THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Nate Fata, Special Referee

Case No. 2016-CP-26-8032
Appellate Case No. 2017-001817

Daniel Eric Knight ..... Respondent,

v.

Phillip Ray Causey, ... Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

This lawsuit concerns a motor vehicle accident occurring in April of 2016. Respondent Knight and Appellant Causey were involved in a head-on collision. (Compl.p.5, ¶¶6-10). Knight claimed Causey's vehicle crossed the roadway's centerline and struck Knight's vehicle. *Id.* Knight's vehicle ultimately collided with an additional car. *Id.*

Knight filed a summons and complaint in December of 2016. (Summons; Compl.p.1). The suit was served on Causey January 2, 2017. (Aff. of Default, Ex.B).

Causey did not answer the lawsuit. On February 14, 2017, Knight filed an affidavit of default. (Aff. of Default, pp.1-2).

Two days later Knight filed a motion for a default judgment and requested a damages hearing. (Mot. for Default J.). Knight then filed a motion to refer the case to a special referee. (Mot. for Referral). The circuit court refered the case to a special referee in an order dated March 22, 2017. (3/22/17 Or.).

The special referee conducted a damages hearing April 18, 2017. (4/18/17 Tr.p.1). Causey attended the damages hearing and apologized to Knight, explaining on three different occasions the wreck "was an accident." (4/18/17 Tr.p.25, line 24 - p.26, line 3; p.72, line 17 - p.73, line 11; p.75, lines 2-10).

A lawyer filed a notice of appearance on Causey's behalf three days after the damages hearing. A few days later, Causey moved through counsel for an order setting aside the entry of default. (Mot. to Set Aside Default). The one-page motion claimed good cause could be demonstrated and that the suit had not been properly served. *Id.*

The special referee issued the default judgment May 30, 2017. (5/30/17 Or.pp.1-5). The judgment included economic damages of $289,206.14 for Knight's past medical bills, future medical bills, past lost wages, and future lost wages. *Id.* The judgment awarded $3.2 million in non-economic damages. *Id.* This was compensation for Knight's permanent scarring, his past and future pain and suffering, and the past and future loss of enjoyment of his life. *Id.*

Causey filed two additional motions after the special referee entered the judgment. One was a post-judgment motion challenging the referee's jurisdiction and seeking relief

under Rules 52 and 59, SCRCP. (Def's 6/8/17 Mot.pp.1-13). The other motion sought relief under Rule 60. (Def's 6/13/17 Mot.pp.1-2). These motions were in addition to Causey's motion to set aside the entry of default under Rule 55.

Later, Causey filed an affidavit claiming he had no legal training and denying he caused the wreck. (6/22/17 Causey Aff.¶¶2, 6, 7, 10, 27). He said he thought an insurance company was "taking care of whatever needed to be taken care of." (Id.¶¶15). He also alleged the special referee was biased. (Id.p.5, ¶24).

The special referee heard all outstanding motions June 29, 2017. (6/29/17 Tr.p.1). On August 2, 2017, the referee issued a lengthy order denying each of Causey's three motions. (8/2/17 Or.pp.1-29).

The special referee's order addressed all of Causey's arguments. The referee found Causey did not show good cause to set aside default under Rule 55. (Id.p.9). The referee noted Causey was a 39 year-old high school graduate and the referee explained the summons had a straightforward warning about the consequences of not responding to the complaint. *Id.* The referee held Causey did not give a sufficient explanation for failing to answer. *Id.*

The special referee found Causey did not demonstrate grounds to set the judgment aside under Rule 60. The referee held the cost of Knight's third surgery related to this wreck did not constitute newly-discovered evidence as it was cumulative to other evidence already in the record. (Id.p.11). The referee also held Causey had not shown mistake, inadvertence, surprise, or excusable neglect. (Id.pp.11-12). The referee then held the judgment was not void and that Causey received proper notice of the damages hearing. (Id.p.12). As in its analysis of default, the referee noted Causey attended the damages hearing. *Id.*

The special referee devoted several pages of his order to Causey's argument that the amount of the judgment was grossly excessive. (Id.pp.16-20). And the referee rejected each of Causey's multiple other arguments that the referee's judgment was void or should be reversed. Causey makes many of these same arguments on appeal. The referee's rulings on these arguments will be briefly summarized under the relevant argument headings.

ARGUMENT

This case is both ordinary and exceptional.

The case is ordinary because the special referee followed appropriate procedures and correctly applied the relevant rules. There is nothing noteworthy about how the proceedings unfolded below. Causey repeatedly claims the referee did not follow the right process, but a review of precedent and of the relevant rules demonstrates he is mistaken. This is a simple case of a party who did not answer a complaint, for no good reason.

The case is exceptional because it concerns an automobile wreck that severely damaged someone's life. Knight was seriously injured, he endured a difficult recovery, and the referee found the wreck negatively impacted Knight's family, his job, and his ability to enjoy his leisure activities. All of these findings are supported by competent evidence. The referee's award of roughly $3.5 million is greater than the estimate offered by Causey's counsel—Causey's counsel said the case's maximum value was $1 million, (6/29/17 Tr.p.97, line12 - p.98, line 16)—but the referee's award is less than the amount Knight's counsel requested. Knight's counsel requested an award of $4 million. (4/18/17 Tr.p.119, line 3 - p.122, line 17). This is a substantial award because the referee found a substantial amount of damages. That finding has evidentiary support and is not clearly erroneous.

I. The special referee did not abuse his discretion in determining the amount of damages awarded in this case was reasonably related to the character and extent of Knight's injuries.

The special referee awarded significant damages because there was evidence the case warranted significant damages.

a. The record includes substantial evidence justifying a large damages award.

This wreck was violent. Knight estimated he was driving 55 mph when Causey "swerved straight in to me." (4/18/17 Tr.p.12, line 15 - p.13, line 23). Knight's vehicle was totaled and the doors had to be removed with crowbars. (Id.p.15, lines 3-10). At the damages hearing Knight explained he likely lost consciousness because he did not remember how his vehicle came to be surrounded by the dozen or so bystanders after the wreck who were "trying to check on me and make sure that I wasn't dead." (Id.p.22, lines 8-21).

The wreck also caused complicated and extensive medical damage. Knight had some wounds likes cuts, bruises, and a broken toe that were readily apparent. (Id.p.21, line 13 - p.22, line 2). At the hospital he was diagnosed with a pelvic contusion. (Id.p.22, lines 3-7). Knight had to go back to the hospital on May 15—about two weeks after the wreck—because he was in excruciating pain. (Id.p.23, line 11 - p.24, line 4). At that point, doctors discovered he had a hole in his stomach, a perforated intestine, and bowel fluid was leaking into his abdominal cavity. *Id.*; see also (Pls.Ex.19pp.46-47).

These injuries caused significant short-term damage. Knight required three surgeries. The first was emergency surgery to remove part of his small intestine and bypass his intestines with an ostomy bag. (Id.pp.528-529). This required a two-week stay in the

hospital during which Knight was diagnosed with an acute kidney injury and respiratory failure. (Tr.p.27, line 20 - p.11); see also (Pls.Ex.25p.7). The second surgery was to re-connect Knight's digestive system, remove the ostomy bag, and repair a hernia that developed at the site of the incision. (Id.p.11) (summary dated 7/8/16). At the time of the damages hearing, Knight was scheduled for a third surgery to repair yet another hernia. (4/18/17 Tr..p.40, lines 1-25).

Knight described the "de-humanizing" helplessness he experienced during the 57 days he had an ostomy bag. (Id.p.34, line 23). He said he sat in the recliner or sat in bed because he was in a substantial amount of pain and because the ostomy bag basically left him incapacitated. (Id.p.63, line 24 - p.64, line 12).

The injury also caused significant long-term damage. Knight testified at the damages hearing his lower back and hips are in constant pain. (Id.p.67, lines 2-21). He also showed the special referee the scarring on his abdomen. (Id.p.71, lines 18-21). The referee described the scarring as "very large and grotesque." (8/3/17 Or.p.21).

Knight said before the wreck he had been in the best shape of his life. (4/18/17 Tr.p.54, line 16 - p.55, line 1). Knight was a competitive power lifter who had won three national titles in his weight class. (Id.p.54, lines 2-5). He lost 40 pounds as a result of the wreck, was on a 20-pound lifting restriction at the time of the damages hearing due to the hernia, and said he had been told his ability to power lift was "pretty much done." (Id.p.58, line 17 - p.59, line 6).

Knight also described the wreck's impact on his personal life. Knight's wife was his primary care giver during his lengthy recovery but by the time of the damages hearing they

were separated. (Id.p.59, line 16 - p.60, line 7). Knight explained he was not the same person as before the wreck and could not do the things he used to do. *Id.*

b. The appellate court's power to reverse an award is limited to awards based on passion, prejudice, or factors other than the evidence.

An appellate court has limited power with respect to the amount of a damages award. The trial court may reduce an award of damages that the court believes is "liberal" by granting a new trial nisi remittitur, but the appellate court may only reverse when the amount of the award is "so grossly excessive" it indicates the jury was "moved by passion or prejudice, or other considerations not founded on the evidence and the instructions of the trial court[.]" *Ray v. Simon*, 245 S.C. 346, 359-360, 140 S.E.2d 575, 581 (1965).

Precedent describes these sorts of awards as obvious outliers. A "grossly excessive" verdict is deemed to result from "disregard of the facts and of the instructions of the Court, and to be due to passion and prejudice rather than reason." *Bowers v. Charleston & W. C. Ry. Co.*, 210 S.C. 367, 375, 42 S.E.2d 705, 708 (1947).

Precedent also explains the lower court is due substantial deference when it comes to the proper valuation of a damages award. This is because the amount of unliquidated damages "cannot be determined with any degree of certainty, but is largely a matter of judgment based upon the facts and circumstances of each case." *Watson v. Wilkinson Trucking Co.*, 244 S.C. 217, 224, 136 S.E.2d 286, 289 (1964). The Supreme Court has explained there is no market value for personal injury and pain and suffering, and that the proper assessment of unliquidated damages must generally rest "in the sound discretion" of the jury and trial judge. *Anderson v. Elliott*, 228 S.C. 371, 375, 90 S.E.2d 367, 369 (1955).

c. This award was not based on passion, prejudice, or things outside the evidence.

Causey's central argument is that there is no evidence Knight has permanent injuries or limitations. This is directly contradicted by Knight's testimony about experiencing constant pain and about his being unable to participate in his pre-accident activities of daily living. The record also includes evidence offered by a life-care planner, explaining Knight is at increased risk of future hernias and infections from future surgeries. (Pls.Ex.25pp.13-14); (4/18/17 Tr.p.87, lines 8-14). The life care planner also reported Knight experiences ongoing anxiety, depression, anger, bitterness, and loneliness. (Pls.Ex.25p.13). Causey does not account for this evidence. Instead he pretends it does not exist.

It is also noteworthy that the referee's award falls within the parties' competing proposals of the case's value. Causey said the case's maximum value was $1 million. (6/29/17 Tr.p.97, line12 - p.98, line 16). Knight said $4 million and offered a methodology for arriving at this figure based on varying calculations of daily damages for the rest of Knight's statutory life expectancy. (4/18/17 Tr.p.119, line 3 - p.122, line 17).

The referee conspicuously advertised that its award "was not motivated by prejudice or passion." (8/3/17 Or.p.21). The referee said he "firmly believe[d]" the award bore a reasonable relationship to Knight's damages. *Id.* The referee explained there was evidence the wreck had a dramatic impact on Knight's life. *Id.* This is consistent with Knight's explanation that no amount of money would compensate him for the pain and loss of enjoyment he has experienced. (4/18/17 Tr.p.72, lines 6-12). Certain things are properly regarded as priceless. Knight would probably pay anything to get his life back.

II. The special referee did not abuse his discretion in denying Causey's motion to admit cumulative evidence created after the damages hearing but before the referee entered the judgment.

At the damages hearing on April 18, 2017, Knight testified he was scheduled to have his third surgery a few weeks later, on May 8. (4/18/17 Tr.p.40, lines 23-25). The special referee issued the judgment May 30. (5/30/17 Or.p.1).

After the judgment was entered Causey asked the special referee to reopen the record, contending the actual cost of Knight's third surgery constituted grounds for amending the judgment under Rules 52(b), 59(a)(2), and 60(b), SCRCP. (Def's 6/8/17 Mot.p.5). The referee rejected this argument, explaining the record already contained "ample testimony" supporting Knight's future medical expenses. (8/3/17 Or.p.15).

The special referee's decision was correct, for at least two reasons.

First, Causey cannot show an abuse of discretion. Newly discovered evidence falls under Rule 60(b). Precedent explains the decision to grant or deny relief under Rule 60(b) rests in the trial judge's discretion. *Lanier v. Lanier*, 364 S.C. 211, 216, 612 S.E.2d 456, 458 (Ct. App. 2005). The same standard of review applies to motions for relief under Rule 59(a)(2), which authorizes the circuit court to grant a new trial "for any of the reasons" for which rehearings have been granted. *Blejski v. Blejski*, 325 S.C. 491, 497 n.4, 480 S.E.2d 462, 466 n.4 (Ct. App. 1997).

The special referee correctly observed this evidence about the cost of Knight's third surgery was cumulative to the life care planner's estimate of Knight's future medical expenses. "Table 1" of the life care planner's report detailed this element of damages. (Pls.Ex.25pp.16-21). The table covers Knight's surgery and his recovery. (Tr.p.91).

The second reason the referee's decision was correct is that Causey cannot show this evidence would change the result. Precedent explains the moving party in a Rule 60(b) motion must present the evidence justifying a claim for relief. *BB & T v. Taylor*, 369 S.C. 548, 552, 633 S.E.2d 501, 503 (2006); *Lanier*, 364 S.C. at 217, 612 S.E.2d at 459. Nothing suggests this evidence would have any effect on the judgment.

III. The special referee correctly determined Causey received proper notice of the damages hearing.

Knight served Causey with notice of the damages hearing six (6) days before the damages hearing occurred. The damages hearing was April 18, 2017. Knight served Causey by mail on April 12, 2017. (6/29/17Tr.Ex.4p.2).

Knight also personally served Causey with notice of the hearing the following day, five days before the damages hearing. (Id.p.4). Causey attended the damages hearing.

At the hearing on his post-judgment motions, Causey argued he was entitled to ten (10) days notice of the damages hearing under the rule that says a motion or the notice of a hearing on a motion must be served not later than ten days before a hearing. Rule 6(d), SCRCP. (6/29/17 Tr.p.116, line 6 - p.120, line 10).

The special referee rejected this argument for three reasons. One, he explained the argument was not properly before him because it was not set forth in any of Causey's written motions for relief. (6/28/17 Or.p.28). Two, the referee held Rule 6 did not apply, citing a case explaining the better practice is for counsel to provide a defaulted party who has not appeared four (4) days notice. (Id.pp.28-29). The referee's third reason for rejecting the argument was that Causey participated in the hearing and thus did not suffer prejudice. *Id.*

Here again, there are multiple reasons the referee's decision was correct.

First, Causey has not challenged the referee's ruling that this argument was not properly presented because it was not raised in his written motions for relief. An unappealed ruling is the law of the case. *ML-Lee Acquisition Fund v. Deloitte & Touche*, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997).

Second, Rule 6 does not apply. Applying this rule would lead to the nonsensical result of giving more notice to a defaulting party who *has not* appeared than to a defaulting party who *has* appeared. Rule 55(b)(2), SCRCP, explains a defaulting party who has appeared in the action shall receive at least 3 days notice of the damages hearing. Persuasive authority explains the purpose of this rule is "to protect those parties who, although delaying in a formal sense by failing to file pleadings . . . have otherwise indicated to the moving party a clear purpose to defend the suit." 10A Fed. Prac. & Proc. Civ. § 2687 (4th ed.). It is difficult to understand the argument that the rules would give more protection to a party who has shown no interest in defending the case.

Before the Rules of Civil Procedure existed the notice requirements for hearings were set by statute. Section 15-9-960 (1977) explained a motion required four days notice. In *Lewis v. Congress of Racial Equality* the Supreme Court held it was "the better practice" to give four days notice of a damages hearing to a defaulting party who has not appeared because "[p]articipation by the defending party . . . will tend to insure a more fair verdict and judgment." 275 S.C. 556, 561, 274 S.E.2d 287, 289-2920 (1981). The Court said it would "closely scrutinize" a default judgment where the defending party was not given an opportunity to participate in the damages hearing. *Id.* at 561, 274 S.E.2d at 289-290.

This history is instructive for two reasons. First, it tends to support the idea that all defaulting parties should be treated equally. There is no support for treating defaulting parties who have not appeared more favorably than those who have appeared. Second, it illustrates that the purpose of the notice requirement was satisfied here. Causey attended the damages hearing and participated in it. He apologized to Knight during the hearing—three times. (4/18/17 Tr.p.25, line 24 - p.26, line 3; p.72, line 17 - p.73, line 11; p.75, lines 2-10).

IV. The special referee properly heard the motion to set aside default; the motion was not required to be heard by a circuit judge.

The order referring this case to the special referee explained the case came before the court on Knight's motion for referral. (3/22/17 Or.). The order noted it "further appear[ed]" a damages hearing should be held. *Id.* The order then instructed "this matter" was "referred with finality" to the special referee "for a hearing on damages[] with any appeal directly to the South Carolina Court of Appeals." *Id.*

The special referee rejected the argument that his authority was limited to conducting a damages hearing, explaining it read the order to refer "the matter" to the referee—meaning the entire case—and that the order explained the case was "referred with finality." (8/3/17 Or.p.4). The referee also examined the operative rule of procedure—Rule 53, SCRCP—noting the rule speaks of referring a "cause of action" to a master or referee and that there was only one cause of action in Knight's complaint. (8/30/17 Or.pp.4-5).

The referee's decision was correct. Rule 53(c) explains that once a case is refereed to a master or special referee the master or referee has the same power and authority as a circuit judge. This Court has noted a master is authorized to entertain post-trial motions even

when the order of reference does not specifically authorize the master to conduct proceedings after the judgment. *Bunkum v. Manor Properties*, 321 S.C. 95, 99, 467 S.E.2d 758, 760 (Ct. App. 1996). The Court explained it makes sense for the master to hear post-judgment motions because the master served as the trial judge.

The same reasoning applies here, as it would be odd for one judge (the referee) to have jurisdiction over the damages hearing but another judge consider whether default should be set aside or whether to grant relief from a default judgment. Knight could not locate an example of a case where the judge conducting the damages hearing did not also consider the relevant motions requesting relief.

This Court has already rejected a similar argument to the one Causey is making. The order of reference In *Smith Companies of Greenville v. Hayes* said "It appearing that this is an action for the foreclosure of a Bond for Title . . . it is ordered that this action be . . . referred." 311 S.C. 358, 360, 428 S.E.2d 900, 902 (Ct. App. 1993). This Court said the order of reference described the action and offered the grounds for the court's decision to refer the case. *Id.* at 360, 428 S.E.2d at 902. The language of the order did not limit the master's power. The same is true of the order's language here.

Causey also argued the referee lost jurisdiction because his motion requesting relief from default included a request for a jury trial. (Defs.6/8/17Mpt.pp.3-4). The special referee properly rejected this argument. (8/3/17 Or.pp.13-14). Rule 5(b), SCRCP, requires a party to serve a written demand for a jury trial not later than 10 days after service of the last pleading. Knight's complaint is the only pleading in this case, and it was filed in December of 2016. Causey filed his motion to have default set aside in June of 2017. (Def's 6/13/17

Mot.). The special referee also correctly cited precedent explaining the right to a jury trial is waived when a party is in default. (8/3/17 Or.p.13) (citing *Gossett v. Gilliam*, 317 S.C. 82, 87, 452 S.E.2d 6, 9 (Ct. App. 1994)).

V. The special referee did not abuse his discretion in finding Causey failed to establish good cause to set aside default.

The referee found Causey did not show good cause to set aside default under Rule 55. (Id.p.9). The referee noted Causey was a 39 year-old high school graduate and the referee explained the summons had a straightforward warning about the consequences of not responding to the complaint. *Id.* The referee held Causey did not give a sufficient explanation for failing to answer. *Id.*

Rule 55(c), SCRCP allows a trial court to set aside default "[f]or good cause shown." The trial court is to consider the timing of the motion for relief, whether the defaulting party has a meritorious defense, and the degree of prejudice to the opposing party, but the court is only required to consider those factors after the defaulting party has given a satisfactory explanation for the default. *Sundown Operating Co. v. Intedge Indus.*, 383 S.C. 601, 607-608, 681 S.E.2d 885, 888 (2009). The decision to grant or deny relief under the rule rests in the trial court's discretion. *Id.* at 607-608, 681 S.E.2d at 888.

Causey cannot show an abuse of discretion. Knight's summons warned Causey that judgment by default would be entered against him if he failed to answer. (Summons). Causey took no steps to answer Knight's suit. Causey's situation is no different from the situation of other litigants who took no action in response to being served with a lawsuit, and precedent explains a party's lack of familiarity with the legal system is no excuse. *Regions*

Bank v. Owens, 402 S.C. 642, 648, 741 S.E.2d 51, 54 (Ct. App. 2013); *Hill v. Dotts*, 345 S.C. 304, 310, 547 S.E.2d 894, 897 (Ct. App.2001) (same). The referee's decision that Causey did not prove good cause has evidentiary support. It must therefore be affirmed.

VI. The order referring this case to the special referee is not void because Knight was not required to serve Causey with the motion requesting referral to the referee.

Knight did not serve Causey with the motion requesting this case's referral to the special referee for a damages hearing. Causey claimed this deprived the special referee of subject matter jurisdiction and warranted the referee's disqualification from further proceedings. (6/8/17 Mot.pp.1-3).

The special referee properly rejected this argument, explaining the last sentence of Rule 5(a), SCRCP does not require a party to serve most pleadings and other papers on a party who is in default for failure to appear. (8/3/17 Or.pp.12-13). The referee also noted Rule 5(a)'s exceptions did not apply, as those exceptions are limited to pleadings asserting new claims against the defaulting party and notice of the damages hearing.

Also, the Supreme Court's decision in *Roche v. Young Brothers* is directly on point. 332 S.C. 75, 79, 504 S.E.2d 311, 313 (1998). No notice of the motion for referral was given there, yet the Supreme Court upheld the order of reference.

VII. The special referee did not abuse his discretion in administering the proceedings below or demonstrate bias against Causey.

Causey made several arguments below alleging bias and charging the special referee with committing "procedural irregularities." The special referee properly rejected each of these arguments.

a. It was not necessary to hear Causey's motion to set aside default before the judgment was entered.

Causey filed his motion to set default aside a week after the special referee conducted the damages hearing but before the referee entered the judgment. The special referee elected to enter the default judgment before hearing Causey's motion for relief at the same time the referee heard Causey's two later motions for relief from the default judgment. Causey claimed this was an "egregious" failure of due process. (6/8/17 Or.p.8).

The Supreme Court has explained a tribunal has "wide discretion in managing a case[.]" *Trotter v. Trane Coil Facility*, 393 S.C. 637, 650, 714 S.E.2d 289, 295 (2011). Nothing indicates the special referee abused his discretion in the way it managed *this* case.

Again, the damages hearing had already occurred by the time Causey moved to have default set aside. Entering the judgment allowed the referee and the parties the opportunity to handle all of the ordinary motions that come at the end of this sort of case in a single proceeding. The referee applied the appropriate measuring stick, viewing Causey's motion under the more favorable standard of Rule 55(c) before also applying the stricter standard imposed by Rule 60(b). (Or.pp.5-6, 25-26). It is difficult to follow Causey's argument that the way the referee managed the motions hearing made any difference.

A review of precedent discloses other instances where requests for relief under both Rules 55 and 60 have been considered together. *Melton v. Olenik*, 379 S.C. 45, 664 S.E.2d 487 (Ct. App. 2008); *Stark Truss Co. v. Superior Const. Corp.*, 360 S.C. 503, 602 S.E.2d 99 (Ct. App. 2004). The cases confirm the correctness of the referee's finding that this procedure did not harm Causey in any way. (8/3/17 Or.p.26).

b. The special referee was not required to verify Causey wished to proceed pro se.

Below, Causey argued the special referee was obligated to make an "inquiry" at the damages hearing as to whether Causey had counsel or was voluntarily electing to proceed pro se. (Def's 6/8/17 Mot.p.12).

The special referee rejected this argument, explaining Causey never asked for a lawyer during the damages hearing and noting Causey's affidavit contained statements indicating he did not wish to hire a lawyer. (8/3/17 Or.p.25). Causey stated in his affidavit he "figured that even if he lost the case [he] would not have to pay a lawyer and there would be nothing for Mr. Knight to collect anyway." (Causey Aff.p.4, ¶18).

Later, Causey claimed this obligation to inquire whether he wished to proceed pro se derived from the fact that Knight's counsel knew an insurance company provided liability coverage for Causey's vehicle. *Id.*

This sounds like an argument that an insurance company's failure to provide counsel constitutes a procedural irregularity and grounds for relief. That argument would be difficult to reconcile with precedent. An attorney's negligence in failing to answer a complaint is imputed to the client. *Williams v. Vanvolkenburg*, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct. App. 1994). Nothing indicates an insurance company's negligence would be treated differently than an attorney's negligence.

Knight cannot explain why Causey's insurance company did not ask for an extension to answer the complaint and did not provide Causey with counsel for the damages hearing. Evidence indicated the insurance company was aware of Knight's claim for a lengthy period

of time, received notice of the lawsuit's filing, and received notice of the damages hearing. (6/29/17 Tr.Pls.Exs.1-3). But the fact remains, nothing indicates an insurance company's negligence would be treated differently than a party's own negligence or the negligence of a party's agent.

c. Causey's father was not barred from entering the damages hearing.

The special referee explained nobody asked Causey's father to leave the damages hearing and nobody denied him entry. (8/3/17 Or.pp.21-22). Causey does not present any authority supporting the argument of reversible error.

d. Causey did not request an opening statement and was not entitled to give an opening statement.

The special referee properly rejected Causey's argument that he was denied due process by not being afforded the opportunity to make an opening statement at the damages hearing. (8/3/17 Or.p.22). First, Causey did not ask to make an opening statement at the hearing. (4/18/17 Tr.p.8, line 15 - p.10, line 5). Second, the referee properly noted that a defaulting party's participation in a damages hearing is limited to cross-examining witnesses and objecting to evidence. (8/3/17 Or.p.22); see also *Limehouse v. Hulsey*, 404 S.C. 93, 116-117, 744 S.E.2d 566, 579 (2013).

e. There was no objection to the referee's evidentiary rulings and there is no proof of prejudice.

Causey argued the special referee displayed bias by allowing Knight to submit his medical records and medical bills into evidence. (Def's 6/8/17 Mot.pp.10-11). There was no objection to this evidence. Causey said "[t]hat's fine" when the medical bills were

introduced. (4/8/17 Tr.p.44, lines 14-25). He said "It'd take me six years to Sunday to read all that" when the medical records were introduced. (Id.p.53, lines4-7).

The referee specifically explained he gave Causey ample opportunities to raise objections and ask questions, (8/3/17 Or.pp.23-24), and a faithful review of the transcript from the damages hearing reinforces this finding. Causey expressed his view that he did not cause certain damage to Knight's vehicle, (4/18/17 Tr.p.19, lines 16-18), he said he had no objection to Knight's evidence of lost wages, (Id.p.47, lines 23-25), and when he was offered the opportunity to cross-examine Knight, Causey denied he was speeding and insisted the wreck was an accident. (Id.p.72, line 15 - p.75, line 10). There is no legitimate reason for questioning the veracity of the special referee's conspicuous explanation that he "went to lengths to make sure [Causey] understood he could ask questions." (8/3/17 Or.p.24).

Furthermore, Causey does not explain why these evidentiary rulings were prejudicial. Precedent explains a party must prove prejudice to win reversal based on the admission or exclusion of evidence. *Fields v. Reg'l Med. Ctr. Orangeburg*, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005). Even if it was error to admit Causey's medical bills and records (and it was not error to admit these items), Causey does not offer any explanation of how the exclusion of his medical records would lead to a different outcome.

Causey also contends the referee displayed bias by allowing Knight to submit an affidavit opposing Causey's affidavit. Causey's affidavit was itself untimely under Rule 59(c), SCRCP, which requires a party to serve affidavits supporting a post-trial motion at the same time the party serves the motion. Rule 6(d) contains a similar requirement. Both rules allows the court to modify the deadline for serving responsive affidavits, and nothing

suggests the special referee erred by accepting Knight's responsive affidavit given that Causey served his affidavit 8 days before the hearing and the rules allow the non-moving party 10 days to respond.

VIII. The special referee did not abuse his discretion in finding Causey failed to establish grounds for relief from the default judgment.

A request for relief under Rule 60(b) requires a stronger showing than a request to set aside default under Rule 55(c). Relief under Rule 55 requires a showing of good cause. Relief under Rule 60 requires a showing of mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or "other misconduct of an adverse party." *Sundown Operating Co.*, 383 S.C. at 608, 681 S.E.2d at 888 (citing Rule 60(b), SCRCP).

As with the trial court's decision whether to grant or deny relief under Rule 55, the trial court's decision with respect to a Rule 60 motion is reviewed under the abuse of discretion standard. *Id.* at 606, 681 S.E.2d at 888.

The special referee acted within its discretion in denying Causey's request for relief, correctly concluding its order was not void, there was no newly discovered evidence, and that none of the other grounds for relief under Rule 60 had been proven. (8/3/17 Or.pp.10-12). Indifference is not the same thing as inadvertence. Careless is not the same thing as a mistake. Inattention is not the same thing as surprise.

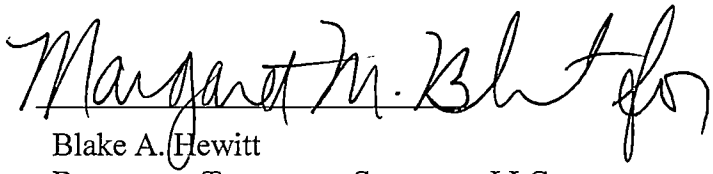
Losing a complaint is not a valid reason for relief. *White Oak Manor v. Lexington Ins. Co.*, 407 S.C. 1, 11-12, 753 S.E.2d 537, 542-543 (2014). The same was true of an attorney's mistaken belief about the length of an extension to answer. *Dixon v. Besco Eng'g*,

320 S.C. 174, 177-179, 463 S.E.2d 636, 638-639 (Ct. App. 1995). Relief was also properly denied where a lawyer mistakenly believed he had been handed two copies of the same lawsuit when in fact there were two lawsuits, one of which went unanswered. *Mitchell Supply Co. v. Gaffney*, 297 S.C. 160, 162, 375 S.E.2d 321, 322 (Ct. App. 1988). This case not materially different from those cases. This is a simple case of a party who did not answer a complaint, for no good reason.

CONCLUSION

For the foregoing reasons this Court should affirm.

Respectfully submitted,



March 1, 2018

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Nate Fata, Special Referee

Case No. 2016-CP-26-8032
Appellate Case No. 2017-001817

Daniel Eric Knight ..... Respondent,

v.

Phillip Ray Causey, ... Appellant.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel for the Appellant with a copy of the *Initial Brief of Respondent and Designation of Matter to be Included in the Record on Appeal* by mailing copies of the same by United States Mail with first class postage prepaid to the following address:

Joseph D. Thompson, III
Hall Booth Smith, PC
40 Calhoun Street, Suite 550
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March 1, 2018

Erin Bridges

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March 1, 2018

VIA HAND DELIVERY
The Honorable Jenny Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: Daniel Eric Knight v. Phillip Ray Causey
Appellate Case No. 2017-001817

Dear Ms. Kitchings:

Please find enclosed the original and one (1) copy of the *Initial Brief of Respondent and Designation of Matter to be Included in the Record on Appeal* in reference to the above matter. I have also enclosed a proof of service of this document on counsel for the Appellant. Please return the additional filed copies to me via our courier.

Thank you for your attention to this matter. If you have any questions or need any additional information, please do not hesitate to contact me.

Sincerely,

Erin Bridges
Paralegal to Blake A. Hewitt
BLUESTEIN THOMPSON SULLIVAN, LLC

/emb
Enclosures
cc: Ian D. Maguire, Esquire
P. Brooke Eaves Wright, Esquire
Joseph D. Thompson, III, Esquire