APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

Case#: 2016-002024

APPEAL FROM CHARELSTON COUNTY

Court of Common Pleas

Kristi Harrington, Circuit Court Judge
Dennis Markley, Circuit Court Judge

Case No. 2015CP1002824

David Scot Lynd

VS

Isle of Palms

Dawn Caldwell,
Individually and in her capacity as an Officer of the Isle of Palms Police Department

South Carolina Law Enforcement Division

Appellants reply To Dawn Caldwell's Response

on its Own Motion To Dismiss.

Now comes David Lynd to show corrections **(by court records)** of the lies and misstatements by Caldwell in her response to Lynd's motion reply.

First dawn Caldwell is incorrect on her terminology and facts. Let's start with the most glaring false fact or lie. The court should consider this blatant perjury for the fact that in its initial

filing it could be called error or mistake. After Lynd's response that clearly outline the error, to respond back and intentional misstate the facts, **facts that are part of the record. Is a clear and concise attempt to commit perjury!**

The ***form 4*** order Caldwell again falsely claims ***states dismissed as untimely***, is even attached to the response. NOWHERE on that form 4 does it say untimely, nor does it even say the motion was dismissed!!!!! It has a box checked for a ***"decision by the Court"*** and further down it says ***ORDERED AND ADJUDGED and a checked box "see attached order"***.

It goes on to state under order information a checked box ***"this order does not end the case"***

Page 2 of the form 4 has a section for notes of the order, **NONE are entered.** And no formal order was ever entered. This is part of Lynd's appeal, as without the order: due to it never been entered; Lynd has no grounds to base his appeal on. For Caldwell and her counsel of record to make this claim **for the 3rd time now**, is inexcusable and should be unforgiveable and sanctionable. In an attempt to place Lynd's appeal in some form of appearance to the court as being factual incorrect, or incompetent, or false, because they cannot win on the facts or merit. Caldwell like the other parties, such as *IOP electroniuc communication response*, claiming Lynd's errors for the mail arriving late that was ridiculous. Caldwell, nor SLED, nor IOP **can win this case or appeal on the facts.** They are all on a campaign to try and discredit Lynd as incompetent, and his filings as incompetent. Ever response they have filed is based here on claims Lynd committed some filing error, or some other procedural error. In hopes of escaping on a technicality, like some guilty defendant, of which they are.

To have and read a court record on only 2 pages and knowingly lie as to its contents, must be addressed by the court.

See the form 4 below, that Caldwell attached to her own response.

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP-10-2824

David Scot Lynd,

PLAINTIFF(S)

Dawn Caldwell, Individually and in her capacity as an officer of the Isle of Palms Police Department, and South Carolina Law Enforcement Division

DEFENDANT(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. ☐ See Page 2 for additional information

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ 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: The Plaintiffs' Motion for Relief from Orders Granting Summary Judgment to Defendants South Carolina Law Enforcement and Dawn Caldwell is denied as untimely filed.

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 (List amount(s) below)
n/a		$
		$
		$

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 | 2151 **Judge Code** | July 28, 2016 **Date**

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

They all fail to state for the record that the error they are trying to create at the time would have been, if it existed, committed by Lynd's counsel, and numerous S. C. precedents on ineffective assistance of counsel govern that, and none forfeit Lynd's right to appeal. Also in IOP's motion they briefly acknowledge Rule 54, and then quickly move on. But as the form 4 states that ruling did not end the case, and Lynd's Counsel Filings were appropriate. As well as the ruling precedent set by the S.C. Supreme Court, that consolidated all the prior precedents that had numerous different outcomes, and subsequent interpretations

The South Carolina Supreme Court has held that the motion Lynd filed does apply to start/toll the appeal time limit and the motion in 2015 was not required to be a separate appeal. The Court also outlines the times and cause of order entry's to file the rule 59/60 motions as well as the application of all the previous motions in a particular case. **This is the standard precedent the court has set to consolidate all the prior precedents.** And it goes on to outline and explain, that the naming of of motion, either to reconsider, or rule 59, or rule 60 does not matter, as to now court views them all as tolling the time to file a notice of appeal.

> **Elam v. South Carolina Dept. of Transp., 602 SE 2d 772 - SC: Supreme Court 2004**
>
> We take this opportunity to clarify the limits and rationale **of *Quality Trailer, supra***, and two Court of Appeals' opinions, ***Coward Hund Const. Co. v. Ball Corp.*, 336 S.C. 1, 518 S.E.2d 56 (Ct.App.1999), and *Collins Music Co. v. IGT*, 353 S.C. 559, 579 S.E.2d 524 (Ct.App.2002).** We conclude the Court of Appeals in the present case and **in *Matthews v. Richland County School Dist. One*, 357 S.C. 594, 594 S.E.2d 177 (Ct.App.2004)** has extended the holdings and rationale of those three **cases in a manner which unnecessarily complicates post-trial and appellate practice.**
>
> After studied review, we reject the rationale and result reached by the Court of Appeals in the present case and in *Matthews*. We conclude a party usually is free to file an initial Rule 59(e) motion, regardless of whether the previous JNOV/new trial motions were made orally or in writing, without unnecessary concern the repetition of an issue or argument made in a previous motion will result in a subsequent appeal being dismissed as untimely. In essence, we view the use of oral or written JNOV/new trial motions, followed by an initial Rule 59(e) motion, **as part and parcel of a party's "single bite at the apple" in presenting his case to the trial court.**
>
> We believe this view of the propriety of post-trial motions to be the correct approach for several reasons. **First, it is proper to view a Rule 59(e) motion not only as a**

vehicle to request the trial court "alter or amend the judgment," but also as a vehicle to seek "reconsideration" of issues and arguments. A motion under Rule 59(e) long has been viewed as "motion for reconsideration" despite the absence of those words from the rule. Consequently, a party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented. *See, e.g., Arnold v. State,* 309 S.C. 157, 420 S.E.2d 834 (1992) ("purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to 22*22 request the judge to reconsider matters properly encompassed in a decision on the merits"); *Curcio v. Caterpillar, Inc.,* 355 S.C. 316, 585 S.E.2d 272 (2003) (an example of the many cases in which trial and appellate courts describe a Rule 59(e) motion as a "motion to reconsider" or "motion for reconsideration"); James Flanagan, *South Carolina Civil Procedure* 474-475 (2d ed. 1996). There is nothing inherently unfair in allowing a party one final chance not only to call the court's attention to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument. **It is inherently unfair to disallow such an opportunity.**

Rule 59(e) in the South Carolina and federal rules of civil procedure is practically identical.[3] Neither contains any provision for a motion for "reconsideration." However, federal courts consider it appropriate for a party to make a "motion for reconsideration" under Rule 59(e) even though the rule mentions only a "motion to alter or amend a judgment." **This view holds true even when a party mislabels a post-trial motion.** *See Blair v. Equifax Check Services, Inc.,* 181 F.3d 832, 837 (7th Cir.1999) (Rule 4(a)(4), FRAP, restates long-accepted practice of considering motions for reconsideration, a practice independent of any appellate rule); 12 *Moore's Federal Practice* § 59.30[2][a] and [7]; 11 Wright, Miller & Kane § 2810.1; 20 *Moore's Federal Practice* §§ 304.13[2] and 304.13[4][b] (3d ed. 2003). "\\

In fact, the United States Supreme Court explicitly has described a motion under federal Rule 59(e) as one which "involves *reconsideration* of matters properly encompassed in a decision on the merits." *Osterneck v. Ernst & Whinney,* 489 U.S. 169, 174, 109 S.Ct. 987, 990, 103 L.Ed.2d 146, 154 (1989) 23*23 (a request relating to discretionary prejudgment interest is a part of the plaintiff's compensation and thus a part of the decision on the merits, which means a Rule 59(e) motion raising prejudgment interest tolled the time for appeal; Court cited precedent in which Rule 59(e) motions relating to attorney's fees and case costs are deemed collateral issues, thus such motions did not toll the time for appeal) (emphasis added). The Court explained its decision furthered the goals of avoiding piecemeal appeals and fostering informed appellate review. *Osterneck,* 489 U.S. at 177-178, 109 S.Ct. at 992, 103 L.Ed.2d at 156

The commentators explain that the approach taken in today's rules allowing a motion for reconsideration which addresses the merits of the case at hand originated in the common law. "It is absolutely necessary *to justice,* that there should, upon many occasions, be opportunities of *reconsidering* the cause by a new trial." 11 Wright, Miller & Kane § 2801 (quoting a 1757 opinion written by an English judge) (emphasis in original); 12 *Moore's Federal Practice* 59 App. 102 (even before 1946 amendment adding subdivision (e) to Rule 59, courts routinely found that motions seeking such relief

as rehearing or reconsideration were proper under Rule 59, although the motions were not literally or technically motions for a new trial).

Third, our rules contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. A party *may* wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.

Fourth, South Carolina appellate courts do not recognize the "plain error rule," under which a court in certain circumstances is allowed to consider and rectify an error not raised below by the party. *Dykema v. Carolina Emergency Physicians, P.C.*, 348 S.C. 549, 554, 560 S.E.2d 894, 896 (2002); *Kennedy v. South Carolina Retirement System*, 349 S.C. 531, 25*25 564 S.E.2d 322 (2001). **Our mandatory preservation requirements make it doubly important that litigants generally be freely allowed to file a first, written Rule 59(e) motion without concern a later appeal will be deemed untimely.**

Fifth, civil procedure and appellate rules should not be written or interpreted to create a trap for the unwary lawyer or party, but a careful consideration of this issue has led us to conclude that is precisely the effect of an unwarranted expansion of *Quality Trailer*. *Cf. Gamble v. State*, 298 S.C. 176, 379 S.E.2d 118 (1989)

If a party is unsure whether he properly raised all issues and obtained a ruling, he must file a Rule 59(e) motion or an appellate court may later determine the issue or argument is not preserved for review. But in filing the motion, he may unwittingly forfeit the right to an appeal if an appellate court later determines the Rule 59(e) motion was unnecessary because he already had raised the issue and obtained a ruling. We strive to avoid an interpretation of procedural rules which routinely would place a party between the proverbial rock and a hard place.[5]

We reaffirm the principles set forth in *Coward Hund*, 336 S.C. 1, 518 S.E.2d 56; *Quality Trailer*, 349 S.C. 216, 562 S.E.2d 615; and *Collins Music*, 353 S.C. 559, 579 S.E.2d 524. We reverse the Court of Appeals' order in the present case and overrule the Court of Appeals' opinion in *Matthews*, 357 S.C. 594, 594 S.E.2d 177. We conclude SCDOT timely served its notice of appeal after receipt of written notice of entry of the order denying its Rule 59(e) motion.

Second Caldwell tries to claim Lynd's Notice of appeal was untimely by trying to back-date to the summary judgement date, not the motion to reconsider denial date. **This AGAIN is a clear and concise lie to the court,** by repeatedly throwing dates at the court to confuse and

mislead the C.O.A.'s. Caldwell then goes into argument that a rule60 was filed but a rule59 argued **and again LIES** claiming it was denied as untimely, *(which Lynd has already proven is false).*

On page 3, Caldwell goes off the deep end even contradicting itself.

Caldwell tries to use *Tench vs SC Dept of Ed* as a precedent, but that is one of the main precedents overturned and consolidated in ***Elam v. South Carolina Dept. of Transp., 602 SE 2d 772 - SC: Supreme Court 2004***

Shown below is an pg 3 excerpt of Caldwell's response, first they go into a tirade that Lynd is claiming the rule 59/60 motion to rehear was denied because Lynd is pro-se and they are attorneys. *CRYSTAL CLEAR they do not even know the facts of the case.* Lynd not only did not claim that, Lynd DID NOT FILE the motion, Greenberg did. And Caldwell in the very next paragraph explains that, **(so clearly knows it)** by stating Lynd was represented by counsel *"" during the summary judgement and arguments, and represented by counsel at the outset of this appeal""* again complete contradiction for the argument made one paragraph higher.

On the contrary this shows Lynd is factual correct, Caldwell and Counsel **either do not know the facts, or do and pretend not to know** when it suits their needs. Either way they are using misleading statements, misleading dates, misleading facts in an attempt to portray Lynd in some light of incompetence. This as stated before is due to; THEY CANNOT PREVAIL ON STRAIGHT FACTS OF THE CASE!!

Not on the verified claim, the conversion of Lynd's property, Caldwell's criminal conduct, the lack of certified notice to Lynd *(registered property owner)* under half a dozen S.C. statutes that require notification, and make no exception for failure on it.

Page 3 Caldwell's response:

litigated at trial and on appeal claims he now makes by motion)).

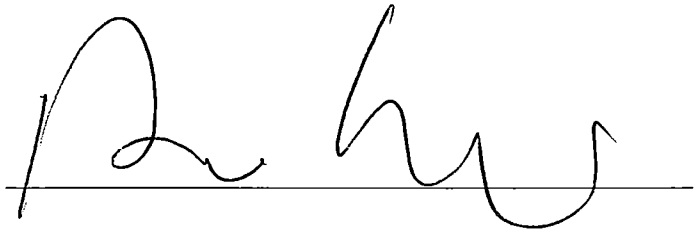
Fifth, Appellant believes that the Court denied the motion for other reasons, such as the Respondents' counsels being attorneys and the Appellant being pro se, and goes on to state "Nowhere was the motion ever argued that it was untimely, not ruled on as untimely, ..." This is blatantly false and is intentionally misleading to the Court by the Appellant. The Form 4 Order denying his Rule 60(b) motion very clearly states, "denied as untimely filed." This Respondent has attached the Form 4 again herein as **Exhibit A**.

Sixth, whether or not this Respondent has "never mention that **Lynd was represented by counsel during trial and the start of this appeal**" is completely irrelevant. The second half of Appellant's Return addresses what he believes to be ineffective assistance of counsel. Appellant was represented by counsel during the summary judgment motions and arguments, and represented by counsel at the outset of this appeal. Further, this Court has recognized and given the Appellant numerous extensions based off of his being a pro se Appellant after his counsel withdrew from representation.

No matter what or how the Appellant attempts to muddy the waters in the case, the facts

The sheer volume of lies and factual inaccuracies by the 3 defendants and their counsel needs to be addressed by the C.O.A. and some form of discipline or sanctions imposed!

To repeatedly claim a **'dismissed as untimely filed"** as shown above, time and time again, THEN BE ARROGANT ENOUGH to attach the form 4 **that shows they are lying is a clear insult to the C.O.A.** They feel and hope the justices will just glance over the motions and exhibits without actual checking the facts, and just rule in their favor because they threw out some misleading dates. That is exactly why we are before the COA, because the trial courts just took their word on Summary judgment and didn't check the facts and the dates on the issues.



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NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

Case#: 2016-002024

APPEAL FROM CHARELSTON COUNTY

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Kristi Harrington, Circuit Court Judge
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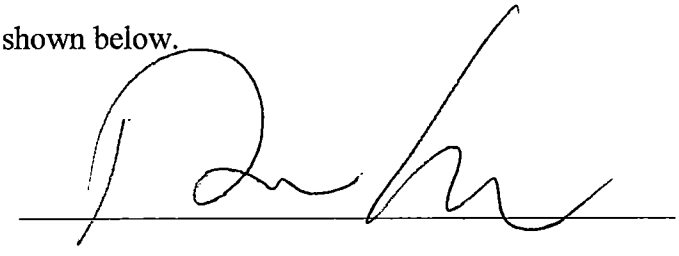
Dawn Caldwell,

Individually and in her capacity as an Officer of the Isle of Palms Police Department

South Carolina Law Enforcement Division

PROOF OF SERVICE

I hereby certify that the above named partied were served this response by **U.S.P.S. mail on 12-4-2017** to the address on file with the court shown below.



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