

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Daniel Eric Knight,

Plaintiff,

vs.

Phillip Ray Causey,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Docket No.: 16-CP-26-8032

ORDER DENYING
DEFENDANT'S MOTIONS

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SC Court of Appeals

On June 29, 2017, this matter came before the undersigned on Defendant's Motion to Set Aside Default, Defendant's Motion for Relief from Judgment Pursuant to SCRPC 60, and Defendant's Post Judgment Motions. For the reasons set forth below, the Court denies the Defendant's motions.

I. BACKGROUND

This case arises out of an automobile collision that occurred in Horry County, South Carolina, on April 27, 2016. Plaintiff Daniel Eric Knight initiated a complaint against Defendant Phillip Ray Causey by filing a Summons and Complaint with the Horry County Clerk of Court on December 16, 2016.

On January 2, 2017, the Summons and Complaint was personally served on Defendant Phillip Ray Causey pursuant to the South Carolina Rules of Civil Procedure. See Hr'g Tr., Pl.'s Exhibit 4:1, June 29, 2017. After Defendant failed to file an Answer, Plaintiff filed an Affidavit of Default as to Defendant on February 14, 2017.

Plaintiff filed a motion for default judgment against Defendant on February 16, 2017. On February 24, 2017, The Court entered an Order declaring that an entry of default against Defendant has been obtained in this matter and that a hearing to ascertain damages should be held to determine the amount owed to Plaintiff.

On March 2, 2017, Plaintiff filed a motion to refer the case to a Special Referee. On March 22, 2017, the Court entered an Order referring this case to Special Referee Nate Fata.

Defendant was served on April 12, 2017, via first class U.S. mail with Notice of the Damages Hearing along with a copy of the Order of Referral, Motion for Referral, Order of Default, Clocked motion for Default and Affidavit of Default. See Hr'g Tr., Pl.'s Exhibit 4:2-3. In addition, Defendant was personally served on April 13, 2017, with Notices of the Damages Hearing along with a copy of the Order of Referral, Motion for Referral, Order of Default, Clocked motion for Default and Affidavit of Default. See Hr'g Tr., Pl.'s Exhibit 4:4. The Hartford (insurance carrier for Defendant) was also mailed a copy of said documents on April 13, 2017, via U.S. Mail Certified RRR and by faxed letter on April 14, 2017. See Hr'g Tr., Pl.'s Exhibits 2 & 3.

The Special Referee held a damages hearing on April 18, 2017, during which Plaintiff Knight testified about the collision and presented evidence regarding his injuries. Dr. Gilbertas Rimkus, the Plaintiff's treating surgeon, testified at the damages hearing about Plaintiff's injuries and treatment. Kim Piacquadio, RN, CNLCP, testified as to Plaintiff's future damages and provided Plaintiff's life care plan. Defendant Phillip Ray Causey attended the damages hearing and was given the opportunity to participate and conduct cross-examination.

Attorney Joseph D. Thompson, III, filed a notice of appearance on behalf of Defendant on April 21, 2017. On April 25, 2017, Defendant filed a Motion to Set Aside Default.

On April 26, 2017, the Special Referee issued a letter rendering his decision on damages. On May 30, 2017, the Order Granting Judgment against Defendant was filed in the amount of \$3,489,206.14.

On June 6, 2017, Plaintiff filed Plaintiff's memorandum in opposition to Defendant's motion to set aside Default.

On June 8, 2017, Defendant filed Defendant's Post Judgment Motions and Memorandum in Support.

On June 13, 2017, Defendant filed a Motion for Relief from Judgment Pursuant to Rule 60, SCRCP. On June 22, 2017, Defendant filed an affidavit of Defendant Phillip Ray Causey in support of Defendant's pending motions.

On June 29, 2017, Plaintiff filed memoranda opposing each of Defendant's motions. The Affidavit of Shawana Pasley-Shaw was attached in support of Plaintiff's filings.

The Special Referee held a hearing on Defendant's motions on June 29, 2017. For the Defendant, Defense counsel, Joseph D. Thompson, III, of Hall Booth Smith, P.C., appeared at the hearing. For the Plaintiff, Plaintiff's counsel, P. Brooke Eaves Wright and Ian D. Maguire of Maguire Law Firm appeared along with Plaintiff's co-counsel Blake Hewitt of Bluestein, Nichols, Thompson, and Delgado. The parties consented for all of Defendant's pending motions to be heard at the hearing on June 29, 2017.

II. DISCUSSION

The Court reviewed and considered the arguments contained within the pleadings, the Affidavits filed by the parties, the oral argument of counsel and the record. As more fully discussed below, Defendant's motions are denied.

A. Authority and Subject Matter Jurisdiction

In support of its motions, the Defendant argued that the Special Referee lacked the power and subject matter jurisdiction to hold the hearing on Defendant's motions.

Defendant argued the Special Referee's power is limited to conducting a damages hearing because Defendant believes the Order of Referral contained language limiting the Special Referee's authority. Defendant argued the entire case should be returned to the circuit court based upon his reading of the order of reference and Rule 53, SCRPC.

Plaintiff's counsel disagreed, arguing Rule 53(c) was amended to make clear that the Special Referee has the same power as a circuit court sitting without a jury unless the order of reference limits that authority¹. Plaintiff contended the order of reference does not contain any express limitations on the Special Referee's authority. Instead, the order of reference gave the Special Referee authority to preside over this entire case, expressly including authority over the damages hearing.

The Court finds the Order of Referral referred this entire case to the Special Referee, which expressly included the hearing on damages. The Order of Referral begins "[t]his matter comes before the Court based on Plaintiff's Motion for Referral." Order of Referral March 22, 2017. When the circuit court stated "[t]his matter", the court was expressly referring to the entire case. See id. The Order goes on to state that "this matter be referred with finality to Nate Fata, Esquire, as Special Referee, for a hearing on damages, with any appeal directly to the South Carolina Court of Appeals". Id. When the circuit court stated "this matter be referred with finality to Nate Fata, Esquire, as Special Referee..." the operative effect was to refer this entire case with finality. Id. The Court believes this interpretation is supported by the words "the matter" in Rule 53, indicating "the matter" means the entire case. See Rule 53, SCRPC.

Rule 53 provides that, "[i]n a default case...some or all of the causes of action in a case may be referred to a master or special referee by order of a circuit judge..." Rule 53, SCRPC.

This case has a cause of action which was referred to the Special Referee with finality with direct appeal to the Court of Appeals. I find that under the Circuit Court's Order of Referral filed March 22, 2017, that the matter, meaning the entire case, was referred to me to include the ascertainment of damages as well as any related issues concerning the cause of action that is set forth in the complaint. There is only one cause of action in the Complaint, which is for negligence; therefore, any issues relating to that cause of action were referred to me because Rule 53 references some or all causes of action in a case. When I construe this Order of Referral, I am looking at the entirety of the order and it is apparent that the intention was that the matter, the entire case, be referred to me with finality.

I find the circuit court's order did not include any reservation of power to that court. Based on the Order of Referral, the South Carolina Rules of Civil Procedure, and the arguments of counsel, this Court finds it has the authority to hear Defendant's motions. Accordingly, the Defendant's request that the Order Granting Judgment be voided, vacated, and/or set aside; that the Special Referee be recused/disqualified from any further handling of this case; and that the case be returned to the circuit court for further disposition is hereby denied.

B. Defendant's Motion to Set Aside Default

Rule 55 (c) of the South Carolina Rules of Civil Procedure provides:

"For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b)."

The standard for setting aside default is set forth in Sundown Operating Co. v. Intedge Indus., Inc., 383 S.C. 601, 607 (2009):

Rule 55(c) permits a party to move to set aside the entry of default.
The standard for granting relief from an entry of default under Rule

¹ "Once referred, the master or special referee shall exercise all power and authority which a circuit judge sitting without a jury would have in a similar matter". Rule 53(c), SCRPC.

55(c) is mere "good cause." Rule 55(c), SCRCP. This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice. Once a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted. Wham v. Shearson Lehman Bros., Inc., 298 S.C. 462, 465, 381 S.E.2d 499, 501-02 (Ct.App. 1989). The trial court need not make specific findings of fact for each factor if there is sufficient evidentiary support on the record for the finding of the lack of good cause. Dixon v. Besco Engineering, Inc., 320 S.C. 174, 179, 463 S.E.2d 636, 639 (Ct.App.1995). A motion under Rule 55(c) is addressed to the sound discretion of the trial court. Williams v. Stalnaker, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct.App.1994).

A party seeking relief from an entry of default under Rule 55(c), SCRCP, must provide an explanation for the default and give reasons why vacation of the default entry would serve the interest of justice.

In support of his motion, Defendant argued that there is good cause to set aside default because the Defendant had no money to hire a lawyer² and did not know what he was doing³. See Hr'g Tr. 20:8-16. At the hearing, Defendant argued he is a high school graduate and cannot be assigned the status of a lawyer or a college graduate. See Hr'g Tr. 20:17-21:21. Defendant also argued he treated the situation like he would treat a traffic ticket: by waiting for something with a court date and then show up for the court date. See Hr'g Tr. 20:24-21:7. Defendant contended this situation is different from cases where a corporation was served or an insurance

² In paragraph 18 of Defendant's affidavit, Defendant stated, "I did not have the financial means to hire a lawyer to assist me with Mr. Knight's lawsuit. However, at all times, I intended to contest Mr. Knight's case and I expected that I would eventually have an opportunity to defend myself in court. Since I did not own anything of value, I figured that even if I lost the case I would not have to pay a lawyer and there would be nothing for Mr. Knight to collect anyway". See Causey Aff.

³ In paragraph 19 of Defendant's affidavit, Defendant stated, "I did not understand that I need to file anything or otherwise respond to the papers that I received." See Causey Aff.

agent was served because those are sophisticated people and entities, unlike the Defendant. See Hr'g Tr. 21:22-22:8.

Defendant contended its motion to set aside default was timely because it was filed approximately two months after the default was entered. Defendant contended he had a meritorious defense because he has denied liability for the collision in his affidavit. Defendant contended there would be no prejudice to the Plaintiff unless the cost of the damages hearing incurred by the Plaintiff was at least \$25,000.00. The "lost costs" in this case appear to be only about \$1,300.00.

In response, Plaintiff's counsel argued that the Defendant has not demonstrated good cause and that the Summons which was served upon the Defendant clearly explained that he had thirty days to Answer. See Hr'g Tr. 23:21-24:4.

Plaintiff's counsel argued that the Defendant's motion to set aside default was untimely because the hearing on damages had already been conducted before said motion was filed. Plaintiff's counsel argued that Dr. Rimkus, the Plaintiff's treating surgeon, had to cancel patient appointments to testify at the hearing. Furthermore, Defendant's motion to set aside default was filed more than two months after the default was entered.

Plaintiff's counsel argued that the degree of prejudice to the Plaintiff if the default were set aside would be substantial because the Plaintiff had already been through the damages hearing and testified extensively about the collision and his injuries, a lengthy experience which was not pleasant. It would cause significant prejudice to make Plaintiff relive this traumatic experience by having to testify all over again. It would also cause substantial prejudice to the Plaintiff because the Plaintiff incurred significant expenses to prepare for the damages hearing

including the following: payment of \$900.00 to Dr. Rimkus for his appearance, payment of \$2,554.20 for the nurse life care plan, and \$412.00 to the life care planner for her appearance.

As to a meritorious defense, Plaintiff's counsel argued that Defendant Causey never denied liability at the damages hearing and never disputed liability until after the default judgment was already entered. Plaintiff's counsel also argued that the Defendant does not have a meritorious defense and that the Defendant's affidavit is not credible. Plaintiff testified at the damages hearing that Defendant Causey caused the collision and Plaintiff subsequently filed an affidavit from a witness, Shawana Palsey-Shaw, supporting Plaintiff's testimony⁴. See Palsey-Shaw Affidavit. The affidavit states "[t]he Ford PK, driven by Phillip Ray Causey, crossed the center line and struck the Honda driven by Daniel Eric Knight." Palsey-Shaw Aff. The affidavit also stated that "[w]hen Phillip Ray Causey struck Daniel Eric Knight's Honda, the impact caused Daniel Eric Knight's Honda to crash head-on into a GMC SUV." Id. Furthermore, the affidavit stated the affiant "...witnessed Phillip Ray Causey get out of the Ford PK he was driving, run around to the passenger side of the Ford PK, and begin throwing items out of the passenger side of his vehicle into the nearby ravine." Id.

Defendant's statements at the hearing rebut the assertion of a meritorious defense. Defendant's objection to the Palsey-Shaw Affidavit is overruled. The Court has reviewed that Affidavit as it bears on the meritorious defense issue raised by Defendant. However, even without the Palsey-Shaw Affidavit, the Defendant did not meet his burden of having a meritorious defense.

⁴ Furthermore, the affidavit of Shawana Palsey-Shaw stated that "[t]he Ford PK, driven by Phillip Ray Causey, crossed the center line many times and kept drifting into the other lane before he finally crossed the center line and struck the Honda driven by Daniel Eric Knight." Palsey-Shaw Aff.

Defendant Causey's affidavit states that he is 39 years old and is a high school graduate. See Causey Affidavit. The defense has not indicated that Defendant has any problems reading or understanding the English language. To the contrary, from Paragraph 18 of his Affidavit, Mr. Causey appears to assert that because he doesn't own anything of value for Mr. Knight to collect, he wasn't concerned about the lawsuit. The Court believes the summons and its language about the consequences of non-responsiveness are clear. Accordingly, Defendant failed to provide sufficient explanation for the default: Defendant has not met his burden of good cause.

The Court also finds Defendant's motion for relief was not timely because Defendant's motion to set aside default was filed more than two months after the Court entered Default. It was also after the damages hearing had already been held, which Defendant attended and to which he did not object.⁵

As to the second factor, Defendant does not have a meritorious defense. It is difficult to reconcile some of the statements made in Defendant's affidavit such as Defendant's claim of a meritorious defense when compared to other statements suggesting Defendant had no assets and would suffer no actual damage from a judgment. See Causey Aff. Also, Defendant did not deny liability at the hearing on damages. Without question, Defendant's denial of liability in his affidavit meets the definition of a defense, but the Court does not believe it constitutes a "meritorious defense."

As to the third factor, the degree of prejudice, the Court finds there would be significant prejudice to the Plaintiff if default was set aside. The damages hearing had already been held before the Defendant's motion to set aside default was filed. Plaintiff incurred significant expenses and preparation to present his damages at the hearing. Plaintiff also made a substantial

effort in getting Dr. Rimkus and the life care planner to testify at the damages hearing, and both the Plaintiff and Defendant were present at the hearing. The hearing was lengthy, and all participants, including the Court, made a substantial effort to conduct a fair and complete hearing to achieve a final judgment that was proper and just.

For reasons stated above herein and based on the arguments of counsel, the Defendant's Motion to Set Aside Default is denied.

C. Defendant's Motion for Relief from Judgment pursuant to SCRPC 60

Rule 60(b) of the South Carolina Rules of Civil Procedure provides:

(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:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud, misrepresentation, or other misconduct of an adverse party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. During the pendency of an appeal, leave to make the motion must be obtained from the appellate court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

⁵ On February 24, 2017, The Court entered an Order declaring that entry of default against Defendant has been obtained in this matter. On April 25, 2017, Defendant filed a Motion to Set Aside Default.

Defense counsel argued the default judgment should be set aside on the grounds of (1) mistake, inadvertence, surprise, or excusable neglect, (2) that the actual costs of Plaintiff's post-hearing surgery constitute "newly discovered evidence" and/or (3) that the judgment is void.

Plaintiff's counsel argued Defendant has not demonstrated any mistake, inadvertence, surprise, or excusable neglect.

Plaintiff's counsel argued the actual costs of Plaintiff's post-hearing surgery does not constitute "newly discovered evidence" because the costs associated with that surgery were accounted for and taken into consideration at the hearing. The evidence presented at the hearing shows that Plaintiff will continue receiving medical treatment for the rest of his life and it would be unfairly burdensome and unreasonable to set aside the judgment every time Plaintiff incurs a new medical bill.

Plaintiff's counsel argued that the default judgment is not void.

The Court finds the life care planner provided an extensive life care plan and testimony to a reasonable degree of life care planning certainty. The life care plan included the estimated costs of a future surgery and it also included other future medical expenses Plaintiff has yet to incur. The post-hearing surgery does not constitute "newly discovered evidence" because there was sufficient evidence presented at the hearing of the costs associated with that surgery. The Court further finds there was sufficient evidence presented at the hearing showing Plaintiff will continue receiving medical treatment for the rest of his life.

The Summons that was served on the Defendant along with the Complaint clearly explained to the Defendant that he was required to answer the complaint within thirty days after service and that if he failed to answer the complaint, judgment by default would be rendered against him. See Summons. The Court finds Defendant has not demonstrated any mistake,

inadvertence, surprise, or excusable neglect in this case. Again, Defendant has not met his burden.

The Court additionally finds Defendant had proper notice of the damages hearing, the Defendant was properly served pursuant to the South Carolina Rules of Civil Procedure, the Defendant attended and participated in the damages hearing. The record also discloses Defendant's insurance carrier was also mailed/sent actual notice of the Damages Hearing. The Court accordingly finds that there was proper personal jurisdiction over the Defendant and that the default judgment is not void.

For reasons stated above herein and based upon the arguments of counsel, the Defendant's Motion for Relief from Judgment pursuant to SCRCP 60 is denied.

D. Defendant's Post Judgment Motions

I. Notice of Motion for Referral to Special Referee

Defendant argued the Order of Referral was legally defective and failed to transfer the power, authority and subject matter jurisdiction of this case to the Special Referee because Defendant did not receive proper notice of Plaintiff's Notice of Motion and Motion for Referral to Special Referee.

Plaintiff argued that the South Carolina Rules of Civil Procedure did not require service of Plaintiff's Motion for Referral to Special Referral on Defendant because Defendant was already in default for failure to appear at the time Plaintiff's Motion for Referral to Special Referee was filed⁶; Plaintiff argued the Motion for Referral to Special Referee did not fall within Rule 5's exception for pleadings asserting new or additional claims for relief and did not fall

⁶ Rule 5, SCRCP, provides that "[n]o service need be made on parties in default for failure to appear, except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for serving of summons in Rule 4, and notice of any trial or hearing on unliquidated damages shall also be given to parties in default." Rule 5, SCRCP.

within the exception for notice of any trial or hearing on unliquidated damages. See Rule 5, SCRPC.

The Court finds that service of Plaintiff's Motion for Referral to Special Referee on Defendant Causey was not necessary nor required pursuant to Rule 5, SCRPC, because the Defendant was in default and Plaintiff complied with the South Carolina Rules of Civil Procedure. Accordingly, the Order of Referral was not legally defective and the Order properly transferred the power, authority, and subject matter jurisdiction of this case to the Special Referee. See Order of Referral March 22, 2017.

II. Defendant's Request for a Jury Trial

Rule 53, SCRPC, provides that "[a]ny party may request a jury pursuant to Rule 38 on any or all issues triable of right by a jury and, upon the filing of a jury demand, the matter shall be returned to the circuit court." "Where a party is in default, the right to a jury trial is waived pursuant to Rule 38(d), SCRPC." Gassett v. Gilliam, 317 S.C. 82 (Ct. App. 1994).

Defendant argued that his motion to set aside default filed on April 25, 2017, included a jury trial demand. Defendant further argued that this case should have been decided by a jury.

Plaintiff argued Defendant had long been in default – default was entered February 14, 2017 – at the time Defendant requested a jury trial; therefore, Defendant's right to a jury trial was untimely and had already been waived pursuant to Rule 38(d), SCRPC.

The Court finds Defendant did not file any pleadings in this case requesting a jury trial and that Defendant's motion including a jury trial demand was filed after the Defendant was already in default. Furthermore, Defendant did not request a jury trial at the damages hearing. The Court additionally finds Defendant's right to a jury trial was waived pursuant to Rule 38(d) because the Defendant was in default. See Rule 38(d), SCRPC. Defendant did not demand a jury

trial until after the damages hearing had been conducted; again, Defendant was present at the damages hearing and never raised that issue during the hearing. For the reasons stated herein, Defendant's request for a jury trial is denied.

III. Defendant's motion for a new trial pursuant to SCRPC 52(b), 59(a)(2), and/or to alter or amend the judgment pursuant to Rule 59(e)

A) Rule 52(b), SCRPC

Rule 52(b) of the South Carolina Rules of Civil Procedure provides that a judgment can be altered or amended, explaining:

(b) Amendment. Upon motion of a party made not later than 10 days after receipt of written notice of entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly, and the motion may be made with a timely motion for a new trial. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the trial court an objection to such findings or has made a motion to amend them or a motion for judgment.

Defense counsel argued that because Plaintiff's third surgery was scheduled shortly after the damages hearing, the record should be reopened and the actual cost of surgery should be considered instead of an estimate; therefore, Defense counsel argued that the judgment or findings should be amended pursuant to Rule 52(b), SCRPC on that basis.

Plaintiff's counsel argued Plaintiff presented substantial evidence of Plaintiff's future damages at the damages hearing, reasonably supporting the Court's findings. The Plaintiff's life care planner testified, in addition to the surgeon who would be providing Plaintiff's future medical care, and the Plaintiff himself testified about his future damages. Kim Piacquadio, RN, CNLCP, testified as to Plaintiff's future damages and provided the life care plan giving ample evidence of the ongoing medical treatment Plaintiff will need as a direct result of the collision. Table 1 of the life care plan accounted for the cost of preoperative, operative, and post-operative

care that Plaintiff will need as a result of this collision throughout the first year. Table 2 accounts for the best-case scenario of the future expenses following year one throughout the remainder of Plaintiff's life expectancy.

The Court finds Plaintiff is still receiving ongoing medical treatment as a direct result of this collision and will continue to incur future damages throughout his lifespan as explained in the life care plan; therefore, the precise amount of Plaintiff's future damages is not now ascertainable as actual damages. Plaintiff's own testimony at the hearing also supports his future damages and corroborated the testimony from Ms. Piacquadio. The Court finds there was ample testimony proving future medical expenses presented at the damages hearing. Furthermore, it would defy logic to reopen this matter each time Plaintiff receives additional medical treatment. For the foregoing reasons, Defendant's motion for a new trial pursuant to SCRPC 52(b) is denied.

B) Rule 59, SCRPC

Rule 59(a)(2) and Rule 59(e) of the South Carolina Rules of Civil Procedure provide:

Rule 59(a)(2) New Trials; Amendment of Judgments

(a) Grounds. A new trial may be granted to all or any of the parties and on all or part of the issues (2) in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in the courts of the State. On a motion for a new trial in an action tried without a jury, the court may open 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.

Rule 59(e) Motion to Alter or Amend a Judgment.

(e) A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order.

"A party cannot use Rule 59(e), SCRPC, to present to the trial court an issue the party could have raised prior to judgment but did not." Peay v. Ross, 292 S.C. 535 (Ct. App. 1987).

"[A]n objection to the sufficiency of the evidence cannot be raised for the first time in a motion

for a new trial; a motion for a directed verdict is a prerequisite to a motion for a new trial on the ground that the evidence does not support the verdict.” Id.

Defense counsel argued that because Plaintiff’s third surgery was scheduled shortly after the damages hearing, the record should be reopened and the actual cost of surgery should be considered instead of an estimate; therefore, Defense counsel argued the judgment should be amended or a new trial should be granted pursuant to Rules 59(a)(2) and/or Rule 59(e), SCRCPP, on that basis.

Plaintiff’s counsel argued that the Defendant did not raise any objections to the sufficiency of the evidence at the damages hearing or at any time prior to the entry of the judgment. The Defendant had the opportunity to raise any objections to the life care planner’s testimony and the life care plan itself at the time of the damages hearing and failed to do so. The defendant did not make any objections regarding the future damages or the testimony regarding the amount of those damages. Defendant could have raised these issues at any time prior to judgment being entered, but did not.

The Court finds Defendant has not provided a sufficient basis to support Defendant’s request for a new trial or amendment of the judgment. For the foregoing reasons, Defendant’s motion for a new trial pursuant to SCRCPP 52(b), SCRCPP 59(a)(2), and/or to alter or amend the judgment pursuant to SCRCPP 59(e) is denied.

IV. Defendant’s motion for a new trial pursuant to SCRCPP 52(b), SCRCPP 59(a)(2), SCRCPP 59(e) on the grounds that the Order granting judgment for \$3,489,206.14 is grossly excessive, shocks the conscience and is unsupported by admissible evidence in the record.

“In an action at law, referred to the master for final judgment with direct appeal to the Supreme Court, the appellate court’s review is limited to the correction of any error of law; it must affirm the master’s factual findings unless there is no evidence that reasonably supports

those findings.” Clark v. Hargrave, 323 S.C. 84, 473 S.E.2d 474 (Ct. App. 1996). “It is only when the verdict is so grossly excessive as to indicate that the jury was so moved by passion or prejudice, or other considerations not founded on the evidence and the instructions of the trial court, that it becomes the duty of this Court, as well as of the trial court, to set it aside absolutely.” Peagler v. A. C. L. Railroad Co., 234 S.C. 140, 107 S.E.2d 15 (1959). “Where the amount of the verdict bears a reasonable relationship to the character and extent of the injury and damage sustained, it is not excessive.” Watson v. Wilkinson Trucking Co., 244 S.C. 217, 136 S.E.2d 286 (1964).

Defense counsel argued that there was no evidence in the record that Plaintiff will have a permanent injury other than permanent scarring⁷ and that Dr. Rimkus said he expects Plaintiff’s digestive system will be the same. See Hr’g Tr. 74:18-20; 75:16-20. Defense counsel argued that there is no indication of any permanency with regards to the biologic mesh. See Hr’g Tr. 76:21-77:5.

Defense counsel also argued that no objective evidence supports the Plaintiff’s version of events and that no evidence in the record says that the Plaintiff cannot lift weights. See Hr’g Tr. 79:4-16; 81:7-8, 81:24-82:2. Defense counsel argued that Plaintiff’s testimony that he lost consciousness, that he had to be intubated, that he had to be resuscitated, and that he had lifting restrictions were all false statements that are not supported by the facts, factual evidence, nor the medical records in the record. See Hr’g Tr. 78:23-79:16; 74:1-4; 80:8-14. Defense counsel argued that Plaintiff’s testimony is not credible because Plaintiff is contradicted by the medical records in evidence. See Hr’g Tr. 78:6-25.

⁷ “And again, I will concede permanent scarring.” See Hr’g Tr. 77:19-23.

Defense counsel argued that plenty of powerlifters have hernia surgery and that nobody said Plaintiff cannot do the things he enjoys doing. See Hr'g Tr. 82:2-6; 86:8-10. Defense counsel argued that nothing justifies Plaintiff getting \$230 per day for the rest of his life and that he can do everything he could do before. See Hr'g Tr. 86:13-87:17. Defense counsel argued that the judgment is excessive and that he thinks the total value of this case is \$1,000,000. See Hr'g Tr. 97:12-98:1. Defense counsel stated that the past medical bills and past wage loss is not contested⁸.

Plaintiff's counsel argued that the judgment is not excessive given the permanent scar across Plaintiff's stomach, the permanent mesh in Plaintiff's body the rest of his life, the portion of Plaintiff's body that had to be removed, the damage done to Plaintiff's digestive system, and the detrimental impact this collision has made on Plaintiff's life. See Hr'g Tr. 105:7-21. Plaintiff's counsel argued that the evidence shows that Plaintiff had to worry about leaking bowel fluid all over his clothes while he had an ostomy bag for a significant period of time as a result of this collision and that the ostomy bag had to be changed every time it became full and needed to be drained about every hour and a half. See Hr'g Tr. 35:7-36:9, April 18, 2017.

Plaintiff's counsel argued that Plaintiff's injury was very different from a simple hernia and was substantially more significant. Plaintiff's counsel explained that this collision actually perforated the Plaintiff's small intestines, a portion of which had to be removed, and then mesh had to be permanently inserted into Plaintiff's body to replace it and that this injury required Plaintiff to undergo three surgeries. See Hr'g Tr. 105:22-106:9, June 29, 2017.

With regards to Plaintiff's credibility as a witness, Plaintiff's counsel argued that Plaintiff's testimony is supported by the medical records presented as evidence at the damages

⁸ "You know, the – the past medical bills are not contested." "The wage loss says, you know, not contested." See

hearing. Plaintiff's counsel argued that the medical records from the Conway Medical Center Emergency Room on April 27, state that Plaintiff did lose consciousness⁹, which is completely consistent with and corroborates Plaintiff's testimony. See Hr'g Tr., Pl.'s Exhibit 19:674. Plaintiff's counsel argued that medical records from Conway Medical Center with the admission date of May 15, 2016, state that Plaintiff had to be resuscitated with crystalloid¹⁰, which corroborates Plaintiff's testimony that he did have to be resuscitated.

Plaintiff's counsel argued that Plaintiff's testimony was consistent with the nurse life care planner, Kim Piacquadio, RN, CNLCP, who testified Plaintiff will no longer be able to eat a regular diet or the diet he has in the past due to his surgeries from this collision. See Hr'g Tr. 103:23-25. Furthermore, she testified Plaintiff will have an altered elimination pattern going forward because he will now have a shorter bowel which brings with it its own challenges. See Hr'g Tr. 85:17-25, April 18, 2017. Ms. Piacquadio also testified that "he [Plaintiff] won't be able to function in the same ways going forward as far as weight lifting and dieting and nutrition and the life he was accustomed to living pre-accident." See Hr'g Tr. 86:8-11, April 18, 2017. Ms. Piacquadio further testified that there is pain in Plaintiff's abdomen and low back that continues with very little relief from medication. See Hr'g Tr. 85:13-15. Furthermore, Ms. Piacquadio testified that she strongly recommends nutritional therapy for Plaintiff because he was not going to be able to eat the same type of diet anymore because of the impact of the surgery from this accident. See Hr'g Tr. 89:11-25.

Hr'g Tr. 94: 10-14; 95: 13-16, June 29, 2017.

⁹ "Loss of consciousness: the patient experienced loss of consciousness, the patient was "dazed". Hr'g Tr., Pl.'s Exhibit 19:674.

¹⁰ "He has been resuscitated with crystalloid and given broad spectrum IV antibiotics. We will take him to the operating room this morning for exploratory laparotomy and possible bowel resection and possible ostomy." Hr'g Tr., Pl.'s Exhibit 19: 48-49.

Plaintiff's counsel argued that Dr. Rimkus testified that Plaintiff has a twenty pound lifting restriction. See Hr'g Tr. 114: 9-12. Ms. Piacquadio, the life care planner, also testified as to Plaintiff's lifting restrictions and the resulting impact on Plaintiff's life. See Hr'g Tr. 84:24-85:12. Plaintiff testified that he had to miss time from work¹¹ and is unable to do all of his job duties with patients because part of his job as a physical therapy assistant is lifting patients - which he cannot do now. See Hr'g Tr. 60:8-61:8. Plaintiff's testimony regarding his digestive issues and the foods he can no longer eat or tolerate because of these injuries is consistent with Ms. Piacquadio's testimony. See Hr'g Tr. 61:18-62:15.

Evidence was presented at the hearing showing that as a result of this collision, biologic mesh was inserted into Plaintiff's body at the ileostomy site and will remain inside him permanently for the rest of his life. Dr. Rimkus testified that biologic mesh was used and that mesh will stay in Plaintiff for the rest of his life. See Hr'g Tr. 110:4-11. Dr. Rimkus testified that the biologic mesh is approximately six by ten centimeters and was incorporated into Plaintiff's body tissues. See Hr'g Tr. 110:4-11. Dr. Rimkus also testified Plaintiff will have permanent scars on his abdomen as a result of these procedures. See Hr'g Tr. 113:24-25; 114:1-2. Plaintiff's counsel argued that the Plaintiff lifted his shirt at the damages hearing to show his "ghastly" scar and this was before he had the third surgery, which no doubt made the scar worse. See Hr'g Tr. 71:19-72:5.

Plaintiff testified that he will not be able to be a competitive power lifter anymore and that he is embarrassed to take his shirt off now at the beach due to the permanent scars. See Hr'g Tr. 59:2-6; 67:22-68:15. Plaintiff testified that that is not able to lift his twenty-three pound daughter and is not able to play with her like he could before this collision. See Hr'g Tr. 59:7-

¹¹ "You know, the - the past medical bills are not contested." "The wage loss says, you know, not contested." See

15. Plaintiff's counsel argued that there is substantial evidence in the record that reasonably supports the factual findings and reasonably supports the amount of the judgment.

The Court finds the judgment was not motivated by any prejudice or passion, or any other considerations not founded on the evidence. The Court listened intently to the evidence at the damages hearing and firmly believes the amount of the judgment bears a reasonable relationship to the character and the extent of the injuries and damages sustained by the Plaintiff. The Court viewed Plaintiff's scar, which is very large and grotesque, and there was substantial evidence presented at the damages hearing indicating this collision had and will continue to have a dramatic impact on Plaintiff's life. The evidence in the record shows that Plaintiff will need ongoing future medical treatment and there was ample testimony to support the findings of the past, present, ongoing, and future damages in this case. The judgment does not shock the Court's conscience.

For the reasons stated herein, the Defendant's motion for a new trial pursuant to SCRCP 52(b), SCRCP 59(a)(2), SCRCP 59(e) on the grounds that the Order granting judgment for \$3,489,206.14 is grossly excessive, shocks the conscience and is unsupported by admissible evidence in the record is denied.

V. Defendant's motion for a new trial for failure of due process afforded Defendant Causey and/or demonstrated bias of the Special Referee.

A) Defendant's Father

Defendant argued that due process was not provided because the Defendant's father was excluded from the damages hearing. Plaintiff's counsel argued that the Court did not exclude the Defendant's father from the damages hearing at any time. Defense counsel conceded that the

record does not state the Defendant's father was denied entry and there is nothing in this record that explains why Mr. Causey's dad did not enter.¹²

The Defendant's father is a grown man over the age of forty years old and he could have come into the room and stayed if he wanted to. The record does not reflect that he was not allowed to stay and there is nothing in the record that says anyone asked him to leave. Furthermore, Defendant never stated that he wanted his father in the room at the damages hearing. The Court finds Defendant's father was not excluded from the damages hearing, which was open to the public. Defendant did not ask at any time for anyone to be present with him during the hearing. The Court has not been presented with any facts or authority suggesting any violation of due process and therefore concludes Defendant's due process rights were not violated.

B) Opening Statements

Defense counsel argued that the Defendant's due process rights were violated because the Defendant was not offered an opportunity to give an opening statement. Defense counsel argued that this demonstrated bias of the Special Referee because Plaintiff's counsel was allowed to give an opening statement.

"During a default damages trial, the defendant's participation shall be limited to cross-examination and objection to the plaintiff's evidence." Limehouse v. Hulsey, 397 S.C. 49 (Ct. App. 2011), *reversed*, 404 S.C. 93 (2013) – add parallel citations. "If our courts were to allow a defaulting defendant to fully participate in a post-default hearing, we believe there would be no consequence of default." Id. The Court finds Defendant was not entitled to give an opening

¹² "There is nothing in this record – this court did not engage in a discussion or explain why Mr. Causey's dad did not enter." Lines 16-19, p. 132. "Where does it say in the record he was not allowed to stay, Counsel? Where does it say that? "I will concede it does not say that." Pg. 133.

statement. In addition, Defendant did not request to give an opening statement. The Court believes Defendant's participation was appropriately limited to cross-examination and objection to the Plaintiff's evidence pursuant to South Carolina law. Accordingly, the Court concludes that no bias was demonstrated and the Defendant's due process rights were not violated. In addition, no contemporaneous objection was made.

C) Evidentiary Objections

Defense counsel argued that the Defendant's due process rights were violated because hearsay was allowed, leading questions were allowed, Defendant did not understand what was happening, he was given 1200 pages of medical records at the damages hearing without time to review the records, and the life care planner's testimony was outside the bounds of her qualifications.

Plaintiff argued that the Special Referee did not demonstrate any bias in this matter and Defendant Causey was afforded due process. The Special Referee gave the Defendant ample opportunities to raise objections and ask questions of the witnesses throughout the hearing. The hearing transcript is filled with examples of opportunities when the Special Referee allowed Defendant Causey to raise objections and ask questions¹³.

With regards to the medical records, if Defendant had appeared in this case and served discovery requests on Plaintiff, then Defendant would have been entitled to receive a copy of the medical records prior to the hearing. However, Defendant failed to Answer, failed to appear case, and failed to serve any discovery requests prior to the damages hearing. Defendant cannot legitimately complain he did not have time to review the medical records prior to the hearing when Defendant never made any attempt to request the medical records and failed to follow the

South Carolina Rules of Civil Procedure. Furthermore, Defendant did not raise any valid or proper objections during the damages hearing, at any point.

The Court finds Defendant was given the opportunity to object to the exhibits and evidence and made no objections. The Court also finds Defendant was allowed to put any objections on the record and was allowed to ask questions of the witnesses, but did not do so. When Plaintiff's counsel showed the medical records to the Defendant and offered them into evidence, the Defendant stated "Ain't no reason - I mean I ---It'd take me six years to Sunday and read all that". See Hr'g Tr. 52:1-8. The Court did not take this statement as any sort of objection to the records, but instead as a concession to the information's admission.

The Court wishes to expressly note it went to lengths to make sure Defendant understood he could ask questions and Defendant still did not ask questions of the witnesses. Defendant did not raise any objections as to the life care planner's qualifications. None of Defendant's evidentiary issues were raised during the damages hearing and they are not timely.

In Limehouse v. Hulsey, the South Carolina Supreme Court held that the Circuit Court judge correctly precluded a defaulting defendant from engaging in discovery and "limited his participation to cross-examination and objection to the plaintiff's evidence". Limehouse v. Hulsey, 404 S.C. 93, add parallel cite (2013). "If our courts were to allow a defaulting defendant to fully participate in a post-default hearing, we believe there would be no consequence of default." Id. The Court finds the Defendant was not entitled to review copies of the Plaintiff's medical records prior to the damages hearing.

¹³ For example, the Court said "Mr. Causey, please ask any questions you might have if any" and Mr. Causey's response was "I don't have none." Pg. 99, lines 21-24.

In conclusion, the Court finds that these issues are not timely raised and also that Defendant's due process rights were not violated because Defendant was given every opportunity to make objections and cross-examine the witnesses and chose not to do so.

D) Pro Se Defendant

The Defendant argued he was not afforded due process because he never indicated that he desired or intended to proceed pro se.

At the damages hearing, Defendant never asked for a lawyer or stated that he wanted a lawyer. Furthermore, Defendant's affidavit shows that he had no desire to hire a lawyer or the means to pay for a lawyer. Defendant's affidavit states "I did not have the financial means to hire a lawyer to assist me with Mr. Knight's lawsuit...I figured that even if I lost the case I would not have to pay a lawyer and there would be nothing for Mr. Knight collect anyway." See Causey Aff. This statement is internally inconsistent and it appears to the Court (who conducted the damages hearing and had the ability to assess Defendant's demeanor) that Defendant chose to participate in the damages hearing as a pro se litigant and his due process rights were not violated.

E) Timing of Order of Judgment

Defense counsel argued that Defendant did not receive due process, impartial justice or fair consideration because the Order granting judgment was entered before the hearing was held on Defendant's motion to set aside default¹⁴. Defense counsel argued that he expressly objected to the entry of the order until after Defendant's motion to set aside default had been heard.

¹⁴ Defense counsel emailed the Special Referee on April 25, 2017, requesting that the Order of Default Judgment be held in abeyance until after the hearing on Defendant's motion to set aside default. Hr'g Tr., Def.'s Exhibit I.

On April 25, 2017, defense counsel filed a motion to set aside default and then emailed the Special Referee in which Defendant “respectfully request that an Order/Judgment of the Special Referee should not be issued/held in abeyance until after the Circuit Court disposes of the now pending motion.” Defense counsel’s email also requested that Plaintiff’s counsel consent to the request. Plaintiff’s counsel replied stating that Plaintiff would not consent to the request because the default judgment hearing was already conducted and concluded seven days prior to Defendant’s motion to set aside default. Plaintiff’s counsel further responded stating “I don’t see how it would not be appropriate for the Special Referee to issue a timely Order when he was given jurisdiction by the court to hold a damages hearing in this matter.”

Defense counsel did not file a motion to hold the order of judgment in abeyance and his email stated this was a respectful request rather than an objection. Defendant did not present any authority supporting his argument that the Court should have delayed entering the default judgment immediately upon receipt of Defendant’s motion to be relieved from default. By the time defendant filed the motion, the damages hearing had already occurred. This was a lengthy hearing at which Defendant himself was personally present and to which Defendant did not object. The court has faithfully considered Defendant’s motion to be relieved of default and has applied the “good cause” standard - a lower standard than is applicable under Rule 60 - and determined there is no good cause. Given the absence of good cause, the Court is not persuaded that Defendant has been prejudiced in any way by the procedure or timing of the motion’s consideration.

F) Notice of Damages Hearing

In Defendant’s post-trial motions, Defense counsel argued Defendant attempted to raise an objection at the damages hearing regarding notice by stating, “I mean I got this paper in the

mail like yesterday. I mean this package came in the mail yesterday and I mean I didn't even know---". (Damages hearing transcript, p. 8). Defense counsel argued that due process was violated because Defendant's alleged concern regarding the timing of the proceeding was not addressed in the record at the damages hearing.

During the hearing on Defendant's motions, Defense counsel argued for the first time that Defendant should have received ten days notice of the damages hearing pursuant to Rule 6¹⁵, SCRCP, instead of the six days notice the Defendant received. Defense counsel argued that Rule 6 should apply because Rule 6 governs motions and the Plaintiff had to file a motion to have a hearing on damages. Defense counsel argued that Rule 55(b) provides parties who have appeared in an action are entitled to three days of notice; however, the rule is silent as to how many days of notice a defendant is entitled to if he has not appeared in the action.

Plaintiff's counsel argued that Rule 6, SCRCP, did not apply because the damages hearing was not a motion hearing¹⁶. The damages hearing on April 18, 2017, was not a hearing on Plaintiff's motion for default judgment (which had already been granted), but instead was merely a hearing to ascertain the amount of the damages for the default judgment¹⁷. Plaintiff's counsel argued that Rule 5, SCRCP, applies which provides "[n]o service need be made on parties in default for failure to appear, except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for serving of summons in Rule 4, and notice of any trial or hearing on unliquidated damages shall also be given to

¹⁵ "A written motion other than one which may be heard ex parte, and notice of the hearing thereof, shall be served not later than ten days before the time specified for the hearing, unless a different period is fixed by these rules of by an order of the court." Rule 6(d), SCRCP.

¹⁶ Plaintiff filed a motion for default judgment on February 16, 2017, and the Order granting that motion was filed on February 24, 2017, without a hearing. The Defendant was served with Plaintiff's motion for default judgment on February 16, 2017. After the Court granted Plaintiff's motion for default judgment against the Defendant, the Plaintiff scheduled the hearing to determine the amount of the damages.

parties in default.” Rule 5, SCRC. Plaintiff’s counsel argued that Rule 55(b), SCRC, requires that the Defendant be given three days’ notice of the damages hearing. Plaintiff’s counsel argued that Defendant was given six days notice, even though the rules only require three days notice, and that the Defendant was served both personally and by mail.

The Court finds Defendant was personally served with notice of the damages hearing and had actual notice, which is more than the rules require. The rules do not require actual notice of the damages hearing, but Plaintiff’s counsel had the Defendant personally served. The Court wishes to also note that while Defendant stated at the hearing he had received notice in the mail, Defendant did not inform the Court that he had also been personally served.

Defendant attended the damages hearing and did not object at the hearing or lodge any request for more time. The record discloses Defendant was given proper notice and did appear and participate at the hearing; therefore, the Defendant suffered no legally cognizable prejudice.

Also, Defendant’s written motion argues Defendant did not receive due process because his alleged attempt to object to notice was not addressed on the record at the damages hearing. However, Defendant’s motion does not argue that the notice of the damages hearing was inadequate or in violation of the rules. In fact, defense counsel never raised an objection regarding the timing of the notice that Defendant was given until oral arguments at the hearing on Defendant’s motions.

Accordingly, this issue is not properly before the Court. However, if the issue had been timely raised, it is denied because the Defendant received adequate and timely notice. I find that Rule 6 does not apply and the Defendant was not entitled to ten days notice. Instead, South Carolina law provides that it is the better practice for Plaintiff’s counsel to give the Defendant


¹⁷ If this were a motion, then Rule 6 still would not apply because Defendant’s in default for failure to appear are not

four days notice, when no appearance has been made, of the time and place of the unliquidated damages hearing¹⁸. See Lewis v. Congress of Racial Equality and/or C. O. R. E., Inc., 275 S.C. 556, 274 S.E.2d 287 (1981). The Court finds Plaintiff's counsel gave the Defendant six days' notice of the damages hearing, which exceeds the amount of notice required by South Carolina law. Accordingly, I find that the damages hearing is not void.

III. CONCLUSION

Based on the foregoing and upon the arguments of counsel, the Court **DENIES** the Defendant's motions in their entirety.

AND IT IS SO ORDERED.



Nate Fata, Esquire
Special Referee, Fifteenth Judicial Circuit

Dated: August 1, 2017
Surfside Beach, South Carolina

entitled to any notice of a motion pursuant to Rule 5, SCRCP.

¹⁸ "Problems growing out of such hearings convince us that hereafter in all unliquidated-damages default hearings, even when no appearance has been made, it is the better practice for claimant's counsel to give to the defending party four days notice, as set out in § 15-9-960 of the Code, of the time and place of the hearing." Lewis v. Congress of Racial Equality and/or C. O. R. E., Inc., 275 S.C. 556 (1981).