In The Court of Appeals

[In The Supreme Court]

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SC Court of Appeals

APPEAL FROM MARION COUNTY

Court of Common Pleas

Thomas A. Russo, Circuit Court Judge

Case No. 2013-CP-33-00306

Appellant Case No. 2018-002061

Anderson Brothers Bank

Respondent,

Dazarhea Monique Parson, a/k/a Dazarhea D. Parson, a/k/a Dazarhea Monique Daniels Parson, A. Tyrone Parson, Jr. a/k/a Arnold Tyrone Parson Jr., South Carolina Department of Revenue and South Carolina Department of Motor Vehicles, Defendants, Of whom Dazarhea Monique Parson, a/k/a Dazarhea D. Parson, a/k/a Dazarhea Monique Daniels Parson, A. Tyrone Parson, Jr. a/k/a Arnold Tyrone Parson Jr.

Appellants,

FINAL REPLY BRIEF OF APPELLANTS

June 3, 2019

Arnold Jr., Dazarhea Parson Pro Se
P O Box 337
Georgetown, South Carolina 29442
843-409-9086
best4lessclothing@gmail.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES..

Reply Argument...

I. Respondents erred when they argued that the Circuit Court correctly ruled that the Appellants' Petition was not filed within a reasonable time under rule 60(b), SCRCP...

II. Respondents erred when they argued that the Circuit Court correctly ruled that there is no legal or factual basis to support a finding that the Foreclosure Order is void under Rule 60(b)(4)...

III. Respondents erred when they argued that the Circuit Court correctly ruled that its findings of fact and conclusion of law were sufficient under applicable law and judicial notice was not appropriate..

CONCLUSION...

TABLE OF AUTHORITIES

Cases:

- **Estelle v. Gamble** 6
- **McDaniel v. U.S Fidelity & Guaranty Co.**, 324 S.C 639, 644, 478 S.E. 2d 868, 871 (Ct. App. 1996)....................6
- **Gatling v. Beach Palace, Inc.,** 294 S.C. 464, 365 S.E. 2d 736(Ct. App. 1988)....... 6
- **Hill Top Developers v. Holiday Pines Service Corp.** 478.So. 2d. 368(Fla 2nd DCA 1985)....................6
- **Orner v. Shalala,** 20 F. 3d 1307(10th Cir. 1994)....................7
- **Nye, Mitchell, Jarvis Bugg v. Oates,** 109 N.C. App. 289, 426 S.E. 2d 291(1993)...7
- **Belle Hall Plantation Homeowner's Ass'n, Inc. v. Murray,** 419 S.C. 605,617,799 S.E.2d 310, 316(Ct. App. 2017)....................8
- **Main v. Thiboutot,** 100 S. Ct. 2502 (1980)....................9
- **Basso v. Utah Power & Light Co.**, 495 F 2d 906, 910....................9
- **Marqutte Corp. v. Priester**, 234 F. Supp. 799(D.S.C. 1964)....................9
- **Klugh v. United States** 620 F. Supp. 892,900(D.S.C. 1985)....................9
- **Ex Parte Kibler,** 53 S.C. 461, 31 S.E. 2d 274(1898)....................10
- **Ex Parte Round Tree,** 51 S.C. 405, 29 S.E. 66(1898)....................10
- **Anderson v. Anderson**, 327 S.E. 2d 355, 356 (South Carolina Court of Appeals 1985)....................10
- **State v. Earle** (S.C. 1903) 66 S.C. 194, 44 S.E. 781....................12
- **Van Ness v. Eckerd Corp** 350 S.C. 399 (S.C. Ct App. 2002)....................13
- **Fochtman v. Clanton's Auto Auction Soles,** 233 S.C. 581, 106 S.E. 2d 272(1958)...14
- **Taylor v. O'Grady,** 888 F. 2d 1189(7th Circ. 1989)....................14
- **United States v. Sciuto**, 521 F.2d 842, 845(7th Cir. 1996)....................15
- **Gomez v. United States,** 109 S. Ct. 2237, 2248(1989)....................15
- **State v. Brown** (S.C. 1935) 178 S.C 294, 182 S.E. 838....................15
- **Robinson v. Estate of Harris**....................15
- **Bryant v. State,** 384 S.C. 525, 529, 683 S.E. 2d 280, 282(2009)....................15
- **Gay v. Ariail**, 381 S.C. 341, 345, 673 S.E. 2d 418, 420(2009)....................16
- **Hitachi Data Sys. Corp. v. Leatherman**, 309 S.C. 174, 178, 420 S.E.2d 843,846(1992....................16
- **Unison Ins. Co. Schmidt**, 339 S.C. 362, 368, 529 S.E.2d 280, 283(2000)....................16

Statute:

- 28 USC 455(a)....................14
- South Carolina Code 1-23-330(2)....................15
- S.C. Code 22-5-140....................9

Other Authorities:

- South Carolina Rule of Disciplinary Enforcement Judicial Conduct Canon (3)(b)(1)....................14
- South Carolina Rule of Disciplinary Enforcement 501(3)(E) Disqualification (1)(d)(i)....................14
- South Carolina Rule of Evidence 1003....................11
- SCRCP Rule 60(b)(4)....................5
- SCRCP Rule 38....................4
- SCRCP Rule 59(e)....................10
- SCRCP Rule 60(b)(6)....................9
- SCRCP 8(f)....................15
- South Carolina Constitution Art. 1 Sec 3....................12
- SCRCP Rule 53....................4
- Flanagan, South Carolina Civil Procedure 487 (2nd ed. 1996)....................5
- 47 Am. Jur.2d Judgments subsection 767-68(1995)....................6
- 11 Wright, Miller, and Kane, Federal Practice and Procedure: Civil 2d subsection 2862, at 324(1995)....................6
- 7 James W Moore et.al ., Moore's Federal Practice 60.25[4](2nd ed.1996)....................6

Reply Argument

Appellants Initial Brief is made forever relevant and material to this Reply as if stated in full herein.

I.

Respondents erred when they argued that the Circuit Court correctly ruled that the Appellants' Petition was not filed within a reasonable time under rule 60(b), SCRCP. Appellants oppose this argument. Respondents (ABB) originally attempted to use the invalid Special Referee's Deed on or around October 1, 2015. Appellants first filed their Motion 60(b) (1) (3) (4) and Challenged the Jurisdiction on October 16, 2015. Including but not limited to, the Respondents (ABB) never showed standing, gave no consideration See Exhibit A-Unrebutted Affidavit of Lack of Consideration) [R. p.271-273], Fraud upon the court, and the Special Referee Fraudulent Deed of which Respondents who were not the bona fide purchasers used to obtain a Writ of Assistance. Respondents(ABB) and the Special Referee having full knowledge of the October 16, 2015 filings assumed, instead of proved jurisdiction and moving forward without having a proper hearing before an impartial court and misleading the 14 Drug Enforcement Unit Officers that Appellants didn't file the proper paperwork. Special Referee was objected to when Respondents first entered the Order in Reference during the foreclosure process pursuant to SCRCP Rule 53[R. p.285-287]. The Appellants did not consent and no circuit court judge ordered parties to go before the Special Referee. Appellants demanded a Trial by Jury pursuant to SCRCP Rule 38. Respondents, and the Special Referee ignored Appellants filings. In this case the Special Referee denied Appellants their right to cure defects in pleadings and resubmit their pleadings (i.e. discovery, interrogatories, request for production,

request for admission) in South Carolina form before granting Respondents judgment. "All pleadings shall be so construed as to do substantial justice to all parties" SCRCP 8(f) and also See **Estelle v. Gamble.** Appellants was never allowed to make a formable defense. The trial court never ruled that the Special Referee had jurisdiction, and the parties never consented. Those are the only two ways the Special Referee could gain jurisdiction. Appellants has made several attempts to mitigate their damages to the Court of Appeals, and Supreme Court. Each attempt has been unsuccessful and was dismissed on technicality (i.e failure to comply). Appellant case has never been ruled on upon the merits and no higher court has affirm Special Referees order. Under 60(b)(4), SCRCP, "The definition of "void" under the rule only encompasses judgments from courts which failed to provide due process…". **McDaniel v. U.S Fidelity & Guaranty Co.**, 324 S.C 639, 644, 478 S.E. 2d 868, 871 (Ct. App. 1996); Contra **Gatling v. Beach Palace, Inc.,** 294 S.C. 464, 365 S.E. 2d 736(Ct. App. 1988)[1](per curiam)("holding that the reasonable time requirement does not apply to 60(b)(4) because a void judgment is a nullity and thus may be attacked at anytime") Flanagan, South Carolina Civil Procedure 487(2nd ed. 1996). Appellants was in possession and living in said property and had every right to Challenge the Jurisdiction of the non bona fide purchasers foreclosure deed. "Defense of lack of Jurisdiction over the subject matter may be raised at any time, even on appeal." **Hill Top Developers v. Holiday Pines Service Corp.** 478.So. 2d. 368(Fla 2nd DCA 1985). In McDaniel his motion was filed untimely as to the trial courts discretion and an Appellant court will not disturb the Special Referees determination absent abuse of

[1] Respondents made reference on page 9 footnote 1 in their Initial Brief to a mistake (left title out of case law) in Appellants Brief page 12. This footnote shows the correct citing.

discretion. The trial court ruling McDaniel's motion was untimely was not an abuse of discretion especially since McDaniel participated in the settlement and received substantial benefits from it.... In the case sub judice no parties have participated in a settlement, nor did Appellants received any benefits from the judgment and order for sale that is subject of this 60(b)(4) which are two facts Special Referee used to make his determination in McDaniel that is not relevant in this appeal. There is disagreement among the various federal and state jurisdictions as to whether the reasonable time requirements should be imposed on Motions which attack a judgment as void. However, many other authorities hold that a void judgment may be attacked at any time. These authorities, including Gatling, generally reason that a void judgment cannot gain validity within the movants delay because it is a nullity from its inception See e.g. 47 Am. Jur.2d Judgments subsection 767-68(1995)(noting that "the reasonable time requirement does not apply to motions for relief from a void judgment," and that the power to vacate a void judgment is independent of statutes or rules fixing periods of time within which applications to vacate judgments should be made") See also 11 Wright, Miller, and Kane, Federal Practice and Procedure: Civil 2d subsection 2862, at 324(1995)(stating that there is no time requirement for Rule 60(b)(4) motions.); 7 James W Moore et.al ., Moore's Federal Practice 60.25[4](2nd ed.1996)(noting that the reasonable time requirement in Rule 60(b)(4) "must generally mean no time limit" absent exceptional circumstances requiring diligence). Many federal authorities have stated or implied that the reasonable time requirement does not apply to motions attacking a judgment as void. See e.g. **Orner v. Shalala,** 20 F. 3d 1307(10th Cir. 1994); **Nye, Mitchell, Jarvis Bugg v. Oates,** 109 N.C. App.

289, 426 S.E. 2d 291(1993)(no reasonable time requirements); "Rule 60(b)(4), SCRCP, provides a court may, upon such terms as are just," relieve a party from void judgment or order." A void judgment is one that, from its inception, is a complete nullity and is without legal effect." **Belle Hall Plantation Homeowner's Ass'n, Inc. v. Murray,** 419 S.C. 605,617,799 S.E.2d 310, 316(Ct. App. 2017). Respondents states in their initial brief [p.10] Appellants October 2015 filings are irrelevant to this appeal because Appellants failed to obtain Appellate court approval to make the motion during that time period." This statement is inaccurate. Appellants received notice of the Writ of Assistance on October 1, 2015. On October 16, 2015 Appellants filed its first 60(b)(1)(3)(4) and Challenged the Jurisdiction. On October 28, 2015 Appellants filed in the Marion County Court of Common Pleas an objection to the Writ of Assistance order and memorandum of law in support and served notice of appeal via email to Respondents, Special Referee and Marion County Sheriff Office. On October 29, 2015 Appellants filed the Notice of Appeal with the Marion County Clerk of Court. There was no need to ask the Court of Appeal for leave to file being that the Motion was already filed and was awaiting to be heard. However, the motion didn't toll the time to appeal. On October 30, 2015 Appellants filed a Petition for Emergency Stay of Writ of Assistance so that Appellants 60(b)(4) and Appeal could be heard. Appellants was denied a hearing prior to the execution of the writ of assistance, and as a proximate result on November 2, 2015 fourteen Drug Enforcement Unit (DEU) Agents armed with sniper and assault rifles executed a Writ of Assistance prior to Appellants having previous Motions heard before the court. Again, assuming not proving jurisdiction. "The law provides that once State and

Federal Jurisdiction has been challenged, it must be proven." **Main v. Thiboutot,** 100 S. Ct. 2502 (1980). "Jurisdiction can be challenged at any time." And "Jurisdiction, once challenged , cannot be assumed and must be decided. "**Basso v. Utah Power & Light Co**., 495 F 2d 906, 910. The DEU Officers arrested Appellant (Arnold Parson Jr.) and charged him with Trespassing, and Breach of Peace pursuant to S.C. Code 22-5-140. These charges were later dismissed, expunged, and invalidated by the Chief Magistrate at the time Danny O'Barker. Barker found that Appellant (Arnold Jr.) did not break any laws in the state of South Carolina, no Magistrate ordered for Appellant (Arnold Jr.] arrest pursuant to S.C. Code 22-5-140 stated after examining the evidential facts that the Officers had no right to be on Appellants property on the morning of November 2, 2015 especially since Appellants did properly and timely filed the proper paperwork. The DEU officers executed the Writ of Assistance based off the invalid Special Referee deed, Special Referee's wife (Kathryn Elizabeth Porter/Betsy) signed as a witness, and notarized that very same deed that was being used by Respondents and challenged by the Appellants at that time. Furthermore, Appellants are laymen and their Rule 60(b)(4) motion should be read in the same light as Rule 60(b)(6) in **Marqutte Corp. v. Priester**, 234 F. Supp. 799(D.S.C. 1964) If the proper circumstances are presented, "Rule 60(b)(6) should be given liberal construction "to the end that justice is accomplished," citied in **Klugh v. United States** 620 F. Supp. 892,900(D.S.C. 1985) and so should Rule 60(b)(4). "Undue delay, however is not a defense here because a fog of complex real property issues concealed from these laymen plaintiffs whether they possessed any interest about which they might complain. The conflicting judicial opinions concerning these

preliminary issues..... high light the complexity that handicapped the plaintiffs from demanding Rule 60(b)(6) relief any sooner than they did (See Marquette Corp. at 803). If a judgment is rendered without regard may be set a side for equitable. **Ex Parte Kibler,** 53 S.C. 461, 31 S.E. 2d 274(1898); **Ex Parte Round Tree,** 51 S.C. 405, 29 S.E. 66(1898). This is logical since "[s]uch a person is in capable of putting his competency in issue in the prior suit." **Anderson v. Anderson**, 327 S.E. 2d 355, 356 (South Carolina Court of Appeals 1985). When the court asked why such a long delay Appellants ask the court to forgive us we are laymen [R. p. 309 line 12] Therefore, Appellants did file its Motion 60(b)(4) within a reasonable time, and the Appellant court should hear these matters for the first time being that the issues were properly preserved for appeal through Appellants 59(e) Motion[R. p. 257-287], or in the alternative reverse and remand this case back to the trial court with instructions on further proceedings consistent with the rulings of this court.

II.

Respondents erred when they argued that the Circuit Court correctly ruled that there is no legal or factual basis to support a finding that the Foreclosure Order is void under Rule 60(b)(4). Appellants oppose this argument. Appellant issues of the Special Referee denying them due process never reached the merits in the Court of Appeals or Supreme Court. Appellants claims were dismiss for failure to comply. Trial court abused its discretion by not going into the merits when Appellants was arguing the matter was never ruled on the merits, and both Appellants and Respondents were present at the August 2018 hearing prepared and willing to go into the merits [R. p. 309 line 5-11]. Special Referee initially denied Appellants due process by not

allowing the case to go back to the circuit court after learning that Appellants objected to SCRCP Rule 53. Appellants never gave consent for the case to go before the Special Referee, and the Circuit Court never ordered it either. Appellants filed and demanded a Trial by Jury pursuant to Rule 38[See R. p. 285-287] on June 25, 2013. Under SCRCP Rule 53, it states in part, "In an action where the parties consent….." " Any party may request a jury pursuant to SCRCP Rule 38….. The record clearly shows that Appellants did file a timely objection. Upon information and belief Appellants filings were ignored and rights prejudiced only because they were not represented by a license attorney. Appellants demanded for Respondents to bring forth the original wet ink signature promissory note pursuant to South Carolina Rules of Evidence 1003. Special Referee denied the request for the original, and instead allowed a copy of the note to be entered in as evidence, pursuant to SCRE 1003 it states in part, "A duplicate is admissible to the same extent as the original unless a genuine question is raised about the original's authencity or circumstances make it unfair to admit the duplicate." Pursuant to S.C. Code § 1-23-330(2) where it states, "Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request parties shall be given an opportunity to compare the copy with original." After the Special Referee entered judgment on August 5, 2013 nearly eight months later at a Rule to Show Cause Hearing held on April 30, 2014 the Special Referee allowed Respondents to present what they purported to be the original promissory note. This was yet another denial of due process. If the Special Referee was going to make Respondents present the original note it should have been done prior to the judgment being entered. Also, Appellants

in their Discovery requested at hearing (July 29, 2013) a time to be allotted where Appellants could bring a professional to view original document for authencity. After the judgment was entered Special Referee allowed his spouse Kathryn Elizabeth Porter (Betsy) to sign the re-conveyance documents as a witness, and then allowed his spouse to notarize his deed for recording in the Record of Deeds. Appellants didn't find this out until after the fact so it was no way for Appellant to present this issue on Appeal in 2013. When Respondents attempted to use the Special Referees Deed against Appellants, that's when Appellants filed on October 16, 2015 their first Motion 60(b)(1)(3)(4) and Challenge the Jurisdiction to raise the issues of the invalid, fraudulent Special Referee Deed that was being used against Appellants to bring Fraud upon the Court. Respondents and the Special Referee ignored all Plaintiff October 2015 filings(Motions) that was properly paid for and denied Appellants a proper hearing before having 14 Drug Enforcement Unit Officer employed by Marion County Sheriff Office ambush Appellants in direct violation of South Carolina Constitution Article 1 Section 3. See **State v. Earle** where it states, "Due process by law" is meant a process which, following the forms of law, is appropriate to the case and just to the parties to be affected. It must be pursued in the ordinary mode prescribed by the law; it must be adjusted to the end to be attained; and whenever it is necessary for the protection of the parties, it must give them an opportunity to be heard respecting the justice of judgment sought. The clause in question means, therefore, that there can be no proceeding against life, liberty, or property which may result in the deprivation of either without the observances of those general rules established in our system of jurisprudence for the security of private rights" **State v.**

Earle (S.C. 1903) 66 S.C. 194, 44 S.E. 781. Appellant Arnold Jr. was charged with Trespassing and Breach of the Peace. Based on the greater weight of the evidence, these charges were dismissed, expunged, and invalidated by the Chief Magistrate at the time Danny O. Barker. Barker concluded in his findings that Appellant Arnold Parson Jr., didn't break any laws in the state of South Carolina. Barker also concluded that on the morning of November 2, 2015, fourteen DEU officers had no right to be there on that particular day in question. Appellants later filed USC 1983 action in the District Court in Florence stemming from the total loss and destruction of all Appellants and Appellants family property, and the dismissal of Trespassing and Breach of Peace. This action is still pending against the 14 Drug Enforcement Unit for excessive force in the course of the arrest of Appellant (Arnold Jr.). The Special Referee Spouse was a representative for Respondents (ABB) at the foreclosure sale causing a conflict of interest giving the appearance of partiality/impropriety in this case. In the case **Van Ness v. Eckerd Corp** 350 S.C. 399 (S.C. Ct App. 2002) "Judge Harwell stated "[he] discovered that one of [his] brothers has a relationship to the corporate defendant which was unknown [to me] at the time this court heard the Motions in question and entered the Order of May 28, 1998." He then vacated his earlier order and recused himself from the case.....Judge Harwell did not know there was a potential conflict until nearly two months after he issued his original order. On realizing there might be a problem, Judge Harwell properly declined to take any further actions in the case, but he should not have vacated his earlier order. Pursuant to the Van Ness case the Special Referee had a duty to disqualify himself from the very beginning or in the alternative decline to take any further action in proceedings

(i.e. Writ of Assistance) after knowing his spouse would appear on behalf of Respondents (ABB). Special Referee spouse Kathryn Elizabeth Porter(Betsy) actions was binding on Respondents by placing the winning bid of $19,000 at the sale of Appellants private property evidencing that she was a representative/agent of the principal(Respondents/ABB). An agent of the agent to the principal is still an agent for the principal especially when the agent actions are binding on the principal. "The doctrine of apparent authority provided that the principal is bound by the acts of its agent when it has placed the agent in such a position that persons of ordinary prudence, reasonably knowledgeable with business usages and customs are led to believe the agent has certain authority and they in turn deal with the agent based on that assumption." See. **Fochtman v. Clanton's Auto Auction Sales,** 233 S.C. 581, 106 S.E. 2d 272(1958). South Carolina Rule of Disciplinary Enforcement Rule 501 Judicial Conduct Canon (3)(b)(1) "A judge shall hear and decide matters assigned to the judge except those in which disqualification is required." See South Carolina Rules of Disciplinary Enforcement Rule 501 Judicial Conduct Canon (3)(E) Disqualification(1) "A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:... "(d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person: (i) is a party to the proceeding, or an officer, director or trustee of a party..... "Recusal under section 455(a) is self-executing; a party need not file affidavits in support of recusal and the judge is obligated to recuse herself sua sponte under the stated circumstances." **"Taylor v. O'Grady,** 888 F. 2d 1189(7th Circ. 1989). Special

Referee choosing not to disqualify himself, was in direct violation of the due process clause of the U.S Constitution as per, "should a judge not disqualify himself, then the judge is in violation of the Due Process Clause of the U.S Constitution. **"United States v. Sciuto**, 521 F.2d 842, 845(7th Cir. 1996)("The right to a tribunal free from bias or prejudice is based, not on section 144, but on the Due Process Clause") See **Gomez v. United States,** 109 S. Ct. 2237, 2248(1989); and **State v. Brown** (S.C. 1935) 178 S.C 294, 182 S.E. 838. The trial courts 59(e) ruling consist of general statements and conclusion (see **Robinson v. Estate of Harris** App. Brief., p. 8; 1st paragraph). The Respondent assert Appellants has used a "string of abusive litigation tactics" against Respondent Anderson Brothers Bank [that was "long]? [and arduous"[sic]](p. 2 first paragraph of Respondent Initial Brief) and calls Appellant claims meritless throughout their initial brief. This assertion is false and demands this courts attention. Appellants through their 60(b)(4), Challenge of Jurisdiction, 59(e) Motion, January 18, 2019 Initial Brief, and this Reply have shown with evidential facts in support that foreclosure judgment and order for sale, and Special Referee Deed in favor of Respondents were reached only through including but not limited to failure to comply with state and federal statutes (S.C. Code 1-23-330(2), South Carolina Rules of Civil Procedure [Rule 8(f)], and South Carolina Rules of Evidence (Rule 1003) all of which remain undisputed by Respondents. "The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature." **Bryant v. State,** 384 S.C. 525, 529, 683 S.E. 2d 280, 282(2009); "Where the statute's language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another

meaning. **<u>Gay v. Ariail</u>**, 381 S.C. 341, 345, 673 S.E. 2d 418, 420(2009); "In interpreting a statute, the language of the statute must be read in a sense that harmonizes with its subject matter and accords with its general purpose. **<u>Hitachi Data Sys. Corp. v. Leatherman</u>**, 309 S.C. 174, 178, 420 S.E.2d 843,846(1992); In the case sub judice the Special Referee had a duty to make Respondents produce the original note as requested by Appellants, instead of allowing a copy to be entered as evidence [see R. p. 328 pre-marked exhibit A and R. p. 355 line 6-15]"Courts will reject a statutory interpretation that would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention." **<u>Unison Ins. Co. Schmidt</u>**, 339 S.C. 362, 368, 529 S.E.2d 280, 283(2000). Therefore, the Appellant court should here these matters for the first time being that the issues were properly preserved for appeal through Appellants 59(e) Motion [R. p. 257-287], or in the alternative reverse and remand claims back to the trial court with instructions on further proceedings consistent of the rulings of this court.

Conclusion

Based on the foregoing, this Court should hear these matters for the first time being that the issues were properly preserved for appeal in Appellants 59(e) Motion, or in the alternative reverse and remand back to the trial court with instructions on further proceedings consistent of the rulings of this court.

By: Arnold Jr. Dazarhea Parson

Arnold Jr., Dazarhea Parson Pro Se
311 N Congdon Street
Georgetown, South Carolina 29440
843-409-9086
best4lessclothing@gmail.com

June 3, 2019

CERTIFICATE OF COUNSEL

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

[In The Supreme Court]

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APPEAL FROM MARION COUNTY

Court of Common Pleas

Thomas A. Russo, Circuit Court Judge

Case No. 2013-CP-33-00306

Appellant Case No. 2018-002061

Anderson Brothers Bank

Respondent,

Dazarhea Monique Parson, a/k/a Dazarhea D. Parson, a/k/a Dazarhea Monique Daniels Parson, A. Tyrone Parson, Jr. a/k/a Arnold Tyrone Parson Jr., South Carolina Department of Revenue and South Carolina Department of Motor Vehicles, Defendants, Of whom Dazarhea Monique Parson, a/k/a Dazarhea D. Parson, a/k/a Dazarhea Monique Daniels Parson, A. Tyrone Parson, Jr. a/k/a Arnold Tyrone Parson Jr.

Appellants

APPELLANT'S CERTIFICATE OF COUNSEL AS TO APPELLANT'S FINAL REPLY BRIEF

Appellants certify, pursuant to Rule 211(a), SCACR, that Appellants final reply brief complies with the requirement of Rule 211(b), SCACR, and contains no matter which was not included in the Appellants Initial Reply Brief other than as allowed under SCACR 211(b).

[SIGNATURE ON FOLLOWING PAGE]

By: Arnold Jr. Dazarhea Parson

Arnold Jr., Dazarhea Parson Pro Se
311 N Congdon Street
Georgetown, South Carolina 29440
843-409-9086
best4lessclothing@gmail.com

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