

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Bobby Foster,
 Plaintiff

v.

Julian Neil Armstrong,
 Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2015--CP-26-5633

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

RECEIVED
AUG 13 2018
SC Court of Appeals

Plaintiff's Attorney: Matthew Nall, Bar No. Address: 62 Columbus St, Charleston, SC 29403 phone: 843-614-8888 fax: 843-853-229 e-mail: matt@akimlawfirm.com other:	Defendant's Attorney: Linda Weeks Gangi, Bar No. 002365 Address: POB 1740, Conway, SC 29528-1740 phone: 843-248-5741 fax: 843-248-5112 e-mail: lgangi@thompsonlaw.com other:										
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)											
SECTION I: Hearing Information Nature of Motion: Order Setting Aside Order for Publication, Default & Referral for Hearing on Damages Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES / <input checked="" type="checkbox"/> NO											
SECTION II: Motion/Order Type <input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.											
Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant <div style="text-align: right;"> Date submitted: <u>October 26 2015</u> 2015 OCT 26 PM 3:05 Horry County Clerk of Court </div>											
SECTION III: Motion Fee <input type="checkbox"/> PAID - AMOUNT: <input checked="" type="checkbox"/> EXEMPT: <table border="0"> <tr> <td><input type="checkbox"/> Rule to Show Cause in Child or Spousal Support</td> <td><input type="checkbox"/> State Agency v. Indigent Party</td> </tr> <tr> <td><input type="checkbox"/> Domestic Abuse or Abuse and Neglect</td> <td><input type="checkbox"/> Post-Conviction Relief</td> </tr> <tr> <td><input type="checkbox"/> Indigent Status</td> <td><input type="checkbox"/> Motion for Stay in Bankruptcy</td> </tr> <tr> <td><input type="checkbox"/> Sexually Violent Predator Act</td> <td><input type="checkbox"/> Motion for Execution (Rule 69, SCRCP)</td> </tr> <tr> <td><input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions</td> <td></td> </tr> </table> Name of Court Reporter: _____ <input type="checkbox"/> Other: _____		<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support	<input type="checkbox"/> State Agency v. Indigent Party	<input type="checkbox"/> Domestic Abuse or Abuse and Neglect	<input type="checkbox"/> Post-Conviction Relief	<input type="checkbox"/> Indigent Status	<input type="checkbox"/> Motion for Stay in Bankruptcy	<input type="checkbox"/> Sexually Violent Predator Act	<input type="checkbox"/> Motion for Execution (Rule 69, SCRCP)	<input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions	
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JUDGE'S SECTION <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE: _____ CODE: _____ Date: _____										
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: _____											

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STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2015-CP-26-5633

BOBBY FOSTER,

Plaintiff,)
RECEIVED

vs.

AUG 13 2018

JULIAN NEIL ARMSTRONG,

SC Court of Appeals

Defendant.)

ORDER SETTING ASIDE
ORDER FOR PUBLICATION AND
SETTING ASIDE ORDER FOR ENTRY
OF DEFAULT AND REFERRAL FOR
HEARING ON DAMAGES

PLAINTIFF'S ATTORNEY:
DEFENDANT'S ATTORNEY:
HEARING DATE:
PRESIDING JUDGE:

MATTHEW NALL, ESQ.
LINDA WEEKS GANGI, ESQ.
OCTOBER 17, 2016
BENJAMIN H. CULBERTSON

MELANIE
CLERK OF COURT
2016 OCT 26 PM 3:08
HORRY COUNTY

The Defendant filed a Motion to Set Aside Order for Entry of Default and Order for Publication on September 21, 2016. Thereafter, that Motion came to be heard before the undersigned on October 17, 2016. The Plaintiff was represented by Matthew Nall, Esq. of Anastapoulo Law Firm, LLC and the Defendant was represented by Linda Weeks Gangi, Esq. of Thompson & Henry, P.A. at the time of the hearing. This Court heard such arguments of counsel and reviewed all documents filed with the Court in this action.

One basis for the Defendant's Motion is that the Plaintiff's Summons is insufficient. Rule 4(b) of the *South Carolina Rules of Civil Procedure* specifically requires the following:

"The Summons shall . . . contain . . . the time within which these rules require the defendant to appear and defend, and shall notify him that in case of his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint."

The Summons filed in this action does not notify the Defendant that if he fails to appear and defend

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number is reflected on the Accident Report. That cellphone number is still the Defendant's cellphone number so his location could have easily been determined by calling the Defendant's cellphone number. S.C. Code Ann. §15-9-740 requires that reasonable diligence be used to ascertain the residence of the Defendant. If the Plaintiff had used reasonable diligence as required by S.C. Code Ann. §15-9-740, the Defendant's whereabouts could easily have been ascertained and proper service effected.

Based on the failure of the original Summons filed with the Court to comply with Rule 4(b) of the *South Carolina Rules of Civil Procedure*, the failure of the publication to include the date of filing of the Summons and Complaint as required by S.C. Code Ann. §15-9-740, the failure to publish the Summons in a newspaper of general circulation in Horry County, and the failure of the Plaintiff to use reasonable diligence in locating the Defendant as required by S.C. Code Ann. §15-9-740, this Court finds that this Court has no personal jurisdiction over the Defendant and that service of the Summons and Complaint was not properly perfected on the Defendant. The Order for Publication and the Order for Entry of Default and Referral for Hearing on Damages are hereby set aside and declared null and void and of no force and effect. The Plaintiff shall amend the Summons to comply with Rule 4(b). The Defendant through his attorney, Linda Weeks Gangi, Esq., has agreed to accept service of the Summons and Complaint in the above-captioned action and will file an Answer within thirty (30) days from the date of receipt of this Order.

AND IT IS SO ORDERED this the 21st day of October, 2016.

In Chambers



The Honorable Benjamin H. Culbertson
Presiding Judge of the Fifteenth Judicial Circuit