

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM LAURENS COUNTY  
Court of Common Pleas

**RECEIVED**

JUL 30 2020

The Honorable Eugene C. Griffith, Jr, Circuit Court Judge

**SC Court of Appeals**

Case No.: 2018-CP-30-00378

Melinda Humphries,.....Respondent,

v.

Christopher Abrams,.....Appellant.

INITIAL APPELLANT'S BRIEF

Dietrich A. Lake  
The Lake Law Firm  
1034 Briargate Circle, Ste. 201  
Columbia, SC 29210  
(803) 750-8311

ATTORNEY FOR APPELLANT

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## STATEMENT OF THE ISSUES ON APPEAL

- I. Did the trial court error in granting the Respondent relief from a judgment pursuant to Rule 60(b) SCRCP?
- II. Did the trial court error in not granting the Plaintiff an opportunity to be heard on his Motion to Dismiss the Defendant's Motion to Enforce Partial Satisfaction of Judgment for lack of subject matter jurisdiction before the trial court granted the Defendant's motion?
- III. Did the trial court error in exercising original jurisdiction over matters involving the South Carolina Department of Motor Vehicle and granting relief not requested in the Respondent Motion to Enforce Partial Satisfaction of Judgment?

## STATEMENT OF THE CASE

This case arises out of an automobile accident that occurred on or about September 2, 2017. The Appellant sustained injuries that caused him to incur medical expenses totaling \$146,498.08 and lost wages of \$11,241.00 as a result of this accident. These injuries and damages were proximately caused by the negligence of the Respondent who failed to yield the right of way in this accident.

The above-stated civil action was filed against the Respondent on April 23, 2018, alleging negligence against the Respondent related to said automobile accident. [Summons and Complaint.]. The Complaint set forth two cause of actions against the Respondent for negligence by the Appellant. [Complaint.] The Respondent filed an Answer on June 8, 2018. [Answer.] Counsel for the Underinsured Motorist (UIM) carrier filed an Answer on June 20, 2018. [UIM Answer.] The Appellant filed a Motion to Compel against the Respondent on August 15, 2018 for failing to timely respond to the

Appellant's discovery requests. [Motion to Compel.] The Appellant filed a Motion to Compel against the UIM carrier on November 1, 2018 for failing to timely respond to the Appellant's discovery requests. [Motion to Compel UIM.] Both motions were resolved without the need for a hearing.

The Respondent filed a Motion to Enforce Settlement and Dismissal of the Second Cause of Action in the Appellant's Complaint on March 5, 2019. [Motion to Enforce Property Damage Settlement Settlement.] The Respondent's motion was scheduled before the Honorable Eugene C. Griffith, Jr. on June 18, 2019; however, the court deferred hearing the matter and placed the case on the trial roster for the next term of court for Laurens County. The Respondent file a Motion to Amend her Answer to add the defense of satisfaction on June 28, 2019. The Honorable Eugene C. Griffith, Jr., sua sponte, granted the Respondents Motion to Amend and granted the Respondent's Motion to Enforce the Property Damage Settlement on the Appellant's Second Cause of Action on September 9, 2019, by Form 4 Order. [Order of September 9, 2019.] The court did not hold a hearing on the Respondent's Motion to Amend her Answer nor did the court have a hearing regarding the motion to enforce the property damage settlement. The Appellant chose not to appeal the court's Order.

The UIM Carrier (State Farm) made a motion to Amend its' Answer to the Appellant's Complaint on March 26, 2019. [Motion to Amend Answer.] The Appellant and the UIM carrier stipulated to the dismissal of the UIM carrier as a party to this action on April 30, 2019. [Stipulation of Dismissal.]

On September 20, 2019, the Respondent filed a Motion to Compel mediation in this case. [Motion to Compel.] The Respondent's Motion to Compel mediation was

denied via Form 4 Order on or about October 21, 2019, by the Honorable Roger L. Couch. [Order of October 21, 2019.] The Respondent never appealed this Order.

A trial was held in this matter before the Honorable Roger L. Couch on October 22, 2019; the jury returned a verdict against the Defendant in the amount of \$225,000.00. [Verdict Form.] The Defendant made no post-trial motions pursuant to Rule 59 of the SCRPC nor did the Defendant request that the trial court allow her an additional ten (10) days to file a post-trial motion pursuant to Rule 59. [Transcript, pp. 4-7.] The Clerk entered a judgment in the amount of \$225,000.00 against the Defendant on October 24, 2019. [Order of Judgment.] The Defendant did not appeal the judgment of the trial court.

The Plaintiff filed a Motion for Costs on October 29, 2019, which was partially granted on February 7, 2020, in the amount of \$288.50. [Motion for Costs; Form 4 Order for Costs.] The Plaintiff moved for a Writ of Execution from the Clerk and it was issued on or about December 9, 2019. [Writ of Execution.] The return on the Writ of Execution from the Laurens County Sheriff's Department indicated that the Respondent did not have any assets in her name within Laurens County. [Return on Writ of Execution.] The Defendant filed a Motion to Enforce Partial Satisfaction of Judgment on January 6, 2020, when the Plaintiff refused the Defendant's partial payment of \$25,000.00. [Motion to Enforce Partial Satisfaction of Judgment.] The Appellant filed an Affidavit for Order of Suspension with the Clerk on January 9, 2020, pursuant to S.C. Ann. §56-9-430. [Affidavit for Order of Suspension.]

Counsel for the Respondent emailed the Honorable Eugene C. Griffith, Jr. regarding the pending suspension of the Respondent's license for failure to satisfy the

Appellant's judgment against the Respondent. [Email of March 31, 2020.] The clerk (Robert Dennis) for Judge Griffith advised the parties that the court would decide the matter without a hearing and by "consulting the file;" furthermore, the email indicated that the parties should submit any additional matters that the court needed to consider in making its' ruling. [Email of April 1, 2020.] The court never made clear what "file" it was referring to as Judge Griffith was not the trial judge in the case. The Appellant responded by email to Mr. Dennis and advised him that the Appellant intended to raise the issue of lack of jurisdiction for the court to hear the Respondent's motion. [Email of April 1, 2020.] The Appellant filed a Motion to Dismiss the Respondent's Motion to Enforce Partial Satisfaction of Judgment on April 1, 2020, due to the court's lack of jurisdiction in the matter. [Motion to Dismiss.] The court never responded to either the Appellant's Motion to Dismiss for Lack of Jurisdiction or the Appellant's email to the court on April 2, 2020, requesting to be heard on his motion before the court issued any rulings.

Judge Griffith signed the Order granting relief on April 3, 2020 (one day after the Appellant's email to the court requesting to be heard on his Motion to Dismiss); the judgment was entered on April 6, 2020. [Order of April 6, 2020.] The Appellant filed a Motion to Reconsider pursuant to Rule 59, SCRCP, on April 6, 2020. [Motion to Reconsider.] The Respondent filed her memorandum in response to the Appellant's Motion to Reconsider on April 10, 2020. [Respondent's Response to Reconsideration.] The Appellant filed his memorandum in support of his motion to reconsider on April 21, 2020. [Appellant's Memorandum in Support of Rule 59 Motion.] The court denied the

Appellant's motion to reconsider by Order of May 8, 2020. [Order of May 8, 2020.] The Appellant filed his Notice of Appeal on May 14, 2020. [Notice of Appeal.]

### **STATEMENT OF THE FACTS**

The Respondent never disputed liability in this automobile accident that occurred on September 2, 2017; in addition, the Respondent never disputed that her negligent conduct was the proximate cause of the Appellant's injuries. The trial that occurred on October 22, 2018 involved determining the amount of award the Appellant was entitled to in this case. The jury awarded the Appellant \$225,000.00 and the Respondent never made any post-trial motions after the return of the verdict nor did the Respondent request any additional time from the court to make any post-trial motions for either a new trial and/or new trial *nisi remittitur*.

The Appellant requested payment of his judgment via email to counsel for the Defendant; furthermore, the Appellant demanded that the payment be made by November 22, 2019. The Respondent failed to make payment any portions of the judgment within the time demanded by the Appellant in his email request despite the fact that the Respondent did not make any post-trial motions at the conclusion of the trial in this case. The Respondent filed her Motion to Enforce Partial Satisfaction of a Judgment when the Appellant would not agree to release the Respondent and/or the carrier from the entirety of the judgment. [Motion to Enforce Partial Satisfaction of a Judgment.] The Respondent's motion was not made pursuant to any statute or any South Carolina Rule of Civil Procedure but she sought such specified relief as indicated in her motion.

The Laurens County Sheriff's Department sought to execute the Writ of Execution against the Respondent and filed in its' response that the Respondent owned no property in Laurens County. [Return on Writ of Execution.] The Appellant and Laurens' County Clerk of Court provided documentation to the South Carolina Department of Motor Vehicles that the Appellant's judgement had not been satisfied by the Respondent within sixty (60) days of the judgement; therefore, the Respondents driving privileges were suspended for failure to satisfy the judgment in this case. [Order of Suspension.] The Respondent, through a series of emails directly to the Honorable Eugene C. Griffith, Jr, sought emergency relief on her Motion to Enforce Partial Satisfaction of a Judgment. [Emails.] The Appellant in response, filed a Motion to Dismiss the Respondent's motion for lack of jurisdiction and requested a hearing on this matter. Judge Griffith's law clerk, Robert S. Dennis, Esquire, communicated to the parties what Judge Griffith required the parties to submit to the court for him to evaluate for his ruling. This matter was being contemplated during the backdrop of the Covid-19 pandemic. The South Carolina Supreme Court enumerated an Order for the operation of the circuit courts during the coronavirus emergency. The Supreme Court's Order allowed for hearings to be conducted using remote communication technology. The Appellant' motion to dismiss the Respondent's motion had merit as it involved subject matter jurisdiction. The Supreme Court in its' emergency Order stated that a trial judge "shall not be made until the opposing party or parties have had an opportunity to file a return or other response to the motion." [Supreme Court Order of April 14, 2020.]

The Appellant requested a hearing on both motions via email The Honorable Eugene C. Griffith, Jr never responded directly to the Appellant's Motion to Dismiss the

Respondent's motion for lack of jurisdiction nor did Judge Griffith directly respond to the Appellant's request for a hearing regarding the Appellant's motion before this Court entered its' Order granting the Respondent's motion of April 3, 2020. The court has never ruled on the Appellant's Motion to Dismiss and the matter remains pending.

The Appellant notified Judge Griffith via email that the Appellant objected to the language contained in the proposed Order before it was signed by this Court because the proposed order contained relief not requested in the Respondents original motion; in addition, the proposed order contained language commenting on the conduct of the insurance carrier in handling the payment of the judgment. [Email of April 6, 2020.] Counsel for the Appellant also notified Judge Griffith that he was not the trial judge in this case for purposes of ruling on the Respondent's motion to enforce partial satisfaction of the judgment and there was no record of the events surrounding the Respondent's motion. Judge Griffith never responded to the Appellant's objections to the proposed Order that was prepared by the Respondent before he signed it on April 6, 2020. Judge Griffith indicated in an email on April 9, 2020, that he was "confident" that he had jurisdiction to hear the matter. There is no transcript of the proceedings surrounding Judge Griffith's decision to grant the Respondent's motion to enforce partial satisfaction of a judgment. Judge Griffith's Order made the Respondent judgment proof because the Order actually excluded a remedy to the Appellant pursuant to the Motor Vehicle Financial Responsibility Act to ensure that the Respondent satisfied the Appellant's judgment.

## **ARGUMENT**

I.

THE TRIAL COURT ERRED IN GRANTING THE RESPONDENT  
RELIEF FROM A JUDGMENT PURSUANT TO RULE 60(b) SCRCP.

Relief from Judgment, Rule 60(b) SCRCP

The Respondent's motion of January 6, 2020, did not specify what avenue she was seeking to obtain partial relief from the judgement. [Respondent's Motion of January 6, 2020.] There is no rule or statutory basis made for the motion in the Respondent's request for relief. The Respondent did in her response to the Appellant's Motion to Dismiss indicate for the very first time that she was seeking relief pursuant to Rule 60(b)(3-5); however, the Respondent's reply places heavy emphasis on subsection 3 of Rule 60(b) which references "fraud, misrepresentation, or other misconduct of an adverse party."

Upon a motion, a circuit court may relieve a party from a final judgment pursuant to Rule 60(b) SCRCP pursuant to the following reasons only:

- 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 goes on to state that the motion shall be made within a reasonable time and no longer than one (1) year if subsections 1, 2, or 3 apply.

Our Courts have held that the moving party in a Rule 60(b) motion has the burden of presenting evidence entitling him to relief; furthermore, our courts have held that a memorandum in support of a motion is not evidence. *McClurg v. Deaton*, 395

S.C. 85,87, 716 S.E.2d 887, 888 (2011). Our courts have further held that evidence entitling a party to relief under Rule 60(b) is usually produced in the form of affidavits proving the facts needed to entitle him to relief. *Bowers v. Bowers*, 304 S.C. 65, 67 , 403 S.E.2d 127, 129 (Ct.App.1991). Our law is clear that whether to grant or deny a motion pursuant to Rule 60(b) is within the sound discretion of the court. *Graybar Elec. Co., Inc. v. Rice*, 339 S.E.2d 883, 287 S.C. 518 (S.C. App. 1985).

Furthermore, our courts have held that a court should consider the following in deciding whether relief is appropriate: 1) promptness in which relief is sought; 2) reasons for the failure to act promptly; 3) the existence of a meritorious defense; and 4) any prejudice to the party if relief was granted. *Rodriguez v. Gutierrez*, 391 S.C. 323, 705 S.E.2d 94 (S.C. App. 2011).

In this case, the Respondent provided no evidence by way of affidavits or anything else entitling her to relief. The Respondent provided a memorandum, and two (2) exhibits related to settlement offers and/or negotiations in this case. [Respondent's Memorandum and Exhibits in Support of Motion to Enforce Partial Satisfaction of Judgment.] It should be pointed out that Defendant's Exhibit 1 was a letter from the carrier to counsel dated December 8, 2017, almost two years before the trial in this case; that letter has no bearing or relevance as to whether relief should have been granted in this case. The Respondent's memorandum and exhibits do not reflect any agreement between the Appellant or Respondent resolving any issues. The Respondent offered no evidence by way of affidavits illustrating either fraud or misrepresentation or other misconduct of an adverse party or evidence that the

judgment was void or evidence the judgment had been satisfied, released, or discharged.

In addition, our courts require that a party seeking relief pursuant to Rule 60(b) must also make a “prima facie showing of a meritorious defense in order to prevail on a motion” to modify a judgment. See, *McClurg*. The Respondent provided no evidence through affidavits or other proof that she had a meritorious defense; again, affidavits are typically required for such a showing. See, *Bowers*. The standard of proof for this evidence is by clear and convincing evidence. *Id.* The Respondent presented no clear and convincing evidence of her meritorious defense in her memorandum or exhibits.

The Respondent asserted relief pursuant subsections 3-5 of Rule 60(b) in her response of April 2, 2020; however, the Respondent focuses her argument on subsection 3 of Rule 60(b) which references “fraud, misrepresentation, or other misconduct of an adverse party.” The Respondent does not provide any extrinsic evidence of fraud or misconduct; the Respondent merely provides exhibits that illustrate the negotiations between the parties before suit in Respondent’s Exhibit 1 and before trial in Respondent’s Exhibit 2. Our Courts have held that a judgment may be set aside on the ground of fraud only if the fraud is extrinsic and not intrinsic. *Robinson v. Estate of Harris*, 388 S.C. 645, 698 S.E.2d 229 (2010). Furthermore, the Court went on to define that extrinsic fraud is “fraud that induces a person not to present a case or deprives a person of the opportunity to be heard.” *Id.*

The judgment in the above-stated case arises from a jury verdict rendered against the Respondent on October 22, 2019. There is no evidence of fraud in the jury verdict nor has the Respondent offered any extrinsic evidence of fraud in the jury

verdict. There is no evidence of misconduct by the Appellant or counsel for the Appellant in securing the jury verdict nor has the Respondent offered any extrinsic evidence of any jury misconduct in the jury verdict. The Appellant contends that Rule 60(b)(3) is not applicable in this case as the Respondent provided no extrinsic evidence to substantiate her claim of fraud or misconduct in the judgment.

In addition, there is no evidence that the jury's verdict and subsequent judgment was void pursuant Rule 60(b)(4). Our Courts have defined void under this rule as judgments from Courts which either failed to provide proper due process, or judgments from courts which lacked either personal or subject matter jurisdiction. *Universal Benefits, Inc. v. McKinney*, 349 S.C. 179, 561 S.E.2d 659 (Ct.App.2002). The Respondent provided no evidence that the trial court failed to provide due process to her during the trial nor is there any evidence that the trial court lacked either personal or subject matter jurisdiction to hear the trial in the case. The Appellant contends that Rule 60(b)(4) is not applicable in this case as the Respondent provided no evidence to substantiate her claim that the judgment of October 24, 2019, was void.

The Appellant further contends that Rule 60(b)(5) is not applicable in this case as there is no evidence that the judgment was satisfied, released, or discharged or reverse or vacated or that it was no longer equitable for the judgment to have application. Our Court of Appeals has held that "relief under Rule 60(b)(5) is available only in cases of fraud upon the court or rare, special, exceptional or unusual circumstances that may warrant equitable relief, including accident or mistake." *Mullarkey v. Mullarkey*, 397 S.C. 182, 723 S.E.2d 249 (Ct.App.2012).

The Appellant contends that the language of Rule 60(b)(5) should be given its "plain meaning" when the statute's meaning is clear on its face. Our Supreme Court has held that "where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the Court has no right to impose another meaning ... "the words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation." *Cfre Llc v. Greenville County Assessor*, 395 S.C. 67, 716 S.E.2d 877 (S.C. 2011). Rule 60(b)(5) allows for relief when the judgment has been "satisfied;" the "offer" to pay \$25,000.00 in this case by the Respondent did not satisfy the \$225,000.00 judgment. Also, it was not equitable to the Appellant for the court to grant the Respondent any relief from the judgment when the offer of \$25,000.00 only represented approximately eleven (11) percent of the judgment amount.

The court erred in determining that the offer by the Respondent to \$25,000.00 as satisfying Rule 60(b)(5); neither the court nor the Respondent provided any statute or case law to support relief solely based paying eleven (11) percent of a judgment nor did either party provide any legal support that the court had the power to force the Appellant to accept the \$25,000.00 offer from the Respondent. The Respondent provided no evidence that the Appellant accepted her offer nor did the court confirm that the Appellant either accepted any offer from the Respondent or received any payment from the Respondent before the court granted the Respondent's motion to enforce partial satisfaction of a judgment; the Court's action was in error.

Counsel for the Respondent appears to argue that there is some misconduct on the Appellant's part or that the judgment is now inequitable due to the suspension of the

Respondent's license. S.C. Ann. § 56-9-430 allows for the suspension of a driver's license or privilege for nonpayment of a judgment. This statute is designed to assist an injured party in collecting monies from a judgment from a negligent driver under the S.C. Motor Vehicle Financial Responsibility Act. Furthermore, S.C. Ann. § 56-9-410 states that "whenever any person fails within sixty days to satisfy any judgment, it shall be the duty of the clerk of court, or of the judge of a court which has no clerk, in which any judgment is rendered within this State to forward to the Department of Motor Vehicles immediately after the expiration of sixty days a certified copy of the judgment."

The Respondent's assertion that the Appellant's and/or the Clerk of Court's reporting to the SCDMV that the judgment was not satisfied within sixty (60) days was somehow misconduct or unethical is without merit. Pursuant to the statute, it was the duty of the Laurens' County Clerk of Court to report that the judgment was not satisfied within the sixty (60) day time limit. The Appellant would contend that even if he would have accepted the \$25,000.00 from the Respondent, the payment would not have relieved the Clerk of Court of its' duty to report because the judgment still would not have been completely satisfied. By erroneously granting the Respondent's request for relief pursuant to Rule 60(b), the court has provided judicial relief to both the Respondent and insurance carrier from having any other entity require them to pay the remaining \$200,000.00 balance of the judgment under a penalty of the law; the Appellant was prejudiced by the court's erroneous decision because it makes it more difficult for him to collect any of the remaining \$200,000.00 judgment. The court in its' order of May 8, 2020 states the Appellant "has full rights under the law to pursue any methods to collect and satisfy the judgment;" however, that statement is simply in error

as the court removed a method of collecting the judgment through the South Carolina Motor Vehicle Responsibility Act.

The Appellant contends that the Respondent has failed to meet her rigorous burden in showing evidence that she is entitled to relief; the Respondent merely provided a memorandum with unsubstantiated allegations. The Respondent also provided no clear and convincing evidence of a meritorious defense to warrant granting her relief in this matter nor did the Respondent provide any evidence at the conclusion of the trial that it had a meritorious defense as to either the jury verdict or jury award. The Respondent provided no evidence by way of affidavit or otherwise that her accident with the Appellant was not her fault nor did the Respondent provide any evidence by way of affidavit or otherwise that the jury's damage award was either not reasonable or was based upon factors not in evidence at her trial. The trial court erred by not deciding whether the Respondent had presented evidence of a meritorious defense in either of the court's orders. The court's orders are silent on the issue of meritorious defense although the Appellant timely raised this issue in his memorandum. This appellate court should review all of the items submitted to the trial court and determine that the Respondent presented no clear and convincing evidence of a meritorious defense warranting any relief from the judgment.

The Appellant contends that the Respondent has provided no meritorious defense as to the Complaint or the trial or the jury verdict or the jury damage award in this case; the damages amount was as a result of a jury verdict and the Respondent failed to either make any post-trial motions for a new trial or appeal the jury verdict. The Respondent did not argue in either her motions or her memorandum in support of her

motions that she had a meritorious defense as to liability; the Respondent appears to only be seeking relief from her damages. The Respondent admitted fault in her deposition; this is additional evidence that there is no evidence of a meritorious defense. [Respondent's Deposition, pp. 31-39;45.] The Appellant contends that the Respondent should have sought relief via a post-trial motion *nisi remittitur* or she should have appealed the verdict if she wanted relief from the judgment amount only; therefore, the Respondent should be prohibited from seeking relief pursuant to Rule 60(b) because she failed to act earlier by making a post-trial motion for new trial and/or appealing the jury verdict.

The court erred when it failed to consider whether the Appellant would endure any prejudice if the Respondent's request for relief was granted. Neither the Court's order of April 6, 2020 or the order of May 8, 2020, address the issue of prejudice to the Appellant though the Appellant raised the issue in his memorandums to the Court. The Appellant suffered prejudice because the relief essentially made the Respondent judgment proof as the Court eliminated a venue (South Carolina Department of Motor Vehicles Financial Responsibility Act) by which the Appellant could have recovered additional relief on the judgment from the Respondent. The Financial Responsibility Act would have required that the Respondent to make payments on the judgment to remain in good standing with her privilege to drive. The Respondent has no incentive to pay the judgment now because the court's order stated that the Respondent's license could not be suspended as a result of the offer to pay \$25,000.00 on the \$225,000.00 judgment. The court's ruling on the licensing issue was prejudicial to the Appellant because it removed a method of recovery for the Appellant; this was in error.

The court abused its' discretion in granting the Respondent relief from the judgment when the Respondent failed to provide any evidence through affidavits or otherwise that she was entitled to relief. The Respondent merely provided a memorandum to the court but offered no extrinsic evidence of fraud or evidence of misrepresentation, or other misconduct of an adverse party nor did the Respondent provide any evidence that either the judgment was void or completely satisfied. Furthermore, the Respondent made no prima facie showing of a meritorious defense to warrant relief from the judgment. The court erred in determining that the Respondent met her standard for granting relief from a default judgment under Rule 60(b), SCRPC because the burden under this rule "is more rigorous" ... because it requires a more particularized showing of mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or 'other misconduct of an adverse party. *Sundown Operating Co. v. Intedge Industries, Inc.*, 383 S.C. 601, 608, 681 S.E.2d 885, 888 (2009). The court's orders are silent on the issues of whether the Respondent provided evidence of a meritorious defense or whether the Appellant would suffer prejudice if relief was granted; both orders should be reversed and the Respondent should be denied any relief from the judgment.

## ARGUMENT

### II.

THE TRIAL COURT ERRED WHEN IT FAILED TO RULE ON THE APPELLANT'S MOTION TO DISMISS BEFORE GRANTING RELIEF ON THE RESPONDENT'S MOTION TO ENFORCE PARTIAL SATISFACTION OF A JUDGMENT.

The Respondent's motion of January 6, 2020, makes no reference to any statutory or any other legal basis for her motion. The Respondent's motion makes no reference to

seeking relief from the judgment pursuant to either Rule 59 or Rule 60 of the South Carolina Rules of Civil Procedure. Rule 59 (b) of the South Carolina Rules of Civil Procedure, states the following:

The motion for a new trial shall be made promptly after the jury is discharged, or in the discretion of the court not later than 10 days after the receipt of written notice of the entry of judgment or of the filing of an order disposing of the action, if no judgment has been entered.

Rule 60(b) allows post trial motions up to one year but only under certain circumstances.

Rule 7 (b), SCRCP – Motions, states the following:

An application to the court for an order shall be by motion which, unless made during a hearing or trial in open court with a court reporter present, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

Our Supreme Court has held that the “particularity” requirement should be read flexibly to recognize the different circumstances of each case in conjunction with Rule 7, SCRCP. *Camp v. Camp*, 689 S.E.2d 634, 386 S.C. 571 (S.C. 2010). Nevertheless, the Appellant’s motion to dismiss challenged the Respondent’s Motion to Enforce Partial Satisfaction of a Judgment due to a lack of particularity in the Respondent’s motion; therefore, the court erred when it did not analyze whether the Appellant was prejudiced by the lack of particularity in the Respondent’s motion.

In this case, it is clear that the Respondent did not make a motion for a new trial or any motions after the jury was discharged; furthermore, it is also clear that there is no record of the trial court exercising its discretion and allowing the Defendant up to (ten)10 days to file any post-trial motions. [Transcript, pp. 4-7.] The Respondent's motion for relief was so ambiguous that the Appellant could not comprehend the basis for the Respondent's motion or know how to appropriately respond to the motion; therefore, the Appellant filed a motion to dismiss for lack of jurisdiction.

The Appellant would point out to this appellate court that the lower court's ruling on this matter was prompted by counsel for the Respondent emailing Judge Griffith directly to request relief. This case was not on a motion's roster when the lower court decided it would rule on this matter. Counsel for the Appellant advised the court that he was under protection at the time and requested that the matter be continued until the protection ended on April 24, 2020; however, the court put Counsel for the Appellant in a position where counsel had to respond to the Respondent's motion for relief or risk waiving the Appellant's right on contesting issues involving the Respondent's request for relief. [Order of Protection; Email of April 1, 2020.] The Appellant responded to the Respondent's motion for relief by filing a motion to dismiss on April 1, 2020, and requested a hearing on his motion before the court ruled on the Respondent's request for relief. The Respondent in her response to the Appellant's Motion to Dismiss indicated for the very first time that she was seeking relief pursuant to Rule 60(b)(3-5). [Respondent's Response to Motion to Dismiss.] The court erred when it did not allow the Appellant to be heard on his motion to dismiss after the Respondent's reply memorandum or rule on the Appellant's motion to dismiss before

the Order of April 6, 2020. The court notified the Appellant via email on April 2, 2020, and less than twenty-four (24) hours after the Appellant filed her motion to dismiss, that the lower court would grant the Respondent's motion. [Email of April 2, 2020.] The Appellant was prejudiced by the ambiguity of the Respondent's motion and having to respond to said ambiguous motion while under protection and within a short period of time to prepare an adequate response.

The Appellant contends that he was entitled to be heard on his Motion to Dismiss the Respondent's Motion for lack of jurisdiction pursuant to Rule 12(b)(1). Subject matter jurisdiction can be raised at any times and means; furthermore, Rule 12(h)(3), SCRPC, states that "whenever it appears by suggestion of the parties that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." In this case, the Appellant did not waive jurisdiction or consent to jurisdiction; furthermore, subject matter jurisdiction cannot be waived or conferred by consent. *GNOC Corp. v. Rhyne*, 312 S.C. 86, 439 S.E.2d 274 (1994).

The Appellant concedes that the events surrounding the Respondent seeking relief from the judgment occurred before and during the pandemic; however, it does not relieve the court of its duty to allow all of the parties to be heard on a material matter. Our Supreme Court in Appellate Case No. 2020-000447 regarding Operation of the Trial Courts During the Coronavirus Emergency, stated in section C(4) that "while the practice has been to conduct hearings on virtually all motions, this will not be possible during this emergency. If, upon reviewing a motion, a judge determines that the motion is without merit, the motion may be denied without waiting for any return or other response from the opposing party or parties. In all other situations except those where

a motion may be made on an ex parte basis, a ruling shall not be made until the opposing party or parties have had an opportunity to file a return or other response to the motion.” The Appellant’s motion on subject matter jurisdiction was material and went to the heart of whether the Respondent’s motion was sufficient to entitle her to relief.

The Court never responded to the Appellant’s Motion to Dismiss for lack of subject-matter jurisdiction before the Court issued its’ Order of April 6, 2020. [Email of April 6, 2020.] The court’s Orders do not address the issue of subject-matter jurisdiction regarding the Respondent’s Motion to Enforce Partial Satisfaction of a Judgment, nor is there a record of the Court’s ruling regarding subject-matter jurisdiction. [Order of April 6, 2020 and May 8, 2020.] This Court’s first response addressing the issue of jurisdiction came on April 9, 2020 via email where this court expressed that it was “confident that I had jurisdictional authority to consider, rule, and issue the order that I signed;” however, the issue was still not addressed in the court’s order of May 8, 2020. The Appellant contends that this email seven (7) days after the court decided to grant the Respondent relief and three (3) days after the court has issued its’ first Order is not a sufficient record to determine the basis of the court’s ruling nor did it address the issue as to why the Appellant was not afforded an opportunity to be heard on his Motion to Dismiss for lack of jurisdiction. The court abused its’ discretion when it did not create a an adequate record of the events surrounding its’ rulings; the court further abused its; discretion when it did not provide the Appellant with an opportunity to be heard on his motion to dismiss for the court issued its order of April 6, 2020.

The court abused its’ discretion in granting the Respondent relief from the judgment when the court failed to address the Appellant’s motion to dismiss; the

Appellant was prejudiced by the ambiguity of the Respondent's motion and further prejudiced by not having an opportunity to be heard on the matter before the court issued its' ruling. The court's orders should be reversed and the Respondent should be denied relief from the judgment.

## **ARGUMENT**

### **III**

#### **THE TRIAL COURT ERRED WHEN IT GRANTED RELIEF NOT REQUESTED FOR IN THE RESPONDENT'S MOTION.**

The Respondent's motion to enforce partial satisfaction of a judgment only requested that the Court force the Appellant to accept the \$25,000.00 as a partial satisfaction of the \$225,000.00 judgment. The Respondent's motion focused on the fact that the Appellant placed a deadline on the Respondent to make a payment on the judgment because the Respondent missed that deadline. The Respondent's motion makes no reference to any other additional relief requested in this matter.

[Respondent's Motion to Enforce Partial Satisfaction of Judgment.] The Respondent's response to the Appellant's motion to dismiss does not specifically request that the court grant the Respondent relief from a driver's license suspension or grant the insurance carrier relief from a possible bad faith action. [Respondent's Response to Motion to Dismiss.]

The Order of the Court contained language that the Respondent complied with her obligations pursuant to S.C. Ann. § 56-9-430 and S.C. Ann. § 56-9-480 and that payment of \$25,000.00 (partially) satisfied the judgment rendered against her insofar as her driver's license could not be suspended or revoked due to the judgment entered by

the Court. [Order of April 6, 2020.] Furthermore, the Order contained language that the carrier acted “properly” in handling the claim which was the subject of this action.

The circuit court has original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction is given to inferior courts, and has such appellate jurisdiction as provided by law. Article V, Section 11, South Carolina Constitution. The circuit court has limited appellate jurisdiction over appeals from the Administrative Law Judge Division over matters relating to state administrative and regulatory agencies.

The Appellant contends that the Court did not have original jurisdiction to decide matters related to driver’s license privileges; hearings related to driver’s licenses are within the original jurisdiction of the Administrative Law Court. An administrative law judge presides as the fact finder in cases involving departments of the executive branch of state government and they hear all appeals from final decisions of contested cases heard by state agencies pursuant to the Administrative Procedures Act. S.C. Ann. § 1-23-600. The Administrative Law Court also has original jurisdiction to address any issues regarding driver’s licenses. The Office of Motor Vehicle Hearings has exclusive jurisdiction to conduct all contested case hearing or administrative hearings arising from actions related to the driver’s licenses issued through the S.C. Department of Motor Vehicles (SCDMV). S.C. Ann § 56-1-10(23). The Respondent failed to seek relief from the administrative law court regarding the suspension of her driver’s license related to failing to satisfy the Appellant’s judgment against her.

The SCDMV is an executive branch agency subject to the original jurisdiction of the Administrative Law Court. S.C. Ann. § 1-23-600 is instructive as subsection (A) states that an administrative law judge shall preside over all hearings of contested

cases as defined in Section 1-23-505 or Article I, Section 22, Constitution of the State of South Carolina, 1895, involving the departments of the executive branch of government as defined in Section 1-30-10 in which a single hearing officer, or an administrative law judge, is authorized or permitted by law or regulation to hear and decide these cases ...; subsection (D), states that “an administrative law judge also shall preside over all appeals from final decisions of contested cases pursuant to the Administrative Procedures Act, Article I, Section 22, Constitution of South Carolina, 1895, or another law ...”

The court in its Orders did not state the origin of the court’s power to exercise original jurisdiction to decide the administrative matter related to the suspension of the Respondent’s driver’s license which was an error by the Court. Furthermore, neither of the court’s orders stated how the court interpreted S.C. Ann. §56-9-480 (1) as it relates when a judgment could be considered sufficiently satisfied under the statute such that a suspension of license is no longer warranted. The court abused its discretion by exercising original jurisdiction and declaring that the Respondent had satisfied the requirements of the Motor Vehicle Responsibility Act such that the Respondent’s license could not be suspended or revoked for failing to satisfy the judgment in this case. The Appellant was prejudiced by the Court’s ruling because the Court’s order prevents the Appellant from seeking relief against the Respondent under the Financial Responsibility Act related to driving motor vehicles.

The court’s order of April 6, 2020, comments on the conduct of the insurance carrier, Progressive Insurance Company; the Appellant contends these comments are outside of this Court’s jurisdiction and outside of the scope of the relief requested in the

Respondent's Motion to Enforce Partial Settlement of a Judgment. The lower court erred by allowing language into the order that the "25,000.00 policy limit payment from the defendant's liability insurance carrier ("Progressive") was properly tendered in response to the Court's judgment rendered against the defendant."

The Appellant is aware that the Civil Rules of Procedure gives the court flexibility to grant relief not specifically pled; however, the Respondent's motion was not a pleading. Rule 15(b), SCRCP. The Appellant did not consent for the court to decide matters outside of the Respondent's motion to enforce partial satisfaction of a judgment nor did the Appellant consent for the court to decide matters related to the conduct of the insurance carrier. Rule 54(c), SCRCP states that "every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled..." The Appellant contends that he is entitled to the judgment in the amount of \$225,000.00 with no such relief afforded to the Respondent which would prevent the Appellant from obtaining his judgment from the Respondent. The Appellant was prejudiced by these comments as it prevents the Appellant from seeking relief against the insurance carrier if it is ever determined that the carrier had acted in bad faith in its' handling of the underlying claim involving the Appellant.

The Appellant contends that the court inserting language relating to driver's licenses and the conduct of the insurance carrier into the court's order was an abuse of discretion. The court was aware or should have been aware through the Respondent's filings that the Appellant was contending that the conduct of the carrier in timely paying the policy limits was in bad faith. The issue of whether the conduct of Progressive was proper was not contained within the Respondent's Motion to Enforce Partial Satisfaction

of a Judgment and this court did not provide a record of how it had jurisdiction over this issue; this was in error as this court lacked jurisdiction to address the issue of the conduct of insurance carrier in handling this claim.

Furthermore, it should be noted that the above-stated case was tried before the Honorable Roger L. Couch and it is not clear as to how or why Judge Griffin scheduled this matter without sufficient notice of his decision to hear this matter. Our Supreme Court has held that "the power to open, modify or vacate a judgment is possessed solely by the court that rendered the judgment." *Coleman v. Dunlap*, 306 S.C. 491, 413 S.E.2d 15 (S.C. 1991); See, also *Tri-County Ice and Fuel Co. v. Palmetto Ice Co.*, 303 S.C. 237, 399 S.E.2d 779 (1991). The court also provided no statement for the record or its' orders as to why this was an emergency hearing regarding the Respondent's post trial motion which was filed on January 6, 2020. Counsel for the Appellant was under protection from the Court for the period of April 1, 2020 through April 22, 2020, yet counsel for the Appellant was required to file a Motion to Dismiss and respond to an email from the court while he was out on protection without any explanation on the record from the court as to why this was an emergency hearing without an actual hearing or any opportunity to be heard on the record.

The court erred in determining that it had original jurisdiction to determine that the Respondent had complied and satisfied the requirements set forth under the Motor Vehicle Responsibility Act. The Appellant was prejudiced in this matter in that the net effect of the Court's Order made the Respondent "judgment proof" and thereby created an additional barrier for the Appellant to overcome to recover his judgment against the Respondent. The Administrative Law Court had original jurisdiction on all matters

related to the suspension of the Respondent's driver's license. The court's orders should be reversed and the Respondent should be denied relief from the judgment.

### **CONCLUSION**

For the reasons stated above, this court should reverse both orders by the court; furthermore, this court should determine that the Respondent has presented no clear and convincing evidence of a meritorious defense then deny the Respondent's request for relief. This court should also determine that the trial court has no original jurisdiction to issue grant the Respondent relief from any suspension of her license for failure to satisfy the judgment, and this court should further hold that the trial court's comments regarding the claim's handling conduct by the carrier in this case was improper.

Respectfully submitted,

July 30, 2020

s/Dietrich A. Lake  
Dietrich A. Lake #69649  
The Lake Law Firm  
1034 Briargate Circle, Ste. 201  
803/750-8311 *office*  
803/750-8312 *fax*  
ATTORNEY FOR APPELLANT

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

**RECEIVED**

JUL 30 2020

APPEAL FROM LAURENS COUNTY  
Court of Common Pleas

**SC Court of Appeals**

The Honorable Eugene C. Griffith, Jr, Circuit Court Judge

Case No.: 2018-CP-30-00378

Melinda Humphries,.....Respondent,

v.

Christopher Abrams,.....Appellant.

PROOF OF SERVICE

The undersigned counsel for the Appellant hereby certifies that the Initial Brief of the Appellant and the Designation of Matter to be Included in the Record on Appeal were served and delivered upon counsel for the Respondent by U.S. mail to: Michael T. Coulter, Clarkson, Walsh, Coulter, PO Box 6728, Greenville, SC 29606.

July 30, 2020

s/Dietrich A. Lake  
Dietrich A. Lake #69649  
1034 Briargate Circle, Ste. 201  
Columbia, SC 29210  
803-750-8311  
Attorney for Appellant

The Lake Law Firm, LLC  
1034 Briargate Circle, Ste. 201  
Columbia, SC 29210

Dietrich A. Lake

Office 803/750-8311  
Fax 803/750-8312

July 30, 2020

Via Hand Delivery

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

**RECEIVED**  
JUL 30 2020  
SC Court of Appeals

Re: Christopher Abrams v. Melinda Humphries  
Appellate Case No.: 2020-000799

Dear Ms. Kitchings:

Enclosed please find one (1) original and one copy of the following: the Appellant's Initial Brief, the Designation of Matter to be Included in the Record on Appeal, and Proof of Service in the above-mentioned case. Please file the originals and return the stamped copies to me in the enclosed envelope.

In addition, please note that the transcript in this matter was received via email on July 13, 2020; therefore, the Appellant has complied with the time requirements for submitting his brief.

Please feel free to contact me should you have any additional questions.

With kind regards,

s/Dietrich A. Lake

Dietrich A. Lake

Enclosures

cc: Michael T. Coulter, Esquire