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**May 04 2020**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CHESTERFIELD COUNTY  
Court of Common Pleas

Wallace H. Jordan, Jr., Special Referee

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Appeal No. 2020-000471

Steven Carol Miller ..... Respondent,

v.

Gene Carson Jordan ..... Appellant.

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**RETURN TO MOTION FOR LEAVE TO FILE  
MOTION FOR RELIEF FROM JUDGMENT  
PURSUANT TO RULE 60(b), SCRCP**

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Pursuant to Rule 240(e), *South Carolina Appellate Court Rules*, Respondent Steven Carol Miller (“Respondent” or “Plaintiff” herein) hereby moves this Court in response to Appellant’s motion for leave to file a Motion for Relief from the Judgement of Special Referee Wallace H. Jordan, Jr., filed February 12, 2020 (“Judgment”). Respondent responds as stated below.

**PROCEDURAL BACKGROUND**

Plaintiff filed a complaint in the Chesterfield County Court of Common Pleas on March 18, 2019 seeking an award of damages to compensate him for injuries sustained from an unprovoked attack on his person by a Rottweiler belonging to Defendant Gene Carson Jordan (“Defendant” or “Appellant” herein). Defendant was properly served with the Summons and Complaint on March 20, 2019. By May 3, 2019, Defendant had failed to answer the complaint or otherwise plead in response to Plaintiff’s complaint and counsel for

Plaintiff filed an Affidavit of Default and motion seeking entry of default and order of reference. Plaintiff's motion was granted by the trial court and the matter was referred to Wallace H. Jordan, Jr. as Special Referee for a hearing on Plaintiff's unliquidated damages. A damages hearing was held on September 16, 2019. Defendant was properly noticed of the damages hearing but failed to appear. An order was issued on January 3, 2020 and judgment was entered against Defendant in the amount of \$833,000.00 on February 12, 2020. Defendant was served with the order of judgment on February 21, 2020 and this appeal follows. Defendant now seeks leave from this court to file a motion for relief from judgment at the trial court level pursuant to Rule 60(b), *South Carolina Rules of Civil Procedure*. Respondent objects for the reasons detailed below.

#### ARGUMENT

As a general matter, the trial court is the proper forum in which to bring a Rule 60(b) motion for relief from that court's own judgment. The [trial] court is the proper forum to determine in the first instance whether there is sufficient basis to overturn the judgment. See Weisman v. Charles E. Smith Management, Inc., 829 F.2d 511, 513-14 (4<sup>th</sup> Cir. 1987). Respondent does not oppose Appellant's motion for leave to bring his Rule 60(b), SCRCP motion before the lower court.

However, Respondent wishes to make two points clear. First, while Respondent agrees that the motion for leave to bring a 60(b) motion at the trial court level is procedurally correct, Respondent does not waive any argument as to the substantive validity of the 60(b) motion itself. Appellant has not stated sufficient grounds to support a 60(b) motion and Respondent will address this more fully at the trial court level. Second, pursuant to the Entry of Default and Order of Reference entered by the circuit court on May 6, 2019, this matter was referred to The Honorable Wallace H. Jordan, Jr. as Special Referee, for all matters. Accordingly, if leave is granted by the appellate court allowing Respondent to file his Rule 60(b) motion at the trial court level, it should be scheduled with the Special Referee. See Wells Fargo Bank, NA v. Smith, 389 S.C. 487, 730 S.E.2d 328 (S.C. Ct. App. 2012). Furthermore, Appellant has requested leave to file this


motion. In accordance with Rule 53(d), SCRCP, Respondent asserts any compensation due to the special referee as the result of a hearing on Appellant's motion should be the sole responsibility of Appellant.

**CONCLUSION**

Based on the foregoing, Appellant moves this Honorable Court for an order granting leave for Appellants Rule 60(b), SCRCP motion to be heard before the appointed Special Referee and directing Appellant to be solely responsible for the fees associated therewith.

Respectfully Submitted,


**COCKRELL AND CAMPBELL, PC**



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**PROOF OF SERVICE**

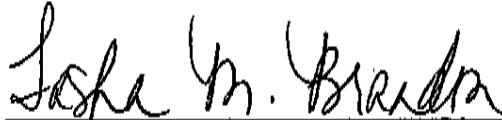
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I certify that I have served the Respondent's Return to Motion for Leave to File Motion for Relief from Judgment Pursuant to Rule 60(b), SCRCP, on Steven Carol Miller, by faxing it, addressed to the State of South Carolina Court of Appeals and depositing a copy of it in the United States Mail, postage prepaid, addressed to the following attorney(s):

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

cc: Doc Morgan, Esquire  
PO Box 2980  
Greenville, SC 29601

Helen F. Hiser, Esquire  
PO Box 650007  
Mt. Pleasant, SC 29465

  
Tasha M. Brandon

Chesterfield, South Carolina  
May 4, 2020



M. W. Cockrell, III\*  
 Sarah C. Campbell  
 M. W. Cockrell, Jr.\*\*+

\* also admitted in TX  
 \*\* admitted in TX only  
 + of counsel

May 4, 2020

**VIA FACSIMILE**  
**(803) 734-1839**

The Honorable Jenny Abbott Kitchings  
 Clerk of Court  
 South Carolina Court of Appeals  
 P.O. Box 11629  
 Columbia, South Carolina 29211

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**May 04 2020**  
**SC Court of Appeals**

Re: Steven Carol Miller vs. Gene Carson Jordan  
 Appeal No.: 2020-000471


Dear Ms. Kitchings:

I hope this letter finds you well. Enclosed herewith, please find Respondent's Return to Motion for Leave to File Motion for Relief From Judgment and the Proof of Service in the above referenced matter.

We are not including six (6) copies as we are filing via facsimile in accordance with the South Carolina Judicial Department's memo on filing during the COVID-19 pandemic.

With kindest regards, I remain,

Sincerely,

  
 M.W. Cockrell, III  
 MWC/tmb

cc: Doc Morgan, Esquire  
 PO Box 2980  
 Greenville, SC 29601

Helen F. Hiser, Esquire  
 PO Box 650007  
 Mt. Pleasant, SC 29465