # 201030663
Amount Due \$238.46	Show Amount Paid Here \$	

LEXINGTON MEDICAL CENTER
PO BOX 100273
COLUMBIA, SC 29202-3273

00002010306630000000238463273

ROA_000096

Dr. J. G. Bonham
1525 Sunset Blvd Ste B
West Columbia, SC 29169-5957
(803) 791-3900

May 22, 2015

PEARLINE WILLIAMS
20 GROOVER CIRCLE
CAYCE, SC 29033

Patient #: 81088
RE: PEARLINE WILLIAMS

Date	Service Descriptions	Charge	Receipt	Total
12/23/14	99204-25 EVAL.+MANAGMENT NEW PT.	225.00		225.00
12/23/14	98942 MANIPULATIVE THERAPY MULTI.	75.00		300.00
12/23/14	97014 ELECTROMUSCLAR STIM.	24.00		324.00
12/23/14	97035 ULTRASOUND THERAPY - 2 units	46.00		370.00
12/23/14	72050 X-RAY CERV. 3 LAT,FLEX,EXT - 4 units	105.00		475.00
12/23/14	72020 X-RAY single spine view	39.00		514.00
12/23/14	72070 X-RAY THORACIC 1 VIEW+READ	39.00		553.00
12/23/14	72100 X-RAY AP+LAT LUMBAR - 2 units	89.00		642.00
12/29/14	98942 MANIPULATIVE THERAPY MULTI.	75.00		717.00
12/29/14	97014 ELECTROMUSCLAR STIM.	24.00		741.00
12/29/14	97035 ULTRASOUND THERAPY - 2 units	46.00		787.00
12/30/14	98942 MANIPULATIVE THERAPY MULTI.	75.00		862.00
12/30/14	97014 ELECTROMUSCLAR STIM.	24.00		886.00
12/30/14	97035 ULTRASOUND THERAPY - 2 units	46.00		932.00
12/31/14	98942 MANIPULATIVE THERAPY MULTI.	75.00		1007.00
12/31/14	97014 ELECTROMUSCLAR STIM.	24.00		1031.00
12/31/14	97035 ULTRASOUND THERAPY - 2 units	46.00		1077.00
01/05/15	98942 MANIPULATIVE THERAPY MULTI.	75.00		1152.00
01/05/15	97014 ELECTROMUSCLAR STIM.	24.00		1176.00
01/05/15	97035 ULTRASOUND THERAPY - 2 units	46.00		1222.00
01/06/15	98942 MANIPULATIVE THERAPY MULTI.	75.00		1297.00
01/06/15	97014 ELECTROMUSCLAR STIM.	24.00		1321.00
01/06/15	97035 ULTRASOUND THERAPY - 2 units	46.00		1367.00
01/06/15	BIOFREEZE-CRYOTHERAPY	22.95		1389.95
01/08/15	98942 MANIPULATIVE THERAPY MULTI.	75.00		1464.95
01/08/15	97014 ELECTROMUSCLAR STIM.	24.00		1488.95
01/08/15	97035 ULTRASOUND THERAPY - 2 units	46.00		1534.95
01/12/15	98942 MANIPULATIVE THERAPY MULTI.	75.00		1609.95
01/12/15	97014 ELECTROMUSCLAR STIM.	24.00		1633.95
01/12/15	97035 ULTRASOUND THERAPY - 2 units	46.00		1679.95
01/13/15	98942 MANIPULATIVE THERAPY MULTI.	75.00		1754.95
01/13/15	97014 ELECTROMUSCLAR STIM.	24.00		1778.95
01/13/15	97035 ULTRASOUND THERAPY - 2 units	46.00		1824.95
01/15/15	98942 MANIPULATIVE THERAPY MULTI.	75.00		1899.95
01/15/15	97014 ELECTROMUSCLAR STIM.	24.00		1923.95
01/15/15	97035 ULTRASOUND THERAPY - 2 units	46.00		1969.95
01/19/15	98942 MANIPULATIVE THERAPY MULTI.	75.00		2044.95
01/19/15	97014 ELECTROMUSCLAR STIM.	24.00		2068.95
01/19/15	97035 ULTRASOUND THERAPY - 2 units	46.00		2114.95
01/20/15	98942 MANIPULATIVE THERAPY MULTI.	75.00		2189.95
01/20/15	97014 ELECTROMUSCLAR STIM.	24.00		2213.95

ROA_000097

RE: PEARLINE WILLIAMS

May 22, 2015

Date	Service Descriptions	Charge	Receipt	Total
01/20/15	97035 ULTRASOUND THERAPY - 2 units	46.00		2269.95
01/22/15	98942 MANIPULATIVE THERAPY MULTI.	75.00		2334.95
01/22/15	97014 ELECTROMUSCLAR STIM.	24.00		2358.95
01/22/15	97035 ULTRASOUND THERAPY - 2 units	46.00		2404.95
01/26/15	99213-25 EVAL.+MANAGMENT ESTAB.PT.15MIN	90.00		2494.95
01/26/15	98942 MANIPULATIVE THERAPY MULTI.	75.00		2569.95
01/28/15	97014 ELECTROMUSCLAR STIM.	24.00		2593.95
01/28/15	97035 ULTRASOUND THERAPY - 2 units	46.00		2639.95
01/27/15	98942 MANIPULATIVE THERAPY MULTI.	75.00		2714.95
01/27/15	97110 RE-HAB EXERCISE 2 UNITS - 2 units	64.00		2778.95
01/27/15	97012 MOTORIZED SPINAL TRACTION(2units) - 2 units	50.00		2828.95
01/29/15	98942 MANIPULATIVE THERAPY MULTI.	75.00		2903.95
01/29/15	97110 RE-HAB EXERCISE 2 UNITS - 2 units	64.00		2967.95
01/29/15	97012 MOTORIZED SPINAL TRACTION(2units) - 2 units	50.00		3017.95
02/02/15	98942 MANIPULATIVE THERAPY MULTI.	75.00		3092.95
02/02/15	97110 RE-HAB EXERCISE 2 UNITS - 2 units	64.00		3156.95
02/02/15	97012 MOTORIZED SPINAL TRACTION(2units) - 2 units	50.00		3206.95
02/03/15	98942 MANIPULATIVE THERAPY MULTI.	75.00		3281.95
02/03/15	97110 RE-HAB EXERCISE 2 UNITS - 2 units	64.00		3345.95
02/03/15	97012 MOTORIZED SPINAL TRACTION(2units) - 2 units	50.00		3395.95
02/05/15	98942 MANIPULATIVE THERAPY MULTI.	75.00		3470.95
02/05/15	97110 RE-HAB EXERCISE 2 UNITS - 2 units	64.00		3534.95
02/05/15	97012 MOTORIZED SPINAL TRACTION(2units) - 2 units	50.00		3584.95
02/09/15	98942 MANIPULATIVE THERAPY MULTI.	75.00		3659.95
02/09/15	97110 RE-HAB EXERCISE 2 UNITS - 2 units	64.00		3723.95
02/09/15	97012 MOTORIZED SPINAL TRACTION(2units) - 2 units	50.00		3773.95
02/10/15	98942 MANIPULATIVE THERAPY MULTI.	75.00		3848.95
02/10/15	97110 RE-HAB EXERCISE 2 UNITS - 2 units	64.00		3912.95
02/10/15	97012 MOTORIZED SPINAL TRACTION(2units) - 2 units	50.00		3962.95
02/17/15	98942 MANIPULATIVE THERAPY MULTI.	75.00		4037.95
02/17/15	97110 RE-HAB EXERCISE 2 UNITS - 2 units	64.00		4101.95
02/17/15	97012 MOTORIZED SPINAL TRACTION(2units) - 2 units	50.00		4151.95
02/19/15	98942 MANIPULATIVE THERAPY MULTI.	75.00		4226.95
02/19/15	97110 RE-HAB EXERCISE 2 UNITS - 2 units	64.00		4290.95
02/19/15	97012 MOTORIZED SPINAL TRACTION(2units) - 2 units	50.00		4340.95
02/24/15	98942 MANIPULATIVE THERAPY MULTI.	75.00		4415.95
02/24/15	97110 RE-HAB EXERCISE 2 UNITS - 2 units	64.00		4479.95
02/24/15	97012 MOTORIZED SPINAL TRACTION(2units) - 2 units	50.00		4529.95
02/26/15	98942 MANIPULATIVE THERAPY MULTI.	75.00		4604.95
02/26/15	97110 RE-HAB EXERCISE 2 UNITS - 2 units	64.00		4668.95
02/26/15	97012 MOTORIZED SPINAL TRACTION(2units) - 2 units	50.00		4718.95
03/03/15	98942 MANIPULATIVE THERAPY MULTI.	75.00		4793.95
03/03/15	97110 RE-HAB EXERCISE 2 UNITS - 2 units	64.00		4857.95
03/03/15	97012 MOTORIZED SPINAL TRACTION(2units) - 2 units	50.00		4907.95
03/05/15	98942 MANIPULATIVE THERAPY MULTI.	75.00		4982.95
03/05/15	97110 RE-HAB EXERCISE 2 UNITS - 2 units	64.00		5046.95
03/05/15	97012 MOTORIZED SPINAL TRACTION(2units) - 2 units	50.00		5096.95
03/10/15	98942 MANIPULATIVE THERAPY MULTI.	75.00		5171.95
03/10/15	97110 RE-HAB EXERCISE 2 UNITS - 2 units	64.00		5235.95
03/10/15	97012 MOTORIZED SPINAL TRACTION(2units) - 2 units	50.00		5285.95
03/12/15	98942 MANIPULATIVE THERAPY MULTI.	75.00		5360.95
03/12/15	97110 RE-HAB EXERCISE 2 UNITS - 2 units	64.00		5424.95
03/12/15	97012 MOTORIZED SPINAL TRACTION(2units) - 2 units	50.00		5474.95
03/17/15	98942 MANIPULATIVE THERAPY MULTI.	75.00		5549.95
03/17/15	97110 RE-HAB EXERCISE 2 UNITS - 2 units	64.00		5613.95
03/17/15	97012 MOTORIZED SPINAL TRACTION(2units) - 2 units	50.00		5663.95
03/19/15	99213-25 EVAL.+MANAGMENT ESTAB.PT.15MIN	90.00		5753.95
03/19/15	98942 MANIPULATIVE THERAPY MULTI.	75.00		5828.95
03/19/15	97110 RE-HAB EXERCISE 2 UNITS - 2 units	64.00		5892.95
03/19/15	97012 MOTORIZED SPINAL TRACTION(2units) - 2 units	50.00		5942.95
		\$5942.95	\$0.00	\$5942.95

ROA_000098

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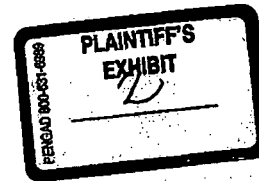
Postage	\$3.45	0202
Certified Fee	\$2.80	16
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$6.74	03/17/2016

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 or PO Box No. _____

City, State, ZIP+4 _____

PS Form 3800, July 2014 See Reverse for Instructions



March 16, 2016

VIA CERTIFIED & REGULAR MAIL

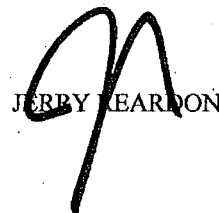
Michelle Masaryk
 1300 Longcreek Dr., Apt. 713
 Columbia, SC 29210

Re: *Notice of Damages Hearing (2:00 PM on March 22, 2016)*
Pearline Williams vs. Larita Hipp and Michelle Masaryk
Docket Number: 2015-CP-40-05106

Dear Ms. Masaryk:

Pursuant to the Motions Roster and Rule 5(a) of the South Carolina Rules of Civil Procedure, please be advised that at 2:00 PM on March 22, 2016, a damages hearing is scheduled to be held before Judge Manning, at the Richland County Judicial Center located at 1701 Main Street, Columbia, South Carolina 29202 in Courtroom 2-E.

Very truly yours,


 JERRY PEARSON

GER/gep



Law Office of Jerry Reardon

1722 Main Street, Ste 302
P.O. Box 7464
Columbia, South Carolina 29202
(803) 602-5242(o) | (803) 602-5243(f)
www.jerryreardonlaw.com | greg@jerryreardonlaw.com



March 16, 2016

VIA CERTIFIED & REGULAR MAIL

Michelle Masaryk
1300 Longcreek Dr., Apt. 713
Columbia, SC 29210

Re: *Notice of Damages Hearing (2:00 PM on March 22, 2016)*
Pearline Williams vs. Larita Hipp and Michelle Masaryk
Docket Number: 2015-CP-40-05106

Dear Ms. Masaryk:

Pursuant to the Motions Roster and Rule 5(a) of the South Carolina Rules of Civil Procedure, please be advised that at 2:00 PM on March 22, 2016, a damages hearing is scheduled to be held before Judge Manning, at the Richland County Judicial Center located at 1701 Main Street, Columbia, South Carolina 29202 in Courtroom 2-E.

Very truly yours,

A handwritten signature in black ink, appearing to be 'JR' with a stylized flourish.
JERRY REARDON

GER/gep

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Michelle Masaryk
1300 Longcreek rd
apt #13
Columbia 29202



9590 9402 1598 5362 3287 67

2. Article Number (Transfer from service label)

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
- ☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

- D. Is delivery address different from item 1?** ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

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- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail
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- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)
- ☐ Priority Mail Express
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

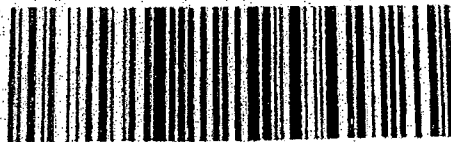
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Law Office of Jerry Reardon
P.O. Box 7464
Columbia, SC 29202

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
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\$6.74

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Michelle Masaryk
1300 Longcreek Dr., Apt. 713
Columbia, SC 29210



ROA_000102

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE FAMILY COURT

PEARLINE WILLIAMS,)
PLAINTIFF)

VERSUS)

TRANSCRIPT OF
RECORD

LARITA HIPPI, MICHELLE MASARYK,)
DEFENDANTS)

JUNE 27TH, 2016
COLUMBIA, SOUTH CAROLINA

BEFORE:

THE HONORABLE L. CASEY MANNING, JUDGE

APPEARANCES:

WILLIAM H. BOWMAN, ESQUIRE
ATTORNEY FOR THE PLAINTIFF

GERALD E. REARDON, ESQUIRE
ATTORNEY FOR THE DEFENDANT

MEG MOLLOHAN,
COURT REPORTER

1 THE COURT: NUMBER 17 SAYS
2 AMENDED MOTION TO SET ASIDE DEFAULT JUDGMENT. 18 IS A 60(B)
3 MOTION, NUMBER 19 SAYS MOTION TO SET ASIDE DEFAULT
4 JUDGMENT, THEN IS NUMBER 20 A MOTION FOR DAMAGES. MR.
5 REARDON, THAT WOULD BE YOUR MOTION?

6 MR. REARDON: NO, THAT WAS THE ORIGINAL
7 DEFENDANT.

8 THE COURT: SO NUMBER 20'S HAS BEEN
9 RESOLVED?

10 MR. REARDON: YES, THAT'S BEEN TAKEN
11 CARE OF.

12 MR. BOWMAN: YES, SIR. THERE'S JUST ONE
13 MATTER.

14 THE COURT: YES, SIR, MR. BOWMAN?

15 MR. BOWMAN: THANK YOU. MAY IT PLEASE
16 THE COURT? BY WAY OF BACKGROUND, THIS IS A MOTION TO SET
17 ASIDE ORDERS FOR THE FORMER JUDGMENT ENTERED AGAINST THE
18 DEFENDANT MASARYK. ORDERS OF THE COURT DATED MARCH 21ST
19 2016 WAS AN ORDER SIGNED THAT DAY FOR \$25,000. THERE WAS ON
20 ORDER SIGNED ON MARCH 22ND, 2016 FOR \$45,000.

21 SO THE DEFENDANT'S MOTION ADDRESSES BOTH THE
22 ORDERS AS IF THEY ARE DUPLICATIVE AND THERE'S NO MOTION BY
23 THE DEFENDANT. DEFENDANT HIPPE SETTLED BUT HE'S NO LONGER A
24 PARTY TO THE CASE. DEFENDANT MASARYK FILED A MOTION TO SET
25 ASIDE ALL DEFAULT JUDGMENTS BOTH ON HER RULE 60(B)(4) ON THE

1 GROUND THAT THE JUDGMENTS ARE VOID FOR LACK OF
2 STATUTORY COMPLIANCE WITH SECTION 15-9-710 OF THE CODE AND
3 VIOLATION OF THE DEFENDANT'S CONSTITUTIONAL DUE PROCESS.
4 I'D LIKE TO TALK A LITTLE BIT ABOUT THE ATTEMPTED SERVICE.

5 ON 9/2/2015 A PROCESS SERVER FOR THE PLAINTIFF
6 NAMED MARK WETHINGTON WENT TO 1300 FARM* CREEK DRIVE,
7 APARTMENT 713, THE ADDRESS OF MS. MARY MASARYK APPEARING
8 IN THE ACCIDENT REPORT TO ATTEMPT SERVICE OF THE COMPLAINT.

9 ON SEPTEMBER THE 8TH 2015 WETHINGTON FILED AN AFFIDAVIT
10 THAT HE WAS UNABLE TO EFFECT SERVICE UNDER THE COMMENT
11 SECTION, AND I QUOTE "RESIDENT STATED HE DOES NOT KNOW
12 DEFENDANT, HER WHEREABOUTS OR CONTACT INFORMATION. HE
13 MOVED INTO THE APARTMENT SIX MONTHS AGO."

14 SO WHAT THE PROCESS SERVER DID WAS TO ATTEMPT
15 TO GO TO THE LAST KNOWN ON THE ADDRESS ON THE POLICE
16 REPORT, IT WAS A WRECK CASE. MS. MASARYK DID NOT LIVE THERE,
17 SOMEONE WHO OPENED THE DOOR SAID HE'D NEVER HEARD OF
18 HER. THAT AFFIDAVIT WAS FILED WITH THAT QUOTED LANGUAGE IN
19 IT.

20 ON NOVEMBER 13TH, 2015 PLAINTIFF FILED AN AFFIDAVIT
21 THAT AFTER DUE DILIGENCE THE DEFENDANT COULD NOT BE FOUND
22 AND REQUESTING SERVICE BY PUBLICATION. ON NOVEMBER 13TH,
23 2015 THE COURT ENTERED AN ORDER OF PUBLICATION IN THE
24 COLUMBIA STAR. ON FEBRUARY 6TH, 2016 AND MARCH 8TH, 2016
25 PLAINTIFF FILED AFFIDAVITS STATING THAT NOTICE HAD BEEN

1 PUBLISHED IN THE COLUMBIA STAR, THAT MASARYK FAILED TO
2 ANSWER AND WAS IN DEFAULT, AND MOVED FOR AN DEFAULT
3 JUDGMENT. I BELIEVE THAT WAS MR. REARDON'S AFFIDAVIT TO THE
4 COURT. AFTER HEARING THE TRIAL COURT AWARD DAMAGES TO
5 WILLIAMS AS PREVIOUSLY STATED AT THE DAMAGES HEARING, THE
6 \$25,000 AND THE \$45,000, PLAINTIFF FAILED TO COMPLY WITH THE
7 MANDATORY REQUIREMENTS OF 15-9-710 OF THE CODE WHICH
8 PERMITS SERVICE BY PUBLICATION AND THE AFFIDAVIT OF
9 WETHINGTON IS THE POSITION OF MASARYK.

10 THERE'S A CASE CALLED CALDWELL VERSUS WICKLESS,*
11 THAT'S CITED IN THE MEMORANDUM. THE COURT OF APPEALS
12 DECIDED THE ISSUE AND DETERMINED THAT THE AFFIDAVITS IN THAT
13 CASE REQUESTING SERVICE BY PUBLICATION WERE FACIALLY
14 DEFECTIVE FOR THE REASON AMONG OTHERS THAT THE AFFIDAVITS
15 REQUESTING SERVICE BY PUBLICATION DO NOT CONTAIN ANY
16 STATEMENTS REGARDING THE DUE DILIGENCE UNDERTAKEN TO
17 FIND THE DEFENDANT CALDWELL. A SHERIFF'S DEPUTY FROM
18 BEAUFORT COUNTY IN THE WICKLESS* CASE WENT TO HIS LAST
19 KNOWN ADDRESS SAYING THE CIRCUMSTANCES THAT WERE THERE.
20 HE WENT TO THAT ADDRESS AND THERE WAS A SIGN OR
21 SOMETHING THAT SAID AN ADDRESS AND THERE WAS A SIGN OR
22 SOMETHING THAT SAID AN ADDRESS, BUT YET THE DEPUTY SHERIFF
23 FILLED OUT AN AFFIDAVIT OF NON-SERVICE STATING HE'D BEEN
24 UNABLE TO COMPLETE SERVICE ON WICKLESS. THE EXPLANATION
25 ADDRESS FAILURE.

1 THAT CASE WENT UP TO THE COURT OF APPEALS AND
2 THE COURT OF APPEALS CONCLUDED THAT THE ATTEMPTED
3 AFFIDAVIT OF SERVICE BY THE DEPUTY SHERIFF COUPLED WITH THE
4 AFFIDAVIT OF THE ATTORNEY REQUESTING PUBLICATION WERE
5 INADEQUATE BECAUSE THEY SIMPLY DID NOT CONTAIN ENOUGH
6 MATERIAL ON WHAT EFFORT MADE, WHAT DUE DILIGENCE WAS
7 TAKEN TO PERFECT THE SERVICE.

8 THE CALDWELL CASE CONCLUDED "WE FIND THE
9 AFFIDAVIT MUST INCLUDE SOME FACTUAL BASIS FOR WHICH THE
10 COURT ISSUING THE ORDER OF SERVICE BY PUBLICATION CAN FIND
11 AND THE DEFENDANT CANNOT AFTER DUE DILIGENCE BE FOUND
12 WITHIN THE STATE." IT IS THE EXISTENCE OF THIS FACTUAL BASIS
13 THAT OUR APPELLATE COURTS HAVE FOUND MAKE THE ORDER FOR
14 SERVICE BY PUBLICATION UNREVIEWABLE ABSENT FRAUD OR
15 CONCLUSION.

16 THE CALDWELL COURT RECOGNIZED SEVERAL OLDER
17 DECISIONS; YATES, MONTGOMERY AND WACHOVIA THAT HAD BEEN
18 IN EFFECT AND DISTINGUISHED THOSE, HOLDING THAT THE CLERK'S
19 AFFIDAVIT PERMITTING SERVICE BY PUBLICATION IS GENERALLY
20 UNREVIEWABLE, BUT DISTINGUISHED THESE TWO CASES. THESE
21 OLDER CASES GENERALLY THAT'S UNREVIEWABLE, BUT THE COURT
22 VIEWED THOSE CASES. IN YATES THE AFFIDAVITS REGARDING NEW
23 YORK RESIDENCY AND OTHER FACTORS THEY FOUND. IN
24 MONTGOMERY THE AFFIDAVIT ONLY SAID IT DID NOT AFFECT
25 SERVICE BY PUBLICATION WITHIN A REASONABLE TIME AFTER THE

1 ORDER OF PUBLICATION WAS FILED. THEREFORE THAT'S
2 DISTINGUISHABLE FROM WHAT WE HAVE HERE OF COURSE.

3 IN THE THIRD CASE, WACHOVIA, THE AFFIDAVIT
4 CONTAINED AN UNTRUE STATEMENT. SO IF THE COURT WILL REVIEW
5 IT, THAT CASE SITED IT. IT DOES TO MY SATISFACTION I BELIEVE
6 DISTINGUISH THE OLD CASES ABOUT SETTING ASIDE THE JUDGMENT
7 ABSENT FRAUD OR COLLUSION.

8 THE COURT HELD THOSE CASES INVOLVED AFFIDAVITS
9 THAT INCLUDED SOME FACTS CONCERNING EVIDENCE TO LOCATE
10 THE DEFENDANT WHICH WERE MORE INCLUSIVE. FINALLY THE
11 CALDWELL COURT NOTED ITS HOLDINGS CONSISTENT WITH THE
12 POLICY OF CASES ON THE MERITS AND NOT BE DEFAULT. THE LAW
13 SHOULD BE LIBERALLY CONSTRUED TO SEE THAT JUSTICE IS
14 PROMOTED AND STRIVE TO HOLD CASES ON THEIR MERITS.

15 FURTHERMORE IN CALDWELL THE COURT WENT ON TO
16 HOLD THAT IF THE NAME AND ADDRESS OF AN INDIVIDUAL IS
17 REASONABLY ASCERTAINABLE, THEN NOTICE BY PUBLICATION IS
18 INSUFFICIENT TO SATISFY DUE PROCESS. THE ESSENTIAL ELEMENT
19 OF DUE PROCESS IS THE OPPORTUNITY TO BE HEARD AND THE
20 NECESSARY CONDITION OF SUCH OPPORTUNITY IS NOTICE. THE
21 WHEREABOUTS OF MS. MASARYK THE DEFENDANT AT THE TIME OF
22 THE ATTEMPTED SERVICE WERE REASONABLY ASCERTAINABLE WITH
23 ONLY LIMITED INQUIRY ABOUT WHERE THE DEFENDANT LIVED.

24 MASARYK, THE ADDRESS FOR HER APPEARING IN THE
25 ACCIDENT DRIVE WAS 1300 LONG'S CREEK DRIVE, APARTMENT 713.

1 THAT WAS ON HER LICENSE AND THAT'S WHERE WETHINGTON WENT.
2 SHE MOVED FROM THAT ADDRESS TO SOUTH POINT DRIVE,
3 APARTMENT 225 IN LEXINGTON ON NOVEMBER 16, 2014. AT THAT
4 TIME SHE PROVIDED HER LANDLORD, AND WE'VE HANDED UP TWO
5 AFFIDAVITS, ONE OF KIM CUERVO* WHO'S THE MANAGER OF
6 HOLLAND* APARTMENTS WHERE SHE LIVED AT THE TIME HER
7 LICENSE WAS ISSUED, AND ONE OF MS. MASARYK HERSELF WHICH
8 ADDRESSES IN MORE DETAIL THIS ISSUE OF WHERE SHE WAS AND
9 HOW SHE SHOULD HAVE BEEN REASONABLY ASCERTAINED, HER
10 LOCATION, HER WHEREABOUTS.

11 BUT ANYWAY SHE MOVED TO SALUDA POINT DRIVE IN
12 LEXINGTON NOVEMBER THE 16TH, 2014. AT THAT TIME ACCORDING
13 TO THE AFFIDAVIT OF MS. CUERVO, HER LANDLORD, SHE PREPARED
14 A MOVE-OUT STATEMENT AS REQUIRED BY STATE LAW, THE
15 LANDLORD/TENANT ACT, WHICH INCLUDED HER NEW RESIDENCE
16 ADDRESS OF 101 SALUDA POINT, APARTMENT 225, LEXINGTON. THE
17 MANAGER ALSO HAD HER CELL PHONE NUMBER AND HER EMAIL
18 ADDRESS ACCORDING TO MS. MASARYK'S AFFIDAVIT.

19 ON AUGUST 4TH, 2015 MASARYK MOVED TO 1029
20 MEANDERING WAY IN HODINTON*, MARYLAND. SHE LEFT HER
21 FORWARDING ADDRESS WITH MANAGEMENT AT SALUDA POINT. SHE
22 WAS NOT RELEASED FROM HER SALUDA POINT LEASE UNTIL
23 DECEMBER 3, 2015, DURING WHICH TIME SHE STAYED IN CONTACT
24 WITH SALUDA POINT MANAGEMENT. AT THE TIME OF EACH OF THE
25 TWO MOVES, MASARYK COMPLETED AN ONLINE CHANGE OF

1 ADDRESS WITH THE US POSTAL SERVICE AND HER MAIL WAS
2 FORWARDED TO HER NEW ADDRESS BY THE POST OFFICE AND
3 RECEIVED BY HER.

4 THERE IS NO EVIDENCE THAT THE PROCESS SERVER
5 ATTEMPTED TO SERVE MASARYK BY CERTIFIED MAIL, HAD HE DONE
6 SO, THERE'S EVERY REASON TO BELIEVE THAT HER MAIL WOULD
7 HAVE BEEN ROUTED TO HER BY THE POST OFFICE.

8 WETHINGTON FILED A SUPPLEMENTAL AFFIDAVIT ON
9 JUNE 21ST, 2016. IN THAT AFFIDAVIT GENERATED THIS WEEK OR LAST,
10 I DON'T THINK IT SHOULD BE CONSIDERED YOUR HONOR BECAUSE
11 IT'S NOT BEFORE THE COURT ISSUING THE ORDER OF DEFAULT. IT
12 SAYS THAT HE DID A SKIP TRACE, PARAGRAPH FIVE IN HIS
13 SUBSEQUENT AFFIDAVIT, HE MAY HAVE DONE A SKIP TRACE,
14 PERHAPS HE COULD HAVE FOUND HER HAD HE DONE THAT, BUT
15 THAT WAS NOT BEFORE THE REVIEWING COURT TO PASS JUDGMENT
16 ON ORDERING SERVICE BY PUBLICATION, IT COMES WITHIN THE LAST
17 WEEK.

18 AND WE THINK EVEN IF IT MAKES A DIFFERENCE, YOUR
19 HONOR, IN THE SUBSTANTIVE LAW OF THE CASE, IT COMES LATE AND
20 IT WASN'T IN THE CONSIDERATION OF THE COURT AT THE TIME THE
21 JUDGMENTS WERE RENDERED.

22 MERITORIOUS DEFENSE; HIPP HAS SETTLED OUT. IT WAS
23 A THREE CAR COLLISION, I BELIEVE MY CLIENT WAS THE FIRST CAR
24 IN LINE, YOUR HONOR. MS. WILLIAMS WAS THE SECOND CAR IN LINE,
25 MS. HIPP WAS THE THIRD CAR IN LINE, AND THE OTHER DEFENDANT

1 CAME UP AND HIT PLAINTIFF, MS. PEARLINE WILLIAMS IN THE REAR
2 CAUSING HER TO HIT MY CLIENT. SO OF COURSE UNDER THE LAW WE
3 HAVE TO MAKE A PRIMA FACIE SHOWING OF SOME MERITORIOUS
4 DEFENSE, AND WE'VE ADDRESSED THAT IN OUR AFFIDAVIT.

5 THE DUE DILIGENCE REQUIREMENTS 15-9-710 DEMAND
6 THAT SOMETHING MORE THAN GOING TO THE DEFENDANT'S
7 ADDRESS APPEARING ON THE ACCIDENT REPORT ABOUT NINE
8 MONTHS AFTER THE ACCIDENT OCCURRED AND BEING TOLD THAT
9 SHE DID NOT RESIDE THERE. THIS IS PRECISELY THE CONDUCT OF
10 CALDWELL. THE JUDGE FOUND THE CONDUCT IN CALDWELL COURT
11 UNACCEPTABLE BY THE DEPUTY SHERIFF WHO FOUND WICKLESS'S
12 ADDRESS VACANT AND DID NOTHING AND LEFT. HOW DIFFICULT
13 WOULD IT HAVE BEEN FOR WETHINGTON TO WALK OVER TO THE
14 APARTMENT MANAGER IN THE OFFICE AT LONG CREEK AND CHECK
15 OUT WHETHER MS. MASARYK'S CONTACT INFORMATION WAS
16 AVAILABLE.

17 THE PLEADINGS WERE PLACED IN THE MAIL FOR
18 MASARYK'S LAST KNOWN ADDRESS FOR FORWARDING AND
19 DELIVERY BY THE POST OFFICE. IN ANY CASE, HIS AFFIDAVIT DOES
20 NOT MEET THE DUE DILIGENCE STANDARD REQUIRED BY CALDWELL
21 VERSUS WICKLESS. AND THE JUDGMENT SHOULD BE SET ASIDE,
22 BOTH JUDGMENTS SHOULD BE SET ASIDE TO ALLOW THE CASE TO
23 PROCEED TO TRIAL ON THE MERITS. THANK YOU, YOUR HONOR.

24 MR. REARDON: I'D START THE ARGUMENT
25 BY GOING TO RULE 60, HE HAS TO COMPLY WITH RULE 60 EITHER

1 UNDER A OR B, AND HE DIDN'T PRESENT ANY EVIDENCE THAT RULE
2 60 IS WHAT WE'RE TALKING ABOUT. WE HAVE A JUDGMENT,
3 THEREFORE HE HAS TO SHOW A STATE AND PURPOSE. I DIDN'T SEE
4 ANY OF THAT IN HIS BRIEF OR HIS ARGUMENTS. IF WE'RE GOING TO
5 ARGUE ABOUT ANYTHING, RULE 60 APPLIES.

6 IN THIS CASE THERE WAS NO EVIDENCE BASED ON HIS
7 ARGUMENTS TODAY OR IN THE AFFIDAVITS PRESENTED, THAT THERE
8 WAS ANYTHING IN REGARDS TO EITHER OF THOSE. SO THAT WOULD
9 BE MY FIRST ARGUMENT. HE HAS TO PRESENT SOMETHING IN RULE
10 60.

11 THE DATES OF THIS CASE, YOUR HONOR, ARE
12 SIGNIFICANT BECAUSE THE DEFENDANT WAS LIVING AT 1300 LONG
13 CREEK DRIVE, APARTMENT 713 PER THE ACCIDENT REPORT WHEN
14 THE ACCIDENT HAPPENED. SHE DID NOT CHANGE HER ADDRESS ON
15 HER DRIVER'S LICENSE, DID NOT TELL THE OFFICER SHE CHANGED
16 HER ADDRESS ON HER LICENSE, AND THEREFORE CONTINUED TO
17 ACCEPT THAT ADDRESS AS HER OWN ADDRESS.

18 SHE THEN SUBSEQUENTLY MOVES TO MARYLAND
19 BEFORE THE PROCESS SERVER GOES OUT TO SERVE HER, SO AT
20 THE TIME THE PROCESS SERVER GOES TO THE ONLY ADDRESS WE
21 HAVE ON FILE, WHICH IS THE ONLY ADDRESS WE HAVE ON FILE,
22 WHICH IS THE ONE LISTED IN THE POLICE REPORT, THE ONE TOLD TO
23 THE POLICE OFFICER, AND SHE DOESN'T LIVE THERE. SHE CLAIMS
24 SHE MOVED TO ANOTHER ADDRESS IN SOUTH CAROLINA. THE
25 AFFIDAVIT OF MY PROCESS SERVER SAID HE DID A DUE DILIGENCE

1 SEARCH AND NOTHING PRODUCED ANY OTHER ADDRESSES.

2 EVEN IF SHE WAS LIVING AT THAT ADDRESS AT THE TIME
3 OF THE ACCIDENT AND THERE HAD BEEN A CHANGE WHERE HE
4 WENT OUT TO SERVE THE SUMMONS AND COMPLAINT, SHE WAS
5 LIVING NOWHERE IN THE STATE OF SOUTH CAROLINA, SHE WAS
6 LIVING IN MARYLAND, SO YOU COULD NOT HAVE PERSONALLY
7 SERVED HER EITHER WAY AT ANY ADDRESS EVEN IF SHE WAS LIVING
8 AT THE ADDRESS THEY WERE SPEAKING ABOUT. SHE WAS NOT IN
9 THE STATE AT THE TIME WHEN THE SUIT WAS FILED OR WHEN WE
10 TRIED TO SERVE THE SUIT OR

11 SECTION 56-1-230 REQUIRES ANY PERSON REQUIRING OR
12 RECEIVING A DRIVER'S LICENSE SHALL MOVE PERMANENTLY FROM
13 THAT ADDRESS TO CHANGE THE NAME BY MARRIAGE OR THE
14 LICENSE ADDRESS WITHIN 10 DAYS. SHE'D BEEN LIVING AT THIS
15 ADDRESS FOR OVER 32 DAYS AT THE TIME OF THE ACCIDENT. SO
16 SHE DID NOTHING TO CHANGE HER ADDRESS IN SOUTH CAROLINA.
17 SHE THEN MOVES TO MARYLAND, LEAVES NO CHANGE OF ADDRESS.
18 THE AFFIDAVIT THAT WAS FILED WITH THE COURT TO GET THE
19 ORIGINAL HAD DEFAULT INDICATED ON IT AFTER DUE AND DILIGENT
20 SEARCH THE UNDERSIGNED WAS UNABLE TO EFFECT SERVICE. IT
21 GOES TO THE ONLY ADDRESS ON FILE, YOUR HONOR. SO SHE FAILS
22 TO COMPLY WITH THE STATUTE, SHE DOESN'T CHANGE HER
23 ADDRESS.

24 AND THERE'S NOTHING TO THIS DAY, YOUR HONOR, IN
25 ANY OF THESE AFFIDAVITS OTHER THAN HER SAYING THAT SHE

1 CHANGED HER DRIVER'S LICENSE AT THE POSTAL SERVICE, THERE'S
2 NOTHING IN HERE INDICATING THAT SHE CHANGED THE ADDRESS
3 THAT WOULD HAVE BEEN USED TO GIVE HER ANY NOTICE OF
4 ANYBODY LOOKING FOR HER. SO AGAIN RULE 60 IS STILL MY
5 ARGUMENT.

6 MR. BOWMAN HAS NOT SHOWN THE STATE ANY SURPRISE OR
7 NEGLECT WITH REGARD TO THE JUDGMENT.

8 THE COURT: THANK YOU, SIR.

9 MR. BOWMAN: DEFENDANT MASARYK FILED
10 A MOTION TO SET ASIDE ALL DEFAULT JUDGMENTS ON MAY THE 3RD,
11 2016 PER RULE 6460(B)4 ON THE GROUNDS THE JUDGMENTS ARE
12 VOID FOR LACK OF STATUTORY COMPLIANCE WITH 15-9-710, AND
13 THAT THEY VIOLATED HER CONSTITUTIONAL RIGHTS TO DUE
14 PROCESS. SO THAT WAS THE MOTION. 60(B)4, NOT EXCUSABLE,
15 SURPRISE, THAT SORT OF THING DON'T APPLY IF DUE PROCESS HAS
16 NOT BEEN COMPLIED WITH.

17 WITH REGARD TO 66-1-230 REGARDING CHANGING HER
18 DRIVER'S LICENSE, THAT MAY BE THE LAW, BUT THERE'S NO
19 ELEMENTS BEFORE THE COURT TODAY THAT IT WASN'T DONE.

20 THE COURT: WHAT EVIDENCE DO YOU HAVE
21 TO SUPPORT THAT IT WAS DONE?

22 MR. BOWMAN: WELL THAT IT WASN'T IS
23 SPECULATION.

24 THE COURT: ANYTHING FURTHER?
25 PROPOSED ORDERS IN 10 DAYS, THANK YOU.

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-----END OF HEARING-----

*PHONETIC

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Distribution Outlets

29201
 Andrews Auto
 Columbia Eye Clinic
 Carolina Occupational Health
 Mack's Restaurant
 Nathan's Restaurant
 Clarion Townhouse
 Constan Carwash
 Christopher Towers
 USC Humanities Bldg.
 Columbia Arthritis
 Carolina Cardiac
 Red Cross
 Bank of America Plaza
 USC Tech Center
 Villa Ironco
 1728 Main St.
 Main St. @Blanding
 Army/Navy Store
 Main St. @Hampton
 Main St. @Washington
 Arcade Mall
 Main St. @Gervais
 Assembly St. @Gervais
 Gervais/Assembly Parking Garage
 Fancy Thai Bistro
 Hampton Place Cafe
 Sumter St. @Hampton
 Sumter @YMCA
 Palmetto to Pulmonary
 Olive Grill Restaurant
 Chamber of Commerce
 Strom Thurmond Bldg.
 Assembly St. Post Office
 Hampton St Book Drops
 Powntown Library
 AT&T Building
 AFLAC Building
 Maurice Bessingers
 Lizard's Thicket
 No Name Deli
 Historic Columbia Foundation
 Eastern States
 Sumter St. @Pendleton
 Carolina Cafe
 Rembert Pennis Bldg.
 Blatt Bldg.
 Brown Bldg.
 Mellow Mushroom
 912 Lady St.
 Gervais St. @Lincoln
 Trustos Theater
 Colonial Life Center
 Todd & Moore
 Palmetto Pig
 Amtrak
 Stronghold Gym
 Seawell's
 Bernie's Restaurant
 Heathwood Hall
 Poe's BBQ
 Green's
 CC Pickson Co.

29205
 Devine Foods
 Midlands Health
 Earth Fare
 Greher HS
 Mad Platter
 Midas
 Bethel AME Church
 Columbia Periodontal
 College Mart
 Finlay House
 Kings Hair
 Pawley's Front Porch
 Skeebo's Exxon
 Sammi's Deli
 Andy's Deli
 PIPRATO's Deli
 Sen. Isadore Lourie Center
 Cook 'n Roll
 Rosewood Market
 5th Avenue Deli
 Ole Timey Meat Market
 Medicine Mart
 Long's Drugs
 Piggy Wiggy
 Lizard's Thicket
 Salinas Multiservices
 Jiffy Lube
 China Buffet
 Eggroll Chen
 Chocolate Nirvana
 LaBrasca's Pizza
 Bojangle's
 Maurice Bessinger's
 Shandon UMC
 Mill Creek Pet Center
 Five Rivers Market
 Grilled Teriyaki
 Delaney's Revente
 Harden St. @Devine
 Yesterday's Restaurant
 Hair Design
 Groucho's Deli

29204
 Richland District One
 Richland County
 Suddeth Automotive
 Allen University
 Capital Supply
 Uncle Bob's
 Quicktrip
 Burger King
 Columbia Mental Health
 BP Cornerstop
 A Cut Above
 The Other Store
 Sato
 Progressive Physical Therapy
 Casa Linda Restaurant
 Dr. Nettles Green
 Zesto's
 Morganelli's

29204
 Lizard's Thicket
 The Pizza Joint
 Miyo's Restaurant
 Hair Doodles
 Forrest & Grant Photo
 Carolina Dermatology
 Middleburg Plaza
 Mousetrap Restaurant
 Forest Pines
 Pruitt Nursing Home
 Providence Hospital
29206
 Pent Middle School
 Richland District Two
 Chic Styles
 Los Puentes Grocery
 McDonalds
 Pho Viet Restaurant
 Midas
 Mini-Mart
 Little Panda
 Pancho's
 Wynnsong Theaters
 Golden Corral
 Chiropractic Wellness Center
 Cheri's Barber Shop
 Scout & Molly's
 First Citizens
 Groucho's Deli
 4711-A Forest Drive
 Cardinal Newman School
 Village Idiot Pizza
 Atria
 Yummy Chinese
 4250 Cleaners
 Sara & Susie's Grooming
 Supplies
 Columbia's Cleaners
 Agape
29223
 Pick Dyer Mercedes
 Lizard's Thicket
 Columbia Spine & Joint
 Magnolia Manor
 NHC Rehabilitation Center
 Uncle Bob's
 Albert's Deli
 Happy Pets
 ABC Hair & Nails
 Maurice Bessinger's
 Hick's Restaurant
 Sub Station II
 Verry's Restaurant
 Katie & Irwin Kahn JCC
 Palmetto Orthopedic
 9400 Two Notch Rd.
 Embers
 Wildewood Pawns
 Jimmy's Mart
 UPS Store

29223
 Schiano's Old Tyme Pizza
 Spring Valley HS
 GMD Music Center
 Army National Guard Office
 Plantation Storage
 Palmetto Pediatrics
 Groucho's Deli
 P's Wings
 Landy's Pharmacy
 Space Place Storage
 The Waterford
 Life Care Center
 111 Pig BBQ

29209
 Hampton Hill Athletic Club
 Columbia's Cleaners
 Hammond School
 Shoney's
 Uncle Bob's
 McDonald's
 Big T BBQ
 Cligo
 BP Convenience Store
 Lizard's Thicket
 Bojangle's
 Chick-ill-A
 Petsense
 Pizza Palace
 7-Up Mini-Mart
 Curtis & Swirls Beauty Shop
 Mill Creek Greenhouses
 VCP Food Mart
 Cheapway Gas Station
 Shell Gas Station
 ABC
 Vacuums, etc.

29203
 Finklin Pharmacy
 4100 N. Main
 Columbia College
 NCBA
 Angelo's Zesto
 The Vino Garage
 South University
 Providence NE Hospital

29033
 P's Wings
 Midas
 Kenney's Auto Supply
 Shuman-Owens Supply
 La Fiesta
 Maurice Bessinger's
 Senn Brothers
 VB Hook & Co.
 George's Southside
 Southern Seafood & Viet
 Tacos & More
 Jiffy Lube
 Tony's Pizza

29033
 Sub Station II
 Lizard's Thicket
29169
 Three Rivers Antiques
 Bill's Pickin Parlor
 Outdoorwood Furniture
 What-a-Burger
 Still Hopes
 Agape
 West Metro Chamber
 Creative Sewing
 Again & Again
 Compton's Kitchen
 Quality Inn
 Backyard Cafe
 Health Directions
 Amedisys
 Firehouse Subs
 America's Value Inn
 Mai Thai Cuisine
 Grecian Gardens
 Happy China Buffet
 Lizard's Thicket
 Jiffy Lube
 Sunset Carwash
 Jaret's Jungle
 Laurel Crest
 Eggroll Station
 Espresso & Wine Bar
 Cafe Strudel
 Carolina Lodge
 Lizard's Thicket
 A-One Express BP
 Lexington County Library

29210
 Midas
 2 Gingers Restaurant
 Jiffy Lube
 Lizard's Thicket
 Raceway Gas Station

29061
 Peking Gourmet
 Long's Drugs
 Horse & Garden Ace Hardware
 Wippowill Cafe
 Mr. Bunky's
 Ringo's Produce
 PLK Eastover
 Margaret's Restaurant
 Lower Richland Barber Shop
 Lower Richland HS

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
L. Casey Manning, Circuit Court Judge

Case No. 2015-CP-40-05106
Appellate Case No. 2016-002043

RECEIVED

JUN 13 2017

SC Court of Appeals

Pearline Williams.....Respondent

v.

Larita Hipp and Michelle Masaryk..... Defendants,

Of Whom Michelle Masaryk is the.....Appellant.

CERTIFICATION OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all materials proposed to be included by any other parties and not any other material.



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June 13, 2017

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