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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Maite D. Murphy, Circuit Court Judge

Innovative Waste Management Inc., Crest Energy Partners, LP, Edward Girardeau, Plaintiffs, Of Whom,

Innovative Waste Management, Inc. is the Respondent,

v.

Crest Energy Partners, GP, LLC, Dunhill Products GP, LLC, Henry Wuertz, Innovative Waste Management, Inc., Crest Energy Partners LP, Dunhill Products LP, Edward H. Girardeau, C. Russ Lloyd, Defendants, Of Whom,

Crest Energy Partners GP, LLC, Crest Energy Partners LP, Dunhill Products, LP, Henry Wuertz, and Edward H. Girardeau are the Petitioners

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PETITION FOR WRIT OF CERTIORARI

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CERTIFICATION OF COUNSEL

I, David B. Marvel, hereby certify that a timely petition for rehearing was made before the Court of Appeals, and that the Court of Appeals issued a final ruling denying the Petition for Rehearing on July 18, 2018.

QUESTIONS PRESENTED FOR REVIEW

1) Did the Court of Appeals err in holding that the Respondent's July 31, 2015 Motion to Reconsider stayed the time for filing a Notice of Appeal, such that the Respondent's Appeal was Timely?

2) Did the Court of Appeals err by reversing the trial court's ruling on grounds that were never argued by any party, when Respondent's actual arguments were not preserved for review?

3) Did the Court of Appeals err in ruling that the Clerk of Court's Form 4 Order was void, and that the trial court abused its discretion by denying Respondent's Rule 60(b) motion?

STATEMENT OF THE CASE

Appellant Innovative Waste Management Inc. (hereafter "IWM") filed this action against the Petitioners on May 11, 2012, alleging numerous causes of action relating to a series of petroleum transactions in Mobile, Alabama and St. Rose, Louisiana in early 2010.[1] Petitioners filed counter claims and claimed set-off on those transactions and a previous transaction. The parties litigated the matter for nearly three years, during which it was designated a Complex Case and assigned to the Honorable Maite D. Murphy. The parties ultimately reached a settlement agreement during mediation on April 8, 2015. The Mediator, Angus M. Lawton, transmitted a Proof of ADR to the Clerk of Court on April 10, 2015, pursuant to Rule 7(f), SCADR.

On April 14, 2015, the Clerk of Court transmitted a Notice of Jury Roster to the parties, setting the case on the May 4, 2015 jury trial roster. In response, the undersigned transmitted an email to Judge Murphy's Clerk, with a copy to all counsel, informing the Court that parties had reached a settlement. (R. p. 42, App. p. 44.) On April 20, 2015, the Court received the Proof of ADR. (R. pp. 39-40, App. p.41-42). The Clerk of Court issued a Form 4 Order dismissing the case on that same date, referring to the Proof of ADR as an "attached order". (R. pp. 2-3, App. p. 4-5). IWM's counsel did not respond to the Form 4 Order.

On May 27, 2015, IWM filed "Motion to Vacate Settlement Agreement, Restore to Active Docket, and Set for Trial" pursuant to Rule 60(b), SCRCP. (R.p.20-23, App. p. 22-25). The motion argued simply that the settlement had not been consummated, and therefore the case should be set for trial. This Motion was heard by Judge Murphy on June 24, 2015.

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[1] The case was filed in the Dorchester County Court of Common Pleas after a case between the parties including the same allegations was dismissed by the United States District Court for the District of South Carolina for lack of subject matter jurisdiction on May 10, 2012. Innovative Waste Management, Inc. v. Crest Energy Partners GP, LLC, Civil Action No. 2:11-cv-1023-RMG (D.S.C. May 10, 2012).

On July 22, 2015, Judge Murphy issued a Form 4 Order denying the 60(b) Motion. (R. pp. 5-6, App. p. 7-8). The Statement of Judgment in that Order stated "[a]fter reviewing all testimony and other evidence presented at the hearing, along with a review of the records provided to the Court, Plaintiff's 60(b) motion . . , is hereby denied." (R. p. 5, App. p. 7).

On July 31, 2015, IWM filed a "Motion to Reconsider" pursuant to Rule 59(e), SCRCP, asking the Court once again to vacate the settlement agreement and restore the case to the active docket. (R. pp. 24, App. p. 26, *et seq.*). On August 18, 2015, Judge Murphy issued a Form 4 Order dismissing IWM's Rule 59 motion, stating as follows:

> Pursuant to this Court's authority under Rule 59, SCRC[P], the Plaintiff's Motion to Reconsider is dismissed without oral argument and determined upon the briefs filed by the parties. I find that all arguments properly raised to the Court have already been ruled upon and this Court will not consider further arguments on the matter.

(R. pp. 7-8, App. p.9-10).

On September 16, 2015, IWM filed and served its Notice of Appeal, purporting to appeal "the orders of the Honorable Maite D. Murphy dated July 22, 2015 and August 18, 2015 and, by reference, the Form 4 judgment signed by the Clerk of Court, Cheryl Graham, on April 20, 2015." Petitioners filed a Motion to Dismiss, contending that the Court of Appeals lacked subject matter jurisdiction because IWM's Rule 59(e) motion was a successive post-trial motion that failed to toll the time for filing a Notice of Appeal. The Court of Appeals denied that motion on March 4, 2016.

On May 23, 2018, the Court of Appeals issued its opinion reversing the trial court's rulings. In doing so, the court held that the April 20, 2015 Form 4 order was void, because the Clerk of Court had no authority to issue the order. The Court of Appeals extrapolated this ruling to find that the trial court had no discretion to allow the Form 4 Order to stand, and that all of the court's

actions and rulings following the Form 4 order were also void. (App. pp.239-40). IWM never argued this position in the trial court or before the Court of Appeals.

Petitioners sought rehearing in the Court of Appeals, arguing that the court erred by basing its ruling on a position never argued, that the court's opinion was legally incorrect, and that the court lacked jurisdiction due to the untimely filing of the Notice of Appeal. The Petition for Rehearing was denied on July 18, 2018. This Petition for Writ of Certiorari to the Court of Appeals follows.

LAW AND ARGUMENT

I. The Court of Appeals Lacked Appellate Jurisdiction because IWM's Appeal was Untimely Following Successive Post-Trial Motions.

In substance, IWM's entire appeal seeks relief from the Clerk of Court's Form 4 Order filed on April 20, 2015 by virtue of a Notice of Appeal filed on September 16, 2015. IWM's appeal must be dismissed for lack of jurisdiction pursuant to Rule 203, SCACR(b)(1). Rule 203 requires an aggrieved party to serve a Notice of Appeal "within thirty (30) days after receipt of written notice of entry of the order or judgment." This requirement of service of the notice of appeal is jurisdictional. If a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to "rescue" the delinquent party by extending or ignoring the deadline for service of the notice. Elam v. S.C. DOT, 361 S.C. 9, 602 S.E.2d 772, 775 (S.C. 2004).

While a timely motion to alter or amend the judgment under Rule 52 or 59, SCRCP, would have stayed the thirty-day period for filing the appeal under Rule 203, IWM's first Motion to Vacate was filed thirty-seven days after the issuance of the Order dismissing the case. Therefore, that Motion was not a "timely motion to alter or amend the judgment", as any such motion would have had to have been filed within ten days of receiving written notice of the entry of judgment. See Rule 59, SCRCP. Accordingly, the substance of IWM's appeal is directed at Judge Murphy's July 22, 2015 ruling denying relief under Rule 60(b). However. even if one construes IWM's Notice of Appeal to apply to the July 22, 2015 ruling, the Notice of Appeal would still be untimely, as it was filed forty-five days after the issuance of that Order.

IWM's "Motion to Reconsider" the July 22, 2015 Order, seeking relief under Rule 59, did not to toll the period for filing the Notice of Appeal under Rule 203, SCACR. However captioned,

that Motion was nothing more than a successive post-trial motion which South Carolina courts have continually stated do not toll the jurisdictional period for filing a Notice of Appeal. See Elam, 602 S.E.2d at 777-78; Quality Trailer Products v. CSL Equipment Co., 349 S.C. 216, 562 S.E.2d 615 (2002); Coward Hund Const. Co. v. Ball Corp., 336 S.C. 1, 518 S.E.2d 56 (Ct. App. 1999); Collins Music Co. v. IGT, 353 S.C. 559, 579 S.E.2d 524 (Ct. App. 2002).

Unlike a Rule 50, 52 or 59, SCRCP, motion, a Rule 60(b) motion does not have any tolling effect on the right to appeal from the challenged judgment. Coward Hund, 518 S.E.2d 56, 59. Regardless of the form in which the request for relief is framed, the substance of the requested relief that matters. Richland County v. Kaiser, 351 S.C. 89, 94, 567 S.E.2d 260, 262 (Ct. App. 2002). Although a timely Rule 59(e) motion normally will toll the time within which an appellant must serve his notice of appeal, a successive Rule 59(e) motion will not do so. Quality Trailer, 562 S.E.2d at 617. Therefore, when the first post-trial motion "does not result in a substantial alteration of the original judgment, an appeal will be barred due to untimely service when, instead of appealing the first post-trial motion, the party files a successive Rule 59(e) motion. Elam, 602 S.E. 2d at 778.

IWM's July 31, 2015 Motion to Reconsider was successive, as Judge Murphy's July 22, 2015 ruling did not alter the original judgment in any way, and the motion itself did not state any new grounds for relief that had not already been argued. In fact, Judge Murphy's August 19, 2015 order explicitly found that "all arguments properly raised to the Court have already been ruled upon", and IWM did not challenge this finding in the Court of Appeals. Therefore, that ruling should not be subject to further review.

Judge Murphy's determination that the Motion to Reconsider was successive raises an issue noted by the Elam court:

> 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.

Elam, 602 S.E.2d at 780.

In the case at bar, the trial court ruled that the Motion to Reconsider was successive. She did so on August 18, 2015. Perhaps the court even ruled without oral argument so that IWM would have more than sufficient time to review the ruling and still file a Notice of Appeal "within thirty (30) days after receipt of written notice of entry" of the July 22, 2015 Order. IWM chose not to do so, instead waiting nearly three weeks to decide to appeal an order it had already challenged twice. Therefore, at the very latest, once the time to file notice of appeal concerning the July 22, 2015 order had expired, that order, "right or wrong," became the law of the case and *res judicata* would preclude any further review on the issues decided therein. See Ulmer v. Ulmer, 369 S.C. 486, 490, 632 S.E.2d 858, 861 (2006) (holding portion of a judgment that is not appealed presents no issue for determination by the reviewing court and constitutes, rightly or wrongly, the law of the case).

II. The Court of Appeals Erred in Reversing the Trial Court on Grounds That Were Never Argued, and IWM's Actual Arguments Were Not Preserved for Appellate Review

The Record on Appeal clearly establishes that the only argument properly raised below was that the case should be restored and set for trial because Petitioner Crest Energy Partners was unable to fund the agreed settlement. Petitioners countered that the settlement agreement fully complied with Rule 43(k), was enforceable by any party, and that was IWM's only remedy. (R. p. 20, App. p. 22, line 11-p. 15, line 2).

When IWM was given the opportunity to make any argument it could before the trial court judge, IWM's counsel explicitly stated "[o]ur argument will be very short." (R. p. 12, App. p. 14, line 13). On appeal, however, IWM advanced four separate arguments in support of its position that the trial court abused its discretion in refusing to re-open the case. As described in IWM's brief, those arguments were:

> 1) The Judgment did not comply with the requirements set forth in Rules 41 and 79(f) of the South Carolina Rules of Civil Procedure, and as such the judgment itself was inherently flawed and its entry was procedurally improper.
>
> 2) The Judgment is ambiguous on its face and it was not the Trial Court's intent to dismiss this action; therefore the Judgment is unenforceable and the Trial Court's decision to deny Appellant's Motion to Vacate Settlement Agreement, Restore to Active Docket, and Set for Trial was based upon clear factual and legal error.
>
> 3) The Trial Court's ruling was contrary to .the written terms of the settlement agreement and completely disregarded the plainly stated intent of all interested parties as forth within the language of the settlement agreement; and
>
> 4) [Petitioners] breached a material term of the settlement agreement between the parties, and the Trial Court abused its discretion by preventing Appellant from rescinding the agreement due to Respondents' non-performance.

(App. p. 60).

IWM's appeal seeks review of the trial court's Order denying its "Motion to Vacate Settlement Agreement, Restore to Active Docket, and Set for Trial", relief that IWM sought from the lower court under Rule 60(b). Rule 60(b) allows a trial court to relieve a party from a final judgment or order when the moving party establishes one of the following grounds:

> (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.

Rule 60, SCRCP.

The decision to grant relief pursuant to Rule 60(b) lies within the sound discretion of the trial court, and an Appellate Court should not reverse that court's decision regarding the grant or denial of a Rule 60(b) motion unless it amounts to an abuse of discretion. E.g., Raby Constr., L.L.P. v. Orr, 358 S.C. 10, 17, 594 S.E.2d 478, 482 (2005).

As the party seeking relief under Rule 60(b), IWM bore the burden to present evidence to both the trial and appellate court entitling it to the requested relief. Jamison v. Ford Motor Co., 373 S.C. 248, 271-272, 644 S.E.2d 755, 767 (Ct. App. 2007); Perry v. Heirs at Law of Gadsden,357 S.C. 42, 46, 590 S.E.2d 502, 504 (Ct. App. 2003). As part of that burden, the party seeking relief pursuant to Rule 60(b) must establish the applicability of one of the qualifying grounds. Paul Davis Sys. v. Deepwater of Hilton Head, LLC, 362 S.C. 220, 225, 607 S.E.2d 358, 360-361 (Ct. App. 2004).

In the Court of Appeals, IWM failed to identify a single portion of the Record on Appeal establishing that it was entitled to relief under any of the grounds contained in Rule 60(b). This is because IWM failed to identify any such grounds before the circuit court, and never even mentioned Rule 60(b) other than a passing reference in its trial court Motion. In fact, as the caption of its Rule 60(b) motion indicated, IWM sought relief from a settlement agreement, not a "final judgment, order, or proceeding". See Rule 60, SCRCP.

Presumably, IWM intended to seek relief from the April 20, 2015 Form 4 Order under Rule 60(b)(1), SCRCP, which allows for relief from a final order if it was induced by mistake, inadvertence, surprise, or excusable neglect. This rule is an appropriate remedy for good faith mistakes of fact if all other applicable factors are met. See Columbia Pools, Inc. v. Galvin, 288 S.C. 59, 61, 339 S.E.2d 524, 525 (Ct. App. 1986). However, in order to gain relief under Rule 60(b)(1), SCRCP, a party must first show a good faith mistake of fact has been made. Williams v. Watkins, 384 S.C. 319, 324, 681 S.E.2d 914, 917 (Ct. App. 2009). A party may not use Rule 60(b)(1) as a vehicle for relief from an error of law. Hillman v. Pinion, 347 S.C. 253, 256-257, 554 S.E.2d 427, 429 (Ct. App. 2001).

During the trial court hearing, a transcript of which appears in the record, IWM's counsel did not articulate a single mistake or impropriety that induced the April 20, 2015 order. More importantly, there was no evidence before the lower court, and there is none before this court, supporting a conclusion that there was a mistake of fact, or any other ground for relief contemplated by Rule 60(b). (App. p.64). IWM's briefs urged the Court of Appeals to assume the intent of the trial court judge, the clerk of court, and the other parties, while Petitioners have simply contended that IWM's remedy was to seek enforcement of the settlement agreement. (App. p. 65-66; R. p. 14, App. p. 16, lines 18-22). Nothing can actually be gleaned from the record except that, when given the opportunity to rescind the April 20, 2015 Form 4 Order dismissing the case and/or to restore the case to the trial docket, the lower court declined.

The only argument IWM properly raised below was that respondents breached the settlement agreement, and the case should have been set for trial. The lower court properly held that this was an insufficient basis to grant IWM's Rule 60(b) motion. Therefore, the arguments

raised by IWM in the Court of Appeals were not preserved for review, and the lower court's ruling should have been affirmed.

However, the Court of Appeals took it upon itself to find that the Clerk's Form 4 Order and all subsequent orders were void under Rule 60(b)(4). Any review of the record must compel the conclusion that IWM has never argued that any of the lower court's rulings were void or even voidable as this Court has held in its opinion. IWM never agued *any* specific standard under Rule 60 or 59 below that was properly preserved for review in this Court, and the word "void" appeared inconsequentially, if at all, in the record prior to this Court's opinion. Therefore, Rule 60(b)(4) was an improper grounds for the Court to grant relief to IWM. See, E.g., Wilder Corp. v. Wilke, 497 S.E.2d 71 (S.C. 1998).

The Court of Appeals' ruling ignores this Court's long standing rule that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review. Any objections and arguments must be sufficiently specific to inform the trial court of the point being urged by the objecting party. Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (citing Creech v. South Carolina Wildlife and Marine Resources Dep't, 328 S.C. 24, 491 S.E.2d 571 (1997); Broom v. Southeastern Highway Contracting Co., 291 S.C. 93, 352 S.E.2d 302 (Ct. App. 1986)). An otherwise unpreserved argument may not be preserved in a Rule 59(e) motion, if it was not raised to the circuit court prior to the issuance of that court's ruling. Lyons v. Fid. Nat'l Title Ins. Co., 415 S.C. 115, 135, 781 S.E.2d 126, 137 (Ct. App. 2015) (citing Kiawah Prop. Owners Grp. v. Pub. Serv. Comm'n of S.C., 359 S.C. 105, 113, 597 S.E.2d 145, 149 (2004)). The Court of Appeals ruling was, in fact, an improper *sua sponte* ruling that is improper and must be vacated.

Finally, the Court of Appeals based its ruling on its finding that "[t]he record discloses no action of the court authorizing the Form 4 dismissal". This Court should vacate that finding because it ignores the Court's pronouncements that IWM bore the burden of furnishing the Court of Appeals with a sufficient record on which it could have based its decision. Helms Realty, Inc. v. Gibson-Wall Co., 363 S.C. 334, 339-340, 611 S.E.2d 485, 487-488 (S.C. 2005). In fact, IWM conceded before the Court of Appeals that the record was insufficient to ascertain the lower court's intent. (App. p. 64). If IWM failed in that burden, the Court of Appeals should have assumed the regularity of the proceedings below and the correctness of the ruling appealed from. Broom v. Southeastern Highway Contracting Co., 291 S.C. 93, 97, 352 S.E.2d 302, 304-305, (Ct. App. 1986) (citing Germain v. Nichol, 278 S.C. 508, 299 S.E. (2d) 335 (1983). 5 Am. Jur. (2d) Appeal and Error § 704 at 151 (1962)).

Given that the trial court judge reviewed the issue twice, and denied the relief requested by IWM, the only deduction that can be made from the record is that the court implicitly, if not explicitly, approved the issuance of the Form 4 Order. The lack of contrary evidence in the record requires an appellate court to uphold the lower court's ruling. Therefore, the Court of Appeals' ruling that the lack of evidence compelled reversal is error, and this Court should grant certiorari and vacate the opinion below to correct that error.

III. The Court of Appeals' Opinion is Legally Incorrect Precedent that Confuses both the Issues in this Case and Ordinary South Carolina Civil Procedure.

The Court of Appeals' opinion reversing the trial court's judgment is based on several incorrect legal precepts. First, the court's opinion either misstated or misapplied the standard under Rule 60(b)(4) by which a judgment can be held to be void. In Belle Hall Plantation Homeowner's Ass'n Inc. v. Murray, 709 S.E.2d 310 (S.C. App. 2017), cited in the May 23, 2018 opinion, the Court of Appeals addressed the issue in greater detail, stating as follows:

> "A void judgment is one that, from its inception, is a complete nullity and is without legal effect." Universal Benefits v. McKinney, 561 S.E.2d 659, 661 (S.C. App. 2002) (quoting Thomas & Howard Co. v. T.W. Graham & Co., 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995)). "The definition of void under the rule only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction." Id. (quoting McDaniel v. U.S. Fid. & Guar. Co., 324 S.C. 639, 644, 478 S.E.2d 868, 871 (Ct. App. 1996)). "Generally, a person against whom a judgment or order is taken without notice may rightly ignore it and may assume that no court will enforce it against his person or property." Id.

There was no evidence or argument in the record or otherwise before the Court of Appeals that the April 20, 2015 order was issued without notice, or without jurisdiction, or that IWM was not granted due process in its opportunity to argue that the order should be vacated. Accordingly, there is no standard recognized by this Court under which the order could be found "void", as it was in this case.

The Court of Appeals' ruling also presumes and implies that the Clerk of Court is without authority to issue a Form 4 Order of Dismissal by consent of the parties, as opposed to at the Plaintiff's insistence. That ruling appears to be a novel reversal of a routine practice in South Carolina's trial courts. Rule 77, SCRCP, explicitly states that "[a]ll motions and applications in the clerk's office for issuing mesne process, for issuing final process to enforce and execute judgments, for entering defaults, and for other proceedings which do not require allowance or order of the court are grantable of course by the clerk". The voluntary dismissal of a case by consent of the parties, on a form that explicitly provides for the subsequent filing of a Rule 41(a)(1) voluntary dismissal, falls directly within the Clerk's powers as designated by Rule 77. That rule also includes its own provision for relief from error, allowing any clerks' "action may be suspended or altered or rescinded by the court upon motion for cause shown." Rule 77(c), SCRCP.

The Court of Appeals' Opinion states that "[g]iven the stage of IWM's case, it could have been voluntarily dismissed only by a stipulation of dismissal signed by all parties. Rule 41(a)(1), SCRCP." This statement ignores the fact that Rule 41(a) is only applicable to voluntary dismissal at the request of the Plaintiff, not by consent of the parties, and ignores the power of the Court to enter an Order of Dismissal pursuant to Rule 41(a)(2), SCRCP.

The confluence of these issues expose the primary errors made by IWM's counsel following the entry of the April 20, 2015 Order. Rather than filing a Rule 77(c) motion to rescind the Clerk of Court's dismissal, IWM filed its "Motion to Vacate Settlement Agreement, Restore to Active Docket, and Set for Trial". The lower court's summary denial of that motion does not explicitly state grounds for its ruling. Neither does the lower court's subsequent denial of IWM's Rule 59 Motion, although that Order did explicitly point out that the entire argument in that Motion had already been made to and ruled upon by the court. The fact remains that IWM never actually requested the relief that it may have been most entitled to, the rescinding of the April 20, 2015 Form 4 Order pursuant to a minimal "cause shown" burden under Rule 77(c).

This Court should grant certiorari, vacate the Court of Appeals' Opinion, and affirm the trial court's rulings. The incorrect (or incomplete) statements of law from the Court of Appeals in a published opinion unnecessarily complicate the issues in the case and confuse the procedures of the Clerks of Court. If IWM's counsel had properly filed a Rule 77(c) motion, and assuming that motion had been granted, the issue before the trial court would have been to determine what relief was available given that the settlement was fully and completely enforceable under Rule 43(k), SCRCP, but remained unfunded. See Ashfort Corp. v. Palmetto Constr. Group, 318 S.C. 492, 493-494, 458 S.E.2d 533, 534, (1995).

IWM sought, under Rule 60, to have the case immediately restored to the active docket and set for trial, and that relief was denied in addition to the lower court's refusal to vacate the judgment, which was the only issue articulated to or addressed by this Court. Petitioners' only substantive argument below was simply that the settlement agreement was binding and enforceable under Rule 43(k), SCRCP and Ashfort Corp. v. Palmetto Const. Grp., Inc., 458 S.E.2d 533, 535 (1995). Accordingly, the only relief available to IWM was to move to enforce the judgment. IWM's request to vacate the settlement agreement, and to set the case for trial, were denied by the trial court, and were not articulately challenged on appeal. Those portions of the lower court's rulings are the law of the case, and remanding the case to the trial court in its current posture would seem to have little effect. See Anderson v. Short, 476 S.E. 2d 475 (S.C. 1996). Under the two-issue rule, this alone is grounds to vacate the Court of Appeals' opinion and affirm the ultimate decision of the trial court. See Todd v. South Carolina Farm Bureau Mut., Ins. Co., 336 S.E. 2d 472 (S.C. 1985).

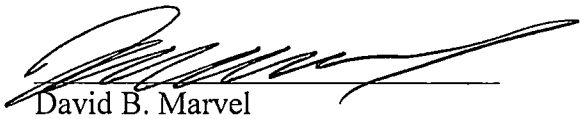
IWM failed to meet its burden under Rule 60(b) before the trial court, and patently failed to meet its burden of establishing an abuse of discretion on appeal. The record simply contains no evidence that would support relief under Rule 60(b), and the Court of Appeals' Opinion is unfounded in prior South Carolina law. Accordingly, this Court should grant this Petition for Certiorari, vacate the Court of Appeals' Opinion, and affirm the decision of the trial court.

CONCLUSION

IWM failed to preserve its issues for appeal, failed in its burden to provide the Court of Appeals with a record sufficient for review, and failed to make any argument on the merits sufficient to justify a finding that the lower court has abused its discretion. Yet, the Court of Appeals looked beyond all of the arguments presented to the trial court and on appeal, issuing a

published opinion that incorrectly states the law, the record, and proper procedure to find that the Clerk of Court's has no authority to issue a Form 4 order, and that the Order in this case was void despite any evidence on the issue. This Court should not allow that ruling to stand or the Opinion to become binding precedent. Accordingly, Respondents Crest Energy Partners GP, LLC, Crest Energy Partners LP, Dunhill Products, LP, Henry Wuertz, and Edward H. Girardeau, hereby respectfully request that this Honorable Court Grant this Petition for Certiorari, vacate the opinion of the Court of Appeals, and Affirm the rulings of the Honorable Maite D. Murphy in the Dorchester County Court of Common Pleas.

RESPECTFULLY SUBMITTED:



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August 17, 2018
Charleston, South Carolina

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S.C. SUPREME COURT

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Crest Energy Partners GP, LLC, Crest Energy Partners LP, Dunhill Products, LP, Henry Wuertz, and Edward H. Girardeau are the Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that on this Seventeenth day of August, 2018, I served Respondent's counsel with the Petition for Certiorari and Appendix in this matter by Hand Delivery to its counsel, at the following address:

Wm. Michael Gruenloh
Gruenloh Law Firm
67 Moultrie St., 2nd Floor
Charleston, South Carolina 29403

David B. Marvel