

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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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.

FINAL REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS

Table of Authorities.....i

Arguments..... 1

 I. The trial court lacked jurisdiction to either amend or alter the judgment pursuant to Rule 59 or Rule 60(b), SCRCP..... 1

 II. The Appellant’s arguments are properly preserved for consideration by the court pursuant to Rule 59, SCRCP.....2

 III. Due process required that the Appellant be given an opportunity to be heard on his Motion to Dismiss to allow the Appellant to address the issues in a meaningful way on the facts as to whether the court had jurisdiction to grant the relief in its’ Orders.....3

Conclusion.....7

TABLE OF AUTHORITIES

CASES

Bowers v. Bowers, 304 S.C.65, 67, 403 S.E.2d 127, 129 (Ct. App.1991).....2

Buist v. Buist, 410 S.C. 569, 766 S.E.2d 381 (S.C.2014).....3

Collins Music Co., Inc. v. IGT, 33 S.C. 559, 579 S.E.2d524 (S.C.App.2002).....3

Palmetto Alliance v. S.C. Public Service Authority, 282 S.C. 430, 319 S.E. (2d) 695 (1984).....6

Smith v. S.C. Dept. of Mental Health, 329 S.C.485, 494 S.E.2d 630 (1997).....4

South Carolina Dept. of Social Services v. Beeks, 325 S.C. 243, 481 S.E.2d 703 (S.C.1996).....3

Williams v. Watkins, 384.S.C. 319, 681 S.E.2d 914 (S.C.App.2009).....1

RULES

Rule 59, SCRCP..... 1,2,3

Rule 60, SCRPC2,3,6

STATUTE

South Carolina Motor Vehicle Responsibility Act.....5,6

ARGUMENTS

In her brief, the Respondent asserts some positions which are inconsistent with the record. The Appellant seeks to clarify those issues to comport with the record.

I. The trial court lacked jurisdiction to either amend or alter the judgment pursuant to Rule 59 or Rule 60(b) SCRPC.

The Respondent in her brief to this appellate court does not argue that she sought relief pursuant to Rule 59, SCRPC; therefore, the Respondent is not entitled to any relief pursuant to Rule 59. The Respondent's failure to argue or request consideration of any facts and/or issues pursuant to Rule 59 in her brief should preclude this appellate court from affirming the trial court's decision pursuant to Rule 59, SCRPC. Furthermore, the Appellant contends that Rule 59 is inapplicable in this case as the Respondent failed to timely file its' motion pursuant to the rule.

Although the Respondent in her brief argued that "neither counsel for Ms. Humphries nor the circuit court sought to address, modify, reconsider, or otherwise alter the verdict or seek a new trial," she still received relief from the Court from the Appellant's Judgment. [Respondent's Initial Brief, p. 6.]

The Respondent in her brief fails to argue to this court that she had a meritorious defense to secure relief from the judgment. Our courts have continually held that a meritorious defense is "necessary" for relief. *Williams v. Watkins*, 384.S.C. 319, 681 S.E.2d 914 (S.C.App.2009). The complete record of the Respondent, to include her memorandums and brief, does not contain any evidence that the Respondent made a prima facie showing of a meritorious defense to the Appellant's claim; furthermore, the Respondent is not clear in her arguments as to whether she is claiming a meritorious defense as to liability and/or claiming a meritorious defense as to damages only and/or

claiming a meritorious defense as to both. Regardless of the ambiguity of the Respondent's argument, it is clear that the words "meritorious defense" are not contained and/or mentioned and/or found in the Respondent's brief or memorandums to any court at all.

The Respondent in her brief continues to argue that the Appellant committed misconduct under Rule 60(b) by failing to accept the Respondent's check for \$25,000.00. The record is absent of any evidence by way of affidavits and/or any other documents submitted by the Respondent indicating how the Appellant's failure to accept this check for \$25,000.00 is misconduct. The Respondent had the burden of presenting evidence, by way of affidavits, of proving the facts to show she was entitled to relief. *Bowers v. Bowers*, 304 S.C.65, 67, 403 S.E.2d 127, 129 (Ct. App.1991). The Respondent failed to meet her burden.

The lower court abused its discretion by granting the Respondent relief pursuant to Rule 60(b) even though the Respondent failed to present a prima facie showing of a meritorious defense and failed to provide any evidence by way of affidavits that the Appellant committed misconduct in obtaining the judgment. The lower court committed errors of law requiring this appellate court to reverse the trial court's decisions and orders. The factual conclusions of the trial court were made without any evidentiary support.

II. The Appellant's arguments are properly preserved for consideration by this court pursuant to Rule 59, SCRCP.

The Respondent erroneously asserts that the Appellant's arguments in his brief were not preserved for this appellate court's consideration. Rule 59, SCRCP, allows the court to consider matter where the moving party believes the court has either made

errors of law or improperly weighed evidence. *Buist v. Buist*, 410 S.C. 569, 766 S.E.2d 381 (S.C.2014); See, also *Collins Music Co., Inc. v. IGT*, 33 S.C. 559, 579 S.E.2d524 (S.C.App.2002). In *Buist*, our Supreme Court held that a party may raise an issue in a motion to reconsider pursuant to Rule 59(e) so long as the motion is timely and the party is reasonably clear in their objection to an error by the court.

Rule 59(e), SCRPC that a motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order. The Appellant's Motion to Reconsider in this case was timely and the motion specifically and clearly stated the errors of law that the Appellant believed the court made in its ruling; furthermore, the motions clearly and specifically raised the Appellant's objections to the court's errors. It is well settled law in South Carolina that once the Appellant properly raised these issues pursuant to a Rule 59 motion, then these matters were preserved for this appellate court's consideration of these issues. See, *Collins Music Co., Inc.*

III. Due process required that the Appellant be given an opportunity to be heard on his Motion to Dismiss to allow the Appellant to address the issues in a meaningful way on the facts as to whether the court had jurisdiction to grant the relief in its' Orders.

The lower court decided some of the following issues in its orders:

1. That the Respondent's driver's license could not be suspended at all;
2. That Progressive acted in good faith at all times during its handling of the case;
3. That he had jurisdiction over all matters contained in his orders; and
4. That Rule 60 applied in this case and entitled the Respondent relief.

Due process requires that all parties be given an opportunity to be heard in a meaningful time and a meaningful way. *South Carolina Dept. of Social Services v. Beeks*, 325 S.C. 243, 481 S.E.2d 703 (S.C.1996). The Appellant acknowledges that while due process is flexible and does not mandate a certain procedure be followed, the

Appellant still contends that due process required the lower court to afford the Appellant meaningful time and a meaningful way to address the important questions of fact or to present favorable evidence to the lower court before the court made its' decision. *Smith v. S.C. Dept. of Mental Health*, 329 S.C.485, 494 S.E.2d 630 (1997).

In this case, the Respondent sent an email to the Honorable Eugene C. Griffith, Jr. on March 31, 2020, requesting that he immediately hear their motion of January 6, 2020; the Appellant was copied on the email at the same time it was sent to Judge Griffith. [R. p. 194.] The Appellant responded to this email at 12:08pm by notifying the lower court that there was a jurisdictional question that needed to be decided first and by notifying the lower court that the Appellant would be filing a motion with the court and requesting a hearing on the matter on April 1, 2020. [R. p. 193.] The Appellant advised the lower court again of its Motion to Dismiss and request to be heard via email on April 2, 2020, at 11:56am. [R. p. 190.] The lower court notified the parties on April 2, 2020 at 4:41pm, that it would grant the Respondent's Motion to Compel Partial Satisfaction of a Judgment. [R. p. 189.] The email from Judge Griffith's law clerk came approximately **forty-eight (48)** hours after the Respondent sought emergency relief. Judge Griffith never responded to the Appellant's request for a hearing in this matter and her motion before ruling; the Appellant's motion to dismiss is still pending in Laurens' County.

The Order granting the Respondent's request for relief on her January 6, 2020, motion was prepared by counsel for the Respondent. The Appellant was provided with a copy of the proposed Order and objected to its' content in an email to all the parties, including Judge Griffith, on April 6, 2020, at 8:17am. [R. p. 188.] The lower court never responded to the Appellant's objections to the Order before Judge Griffith signed the

Order on April 6, 2020, at 11:30am. Furthermore, the signed Order contained relief not requested in the Respondent's motion of January 6, 2020; the April 6, 2020 Order addressed the Respondent's driver's license, it addressed whether the Respondent had sufficiently complied with the Motor Vehicle Responsibility Act, and it addressed the conduct of Progressive Insurance Company in its claim's handling practices in this case. [R. 4-7.]

It should be noted that the Respondent contends that the Appellant never made the arguments from her brief in her motion to dismiss; however, the Appellant was never given an opportunity to be heard on his motion nor was he provided with any meaningful time to supplement his motion with a memorandum because the lower court granted relief to the Respondent in forty-eight (48) hours after the Respondent's requested an emergency hearing to be heard on her motion of January, 6, 2020. The above-stated facts highlight the fact that the Appellant was denied opportunities by the lower court to be heard on any issues and was prejudiced by that fact.

The Appellant was not provided an opportunity to be heard in a meaningful time and a meaningful way on the matter regarding either her motion to dismiss or the Respondent's motion to compel. The lower court not only did not provide any meaningful time to be heard on this matter, the lower court never even advised the Appellant that it would agree to even hear the matter immediately under emergency circumstances. Furthermore, the Appellant would contend that the Covid-19 pandemic still did not justify or excuse the lower court's conduct in not allowing the Appellant to be heard at a meaningful time and in a meaningful way on the issues in this case; our Supreme Court provided guidelines and mechanisms, such as WebEx, to enable the

lower courts to function safely during the pandemic. The lower court ignored the guidelines set out by our Supreme Court and just ruled without any explanation until Judge Griffith advised the Appellant in an email on April 9, 2020, that he felt confident that he had jurisdiction to consider and rule in the matter and that the Appellant should file a Rule 59 motion to preserve the issue. [R. p. 186.] The Appellant contends he was prejudiced by the lower court's conduct of not allowing him an opportunity to be heard on matters jurisdiction and/or on matters regarding whether the Respondent was entitled to relief under Rule 60(b), SCRPC. The Appellant contends that the outcome of the lower court's ruling would have been different because the Appellant would have been able to argue to the lower court that the Respondent presented no evidence of a meritorious defense to entitle her to relief under Rule 60(b).

Due process requires a showing of substantial prejudice. *Palmetto Alliance v. S.C. Public Service Authority*, 282 S.C. 430, 319 S.E. (2d) 695 (1984). The Appellant was unable to challenge any of the relief that the lower court granted its' Order of April 2, 2020 nor was the Appellant able to challenge whether the lower court had jurisdiction to hear the matter where the Respondent had not articulated with any particularity in her motion the Respondent's basis and/or request for relief. The lower court's Order placed significant obstacle in front of the Appellant in recovering any amounts above the Respondent's policy limits from the Respondent and eliminated any bad faith claims against Progressive Insurance for its' handling of the claim in this case. [R. 227-228.] The South Carolina Motor Vehicle Responsibility Act provides a mechanism to an injured party to collect funds from at fault drivers who either have no coverage or insufficient coverage to handle a loss; the lower court's Order removed this option of

collection from the Appellant. Bad faith claims allow an injured party to secure judgments against a carrier who did not act in good faith in handling the case; the lower court's Order removed this option of collection from the Appellant. The Appellant was substantially prejudiced by these actions of the court without an opportunity to be heard in a meaningful time and a meaningful way in this matter.

CONCLUSION

For all of the above-stated reasons and the reasons stated in the Appellant's primary brief, this court should reverse the result and findings below in the lower court and remand with instructions to deny the Respondent's request for relief and to restore the suspension of the Respondent's license for failing to satisfy the judgment in this case.

Respectfully submitted,

November 5, 2020

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CERTIFICATE OF COMPLIANCE

The undersigned counsel for the Appellant hereby certifies that this Final Reply Brief is identical to the Initial Reply Brief, except for inclusion of references to the Record and correction of typographical errors and/or misspellings, and it otherwise complies with Rule 211 (b) SCACR.

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