THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

Honorable Joseph M. Strickland, Master in Equity

Case No. 2010-CP-40-05886

Appellate Case No. 2016-001119

MidFirst Bank, ...Respondent

v.

Mahasin K. Bowen as Personal Representative for the Estate of Mary Lee Samuel; Mahasin K. Bowen; Cecil Samuel a/k/a Cecil A. Samuel; Charles Samuel, Jr.: Earl Hassan Samuel; Kenneth Kareem Samuel; Kilgore Marketing Solutions d/b/a RSVP Columbia; Tauheedah Maeen; Raymond Samuel a/k/a Shamsud-din Raymond Samuel; South Carolina Attorney General; South Carolina Department of Motor Vehicles, Defendants

Of Whom Mahasin K. Bowen, as Personal Representative for the Estate of Mary Lee Samuel, and individually is the .....Appellant

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RETURN TO PETITION FOR REHEARING

The Court's decision correctly states the law and takes into consideration all applicable rules of procedure, in affirming the lower court's decision regarding the appropriateness of the Master in Equity granting summary judgment. Appellant's petition for rehearing concentrates on this Court's ruling as to appellate issues two through four. In affirming the Master in Equity's grant of summary judgment, this Court correctly pointed to the case of *Peterson v. Porter* where it was held an issue is not preserved for appellate review when a party did not raise the issue during summary judgment

proceedings and raised the issue for the first time in a motion to reconsider. 389 S.C. 148, 152, 657 S.E.2d 656, 658 (Ct. App. 2010).

Appellant attempts to distinguish *Peterson* from the present action by claiming that Mr. Peterson did not raise the issue at any other time such as in his complaint or other pleadings while claiming that Appellant raised the issue in her pleadings. This distinction is not relevant. The *Peterson* Court specifically based its decision on the fact that Mr. Peterson failed to raise the employer-employee issue "during **summary judgment proceedings**, therefore it is not preserved" *Id.* (emphasis added). There is no mention in *Peterson* of whether or not this issue was discussed at any time prior to the summary judgment hearing and this was not a factor in the court's decision.

Appellant goes on to reference three other cases that he contends led up to the decision in *Peterson* and points out that none of these cases specifically pertain to a summary judgment motion. Appellant fails to reference any cases which stand for a proposition or reach a conclusion different from *Peterson*, where the analysis does specifically relate to summary judgment.

"Summary judgment is appropriate where it is clear there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law" *Brooks v. Northwood Little League*, 327 S.C. 400, 489 S.E.2d 647, 648 (Ct. App. 1997). Summary judgment is appropriate 'if the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to a judgment as a matter of law." *Branch Banking and Trust, Co. v. Carolina Crank and Core, Inc*, 362 S.C. 647, 651, 608 S.E.2d 896, 899 (Ct. App. 2005). "In order to resist a motion for summary judgment, the nonmoving party must come forward with specific facts

showing genuine issues necessitating trial." *Nationsbank v. Scott Farm*, 320 S.C. 299, 303, 465 S.E.2d 98, 100 (Ct. App. 1995). "Once the moving party carries its initial burden, the 'opposing party must, under Rule 56(e), do more than simply show that there is some metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a genuine issue for trial." *Hedgepath v. AT&T*, 348 S.C. 430, 559 S.E.2d 327 (Ct. App. 2001).

Respondent's Motion for Summary Judgment was supported by seventeen attached exhibits, which included two properly signed affidavits. Included were copies of Respondent's Request to Admit, Request for Production and Interrogatories to which Appellant failed to respond. Said documents, the admissibility of which was never objected by Appellant, constitute evidence to support every finding in the Master in Equity's order. "To preserve an issue regarding the admissibility of evidence, a contemporaneous objection must be made." *McKissick v. J.F. Cleckley & Co.*, 325 S.C. 327, 344, 479 S.E.2d 67, 75 (Ct. App. 1996) citing *Geddings v. Geddings*, 319 S.C. 213, 460 S.E.2d 376 (1995). "Failure to object when the evidence is offered constitutes a waiver of the right to have the issue considered on appeal." *Id.* In bringing this appeal, Appellant inappropriately attempts to attack the evidence Respondent submitted in support of summary judgment to which she made no objection.

Furthermore, there was no response from the Appellant to Respondent's summary judgment motion, which further supports the Master in Equity's grant of summary judgment. Even though she did not appear at hearing, did not file an affidavit or memo in opposition, failed to answer Respondent's written discovery, never served discovery, and declined to answer questions at her deposition, Appellant contends that because she raised

potential issues in her answer, this should suffice to overcome summary judgment. If that were the acceptable standard, motions for summary judgment could never be granted in a case where a party entered a pleading. Fortunately, the Court has set a higher bar. "When a motion for summary judgment is made and supported as provided by the rule, **an adverse party may not rest upon the mere allegation or denials of his pleading**. The adverse party's response, including affidavits or as otherwise provided by the rule, must set forth specific facts showing there is a genuine issue for trial." *SSI Medical Services, Inc. v. Cox*, 301 S.C. 493, 497, 392 S.E.2d 789, 792 (1990) (quoting Rule 56(e), SCRCP) (emphasis added). A party cannot oppose summary judgment by taking no action. *Id.* "Summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner." *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006). Again, Appellant made no response to Respondent's motion for summary judgment.

Furthermore, "A party cannot raise an issue for the first time in a Rule 59(e), SCRCP motion which could have been raised at trial." *MailSource, LLC v. M.A. Bailey & Associates, Inc.*, 356 S.C. 370, 374, 588 S.E.2d 639, 641 (Ct. App. 2003). A Rule 59(e) motion to alter or amend a judgment is available to a losing party to allow that party to obtain a ruling by the trial court on an issue which was raised by the party but not ruled on by the Court. *Murphy v. Jefferson Pilot Communication Co.*, 364 S.C. 453, 465, 613 S.E.2d 808, 814 (Ct. App. 2005). There are two situations contemplated by the rules in which a party should consider filing a Rule 59(e) motion. *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 24 (2003). "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." *Id.* (Emphasis in original). In the context of a Motion for Summary judgment, if the party failed to respond to the motion and failed to appear at hearing there can be no issue raised on which the court failed to rule or misunderstood.

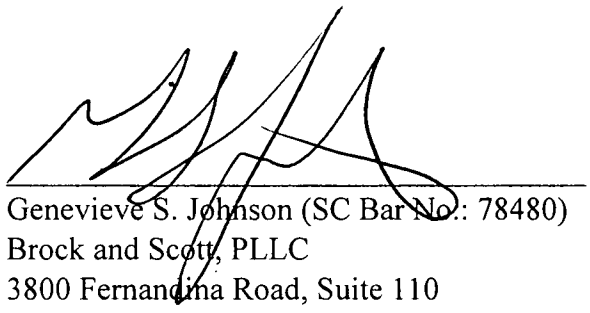
Appellant contends that during the underlying action she was a pro se defendant and should have been granted additional leeway. The same standards apply to pro se litigants as attorneys. "Lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney." *Goodson v. American Bankers Ins. Co.*, 295 S.C. 400, 402, 368 S.E.2d 687, 689 (Ct. App. 1988).

CONCLUSION

Finally, a petition for rehearing shall be in accordance with Rule 240, and shall state with particularity the points supposed to have been overlooked or misapprehended by the court. Rule 221, SCACR. It is not another opportunity for the Appellant to attempt to attack the evidence and pleadings submitted without objection in support of summary judgment. "It is well settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved." *Pye v. Estate of Fox*, 369 S.C. 555, 564, 633 S.E.2d 505, 510 (2006).Appellant has failed to state any points that have been overlooked or misapprehended by the court. Based upon the foregoing, Respondent respectfully requests the petition for rehearing be denied.

[SIGNATURE PAGE TO FOLLOW]

April 20, 2018



Genevieve S. Johnson (SC Bar No.: 78480)
Brock and Scott, PLLC
3800 Fernandina Road, Suite 110
Columbia, SC 29210
(803) 454 3540

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Of Whom Mahasin K. Bowen, as Personal Representative for the Estate of Mary Lee Samuel, and individually is the .....Appellant

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CERTIFICATE OF MAILING

The undersigned certifies that, on April 20, 2018, Respondent's Return was served on Appellant by depositing a copy thereof in the United States Mail, first Class, postage prepaid, addressed to:

Leonard R. Jordan, Jr.
JORDAN LAW FIRM
211 Veteran Road, Suite D
Columbia, South Carolina 29209

Brittany R. Sloan
Litigation Paralegal
Brock & Scott, PLLC