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FORM 4

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

JUDGMENT IN A CIVIL CASE

JUL 28 2017

CASE NO. 2016-CP-10-1849

SC Court of Appeals

Robert N. Baty

Lydia B. Welling and Amanda L. Lockman

PLAINTIFF(S)

DEFENDANT(S)

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

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: Defendant's Motion to Dismiss filed on 11/8/2016 is granted because service was improper.

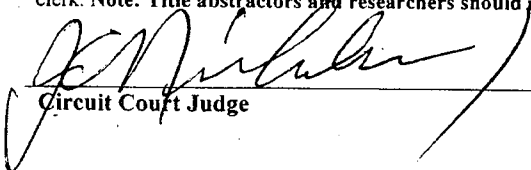
ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
If applicable, describe the property, including tax map information and address, referenced in the order: N/A		

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

2117
Judge Code

3/9/17
Date

740, none of Plaintiff's published notices included the time and place of the Complaint's filing, April 11, 2016 at the Charleston County Court of Common Pleas.

I. Plaintiff did not comply with the Order for Publication

Plaintiff failed to comply with the Order for Publication, only publishing two out of the three weeks required both by the Order and S.C. Code Ann. § 15-9-710. As stated by the Court in *Dubose*, the "statute expressly requires that the order shall be the basis of the publication." *Du Bose v. Du Bose*, 90 S.C. 87 (1911) "Shall be the basis" in its simplest definition means pre-exists or comes first. The Order must be signed before it is valid. "[W]hen an officer is performing the ministerial duty of issuing a paper on compliance with certain conditions prescribed by law, his signature at the foot of the paper he intended to sign is necessary to its validity." *Id.* Publication before the officer has signed the order to publish is therefore invalid.

Plaintiff argued that service should be valid despite only publishing a notice on two dates, July 27, 2016 and August 3, 2016, after the Clerk's Order granting Plaintiff permission to begin service by publication. The Order requires publication once a week for three weeks, the minimum allowed by SC Code Ann. § 15-9-740. Orders constitute the basis of many of the actions in the legal profession and justice system. Their import in conducting court business should not be underestimated. As the Order of the Clerk is the basis of publication, stating in which periodical and duration of time publication is required, attempts to publish before an Order is issued are insufficient and invalid.

II. Plaintiff did not comply with S.C. Code Ann. 15-9-740 as to the contents of the Summons

S.C. Code Ann. 15-9-740 requires that, "In all cases in which publication is made the complaint must first be filed and the summons, as published, must state the time and place of

such filing.” None of Plaintiff’s published notices includes the time and place of the Complaint’s filing, April 11, 2016 at the Charleston County Court of Common Pleas.

Service by publication demands strict compliance with the statute. “Service by publication of the summons... is in derogation of the common law, and the statute must be strictly construed.” *Tenney v. American Pipe Mfg. Co.* 96 F. 919 (C.C.D.S.C. 1899). “[T]here must be a strict compliance with the statutes and rules on constructive service; compliance is jurisdictional, and if any essential statutory step is omitted, the decree rendered on such service is void.” *Caldwell* at 574 quoting, *Sanders v. Sanders*, 12 Md. App. 441, 278 A2.d 615, 618 (Md. Ct. Spec. App. 1971).

South Carolina Rule of Civil Procedure 4 requires that the Summons and Complaint must be served together to effectuate service and establish jurisdiction over a Defendant. In this case, the Complaint was not served nor published. Instead, a Summons was ordered to be published by the Clerk of Court in accordance with S.C. R. Civ. P. 4(e). Service by publication in South Carolina is controlled by S.C. Code Ann. § 15-9-710 & S.C. Code Ann. § 15-9-740.

The South Carolina Supreme Court has addressed the issue of a Summons failing to comport with the statutory requirements stating, “The purpose of a summons is to inform the defendant. When an action is commenced by the use of a summons only, it should be in keeping with the statute.” *Crawford v. Murphy*, 260 S.C. 411, 415 (1973). South Carolina requires strict compliance with statutes allowing service by publication. As Plaintiff’s published Summons did not include the date and place of filing, the Summons was deficient.

III. Failure to serve Defendant Welling within the Statute of Limitations

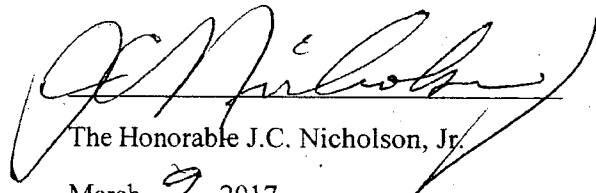
South Carolina Rule of Civil Procedure 3(a) requires that a Summons and Complaint are filed within the Statute of Limitations and service is effectuated within the Statute of Limitations

or not later than 120 days after the filing of the action if service is not completed within the Statute of Limitations. S.C. Code Ann. § 15-3-530(5) provides for a three year statute of limitations for an action on any injury to the person, establishing the proper statute of limitations for this action. Plaintiff filed this action on April 11, 2016 and as such had until August 9, 2016 to perfect service. Service was not properly perfected for the reasons stated above.

CONCLUSION

IT IS THEREFORE ORDERED, ADJUGED, AND DECREED that:

Defendant Lydia B. Welling's Motion to Dismiss based on S.C. R. Civ. P. 3, 12(b)(4) and (5), and S.C. Code Ann. § 15-9-710 and 15-9-740 is **GRANTED**.



The Honorable J.C. Nicholson, Jr.

March 9 2017

Charleston, South Carolina

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-10-1849

SC Court of Appeals

FILED

Robert N. Baty
PLAINTIFF(S)

Lydia B. Welling and Amanda L. Lockman
DEFENDANT(S)

2017 JUL -7 PM 4: 47

Submitted by:	JULIE J. ARMSTRONG CLERK OF COURT	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
		or <input type="checkbox"/> Self-Represented Litigant

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 - STAYED DUE TO BANKRUPTCY**
 - DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
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IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: Upon review of the pleadings, memoranda, and arguments at the hearing on 6/12/17, Plaintiff's Motion to Reconsider filed on 3/27/17 is respectfully **denied**. Although Plaintiff provides a compelling argument, it is not properly before the Court because the waiver argument was not raised until the motion to reconsider. A party cannot use a motion to reconsider, alter or amend a judgment to present an issue that could have been raised prior to the judgment but was not. *Dixon v. Dixon*, 362 S.C. 388, 399, 608 S.E.2d 849, 854 (2005) (finding issue raised for first time in Rule 59, SCRCP, motion is not preserved for review); *Kiawah Prop. Owners Grp. v. Public Serv. Comm'n.*, 359 S.C. 105, 113, 597 S.E.2d 145, 149 (2004) (stating an issue raised for first time in petition for rehearing not preserved). *Poch v. Bayshore Concrete Prod./S.C., Inc.*, 386 S.C. 13, 31, 686 S.E.2d 689, 699 (Ct. App. 2009), aff'd as modified, 405 S.C. 359, 747 S.E.2d 757 (2013).

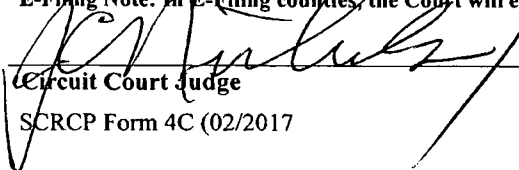
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E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


Circuit Court Judge
SCRCP Form 4C (02/2017)

2117
Judge Code

07/05/2017
Date