

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF ORANGEBURG )  
 )  
\_\_\_\_\_  
Carl Chavis and Betty Chavis, )  
 )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
Darryl Day, )  
 )  
 )  
Defendants. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2016-CP-38-00799

DEFAULT ORDER

RECEIVED

APR 01 2019

SC Court of Appeals

This matter came before this court on December 6, 2018 for a default hearing. On June 24, 2016 the Plaintiffs, Carl Chavis and Betty Chavis, initiated a civil action against Defendant by filing a Civil Action Coversheet, Summons and Complaint which was personally served on Defendant on July 12, 2016, as evidenced by the Affidavit of Service filed with the Court on July 21, 2016. The Defendant did not file an Answer or other responsive pleading. An Affidavit of Default was filed on November 8, 2016 by the Plaintiffs. Thereafter, the case was placed on the Non-Jury Case Roster, and the Plaintiffs mailed the Defendant notice of default hearing in February of 2017. The Defendant then filed a Motion to Set Aside Default on February 17, 2017, which was denied after a hearing pursuant to an Order issued on January 18, 2018.

At the default hearing in this matter, counsel for the Defendant, Robert R. Thuss, Esquire, was present together with the Plaintiffs and their counsel, Clarissa Warren Joyner, Esquire. Based on the evidence presented, I find that Plaintiffs sustained their burden of proof as to their claims to quiet title, for damages for trespass, and for injunctive relief. Plaintiffs are owners of seven (7) acres of real property located at 321 Camelot Drive, Rowesville, South Carolina which they have owned since 1996. The deed to their property, as referenced in their pleadings, was dated March 13, 1996, and recorded on March 15, 1996 in the Office of the Register of Mesne Conveyance for

Orangeburg County, in book 627 at page 39. The Defendant, Darryl Day, owns property adjacent to Plaintiffs property. Defendant set up structures on property which Plaintiffs maintained was part of their property. I find that title to the disputed property rests with Plaintiffs. No plat or deed was recorded by Defendant slandering the title of Plaintiff or disputing that Plaintiffs are the owners of the land. The adverse claims of Defendant are without any right whatsoever. Defendant has no right, title, estate, lien or interest in the land of the Plaintiffs.

Plaintiffs claim the right of exclusive use of their property and maintained that Defendant entered without permission and encroached on their property by setting up structures on their land, and preventing Plaintiffs from entering and using their property, and threatening them with bodily harm if they entered or made use of their property. I find that Plaintiffs are also entitled to injunctive relief requiring the Defendant to immediately remove his dogs from Plaintiff's property, and remove all structures, trash, debris or any other item placed by him on this property within thirty (30) days. I further enjoin and restrain Defendant from constructing and placing structures or other barriers on Plaintiff's property to which they hold legal title.

Based on the testimony presented, I also find that the acts of the Defendant caused Plaintiffs emotional and mental distress when he threatened them with reprisal and physical harm. Defendant also damaged the Plaintiffs landscaping and real property to which they hold legal title, and he threatened their peaceful enjoyment of their land, and unreasonably interfered with and obstructed Plaintiff's real property. Defendant is therefore liable for trespass and based on the testimony presented, Defendant shall pay Plaintiffs Two Thousand five hundred (\$2,500.00) Dollars in damages within thirty (30) days of this Order.

Plaintiffs are also entitled to a permanent restraining order enjoining and restraining Defendant from harassing, abusing, or threatening to abuse the Plaintiffs at any time or place. The

Defendant is further enjoined and restrained from entering the Plaintiff's residence or place of employment as well as restrained from building, constructing fences or any other conduct which interferes with Plaintiffs use of their property.

AND IT IS SO ORDERED.

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The Hon. Diane S. Goodstein  
Presiding Circuit Court Judge

Date: \_\_\_\_\_, 2019

\_\_\_\_\_, South Carolina



Orangeburg Common Pleas

**Case Caption:** Carl Chavis VS Darryl Day

**Case Number:** 2016CP3800799

**Type:** Order/Damages

This Order is Hereby GRANTED!

s/ Diane S. Goodstein (2112)

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF ORANGEBURG )  
 )  
 Carl Chavis and Betty Chavis, )  
 )  
 Plaintiff, )  
 vs. )  
 )  
 Darryl Day, )  
 )  
 Defendants. )

IN THE COURT OF COMMON PLEAS  
 FIRST JUDICIAL CIRCUIT

Civil Action No.: 2016-CP-38-00799

**ORDER DENYING MOTION  
 TO SET ASIDE DEFAULT**

**RECEIVED**

APR 01 2019

SC Court of Appeals

FILED FOR RECORD  
 WINNIEFA B. CLARK  
 2018 JAN 24 A 10 11  
 CLERK OF COURT  
 ORANGEBURG, SC

THIS MATTER came before this Court on July 10, 2017 on the Defendant's Motion to Set Aside Default pursuant to Rule 55(c), *SCRPC*. The Plaintiffs, Carl Chavis and Betty Chavis, initiated a civil action against the Defendant, Darryl Day, on June 24, 2016, by filing a Civil Action Coversheet, Summons and Complaint. These items were personally served upon Defendant on July 12, 2016, as evidenced by the Affidavit of Service filed with the Clerk of Court on July 21, 2016. The Defendant did not file an Answer or other responsive pleading. An Affidavit of Default was filed by the Plaintiffs on November 8, 2016. Thereafter, the case was placed on the Non-Jury Roster, and in February of 2017 the Plaintiffs mailed the Defendant notice of the default hearing. The Defendant subsequently filed a Motion to Set Aside Default on February 17, 2017.

At the hearing on Defendant's Motion to Set Aside Default, the Defendant and his counsel, Robert R. Thuss, Esquire, were present together along with counsel for the Plaintiffs, Clarissa Warren Joyner, Esquire. The only evidence submitted in support of Defendant's motion were two Affidavits: the Affidavit of Defendant Darryl Day and the Affidavit of Natalie A. Laing. After reviewing the Affidavits in support of the Motion to Set Aside Default, the pleading, arguments made by counsel, and other matters contained in the record, and for the reasons stated herein, the Court finds that Defendant's Motion to Set Aside Default should be DENIED.

The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the trial judge. *Thompson v. Hammond*, 299 S.C. 116, 119, 382 S.E.2d 900, 902-3

(1989). The circuit court's decision will not be disturbed on appeal absent a clear showing of an abuse of that discretion. *Mitchell Supply Co. v. Gaffney*, 297 S.C. 160, 162–63, 375 S.E.2d 321, 322–23 (Ct.App.1988). An abuse of discretion arises when the court issuing the order was controlled by an error of law or when the order, based upon factual conclusions, is without evidentiary support. *Rodriguez v. Gutierrez*, 391 S.C. 323, 330, 705 S.E.2d 94, 98 (Ct. App. 2011) (citing *Goodson v. Am. Bankers Ins. Co.*, 295 S.C. 400, 402, 368 S.E.2d 687, 689 (Ct.App.1988)).

Rule 55(c), *SCRCP* permits a party to move to set aside the entry of default for good cause. “This standard requires a party seeking relief from an entry of default under Rule 55 (c) to provide an explanation for the default, and give reasons why vacation of the default entry would serve the interest of justice.” *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009). “Once a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the Defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted.” *Id.* at 607-08, 681 S.E.2d at 888 (citing *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501-02 (Ct. App. 1989)). The trial court need not make specific findings of fact for each factor if there is sufficient evidentiary support on the record for the finding of lack of good cause. *Id.* Losing a summons and complaint is not a ground to set aside a default judgment. *Roche v. Young Brothers, Inc.*, 318 S.C. 207, 456, S.E.2d 897, 900 (1995).

According to an Affidavit of Service filed with the court, a Civil Action Coversheet, Summons and Complaint were personally served upon the Defendant on July 12, 2016, at 305 Camelot Drive, Rowesville, South Carolina 29113, which is the Defendant's home address. The Summons clearly stated that Defendant had thirty (30) days from the date of service to answer the Complaint, and “if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.”

In his Affidavit, Defendant maintains that the medication he takes for kidney disease and his dialysis treatment effects how clearly he thinks. He further stated that after he was served on July 12, 2016, his wife read the papers to him. He stated his wife did not read the Summons to him. In the other

Affidavit he submitted in support of his motion, his wife Natalie Laing stated that the Defendant has dialysis treatments three (3) times a week and that he was hospitalized for five (5) days in September, 2016 and four (4) days in December 2016.

The Defendant acknowledges that he was personally served on July 12, 2016. Although he maintains he has a hard time thinking clearly on the days of his dialysis due to increased medications, and that he was personally served on a date in which he had dialysis, he also further acknowledged that the pleadings were read to him the following day, July 13, 2016. He states that the pleadings were carefully read, as evidenced by the fact that he knew that the case must be mediated within 210 days. Although the Defendant did not recall seeing the Summons, he knew a lawsuit had been filed against him. Losing a summons and complaint is not a ground to set aside a default judgment. *Id.*

On November 8, 2016, approximately four months after the deadline to answer the Complaint had expired, the Plaintiffs filed a Motion for Entry of Default. On February 15, 2017, the Plaintiffs sent Defendant a letter informing him of a February 21, 2017 Non-Jury Roster Meeting and damages hearing. At this point, the Defendant filed a Motion to set aside the default. Until that point in time, Defendant had made no inquiries about the lawsuit which was pending against him. As a result of Defendant's poor health, he was hospitalized nine (9) days of the seven (7) months that this case had been pending. Defendant maintains, and Plaintiffs do not dispute that his thinking is affected by medications on the three (3) days of the week he has dialysis. However, he did not make the same complaints regarding the remaining days, and he had the help of his wife in providing substantial support and assistance, as she admittedly read the lawsuit papers to him.

On July 10, 2017, the Court held a hearing on the Defendant's Motion to Set Aside Default. No further Affidavits or evidence was submitted to supplement the two Affidavits which were attached to Defendant's Motion to Set Aside Default.

Based upon Defendant's failure to plead or otherwise defend against this action for approximately seven (7) months after he was personally served with the Summons and Complaint, the entry of default

was proper. Rule 12(a), *SCRCP*, states that a defendant *shall* serve his answer within 30 days after the service of the Complaint upon him. The entry of default was not entered unfairly, fraudulently or mistakenly. Defendant acknowledged that he was personally served with the pleadings in this matter on July 12, 2016 and they were read to him on July 13, 2016.

Restarting this matter at this juncture would not serve the ends of justice and would result in prejudice to the Plaintiffs who have been waiting at this point for more than one (1) year to finalize this case. The Defendant failed to take action after service of process, from July 12, 2016 until February 17, 2017. His voluntary inaction resulted in the default. The Defendant was not justified in failing to answer or otherwise respond in accordance with the procedural rules, and he has not presented good cause for this failure to respond.

Under these circumstances, this Court denies the Motion to Set Aside Entry of Default. The default resulted from the Defendant's own decision not to act after being served with the Summons and Complaint.

The vacation of the default would not serve the interest of justice, as the Plaintiffs would be prejudiced by default being set aside at this stage. Plaintiffs have exerted substantial time, effort and resources into obtaining an entry of default in this matter. The showing of good cause which would serve the ends of justice is required before any other factors are considered. The trial court need not make specific findings of fact for each factor if there is sufficient evidentiary support on the record for the finding of lack of good cause. *Id.* Further, the claim that a failure to respond was due to a missing summons is not sufficient in this situation. Losing a summons and complaint is not a ground to set aside a default judgment. *Roche v. Young Brothers, Inc.*, 318 S.C. 207, 456, S.E.2d 897, 900 (1995).

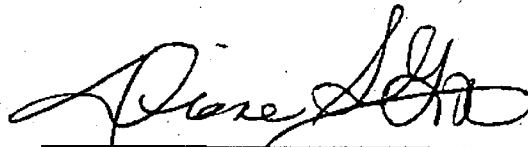
Moreover, the granting of Defendant's Motion to Set Aside Default would encourage the notion that a party may have unlimited opportunities to present their case. The Court is cognizant of the fact that litigation must be brought to an end. Based on the facts and procedural history of this particular case, this Court concludes that it would prejudice the Plaintiffs to allow the default to be set aside at this stage of

the proceedings on the basis presented in the Defendant's Affidavits and other evidence of record. The Defendant was given a final opportunity to present his case at the hearing on the Motion to Set Aside Default. His failure to provide a sufficient basis for setting aside the default in the filed Affidavits does not warrant consideration of matters which are not in the record. There was no evidence presented by Affidavit, nor is there any underlying record to support, many of the contentions argued by Defendant at the hearing on this matter. The evidence in the record does not support Defendant's assertion of a meritorious defense.

In conclusion, the Court recognizes, and has strenuously deliberated over, the appearance of unfairness that hangs over any judgment obtained through default. Our judicial system provides a default process in order to allow the system to function with fairness and efficiency. Rule 55(c), *SCRPC* is the mechanism by which a party may move to set aside the entry of default for good cause. However, the good cause cannot be based on factual conclusions without evidentiary support. *Goodson v. Am. Bankers Ins. Co.*, 295 S.C. 400, 402, 368 S.E.2d 687, 689 (Ct.App.1988). This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interest of justice. *Sundown Operating Co v. Intedge Indus., Inc.*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009). The trial court need not make specific findings of fact for each factor if there is sufficient evidentiary support on the record for the finding of lack of good cause. Here, as made clear in the analysis above, there was insufficient proof, and the entry of default must be allowed to stand.

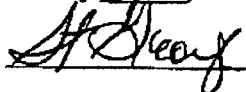
Accordingly, it is hereby ORDERED that Defendant's Motion to Set Aside Default is DENIED.

IT IS SO ORDERED.



The Hon. Diane S. Goodstein  
Presiding Circuit Court Judge

January 11, 2018



South Carolina

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*

NOTICE OF ELECTRONIC FILING [NEF]

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A filing has been submitted to the court RE: 2016CP3800799

Official File Stamp: 03-19-2019 04:57:45 PM

Court: CIRCUIT COURT

Common Pleas

Orangeburg

Case Caption: Carl Chavis VS Darryl Day

Document(s) Submitted: Appeal/Notice of Appeal to Court of Appeals

Filed by or on behalf of: Robert Rutland Thuss

This notice was automatically generated by the Court's auto-notification system.

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The following people were served electronically:

Robert Rutland Thuss for Darryl Day

Clarissa Warren Joyner for Carl Chavis

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means: