

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas
James W. Peterson, Jr., Special Referee

Case No. 2015-CP-21-02451

Appellate Case No. 2021-000135

Estate of Artrell Davis, by and through her Personal Representatives, Lynette Gibss and Jerome Davis,

Plaintiffs/Respondents,

v.

Elroy Jackson and Michael Laverne Marks, Jr.,

Of whom Elroy Jackson is the Appellant.

RECORD ON APPEAL – VOLUME 1

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ATTORNEYS FOR RESPONDENT

RECEIVED

Aug 24 2021

SC Court of Appeals

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IN THE COURT OF COMMON PLEAS

CASE NO. 2015 CP-21-2451

THE ESTATE OF ARTRELL DAVIS, BY AND THROUGH
HER PERSONAL REPRESENTATIVES, LYNETTE GIBBS
AND JEROME DAVIS,

ELROY JACKSON AND MICHAEL LAVERNE MARKS,
JR.,

FILED
2015 JUN 30 PM 5:05
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, SC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: B. SCOTT SUGGS

Attorney for : Plaintiff Defendant
or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

CERTIFIED: A TRUE COPY
Clerk of Court C.P. & G.S.
Florence County, S.C.

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

ACTION TO BE REFERRED TO MASTER IN EQUITY OR SPECIAL REFEREE FOR DAMAGES HEARING.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

[Signature]
Circuit Court Judge

2131
Judge Code

6/24/16
Date

For Clerk of Court Office Use Only

This judgment was entered on the 30 day of June, 2016 and a copy mailed first class or placed in the appropriate attorney's box on this 1 day of July, 2016 to attorneys of record to parties (when appearing pro se) as follows:

B. SCOTT SUGGS
PO DRAWER 591
FLORENCE, SC 29503

W. JAMES HOFFMEYER
125 WARLEY ST.
FLORENCE, SC 29501
ELROY JACKSON
1001 W. TURNER GATE RD.
PAMPLICO, SC 29583-6734

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)
Connie Reel-Shearin
CLERK OF COURT

Court Reporter: KAY H. RICHARDSON

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

FILED
2016 JUN 30 PM 5:05
CONNIE REEL-SHEARIN
CLERK OF COURT
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY
[Signature]
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

The Estate of Artrell Davis, by and
through her Personal Representatives
Lynette Gibbs and Jerome Davis,

Plaintiff,

-vs-

Elroy Jackson and Michael Laverne
Marks, Jr.,

Defendants

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

ORDER GRANTING PLAINTIFF'S
MOTION/APPLICATION FOR
DEFAULT JUDGMENT

Docket No.: 2015-CP-21-245

2016 JUN 30 PM 5:05
CORDELL MADDUX, JR.
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, SC

FILED

DATE OF HEARING:
PRESIDING JUDGE:
FOR THE PLAINTIFF:
FOR DEFENDANT JACKSON:
FOR DEFENDANT MARKS:
COURT REPORTER:

June 6, 2016, @ 9:30 o'clock, a.m.
The Honorable J. Cordell Maddox, Jr.
B. Scott Suggs.
None/No Appearance.
W. James Hoffmeyer.
Kay H. Richardson.

CERTIFIED: A TRUE COPY
12/30/16
CORDELL MADDUX, JR.
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

PROCEDURAL HISTORY:

This matter comes before this Court on the above date and time pursuant to a Motion/
Application for Default Judgment, filed by the Plaintiff on March 23, 2016, in which she sought
an Order of this Court for Judgment by Default against Defendant Elroy Jackson (hereinafter
"Defendant Jackson").

The Plaintiff filed her Summons and Complaint against both Defendant Jackson and
Defendant Michael Laverne Marks, Jr., (hereinafter "Defendant Marks"), on August 25, 2015.
Defendant Jackson was personally served with the Plaintiff's Summons and Complaint on
August 28, 2015. Proof of personal service is supported by the Plaintiff's Affidavit of Personal
Service which was filed with this Court on September 22, 2015. According to the evidence
contained in the file, more than thirty (30) days had elapsed following service upon Defendant

Jackson of the Plaintiff's Summons and Complaint and he has failed to appear in this action and has failed to file any responsive pleadings.

Defendant Marks was personally served with the Plaintiff's Summons and Complaint on August 31, 2015. However, at the time this Defendant was served, he was incarcerated at the Florence County Detention Center. Therefore, service was perfected upon his Mother with whom he resided prior to the date this action was filed. As a result of this Defendant's incapacity, this Court granted the Plaintiff's Motion for the appointment of a Guardian *ad Litem* for Defendant Marks pursuant to Rule 17 (c) of the South Carolina Rules of Civil Procedure. This Order was filed on October 16, 2015. W. James Hoffmeyer, of the *Law Office of W. James Hoffmeyer, P.C.*, was appointed as Guardian *ad Litem* for Defendant Marks. Mr. Hoffmeyer consulted with and advised Defendant Marks that he had been named as a party Defendant in this pending action. Defendant Marks subsequently, filed an Answer to the Plaintiff's Summons and Complaint on November 11, 2015. Therefore, the hearing today is confined solely to the issue of Default as it relates to Defendant Jackson.

Included with the Plaintiff's Motion/Application for Default Judgment, was an affidavit which verily set forth a statement of liquidated and unliquidated damages. The Court's file also contains the Plaintiff's Affidavit of Default, which was filed on January 26, 2016.

THE HEARING:

Present at today's hearing is B. Scott Suggs, of the *Suggs Law Firm, P.C.*, who represents the Personal Representatives of the Plaintiff's Estate. The Personal Representatives, Lynette Gibbs and Jerome Davis are also present. W. James Hoffmeyer, attorney for Defendant Marks, is also present, having been served with notice of this hearing pursuant to Rule 8(b) of the South Carolina Rules of Civil Procedure. Notice of this hearing was served on Defendant Jackson by certified

mail, return receipt requested, restricted delivery (7002 2410 0003 1697 6826), pursuant to Rule 8(a) and Rule (b) of the South Carolina Rules of Civil Procedure.

Notice of this hearing, dated May 25, 2016, was mailed to Defendant Jackson at his last known address and was introduced and filed at the hearing on the Plaintiff's Motion. This notice was marked as Plaintiff's Exhibit #1. The Plaintiff's notice to Defendant Jackson was also accompanied by a document provided by the United States Postal Service, which indicated that notice of this hearing to Defendant Jackson had arrived at the postal facility in Columbia, South Carolina, on June 1, 2016, at 8:28 o'clock, p.m. This document was attached to the Plaintiff's notice to Defendant Jackson and was also marked as Plaintiff's Exhibit #1. Attorney for the Plaintiff has also supplemented the file in this matter by submitting a return receipt, which is attached hereto and merged and incorporated into this Order by reference herein. The return receipt indicates that notice of this hearing was originally presented to the United States Postal Service for delivery to Defendant Jackson on May 27, 2016, and that this notice was indeed, forwarded to Defendant Jackson by certified mail, return receipt requested, restricted delivery. This proof satisfies the Court that notice of this hearing meets the requirements as set forth under our Rules. In addition, under Rule 8(b) of the South Carolina Rules of Civil Procedure, this Court recognizes that it was not necessary for attorney for the Plaintiff to provide notice of the hearing on the Plaintiff's Motion/Application for Default Judgment to Defendant Jackson in this particular manner. It is sufficient under our Rules that delivery by mail of all papers and pleadings *after* service of the original summons and complaint is complete upon mailing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

After hearing recitation by counsel and after reviewing the file as a whole, I make the following *findings of fact* and *conclusions of law*:


1. All time periods have either expired, been satisfied or waived for the Court to now entertain the issue presented in the Plaintiff's Motion;
2. That Defendant Jackson was personally served with the Plaintiff's Summons and Complaint on August 28, 2015;
3. That proof of personal service of the Plaintiff's Summons and Complaint upon Defendant Jackson was supported by an Affidavit of Personal Service which was filed by the Plaintiff with this Court on September 22, 2015;
4. That Defendant Jackson has failed to respond to the Plaintiff's Summons and Complaint in any fashion after being personally served with same;
5. That the Plaintiff filed her Affidavit of Default with this Court on January 26, 2016;
6. That Defendant Jackson is hereby in default;
7. That this Court hereby grants the Plaintiff's Motion/Application for Default Judgment against Defendant Jackson;
8. That Defendant Jackson was properly notified of this hearing on May 27, 2016, which is well within the notice requirements as set forth by our Rules;
9. That Defendant Jackson has voluntarily excluded himself from these proceedings;
10. That this matter is now ripe for a determination of both liquidated and unliquidated damages;
11. That this matter shall be referred to a Master in Equity or to a Special Referee for a determination of damages sustained by the Plaintiff and owed to the Plaintiff by Defendant Jackson;

12. That attorney for the Plaintiff shall prepare an Order of Reference and select a Master in Equity or a Special Referee within thirty (30) days from the date of the execution of this Order;
13. That a damages hearing in this matter shall be held within sixty (60) days following this Court's Order selecting the Master in Equity or Special Referee;
14. That the Florence County Clerk of Court is hereby ordered not to strike this case from the active docket of cases, and;
15. That as this is a default matter, the requirement of Mediation is hereby waived.

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

The Plaintiff's Motion/Application for Default Judgment against Defendant Jackson is hereby GRANTED, and all of the above findings of fact and conclusions of law as set forth above are hereby merged and incorporated into this Order by reference herein and shall be made a Final Order of this Court in all particulars.

AND IT IS SO ORDERED!


 The Honorable J. Cordell Maddox, Jr.
 Presiding Judge
 Florence County Court of Common Pleas
 Twelfth Judicial Circuit

Estate of Artrell Davis v. Jackson, et.al.
Docket No.: 2015-CP-21-2451

Anderson
 Florence, South Carolina

June 24, 2016

2016 JUN 30 PM 5:05
 CONNIE REEF-SHERWIN
 COCP & GS
 FLORENCE COUNTY, SC
 FILED
 CERTIFIED - A TRUE COPY
 Clerk of Court C.P. & G.S.
 FLORENCE COUNTY, S.C.
 ROA 007
 5

ATTORNEY FOR P.R.:

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P.O. Drawer 591
Florence, S.C. 29503
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(843) 629-8400 (Facsimile)
(855) 877-3978 (Toll Free)
thesuggslawfirm@sc.twcbc.com

ATTORNEY FOR JACKSON:

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Pamplico, S.C. 29583

ATTORNEY FOR MARKS:

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Florence, S.C. 29501
(843) 664-0009 (Telephone)
(843) 664-0115 (Facsimile)
jim@hoffmeyerlaw.com



Shipping Label Receipt

Delivery Confirmation™ Service Number:

9473711899563267330496

First-Class with USPS CERTIFIED MAIL*

Electronic Service Fee: \$0.00

Additional Services: Certified, Return Receipt, Restricted

Total Postage and Fees: \$13.99

Weight: 11 oz

Print Date: 05/27/2016

Mailing Date: 05/27/2016

From: Scott Suggs

Suggs Law Firm, P.C.

506 W. Evans Street

Florence SC 29501

To:

Elroy Jackson

1001 West Turner Gate Rd.

Pamplico SC 29583-6734

USPS
Postmark
Here

*Regular First-Class Mail Service postage rates apply. USPS CERTIFIED MAIL service electronic fee is required. Postmark required if fee refund requested. Delivery information is not available by phone for the electronic option.

Instructions:

1. Adhere shipping label to package with tape or glue - DO NOT TAPE OVER BARCODE. Be sure all edges are secured. Self-adhesive label is recommended.
2. Place the label so it does not wrap around the edge of the package.
3. This package may be deposited in any collection box, handed to your mail carrier, or presented to a clerk at your local Post Office.
4. Each confirmation number is unique and can be used only once - DO NOT PHOTOCOPY.
5. You must mail this package on the "mail date" that is specified on this label.

ROA 009

THE SUGGS LAW FIRM

Professional Corporation
506 WEST EVANS STREET
POST OFFICE DRAWER 591
FLORENCE, S.C. 29503

B. Scott Suggs
ATTORNEY AT LAW
South Carolina Bar No.: 012896
Federal I.D. No.: 5846

June 10, 2016

Telephone: (843) 629-5050
Facsimile: (843) 629-8400
thesuggslawfirm@sc.twcbc.com
Toll Free: (855) 877-3978

The Honorable J. Cordell Maddox, Jr.
ANDERSON CO. COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT
P.O. Box 8002
Anderson, S.C. 29622

FILED
2016 JUN 30 PM 5:05
JUNNIE REEL-SHEARIN
CLERK OF COURT
C.C.P. & G.S.
FLORENCE COUNTY, SC

RE: Estate of Artrell Davis v. Jackson, et. al.
Docket No.: 2015-CP-21-2451

Dear Judge Maddox:

It was a pleasure seeing you in Florence on Monday. I hope that you had an enjoyable week. I apologize for not catching up with you before your left town to present you this proposed Order.

I have enclosed same, with an attachment. If the Order meets with your approval, please execute same and return it to me in the self-addressed, stamped envelope provided for your convenience. I will then be responsible for filing the Order and the distribution of certified copies accordingly. If any changes need to be made, please advise and I will be happy to make those.

Thank you in advance for your kindness and courtesies in this matter.

With kind regards, I remain,

Sincerely yours,

THE SUGGS LAW FIRM, P.C.

BY: 
B. SCOTT SUGGS

BSS/ss

w/enclosures

- cc: File/GLF (Hand Delivery) w/enclosures
- Client (U.S. Mail) w/enclosures
- W. James Hoffmeyer (Hand Delivery) w/enclosures
- Elroy Jackson (U.S. Mail) w/enclosures

CERTIFIED: A TRUE COPY

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

ROA 010

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

The Estate of Artrell Davis, by and
through her Personal Representatives
Lynette Gibbs and Jerome Davis,

Plaintiff,

-vs-

Elroy Jackson and Michael Laverne
Marks, Jr.,

Defendants

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

ORDER OF REFERENCE

Docket No.: 2015-CP-21-245

FILED
2016 AUG - 8 PM 11:37
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

WHEREAS, the Plaintiff's Application/Motion for Default Judgment against Defendant Elroy Jackson (hereinafter referred to as "Defendant Jackson"), was GRANTED by this Court on June 24, 2016;

WHEREAS, this Order required that an Order of Reference be prepared and that a Master in Equity or Special Referee be appointed within thirty (30) days from the date of the Order and that a hearing on the issue of damages be held within sixty (60) days from the date of the appointment;

WHEREAS, Defendant Michael Laverne Marks, Jr., is represented by his Court appointed attorney and Guardian *ad Litem*, W. James Hoffmeyer, who has no position with regard to selection by the Court of the appointment of said Master in Equity or Special Referee as evidenced by his signature which is affixed below, and;

WHEREAS, Defendant Jackson is in Default.

WHEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED that:

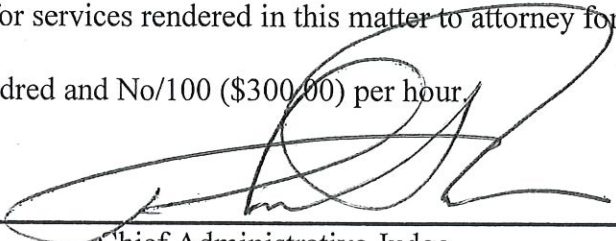
CERTIFIED: A TRUE COPY
2016
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

ROA 011

This matter shall be referred to James W. Peterson, Jr., Esq., who shall be appointed as the neutral in this matter and that a damages hearing be scheduled and conducted within sixty (60) days from the date of the execution of this Order of Appointment, and;

The neutral shall submit his/her bill for services rendered in this matter to attorney for the Plaintiff not to exceed the sum of Three Hundred and No/100 (\$300.00) per hour.

AND IT IS SO ORDERED!



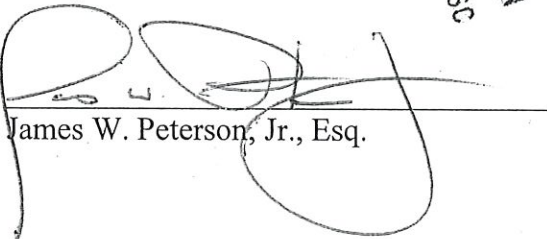
Chief Administrative Judge
Florence County Court of Common Pleas
Twelfth Judicial Circuit

Estate of Davis, et. al., v. Jackson, et. al.
Docket No.: 2015-CP-21-2451

Florence South Carolina

~~July~~ ^{August} 1, 2016

I do not know any of the parties to this action and agree to serve as the neutral in this matter if so appointed by the Court.



James W. Peterson, Jr., Esq.

Florence, South Carolina

July 27, 2016

FILED
2015 AUG - 8 PM 4:31
CORIE DEEL-SHERMAN
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

CERTIFIED: A TRUE COPY
Corie Deel Sherman
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

THE SUGGS LAW FIRM

Professional Corporation
506 WEST EVANS STREET
POST OFFICE DRAWER 591
FLORENCE, S.C. 29503

B. Scott Suggs
ATTORNEY AT LAW
South Carolina Bar No.: 012896
Federal I.D. No.: 5846

August 3, 2016

Telephone: (843) 629-5050
Facsimile: (843) 629-8400
thesuggslawfirm@sc.twcbc.com
Toll Free: (855) 877-3978

HAND DELIVERY:

The Honorable Connie Reel-Shearin
FLORENCE COUNTY CLERK OF COURT
TWELFTH JUDICIAL CIRCUIT
180 N. Irby St., MSC-E
Florence, S.C., 29501

RE: Estate of Artrell Davis
Docket No.: 2015-21-CP-2451

Dear Connie:

Enclosed for filing, please find one (1) original and three (3) copies of the Order Appointing Special Referee in the above styled matter.

Please file the original, true certify the copies and return the latter to my courier.

Thank you in advance for your kindness and courtesies in this matter.

With kind regards, I remain,

Sincerely yours,

THE SUGGS LAW FIRM, P.C.
BY: **B. SCOTT SUGGS**
B. SCOTT SUGGS

BSS/ss
w/enclosures
cc: File/GLF (Hand Delivery) w/enclosures
Personal Representatives (U.S. Mail) w/enclosures

FILED
2016 AUG -8 PM 4:37
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY
Connie Reel Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

ROA 013

STATE OF SOUTH CAROLINA
 COUNTY OF FLORENCE
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP-21-2451

The Estate of Artrell Davis, by and through her Personal
 Representatives Lynette Gibbs and Jerome Davis,

Elroy Jackson and Michael Laverne Marks, Jr.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: B. Scott Suggs

Attorney for : Plaintiff Defendant
 or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

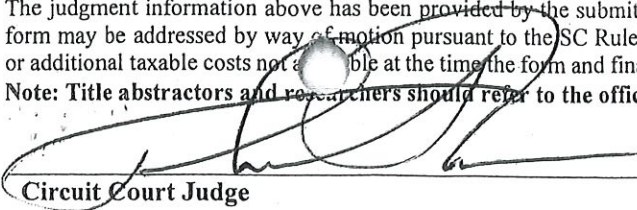
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

FILED
 2015 AUG -8 PM 4:31
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.
 CERTIFIED: A TRUE COPY

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted. The judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


Circuit Court Judge

2141
Judge Code

8/1/16
Date

For Clerk of Court Office Use Only

This judgment was entered on the 8 day of August 2016 and a copy mailed first class or placed in the appropriate attorney's box on this 9 day of August 2016 to attorneys of record or to parties (when appearing pro se) as follows:

B. Scott Suggs
PO Drawer 591
Florence, SC 29503 (received copy)

ATTORNEY(S) FOR THE PLAINTIFF(S)

J. Peterson (Sp. Ref. Xhondal)

W. James Hoffmeyer
125 Warley St.
Florence, SC 29501

ATTORNEY(S) FOR THE DEFENDANT(S)

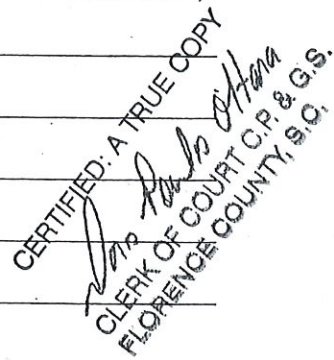
Connie Ketchum
CLERK OF COURT

FILED
AUG - 8 PM 4:31
CLERK OF COURT
FLORENCE COUNTY, SC

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

CERTIFIED: A TRUE COPY
Clerk of Court
Florence County, S.C.


STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT
C/A NO. 2015-CP-21-2451

Estate of Artrell Davis, by and through)
her Personal Representatives Lynette)
Gibbs and Jerome Davis,)

Plaintiff(s),)

vs.)

**JUDGMENT AGAINST DEFENDANT
ELROY JACKSON**

Elroy Jackson and Michael Laverne)
Marks, Jr.,)

Defendant(s).)

This matter comes before me in my capacity as Special Referee for Florence County having been appointed pursuant to Order issued August 1, 2016 for the purpose of holding a damages hearing and determining the damages for a default judgment entered against Defendant Elroy Jackson. This matter arises out of a two vehicle automobile accident which occurred on September 6, 2014 on Big Swamp Road (S-21-164) in Florence County, South Carolina. Artrell Davis, deceased, was a passenger in a vehicle operated by Defendant Michael Laverne Marks, Jr. and owned by Defendant Elroy Jackson.

By Summons and Complaint filed August 25, 2015, plaintiff instituted this wrongful death and survival action against Defendant Michael Laverne Marks, Jr., and Defendant Elroy Jackson. Defendant Marks has filed an Answer, and that action remains pending. Defendant Jackson, who was served with the Summons and Complaint on August

28, 2015, has filed no Answer as reflected on the Affidavit of Default filed January 26, 2016. Plaintiff filed a Motion/Application for Default Judgment against Defendant Jackson on March 23, 2016, and a hearing on that motion was held on June 24, 2016. Default judgment was entered against Defendant Jackson on June 24, 2016, and this matter was referred to the undersigned for the purpose of holding a damages hearing.

Pursuant to and in accordance with the provisions of Rule 55(b) of the South Carolina Rules of Civil Procedure, a hearing on damages was scheduled before the undersigned on December 13, 2016. Written notice of the hearing on damages was provided to both Defendant Jackson and to Greenville Casualty Insurance Company, Inc., the insurance carrier that allegedly provided coverage on the vehicle owned by Defendant Jackson and operated by Defendant Marks at the time of the accident in question. Neither Defendant Jackson nor any representative of Greenville Casualty Insurance Company, Inc. appeared at the hearing.

Based upon the evidence presented at the hearing on December 13, 2016, the undersigned makes the following findings of fact in this matter.

FINDINGS OF FACT

1. That the Summons and Complaint alleging a wrongful death action and a survival action were served upon Defendant Elroy Jackson on August 28, 2015.
2. Defendant Jackson failed to answer the Summons and Complaint and default judgment was entered against Defendant Jackson on June 24, 2016.



3. That the allegations contained in the Complaint which assert that Defendant Jackson was negligent, willful, wanton, careless, reckless, and grossly negligent by entrusting his vehicle to Defendant Marks when Defendant Jackson knew, or should have known through the exercise of reasonable care and due diligence, that Defendant Marks was an unsafe driver are admitted as true based upon Defendant Jackson's default in this matter.

4. That on September 6, 2014, Artrell Davis was a passenger in a 1998 Ford vehicle, vehicle identification no. 1FMZU32EXWZB89648, which was owned by Defendant Jackson and was being operated by Defendant Marks.

5. That Artrell Davis was born on October 20, 1982, and died on September 12, 2014, as a direct and proximate result of the injuries she sustained in the automobile accident that occurred on September 6, 2014.

6. That as a result of the aforementioned accident, Artrell Davis sustained multiple injuries that included spinal cord injuries resulting in quadriplegia, and she was hospitalized from September 6, 2014 until her death on September 12, 2014.

7. That the accident on September 6, 2014 occurred when the vehicle owned by Defendant Jackson and operated by Defendant Marks attempted to pass other traffic unlawfully on a double yellow line and collided with traffic approaching from the opposite direction. Defendant Marks was found to have been intoxicated at the time of the accident and Defendant Marks was charged with and pled guilty to involuntary manslaughter as a result of his actions in causing the accident.



8. That Artrell Davis, at the time of her death, was a 21 year old high school graduate.

9. That Artrell Davis was not married at the time of her death, and she had one child named Myrakle Robinson who was born on July 28, 2009. In addition to her child, Artrell Davis was survived by her mother, Lynette M. Gibbs and by her father, Jerome Davis.

10. That, prior to her death, Artrell Davis was a single mother who was very involved in the life of her daughter, Myrakle Robinson, and she had a work history that included working as a cashier at Wal-Mart and working part time for Wellman Industries.

11. In addition, at the time of her death, Artell Davis was registered in a cosmetology program that was a one year program and would have resulted in her being a licensed cosmetologist, which her mother testified was her career goal.

12. That Artrell Davis was very close to her daughter Myrakle Robinson, and she maintained a close relationship with her mother, Lynette Gibbs, with whom Artrell Davis and Myrakle Robinson lived.

13. That, as a result of the injuries sustained in the subject accident, Artrell Davis incurred medical expenses of \$416,472.38, all of these expenses having been incurred while she was treated at McLeod Regional Medical Center between September 6, 2014 and her death on September 12, 2014.

14. In addition, funeral expenses were incurred for the services for Artrell Davis which were provided by Ideal Funeral Home, and the amount of the funeral expenses were



\$7,969.50.

15. That at the time of her death on September 12, 2014, Artrell Davis was just over one month short of her 22nd birthday. As a result, according to the life expectancy tables contained in §19-1-150 of the South Carolina Code of Laws, Artrell Davis had a life expectancy of 59.31 years.

16. That Artrell Davis' death was the result of, among other things, the wrongful act, neglect, or default of Defendant Jackson in that he negligently, willfully, wantonly, carelessly, recklessly, and grossly negligently entrusted the subject vehicle to Defendant Marks with knowledge that Defendant Marks was an unsafe driver.

17. That the above referenced wrongful acts of Defendant Jackson were a proximate cause of the wrongful death of Artrell Davis and have resulted in pecuniary loss, mental shock and suffering, wounded feelings, grief and sorrow, loss of companionship, and the deprivation of the use and comfort of the decedent's society.

18. That the wrongful acts of Defendant Jackson cited above also approximately caused the loss of wages, the incurring of medical expenses, the incurring of funeral expenses, and the incurring of conscious pain and suffering by Artrell Davis during the period of time from the accident on September 6, 2014 until her death on September 12, 2014.

CONCLUSIONS OF LAW

Based upon my careful review of the pleadings, the evidence presented in this



matter, and my findings of fact set out above, the undersigned reaches the following conclusions of law:

1. That Plaintiff is entitled to the entry of a judgment against Defendant Jackson for both the wrongful death of Artrell Davis pursuant to the provisions of §15-51-101 of the South Carolina Code of Laws, and for survival actions for the damages sustained by Artrell Davis pursuant to §15-5-90 of the South Carolina Code of Laws.
2. That, in addition to actual damages, Plaintiff is entitled to recover punitive damages since Defendant Jackson's default in this case admits the allegations that his entrustment of the vehicle to Defendant Marks was negligent, willful, wanton, careless, reckless, and grossly negligent.
3. That taking into account the pecuniary loss, the mental shock and suffering sustained by the family of Artrell Davis, the wounded feelings, grief and sorrow, loss of companionship and deprivation of the use and comfort of Artrell Davis' society, I find and conclude that Plaintiff is entitled to recover actual damages under the wrongful death act from Defendant Jackson in the amount of One Million, Five Hundred Thousand and no/100 (\$1,500,000.00) Dollars.
4. I conclude that Plaintiff is also entitled to recover for the injuries sustained by Artrell Davis as a result of this accident, which cause of action survives the death of Artrell Davis, and, taking into account lost wages, medical expenses incurred, funeral expenses incurred, and conscious pain and suffering, I conclude that the measure of damages for the



survival action is the sum of One Million and no/100 (1,000,000.00) Dollars.

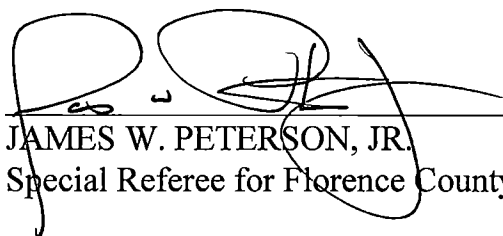
5. That, in addition to the actual damages awarded above, I conclude that Plaintiff is entitled to an award for punitive damages, and the amount of punitive damages hereby awarded is the sum of Five Hundred Thousand and no/100 (\$500,000.00) Dollars.

ENTRY OF JUDGMENT

IT IS, THEREFORE, HEREBY ORDERED, ADJUDGED AND DECREED, that judgment is entered in favor of the plaintiff against Defendant Elroy Jackson as follows:

1.	Actual damages for wrongful death	\$1,500,000.00
2.	Actual damages for survival action	\$1,000,000.00
3.	Punitive damages	<u>\$ 500,000.00</u>
	TOTAL JUDGMENT AWARDED:	\$3,000,000.00

AND IT IS SO ORDERED.



JAMES W. PETERSON, JR.
Special Referee for Florence County

Florence, South Carolina
March 7, 2017

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE)	C/A NO. 2015-CP-21-2451
Estate of Artrell Davis, by and through her)	
Personal Representatives Lynette Gibbs)	
and Jerome Davis,)	
)	
Plaintiff,)	ORDER DENYING MOTION TO
)	SET ASIDE JUDGMENT
vs.)	
)	
Elroy Jackson and Michael Laverne)	
Marks, Jr.,)	
)	
Defendants.)	

This matter comes before me in my capacity as Special Referee for Florence County having been appointed pursuant to the Order issued August 1, 2016 for the purpose of holding a damages hearing and determining the damages for a default judgment entered against Defendant Elroy Jackson. A hearing on damages was scheduled before me and occurred on December 13, 2016. Plaintiffs and counsel for plaintiffs appeared at the hearing. No one appeared on behalf of the defendants. Based upon the evidence presented at the hearing, the undersigned executed a judgment against Defendant Elroy Jackson on March 7, 2017.

Defendant, Elroy Jackson, by and through his counsel, has now filed a Motion to Set Aside the Judgment in this matter. The motion indicates that it is made pursuant to Rules 55(c) and 60(b) of the South Carolina Rules of Civil Procedure. After due notice, a

hearing was held on this motion on April 25, 2019.

While a reading of the Motion to Set Aside the Judgment does not make the basis of the motion completely clear, counsel for Mr. Jackson clarified that very well at the hearing. The motion is based upon the contention that Mr. Jackson was not properly served with notice of the December 13, 2016 hearing on damages. In taking this position, Defendant Jackson relies on the notice of hearing requirement found in Rule 55(b)(2) of the South Carolina Rules of Civil Procedure. It is the position of Defendant Jackson that the Notice of Hearing mailed by Plaintiffs' counsel to an incorrect address. In addition, by Affidavit of Elroy Jackson, the defendant asserts that he never received the Notice of Hearing.

In response to the motion, Plaintiffs take two positions. First, Plaintiffs assert that the motion before the court should be denied as untimely. In taking this position, Plaintiffs rely upon the language found in Rule 60(b) of the South Carolina Rules of Civil Procedure. In addition, Plaintiffs' counsel asserts that, even if the motion is deemed to be timely, it should be denied because Plaintiffs complied with the notice of hearing requirements as set forth in Rule 55(b)(2), and Defendant Jackson has failed to prove otherwise.

Based upon all of the evidence presented in this matter, and after giving full consideration to the positions of the respective parties hereto, the undersigned denies Defendant Jackson's Motion to Set Aside the Judgment based upon the findings of fact and conclusions of law set forth below.



FINDINGS OF FACT

1. Defendant Jackson admits that he was properly served with the Summons and Complaint in the above-captioned matter and that he failed to file and serve an answer in this matter. Defendant Jackson is not seeking to set aside default, but rather is seeking that the judgment establishing damages be set aside and seeking a new hearing on damages be scheduled.

2. That Scott Suggs, as counsel for Plaintiffs, attempted to notify Defendant Elroy Jackson of the damages hearing scheduled for December 13, 2016 by mailing two letters to Elroy Jackson, one certified mail return receipt requested, and one by regular mail. The letters were addressed to the following address:

Elroy Jackson
1001 West Turner Gate Road
Pamplico, South Carolina 29583.

3. That Defendant Jackson's actual address is as follows:

Elroy Jackson
1010 West Turner Gate Road
Pamplico, South Carolina 29583.

4. That Plaintiffs' counsel attempted to mail the Notice of Hearing to 1001 West Turner Gate Road based upon all of the information available to them at the time. The information available to them came from two sources. First, the South Carolina Traffic Collision Report form prepared as a result of the fatal accident which occurred on September 5, 2014, and which is the subject of this lawsuit, indicates that the owner of one



of the vehicles involved in the accident was Elroy Jackson. The Report shows Elroy Jackson's address as "1001 W. Turner Gate Rd., Pamplico, SC 29583." Secondly, on August 28, 2015, Plaintiffs' counsel retained the services of Mack Harrelson to serve the Summons and Complaint upon Defendant Elroy Jackson. The Return of Service affidavit executed by Mack Harrelson on August 28, 2015 shows that Elroy Jackson was personally served at "1001 West Turner Gate Road, Pamplico, S.C. 29583." The Return of Service was filed by Plaintiffs' counsel on September 22, 2015. There has been no evidence presented which indicates that Plaintiffs knew or should have known that 1001 West Turner Gate Road was not the correct address. I further find that the residence at which Defendant Jackson resides has no visible indication of its address. (See Affidavit of Mack Harrelson dated April 11, 2019 and marked as Plaintiffs' Exhibit 2.)

5. That counsel for Defendant Elroy Jackson prepared, filed, and served the pending Motion to Set Aside Judgment within less than a week from the date Defendant Jackson became aware of the judgment executed by the undersigned on March 7, 2017.

CONCLUSIONS OF LAW

Based upon the findings of fact set out above, this court concludes as follows:

1. That the real basis of the relief sought by Defendant Jackson is Defendant Jackson's argument that the judgment for damages in this case is void because Plaintiffs failed to provide Defendant Jackson with notice of the December 13, 2016 hearing on damages as required by Rule 55(b)(2) of the South Carolina Rules of Civil Procedure.



Since the basis of the Motion to Set Aside Judgment is Rule 60(b)(4) of the South Carolina Rules of Civil Procedure, the time requirement for making that motion is only that it "... be made within a reasonable time ...". The one year "statute of limitations" found in Rule 60(b) only applies to reasons (1), (2), and (3). The one year limitation does not apply to a contention that the judgment is void. Since Defendant Jackson moved to set aside the judgment within a very short period of time upon learning of the judgment, the motion was made within a reasonable time and is not barred for timeliness.

2. Ultimately, the real legal issue in this case is whether or not the attempts by Plaintiffs' counsel to provide notice of the hearing on damages to Defendant Jackson met the requirements contained in Rule 55(b)(2). The applicable portion of Rule 55 provides as follows:

"Pursuant to Rule 5(a), notice of any trial or hearing on unliquidated damages shall be given to parties in default by first class mail to the last known address of such party whether or not such party has appeared in the action." *Rule 55(b)(2), South Carolina Rules of Civil Procedure.*

3. Based upon all of the evidence presented in this matter, I conclude that "1001 West Turner Gate Road, Pamplico, South Carolina 29583" was the "last known address" of Elroy Jackson at the time of the hearing on damages. While Defendant Jackson has presented evidence and convinced me that his address is actually 1010 West Turner Gate Road, there has been no evidence presented to indicate that Plaintiffs knew or should have known of that address. Instead, all evidence presented indicates that, based upon both the



accident report and the Return of Service in this matter, Plaintiffs had every reason to believe that the address was 1001 West Turner Gate Road.

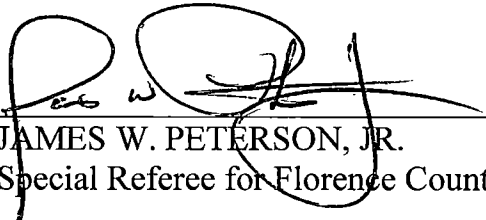
4. Since I have found that Plaintiffs sent notice of the hearing on damages by both certified mail return receipt requested and regular U.S. mail to 1001 West Turner Gate Road, Pamplico, South Carolina 29583, I conclude that Plaintiffs complied with the notice requirements as established by Rule 55(b)(2).

5. Since Plaintiffs met the notice obligations contained in Rule 55(b)(2) of the South Carolina Rules of Civil Procedure, I conclude that Defendant Elroy Jackson has failed to meet his burden of establishing that the judgment in this case is void, and, therefore, his motion to set aside the default judgment and to order a new damages hearing must be denied.

ORDER

Based upon the findings of fact and conclusions of law set out above, it is, hereby ordered, adjudged and agreed that the Motion to Set Aside Judgment filed by Defendant Elroy Jackson in the above-captioned matter is hereby denied.

AND IT IS SO ORDERED.



JAMES W. PETERSON, JR.
Special Referee for Florence County

Florence, South Carolina
October 7, 2019

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
FOR THE 12TH JUDICIAL CIRCUIT
CASE NO: 2015-CP-21-02451

ESTATE OF ARTRELL DAVIS, by and
through her Personal Representatives
LYNETTE GIBBS AND JEROME
DAVIS,

Plaintiffs,

v.

ELROY JACKSON AND MICHAEL
LAVERNE MARKS, JR.,

Defendants.

**ORDER DENYING DEFENDANT
ELROY JACKSON'S MOTION TO
ALTER/AMEND AND MOTION FOR A
NEW TRIAL**

This matter came before the undersigned in my capacity as Special Referee on November 17, 2020, on Defendant Elroy Jackson's Motion to Alter/Amend and Motion for a New Trial.¹ Attorney Robert C. Childs, III of Childs Law Firm was present for Defendant Elroy Jackson. Attorneys Lane D. Jefferies and Roy T. Willey, IV, both of Anastopoulo Law Firm, and attorney B. Scott Suggs, of The Suggs Law Firm, were present for Plaintiffs. Plaintiff Lynette Gibbs, as Personal Representative of the Estate of Artrell Davis, was also present.

In short, the issue before the Court is the sufficiency of service of the notice of a damages hearing upon defaulting Defendant Elroy Jackson. By the previous Order, this Court denied Defendant Jackson's Motion to Set Aside the Judgment in this matter based upon its findings and conclusions that the service of the Notice of Hearing upon Defendant Jackson complied with the requirements of Rule 55, SCRCF. The motion now before this court is Defendant Jackson's motion, pursuant to Rules 59 and 60(a) seeking reconsideration, altering and/or a new trial on this issue. As more fully described below, this Court finds that service was sufficient and proper

¹ Originally filed on October 11, 2019, and amended on October 21, 2019.

because it fully complied with the requirements of Rule 55, SCRCF for the same reasons set out in the earlier order. Before addressing the legal issues, a little background will be helpful.

BACKGROUND AND PROCEDURAL HISTORY

This case arises out of an automobile wreck on September 6, 2014, in which Artrell Davis was killed. Ms. Davis was a passenger in a vehicle driven by Defendant Michael Laverne Marks, Jr. and owned by Defendant Elroy Jackson. Plaintiffs filed suit on August 25, 2015, alleging (among other things) causes of action for negligence against Defendant Michael Laverne Marks, and negligent entrustment against Defendant Elroy Jackson.

Defendant Elroy Jackson was served with the Summons and Complaint on August 28, 2015, and he failed to file an Answer. Plaintiffs filed a Motion/Application for Default Judgment against Defendant Elroy Jackson on March 23, 2016, and Default Judgment was entered against Defendant Jackson on June 30, 2016. The matter was then referred to the undersigned for the purpose of holding a damage's hearing.

A damages hearing was scheduled for December 13, 2016 before the undersigned pursuant to the order of referral issued on August 1, 2016 which appointed the undersigned as Special Referee for Florence County for the purpose of holding a damage's hearing and determining the damages for the default judgment entered against Defendant Elroy Jackson. On December 13, 2016, Plaintiffs and counsel for Plaintiffs appeared at the hearing. No one appeared on behalf of the Defendants. Plaintiff's submitted evidence that Notice of Hearing had been mailed to the last known address of Defendant Jackson. As a result of the hearing, this Court found in favor of



Plaintiffs against Defendant Elroy Jackson in the amount of Three Million and no/100 (\$3,000,000.00) Dollars, which judgment was entered on January 25, 2019.²

On April 2, 2018, Defendant Elroy Jackson filed a Motion to Set Aside Judgment, and a hearing was set for April 25, 2019. While a reading of the April 2, 2018 motion does not make its basis particularly clear (in part because the written motion sought to set aside a judgment entered on June 30, 2016 rather than the December 13, 2016 three-million-dollar judgment), counsel for Defendant Elroy Jackson clarified during the hearing that the basis for the motion was Defendant Elroy Jackson's contention that he was not properly served with notice of the December 13, 2016 damages hearing. For the reasons set forth in this Court's Order signed and served on October 7, 2019 and filed on October 14, 2019 (incorporated herein by reference), this Court denied Defendant Elroy Jackson's Motion to Set Aside Judgment. In short, this Court found that Defendant Elroy Jackson was properly served with notice of the December 13, 2016 damages hearing.

On October 11, 2019, Defendant Elroy Jackson filed the instant Motion to Alter/Amend and Motion for a New Trial, which was subsequently amended on October 21, 2019. This Court requested briefs from both parties, and a hearing was held on November 17, 2020.

Now, after carefully considering the voluminous record, submissions of the parties, documents of record, the applicable law, and the arguments of counsel, this Court holds that the applicable law, together with the facts on record, support this Court's Order dated October 7, 2019 denying Defendant Elroy Jackson's Motion for Relief and holding that Plaintiffs properly served the Notice of Damages Hearing on Defendant Elroy Jackson by mailing it to Defendant Elroy

² While the order was signed on March 7, 2017 and delivered to counsel, it was not entered with the Florence County Court of Common Pleas until January 25, 2019. The cause of the delay is not clear.

Jackson's last known address as required by Rule 55. As a result, and as described more fully below, Defendant Elroy Jackson's Motion to Alter/Amend and Motion for a New Trial must be and hereby is **DENIED**.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. None of Defendant's ten specific assignments of error form a proper basis for altering or amending this Court's Order denying relief from judgment.

Defendant raised ten specific assignments of error in his Motion, none of which are a sufficient basis for altering or amending this Court's Order Denying Motion to Set Aside Judgment entered October 14, 2019 ("Order").

Defendant's assignments of error fall into two categories. The first category contains assignments of error numbers 1, 2, and 3, which are of the "Court failed to consider X" variety. This Court did, however, consider each of the enumerated arguments, and the record reflects that this Court did consider each of these arguments; it simply reached a conclusion that the Defendant does not agree with. In short, the facts and the law support the Court's conclusion that Plaintiffs properly served the Notice of Hearing on Defendant Elroy Jackson by mailing it to Defendant Elroy Jackson's last known address as required by Rule 55. For example, the Court considered Defendant's claim that he never received any notice of the damages hearing during the April 25, 2019 hearing at Tr., p. 4, 10; the Court considered Defendant's claim that a certified mailing to Defendant was returned as undeliverable at Tr., p. 4, 7; and the Court considered Defendant's claim that the process server admitted that he made a mistake about the Defendant's address at Tr., p. 5, 6, 19. Because the record³ clearly shows that the Court considered the issues described in

³ The transcript of the April 25, 2019 hearing is on file with this Court as Exhibit A to Plaintiff's October 27, 2020 Memorandum in Opposition to Defendant Elroy Jackson's Amended Motion to Alter or Amend Filed October 21, 2019.

assignments of error one through three, the Court holds that these assignments of error are without merit.

The second category contains assignments of error four through ten, which are of the “Court erred in Y” variety. Each of these is without merit as described below.⁴ For clarity, the Court addresses each of these assignments of error individually as follows.

As to assignment of error number four, this Court did not err “in considering the statement of Plaintiffs’ counsel that the regular mailing did not come back ‘as far as I know’ when the court refused to consider evidence outside the affidavits submitted by the parties,” because Plaintiffs’ counsel’s statement is not and was not a basis for the Court’s opinion. As described in Sections II and IV below, it is of no legal consequence whether the letter came back, because Rule 55(b)(2) is satisfied regardless of receipt by the addressee. Plaintiffs are not required to undertake a scavenger hunt based on a returned letter. Accordingly, no consideration at all need be given to Plaintiffs’ counsel’s statement that the letter did not come back in order for this Court to reach the result it reached. Accordingly, there is no error.

As to assignment of error number five, this Court did not err “in failing to require Plaintiffs’ counsel to disclose the address at which they served the Defendant,” because it is the Defendant’s burden to come forward with evidence, not the Plaintiffs’. Defense counsel conceded this during the April 25, 2019 hearing. (Plaintiffs’ Counsel: “Well, it’s not our burden to prove that and we’re not --”. Defense Counsel: “Okay.”) Tr., p. 8. As a result, there is no error.

As to assignment of error number six, this Court did not err “in considering evidence of Defendant’s insurance carrier,” because the Court specifically refused to consider such evidence.

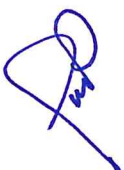
⁴ They are also nothing new, as the Court considered and rejected these same arguments during the April 25, 2019 hearing.



Indeed, the Court specifically stated on page 24 of the Transcript that it was not considering insurance (Mr. Childs: “the entire argument about insurance coverage is improper for you.” The Court: “I’m not gonna consider that. I know that . . . As far as I’m concerned, the issues here are isolated to the application of Rule 60.”). As a result, there is no error.

As to assignment of error number seven, this Court did not err “in considering the accident report.” The Court considered the accident report only as part of Plaintiffs’ explanation of where Defendant Elroy Jackson’s last known address came from. That is a permissible use of the report. Neither Section 56-5-1340 nor Sections 56-5-1270 or 56-5-1290 prohibit use of an accident report for the limited purpose of determining what a person’s address is. Defendant has not come forward with any authority to the contrary.

Moreover, this Court believes that Section 56-5-1340, the section argued by Defendant Jackson, is inapplicable to the report at issue in the first place, as it applies only to “accident reports *made by persons involved in accidents.*” S.C. Code § 56-5-1340 (emphasis added); *Ellison v. Pope*, 290 S.C. 100, 107, 348 S.E.2d 367, 371 (Ct. App. 1986) (“We construe the term “accident reports,” as used in Section 56–5–1340, as amended, to mean only the reports of an accident that the law requires a person to make and not the reports of an accident that a person otherwise makes.”). The *Ellison* court makes clear that the “person” to which it refers is a person *involved in the accident*, not a responding police officer. Citing a similar Florida statute, the *Ellison* court stated that the purpose of the statute was to “clothe with statutory immunity *only* such statements and communications as *the driver, owner, or occupant of a vehicle is compelled to make* in order to comply with his or her statutory duty.” *Ellison v. Pope*, 290 S.C. 100, 107, 348 S.E.2d 367, 371 (Ct. App. 1986) (emphasis added).



The report at issue here, and its use, does not involve any sort of compulsory statement by the driver, owner, or occupant. Instead, the person who made the report at issue in this case was a law enforcement officer not involved in the accident. Accordingly, Section 56-5-1340 has no application.

Rather than Section 56-5-1340, it is Sections 56-5-1270 and 56-5-1290 that apply to the report at issue, since the report was created by a police officer and not by a person involved in the accident. Section 56-5-1270 requires that “[e]very law enforcement officer who, in the regular course of duty, investigates a motor vehicle accident that results in injury to or death of any person . . . must forward a written report of the accident to the Department of Motor Vehicles.” S.C. Code § 56-5-1270. Accordingly, the statute that limits the use of the report at issue here is S.C. Code Section 56-5-1290, entitled “Evidentiary use of reports”, which is not a blanket prohibition. Instead, the limitation on use of reports created by investigating officers is rather narrow. Specifically, Section 56-5-1290 states that “None of the reports required by Sections 56-5-1260 to 56-5-1280 *may be evidence of the negligence or due care of either party* at the trial of any action at law to recover damages.” S.C. Code Ann. § 56-5-1290 (emphasis added).

In contrast, Section 56-5-1290 does not prohibit use of reports for other reasons besides showing negligence, such as determining a person’s last known address. Indeed, that is exactly the purpose to which an accident report was put in *Caldwell v. Wiquist*, 402 S.C. 565, 568, 741 S.E.2d 583, 585 (Ct. App. 2013) There, the sheriff’s department “executed affidavits of non-service stating that it had been unable to complete service on Wiquist *at her last known address that was listed on the traffic collision report.*” *Caldwell v. Wiquist*, 402 S.C. 565, 568, 741 S.E.2d 583, 585 (Ct. App. 2013) (emphasis added). Although the *Caldwell* court found other issues with service in that case, it did not find any fault with using the accident report to obtain the last known address



of a defendant, which is exactly what Plaintiffs used the report for in this case. Defendant has not come forward with any authority for the proposition that an accident report cannot be used for the limited purpose of determining a person's address. Accordingly, there is no error.

As to assignment of error number eight, this Court did not err "in concluding that there was no evidence presented that indicates the Plaintiffs [*sic*] knew or should have known that 1001 West Turner Gate Road was not the correct address of the Defendant, when the evidence was that the certified mailing to the Defendant was returned 'undeliverable' and the affidavit of the process server clearly implied that he was mistaken about the Defendant's address when he put it on his Affidavit of Service of the Summons and Complaint," because, among other things, the return of a letter as undeliverable is not evidence that the address used is not the "last known address of the person."

As described in Sections II and IV below, service under Rule 55(b)(2) is effective when the notice is mailed to the last *known* address – regardless of whether the letter ever actually gets delivered, and regardless of whether the last known address is the defendant's current address. Defendant has not come forward with any authority for the proposition that if a letter to the last known address is returned, the Plaintiffs must then go on a scavenger hunt to find a new address. Nor has Defendant come forward with any evidence at all that the letter was actually returned. It is Defendant's burden to come forward with such evidence. Defendant has failed to do so. Accordingly, there is no error here.

As to assignment of error number nine, this Court did not err "in considering the address in the accident report as evidence of the last known address of the Defendant." This is essentially the same argument as this Court already found unpersuasive in assignment of error number seven. Moreover, Defendant has not come forward with any evidence at all showing that, at the time



Plaintiffs mailed the notice of hearing, Plaintiffs knew of a more up-to-date address than the one specified in the accident report. As shown above, the accident report is an acceptable source for address information. Defendant has not come forward with any authority to the contrary. Nor has Defendant come forward with any evidence that Plaintiffs had a more current address for Defendant. It is Defendant's burden to come forward with such evidence. Defendant has not met his burden. Accordingly, there is no error here.

As to assignment of error number ten, this Court did not err in failing to find that due process requires that the Defendant be afforded "some reasonable notice" of the damages hearing, "even though he is in default of his answer and he should not be liable for the mistakes of the Plaintiffs in verifying his proper address for mailing," because Defendant has not come forward with any authority for the proposition that a defaulting defendant is entitled to anything other than what Rule 55(b)(2) provides for.

The South Carolina Rules of Civil Procedure took effect on July 1, 1985. *See* Rule 86, SCRCPP. In the thirty-five years since, no court, of which the undersigned is aware, has held that Rule 55(b)(2) violates due process. This Court declines Defendant's invitation to be the first to do so.

In support of his argument, Defendant cites *McCall v. IKON*, 363 S.C. 646, 654–55, 611 S.E.2d 315, 319 (Ct. App. 2005). However, Plaintiffs fully complied with the requirements of Rule 55 as described in *McCall*. The dispositive issue in *McCall* was not what address the letter was sent to, but that a *single* letter was sent to *two* defaulting Defendants as shown in the following quote:

Under Rule 55(b)(2), SCRCPP, "[p]ursuant to Rule 5(a), notice of any trial or hearing on unliquidated damages shall also be given to parties in default by first class mail to the last known address of such party whether or not such party has appeared in the action." The service requirements of Rule 5(a), SCRCPP, incorporated into Rule 55(b)(2) mandate that "[e]very order required by its terms to be served, every pleading subsequent to the original



summons and complaint ... *every written notice*, appearance, demand, offer of judgment, designation of record or case and exceptions on appeal, and similar papers shall be served upon *each* of the parties ..." (emphasis added). *The plain language of the rule therefore requires that each party shall be served separately. Mailing one letter addressed to both IKON and CESC, therefore, was not sufficient to comply with Rule 55(b)(2) and Rule 5(a).*

McCall v. IKON, 363 S.C. 646, 654–55, 611 S.E.2d 315, 319 (Ct. App. 2005).

The *McCall* court's holding is shown in italics in the paragraph above. It is incontrovertible that the basis for the holding is the use of a single letter when there were two defendants. The *McCall* court did not find any fault at all with the address used – just with the lack of one letter per defendant. Here, Plaintiffs fully complied with *McCall*; Plaintiffs sent one letter to the one Defendant at his last known address – just as provided by Rule 55(b)(2).

II. It does not matter if notice was not mailed to the address where Defendant actually lived.

The plain language of Rule 55(b)(2) is clear – hearing notice shall “be given to parties in default by first class mail to the *last known address* of such party.” Rule 55(b)(2), SCRCP (emphasis added). The rule does not say “current address,” a term which appears in at least twenty-six other rules and statutes. *See, e.g.*, Rule 8, SCRFC. (“The notification shall include the attorney's *current address*”) (emphasis added).⁵ Similarly, the term “last known address” appears in eighteen court rules and 125 statutes.⁶

⁵ *See also*, S.C. Code Sections 11-35-3030; 24-21-5; 50-5-550; 16-3-1555; 39-57-60; 11-1-120; 63-19-2050; 62-5-303; 27-32-310; 29-5-440; 7-5-330; 33-31-1707; 57-5-1660; 17-22-950; 23-23-150; 62-5-403; 63-9-730; 62-5-402; 43-35-45; 15-3-20; 33-1-410; 14-1-150; 15-3-530; Rule 20, SCACR; Rule 8.5, RPC (of Rule 407, SCACR).

⁶ Rules 4, 5, 60, and 77, SCRCP; Rule 8, SCRMC; Rules 2 and 17, SCRFC; Rule 502, SCACR, Judicial Disciplinary Enforcement, Rule 14; Rule 413, SCACR, Lawyer Disciplinary Enforcement, Rule 14; Rules 5 and 54, SCRALC; Rules 262, 504, 510, and 626, SCACR; Part 4, App. G, and App. D, SCACR. A Westlaw search reveals 125 statutes as well.

Because both terms – “last known address” and “current address” – appear in the rules of court, the drafters’ use of one instead of the other is presumed to be intentional. *See CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (“[W]e must read the statute so ‘that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous’”); *Maxwell v. Genez*, 356 S.C. 617, 620, 591 S.E.2d 26, 27 (2003) (The same canons of construction apply to Rules of Court).

Clearly, the drafters knew that “last known address” and “current address” mean two different things. *See, Soliman v. Gonzales*, 419 F.3d 276, 283 (4th Cir. 2005) (“Where Congress has utilized distinct terms within the same statute, the applicable canons of statutory construction require that we endeavor to give different meanings to those different terms.”). Defendant has not come forward with any authority for the proposition that “last known address” means anything other than what the words plainly say. *Steinke v. S.C. Dep’t of Labor, Licensing & Regulation*, 336 S.C. 373, 393–94, 520 S.E.2d 142, 152 (1999) (“in construing statute, words must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand statute’s operation.”). Plaintiffs were only required to follow the rule as written, not as Defendant might prefer it had been written.

While the plain meaning of the words used is enough to decide this issue, there are also cases on point. *See, e.g., NCNB S.C. v. Floyd*, 303 S.C. 261, 264, 399 S.E.2d 794, 795–96 (Ct.App.1990) (holding service was proper under Rule 5, which also uses the term “last known address,” when a bank mailed its notices to a defendant’s last known address and the defendant moved “from place to place” but did not provide the address where he could be located).

In addition to “last known address” being the plain meaning of the rule, the rule makes sense, as Rule 55(b)(2) applies to service on persons who have *already been served with the*



lawsuit. Such folks know that they are in a lawsuit. All they have to do to make sure that their “last known address” reflects their “current address” is to update their address with the clerk of court. By the time Plaintiffs moved for an entry of default judgment, Defendant been involved in this lawsuit for seven months. Defendant has not come forward with any evidence that in all that time he ever updated his address with the clerk of court.

III. It does not matter if Defendant did not actually receive the notice.

As described above, notice under Rule 55(b)(2) is for people, like Defendant, who were already served with a lawsuit. Not only do such folks have numerous ways to stay current, they are required to do so. Indeed, our appellate courts “have long held [that] a party has a duty to monitor the progress of his case.” *Paul Davis Sys., Inc. v. Deepwater of Hilton Head, LLC*, 362 S.C. 220, 225, 607 S.E.2d 358, 361 (Ct. App. 2004) (internal quotations omitted). Moreover, “[l]ack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney.” *Hill v. Dotts*, 345 S.C. 304, 310, 547 S.E.2d 894, 897 (Ct. App. 2001).

Because people who know that they have been sued have myriad opportunities to stay current, the law does not require that they receive actual notice. *Schleicher v. Schleicher*, 310 S.C. 275, 277, 423 S.E.2d 147, 148 (Ct. App. 1992) (service is effective “when the notice is properly mailed, *regardless of its receipt by the addressee*; in such case the risk of miscarriage or failure to deliver is on the addressee.”) (emphasis added) (citing 66 C.J.S. *Notice* § 18e, at 664 (1950)). In fact, another option for service under Rule 5(b)(1), which applies to documents other than notice of a damages hearing, is simply to “leav[e] it with the clerk of court” – a method which stands almost no chance at all of achieving actual delivery to the defendant. Rule 5(b)(1), SCRC.P.

Plaintiffs argued that Defendant could have done any number of things to make sure he received actual notice, and this Court agrees. For example, Defendant could have: retained an attorney; alerted his insurance company; updated his address with the clerk of court; checked the public index online; visited the clerk's office in person; or even called Plaintiffs' counsel. Defendant did not come forward with evidence that he did any of these things. Indeed, Defendant has not come forward with any evidence at all to show that he did anything at all to monitor the progress of his case as he was required to do during the seven months between the time he was first served and the time that Plaintiffs moved for a default judgment.

The law is clear that service is effective the moment the notice is mailed to Defendant's last known address, "*regardless of its receipt by the addressee.*" *Schleicher v. Schleicher*, 310 S.C. 275, 277, 423 S.E.2d 147, 148 (Ct. App. 1992) (emphasis added). Accordingly, Defendant's assertion that he did not receive the letter, even if it had been supported by evidence, would be legally irrelevant.

IV. It does not matter whether Plaintiffs should have known that the address used was incorrect (if it was).

Defendant did not present any evidence that Plaintiffs should have known that the address used was not where Defendant actually lived at the time of service of the notice of hearing. Likewise, Defendant did not present any evidence that the notice letter was returned (and Plaintiffs denied that it was returned). Because this is Defendant's Motion, it is Defendant's burden to come forward with evidence. He has not.

Even if Defendant had offered evidence that the notice letter had been returned, that fact would not be legally relevant. Return of a letter shows, at most, two things: (1) that the addressee did not get the letter, and (2) that the address used is not the addressee's current address. As



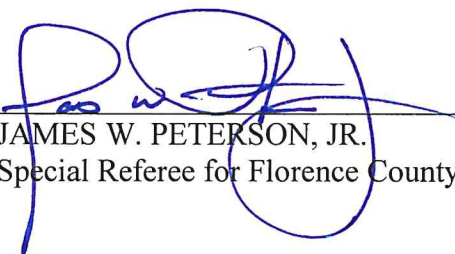
discussed above, these are exactly the two things that the law does not require: (1) use of the current address (See Section II), or (2) actual delivery (See Section III).

Accordingly, return of the notice letter, even if it had been supported by evidence, shows nothing at all that is legally relevant. Moreover, Defendant did not come forward with any authority for the proposition that Plaintiffs, if they ever did receive the letter back, must then engage on some sort of scavenger hunt to find the defaulting Defendant's new address.

CONCLUSION

This Court has previously considered and rejected the arguments raised by Defendant Elroy Jackson in his Motion to Alter/Amend and Motion for a New Trial. Defendant Elroy Jackson has not come forward with any new law, new facts, or new arguments about how the law applies to the facts that could form a sufficient basis for changing this Court's already well-considered opinions embodied in its previous orders. Accordingly, this Court must and hereby does respectfully deny Defendant Elroy Jackson's Motion to Alter/Amend and Motion for a New Trial.

AND IT IS SO ORDERED.


JAMES W. PETERSON, JR.
Special Referee for Florence County

Florence, South Carolina
January 14, 2021



Estate of Artrell Davis, by and Through her Personal
 Representative Lynette Gibbs and Jerome Davis

Elroy Jackson and Michael Laverne Marks, Jr.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The Estate of Artrell Davis, by and through her Personal Representative, Lynette Gibbs,

Plaintiff(s)

vs.

Michael Laverne Marks Jr. and Elroy Jackson,

Defendant(s)

Submitted By: B. Scott Suggs, The Suggs Law Firm
Address: 591 W. Evans St., Florence, S.C., 29503

CIVIL ACTION COVERSHEET

2015-CP - 21-

2015 AUG 25 PM 2:55
FILED
FLORENCE COUNTY, S.C.

SC Bar #: 012896
Telephone #: (843) 629-5050
Fax #: (843) 629-8400
Other: (855) 877-3978
E-mail: thesuggslawfirm@sc.twcbc.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.
NON-JURY TRIAL demanded in complaint.
This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts: Constructions (100), Debt Collection (110), General (130), Breach of Contract (140), Fraud/Bad Faith (150), Failure to Deliver Warrant (160), Employment Discrim (170), Employment (180), Other (199)
Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Previous Notice of Intent Case # 20--NI-- , Notice/ File Med Mal (230), Other (299)
Torts - Personal Injury: Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Wrongful Death (360), Assault/Battery (370), Slander/Libel (380), Other (399)
Real Property: Claim & Delivery (400), Condemnation (410), Foreclosure (420), Mechanic's Lien (430), Partition (440), Possession (450), Building Code Violation (460), Other (499)
Inmate Petitions: PCR (500), Mandamus (520), Habeas Corpus (530), Other (599)
Administrative Law/Relief: Reinstate Drv. License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture-Petition (840), Forfeiture-Consent Order (850), Other (899)
Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript Judgment (740), Lis Pendens (750), Transfer of Structured Settlement Payment Rights Application (760), Confession of Judgment (770), Petition for Workers Compensation Settlement Approval (780), Other (799)
Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCJDOT (950), Worker's Comp (960), Zoning Board (970), Public Service Comm. (990), Employment Security Comm (991), Other (999)
Special/Complex /Other: Environmental (600), Automobile Arb (610), Medical (620), Other (699), Sexual Predator (510), Pharmaceuticals (630), Unfair Trade Practices (640), Out-of State Depositions (650), Motion to Quash Subpoena in an Out-of-County Action (660), Pre-Suit Discovery (670)

Submitting Party Signature: [Signature]

Date: 8/19/15

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

The Estate of Artrell Davis, by and through
her Personal Representative, Lynette Gibbs,

Plaintiff,

-vs-

Michael Laverne Marks Jr., and Elroy
Jackson,

Defendants

IN THE COURT OF COMMON PLEAS

TWELFTH JUDICIAL CIRCUIT

SUMMONS

Docket No.: 2015-CP-21-

2015 AUG 25 PM 2:55
COMM. CLERK
FLORENCE COUNTY, SC

FILED

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the subscriber, at his office at 506 West Evans Street, Florence, S.C., within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you for the relief demanded in the Complaint.

THE SUGGS LAW FIRM, P.C.

BY: _____

B. Scott Suggs
B. Scott Suggs

S.C. Bar No.: 012896

Federal I.D. No.: 5846

506 West Evans Street

P.O. Drawer 591

Florence, S.C. 29001

(843) 629-5050 (Telephone)

(843) 629-8400 (Facsimile)

(855) 877-3978 (Toll Free)

TheSuggsLawFirm@sc.twcbc.com

CERTIFIED: A TRUE COPY
Ruth A. Hanna
CLERK OF COURT C.R. & G.S.
FLORENCE COUNTY, S.C.

Florence, South Carolina

August 21, 2015

ATTORNEY FOR THE PLAINTIFF

ROA 047

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

The Estate of Artrell Davis, by and through
her Court Appointed Personal Representative,
Lynette Gibbs,

Plaintiff,

-vs-

Elroy Jackson and Michael Laverne Marks Jr.,

Defendants

IN THE COURT OF COMMON PLEAS

TWELFTH JUDICIAL CIRCUIT

COMPLAINT

Docket No.: 2015-CP-21-

245
FLORENCE COUNTY, SC
2015 AUG 25 PM 2:55
FILED

JURISDICTION/VENUE:

THE PLAINTIFF ABOVE-NAMED, complaining of the Defendants herein, would respectfully show unto this Honorable Court as follows:

1. The Plaintiff herein is the Estate of Artrell Davis (also known as the Plaintiff or the Decedent), which is being administered through the Probate Court for the County of Florence, State of South Carolina, by Lynette Gibbs, who is hereinafter identified.
2. The Personal Representative of said Estate is administered by Lynette Gibbs, who is a citizen and resident of the County of Florence, State of South Carolina, and who is the biological mother of the Decedent and who is the lawfully appointed Personal Representative of the Estate of the Decedent, having been appointed by the Florence County Probate Court on December 16, 2014. A copy of said Certificate of Appointment is attached hereto and merged and incorporated into the Plaintiff's Summons and Complaint by reference herein.

CERTIFIED: A TRUE COPY
Ms Paula Ottana
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

3. The Decedent was a citizen and resident of the County of Florence, State of South Carolina, and whose date of birth is October 20, 1992.
4. That upon information and belief, Defendant Elroy Jackson (hereinafter referred to as "Defendant Jackson"), is a citizen and resident of the County of Florence, State of South Carolina and at all times herein alleged, was the owner of a 1998 Ford SUV (VIN: 1FMZU32EXWZB89648), and had given permission to Defendant Michael Laverne Marks, Jr., either express or implied, to operated said vehicle.
5. That upon information and belief, Defendant Michael Laverne Marks, Jr., (hereinafter referred to as "Defendant Marks"), is a citizen and resident of the County of Florence, State of South Carolina and at all times herein alleged, was the operator of the vehicle belonging to Defendant Jackson who is referenced above and who had received permission from Defendant Jackson, either express or implied, to operate said vehicle.
6. The facts which give rise to this Complaint occurred in the County of Florence, State of South Carolina, on or about September 6, 2014.
7. This Court has personal jurisdiction over the parties hereto and the subject matter herein, and venue is proper in Florence County.

STATEMENT OF FACTS:

8. The Plaintiff restates all of the previous allegations of her Complaint as if fully set forth herein verbatim.
9. That on or about September 6, 2014, Defendant Marks was the operator and the Plaintiff was a passenger in the vehicle previously identified.

10. That as Defendant Marks attempted to unlawfully pass another vehicle on a double yellow line, he lost control of said vehicle and collided with an opposing vehicle with significant force.
11. That upon information and belief, Defendant Marks was operating this motor vehicle while under the influence of alcohol and/or drugs at the time of this accident.
12. That at all times herein alleged, the Plaintiff exercised due care for her own safety.
13. That as a result of the above described collision, the Plaintiff was killed and also suffered conscious pain and suffering prior to her death.

AS TO DEFENDANT MARKS:

14. The Defendant Marks was negligent, willful, wanton, careless, reckless, and grossly negligent at the time and place above mentioned in one or more of the following particulars:
 - (a) By operating a motor vehicle in a reckless, dangerous, careless, and negligent manner without due regard for the Plaintiff, other passengers inside of the vehicle and for other people travelling along the roadway;
 - (b) By operating a vehicle while under the influence of alcohol and/or drugs.
 - (c) By violating the statutory laws of the State of South Carolina by exceeding the posted speed limit and by attempting to pass another vehicle unlawfully;
 - (d) By failing to use the degree of care and caution that a reasonable and prudent person would have used under the same circumstances then and there existing, and;
 - (e) In such other and further particulars which may be shown at trial or in preparation for trial.

15. That all of the above were the direct and proximate cause of the injuries and damages suffered by the Plaintiff herein, said acts being in violation of the statutory and common laws of the State of South Carolina.

AS TO DEFENDANT JACKSON:

16. The Defendant Jackson was negligent, willful, wanton, careless, reckless, and grossly negligent at the time and place above mentioned in one or more of the following particulars:

(a) By entrusting the above referenced vehicle to Defendant Marks when Defendant Jackson knew, or should have known through the exercise of reasonable care and due diligence, that Defendant Marks was an unsafe driver.

FOR A FIRST CAUSE OF ACTION:

(Wrongful Death S.C. Code § 15-51-10 et seq.)

17. The Plaintiff restates all of the previous allegations of her Complaint as if fully set forth herein verbatim.

18. The Personal Representative of Artrell Davis brings this claim for the death of the Decedent pursuant to the South Carolina Death by Wrongful Act Statute, S.C. Code § 15-51-10 (1976), *et. seq.*

19. That as a direct and proximate result of the acts and omissions of the Defendants named above, the Decedent died on September 12, 2014.

20. The Personal Representative of the Decedent claims all damages under the Wrongful Death Act to include, but not be limited to, pecuniary loss, mental shock and suffering,

loss of care, wounded feelings, grief and sorrow, deprivation of the Decedent's society, comfort and companionship.

21. The Plaintiff is informed and believes that she is entitled to judgment against the Defendants for their combined negligence in an appropriate amount, and for punitive damages should the jury find sufficient evidence to justify an award of same.

FOR A SECOND CAUSE OF ACTION:

(Survival Action § 15-5-90)

22. The Plaintiff restates all of the previous allegations of her Complaint as if fully set forth herein verbatim.

23. The Personal Representative of Artrell Davis brings this action for the conscious pain and suffering of the Decedent pursuant to the Survival Right of Action Statute S.C. Code § 15-5-90 (1976).

24. The Decedent's Personal Representative claims all damages under the Survival Action including but not limited to, conscious pain and suffering, compensation for physical injuries inflicted by the Defendants, and scarring and disfigurement.

25. The Plaintiff is informed and believes that she is entitled to judgment against the Defendants for their combined negligence in an appropriate amount and for punitive damages should the jury find sufficient evidence to justify an award of same.

WHEREFORE, the Plaintiff requests actual damages from the Defendants as determined by the trier of fact for the wrongful death of the Decedent, and for her conscious pain and suffering, and for such other and further relief as this Court may deem just and proper.

THE SUGGS LAW FIRM, P.C.

By: _____



B. Scott Suggs

S.C. Bar No.: 012896

Federal I.D. No.: 5846

506 West Evans Street

P.O. Drawer 591

Florence, S.C. 29503

(843) 629-5050 (Telephone)

(843) 629-8400 (Facsimile)

(855) 877-3978 (Toll Free)

TheSuggsLawFirm@sc.twcbc.com

Florence, South Carolina

August 24, 2015

ATTORNEY FOR THE PLAINTIFF

STATE OF SOUTH CAROLINA

COUNTY OF: FLORENCE

IN THE MATTER OF:
ARTRELL L DAVIS
(Decedent)

)
)
)
)
)
)
)

IN THE PROBATE COURT

CERTIFICATE OF APPOINTMENT

CASE NUMBER: 2014 ES21 00925

This is to certify that

LYNETT GIBBS
JEROME DAVIS

is/are the duly qualified

- PERSONAL REPRESENTATIVE
- SUCCESSOR PERSONAL REPRESENTATIVE
- SPECIAL ADMINISTRATOR

in the above matter and that this appointment, having been executed on
16th DAY OF DECEMBER, 2014 , is in full force and effect

RESTRICTIONS:

Executed this 17th DAY OF DECEMBER, 2014



J. MUNFORD SCOTT, JR., Probate Court Judge

Do not accept a copy of this certificate without
the raised seal of the Probate Court.

THE SUGGS LAW FIRM

Professional Corporation
506 WEST EVANS STREET
POST OFFICE DRAWER 591
FLORENCE, S.C. 29503

B. Scott Suggs
ATTORNEY AT LAW
South Carolina Bar No.: 012896
Federal ID No.: 5846

August 21, 2015

Telephone: (843) 629-5050
Facsimile: (843) 629-8400
TheSuggsLawFirm@sc.twcbc.com
Toll Free: 1-855-877-3978

VIA: HAND DELIVERY:

Connie Reel-Shearin
Florence County Clerk of Court
Twelfth Judicial Circuit
180 N. Irby St.
Florence, S.C., 29501

RE: Estate of Artrell Davis.
Docket No.: 2015-CP-21-

FILED
2015 AUG 25 PM 2:55
CONNIE REEL-SHEARIN
CLERK OF COURT
FLORENCE COUNTY, SC

Dear Connie:

Enclosed herewith, please find one (1) original and seven (7) copies of the Plaintiff's Summons and Complaint and the Certificate of Appointment for the Personal Representative regarding the above-referenced matter. Also find enclosed, a check for filing fees.

Please file the original, true certify the copies, and return the latter to me *via* my courier.

Thank you for your time and attention in this matter, and please do not hesitate to contact me with any questions or concerns.

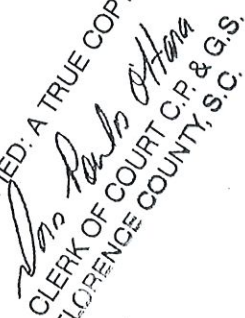
With kind regards, I remain,

Sincerely yours,

THE SUGGS LAW FIRM, P.C.


B. SCOTT SUGGS

BSS/tt
w/enclosures
cc: File

CERTIFIED: A TRUE COPY

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

ROA 055

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

THE ESTATE OF AATRELL
DAVIS, By ANN THROUGH
HER PERSONAL REPRESENTATIVE,
NYNETTE GIBBS,

PLAINTIFF(S),

VS.

MICHAEL LAVERNE MARKS,
JR. ANN ELROY JACKSON,

DEFENDANT(S).

RETURN OF SERVICE

CASE NUMBER: 15-CP-21-2451

JENNIE KEEL, CLERK
CCCP & GS
FLORENCE COUNTY, SC

2015 SEP 22 PM 3:26

FILED

THE UNDERSIGNED, Mack Harrelson, being duly sworn, says that he served the following:

CIVIL ACTION COVER SHEET # SUMMONS # COMPLAINT
CERTIFICATE OF APPOINTMENT

in the above action on: ELROY JACKSON - 1001 WEST TURNER
GATE ROAD PAMPlico, S.C. 29583
(Name of Person Served)

By delivering a copy to

(Plaintiff or Defendant)

Personally

by delivering a copy to

ELROY JACKSON

(Name of Person Left With)

A person of suitable age and discretion at the following location:

Time and Date of Service:

2:20 P

M. on the

28

day of

AUGUST

2015

Was not served for the following reasons:

~~Mack Harrelson~~

SWORN to before me this

28 day of August, 2015.

Don May Handers
Notary Public for South Carolina
Commission Expires: April 15, 2021

MACK HARRELSON

P.O. BOX 6826

FLORENCE, S.C. 29508

ROA 056

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

THE ESTATE OF ARTRELL DAVIS, by and)
through her PERSONAL REPRESENTATIVE,)
LYNETTE GIBBS,)

Plaintiff(s))

vs.)

ELROY JACKSON AND MICHAEL)
LAVERNE MARKS, JR.,)

Defendant(s))

IN THE COURT OF COMMON PLEAS

CASE NO. 2015-CP-21-2451

AFFIDAVIT OF DEFAULT

FILED
2016 JAN 26 PM 2:31
JUNNIE REBEL-BREAR
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, SC

PERSONALLY appeared before me B. SCOTT SUGGS, who, being duly sworn, states that he is the Attorney for the Plaintiff(s) and that more than thirty (30) days have elapsed since the service of the Summons and Complaint, exclusive of the date of service, upon the Defendant(s) ELROY JACKSON, , : and that no Answer, Demurrer or Notice of Appearance has been served upon him as required by the Summons in this action; and that the Defendant(s) is not a member of the military service; and the Defendant(s) is in default.

Sworn to and Subscribed before me)
25th day of JANUARY, 2016.)

[Signature])
Notary Public for South Carolina)

My Commission expires 10/1/2025)

[Signature]

Attorney(s) for Plaintiff

CERTIFIED: A TRUE COPY
[Signature]
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

THE SUGGS LAW FIRM

Professional Corporation
506 WEST EVANS STREET
POST OFFICE DRAWER 591
FLORENCE, S.C. 29503

B. Scott Suggs
ATTORNEY AT LAW
South Carolina Bar No.: 012896
Federal I.D. No.: 5846

January 24, 2016

Telephone: (843) 629-5050
Facsimile: (843) 629-8400
thesuggslawfirm@sc.twcbc.com
Toll Free: (855) 877-3978

HAND DELIVERY:

Connie Reel-Shearin
FLORENCE COUNTY CLERK OF COURT
COMMON PLEAS COURT
180 N. Irby St., MSC-E
Florence, S.C. 29501

RE: Estate of Artrell Davis, et. al
Docket No.: 2015-DR-21-2451

Dear Connie:

Enclosed herewith for filing, please find one (1) original and three (3) copies of our Affidavit of Default in the above styled matter.

Please file the original, true certify the copies and return the latter to me *via* my courier.

Thank you in advance for your kindness and courtesies in this matter.

With kind regards, I remain,

Sincerely yours,

THE SUGGS LAW FIRM, P.C.
BY: **B. SCOTT SUGGS**
B. SCOTT SUGGS

BSS/ss
w/enclosures
cc: File/GLF (Hand Delivery) w/enclosures
Lynette Gibbs (U.S. Mail) w/enclosures

2016 JAN 26 PM 2:31
FILED
CONNIE REEL-SHEARIN
CCCP & GS-Y. ST
FLORENCE COUNTY, S.C.
CERTIFIED: A TRUE COPY
Donna Pauls O'Hara
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

ROA 058

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
 TWELFTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-21-2451

ESTATE OF ARTRELL DAVIS, by and)
 through her PERSONAL)
 REPRESENTATIVES, LYNETTE GIBBS)
 AND JEROME DAVIS,)

MOTION AND ORDER INFORMATION

Plaintiff,)

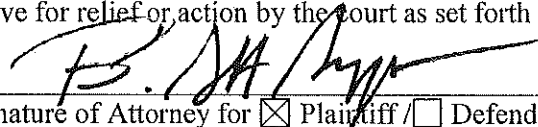
FORM AND COVER SHEET

vs.)

ELROY JACKSON AND MICHAEL)
 LAVERNE MARKS, JR.,)

Defendant.)

FILED
 MAR 23 PM 1:14
 CLERK OF COURT C.P. & C.S.
 FLORENCE COUNTY, S.C.

Plaintiff's Attorney: B. SCOTT SUGGS, Bar No. 012896 Address: PO DRAWER 591 FLORENCE, SC 29503 Phone: 843-629-5050 Fax 843-629-8400 E-mail: thesuggslawfirm@sc.twcbc.com Other: 855-877-3978 TOLL FREE	Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: DEFAULT/DAMAGES Estimated Time Needed: ONE (1) HOUR Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for <input checked="" type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant	3/2/16 Date submitted
SECTION III: Motion Fee	
<input checked="" type="checkbox"/> PAID - AMOUNT: \$ _____ <input type="checkbox"/> EXEMPT:	
(check reason) <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____	
JUDGE'S SECTION	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____

CERTIFIED: A TRUE COPY
 Clerk of Court
 Florence County, S.C.

CLERK'S VERIFICATION

Collected by: CT Date Filed: _____
 MOTION FEE COLLECTED: \$ 25⁰⁰
 CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

THE ESTATE OF ARTRELL DAVIS, by
and through her PERSONAL
REPRESENTATIVES, LYNETTE GIBBS
AND JEROME DAVIS,

Plaintiff,

-vs-

ELROY JACKSON and MICHAEL
LAVERNE MARKS, JR.,

Defendants

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

MOTION/APPLICATION FOR
DEFAULT JUDGMENT

(Rule 55(b)(1) Liquidated Damages)
(Rule 55(b)(2) Unliquidated Damages)

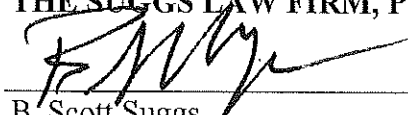
Docket No.: 2015-CP-21-2451

FILED
2016 MAR 23 PM 4:14
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

THE PLAINTIFF above named, by and through the undersigned, shall move before the Presiding Judge of the Florence County Court of Common Pleas, located at 180 N. Irby St., Florence, S.C., 29501, within ten (10) days from the date of this Motion, or as soon thereafter as counsel may be heard, for an Entry of Judgment by Default against Defendant Elroy Jackson (hereinafter "Defendant Jackson"). This Motion shall be based upon Defendant Jackson's failure to plead or to otherwise make an appearance in this action. The Plaintiff shall also apply for an Order awarding the Plaintiff's Estate and her heirs and assigns, liquidated and unliquidated damages in an amount that the Court rules is just and appropriate based upon the presentation of such evidence which is attached to this Motion and merged and incorporated by reference herein, or such testimony which shall be presented at the hearing on this Motion.

THE SUGGS LAW FIRM, P.C.

BY:



B. Scott Suggs
S.C. Bar No.: 612896
Federal ID No.: 5846

CERTIFIED: A TRUE COPY
2016 MAR 23 PM 4:14
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

ROA 061

Federal ID No.: 5846
506 West Evans Street
P.O. Drawer 591
Florence, S.C. 29503
(843) 629-5050 Telephone)
(843) 629-8400 (Facsimile)
(855)-877-3978 (Toll Free)

TheSuggsLawFirm@sc.twcbc.com

ATTORNEY FOR THE PLAINTIFF

Florence, South Carolina

March 18, 2016

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

THE ESTATE OF ARTRELL DAVIS, by
and through her PERSONAL
REPRESENTATIVES, LYNETTE GIBBS
AND JEROME DAVIS,

Plaintiff,

-vs-

ELROY JACKSON and MICHAEL
LAVERNE MARKS, JR.,

Defendants

IN THE COURT OF COMMON PLEAS

TWELFTH JUDICIAL CIRCUIT

**AFFIDAVIT IN SUPPORT OF
ENTRY OF DEFAULT JUDGMENT
AND FOR DAMAGES**

*(For Liquidated and
Unliquidated Damages)*

Docket No.: 2015-CP-21-2453

FILED
2016 MAR 23 PM 4:14
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, SC

THE AFFIANT BELOW NAMED, after being duly sworn, deposes and testifies as
follow:

1. I am the attorney for the Plaintiff herein.
2. Artrell Davis, the Decedent, was a passenger in a motor vehicle which was involved in an accident which occurred on September 6, 2014. On September 12, 2014, the Decedent subsequently died from her injuries which were sustained in this motor vehicle. The Decedent was not at fault in this accident. The insured owner of the at-fault vehicle is identified as Defendant Elroy Jackson (hereinafter referred to as "Defendant Jackson"). The insured driver of said vehicle is identified as Defendant Michael Laverne Marks, Jr. (hereinafter referred to as "Defendant Marks"). A copy of the South Carolina Traffic Collision Report Form (SCTCRF) which sets forth the facts and circumstances surrounding this accident, is attached hereto and merged and incorporated by reference herein and is hereby marked as Exhibit #1.

CERTIFIED: A TRUE COPY 1
Donna Paula Ottana
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.
ROA 063

3. A copy of the Decedent's Death Certificate is also attached hereto and merged and incorporated by reference herein and is hereby marked as Exhibit #2.
4. The Decedent's biological parents were appointed to serve as the Personal Representatives of the Estate of the Decedent by the Florence County Probate Court on December 16, 2014. A certified, true copy of said Certificate of Appointment is attached hereto and merged and incorporated by reference herein and is hereby marked as Exhibit #3.
5. The Plaintiff filed a claim for Wrongful Death and for a Survival Cause of Action with the liability insurance carrier which insured Defendant Jackson as the owner of the at-fault vehicle and Defendant Marks, as the insured driver. The at-fault liability carrier is identified as Greenville Casualty Insurance Company, Inc., and the claim is referenced under GCI0011358. However, said liability carrier has made no response to this claim.
6. The Plaintiff filed her Summons and Complaint for Wrongful Death and for her Survival Cause of Action against Defendants, Jackson and Marks on August 25, 2015. A true, certified copy of said Summons and Complaint is attached hereto and merged and incorporated by reference herein and is hereby marked as Exhibit #4.
7. The Plaintiff personally served her Summons and Complaint against Defendant Jackson on August 28, 2015, pursuant to Rule 4(d)(d)(1), of the South Carolina Rules of Civil Procedure. A true, certified copy of the Affidavit/Proof of Service is attached hereto and merged and incorporated by reference herein and is hereby marked as Exhibit #5.

8. Defendant Marks is currently incarcerated in the Florence County Detention Center. This Defendant was personally served with the Plaintiff's Summons and Complaint on August 31, 2015. A copy of this Affidavit of Service is attached hereto and is marked as Exhibit #6.
9. Pursuant to Rule 17 (c) of the South Carolina Rules of Civil Procedure, W. James Hoffmeyer, Esq., was appointed as Guardian for Defendant Marks on October 16, 2015. A copy of said Order of Appointment is attached hereto and merged and incorporated by reference herein and is hereby marked as Exhibit #7. Defendant Marks was again served with the Plaintiff's Summons and Complaint by service of same upon his Court appointed Guardian.
10. Defendant Marks answered the Plaintiff's Summons and Complaint on November 11, 2015. A copy of this Defendant's Answer is attached hereto and merged and incorporated by reference herein and is hereby marked as Exhibit #8.
11. Defendant Jackson has failed to respond to said Summons and Complaint or has failed to make an appearance of any kind. Upon information and belief, Defendant Jackson is not a minor, incompetent or under any disability which would otherwise prevent him from responding to the Plaintiff's Summons and Complaint.
12. Upon information, Defendant Jackson is in default. An Affidavit of Default was filed by the Florence County Clerk of Court against Defendant Jackson on January 26, 2016. A true, certified copy of said Affidavit of Default is attached hereto and merged and incorporated by reference herein and is hereby marked as Exhibit #9.
13. The Plaintiff herein has suffered the following damages which have been marked as

Exhibit #10:

a. Florence County EMS:	\$ 817.60
b. McLeod Regional Medical Center:	\$ 402,965.86
c. ERP	\$ 528.00
d. Florence Radiological:	\$ 1,495.00
e. Hanger Prosthetics and Orthotics, Inc.:	\$ 3,725.92
f. Medical Anesthesia Consultants:	\$ 6,940.00
g. Ideal Funeral Home:	\$ 7,969.50
h. WRONGFUL DEATH	\$ TBD
i. SURVIVAL CAUSE OF ACTION	\$ TBD
TOTAL:	\$ 424,441.88

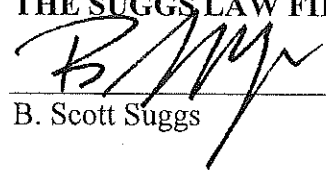
14. The Decedent died intestate. The Decedent left no surviving spouse. The Decedent left one (1) minor issue, who has been identified as Myracle Robinson, and whose date of birth is July 28, 2009.

15. Attorney for the Plaintiff is informed and believes that the Plaintiff, on behalf of the Estate of Artrell Davis, is entitled to judgment from this Court from Defendant Jackson in the amount as set forth in this affidavit for liquidated damages and an award for unliquidated damages in an amount for wrongful death for her statutory beneficiary, Myracle Robinson, and for the Estate of Artrell Davis for her survival cause of action.

FURTHER AFFIANT SAYIETH NOT!

THE SUGGS LAW FIRM, P.C.

By:


B. Scott Suggs

S.C. Bar No.: 012896
Federal I.D. No.: 5846
506 W. Evans St.
P.O. Drawer 591
Florence, S.C. 29503
(843) 629-5050 (Telephone)
(843) 629-8400 (Facsimile)
(855) 877-3978 (Toll Free)

Florence, South Carolina

TheSuggsLawFirm@sc.twcbc.com

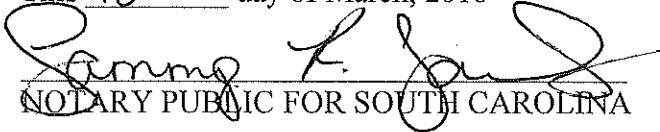
March 18, 2016

ATTORNEY FOR THE PLAINTIFF

Estate of Davis, et. al., v. Jackson, et. al.
Docket No.: 2015-CP-21-2451

SWORN TO AND SUBSCRIBED before me

This 18th day of March, 2016


NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: 10/1/2025

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

THE ESTATE OF ARTRELL DAVIS, by
and through her PERSONAL
REPRESENTATIVES, LYNETTE GIBBS
AND JEROME DAVIS,

Plaintiffs,

-vs-

ELROY JACKSON and MICHAEL
LAVERNE MARKS, JR.,

Defendants

IN THE COURT OF COMMON PLEAS

TWELFTH JUDICIAL CIRCUIT

INDEX OF EXHIBITS

Docket No.: 2015-CP-21-2451

1. South Carolina Traffic Collision Report Form (SCTRF)
2. Death Certificate of Artrell Davis
3. Certificate of Appointment
4. Summons and Complaint
5. Affidavit/Proof of Service (Defendant Jackson)
6. Affidavit/Proof of Service (Defendant Marks)
7. Order of Appointment
8. Defendant Marks Answer to Summons and Complaint
9. Affidavit of Default
10. Copies of all Medical bills and Funeral Bill
 - a. Florence County EMS \$ 817.60
 - b. McLeod Regional Medical Center \$ 402,965.86
 - c. ERP \$ 528.00

d. Florence Radiological	\$ 1,495.00
e. Hangar Prosthetics and Orthotics, Inc.	\$ 3,725.92
f. Medical Anesthesia Consultants	\$ 6,940.00
g. Ideal Funeral Home	\$ 7,969.50
TOTAL:	\$ 424,441.88

THE SUGGS LAW FIRM, P.C.

BY: 

B. Scott Suggs
S.C. Bar No.: 012896
Federal ID No.: 5846
506 West Evans Street
P.O. Drawer 591
Florence, S.C. 29503
(843) 629-5050 Telephone)
(843) 629-8400 (Facsimile)
(855)-877-3978 (Toll Free)

TheSuggsLawFirm@sc.twcbc.com

ATTORNEY FOR THE PLAINTIFFS

Florence, South Carolina

March 18, 2016

EXHIBIT 1

ORIGINAL-AMENDED

FATAL

SOUTH CAROLINA DPS/OHS & DMV USE ONLY		Page # 1	SOUTH CAROLINA TRAFFIC COLLISION REPORT FORM TR-310 (Rev. 11/2011)		# Of Units 02	<input checked="" type="checkbox"/> Amended - Attach Copy of Original Report	Notified 0040	Arrived 0040
---------------------------------------	--	----------	--	--	---------------	--	---------------	--------------

Date 08-08-2014	Time of Collision 0030	County 21	1-Interstate 2-US Primary 3-SC Primary	4-Secondary 5-County 6-PP	Collision Location (Rt. # / Name) 5 184 / BIG SWAMP ROAD	1-Main Line 2-Alternate 3-Spur	6-Connection 7-Business	Miles: 4.42	Dir. N E S W	In (Near) City or Town of: FLORENCE
-----------------	------------------------	-----------	--	---------------------------------	--	--------------------------------------	----------------------------	-------------	--------------	-------------------------------------

Lane # / Dir. 1 2 N E S W	Distance Offset .07 Miles	Direction N E S W	1-Interstate 2-US Primary 3-SC Primary	4-Secondary 5-County 6-Other	Base Intersection (Rt. # / Name) / GLENHAVEN ROAD	1-Main Line 2-Alternate 3-Spur	6-Connection 7-Business 9-Other	GPS COORDINATES 00 00' 00.00" DEGREES MINUTES SECONDS		
R.R. Id.	From N E S W	Ramp Only 1-Entrance 2-Exit	To N E S W	1-Interstate 2-US Primary 3-SC Primary	4-Secondary 5-County 6-Other	Second Intersection (Rt. # / Name) / BLOSSOM LANE	1-Main Line 2-Alternate 3-Spur	6-Connection 7-Business 9-Other	Latitude 33 56 42.50	Longitude 79 34 05.02

E-841095	MARKA, JR	MICHAEL	LAVERNE	E-841096	MILES	PAMELA	ANN
----------	-----------	---------	---------	----------	-------	--------	-----

Unit # 01	Sex M	Race B	Street 1211 WILLIAM LANE	Unit # 02	Sex F	Race W	Street 1029 LAKE CITY HWY
-----------	-------	--------	--------------------------	-----------	-------	--------	---------------------------

Occ 6	Birth Date 07-21-1996	City, State, & Zip FLORENCE SC 29608	Occ 1	Birth Date 10-11-1972	City, State, & Zip JOHNSONVILLE SC 29558029
-------	-----------------------	--------------------------------------	-------	-----------------------	---

State BC	Driver's License # 103474714	Class	Insurance Company: GREENVILLE CASUALTY	State SC	Driver's License # 7009096	Class D	Insurance Company: ALLSTATE
----------	------------------------------	-------	--	----------	----------------------------	---------	-----------------------------

Year 1 2 0 0	Body BU	Vehicle Make FORD	VIN # 1FMZU32EXWZB00040	Year 2 0 0 7	Body 48	Vehicle Make ODDG	VIN # 2B9KA43R27H642320
--------------	---------	-------------------	-------------------------	--------------	---------	-------------------	-------------------------

State BC	Year 2 0 1 8	License Plate # JXT808	Owner's D.L. # UNKNOWN	State BC	Year 2 0 1 6	License Plate # DNZ850	Owner's D.L. # UNKNOWN
----------	--------------	------------------------	------------------------	----------	--------------	------------------------	------------------------

Home Telephone (843) 8248340	Owner's Full Name JACKSON ELROY	Home Telephone (843) 5800227	Owner's Full Name MILES CHARLES EDWARD
------------------------------	---------------------------------	------------------------------	--

Bus. Telephone	Street 1001 W. TURNER GATE RD	Bus. Telephone	Street 1029 LAKE CITY HWY
----------------	-------------------------------	----------------	---------------------------

Contributed To Collision Yes	City, State, & Zip PAMPLICO SC 29663	Contributed To Collision No	City, State, & Zip JOHNSONVILLE SC 29558029
------------------------------	--------------------------------------	-----------------------------	---

Estimated Speed 65	Speed Limit 65	C.D.L. Req: Yes No	T/B S Req: Yes No	Alc/Drg Info (see back): Yes No	Estimated Speed 45	Speed Limit 65	C.D.L. Req: Yes No	T/B S Req: Yes No	Alc/Drg Info (see back): Yes No
--------------------	----------------	--------------------	-------------------	---------------------------------	--------------------	----------------	--------------------	-------------------	---------------------------------

State BC	Year 2 0 1 8	License Plate # JXT808	Owner's D.L. # UNKNOWN	State BC	Year 2 0 1 6	License Plate # DNZ850	Owner's D.L. # UNKNOWN
----------	--------------	------------------------	------------------------	----------	--------------	------------------------	------------------------

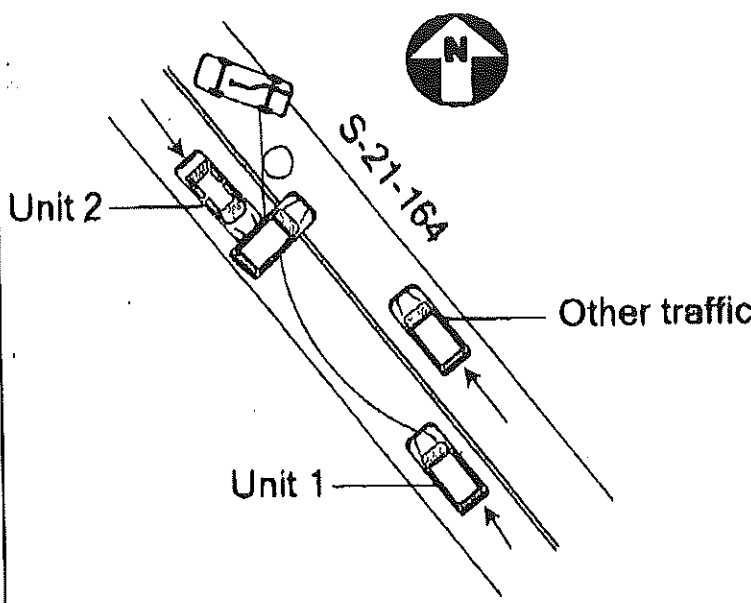
Home Telephone	Owner's Full Name	Home Telephone	Owner's Full Name
----------------	-------------------	----------------	-------------------

Bus. Telephone	Street	Bus. Telephone	Street
----------------	--------	----------------	--------

Contributed To Collision Yes	City, State, & Zip	Contributed To Collision No	City, State, & Zip
------------------------------	--------------------	-----------------------------	--------------------

Year 2 0 1 8	Body BU	Vehicle Make FORD	VIN # 1FMZU32EXWZB00040	Year 2 0 1 6	Body 48	Vehicle Make ODDG	VIN # 2B9KA43R27H642320
--------------	---------	-------------------	-------------------------	--------------	---------	-------------------	-------------------------

Dir. of Travel: Unit 1: (N) S E W	Unit 2: (S) E W	Unit 3: N S E W
-----------------------------------	-----------------	-----------------



Unit 1 Dam. \$ 2000	Unit 2 Dam. \$ 10000	Unit 3 Dam.	Prop. Dam. 1	Prop. Dam. 2
---------------------	----------------------	-------------	--------------	--------------

Property Owner/Witness:	Address:	State:	Zip:	Phone:
-------------------------	----------	--------	------	--------

Photo: Describe What Happened (Refer to Units by Number)
 (1) N
 UNIT 1 WAS TRAVELING NORTH ON S-21-164. UNIT 2 WAS TRAVELING SOUTH ON S-21-164. UNIT 1, DRIVING UNDER THE INFLUENCE OF ALCOHOL, WAS ATTEMPTING TO PASS OTHER TRAFFIC ON A DOUBLE YELLOW LINE BEFORE LOSING CONTROL AND TURNING SIDWAYS STRIKING UNIT 2 HEAD-ON. UNIT 1 THEN OVERTURNED IN THE ROADWAY. AS A RESULT OF A PASSENGER IN UNIT 1 SUSTAINING GREAT BODILY INJURY, UNIT 1 DRIVER WAS CHARGED WITH FELONY DUI.

09/15/2014: AMENDED TO SHOW THAT UNIT 1 PASSENGER, ARTRELL DAVIS, DIED AS A RESULT OF INJURIES SUSTAINED IN COLLISION.

NOTICE - THE TR-310 IS FOR STATISTICAL REPORTING PURPOSES ONLY AND IS A REFLECTION OF THE OFFICER'S BEST KNOWLEDGE, OPINION AND BELIEF COVERING THE COLLISION BUT NO WARRANT IS MADE AS TO THE FACTUAL ACCURACY THEREOF.

Investigating Officer's Name: POSTON - L N	Rank: UCPL	Badge #: T 7 9 3	Jurisdiction Code: H P O 5	Review Date: 09-18-2014	Reviewer's Name: FT Cherry	Rank: (C)	Internal Agency Code: RFL100118
--	------------	------------------	----------------------------	-------------------------	----------------------------	-----------	---------------------------------

ROA 071

EXHIBIT 2

CERTIFICATION OF VITAL RECORD

DEATH CERTIFICATION

STATE FILE NUMBER : 139-14-030914

DECEDENT'S NAME: *ARTRELL LA'TIYA DAVIS*

SEX: FEMALE

SOCIAL SECURITY NUMBER: 251-91-5570

AKA's: NA

ARMED FORCES: NO

AGE: 21 YEARS

DATE OF BIRTH: OCTOBER 20, 1992

COUNTY OF DEATH: FLORENCE

TYPE OF PLACE OF DEATH: HOSPITAL- INPATIENT

NAME AND ADDRESS OF PLACE OF DEATH: MCLEOD REGIONAL MEDICAL CENTER OF THE PEE DEE, INC, FLORENCE, SC 29506

PLACE OF DISPOSITION: WHITE HILL BAPTIST CHURCH CEMETERY

DISPOSITION LOCATION: GRESHAM, SOUTH CAROLINA

METHOD OF DISPOSITION: BURIAL

DECEDENT'S RESIDENCE: 951 MERRITT DRIVE, PAMPLICO, FLORENCE COUNTY, SC, 29583

MARITAL STATUS: NEVER MARRIED

PLACE OF BIRTH: SOUTH CAROLINA

SURVIVING SPOUSE'S NAME: NA

FATHER'S NAME: JEROME DAVIS

MOTHER'S NAME PRIOR TO FIRST MARRIAGE: LYNETT M CRAWFORD

RELATIONSHIP: MOTHER

INFORMANT'S NAME: LYNETT M GIBBS

MAILING ADDRESS: 951 MERRITT DRIVE, PAMPLICO, SC, 29583

FUNERAL HOME: IDEAL FUNERAL PARLOR, 106 EAST DARLINGTON ST., FLORENCE, SC, 29506

LICENSE NUMBER: 1976

FUNERAL DIRECTOR: R. DOUGLAS HAWKINS

LICENSE NUMBER: 1976

EMBALMER'S NAME: R DOUGLAS HAWKINS

MANNER OF DEATH : ACCIDENT

ACTUAL OR PRESUMED DATE OF DEATH : SEPTEMBER 12, 2014

ACTUAL OR PRESUMED TIME OF DEATH: 1630

CAUSE OF DEATH - PART I

MULTIPLE SYSTEM ORGAN FAILURE

RESPIRATORY FAILURE

SPINAL CORD INJURY WITH QUADRIPLÉGIA

MOTOR VEHICLE CRASH

OTHER SIGNIFICANT CONDITIONS - PART II:

NA

CORONER CONTACTED? YES

AUTOPSY PERFORMED? NO

AUTOPSY AVAILABLE? NA

DATE OF INJURY: SEPTEMBER 06, 2014

TIME OF INJURY: 0100

INJURY AT WORK? NOT LISTED

PLACE OF INJURY: STREET

LOCATION OF INJURY: NOT LISTED

HOW THE INJURY OCCURRED?

MOTOR VEHICLE

CERTIFIER NAME AND TITLE: DR. MARK A REYNOLDS

LICENSE NUMBER: 19841

CERTIFIER'S ADDRESS: 800 E. CHEVES ST, SUITE 260, FLORENCE, SC, 29506

DATE FILED: SEPTEMBER 26, 2014

DATE OF ISSUANCE: SEPTEMBER 26, 2014

SPECIAL INSTRUCTIONS :

NA

SC03872675

This is a true certification of the facts on file in the Division of Vital Records, SC Department of Health and Environmental Control.

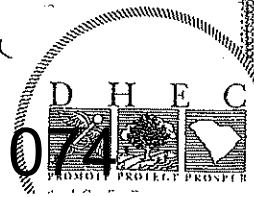
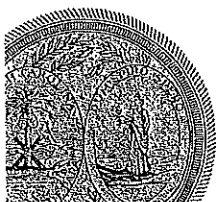
Catherine Templeton
Catherine Templeton
Director and State Registrar

Barbara E. Derrick
Barbara E. Derrick
Assistant State Registrar

This copy is not valid unless prepared on an engraved border displaying the state seal and issuing agency logo.

Revision Date: 01/24/2014

2014 DEC 16 AM 10:29



ROA 074

EXHIBIT 3

CRG

STATE OF SOUTH CAROLINA

COUNTY OF: FLORENCE

IN THE MATTER OF:
ARTRELL L DAVIS
(Decedent)

)
)
)
)
)
)
)

IN THE PROBATE COURT

CERTIFICATE OF APPOINTMENT

CASE NUMBER: 2014 ES21 00925

This is to certify that

LYNETT GIBBS
JEROME DAVIS

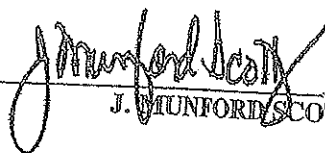
is/are the duly qualified

- PERSONAL REPRESENTATIVE
- SUCCESSOR PERSONAL REPRESENTATIVE
- SPECIAL ADMINISTRATOR

in the above matter and that this appointment, having been executed on
16th DAY OF DECEMBER, 2014, is in full force and effect

RESTRICTIONS:

Executed this 17th DAY OF DECEMBER, 2014



J. MUNFORD SCOTT, JR., Probate Court Judge

Do not accept a copy of this certificate without
the raised seal of the Probate Court.

ROA 076

EXHIBIT 4

THE SUGGS LAW FIRM

Professional Corporation
506 WEST EVANS STREET
POST OFFICE DRAWER 591
FLORENCE, S.C. 29503

B. Scott Suggs
ATTORNEY AT LAW
South Carolina Bar No.: 012896
Federal ID No.: 5846

August 21, 2015

Telephone: (843) 629-5050
Facsimile: (843) 629-8400
TheSuggsLawFirm@sc.twcbc.com
Toll Free: 1-855-877-3978

VIA: HAND DELIVERY:

Connie Reel-Shearin
Florence County Clerk of Court
Twelfth Judicial Circuit
180 N. Irby St.
Florence, S.C., 29501

RE: Estate of Artrell Davis.
Docket No.: 2015-CP-21- .

2015 AUG 25 PM 2:56
FLORENCE COUNTY, SC

Dear Connie:

Enclosed herewith, please find one (1) original and seven (7) copies of the Plaintiff's Summons and Complaint and the Certificate of Appointment for the Personal Representative regarding the above-referenced matter. Also find enclosed, a check for filing fees.

Please file the original, true certify the copies, and return the latter to me *via* my courier.

Thank you for your time and attention in this matter, and please do not hesitate to contact me with any questions or concerns.

With kind regards, I remain,

Sincerely yours,

THE SUGGS LAW FIRM, P.C.


B. SCOTT SUGGS

BSS/tt
w/enclosures
cc: File

RECEIVED A TRUE COPY
2015 AUG 25 PM 2:56
FLORENCE COUNTY, SC

ROA 078

COUNTY OF FLORENCE

The Estate of Artrell Davis, by and through her
Personal Representative, Lynette Gibbs,

CIVIL ACTION COVERSHEET

Plaintiff(s)

2015-CP - 21- 2451

vs.

Michael Laverne Marks Jr. and Elroy Jackson,

Defendant(s)

Submitted By: B. Scott Suggs, The Suggs Law Firm
Address: 591 W. Evans St., Florence, S.C., 29503

SC Bar #: 012896
Telephone #: (843) 629-5050
Fax #: (843) 629-8400
Other: (855) 877-3978
E-mail: thesuggslawfirm@sc.twcabc.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|--|
| <p>Contracts</p> <ul style="list-style-type: none"> <input type="checkbox"/> Constructions (100) <input type="checkbox"/> Debt Collection (110) <input type="checkbox"/> General (130) <input type="checkbox"/> Breach of Contract (140) <input type="checkbox"/> Fraud/Bad Faith (150) <input type="checkbox"/> Failure to Deliver/Warranty (160) <input type="checkbox"/> Employment Discrim (170) <input type="checkbox"/> Employment (180) <input type="checkbox"/> Other (199) | <p>Torts - Professional Malpractice</p> <ul style="list-style-type: none"> <input type="checkbox"/> Dental Malpractice (200) <input type="checkbox"/> Legal Malpractice (210) <input type="checkbox"/> Medical Malpractice (220) Previous Notice of Intent Case #
20 -NI- <input type="checkbox"/> Notice/ File Med Mal (230) <input type="checkbox"/> Other (299) | <p>Torts - Personal Injury</p> <ul style="list-style-type: none"> <input type="checkbox"/> Conversion (310) <input type="checkbox"/> Motor Vehicle Accident (320) <input type="checkbox"/> Premises Liability (330) <input type="checkbox"/> Products Liability (340) <input type="checkbox"/> Personal Injury (350) <input checked="" type="checkbox"/> Wrongful Death (360) <input type="checkbox"/> Assault/Battery (370) <input type="checkbox"/> Slander/Libel (380) <input type="checkbox"/> Other (399) | <p>Real Property</p> <ul style="list-style-type: none"> <input type="checkbox"/> Claim & Delivery (400) <input type="checkbox"/> Condemnation (410) <input type="checkbox"/> Foreclosure (420) <input type="checkbox"/> Mechanic's Lien (430) <input type="checkbox"/> Partition (440) <input type="checkbox"/> Possession (450) <input type="checkbox"/> Building Code Violation (460) <input type="checkbox"/> Other (499) |
| <p>Inmate Petitions</p> <ul style="list-style-type: none"> <input type="checkbox"/> PCR (500) <input type="checkbox"/> Mandamus (520) <input type="checkbox"/> Habeas Corpus (530) <input type="checkbox"/> Other (599) | <p>Administrative Law/Relief</p> <ul style="list-style-type: none"> <input type="checkbox"/> Reinstate Drv. License (800) <input type="checkbox"/> Judicial Review (810) <input type="checkbox"/> Relief (820) <input type="checkbox"/> Permanent Injunction (830) <input type="checkbox"/> Forfeiture-Petition (840) <input type="checkbox"/> Forfeiture-Consent Order (850) <input type="checkbox"/> Other (899) | <p>Judgments/Settlements</p> <ul style="list-style-type: none"> <input type="checkbox"/> Death Settlement (700) <input type="checkbox"/> Foreign Judgment (710) <input type="checkbox"/> Magistrate's Judgment (720) <input type="checkbox"/> Minor Settlement (730) <input type="checkbox"/> Transcript Judgment (740) <input type="checkbox"/> Lis Pendens (750) <input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760) <input type="checkbox"/> Confession of Judgment (770) <input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780) <input type="checkbox"/> Other (799) | <p>Appeals</p> <ul style="list-style-type: none"> <input type="checkbox"/> Arbitration (900) <input type="checkbox"/> Magistrate-Civil (910) <input type="checkbox"/> Magistrate-Criminal (920) <input type="checkbox"/> Municipal (930) <input type="checkbox"/> Probate Court (940) <input type="checkbox"/> SCDOT (950) <input type="checkbox"/> Worker's Comp (960) <input type="checkbox"/> Zoning Board (970) <input type="checkbox"/> Public Service Comm. (990) <input type="checkbox"/> Employment Security Comm (991) <input type="checkbox"/> Other (999) |
| <p>Special/Complex /Other</p> <ul style="list-style-type: none"> <input type="checkbox"/> Environmental (600) <input type="checkbox"/> Automobile Arb (610) <input type="checkbox"/> Medical (620) <input type="checkbox"/> Other (699) <input type="checkbox"/> Sexual Predator (510) | | <ul style="list-style-type: none"> <input type="checkbox"/> Pharmaceuticals (630) <input type="checkbox"/> Unfair Trade Practices (640) <input type="checkbox"/> Out-of State Depositions (650) <input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660) <input type="checkbox"/> Pre-Suit Discovery (670) | |

Submitting Party Signature:

[Handwritten Signature]

Date:

8/19/15

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Blount, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

The Estate of Artrell Davis, by and through
her Personal Representative, Lynette Gibbs,

Plaintiff,

-vs-

Michael Laverne Marks Jr., and Elroy
Jackson,

Defendants

IN THE COURT OF COMMON PLEAS

TWELFTH JUDICIAL CIRCUIT

SUMMONS

Docket No.: 2015-CP-21-_____

FLORENCE COUNTY, S.C.
JUL 21 2015

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the subscriber, at his office at 506 West Evans Street, Florence, S.C., within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you for the relief demanded in the Complaint.

THE SUGGS LAW FIRM, P.C.

BY: _____

B. Scott Suggs

S.C. Bar No.: 012896

Federal I.D. No.: 5846

506 West Evans Street

P.O. Drawer 591

Florence, S.C. 29001

(843) 629-5050 (Telephone)

(843) 629-8400 (Facsimile)

(855) 877-3978 (Toll Free)

TheSuggsLawFirm@sc.twcbc.com

Florence, South Carolina

August 21, 2015

ATTORNEY FOR THE PLAINTIFF

ROA 081

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
The Estate of Artrell Davis, by and through
her Court Appointed Personal Representative,
Lynette Gibbs,

Plaintiff,

-vs-

Elroy Jackson and Michael Laverne Marks Jr.,

Defendants

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

COMPLAINT

Docket No.: 2015-CP-21-

2461

2015 AUG 25 PM 2:50
FLORENCE COUNTY, SC

JURISDICTION/VENUE:

THE PLAINTIFF ABOVE-NAMED, complaining of the Defendants herein, would respectfully show unto this Honorable Court as follows:

1. The Plaintiff herein is the Estate of Artrell Davis (also known as the Plaintiff or the Decedent), which is being administered through the Probate Court for the County of Florence, State of South Carolina, by Lynette Gibbs, who is hereinafter identified.
2. The Personal Representative of said Estate is administered by Lynette Gibbs, who is a citizen and resident of the County of Florence, State of South Carolina, and who is the biological mother of the Decedent and who is the lawfully appointed Personal Representative of the Estate of the Decedent, having been appointed by the Florence County Probate Court on December 16, 2014. A copy of said Certificate of Appointment is attached hereto and merged and incorporated into the Plaintiff's Summons and Complaint by reference herein.

CELESTINE...
FLORENCE COUNTY, SC

3. The Decedent was a citizen and resident of the County of Florence, State of South Carolina, and whose date of birth is October 20, 1992.
4. That upon information and belief, Defendant Elroy Jackson (hereinafter referred to as "Defendant Jackson"), is a citizen and resident of the County of Florence, State of South Carolina and at all times herein alleged, was the owner of a 1998 Ford SUV (VIN: 1FMZU32EXWZB89648), and had given permission to Defendant Michael Laverne Marks, Jr., either express or implied, to operated said vehicle.
5. That upon information and belief, Defendant Michael Laverne Marks, Jr., (hereinafter referred to as "Defendant Marks"), is a citizen and resident of the County of Florence, State of South Carolina and at all times herein alleged, was the operator of the vehicle belonging to Defendant Jackson who is referenced above and who had received permission from Defendant Jackson, either express or implied, to operate said vehicle.
6. The facts which give rise to this Complaint occurred in the County of Florence, State of South Carolina, on or about September 6, 2014.
7. This Court has personal jurisdiction over the parties hereto and the subject matter herein, and venue is proper in Florence County.

STATEMENT OF FACTS:

8. The Plaintiff restates all of the previous allegations of her Complaint as if fully set forth herein verbatim.
9. That on or about September 6, 2014, Defendant Marks was the operator and the Plaintiff was a passenger in the vehicle previously identified.

10. That as Defendant Marks attempted to unlawfully pass another vehicle on a double yellow line, he lost control of said vehicle and collided with an opposing vehicle with significant force.
11. That upon information and belief, Defendant Marks was operating this motor vehicle while under the influence of alcohol and/or drugs at the time of this accident.
12. That at all times herein alleged, the Plaintiff exercised due care for her own safety.
13. That as a result of the above described collision, the Plaintiff was killed and also suffered conscious pain and suffering prior to her death.

AS TO DEFENDANT MARKS:

14. The Defendant Marks was negligent, willful, wanton, careless, reckless, and grossly negligent at the time and place above mentioned in one or more of the following particulars:
 - (a) By operating a motor vehicle in a reckless, dangerous, careless, and negligent manner without due regard for the Plaintiff, other passengers inside of the vehicle and for other people travelling along the roadway;
 - (b) By operating a vehicle while under the influence of alcohol and/or drugs.
 - (c) By violating the statutory laws of the State of South Carolina by exceeding the posted speed limit and by attempting to pass another vehicle unlawfully;
 - (d) By failing to use the degree of care and caution that a reasonable and prudent person would have used under the same circumstances then and there existing, and;
 - (e) In such other and further particulars which may be shown at trial or in preparation for trial.

15. That all of the above were the direct and proximate cause of the injuries and damages suffered by the Plaintiff herein, said acts being in violation of the statutory and common laws of the State of South Carolina.

AS TO DEFENDANT JACKSON:

16. The Defendant Jackson was negligent, willful, wanton, careless, reckless, and grossly negligent at the time and place above mentioned in one or more of the following particulars:

(a) By entrusting the above referenced vehicle to Defendant Marks when Defendant Jackson knew, or should have known through the exercise of reasonable care and due diligence, that Defendant Marks was an unsafe driver.

FOR A FIRST CAUSE OF ACTION:
(Wrongful Death S.C. Code § 15-51-10 et seq.)

17. The Plaintiff restates all of the previous allegations of her Complaint as if fully set forth herein verbatim.

18. The Personal Representative of Artrell Davis brings this claim for the death of the Decedent pursuant to the South Carolina Death by Wrongful Act Statute, S.C. Code § 15-51-10 (1976), *et. seq.*

19. That as a direct and proximate result of the acts and omissions of the Defendants named above, the Decedent died on September 12, 2014.

20. The Personal Representative of the Decedent claims all damages under the Wrongful Death Act to include, but not be limited to, pecuniary loss, mental shock and suffering,

loss of care, wounded feelings, grief and sorrow, deprivation of the Decedent's society, comfort and companionship.

21. The Plaintiff is informed and believes that she is entitled to judgment against the Defendants for their combined negligence in an appropriate amount, and for punitive damages should the jury find sufficient evidence to justify an award of same.

FOR A SECOND CAUSE OF ACTION:
(Survival Action § 15-5-90)

22. The Plaintiff restates all of the previous allegations of her Complaint as if fully set forth herein verbatim.

23. The Personal Representative of Artrell Davis brings this action for the conscious pain and suffering of the Decedent pursuant to the Survival Right of Action Statute S.C. Code § 15-5-90 (1976).

24. The Decedent's Personal Representative claims all damages under the Survival Action including but not limited to, conscious pain and suffering, compensation for physical injuries inflicted by the Defendants, and scarring and disfigurement.

25. The Plaintiff is informed and believes that she is entitled to judgment against the Defendants for their combined negligence in an appropriate amount and for punitive damages should the jury find sufficient evidence to justify an award of same.

WHEREFORE, the Plaintiff requests actual damages from the Defendants as determined by the trier of fact for the wrongful death of the Decedent, and for her conscious pain and suffering, and for such other and further relief as this Court may deem just and proper.

THE SUGGS LAW FIRM, P.C.

By:



B. Scott Suggs

S.C. Bar No.: 012896

Federal I.D. No.: 5846

506 West Evans Street

P.O. Drawer 591

Florence, S.C. 29503

(843) 629-5050 (Telephone)

(843) 629-8400 (Facsimile)

(855) 877-3978 (Toll Free)

TheSuggsLawFirm@sc.twcbc.com

Florence, South Carolina

August 21, 2015

ATTORNEY FOR THE PLAINTIFF

EXHIBIT 5

CERTIFIED: A TRUE COPY

Cornie Reed Shpton
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

THE ESTATE OF ANTRELL
DAVIS, By ANN THROUGHT
HER PERSONAL REPRESENTATIVE,
KYNETTE GIBBS,
PLAINTIFF(S),

VS.

MICHAEL LAVERNE MARKS
JR. AND ELADY JACKSON,
DEFENDANT(S).

RETURN OF SERVICE

CASE NUMBER: 15-CP-21-2451

2015 SEP 22 PM 3:26
CLERK RECEIVED
C.C.P. & G.S.
FLORENCE COUNTY, S.C.

FILED

THE UNDERSIGNED, Mack Harrelson, being duly sworn, says that he served the following:

CIVIL ACTION COVER SHEET # SUMMONS # COMPLAINT
CERTIFICATE OF APPOINTMENT

in the above action on: ELADY JACKSON - 1001 WEST TURNER
GATE ROAD PAMPlico, S.C. 29583
(Name of Person Served)

By delivering a copy to _____ (Plaintiff or Defendant)
Personally by delivering a copy to ELADY JACKSON
(Name of Person Left With)

A person of suitable age and discretion at the following location:

Time and Date of Service: 2:20 P. M. on the
28 day of AUGUST 2015

Was not served for the following reasons:

Mack Harrelson
Mack Harrelson

SWORN to before me this
28 day of August, 2015

Don Max Anderson
Notary Public for South Carolina

MACK HARRELSON
P.O. BOX 6826

ROA 089

EXHIBIT 6

CERTIFIED: A TRUE COPY

Carrie Reed Stearns
CLERK OF COURT
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

THE ESTATE OF AATRELL
DAVIS, BY ANN THROUGHT
HER PERSONAL REPRESENTATIVE,
LYNETTE GIBBS,
PLAINTIFF(S),

VS.

MICHAEL LAVERNE MARKS,
JR. ANN ELADY JACKSON,

DEFENDANT(S).

RETURN OF SERVICE

CASE NUMBER: 15-CP-21-2451

2015 SEP 22 PM 3:27
CLERK OF COURT
FLORENCE COUNTY, S.C.

FILED

THE UNDERSIGNED, Mack Harrelson, being duly sworn, says that he served the following:

CIVIL ACTION COVER SHEET # SUMMONS # COMPLAINT
CERTIFICATE OF APPOINTMENT

in the above action on

MICHAEL LAVERNE MARKS, JR - 209 High-
land Pointe Dr. Ant-T Lake City S.C. 29560
(Name of Person Served) (Lives with his mother)

By delivering a copy to

(Plaintiff or Defendant)

Personally

By delivering a copy to

MICHAEL LAVERNE MARKS, JR.
(Name of Person Left With)

A person of suitable age and discretion at the following location:

Time and Date of Service:

2:55

P

M. on the

31

day of

AUGUST

2015.

Was not served for the following reasons:

Mack Harrelson
Mack Harrelson

SWORN to before me this

31 day of August 2015.

Don May
Notary Public for South Carolina

MV Commission Expires: April 15, 2017

MACK HARRELSON

P.O. BOX 6828

FLORENCE, S.C. 29502

ROA 091

EXHIBIT 7

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

The Estate of Artrell Davis, by and through her Personal Representative, Lynette Gibbs,

Plaintiff,

-vs-

Elroy Jackson and Michael Laverne Marks, Jr.,

Defendants

IN THE COURT OF COMMON PLEAS

TWELFTH JUDICIAL CIRCUIT

MOTION AND ORDER TO APPOINT A GUARDIAN AD LITEM

Docket No.: 2015-CP-21-2451

2015 OCT 16 PM 2:33
JAMIE REEL-SHEARIN
C.C.P. & G.S.
FLORENCE COUNTY, S.C.

FILED

PURSUANT TO Rule 17(c), South Carolina Rules of Civil Procedure, the Plaintiff, by

and through the undersigned, hereby moves before this Honorable Court for an Order appointing a Guardian for Defendant Michael Laverne Marks, Jr., who is currently incarcerated in the Florence County Detention Center and against whom this action is currently pending.

THE SUGGS LAW FIRM, P.C.

BY:

B. Scott Suggs

B. Scott Suggs
P.O. Drawer 591
Florence, S.C. 29503

ATTORNEY FOR PLAINTIFF

Florence, South Carolina

October 7th, 2015

CERTIFIED: A TRUE COPY
Connie Real Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

ORDER:

Based upon the foregoing, W. James Hoffmeyer, Esq., is hereby appointed as Guardian for the Defendant Michael Marks, Jr., should he have no conflicts.

Florence, South Carolina

October 16, 2015

Michael Marks
The Honorable Connie Real Shearin
Florence County Clerk of Court

I have no conflicts in this matter and I agree to serve as Guardian for the Defendant, Michael Laverne Marks, Jr., if appointed. *[Signature]* DATE: 10/16/15

ROA 093

EXHIBIT 8

LAW OFFICE OF W. JAMES HOFFMEYER

Professional Corporation
125 WARLEY STREET
FLORENCE, SOUTH CAROLINA 29501
843-664-0009
(843) 664-0105 fax
jim@hoffmeyerlaw.com

W. James Hoffmeyer
Attorney at Law

November 12, 2015

B. Scott Suggs, Esquire
The Suggs Law Firm, PC
Post Office Drawer 591
Florence, South Carolina 29503

Re: *The Estate of Artrell Davis, by and through her Court Appointed Personal Representative, Lynette Gibbs v. Michael Laverne Marks, Jr. and Elroy Jackson*
Case No. 2015-DR-21-2451
Our File No. 15-529

Dear Scott:

Enclosed please find a copy of the Answer I am filing in the above-referenced matter as guardian ad litem for Mr. Marks. I do not know the status of an insurance carrier coming in and defending this action, but I am concerned, as guardian for Mr. Marks, that an Answer has not been filed, so I am filing this Answer on his behalf. I certainly hope someone will enter an appearance soon on his behalf in this matter.

Of course, I am copying Rose Mary who represents him on the criminal case. If you become aware of an attorney making an appearance through the insurance carrier, I would appreciate your letting me know.

With kind regards, I am,

Yours very truly,


W. James Hoffmeyer

WJH/fcb
Enclosure

Cc: Michael Laverne Marks, Jr.
Rose Mary Parham, Esquire

RECEIVED
11/16

ROA 095

LAW OFFICE OF W. JAMES HOFFMEYER

Professional Corporation
125 WARLEY STREET
FLORENCE, SOUTH CAROLINA 29501
843-664-0009
843-664-0105 (fax)

W. James Hoffmeyer
Attorney at Law

November 11, 2015

Attention: Common Pleas
Darlington Clerk of Court
1 Public Square, Room B-4
Darlington, South Carolina 29532

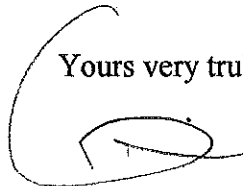
Re: *The Estate of Artrell Davis, by and through her Court Appointed Personal Representative, Lynette Gibbs v. Michael Laverne Marks, Jr. and Elroy Jackson*
Case No. 2015-DR-21-2451
Our File No. 15-529

To whom it may concern:

Enclosed please find an *Answer* which I would appreciate your filing in the above-referenced matter and returning a certified copy to me in the self-addressed envelope provided.

With kind regards, I am,

Yours very truly,



W. James Hoffmeyer

WJH/fb
Enclosures

Cc: Michael Laverne Marks, Jr.
Rose Mary Parham, Esquire
B. Scott Suggs, Esquire

ROA 096

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

The Estate of Artrell Davis, by and through)
her Court Appointed Personal)
Representative, Lynette Gibbs,)

CASE NO. 2015-CP-21-2451

Plaintiff,)

ANSWER
(Jury Trial Requested)

v.)

Michael Laverne Marks, Jr. and)
Elroy Jackson,)

Defendants.)
_____)

The Defendant Michael Laverne Marks, Jr., subject to any motions and reserving all rights hereunder, alleges:

FOR A FIRST DEFENSE

1. Each and every allegation not hereinafter admitted is denied.

FOR A SECOND DEFENSE

2. Admits the allegations contained in paragraphs 1, 2, 3, 4, 5, 6, 7 and 8 of the Complaint.
3. On information and belief, admits the allegations contained in paragraph 9 of the Complaint.
4. Denies the allegations contained in paragraphs 10, 11, 12, 13, 14 and 15 of the Complaint.
5. Denies paragraph 16 to the extent it alleges any wrongdoing by this Defendant.
6. Paragraph 17 is denied to the extent denied above.
7. Admits the allegations contained in paragraph 18 of the Complaint.
8. Denies the allegations contained in paragraphs 19, 20, and 21 of the Complaint.

9. Paragraph 22 is denied to the extent denied above.
10. Admits the allegations contained in paragraph 23 of the Complaint.
11. Denies the allegations contained in paragraphs 24, 25, and the Wherefore Clause of the Complaint to the extent they allege any fault, negligence and/or recklessness, wrongdoing or liability on behalf of this Defendant.

FOR A THIRD DEFENSE
(Comparative Negligence/Recklessness)

6. That the Defendant Marks realleges each and every paragraph as if set forth herein verbatim.
7. That the Plaintiff was comparatively negligent and/or comparatively reckless and the Plaintiff's comparative negligence and/or comparative recklessness proximately caused the incident of September 6, 2014 and any award to the Plaintiff should be reduced by the comparative negligence and/or comparative recklessness of the Plaintiff.

FOR A FOURTH DEFENSE

10. The imposition and awarding of punitive damages in this case would deprive the answering Defendant of property without due process of law; would allow a jury to arbitrarily assess punitive damages without foundation, in fact or law, and without proper instruction in judicial review; would allow the jury in its sole discretion to award punitive damages for simple negligence; is unconstitutional; a denial of this Defendants' Constitutional Rights and is contrary to Article One, Section Ten, and the Fourteenth Amendment of the Constitution of the United States of America and Article One, Section Three of the Constitution of the State of South Carolina.

WHEREFORE the Defendant Marks requests the following:

- a. that the Complaint against him be dismissed;
- b. for the cost of this action; and
- c. for such other and further relief as the Court deems just and proper.



W. JAMES HOFFMEYER
125 Warley Street
Florence, South Carolina 29501
(843) 664-0009
(843) 664-0105 *facsimile*
jim@hoffmeyerlaw.com

November 11, 2015

***GUARDIAN AD LITEM APPOINTED
BY THE COURT FOR DEFENDANT
MICHAEL LAVERNE MARKS, JR.***

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

The Estate of Artrell Davis, by and through)
her Court Appointed Personal)
Representative, Lynette Gibbs,)

CASE NO. 2015-CP-21-2451

Plaintiff,)

CERTIFICATE OF SERVICE BY MAIL

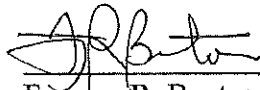
v.)

Michael Laverne Marks, Jr. and)
Elroy Jackson,)

Defendants.)
_____)

I, Frances R. Benton, certify that I am an employee of the Law Office of W. James Hoffmeyer, P.C., Florence, South Carolina, and that on November 11, 2015 I mailed a copy of the *Answer* to the attorney for the Plaintiff, by depositing same in the United States Mail, postage prepaid, return address clearly indicated, to the following address:

B. Scott Suggs, Esquire
The Suggs Law Firm, PC
Post Office Drawer 591
Florence, South Carolina 29503



Frances R. Benton
Paralegal to W. James Hoffmeyer

EXHIBIT 9

THE SUGGS LAW FIRM

Professional Corporation
506 WEST EVANS STREET
POST OFFICE DRAWER 591
FLORENCE, S.C. 29503

B. Scott Suggs
ATTORNEY AT LAW
South Carolina Bar No.: 012896
Federal I.D. No.: 5846

January 24, 2016

Telephone: (843) 629-5050
Facsimile: (843) 629-8400
thesuggslawfirm@sc.twcbc.com
Toll Free: (855) 877-3978

HAND DELIVERY:

Connie Reel-Shearin
FLORENCE COUNTY CLERK OF COURT
COMMON PLEAS COURT
180 N. Irby St., MSC-E
Florence, S.C. 29501

RE: Estate of Artrell Davis, et. al
Docket No.: 2015-DR-21-2451

FILED
2016 JAN 26 PM 2:31
CONNIE REEL-SHEARIN
C.C.P. & G.S.
FLORENCE COUNTY, S.C.

Dear Connie:

Enclosed herewith for filing, please find one (1) original and three (3) copies of our Affidavit of Default in the above styled matter.

Please file the original, true certify the copies and return the latter to me *via* my courier.

Thank you in advance for your kindness and courtesies in this matter.

With kind regards, I remain,

Sincerely yours,

THE SUGGS LAW FIRM, P.C.
BY: **B. SCOTT SUGGS**
B. SCOTT SUGGS

BSS/ss
w/enclosures
cc: File/GLF (Hand Delivery) w/enclosures
Lynette Gibbs (U.S. Mail) w/enclosures

CERTIFIED A TRUE COPY
Connie Reel-Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

ROA 102

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)
)
THE ESTATE OF ARTRELL DAVIS, by and)
through her PERSONAL REPRESENTATIVE,)
SYNETTE GIBBS,)

IN THE COURT OF COMMON PLEAS

CASE NO. 2015-CP-21-2451

Plaintiff(s))

vs.)

AFFIDAVIT OF DEFAULT

ELROY JACKSON AND MICHAEL)
AVERNE MARKS, JR.,)

Defendant(s))

FILED
2016 JAN 26 PM 2:31
CLERK OF COURT
FLORENCE COUNTY, SC

PERSONALLY appeared before me B. SCOTT SUGGS, who, being duly sworn, states that he is the Attorney for the Plaintiff(s) and that more than thirty (30) days have elapsed since the service of the Summons and Complaint, exclusive of the date of service, upon the Defendant(s) ELROY JACKSON, , : and that no Answer, Demurrer or Notice of Appearance has been served upon him as required by the Summons in this action; and that the Defendant(s) is not a member of the military service; and the Defendant(s) is in default.

sworn to and Subscribed before me)
5th day of JANUARY, 2016.)

Jimmy R. Lane)
Notary Public for South Carolina)

B. Suggs

Attorney(s) for Plaintiff

My Commission expires 10/1/2025)

CERTIFIED: A TRUE COPY
Clerk of Court
FLORENCE COUNTY, S.C.

EXHIBIT 10

FLORENCE COUNTY EMS

180 N. IRBY STREET, MSC-GG, FLORENCE, SC 29501
(843)665-3011 Federal Tax ID: 57-6000351

Insurance:

Patient Name: ARTRELL L. DAVIS

IF NOT LISTED ABOVE: NO INSURANCE INFO ON FILE

Patient Number: 4505802

Call Number: 31950262

Date Of Call: 09/08/2014 Call Time: 12:38 AM

From Location: 2040 BIG SWAMP RD

To Location: HOSPITAL-MCLEOD REGIONAL

Reason(s) 789.08 E812.0

ARTRELL L. DAVIS
614 BABYS DR
PAMPLICO, SC 29683

<u>DESCRIPTION OF CHARGES</u>	<u>HCPC</u>	<u>QUANTITY</u>	<u>UNIT PRICE</u>	<u>AMOUNT</u>
ALS BASE-EMERGENCY	A0427	1.0	425.00	425.00
MILEAGE	A0425	22.2	8.00	177.60
OXYGEN SUPPLIES		1.0	50.00	50.00
CARDIAC MONITOR		1.0	50.00	50.00
IV SUPPLIES		1.0	50.00	50.00
FLUID-NS/SODIUM CHLORIDE	J7030	1.0	15.00	15.00
ALS SUPPLIES		1.0	50.00	50.00

Total Charges 817.60

Total Credits 0.00

PLEASE PAY THIS AMOUNT => \$817.60

^DETACH ALONG ABOVE LINE AND RETURN STUB WITH YOUR PAYMENT^

Patient Name: DAVIS, ARTRELL L
Patient Number: 4505802

Call Number: 31950262
Current Date: 10/02/2014

Amount Due: \$817.60

Amount
Enclosed \$ _____

***Thank You For Using Florence County EMS. If you have insurance, please provide us with a copy of the front and back of your insurance card, otherwise we will expect your payment.

LOOX DAVIS, ARTRELL LATYIA Enc #12725238 9/6/2014 - 9/12/2014 UB-04 9/25/201. 1 UB04

MCLEOD REGIONAL MEDICAL C		MCLEOD REGIONAL MEDICAL C		34 PAT. CONT. #	12725238	0 TYPE REPORT
555 E CHEVES ST		P O BOX 100567		6 MEN REG.#	000000256783	0111
FLORENCE SC 295062617		FLORENCE SC 29502		6 FED. TAX NO.	570370242	7 FC = R
8437772955				8 STATEMENT COVERS PERIOD FROM	090614	9 THROUGH
8 PATIENT NAME		251915570		8 PATIENT ADDRESS		614 BABY DRIVE
DAVIS, ARTRELL LATYIA		PAMPLICO		9 SC	10 29583	
10 BIRTH DATE	11 SEX	12 ADMIN. DATE	13 HR	14 MIN	15 SEC	16 DHR
10201992	F	090614	04	1	1	20
17 STAT	18 C5	19	20	21	22	23
24	25	26	27	28	29	30
31	32	33	34	35	36	37
A1	102092	01	090614	42	091214	S01
38 ARTRELL LATYIA DAVIS				39 VALUE CODES		40
614 BABY DRIVE				02		000
PAMPLICO SC 29583				21		021
				22		251915570
				23		081
				45		0000
				61		600
				600		
42 REV. CO.	43 DESCRIPTION	44 HCPCS / RATE / HSPS CODE	45 SERV. DATE	46 SERV. UNITS	47 TOTAL CHARGES	48 NON-COVERED CHARGES
208	ICU/TRAUMA	6637.00		6	3982200	
230	NURSING INCREM			1	41700	
250	PHARMACY			241	2588600	
255	DRUGS/INCIDENT RAD			176	35200	
258	IV SOLUTIONS			67	608300	
270	MED SUPP SUPPLIES			1	5500	
272	STERILE SUPPLY			53	5075600	
278	SUPPLY/IMPLANTS			33	10264100	
300	LABORATORY			177	2279500	
320	DX X-RAY			11	361300	
324	DX X-RAY/CHEST			9	230400	
351	CT SCAN/HEAD			2	470900	
352	CT SCAN/BODY			6	1983500	
360	OR SERVICES			517	6376400	
361	OR/MINOR			1	325900	
370	ANESTHESIA			4	904300	
390	BLOOD/STOR-PROC			51	1129600	
391	BLOOD/ADMIN			3	348000	
402	ULTRASOUND			1	75100	
410	RESPIRATORY SVC			26	1060300	
450	EMERG ROOM			5	656786	
483	ECHOCARDIOLOGY			2	500600	
0001 PAGE 1 OF 2				CREATION DATE	092514	TOTALS
					39312786	
50 PAYER CODE	51 HEALTH PLAN ID	52 RES. Y/N	53 MARK Y/N	54 PRIOR PATIENTS	55 EST. AMOUNT DIF.	56 EMP. ID
SELF PAY 60000		Y	Y			1699756221
57 OTHER PRVID						57
						570370242
58 INSURED'S NAME	59 SSN	60 INSURED'S UNCLID	61 GROUP NAME	62 RELRANCE GROUP NO.		
DAVIS, ARTRELL LATYIA	18	251915570		999999		
63 TREATMENT AUTHORIZATION CODES	64 DOCUMENT CONTROL NUMBER		65 EMPLOYER NAME			
			UNEMPLOYED			
66 DX	67 ICD9	68 ICD10	69 ICD9	70 ICD10	71 ICD9	72 ICD10
B0624	M86121	M8604	Y78550	N51169	Y51852	Y85012
92851	M3441	M80702	M87342	M86101	Y2767	Y42789
73 ADMIN. CODE	74 PATIENT-RESPONSE DK	75 ICD9	76 ICD10	77 ICD9	78 ICD10	79 ICD9
85012	85012	80624	86121	0955	E8121	E8495
76 ATTENDING	77 OFFICATING		78 OTHER		79 OTHER	
NPI 659344810	NPI 639498405		DN NPI 922004498		NPI	
QUAL	QUAL		QUAL		QUAL	
80 REMARKS	81 CC		82 OTHER			
DAVIS, ARTRELL	E3282N00000X					
614 BABY DRIVE						
PAMPLICO, SC						
29583						
83 LAST	84 FIRST		85 QUAL			

LOOX DAVIS, ARTRELL LATYIA Enc #1272...38 9/6/2014 - 9/12/2014 UB-04 9/25/2014 1 UB04

MCLEOD REGIONAL MEDICAL C		MCLEOD REGIONAL MEDICAL C		PATIENT ID: 127256238		TYPE OF BILL: 0111	
555 E CHEVES ST		P O BOX 100567		I.D.#: 000000256783			
FLORENCE SC 295062617		FLORENCE SC 29502		FED. TAX NO.: 570370242		STATEMENT COVERS PERIOD FROM 090614 THROUGH 091214	
8437772955						PT = G	
PATIENT NAME: DAVIS, ARTRELL LATYIA				PATIENT ADDRESS: 614 BABY DRIVE			
DAVIS, ARTRELL LATYIA				PAMPLICO SC 29583			
10 BIRTHDATE: 10201992		11 SEX: F		12 DATE: 090614		13 PR: 04	
14 TYPE: 1		15 SRC: 1		16 DHR: 20		17 STAT: C5	
18 ACCT STATE: SC							
31 OCCURRENCE DATE: A1 102092		32 OCCURRENCE DATE: 01 090614		33 OCCURRENCE DATE: 42 091214			
34 OCCURRENCE DATE:		35 OCCURRENCE DATE:		36 OCCURRENCE DATE:		37	
38 ARTRELL LATYIA DAVIS		614 BABY DRIVE		PAMPLICO SC 29583			
39 CODE: 02		VALUE CODES AMOUNT: 000		40 CODE: 21		VALUE CODES AMOUNT: 021	
41 CODE: 22		VALUE CODES AMOUNT: 251915570		42 CODE: 23		VALUE CODES AMOUNT: 001	
43 CODE: 45		VALUE CODES AMOUNT: 000		44 CODE: 81		VALUE CODES AMOUNT: 600	
45 CODE:		VALUE CODES AMOUNT:		46 CODE:		VALUE CODES AMOUNT:	
47 REV. CD: 683		48 DESCRIPTION: TRAUMA LEVEL III		49 HCPCS / RATE / NPPS CODE:		50 SERV. DATE:	
51 SERV. UNITS: 1		52 TOTAL CHARGES: 609200		53 NON-COVERED CHARGES:		54	
55 730		56 EKG/EKG		57 1		58 32200	
59 801		60 DIALY/INPT		61 1		62 283000	
63 920		64 OTHER DX SVS		65 1		66 59400	
67		68		69		70	
71		72		73		74	
75		76		77		78	
79		80		81		82	
83		84		85		86	
87		88		89		90	
91		92		93		94	
95		96		97		98	
99		00		01		02	
03		04		05		06	
07		08		09		10	
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15		16		17		18	
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23		24		25		26	
27		28		29		30	
31		32		33		34	
35		36		37		38	
39		40		41		42	
43		44		45		46	
47		48		49		50	
51		52		53		54	
55		56		57		58	
59		60		61		62	
63		64		65		66	
67		68		69		70	
71		72		73		74	
75		76		77		78	
79		80		81		82	
83		84		85		86	
87		88		89		90	
91		92		93		94	
95		96		97		98	
99		00		01		02	
03		04		05		06	
07		08		09		10	
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51		52		53		54	
55		56		57		58	
59		60		61		62	
63		64		65		66	
67		68		69		70	
71		72		73		74	
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79		80		81		82	
83		84		85		86	
87		88		89		90	
91		92		93		94	
95		96		97		98	
99		00		01		02	
03		04		05		06	
07		08		09		10	
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35		36		37		38	
39		40		41		42	
43		44		45		46	
47		48		49		50	
51		52		53		54	
55		56		57		58	
59		60		61		62	
63		64		65		66	
67		68		69		70	
71		72		73		74	
75		76		77		78	
79		80		81		82	
83		84		85		86	
87		88		89		90	
91		92		93		94	
95		96		97		98	
99		00		01		02	
03		04		05		06	
07		08		09		10	
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43		44		45		46	
47		48		49		50	
51		52		53		54	
55		56		57		58	
59		60		61		62	
63		64		65		66	
67		68		69		70	
71		72		73		74	
75		76		77		78	
79		80		81		82	
83		84		85		86	
87		88		89		90	
91		92		93		94	
95		96		97		98	
99		00		01		02	
03		04		05		06	
07		08		09		10	
11		12		13		14	
15		16		17		18	
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27		28		29		30	
31		32		33		34	
35		36		37		38	
39		40		41		42	
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59		60		61		62	
63		64		65		66	
67		68		69		70	
71		72		73		74	
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79		80		81		82	
83		84		85		86	
87		88		89		90	
91		92		93		94	
95		96		97		98	
99		00		01		02	
03		04		05		06	
07		08		09		10	
11		12		13		14	
15		16		17		18	
19		20		21		22	
23		24		25		26	
27		28		29		30	
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39		40		41		42	
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63		64		65		66	
67		68		69		70	
71		72		73		74	
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79		80		81		82	
83		84		85		86	
87		88		89		90	
91		92		93		94	
95		96		97		98	
99		00		01		02	
03		04		05		06	
07		08		09		10	
11		12		13		14	
15		16		17		18	
19		20		21		22	
23		24		25		26	
27		28		29		30	
31		32		33		34	
35		36		37		38	
39		40		41		42	
43		44		45		46	
47		48		49		50	
51		52		53		54	
55		56		57		58	
59		60		61		62	
63		64		65		66	
67		68		69		70	
71		72		73		74	
75		76		77		78	
79		80		81		82	
83		84		85		86	
87		88		89		90	
91		92		93		94	
95		96		97		98	
99		00		01		02	
03		04		05		06	
07		08		09		10	
11		12		13		14	
15		16		17		18	
19		20		21		22	
23		24		25		26	
27		28		29		30	
31		32		33		34	
35		36		37		38	
39		40		41		42	
43		44		45		46	
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59		60		61		62	
63		64		65		66	
67		68		69		70	
71		72		73		74	
75		76		77		78	
79		80		81		82	
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95		96		97		98	
99		00		01		02	

G090 SIGINV #425300340 9/10/2014 Enc. 127256238 SIGNATURE CMS - 1514 9/10/2014 1 1514SIG



S98
DAVIS , ARTELL
614 BABY DRIVE
PAMPLICO SC 29583

HEALTH INSURANCE CLAIM FORM

APPROVED BY NATIONAL UNIFORM CLAIM COMMITTEE (NUCC) 02/12

PICA CASE ID: 00127256238		PICA	
1. MEDICARE <input type="checkbox"/> MEDICAID <input type="checkbox"/> TRICARE <input type="checkbox"/> CHAMPVA <input type="checkbox"/> GROUP HEALTH PLAN <input type="checkbox"/> FECA BLK LUNG (ID#) <input checked="" type="checkbox"/> OTHER <input type="checkbox"/>		1a. INSURED'S I.D. NUMBER (For Program in Item 1) 251915570	
2. PATIENT'S NAME (Last Name, First Name, Middle Initial) DAVIS, ARTELL LATYIA		4. INSURED'S NAME (Last Name, First Name, Middle Initial) DAVIS, ARTELL	
3. PATIENT'S BIRTH DATE MM DD YY 10 20 92 SEX M <input type="checkbox"/> F <input checked="" type="checkbox"/>		7. INSURED'S ADDRESS (No., Street) 614 BABY DRIVE	
5. PATIENT'S ADDRESS (No., Street) 614 BABY DRIVE		8. RESERVED FOR NUCC USE	
6. PATIENT RELATIONSHIP TO INSURED Self <input checked="" type="checkbox"/> Spouse <input type="checkbox"/> Child <input type="checkbox"/> Other <input type="checkbox"/>		9. RESERVED FOR NUCC USE	
CITY STATE PAMPLICO SC		CITY STATE PAMPLICO SC	
ZIP CODE TELEPHONE (Include Area Code) 29583 (843) 601-8647		ZIP CODE TELEPHONE (Include Area Code) 29583 (843) 601-8647	
8. OTHER INSURED'S NAME (Last Name, First Name, Middle Initial)		10. IS PATIENT'S CONDITION RELATED TO:	
a. OTHER INSURED'S POLICY OR GROUP NUMBER		a. EMPLOYMENT? (Current or Previous) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
b. RESERVED FOR NUCC USE		b. AUTO ACCIDENT? PLACE (State) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
c. RESERVED FOR NUCC USE		c. OTHER ACCIDENT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
d. INSURANCE PLAN NAME OR PROGRAM NAME		10d. CLAIM CODES (Designated by NUCC)	
11. INSURED'S POLICY GROUP OR FECA NUMBER 999999		11. INSURED'S DATE OF BIRTH MM DD YY 10 20 92 SEX M <input type="checkbox"/> F <input checked="" type="checkbox"/>	
12. PATIENT'S OR AUTHORIZED PERSON'S SIGNATURE I authorize the release of any medical or other information necessary to process this claim. I also request payment of government benefits either to myself or to the party who accepts assignment below. SIGNED PATIENT SIGNATURE ON FILE DATE 09 10 14		13. INSURED'S OR AUTHORIZED PERSON'S SIGNATURE I authorize payment of medical benefits to the undersigned physician or supplier for services described below. SIGNED SIGNATURE ON FILE	
14. DATE OF CURRENT ILLNESS, INJURY, or PREGNANCY (LMP) MM DD YY QUAL.		15. OTHER DATE MM DD YY QUAL.	
17. NAME OF REFERRING PROVIDER OR OTHER SOURCE		17a. 17b. NPI	
19. ADDITIONAL CLAIM INFORMATION (Designated by NUCC)		18. HOSPITALIZATION DATES RELATED TO CURRENT SERVICES FROM MM DD YY TO MM DD YY	
21. DIAGNOSIS OR NATURE OF ILLNESS OR INJURY Relate A-L to service line below (24E) ICD Ind. 9 A. 832.00 B. 873.42 C. 805.00 D. 805.2 E. F. G. H. I. J. K. L.		20. OUTSIDE LAB? \$ CHARGES <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
24. A. DATE(S) OF SERVICE From MM DD YY To MM DD YY B. PLACE OF SERVICE C. D. PROCEDURES, SERVICES, OR SUPPLIES (Explain Unusual Circumstances) E. DIAGNOSIS POINTER		22. RESUBMISSION CODE ORIGINAL REF. NO.	
1 09 06 14 23 99291 25 ABCD 305 00 1 NPI 1639498405		23. PRIOR AUTHORIZATION NUMBER	
2 09 06 14 23 12013 ABCD 223 00 1 NPI 1639498405		F. \$ CHARGES G. DAYS OR UNITS H. EPICOT Family Plan I. ID. QUAL. J. RENDERING PROVIDER ID. #	
3			
4			
5			
6			
25. FEDERAL TAX I.D. NUMBER SSN EIN 570370242 <input type="checkbox"/> <input checked="" type="checkbox"/>		26. PATIENT'S ACCOUNT NO. 42530034090G0	
31. SIGNATURE OF PHYSICIAN OR SUPPLIER INCLUDING DEGREES OR CREDENTIALS (I certify that the statements on the reverse are true and correct.) SIGNED 09/10/14 DATE		27. ACCEPT ASSIGNMENT? For gov. claims, use box <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
32. SERVICE FACILITY LOCATION INFORMATION MCLEOD REGIONAL MED CTR 555 E CHEVES ST FLORENCE SC 29506 a. 1699756221 b. 570370242		28. TOTAL CHARGE \$ 52800 29. AMOUNT PAID \$ 000	
33. BILLING PROVIDER INFO & PH # (843) 777-2955 CBO MRMC EMERGENCY 555 E. CHEVES ST FLORENCE SC 29506-2617 a. 1154371433 b. 570370242		30. Rev'd for NUCC Use	

CARRIER
PATIENT AND INSURED INFORMATION
PHYSICIAN OR SUPPLIER INFORMATION

Florence Radiological Associates, PA
 PO Box 51330
 Myrtle Beach SC 29579

CHECK CREDIT CARD USING FOR PAYMENT AND FILL OUT BELOW.

CARD NUMBER		SECURITY CODE
NAME ON CARD (PLEASE PRINT)		EXP. DATE
SIGNATURE		CLIENT ID 184
STATEMENT DATE 09/16/2014	ACCOUNT # 257237	PAY THIS AMOUNT CONTINUED

0001



AMOUNT P

Toll Free: (800) 841-4236

Pay online at www.ePayitOnline.com
 CodeID: MSN00001 Access #: 4205433-1-2713
 Patient: ARTRELL LATYI DAVIS

0184000025723700001495002

MAKE CHECK PAYABLE & REMIT TO:

1232 1 AT 0.406 *5 01232

 ARTRELL LATYI DAVIS 257237
 614 Babys Dr
 Pamplico SC 29583-6526

Florence Radiological Associates, PA
 PO Box 51330
 Myrtle Beach SC 29579

MSN00001-0387041-0001232-4205433-001-002713-#001628-0001

PLEASE CHECK BOX IF ABOVE ADDRESS IS INCORRECT AND INDICATE CHANGES ON BACK.

DETACH HERE

AND RETURN THIS TOP PORTION WITH YOUR PAYMENT
 USING THE RETURN ENVELOPE ENCLOSED

DATE	POST DATE	CODE	DESCRIPTION OF SERVICE	CHARGE	PAYMENT	ADJ	BALANCE
09/06/14		72020	RADEX SPI 1 VIEW S Location: MCLEOD REGIONAL MEDICAL CENTER	\$17.00			\$17.00
09/07/14		71010	RADEX CH 1 VIEW FR Location: MCLEOD REGIONAL MEDICAL CENTER	\$20.00			\$20.00
09/07/14		71010	RADEX CH 1 VIEW FR Location: MCLEOD REGIONAL MEDICAL CENTER	\$20.00			\$20.00
09/07/14		71010	RADEX CH 1 VIEW FR Location: MCLEOD REGIONAL MEDICAL CENTER	\$20.00			\$20.00
09/07/14		72040	RADEX SPI CRV 2/3 Location: MCLEOD REGIONAL MEDICAL CENTER	\$24.00			\$24.00
09/06/14		74177	CT, ABD AND PEL; W Location: MCLEOD REGIONAL MEDICAL CENTER	\$268.00			\$268.00
09/06/14		71260	CT THORAX C+ MATRL Location: MCLEOD REGIONAL MEDICAL CENTER	\$137.00			\$137.00
09/06/14		70486	CT MAXLFCL AREA C- Location: MCLEOD REGIONAL MEDICAL CENTER	\$125.00			\$125.00
09/06/14		72125	CT CRV SPI C-MATRL Location: MCLEOD REGIONAL MEDICAL CENTER	\$128.00			\$128.00
09/06/14		70450	CT HEAD/BRN C-MATR Location: MCLEOD REGIONAL MEDICAL CENTER	\$94.00			\$94.00

CONTINUED

Patient: ARTRELL LATYI DAVIS

Account Number: 257237

Statement Date: 09/16/2014

Please verify your insurance information above to ensure everything is correct. Complete the back of this form and return it to our office if there are any discrepancies.

Florence Radiological Associates, PA
 PO Box 51330
 Myrtle Beach SC 29579

Estos son servicios proporcionados para usted. Si tiene alguna pregunta con respecto a esta declaracion, por favor llame a nuestra oficina al Toll Free: (800) 841-4236.

Toll Free: (800) 841-4236

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ROA 111

Florence Radiological Associates, PA
 PO Box 51330
 Myrtle Beach SC 29579

CHECK CREDIT USING FOR PAYMENT AND FILL OUT BELOW.

AMERICAN EXPRESS VISA DISCOVER

CARD NUMBER	SECURITY CODE
NAME ON CARD (PLEASE PRINT)	EXP. DATE
SIGNATURE	CLIENT ID 184
STATEMENT DATE 09/16/2014	ACCOUNT # 257237
PAY THIS AMOUNT CONTINUED	



Toll Free: (800) 841-4236

Pay online at www.ePayitOnline.com
 CodeID: MSN00001 Access #: 4205433-1-2713
 Patient: ARTRELL LATYI DAVIS

0184000025723700001495002

MAKE CHECK PAYABLE & REMIT TO:

1232 1 AT 0.406 *5



ARTRELL LATYI DAVIS 257237
 614 Babys Dr
 Pamplico SC 29583-6526



Florence Radiological Associates, PA
 PO Box 51330
 Myrtle Beach SC 29579

MSN00001-0397041-0001232-4205433-001-002713-#001629-0001

PLEASE CHECK BOX IF ABOVE ADDRESS IS INCORRECT AND INDICATE CHANGES ON BACK.

DETACH HERE

AND RETURN THIS TOP PORTION WITH YOUR PAYMENT USING THE RETURN ENVELOPE ENCLOSED

DATE	POST DATE	CODE	DESCRIPTION OF SERVICE	CHARGE	PAYMENT	ADJ	BALANCE
09/06/14		71260	CT THORAX C+ MATRL Location: MCLEOD REGIONAL MEDICAL CENTER	\$137.00			\$137.00
09/06/14		73080	RADEX ELBW COMPL M Location: MCLEOD REGIONAL MEDICAL CENTER	\$17.00			\$17.00
09/06/14		72020	RADEX SPI 1 VIEW S Location: MCLEOD REGIONAL MEDICAL CENTER	\$17.00			\$17.00
09/06/14		73070	RADEX ELBW 2 VIEWS Location: MCLEOD REGIONAL MEDICAL CENTER	\$16.00			\$16.00
09/06/14		71010	RADEX CH 1 VIEW FR Location: MCLEOD REGIONAL MEDICAL CENTER	\$20.00			\$20.00
09/06/14		72170	RADEX PELVIS 1/2 V Location: MCLEOD REGIONAL MEDICAL CENTER	\$19.00			\$19.00
09/06/14		73070	RADEX ELBW 2 VIEWS Location: MCLEOD REGIONAL MEDICAL CENTER	\$16.00			\$16.00
09/06/14		71010	RADEX CH 1 VIEW FR Location: MCLEOD REGIONAL MEDICAL CENTER	\$20.00			\$20.00
09/06/14		74000	RADEX ABD 1 ANTERO Location: MCLEOD REGIONAL MEDICAL CENTER	\$20.00			\$20.00
09/08/14		73200	CT UXTR C-MATRL Location: MCLEOD REGIONAL MEDICAL CENTER	\$120.00			\$120.00

CONTINUED

Patient: ARTRELL LATYI DAVIS

Account Number: 257237

Statement Date: 09/16/2014

Please verify your insurance information above to ensure everything is correct. Complete the back of this form and return it to our office if there are any discrepancies.

Florence Radiological Associates, PA
 PO Box 51330
 Myrtle Beach SC 29579

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Toll Free: (800) 841-4236

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ROA 112

Florence Radiological Associates, PA
 PO Box 51330
 Myrtle Beach SC 29579

CHECK CREDIT USING FOR PAYMENT AND FILL OUT BELOW.

MONEY ORDER VISA DISCOVER

CARD NUMBER		SECURITY CODE
NAME ON CARD (PLEASE PRINT)		EXP. DATE
SIGNATURE		CLIENT ID 184
STATEMENT DATE 09/16/2014	ACCOUNT # 257237	PAY THIS AMOUNT \$1,495.00



AMOUNT P

Toll Free: (800) 841-4236

Pay online at www.ePayitOnline.com
 CodeID: MSN00001 Access #: 4205433-1-2713
 Patient: ARTRELL LATYI DAVIS

0184000025723700001495002

MAKE CHECK PAYABLE & REMIT TO:

1232 1 AT 0.406 *5



ARTRELL LATYI DAVIS 257237
 614 Babys Dr
 Pamplico SC 29583-6526



Florence Radiological Associates, PA
 PO Box 51330
 Myrtle Beach SC 29579

MSN00001-0397041-0001232-4205433-001-002713-#001630-0001

PLEASE CHECK BOX IF ABOVE ADDRESS IS INCORRECT AND INDICATE CHANGES ON BACK.

DETACH HERE

AND RETURN THIS TOP PORTION WITH YOUR PAYMENT USING THE RETURN ENVELOPE ENCLOSED

DATE	POST DATE	CODE	DESCRIPTION OF SERVICE	CHARGE	PAYMENT	ADJ	BALANCE
09/08/14		72125	CT CRV SPI C-MATRL Location: MCLEOD REGIONAL MEDICAL CENTER	\$128.00			\$128.00
09/08/14		71010	RADEX CH 1 VIEW FR Location: MCLEOD REGIONAL MEDICAL CENTER	\$20.00			\$20.00
09/09/14		73070	RADEX ELBW 2 VIEWS Location: MCLEOD REGIONAL MEDICAL CENTER	\$16.00			\$16.00
09/09/14		73070	RADEX ELBW 2 VIEWS Location: MCLEOD REGIONAL MEDICAL CENTER	\$16.00			\$16.00
09/10/14		71010	RADEX CH 1 VIEW FR Location: MCLEOD REGIONAL MEDICAL CENTER	\$20.00			\$20.00
09/09/14		71010	RADEX CH 1 VIEW FR Location: MCLEOD REGIONAL MEDICAL CENTER	\$20.00			\$20.00
09/11/14		71010	RADEX CH 1 VIEW FR Location: MCLEOD REGIONAL MEDICAL CENTER	\$20.00			\$20.00

*** You are responsible for payment in full within 20 days. ***

PLEASE HELP US GO GREEN!
 GO TO WWW.EPAYITONLINE.COM & PAY YOUR BILL ONLINE!
 CodeID: MSN00001 Access #: 4205433-1-2713

SCAN FOR
 MOBILE
 PAYMENT



OR YOU MAY EMAIL OR CHAT LIVE WITH A CUSTOMER SERVICE ATTENDANT AT WWW.MSNLLC.NET

Primary Insurance:
 Secondary Insurance:

Total Balance: \$1,495.00
 Insurance Pending: \$0.00
AMOUNT DUE NOW: \$1,495.00

Patient: ARTRELL LATYI DAVIS

Account Number: 257237

Statement Date: 09/16/2014

Please verify your insurance information above to ensure everything is correct. Complete the back of this form and return it to our office if there are any discrepancies.

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These are charges for services provided to you. If you have any questions with respect to this statement, please call our office at Toll Free: (800) 841-4236.

Florence Radiological Associates, PA
 PO Box 51330
 Myrtle Beach SC 29579

Toll Free: (800) 841-4236

ROA 113

PROSTHETICS & ORTHOTICS
Hanger INC.

DETAILS STATEMENT

TO: Artrell Davis
 614 Baby Dr
 Pamplico, SC, 29583

Hanger Prosthetics & Orthotics, Inc. db
 326 South Dargan Street
 Florence, SC, 29506-2537

(843) 669-8509

<u>Patient</u>	<u>Account #</u>	<u>Amount Due</u>	<u>Statement Date</u>
Artrell Davis	DHNOXCGPCG	\$3,725.92	9/16/2014

Florence, SC
 Florence, SC, 29506-2537

Invoice# K8E1XCGPCG

<u>Date</u>	<u>Procedure</u>	<u>Description</u>	<u>Charges</u>	<u>Pay/Adj</u>
09/16/2014	L0859	HALO, ADDITION, MRI COMPATIBLE SYSTEM, incl rings/pins	1,834.00	
09/16/2014	L0810	Halo with Plastic Vest	3,351.00	
09/16/2014	0206L	ORTHOTIC FIT FEE (HOSP) (TAXABLE)	100.00	
09/16/2014		Total Tax	184.97	
09/16/2014		Discount	1,744.05	

<u>Invoice Balance:</u>	<u>3,725.92</u>
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<u>Current</u>	<u>Over 30</u>	<u>Over 60</u>	<u>Over 90</u>	<u>Over 120</u>	<u>Total Due</u>
\$3,725.92	\$0.00	\$0.00	\$0.00	\$0.00	\$3,725.92



Patient Journal

Section I - Patient & Guarantor Information

Patient

Last Name:	DAVIS	Account#:	127256238	Address:	614 BABY DRIVE		
First Name:	ARTRELL	SSAN:	****5570	City:	PAMPLICO		
MI:	L	Med. Rec.#:		State:	SC	Zip Code:	29583
Birth Date:	1992/10/20	Phone#:	8436018647				

Guarantor

Last Name:		Relationship:	Self	Address:			
First Name:		SSAN:		City:			
MI:		Home Phone#:		State:		Zip Code:	
Birth Date:		Work Phone#:					

Section II - Insurance Information

Status Code:		Carrier Name:	
Certificate#:		Address:	
Phone#:		Authorization#:	

Section III - Unapplied Transactions

Transaction Date	Description	Batch#	Deposit Date	Transaction Amount

Unapplied Totals:	\$0.00
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ROA 115

CONFIDENTIAL

Patient Journal

Section IV - Case Information:

Case#: 18301483	Doctor (D): FOX, DANIEL	Surgeon: Reynolds, Mark	Start Time: 11:19						
ServiceDate: 2014/09/07	Assistant (A): Not Employed By Group,	* B / T / Mins: 6 / 39 / 386	Stop Time: 17:45						
Location: McLeod Regional Medical Center	Type: Inpatient Hospital								
Date	Carrier	D/A	DiagnosisCodes 1 2 3 4	CPTCode	Modifiers	Description	Amount		
2014/09/10		D	860.2	32551		Patient Billed (No Insurance)	\$3,600.00		
2015/03/09		D	860.2	32551		Sent To Collection Agency	\$-3,600.00		
2014/09/10		D	860.2	36620		Patient Billed (No Insurance)	\$240.00		
2015/03/09		D	860.2	36620		Sent To Collection Agency	\$-240.00		
2014/09/10		D	860.2	36556		Patient Billed (No Insurance)	\$460.00		
2015/03/09		D	860.2	36556		Sent To Collection Agency	\$-460.00		
				Insurance	\$0.00	Patient	\$0.00	Case Balance:	\$0.00

Patient Balance:	\$0.00
Sent Final Notice/Sent to Collections:	\$4,300.00
Patient Case Liability:	\$4,300.00

ROA 116

CONFIDENTIAL

Patient Journal

Case#: 18310750	Doctor (D): JOHNSON, KYLE	Surgeon: Winkler, Gabor	Start Time: 12:37							
ServiceDate: 2014/09/08	Assistant (A): Not Employed By Group,	* B / T / Mins: 7 / 5 / 44	Stop Time: 13:21							
Location: McLeod Regional Medical Center Type: Inpatient Hospital										
Date	Carrier	D/A	DiagnosisCodes				CPTCode	Modifiers	Description	Amount
			1	2	3	4				
2014/09/12		D	V71.4			4	37191	P4	Patient Billed (No Insurance)	\$960.00
2015/03/17		D	V71.4				37191	P4	Collection Review (Client)	\$-960.00
2015/04/20		D	V71.4				37191	P4	Collection Review (Client)	\$960.00
2015/04/20		D	V71.4				37191	P4	Sent To Collection Agency	\$-960.00
2014/09/12		D	V71.4				36620		Patient Billed (No Insurance)	\$240.00
2015/03/17		D	V71.4				36620		Collection Review (Client)	\$-240.00
2015/04/20		D	V71.4				36620		Collection Review (Client)	\$240.00
2015/04/20		D	V71.4				36620		Sent To Collection Agency	\$-240.00

Patient Balance:	\$0.00
Sent Final Notice/Sent to Collections:	\$1,200.00
Patient Case Liability:	\$1,200.00

Insurance	\$0.00	Patient	\$0.00	Case Balance	\$0.00
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ROA 117

CONFIDENTIAL



S 98
DAVIS , ARTRELL
614 BABY DRIVE
PAMPLICO SC 29583

HEALTH INSURANCE CLAIM FORM

APPROVED BY NATIONAL UNIFORM CLAIM COMMITTEE (NUCC) 02/12

PICA <input type="checkbox"/>		CASE ID: 00127256238		PICA <input type="checkbox"/>	
1. MEDICARE <input type="checkbox"/> (Medicare#)		MEDICAID <input type="checkbox"/> (Medicaid#)		TRICARE <input type="checkbox"/> (ID#/DoD#)	
CHAMPVA <input type="checkbox"/> (Member ID#)		GROUP HEALTH PLAN <input type="checkbox"/> (ID#)		FECA BLK LUNG <input type="checkbox"/> (ID#)	
OTHER <input checked="" type="checkbox"/> (ID#)		1a. INSURED'S I.D. NUMBER (For Program in Item 1)		251915570	
2. PATIENT'S NAME (Last Name, First Name, Middle Initial) DAVIS, ARTRELL LATYIA			3. PATIENT'S BIRTH DATE MM DD YY 10 20 92		SEX M <input type="checkbox"/> F <input checked="" type="checkbox"/>
5. PATIENT'S ADDRESS (No., Street) 614 BABY DRIVE			8. PATIENT RELATIONSHIP TO INSURED Self <input checked="" type="checkbox"/> Spouse <input type="checkbox"/> Child <input type="checkbox"/> Other <input type="checkbox"/>		7. INSURED'S ADDRESS (No., Street) 614 BABY DRIVE
CITY PAMPLICO		STATE SC		CITY PAMPLICO	
STATE SC		STATE SC		STATE SC	
ZIP CODE 29583		TELEPHONE (Include Area Code) (843) 601-8647		ZIP CODE 29583	
TELEPHONE (Include Area Code) (843) 601-8647		TELEPHONE (Include Area Code) (843) 601-8647		TELEPHONE (Include Area Code) (843) 601-8647	
9. OTHER INSURED'S NAME (Last Name, First Name, Middle Initial)			10. IS PATIENT'S CONDITION RELATED TO:		
a. OTHER INSURED'S POLICY OR GROUP NUMBER			a. EMPLOYMENT? (Current or Previous) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		
b. RESERVED FOR NUCC USE			b. AUTO ACCIDENT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO PLACE (State)		
c. RESERVED FOR NUCC USE			c. OTHER ACCIDENT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		
d. INSURANCE PLAN NAME OR PROGRAM NAME			10d. CLAIM CODES (Designated by NUCC)		
11. INSURED'S POLICY GROUP OR FECA NUMBER 999999			a. INSURED'S DATE OF BIRTH MM DD YY 10 20 92		
SEX M <input type="checkbox"/> F <input checked="" type="checkbox"/>			b. OTHER CLAIM ID (Designated by NUCC)		
c. INSURANCE PLAN NAME OR PROGRAM NAME DAVIS, ARTRELL			d. IS THERE ANOTHER HEALTH BENEFIT PLAN? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO If yes, complete items 9, 9a, and 9d.		
12. PATIENT'S OR AUTHORIZED PERSON'S SIGNATURE I authorize the release of any medical or other information necessary to process this claim. I also request payment of government benefits either to myself or to the party who accepts assignment below. SIGNED PATIENT SIGNATURE ON FILE DATE 09 29 14					
13. INSURED'S OR AUTHORIZED PERSON'S SIGNATURE I authorize payment of medical benefits to the undersigned physician or supplier for services described below. SIGNED SIGNATURE ON FILE					
14. DATE OF CURRENT ILLNESS, INJURY, or PREGNANCY (LMP) MM DD YY QUAL.		15. OTHER DATE MM DD YY QUAL.		16. DATES PATIENT UNABLE TO WORK IN CURRENT OCCUPATION FROM MM DD YY TO MM DD YY	
17. NAME OF REFERRING PROVIDER OR OTHER SOURCE		17a. NPI		18. HOSPITALIZATION DATES RELATED TO CURRENT SERVICES FROM MM DD YY TO MM DD YY	
19. ADDITIONAL CLAIM INFORMATION (Designated by NUCC) ANES TIME: 0044 MIN START: 00:00 STOP: 00:00					
21. DIAGNOSIS OR NATURE OF ILLNESS OR INJURY Relate A-L to service line below (24E) A. 80624 B. 86121 C. 8604 D. 78550 E. F. G. H. I. J. K. L.				22. RESUBMISSION CODE ORIGINAL REF. NO.	
23. PRIOR AUTHORIZATION NUMBER		24. A. DATE(S) OF SERVICE From MM DD YY To MM DD YY			
B. PLACE OF SERVICE		C. EMG		D. PROCEDURES, SERVICES, OR SUPPLIES (Explain Unusual Circumstances) CPT/HCPCS MODIFIER	
E. DIAGNOSIS POINTER		F. \$ CHARGES		G. PAYD OR UNITS	
H. SPST Family Plan		I. ID. QUAL.		J. RENDERING PROVIDER ID.#	
1 09 08 14 21 01930 QX ABCD 960 00 44 NPI 1952543035		2		3	
4		5		6	
26. FEDERAL TAX I.D. NUMBER 570370242		27. SSN EIN <input type="checkbox"/> <input checked="" type="checkbox"/>		28. PATIENT'S ACCOUNT NO. 42720097690G0	
29. ACCEPT ASSIGNMENT? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		30. TOTAL CHARGE \$ 96000		31. AMOUNT PAID \$ 000	
32. SIGNATURE OF PHYSICIAN OR SUPPLIER INCLUDING DEGREES OR CREDENTIALS I certify that the statements on the reverse of this form are true and correct. R SIGNED 09/29/14 DATE		33. SERVICE FACILITY LOCATION INFORMATION MCLEOD REGIONAL MEDICAL C 555 E CHEVES STREET FLORENCE SC 29501 a. 1699756221 b. 570370242		34. BILLING PROVIDER INFO & PH # (843) 777-2955 MCLEOD CRNA 555 E. CHEVES ST FLORENCE SC 29506-2617 a. 1154371433 b.	

CARRIER
PATIENT AND INSURED INFORMATION
PHYSICIAN OR SUPPLIER INFORMATION

ROA 119

G090 SIGINV #427200963 9/29/2014 Enc. 127256238 SIGNATURE CMS - 1514 9/29/2014 1 1514SIG



S98
DAVIS , ARTRELL
614 BABY DRIVE
PAMPLICO SC 29583

HEALTH INSURANCE CLAIM FORM

APPROVED BY NATIONAL UNIFORM CLAIM COMMITTEE (NUCC) 02/12

PICA CASE ID: 00127256238		PICA	
1. MEDICARE <input type="checkbox"/> MEDICAID <input type="checkbox"/> TRICARE <input type="checkbox"/> CHAMPVA <input type="checkbox"/> GROUP HEALTH PLAN <input type="checkbox"/> FECA <input type="checkbox"/> OTHER <input checked="" type="checkbox"/>		1a. INSURED'S I.D. NUMBER (For Program in Item 1) 251915570	
2. PATIENT'S NAME (Last Name, First Name, Middle Initial) DAVIS, ARTRELL LATYIA		3. PATIENT'S BIRTH DATE MM DD YY 10 20 92 SEX M <input checked="" type="checkbox"/> F <input type="checkbox"/>	
5. PATIENT'S ADDRESS (No., Street) 614 BABY DRIVE		6. PATIENT RELATIONSHIP TO INSURED Self <input checked="" type="checkbox"/> Spouse <input type="checkbox"/> Child <input type="checkbox"/> Other <input type="checkbox"/>	
CITY PAMPLICO STATE SC		7. INSURED'S ADDRESS (No., Street) 614 BABY DRIVE	
ZIP CODE 29583 TELEPHONE (Include Area Code) (843) 601-8647		CITY PAMPLICO STATE SC	
8. OTHER INSURED'S NAME (Last Name, First Name, Middle Initial)		10. IS PATIENT'S CONDITION RELATED TO: a. EMPLOYMENT? (Current or Previous) YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> b. AUTO ACCIDENT? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> PLACE (State) _____ c. OTHER ACCIDENT? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
a. OTHER INSURED'S POLICY OR GROUP NUMBER		11. INSURED'S POLICY GROUP OR FECA NUMBER 999999	
b. RESERVED FOR NUCC USE		a. INSURED'S DATE OF BIRTH MM DD YY 10 20 92 SEX M <input type="checkbox"/> F <input checked="" type="checkbox"/>	
c. RESERVED FOR NUCC USE		b. OTHER CLAIM ID (Designated by NUCC)	
d. INSURANCE PLAN NAME OR PROGRAM NAME		c. INSURANCE PLAN NAME OR PROGRAM NAME DAVIS, ARTRELL	
12. PATIENT'S OR AUTHORIZED PERSON'S SIGNATURE I authorize the release of any medical or other information necessary to process this claim. I also request payment of government benefits either to myself or to the party who accepts assignment below. SIGNED PATIENT SIGNATURE ON FILE DATE 09 29 14		13. INSURED'S OR AUTHORIZED PERSON'S SIGNATURE I authorize payment of medical benefits to the undersigned physician or supplier for services described below. SIGNED SIGNATURE ON FILE	
14. DATE OF CURRENT ILLNESS, INJURY, or PREGNANCY (LMP) MM DD YY QUAL		15. OTHER DATE MM DD YY QUAL	
17. NAME OF REFERRING PROVIDER OR OTHER SOURCE		18. HOSPITALIZATION DATES RELATED TO CURRENT SERVICES FROM MM DD YY TO MM DD YY	
19. ADDITIONAL CLAIM INFORMATION (Designated by NUCC) ANES TIME: 0118 MIN START: 00:00 STOP: 00:00		20. OUTSIDE LAB? \$ CHARGES YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
21. DIAGNOSIS OR NATURE OF ILLNESS OR INJURY Relate A-L to service line below (24E) ICD Ind. 9 A. 80624 B. 86121 C. B604 D. 78550		22. RESUBMISSION CODE ORIGINAL REF. NO.	
24. A. DATE(S) OF SERVICE From MM DD YY To MM DD YY B. PLACE OF SERVICE C. EMG D. PROCEDURES, SERVICES, OR SUPPLIES (Explain Unusual Circumstances) CPT/HCPCS MODIFIER E. DIAGNOSIS POINTER F. \$ CHARGES G. DAYS OR UNITS H. ICD-9 CODE I. IS QUAL J. REFERRING PROVIDER ID. #		23. PRIOR AUTHORIZATION NUMBER	
1 09 09 14 21 01740 QX ABCD 1440 00 118 NPI 1376850164			
2			
3			
4			
5			
6			
25. FEDERAL TAX I.D. NUMBER 570370242 SSN EIN <input checked="" type="checkbox"/>		26. PATIENT'S ACCOUNT NO. 42720096390G0	
27. ACCEPT ASSIGNMENT? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		28. TOTAL CHARGE \$ 144000	
29. AMOUNT PAID \$ 000		30. Paid for NUCC Use	
31. SIGNATURE OF PHYSICIAN OR SUPPLIER INCLUDING DEGREES OR CREDENTIALS (I certify that the statements on the reverse are true to the best of my knowledge and belief.) C 09/29/14 DATE		32. SERVICE FACILITY LOCATION INFORMATION MCLEOD REGIONAL MEDICAL C 555 E CHEVES STREET FLORENCE SC 29501 a. 1699756221 b. 570370242	
		33. BILLING PROVIDER INFO & PH # (843) 777-2955 MCLEOD CRNA 555 E. CHEVES ST FLORENCE SC 29506-2617 a. 1154371433	

CARRIER
PATIENT AND INSURED INFORMATION
PHYSICIAN OR SUPPLIER INFORMATION

Ideal Funeral Parlor, Inc.

R. Douglas Hawkins, Manager, Funeral Director / Embalmer
106 East Darlington Street
Florence, South Carolina 29506

Phone: 843.662.3581 ❖ Toll Free: 800.738.4845 ❖ Fax: 843.665.7830
www.idealfuneral.com ❖ info@idealfuneral.com

Mrs. E. B. Guile, President

Mrs. Willette J. Moore, Vice President, Secretary

Mr. Leo James

Mr. Johnny Holmes

Mr. Rufus Hawkins, Funeral Director, Director of Operations

State of South Carolina

County of Florence

Statement of Funeral Expenses Of Artrell La'Tiya Davis

Professional Services	2195.00	
Embalming	795.00	
Other Preparation	275.00	
Transfer of Remains	200.00	
Funeral Coach	310.00	
Limousine Service	620.00	
Utility Vehicle/Lead Car	400.00	
Final Disposition	495.00	
Visitation Package	130.00	
Casket	995.00	
Liner	787.50	
Printed Programs	10.00	
Death Certificates	24.00	
Grave Open/Close	550.00	
SC Sales Tax	183.00	
Total		7969.50
Payment		1000.00
Balance		6969.50

This is to certify the above is a true and accurate statement of the funeral expenses of Artrell L. Davis; that Jerome Davis, Gerald Gibbs, Kimberly Crawford and Lynett Gibbs are responsible for said expenses; that the balance is due and payable as of this 21st day of October, 2014.


Funeral Director

Sworn to and subscribed before me this day of October 21, 2014.


Notary Public for South Carolina

My Commission Expires:

May 12, 2020

ROA 121

THE SUGGS LAW FIRM

Professional Corporation
506 WEST EVANS STREET
POST OFFICE DRAWER 591
FLORENCE, S.C. 29503

B. Scott Suggs
ATTORNEY AT LAW
South Carolina Bar No.: 012896
Federal I.D. No.: 5846

March 21, 2016

Telephone: (843) 629-5050
Facsimile: (843) 629-8400
thesuggslawfirm@sc.twcbc.com
Toll Free: (855) 877-3978

HAND DELIVERY:

The Honorable Connie Reel-Shearin
FLORENCE COUNTY CLERK OF COURT
TWELFTH JUDICIAL CIRCUIT
180 N. Irby St., MSC-E
Florence, S.C., 29501

FILED
2016 MAR 23 PM 4:14
CONNIE REEL-SHEARIN
COCJ & GS
FLORENCE COUNTY, SC

RE: Estate of Artrell Davis
Docket No.: 2015-21-CP-2451

Dear Connie:

Enclosed for filing, please find one (1) original and seven (7) copies of our Coversheet and our Motion and Application for Default Judgment with attached exhibits in the above styled matter, along with a check in the amount of Twenty-Five and No/100 (\$25.00) Dollars to cover the perfunctory filing fee.

Please file the original, true certify the copies with exhibits and return the latter to my courier. My office will then contact one (1) of your assistants to schedule a hearing in this matter.

Thank you in advance for your kindness and courtesies in this matter.

With kind regards, I remain,

Sincerely yours,

THE SUGGS LAW FIRM, P.C.
BY: **B. SCOTT SUGGS**
B. SCOTT SUGGS

BSS/ss
w/enclosures
cc: File/GLF (Hand Delivery) w/enclosures
Personal Representatives (U.S. Mail) w/enclosures

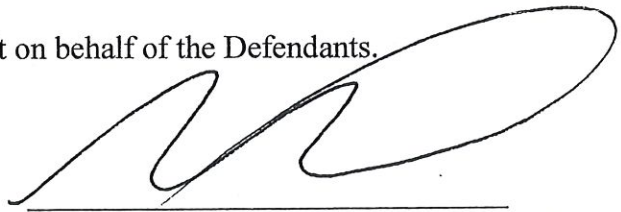
STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)
)
Estate of Artrell Davis,)
)
Plaintiff,)
)
v.)
)
Elroy Jackson and)
)
Michael Laverne Marks, Jr.,)
)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C. A. No.: 2015-CP-21-2451

NOTICE OF APPEARANCE

The undersigned hereby appears in this suit on behalf of the Defendants.



Robert C. Childs, III
Attorney for Defendants
2100 Poinsett Hwy, Suite D
Greenville, SC 29609
(864) 242-9997
Fax (864) 242-9914

Greenville, South Carolina
Date: 8/17/17

FILED
2017 AUG 21 AM 11:08
DORIS PULLO O'HARA
CCJP & GS
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY
Doris Pullo O'Hara
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.
ROA 123

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)
)
 The Estate of Artrell Davis, by and)
 through her Personal Representatives)
 Lynette Gibbs and Jerome Davis)
 Plaintiffs,)
)
 v.)
)
 Michael Laverne Marks, Jr. and Elroy)
 Jackson)
 Defendants.)

IN THE COURT OF COMMON PLEAS

C.A. No.: 2015-CP-21-0245

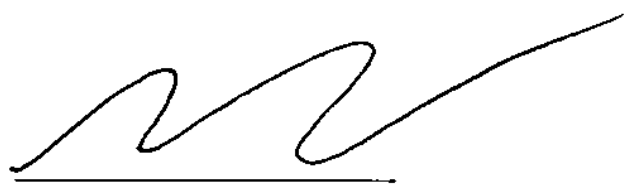
MOTION TO SET ASIDE JUDGMENT

2018 APR -2 PM 2:19
 DORIS POULSON O'HARA
 CLERK OF COURT
 FLORENCE COUNTY, SC

FILED

The undersigned, as counsel for Defendant Elroy Jackson, specifically reserving all defenses and rights under the South Carolina Rules of Civil Procedure; including, but not limited to: Lack of personal jurisdiction, improper venue, insufficiency of process, insufficiency of service of process, and failure to state a claim; pursuant to Rules 55(c) and 60(b) of the South Carolina Rules of Civil Procedure moves the Court for an order setting aside the Judgment entered against the Defendant on June 30, 2016.

This motion may be supplemented by memoranda, affidavits, and other pertinent material.



Robert C. Childs, III, #1218
 Attorney for Defendant
 2100 Poinsett Hwy, Suite D
 Greenville, SC 29609
 (864) 242-9997
 Fax (864) 242-9914

Greenville, South Carolina
 Date: 2/21/18

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)
)
 The Estate of Artrell Davis, by and through)
 her Personal Representatives Lynette Gibbs)
 and Jerome Davis)
)
 Plaintiffs,)
)
)
 v.)
)
 Michael Laverne Marks, Jr. and Elroy)
 Jackson,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS

C.A. No.: 2015-CP-21-02451

CERTIFICATE OF SERVICE

I, the undersigned Paralegal, of the law offices of Childs Law Firm, do hereby certify that I have served all counsel of record this 29th day of March, 2018, in this action with a copy of the pleading(s) herein below specified by mailing a copy of the same to the following address:

Pleadings:

Motion To Set Aside Judgment

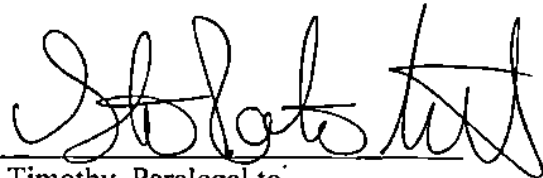
Counsel Served:

B. Scott Suggs
 506 West Evans Street
 Florence, SC 29503

W. James Hoffmeyer
 125 Warley Street
 Florence, SC 29501

2018 APR -2 PM 2:19
 DORIS POULOS O'HARA
 CCCP & GS
 FLORENCE COUNTY, SC

FILED



Stacy P. Timothy, Paralegal to
 Robert C. Childs, III, #1218

Greenville, SC

Childs Law Firm, LLC

Robert C. Childs, III
2100 Poinsett Highway, Suite D
Greenville, South Carolina 29609

www.LawyerChilds.com
Robert@LawyerChilds.com

864-242-9997
Fax - 864-242-9914

March 29, 2018

Florence County Clerk of Court
180 N. Irby Street, B11
Florence, SC 29501

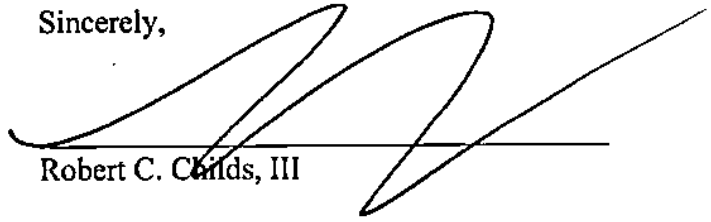
FILED
2018 APR -2 PM 2:13
DORIS POULOS O'HARA
Clerk of Court
FLORENCE COUNTY, SC

Re: The Estate of Artrell Davis, by and through her Personal Representatives Lynette Gibbs
and Jerome Davis v. Michael Laverne Marks, Jr. and Elroy Jackson
C. A. No.: 2018-CP-21-02451

Dear Sir or Madam:

Enclosed you will find the original and one copy of Defendant Jackson's *Motion to Set Aside Judgment* and *Certificate of Service* regarding the above-referenced matter. Also enclosed is a check for \$25.00 for the filing fee. Please file and return the time-stamped copy to me in the enclosed self-addressed stamped envelope.

Sincerely,



Robert C. Childs, III

RCC/spt

Enclosure

- cc: B. Scott Suggs
- W. James Hoffmeyer
- Elroy Jackson
- Jill Williams

AFFIDAVIT OF SERVICE

State of South Carolina

County of Florence

Common Pleas Court

Case Number: 2017CP2102451

Plaintiffs:

**The Estate of Atrell Davis, by and through Personal Representatives
Lynette Gibbs and Jerome Davis**

vs.

Defendants:

Elroy Jackson, and Michael Laverne Marks, Jr.

For:

Robert Childs III
Childs Law Firm, LLC
2100 Poinsett Highway
Suite D
Greenville, SC 29609

FILED
2018 MAR 12 PM 3:20
CLERK OF COURT
FLORENCE COUNTY
SOUTH CAROLINA

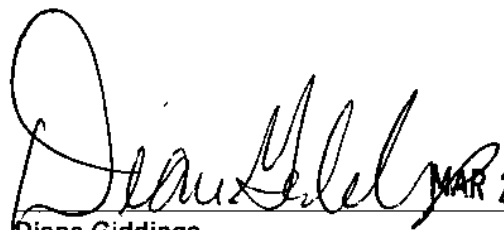
Received by Falcon Express on the 27th day of March, 2018 at 9:18 am to be served on **Elroy Jackson, 1001 W. Turner Gate Road, Pamplico, SC 29583.**

I, Diane Giddings, being duly sworn, depose and say that on the **29th day of March, 2018 at 8:09 am, I:**

SUBSTITUTE served by delivering a true copy of the **LETTER, MOTION TO SET ASIDE JUDGMENT and CERTIFICATE OF SERVICE** with the date and hour of service endorsed thereon by me, to: **Chris Brown** as **Roommate** at the address of: **1001 W. Turner Gate Road, Pamplico, SC 29583**, the within named person's usual place of **Abode**, who resides therein, who is fifteen (15) years of age or older and informed said person of the contents therein, in compliance with state statutes.

Description of Person Served: Age: 35, Sex: M, Race/Skin Color: Black, Height: 5'10, Weight: 200, Hair: Black, Glasses: N

I certify that I am now and at all times herein mentioned a citizen of the United States, over the age of eighteen, not an officer of a plaintiff corporation, not a party to nor interested in the above entitled action, has the authority to serve pleadings in the state named and is competent to be a witness therein

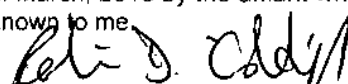

MAR 29 2018

Diane Giddings
Process Server

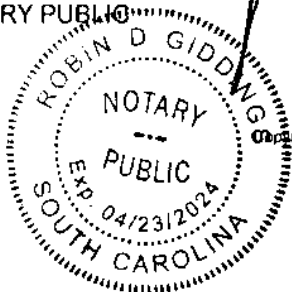
Falcon Express
238 Mathis Ferry Rd Suite 101
Mt. Pleasant, SC 29464

Our Job Serial Number: FES-2018000529

Subscribed and Sworn to before me on the 29th day of March, 2018 by the affiant who is personally known to me.



NOTARY PUBLIC



STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)
)
 Greenville Causality)
 Insurance Co., Inc.,)
)
 Plaintiff,)
)
 v.)
)
 Lynette Gibs, Jerome Davis, Elroy Jackson,)
 And Michael Laverne., Jr as Personal)
 Representatives for the Estate of)
 Artrell Davis)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 FOR THE 12TH JUDICIAL CIRCUIT

C. A. No.: 2015-CP-21-2451

AFFIDAVIT OF ELROY JACKSON

2018 MAY 21 PM 3:49
 DAVIS FOLLOS O'HARA
 COOP & GS
 FLORENCE COUNTY, SC

FILED

I, Elroy Jackson, being duly sworn, do swear and affirm as follows:

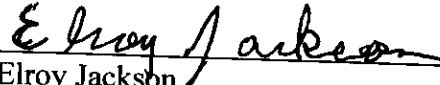
I am 51 years of age. I've lived most of my life in the area of Pamlico South Carolina. I am the defendant in the above entitled action. I was not aware that there was a \$3,000,000.00 judgment against me until Mr. Robert C. Childs, III informed me of the situation on March 29, 2018. My proper address is 1010 West Turner Gate Rd., Pimilico South Carolina. I am informed multiple documents in this file have my address as 1001 West Turner Gate but 1010 West Turner Gate has been my address for many years and at least since before this automobile accident. On September 8, 2014 my daughter Latrice McWhite borrowed my car. I am informed that my daughter allowed Michael Laverne Marks Jr., to drive my car and it was involved in an accident. I was not involved in the accident in any manner whatsoever. I am informed that two lawsuits were filed against me. I remember someone serving this or the other lawsuit on me but I assumed the insurance company was handling everything and I didn't understand what the paperwork meant. I think the process server wrote 1001 West Turner Gate Rd., Pamplico SC on his affidavit of service by mistake and after that everything went to the wrong address.

I have been informed that I was sued for negligently entrusting the vehicle to Mr. Marks. I never entrusted any vehicle to Mr. Marks. I had no knowledge whatsoever the he would likely

be in an accident and no one had ever indicated to me that he was a poor driver. I have been informed that although Mr. Marks, who was allegedly the driver and that has been sued before that charge has never been brought to a conclusion. I have been informed that a hearing was held on June 6, 2016 where I was found in default for not answering the complaint and notice of that hearing went to 1001 West Turner Gate Rd., Pamlico South Carolina. 1001 West Pamlico is not my known address. I understand that the Judge ordered a damages hearing within 60 days of the date of the order dated June 24, 2016. I have been informed a damages hearing was held on December 13, 2016. To my knowledge I was never notified of that hearing. I appears that since they had my address wrong that notice and all the other notices were returned to them as undeliverable. I am informed that the transcript of the hearing confirms that notice to me was returned. I am informed that a \$3,000,000.00 judgment was rendered against me. I've never been served with that judgment. I am informed that Mr. Childs did not receive that judgment until this month and he also had trouble getting in touch with me due to the incorrect address.


I didn't do anything wrong. I thought this was being handled by insurance. Had I known there were going to be hearings about this I would have come and told them I wasn't involved and that I didn't negligently entrust anyone with my car. I seems completely unfair that I have a \$3,000,000.00 judgment against me and the guy that crashed my car had nothing against him. It is no longer fair that I have a judgment against me when I did nothing wrong.

Further affiant sayeth not.


Elroy Jackson

SWORN to before me this

14th Day of May 2018.


Notary Public for South Carolina
My Commission Expires 12/5/2027

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

THE ESTATE OF ARTRELL DAVIS, by
and through her Personal Representatives,
Lynette Gibbs and Jerome Davis,

Plaintiffs,

-vs-

Elroy Jackson and Michael Laverne
Marks, Jr.,

Defendants

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

AFFIDAVIT OF MACK HARRELSON

Docket No.: 2015-CP-21-2451

NOW COMES THE UNDERSIGNED, after being duly SWORN or AFFIRMED,
deposes and testifies as follow:

1. My name is Mack Harrelson. I am a process server who works as an independent contractor for a large number of attorneys and law firms in this area by serving pleadings, subpoenas, and other documents which may require personal service. I have been involved in this line of work for many years.

2. I consider the *Suggs Law Firm, P.C.*, to be one (1) of my many clients. I have served papers for Mr. Suggs for many years. In fact, I was the process server who served Elroy Jackson, one (1) of the Defendants in the above-styled action. I specifically recall that I personally served Mr. Jackson with a true, certified copy of the Summons and Complaint captioned above, on August 28, 2015, as reflected in my affidavit of service. The original affidavit of service was filed with the Florence County Clerk of Court on September 22, 2015, and is attached to my affidavit.

3. Recently, Mr. Suggs provided me with an affidavit executed by Elroy Jackson, in

which he stated that his physical address was 1010 West Turner Gate Road, in Pamplico, S.C. following my review of Mr. Jackson's affidavit, I reviewed a copy of my original affidavit of service and it did, in fact, state that Mr. Jackson's physical address was 1001 West Turner Gate Road, in Pamplico, S.C.

4. This contradiction concerned me, because I take pride in my work. I do so not only because I know how important deadlines are in the practice of law but I also know that these attorneys rely upon me to do the jobs that they give me in a correct fashion. It is important to me that these attorneys and law firms know that they can continue to depend upon me to do things right the first time.

5. In order to determine if I did indeed, serve the correct Defendant, I went to Mr. Jackson's residence on March 16, 2019 at approximately 1:30 p.m. Although I served Mr. Jackson over three (3) years ago, as soon as we drove into the driveway of Mr. Jackson's mobile home, I immediately recognized it as the same mobile home where I served the original pleadings on Mr. Jackson in 2015.

6. Although I did not see any numbers on the mobile home or any other numbers indicating the address of the property, when I served Mr. Jackson in 2015, I knew the approximate location of his residence from the attorney who asked me to perfect service. There are very few homes on that road, which is a dirt road, so I knew that I was in the correct, general location.

7. We went out to the location on March 16, 2019, to simply verify that I had been at the same home in 2015, and not a different home. We were also hopeful that Mr. Jackson would be home so that I could identify him. We did not go there for any other reasons, and we especially did not go there to speak to Mr. Jackson in any way.

8. After we looked at the mobile home for a few minutes from inside the vehicle, and as we were preparing to leave, Mr. Jackson suddenly exited from his home and asked us what we wanted. As soon as he opened the clear, storm door of his mobile home and stood there on the threshold, I immediately recognized him as the same person that I had served in 2015.

9. He seemed to be nervous so I immediately identified myself and answered his question to put him at ease. I thought that this was the prudent thing to do, especially when you live or visit folks in the "country." Oftentimes, people are suspicious of strangers and their intent. Again, as we did not go out there to engage him in any conversation, I felt compelled to answer his question about what we wanted because I did not want him to think that I was a police officer or that I was on his property for some improper purpose.

10. After I explained to him why I was there, he told me that he did remember me from some years past, when I had served him originally. I did not engage him in any further conversation. He did most of the talking in our brief encounter, which lasted about three (3) minutes. He told me that his address was 1010 West Turner Gate Road, and seemed to place emphasis on that fact, as if he had been in some way "coached" to make that fact clear to me as he had stated in his affidavit. As soon as I recognized him, the home, and he finished speaking to me, we immediately left.

11. Regardless of the error on my affidavit of service as it relates to the address, the man that I spoke to did identify himself as Elroy Jackson, I did recognize him as he recognized me, and I do know with certainty that the door of the home in which he was standing, was the same mobile home where I served him a true, certified copy of the Summons and Complaint in the above-styled matter on August 28, 2015. There is no doubt in my mind that I did my job correctly,

except for the address listed on my affidavit of service. I blame the accident report for that mistake, because that was the address on the police report and the one that I had been given and there were no numbers on the home or anywhere else to confirm the exact address of his home.

Mack Harrelson
Mack Harrelson/Affiant

SWORN TO and SUBSCRIBED before me,

this 11th day of April, 2019

Heather H Horney
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 3/30/2026

CERTIFIED: A TRUE COPY

Connie Reel Steiner
CLERK OF COURT, C.C. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

THE ESTATE OF PATRELL
DAVIS, BY ANN THROUGHT
HER PERSONAL REPRESENTATIVE,
LYNETTE GIBBS,
PLAINTIFF(S),

VS.

MICHAEL LAVERNE MARKS,
JR. ANN ELROY JACKSON,
DEFENDANT(S).

RETURN OF SERVICE

CASE NUMBER: 15-CP-21-2451

2015 SEP 22 PM 3:26

JAMIE REEL STEINER
CLERK OF COURT, C.C. & G.S.
FLORENCE COUNTY, SC

FILED

THE UNDERSIGNED, Mack Harrelson, being duly sworn, says that he served the following:

CIVIL ACTION COVER SHEET # SUMMONS # COMPLAINT
CERTIFICATE OF APPOINTMENT

in the above action on: ELROY JACKSON - 1001 WEST TURNER
GATE ROAD PAMPICO, S.C. 29583
(Name of Person Served)

By delivering a copy to _____

(Plaintiff or Defendant)

Personally by delivering a copy to ELROY JACKSON
(Name of Person Left With)

A person of suitable age and discretion at the following location:

Time and Date of Service: 2:20 P M. on the
28 day of AUGUST 2015.

Was not served for the following reasons:

Mack Harrelson
Mack Harrelson

SWORN to before me this
28 day of August, 2015.

Don Max Munday
Notary Public for South Carolina

MACK HARRELSON
P.O. BOX 6826

ROA 134

ORIGINAL-AMENDED

FATAL

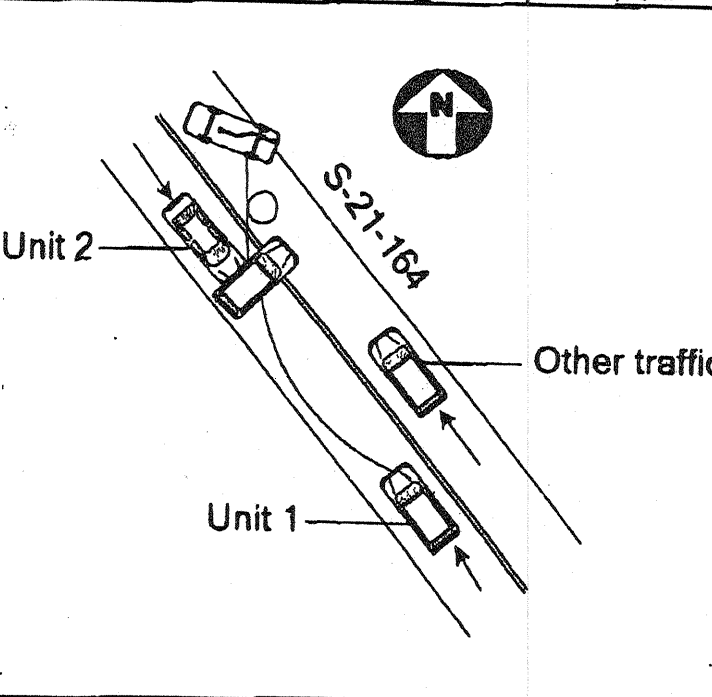
2014585400

ELECTRONICALLY FILED - APR 26 @ 2:21 AM - FLORENCE - DON MON PLEAS - CASE 2015-0212461

SOUTH CAROLINA DPS/OMS & DMV USE ONLY		Page 1 of 1	SOUTH CAROLINA TRAFFIC COLLISION REPORT FORM TR-310 (Rev. 11/2011)		# Of Units 02	<input checked="" type="checkbox"/> Amended - Attach Copy of Original Report <input type="checkbox"/> Corrected	Notified 0040	Arrived 0040		
Date 09-06-2014	Time of Collision 0030	County 21	1-Interstate 2-US Primary 3-SC Primary	4-Secondary 5-County 6-PP	Collision Location (Rt. # / Name) 184 / BIG SWAMP ROAD	0-Main Line 2-Alternate 3-Spur	6-Connection 7-Business	Miles: 4.42	Dir. N E S W	In (Near) City or Town of: FLORENCE
Lane # / Dir. 1 / 2	Distance Offset 07	Direction N E S W	1-Interstate 2-US Primary 3-SC Primary	4-Secondary 5-County 6-Other	Base Intersection (Rt. # / Name) / GLENHAVEN ROAD	0-Main Line 2-Alternate 3-Spur	6-Connection 7-Business 8-Other	GPS COORDINATES 00 00' 00.00" DEGREES MINUTES SECONDS		
R.R. Id.	From N E S W	Ramp Only 1-Entrance 2-Exit	To N E S W	1-Interstate 2-US Primary 3-SC Primary	4-Secondary 5-County 6-Other	0-Main Line 2-Alternate 3-Spur	6-Connection 7-Business 8-Other	Latitude 33 58 42.90	Longitude 79 34 08.00	

E-841095				E-841096			
Driver/Pedestrian's Full Name MARKS, JR MICHAEL LAVERNE				Driver/Pedestrian's Full Name MILES PAMELA ANN			
Unit # 01	Sex M	Race B	Street 1211 WILLIAM LANE	Unit # 02	Sex F	Race W	Street 1028 LAKE CITY HWY
DOB 07-21-1988		City, State, & Zip FLORENCE SC 29508		DOB 10-11-1972		City, State, & Zip JOHNSONVILLE SC 29555029	
State BC	Driver's License # 103674714	Class ID	Insurance Company GREENVILLE CABUALTY	State SC	Driver's License # 7008095	Class D	Insurance Company ALLSTATE
Year 1988	Body SU	Vehicle Make FORD	VIN # 1FMZU32EXWZB00046	Year 2007	Body 48	Vehicle Make DODG	VIN # 2B9KA43R27H642320
State BC	Year 2018	License Plate # JXT808	Owner's D.L. # UNKNOWN	State SC	Year 2015	License Plate # DNZ850	Owner's D.L. # UNKNOWN
Home Telephone (843) 824-8348		Owner's Full Name JACKSON ELROY		Home Telephone (843) 580-2227		Owner's Full Name MILES CHARLES EDWARD	
Bus. Telephone ()		Street 1001 W. TURNER OATE RD		Bus. Telephone ()		Street 1028 LAKE CITY HWY	
Contributed To Collision Yes		City, State, & Zip PAMPLICO SC 29563		Contributed To Collision No		City, State, & Zip JOHNSONVILLE SC 29555029	

Estimated Speed 56	Speed Limit 88	C.D.L. Req. Yes/No Summons # 2014A21	T/B 5 Req. Yes/No Code 08	Alc/Drg Info (see back): Yes/No Code 08	Towed By GOINS	Yes/No (Yes) No
Driver/Pedestrian's Full Name						
Unit #	Sex	Race	Street	Home Telephone	Owner's Full Name	
DOB		City, State, & Zip		Bus. Telephone	Street	
State	Driver's License #	Class	Insurance Company	Contributed To Collision Yes No		
Year	Body	Vehicle Make	VIN #	City, State, & Zip		
Dir. of Travel: Unit 1: (N) S E W Unit 2: (N) S E W Unit 3: N S E W						



Unit 1 Dam.	Unit 2 Dam.	Unit 3 Dam.	Prop. Dam. 1	Prop. Dam.	
\$ 2000	\$ 10000	\$	\$	\$	
Property Owner/Witness:			Property Owner/Witness:		
Address:			Address:		
State	Zip:	Phone	State	Zip:	Phone
Photo: Describe What Happened (Refer to Units by Number)					
<p>UNIT 1 WAS TRAVELING NORTH ON S-21-164. UNIT 2 WAS TRAVELING SOUTH ON S-21-164. UNIT 1, DRIVING UNDER THE INFLUENCE OF ALCOHOL, WAS ATTEMPTING TO PASS OTHER TRAFFIC ON A DOUBLE YELLOW LINE BEFORE LOSING CONTROL AND TURNING SIDWAYS STRIKING UNIT 2 HEAD-ON. UNIT 1 THEN OVERTURNED IN THE ROADWAY. AS A RESULT OF A PASSENGER IN UNIT 1 SUSTAINING GREAT BODILY INJURY, UNIT 1 DRIVER WAS CHARGED WITH FELONY DUI.</p>					
<p>9/15/2014: AMENDED TO SHOW THAT UNIT 1 PASSENGER, ARTRELL DAVIS, DIED AS A RESULT OF INJURIES SUSTAINED IN COLLISION.</p>					

NOTICE - THE TR-310 IS FOR STATISTICAL REPORTING PURPOSES ONLY AND IS A REFLECTION OF THE OFFICER'S BEST KNOWLEDGE, OPINION AND BELIEF COVERING THE COLLISION BUT NO WARRANT IS MADE AS TO THE FACTUAL ACCURACY THEREOF.

Investigating Officer's Name POSTON - LN	Rank S/CPL	Badge # T 7 9 3	Jurisdiction Code H P O 5	Review Date 09-15-2014	Reviewer's Name FT Cherry	Rank Col	Internal Agency Code 14FLT08113
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ROA 135

FATAL

2014585400

ELECTRONICALLY FILED - 2019 APR 26 9:21 AM - FLORENCE - COMMON PLEAS - CASE#2015CP2102451

Unit	Date of Birth	Sex	Race	INJ	Seat	R/SD	A.B.D.	Eject	LAI	Tran	Name	Street Address	Zip Code
01	07-21-1968	M	B	2	01	00	4	0	1	1	MARKS, JR MICHAEL LAVER	1211 WILLIAM LANE FLORENCE SC	29508
02	10-11-1972	F	W	2	01	13	1	0	1	1	MILES PAMELA ANN	1028 LAKE CITY HWY JOHNSONVIL SC	29555029
01	12-02-1996	F	B	2	03	00	4	0	1	1	JACKSON ZANDRIA	429 RIVER RD LOT 10 PAMPLICO SC	29563
01	07-26-1994	M	B	2	04	00	4	0	1	1	BARDEN REDONSEA	930A JUNE LN FLORENCE SC	29501
01	10-20-1992	F	B	4	05	00	4	0	1	1	DAVIS ARTRELL	614 BABY LN PAMPLICO SC	29563
01	08-09-1994	F	B	2	06	00	4	0	1	1	MCWHITE LATRICE	1001 TURNER GATE RD PAMPLICO SC	29568

Race A - Asian/Pacific Islander B - African American 1 - Alaskan Native or American Indian	W - Caucasian H - Hispanic U - Unk.	Injury Status 0 - Not Injured 1 - Possible Injury b) 2 or 3 Wheel Motorized Vehicle 1 - Not Trapped 2 - Extricated (Mechanical Means)	2 - Non-Incapacitating 3 - Incapacitating 4 - Fatal	Seating Loc. 01 02 03 04 05 06 07 08 09	20 - Pedestrian 30 - Trailing Unit 40 - Bus or Van (4th row or Higher) 50 - Other Enclosed Area (nontrailing) 60 - Sleeper of Cab 70 - Riding on Unit Exterior 80 - Lap 89 - Unk./NA 90 - Other Unenclosed Area (nontrailing)	Restraint/Safety Device 00 - None Used 21 - Child 11 - Shoulder belt 12 - Lap Belt Only 13 - Shoulder & Lap Belt 68 - Other 31 - Helmet 51 - Reflective Clothing 41 - Protective Pads 61 - Lighting	
Air Bag Deployment / Switch 1 - Deployed Front 2 - Deployed Side 3 - Deployed Both 4 - Not Deployed 7 - Not Applicable 8 - Deployment Unk.		Ejection 1 - Not Ejected 2 - Part, Ejected 3 - Tot. Ejected		Head Injury 1 - Yes 2 - No 3 - Freed (non-mech.) 4 - Not Applicable		Transported to Medical Facility 1 - Yes 2 - No 3 - Unknown	
1 - Switch in Off Position 2 - Switch in On Position		3 - No Switch 9 - Unknown		7 - Not App. 9 - Unk.		By: 1-EMS 2-Police 3-Other 9-Unk.	

Non-Collision 01 - Cargo Equip Loss or Eff 02 - Cargo Median/Center 03 - Downhill Runaway	04 - Equipment Failure 06 - Piral/Explosion 07 - Jackknives	08 - Overrun/Retover 09 - Run off Road Left 10 - Run off Road Right 11 - Separation of Units 12 - Split (Two-Wheeled Veh.) 13 - Other Non-collision 18 - Unk. Non-collision	Collision: Not Fixed 20 - Animal (Deer Only) 21 - Animal (All Other) 22 - Motor Veh. (In Transport) 23 - Motor Veh. (Stopped) 24 - Motor Veh. (Other Roadway) 25 - Motor Veh. (Parkad) 26 - Pedalcycle	Collision: Fixed Object 27 - Pedestrian 28 - Railway Veh 29 - Motor Veh. (Mainl. Equip.) 30 - Other Movable Object 31 - Unk. Movable Object	27 - Embankment 28 - Equipment 29 - Fence 30 - Guardrail End 31 - Guardrail Face 32 - Highway Traffic Sign Post 33 - Impact/Retractor/Crash Cushion 34 - Light/Luminaire Support	35 - Mail Box 36 - Median Barrier 37 - Overhead Sign Support 38 - Other (Post, Pole, Support, Etc.) 39 - Other (Wall, Building, Tunnel, Etc.) 40 - Tree 41 - Utility Pole 42 - Work Zone Maint. Equipment
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Manner of Collision (Struck Veh.) 1 - 00-Not Coll. w/ Motor Veh. 2 - 10-Rear End 3 - 20-Head On	30-Rear-to-Rear 41-Angle (↘/↗)	40-Sideswipe Same Dir. 50-Sideswipe Opposite Dir. 60-Backed Into 70-Backed Into 80-Unknown	1st / Most Deformed Area 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100
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Vehicle Type: 17 01-Automobile 20 12-Pickup Truck 3 13-Truck Tractor 14-Other Truck	18-Full Size Van 19-Mini Van 25-Motorcycle 28-Other Motorcycle	27-Pedalcycle 38-Animal Drawn Veh 39-Animal (Ridden) 41-Pedestrian 51-Train	81-School Bus 82-Passenger Bus 88-Other 99-Unk. (Hit and Run Only)
Vehicle Use Code 01 01-Personal 20 02-Driver Training 3 03-Construction/Maint.	04-Ambulance 05-Military 09-Transport Passengers 10-Transport Property	06-Farm Use 09-Wrecker or Tow 10-Police 11-Government	12-Fire Fighting 13-Logging 18-Other 41-Pedestrian
Vehicle Attachment 1 1-None 2 2-Mobile Home 3 3-Semi-Trailer	4-Utility Trailer 5-Farm Trailer 6-Trailer w/Boat 7-Camper Trailer	8-Towed Motor Vehicle 9-Petroleum Tanker A-Lowboy Trailer B-Autocarrier Trailer	C-Other Tanker D-Flat Bed E-Twin Trailers F-Other
Action Prior to Impact 108 01-Backing 208 02-Changing lanes 3 03-Entering traffic lane 4 04-Leaving traffic lane 5 05-Making U-Turn 6 06-Movements Essentially Straight Ahead 7 07-Overtaking/passing	(Vehicle) 06-Parked 09-Slowing or Stopped in traffic 10-Turning left 11-Turning right 18-Other	(Non-Motorist) 21-Approaching/Leaving Vehicle 22-Entering/Crossing Location 23-Playing/Working on Vehicle 24-Pushing Vehicle 26-Standing 28-Walking, Playing, Cycling 27-Working	1st / Most Deformed Area 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

Weather Condition 1 1-Clear (no adverse conditions) 2 2-Rain 3 3-Cloudy 4 4-Sleet, Hail 5 5-Snow 6 6-Fog, Smog, Smoke 7 7-Blowing Sand, Oil, Dirt or Snow 8 8-Severe Crosswinds 9 9-Unk.	Light Condition 3 3-Dusk 4 4-Dark (Lighting Unspecified) 5 5-Dark (Street Lamp Lit)	02-Fishing Traffic Signal 11-RR (X-bucks, Lights & Gates) 12-RR (X-bucks & Lights) 13-RR (X-bucks Only)	21-Officer or Flagman 22-Oncoming Emergency Vehicle 31-Pavement Markings (only) 41-Stop Sign 42-School Zone Sign
1-Yes, Directly 2-Yes, Indirectly 3-No 4-Unknown	5-Under-Compartment Intrusion 6-Under-No Intrusion 7-Under-Unknown	8-Given - Pending 9-None 10-Refused	1-Under-Compartment Intrusion 2-Over-MV in transport 3-Over-Other Vehicle 4-None 5-None 6-None 7-None 8-None 9-None

1-1-000 2-2-000 3-3-000	1-Two-way, Not Divided 2-Two-way, Divided, Unprotected Median 3-Two-way, Divided, Barrier 4-One-Way 5-Other	6-Functional Damage 7-Disabling Damage 8-Not Applicable	1-Under-Compartment Intrusion 2-Over-MV in transport 3-Over-Other Vehicle 4-None 5-None 6-None 7-None 8-None 9-None
1-1-000 2-2-000 3-3-000	1-1-000 2-2-000 3-3-000	1-1-000 2-2-000 3-3-000	1-1-000 2-2-000 3-3-000

Primary Contributing Factors 18 01-Disregarded Signs, Signals, Etc. 02-Distracted/Inattention 03-Driving Too Fast for Conditions 04-Exceeded Authorized Speed Limit 05-Failed to Yield Right of Way 06-Ran off Road 07-Fatigued/Asleep 08-Followed Too Closely	09-Made an Improper Turn 10-Medical Related 12-Aggressive Operation of Vehicle 13-Over-correcting/Over-steering 14-Swerving to Avoiding Object 15-Wrong Side or Wrong Way 16-Under the Influence 17-Vision Obscured (Within Unit) 18-Improper Lane Usage/Change 19-Cell Phone 20-Texting 28-Other Improper Action	Roadway 30-Debris 31-Non-highway Work 32-Obstruction in Roadway 33-Road Surface Condition (i.e., Wet) 34-Ruts, Holes, Bumps 35-Shoulders (None, Low, Soft, High) 36-Traffic Control Device (i.e., Missing) 37-Work Zone (Const./Maint./Utility) 38-Worn Travel/Polished Surface	Non-Motorist 46-Other 50-Interruption 51-Lying &/or Illegally in Roadway 52-Failure to Yield R. of W. 53-Not Visible (Dark Clothing) 54-Disregard Signs, Signals, Etc. 55-Improper Crossing 56-Denial 57-Wrong Side of Road 58-Other 59-Under the Influence 67-Other Person Under Influence	Environmental 60-Animal in Road 61-Glare 62-Weather Cond. 63-Weather Cond. 64-Other 65-Other	68-Obstruction 69-Weather Cond. 70-Brakes 71-Steering 72-Power Plant 73-Tires/Wheel 74-Lights 75-Signals 76-Window/Shield 77-Restraint System 78-Truck Coupling 79-Cargo 80-Fuel System 81-Other 82-Other
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ROA 136

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)
)
 The Estate of Artrell Davis, by and)
 through Personal Representatives)
 Lynette Gibbs and Jerome Davis)
 Plaintiffs,)
)
 v.)
)
 Michael Laverne Marks, Jr. and Elroy)
 Jackson)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 TWELFTH JUDICIAL CIRCUIT

C.A. No.: 2015-CP-21-02451

**MOTION TO ALTER/AMEND AND
 MOTION FOR A NEW TRIAL**

YOU WILL PLEASE TAKE NOTICE that the Defendant, Elroy Jackson by and through his undersigned counsel, will move before the Honorable Special Referee, James W. Peterson as it is convenient to the Court and counsel for an Order altering, amending or granting relief from his order dated October 7, 2019 pursuant to the South Carolina Rules of Civil Procedure Rule 59 and Rule 60(a) as follows;

1. The hearing court erred in failing to consider that the Defendant never received any notice of the damages hearing.
2. The hearing court failed to consider that the certified mailing to the Defendant was returned as undeliverable.
3. The hearing court erred in consider that the process server in his Affidavit admits that he made a mistake about the Defendants address
4. The hearing court erred in considering the statement of Plaintiff’s counsel that the regular mailing did not come back, “as far as I know” when the court refused to consider evidence outside the Affidavits submitted by the parties. (Tr.p. 7, I. 4-5).
5. The hearing court erred in failing to require Plaintiff’s counsel to disclose the

- address at which they served the Defendant.
6. The hearing court erred in considering the irrelevant evidence of the Defendant's insurance carrier.
 7. The hearing court erred in concluding that there was no evidence presented that indicated the Plaintiff's know or should have known that 1001 West Turner Gate Road was not the correct address of the Defendant, when the evidence was that the certified mailing to the Defendant was returned as "undeliverable" and the Affidavit of the process server clearly implied he was mistaken about the Defendant's address when he put it on his Affidavit of Service of the Summons and Complaint.
 8. The hearing court erred in considering the address specified in the accident report as evidence of the last known address of the Defendant.
 9. The hearing officer erred in failing to find that due process requires that the Defendant be afforded some reasonable notice of the damages hearing even though he is in default of his answer and he should not be liable for the mistakes of agents of the Plaintiff in verifying his proper address for mailing.
 10. For such other and further reasons as may hereafter be set forth.

Wherefore, the Defendant requests that the hearing court alter, or amend its decision and grant him relief from the Default Judgment amount.

Greenville, South Carolina
Date: 10/11/2019

s/Robert C. Childs III
Robert C. Childs, III, #1218
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STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

C.A. No.: 2015-CP-21-02451

The Estate of Artrell Davis, by and through
Personal Representatives Lynette Gibbs and
Jerome Davis,

Plaintiffs,

v.

Michael Laverne Marks, Jr. and Elroy Jackson,

Defendants.

**AMENDED MOTION AND
MEMORANDUM
MEMORANDUM IN SUPPORT OF
DEFENDANTS' AMENDED MOTION
TO ALTER/AMEND AND MOTION
FOR A NEW TRIAL**

**TO: HIS HONORABLE SPECIAL REFEREE, JAMES W. PETERSON, JR., AND THE
PLAINTIFFS BY AND THROUGH THEIR COUNSEL.**

The Defendant, Elroy Jackson by and through undersigned counsel, files this Amended Motion and Memorandum in Support of his Amended Motion to Alter/Amend and Motion for a New Trial. For the reasons set forth herein, Defendant Jackson requests that his motion be granted and that the Court alter, amend, or grant relief from the Court's order dated October 7, 2019 and filed and served on October 14, 2019 pursuant to the South Carolina Rules of Civil Procedure Rule 59 and Rule 60(a). This amends the motion filed on October 11, 2019 which was filed prior to the filing of the Order on this matter on October 14, 2019.

AMENDED MOTION TO ALTER, AMEND, RECONSIDER, GRANT RELIEF

THEREFORE, YOU WILL PLEASE TAKE NOTICE that the Defendant Elroy Jackson by and through his undersigned counsel, will move before the Honorable Special Referee James W. Peterson, Jr. as is convenient to the Court and counsel for an Order altering, amending or

granting relief from his order dated October 7, 2019 pursuant to the South Carolina Rules of Civil Procedure Rule 59 and Rule 60(a) as follows;

1. The hearing court erred in failing to consider that the Defendant never received any notice of the damages hearing.
2. The hearing court failed to consider that the certified mailing to the Defendant was returned as undeliverable.
3. The hearing court erred in failing to consider that the process server, in his affidavit admits that he made a mistake about the Defendant's address.
4. The hearing court erred in considering the statement of Plaintiff's counsel that the regular mailing did not come back "as far as I know" when the court refused to consider evidence outside the affidavits submitted by the parties. (Tr.p.7, l. 4-5,).
5. The hearing court erred in failing to require Plaintiff's counsel to disclose the address at which they served the Defendant.
6. The hearing court erred in considering irrelevant evidence of the Defendant's insurance carrier.
7. The hearing court erred in considering the accident report.
8. The hearing court erred in concluding that there was no evidence presented that indicates the Plaintiff's knew or should have known that 1001 West Turner Gate Road was not the correct address of the Defendant, when the evidence was that the certified mailing to the Defendant was returned "undeliverable" and the affidavit of the process server clearly implied that he was mistaken about the Defendant's address when he put it on his Affidavit of Service of the Summons and Complaint.

9. The hearing court erred in considering the address specified in the accident report as evidence of the last known address of the Defendant.
10. The hearing officer erred in failing to find that due process requires that the Defendant be afforded some reasonable notice of the damages hearing even though he is in default of his answer and he should not be liable for the mistakes of the agents of the Plaintiff in verifying his proper address for mailing.
11. For such other and further reasons as may hereafter be set forth.

FACTS/CASE HISTORY

This case arises out of an automobile accident involving two vehicles, which occurred on September 6, 2014 on Big Swamp Road (S-21-164) in Florence County, South Carolina. Artrell Davis, deceased, was a passenger in the vehicle operated by Defendant Michael Laverne Marks, Jr. and owned by Defendant Elroy Jackson. Plaintiffs filed their Summons and Complaint on August 25, 2015 for a wrongful death and survival action. Defendant Jackson, who was served with the Summons and Complaint on August 28, 2015, failed to file an Answer. Plaintiffs filed a Motion/Application for Default Judgment against Defendant Jackson on March 23, 2016, and Default Judgment was entered against Defendant Jackson on June 24, 2016. The matter was referred to this Court for the purpose of holding a damages hearing.

A damages hearing was scheduled before this Court on December 13, 2016. Plaintiffs allegedly provided written notice to Defendant Jackson. Defendant Jackson did not appear at the hearing. At conclusion of the hearing, this Court entered judgment in favor of the plaintiffs against Defendant Jackson in the amount of Three Million and no/100 (\$3,000,000.00) Dollars on March 7, 2017. Defendant Jackson filed a Motion to Set Aside Judgment and a hearing was held on April 25, 2019. The Court denied Defendant Jackson's Motion in an Order dated

October 7, 2019. Defendant Jackson now moves the Court to alter, amend, or grant relief from the Court's Order denying the defendant's Motion to Set Aside Judgment.

ANALYSIS

The Defendant Jackson seeks relief from the Order dated October 7, 2019, denying the defendant's Motion to Set Aside Judgment. Defendant Jackson does not seek to set aside default, but he requests that the judgment establishing damages be set aside and he seeks to have a new hearing on damages scheduled. In addition to the factual errors in the Court's Order, Defendant Jackson has shown that he was never given notice of the damages hearing, which is required under Rule 55(b) of the South Carolina Rules of Civil Procedure for hearings on unliquidated damages. Rule 55(b) specifically provides that "[p]ursuant to Rule 5(a), notice of any trial or hearing on unliquidated damages shall also be given to parties in default by first class mail to the last known address of such party whether or not such party has appeared in the action." As this case involves unliquidated damages, Defendant Jackson was entitled to a notice by first class mail to his last known address. The intent of the Rule is that defendant receive notice.

Before the hearing on damages took place, the plaintiffs mailed the Notice of Hearing to the wrong address. The Court in its October 7, 2019 Order determined that the Plaintiffs mailed the notice to the correct address based upon all of the information available to them at the time, which was two sources of information. The first source was the South Carolina Traffic Collision Report prepared as a result of the accident, which is the subject of this lawsuit. The second source is the Return of Service Affidavit executed by Mack Harrelson when he served the Summons and Complaint on Defendant Jackson. Both sources list Mr. Jackson's address as "1001 West Turner Gate Road, Pamplico, SC 29583," when Mr. Jackson's actual address is "1010 West Turner Gate Road, Pamplico, SC 29583."

Rule 55(b)(2) states that “notice of any trial or hearing on unliquidated damages shall be given to parties in default by first class mail to the last known address of such party whether or not such party has appeared in the action.” Rule 55(b)(2), South Carolina Rules of Civil Procedure. In its Order denying defendant’s Motion to Set Aside Judgment, the Court found that “1001 West Turner Gate Road, Pamplico, SC 29583” was the last known address of Mr. Jackson, and therefore, the plaintiffs properly provided Defendant Jackson with notice of the damages hearing. However, cases in South Carolina show that mailing notice to the wrong address is inadequate notice for a damages hearing.

In *McCall v. IKON*, 363 S.C. 646, 611 S.E. 2d 315 (Ct. App. 2005), the Court of Appeals determined a notice of damages hearing inadequate when the plaintiff mailed the notice to one of the defendant’s former office location. In that case, the plaintiff sent one letter of notice addressed to both defendants, IKON and Computer Educational Services Corporation (“CESC”). Before the damages hearing, CESC purchased IKON’s education business and moved into IKON’s office location. The plaintiff mailed the letter to IKON’s former office location, which was CESC’s location at the time of notice. The Court of Appeals found that this notice of a damages hearing was inadequate, stating that written notice should be given to each party. The Court emphasized the fact that one letter was sent to both defendants. However, it is important to note that the Court found notice inadequate when the plaintiff in that case mailed the letter to one of the defendant’s former office location. Addressing one letter to two distinct parties “sharply diminishes the likelihood that both will actually receive notice, as such a method necessarily depends upon one of the parties ‘passing along’ the notification to the other. The rules of service are designed to eliminate the need for such contingencies.” *McCall*, 363 S.C. at 655.

Also, the hearing court erred in considering the South Carolina Collision Report as S.C. Code 56-5-1340 renders all accident reports “confidential and prohibits their “use” as evidence in any trial, civil or criminal arising out of an accident. See *Ellison v. Pope*, 348 S.E. 2d 367, 290 S.C. 100 (S.C. App 1986) Use of this report is expressly barred by 56-5-1340. *Branham v. Leaphart*, 428 S.E. 2d, 707, 311 S.C. 231 (S.C. 1993). Therefore, the Plaintiff had only one address to rely upon, the admittedly incorrect Affidavit of Service of the process sever.

Similarly, sending the notice to the wrong address greatly diminishes the likelihood that a party receives notice. While the *McCall* case highlights the fact that only one notice letter was sent to the defendants, overall the *McCall* case found that notice was inadequate when the plaintiff sent a letter to the defendant’s former office location. Another Court of Appeals case found notice adequate under Rule 5 of the South Carolina Rules of Civil Procedure when the notice was sent to the defendant’s former address. See *S.C. Dep’t of Soc. Servs. v. Johnson*, 386 S.C. 426 (Ct. App. 2009). In that opinion, the Court emphasized the fact that the defendant was statutorily obligated, under S.C. Code § 63-17-450, to update his address and he failed to do so making the notice adequate. *Id.* Here, the defendant had no reason to correct his address because he had been properly served with the summons and complaint.

In the instant case, the plaintiff sent a notice letter to Defendant Jackson’s wrong address. The process server stated in his affidavit, “Regardless of my error on my affidavit of service as it relates to the address...” Therefore, this was an address the Plaintiff knew or should have known as incorrect. This requires a similar reliance on the notification being passed along to the defendant. Therefore, sending the notice to the wrong address could not be considered adequate notice given to the defendant.

Courts in South Carolina have determined that the requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review in the civil context. *See S.C. Dep't of Soc. Servs. on Behalf of State of Texas v. Holden*, 319 S.C. 72 (1995). Additionally, "it is fundamental that no judgment or order affecting the rights of a party to the cause shall be made or rendered without notice to the party whose rights are affected." *Tryon Fed. Sav. & Loan Ass'n v. Phelps*, 307 S.C. 361, 362 (1992) (citing *Insurance Co. of North America v. Hyatt*, 290 S.C. 159 (1986)). In *Tryon Federal Savings & Loan Association v. Phelps*, the Supreme Court remanded the case to determine whether the appellants received notice that the master-in-equity's reference was with finality. *Id.* In this case, Defendant Jackson was never given notice and an opportunity to be heard in a meaningful way in the unliquidated damages hearing.

Finally, Courts in other states have found notice inadequate when the defendant was given notice of an initial petition, but then did not receive notice of the default judgment motion due to plaintiff sending the motion to the wrong address. *See Cruz-Morales v. Swift Beef Co.*, 275 Neb. 407 (2008); *Jones v. Lindsey*, 114 Cal.App.2d 237, 250 P.2d 153 (1952). Therefore, this court incorrectly ruled that the Defendant received proper notice.

CONCLUSION

For the reasons set forth above, Defendant Jackson requests that the Court alter, amend, or grant relief pursuant to Rule 59 and Rule 60(a) of the South Carolina Rules of Civil Procedure from the Court's October 7, 2019 Order denying defendant's Motion to Set Aside Judgment.

Greenville, South Carolina
Date: 10/18/2019

s/Robert C. Childs III
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IN THE STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
FOR THE 12TH JUDICIAL CIRCUIT
CASE NO: 2015-CP-21-02451

ESTATE OF ARTRELL DAVIS, by and
through her Personal Representatives
LYNETTE GIBSS AND JEROME
DAVIS,

Plaintiffs,

v.

ELLROY JACKSON AND MICHAEL
LAVERNE MARKS, JR.,

Defendant.

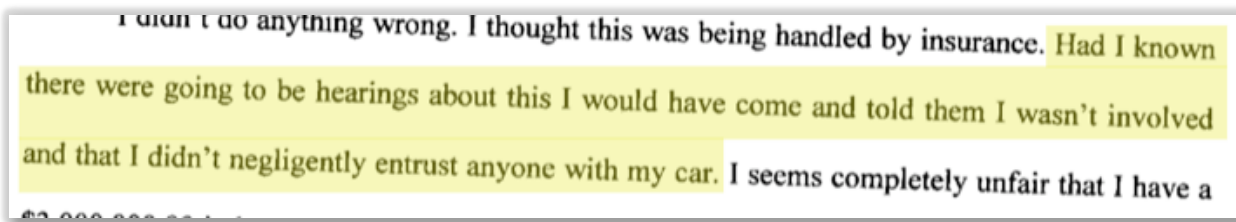
**PLAINTIFF’S MEMORANDUM IN
OPPOSITION TO DEFENDANT
ELROY JACKSON’S AMENDED
MOTION TO ALTER OR AMEND
FILED OCTOBER 21, 2019**

TO: THE HONORABLE COURT AND ALL COUNSEL OF RECORD

THE ISSUE IS MOOT

Before getting into the details of why Defendant is wrong, it is worth noting that Defendant’s motion should be denied because the issue is moot. It is moot because Defendant has already told this Court in a sworn affidavit everything he would have done had he appeared at the damages hearing, and what Defendant wanted to do would not have changed the outcome at all.

Defendant did not say that he would have hired a lawyer to challenge Plaintiff’s damages evidence, which would have been permissible (though fruitless, as described in **Section V** below). Nor did he say that he would have challenged Plaintiff’s damages himself, *pro se* (also permissible). Nor did he say that he would have insisted that his insurance company get him a lawyer to challenge damages (also permissible).



Instead, the only thing Defendant says he would have done is the one thing that a defaulting defendant is forbidden to do – offer evidence to contest liability. (Jackson Aff.).

“A defendant in default admits liability but not the damages.” *Wells Fargo Bank, N.A. v. Marion Amphitheatre, LLC*, 408 S.C. 87, 90, 757 S.E.2d 557, 558 (Ct. App. 2014); *see also, Limehouse v. Hulsey*, 404 S.C. 93, 117, 744 S.E.2d 566, 579 (2013) (holding that a defaulting defendant’s participation is limited “to cross-examination and objection to the plaintiff’s evidence.”).

Accordingly, even if everything had gone exactly as Defendant would have preferred with respect to mailing of the notice of the hearing, the outcome would have been exactly the same because, as a matter of law, this Court could not have let Defendant do the one thing he says he would have done.

In the interest of judicial economy, Plaintiff respectfully suggests that the Court may stop reading right now and deny Defendant’s motion as moot. However, if the Court needs more reasons to deny, they are described below.

**EVEN IF THE ISSUE WERE NOT MOOT,
DEFENDANT’S MOTION SHOULD STILL BE DENIED.**

This Court got it right the first time. This is *Defendant’s* motion to alter or amend. Accordingly, the burden is on *Defendant* to show how the Court erred the first time. It is not Plaintiff’s burden to show that the Court got it right. This Court has already determined that notice of the default damages hearing was properly served on Defendant pursuant to Rule 55(b)(2), SCRCF, which provides that service of the hearing notice shall “be given to parties in default by first class mail to the last known address of such party.” Therefore, in order to prevail, Defendant must show that notice was *not* mailed to him at his last known address. Again, at this stage, it is Defendant’s burden to show that mailing did *not* happen; it is not Plaintiff’s burden to show that it did. Defendant has not met his burden.

To support his allegation of error, Defendant makes three main assertions:

1. That notice was not mailed to the address where Defendant actually lived.
2. That Defendant did not actually receive the notice.
3. That Plaintiff should have known that the address used was incorrect.

None of that matters. Defendant spent the majority of his time during the April 25, 2019 hearing focusing on these three arguments. Defendant's Rule 59 motion is likewise focused on these three arguments. Defendant's focus is misplaced.

Even if Defendant had evidence and could prove that all three of the above assertions are true, it would not matter at all, because all three are legally irrelevant. They are irrelevant because Rule 55(b)(2) does not require any of these things. Accordingly, even if Defendant could prove them, it would not change the outcome.

In contrast, the one thing that Defendant must do in order to prevail is the one thing that Defendant did not do and cannot do – i.e. come forward with evidence showing that Plaintiff did not mail notice to Defendant at his last known address.

This memorandum begins with **Sections I - III** which explain how each of Defendant's three main assertions set forth above are irrelevant. It continues in **Section IV** by refuting each of Defendant's ten specific assignments of error. And finally, it concludes in **Section V** by showing how, even if Defendant were right, the error is harmless.

I. It does not matter if notice was not mailed to the address where Defendant actually lived.

The plain language of Rule 55(b)(2) is clear – hearing notice shall “be given to parties in default by first class mail to the *last known address* of such party.” Rule 55(b)(2), SCRCP (emphasis added). The rule does not say “current address,” a term which appears in at least twenty-six other rules and statutes. See, e.g., Rule 8, SCRFC. (“The notification shall include the

attorney's *current address*") (emphasis added).¹ Similarly, the term "last known address" appears in eighteen court rules and 125 statutes.²

Because both terms – "last known address" and "current address" – appear in the rules of court, the drafters' use of one instead of the other is presumed to be intentional. *See CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) ("[W]e must read the statute so 'that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous'"); *Maxwell v. Genez*, 356 S.C. 617, 620, 591 S.E.2d 26, 27 (2003) (The same canons of construction apply to Rules of Court).

Clearly, the drafters know that "last known address" and "current address" mean two different things. *See, Soliman v. Gonzales*, 419 F.3d 276, 283 (4th Cir. 2005) ("Where Congress has utilized distinct terms within the same statute, the applicable canons of statutory construction require that we endeavor to give different meanings to those different terms."). Defendant has not come forward with any authority for the proposition that "last known address" means anything other than what the words plainly say. *Steinke v. S.C. Dep't of Labor, Licensing & Regulation*, 336 S.C. 373, 393–94, 520 S.E.2d 142, 152 (1999) ("in construing statute, words must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand statute's operation."). Plaintiff was required to follow the rule as written, not as Defendant might prefer it had been written.

¹ *See also*, S.C. Code Sections 11-35-3030; 24-21-5; 50-5-550; 16-3-1555; 39-57-60; 11-1-120; 63-19-2050; 62-5-303; 27-32-310; 29-5-440; 7-5-330; 33-31-1707; 57-5-1660; 17-22-950; 23-23-150; 62-5-403; 63-9-730; 62-5-402; 43-35-45; 15-3-20; 33-1-410; 14-1-150; 15-3-530; Rule 20, SCACR; Rule 8.5, RPC (of Rule 407, SCACR).

² Rules 4, 5, 60, and 77, SCRCP; Rule 8, SCRMC; Rules 2 and 17, SCRFC; Rule 502, SCACR, Judicial Disciplinary Enforcement, Rule 14; Rule 413, SCACR, Lawyer Disciplinary Enforcement, Rule 14; Rules 5 and 54, SCRALC; Rules 262, 504, 510, and 626, SCACR; Part 4, App. G, and App. D, SCACR. A Westlaw search reveals 125 statutes as well.

While the plain meaning of the words used is enough to decide this issue, there are also cases on point. *See, e.g., NCNB S.C. v. Floyd*, 303 S.C. 261, 264, 399 S.E.2d 794, 795–96 (Ct.App.1990) (holding service was proper under Rule 5, which also uses the term “last known address,” when a bank mailed its notices to a defendant's last known address and the defendant moved “from place to place” but did not provide the address where he could be located).

In addition to “last known address” being the plain meaning of the rule, the rule makes sense. Recall that Rule 55(b)(2) applies to service on persons who have *already been served with the lawsuit*. Accordingly, those folks *know* that they are in a lawsuit. All they have to do to make sure that their “last known address” reflects their “current address” is to update their address with the clerk of court. It is that simple. It is also required. However, Defendant has not come forward with any evidence that he ever did this.³

By the time Plaintiff moved for an entry of default judgment, Defendant been involved in this lawsuit for seven months. There is no evidence that in all that time he let the clerk of court know what his actual current mailing address was. Accordingly, if Defendant’s “last known address” was not where he actually lived, he has no one but himself and his insurance company to blame. *NCNB S.C. v. Floyd*, 303 S.C. 261, 264, 399 S.E.2d 794, 795–96 (Ct.App.1990). Although not relevant to the Court’s decision in this matter, it is worth noting that Defendant’s insurance company was kept well-informed of the status of this case. If the insurance company had provided a defense as it was contractually obliged to do, none of this would have happened.

³ In addition, Defendant has not come forward with any authority requiring Plaintiff to check to see if the “last known address” was correct in the past either. It is not even clear how such a check would be possible – people move, houses burn down, etc. Such a check is a fool’s errand that the law does not require.

II. It does not matter if Defendant did not actually receive the notice.

As described above, notice under Rule 55(b)(2) is for people, like Defendant, who were *already* served with a lawsuit. Not only do such folks have numerous ways to stay current, they are required to do so. Indeed, our appellate courts “have long held [that] a party has a duty to monitor the progress of his case.” *Paul Davis Sys., Inc. v. Deepwater of Hilton Head, LLC*, 362 S.C. 220, 225, 607 S.E.2d 358, 361 (Ct. App. 2004) (internal quotations omitted). Moreover, “[l]ack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney.” *Hill v. Dotts*, 345 S.C. 304, 310, 547 S.E.2d 894, 897 (Ct. App. 2001).

Because people who know that they have been sued have myriad opportunities to stay current, the law does not require that they actually receive notice. *Schleicher v. Schleicher*, 310 S.C. 275, 277, 423 S.E.2d 147, 148 (Ct. App. 1992) (service is effective “when the notice is properly mailed, *regardless of its receipt by the addressee*; in such case the risk of miscarriage or failure to deliver is on the addressee.”) (emphasis added) (citing 66 C.J.S. *Notice* § 18e, at 664 (1950)). In fact, another option for service under Rule 5(b)(1), which applies to documents other than notice of a damages hearing, is simply to “leav[e] it with the clerk of court” – a method which stands almost a zero percent chance of achieving actual delivery to the defendant. Rule 5(b)(1), SCRPC.

Defendant could have done any number of things to make sure he received actual notice. For example, Defendant could have: retained an attorney; alerted his insurance company; updated his address with the clerk of court; checked the public index online; visited the clerk’s office in person; or even called Plaintiff’s counsel. Defendant did none of these things.

Defendant has not come forward with any evidence at all to show that he did anything at all to monitor the progress of his case as he was required to do during the seven months between the time he was first served and the time Plaintiff moved for a default judgment.

The law is clear that service is effective the moment the notice is mailed to Defendant's last known address, "*regardless of its receipt by the addressee.*" *Schleicher v. Schleicher*, 310 S.C. 275, 277, 423 S.E.2d 147, 148 (Ct. App. 1992) (emphasis added). Accordingly, Defendant's assertion that he did not receive the letter, even if true and supported by evidence, is legally irrelevant.

III. It does not matter whether Plaintiff should have known that the address used was incorrect (if it was).

Defendant has not presented any evidence that Plaintiff should have known that the address used was not where Defendant actually currently lived. Likewise, Defendant has not presented any evidence that the notice letter was returned (and Plaintiff denies that it was returned). Again, this is Defendant's motion, so it is Defendant's burden to come forward with evidence. He has not.

Even if there was evidence that the notice letter had been returned, it would not matter. Return of a letter shows what? It shows two things at best: (1) that the addressee did not get the letter, and (2) that the address used is not the addressee's current address. Well, so what? As discussed above, these are exactly the two things that the law *does not require*: (1) use of the current address (See **Section I**), or (2) actual delivery (See **Section II**).

Accordingly, return of the notice letter, even if true and supported by evidence, shows nothing at all that is legally relevant. Moreover, Defendant has not come forward with any authority at all for the proposition that Plaintiff, if he ever did receive the letter back, must then engage on some sort of scavenger hunt to find the defaulting Defendant's new address.

Although not necessary to the Court's decision, one must wonder what the result of a scavenger hunt for Defendant's actual current address would be, in light of the fact that Defendant himself appears not to know where he lives. For example, Defendant swears in his affidavit that:

- "I've lived most of my life in the area of **Pamlico** South Carolina." (emphasis added)
- "My proper address is 1010 West Turner Gate Rd., **Pimilico** South Carolina." (emphasis added)
- "**1001 West Pamlico** is not my known address." (emphasis added)
- "I think the process server wrote 1001 West Turner Gate Rd., Pamplico SC on his affidavit"

(Jackson Aff.).

However, the address that the insurance company's attorney argues is Defendant's correct address is none of these. Instead, it is:

- 1010 West Turner Gate Road, Pamplico, SC 29583.⁴

Well, which is it? Note that **none** of the addresses provided by Defendant match where defense counsel says his client lives. Moreover, none of the addresses provided by Defendant as being his current address even exist.⁵ Tellingly, even if what defense counsel argues is the correct address is actually true and supported by evidence, the closest match is not the addresses Defendant gave for himself, but the supposedly erroneous address written by the process server! Even under Defendant's theory (unsupported by any evidence), at least the process server got the town and street right, which is better than Defendant himself did.

⁴ Defendant's Motion to Alter or Amend, filed October 21, 2019, p. 4.

⁵ There is no town named Pamlico in South Carolina, although there is a county by that name in neighboring North Carolina. There is no town named Pimilico in South Carolina, although there is a plantation with the similar name of Pimlico in Berkeley County (and, of course, the similarly named Pimlico race track in Maryland, home to the Preakness Stakes horse race, traditionally the middle jewel in the Triple-Crown). Finally, 1001 West Pamlico is not a street address anywhere in South Carolina according to Google Maps – so Plaintiff agrees that Defendant does not live at that (non-existent) address.

As shown above, each of the three main assertions that underpin Defendant's motion are legally irrelevant. As a result, even if Defendant could prove them by introducing evidence, it would not matter. Once again, in the interest of judicial economy, the Court may stop reading here and deny Defendant's motion as both moot and unsupported by any legal authority or evidence. However, if the Court requires additional reasons to support denial, such additional reasons are explained below.

IV. Each of Defendant's specific assignments of error is incorrect.

Defendant makes ten specific assignments of error. They fall into two broad types, and both types are flawed. The first type is the "Court failed to consider X" variety. As shown below, Defendant is mistaken. As to each "Court failed to consider" argument, the record reflects that the Court *did* consider the argument; it simply reached a conclusion that the Defendant does not like. The second type is the "Court erred in Y" variety. As shown below, Defendant is mistaken about these as well. Debunking the assignments of error in order, Defendant claims that:

1. The hearing court erred in failing to consider that the Defendant never received any notice of the damages hearing.

Defendant is incorrect. The record reflects that the Court considered Defendant's claim at Tr., p. 4, 10.⁶ The Court simply considered the matter, and in its discretion reached a different conclusion from the one Defendant prefers. As described in **Section II** above, it does not matter if Defendant did not actually receive the notice papers. As a result, there is no error for failure to consider.

⁶ Transcript of April 25, 2019 hearing attached hereto as Exhibit A.

2. The hearing court failed to consider that the certified mailing to the Defendant was returned as undeliverable.

Defendant is incorrect. The record reflects that the Court considered Defendant's claim at Tr., p. 4, 7. The Court simply considered the matter, and in its discretion reached a different conclusion from the one Defendant prefers. As described in **Sections I and III** above, it does not matter if Defendant did not actually receive the notice papers or if the letter was returned as undeliverable. As a result, there is no error for failure to consider.

3. The hearing court erred in failing to consider that the process server, in his affidavit admits that he made a mistake about the Defendant's address.

Defendant is incorrect. The record reflects that the Court considered Defendant's claim at Tr., p. 5, 6, 19. The Court simply considered the matter, and in its discretion reached a different conclusion from the one Defendant prefers. As described in **Section I** above, it does not matter if the address used is actually the correct address, as long as it is the "last known address." Moreover, there is no dispute that the process server served Defendant by using the address that defense counsel now describes as mistaken. Finally, as described in **Section III** above, the allegedly mistaken address matches the allegedly correct address far more closely than do any of the fictitious addresses provided by Defendant. The Court considered all this. See, e.g. Tr., p. 32 – 33. As a result, there is no error for failure to consider.

4. The hearing court erred in considering the statement of Plaintiff's counsel that the regular mailing did not come back "as far as I know" when the court refused to consider evidence outside the affidavits submitted by the parties. (Tr.p.7, l. 4-5,).

Defendant is incorrect. Plaintiff's counsel's statement is not a basis for the Court's opinion because, as described in **Sections I and III** above, it does not matter whether the letter came back, as Rule 55(b)(2) is satisfied regardless of receipt by the addressee, and Plaintiff is not required to undertake a scavenger hunt based on a returned letter. Accordingly, no consideration at all need be given to Plaintiff's counsel's statement that the letter did not come back in order for the Court to reach the result it reached. Accordingly, there is no error.

5. The hearing court erred in failing to require Plaintiff's counsel to disclose the address at which they served the Defendant.

Defendant is incorrect. The record reflects that the Court considered Defendant's claim at Tr., p. 8. The Court simply considered the matter, and in its discretion reached a different conclusion from the one Defendant prefers. As described above, this is Defendant's motion, as was the Rule 60 motion. Accordingly, it is the Defendant's burden to come forward with evidence, not the Plaintiff's. Defense counsel even conceded this during the April 25, 2019 hearing (Mr. Willey: "Well, it's not our burden to prove that and we're not -- ". Mr. Childs: "Okay.") Tr., p. 8. As a result, there is no error.

6. The hearing court erred in considering irrelevant evidence of the Defendant's insurance carrier.

Defendant is incorrect. The Court specifically stated on page 24 of the Transcript that it was not considering insurance (Mr. Childs: "the entire argument about insurance coverage is improper for you." The Court: "I'm not gonna consider that. I know that . . . As far as I'm concerned, the issues here are isolated to the application of Rule 60.) It is difficult to imagine a clearer statement that insurance was not considered. As a result, there is no error.

7. The hearing court erred in considering the accident report.

Defendant is incorrect. The Court considered the accident report only as part of Plaintiff's explanation of where the last known address came from. That is a permissible use of the report. Neither Section 56-5-1340 nor 56-5-1290 prohibit use of an accident report to figure out what someone's address is. Moreover, it would appear that Section 56-5-1340 is inapplicable to the report at issue, as 56-5-1340 applies only to "accident reports *made by persons involved in accidents*." (emphasis added). *Ellison v. Pope*, 290 S.C. 100, 107, 348 S.E.2d 367, 371 (Ct. App. 1986) ("We construe the term "accident reports," as used in Section 56-5-1340, as amended, to mean only the reports of an accident that the law requires a person to make and not the reports of an accident that a person otherwise makes."). And, of course, the "person" that is being referred to is a "person[] involved in [the] accident." Citing a similar Florida statute, the *Ellison* court stated that the purpose of the statute was to "clothe with statutory immunity *only* such statements and communications as *the driver, owner, or occupant of a vehicle is compelled to make* in order to comply with his or her statutory duty." *Ellison v. Pope*, 290 S.C. 100, 107, 348 S.E.2d 367, 371 (Ct. App. 1986). The report at issue here does not involve any sort of compulsory statement by the

driver, owner, or occupant. Here, the person who made the report at issue was a police officer not involved in the accident.

Interestingly, Defendant does not even mention the statute that actually applies to the report at issue (which was created by an officer pursuant to S.C. Code Section 56-5-1270 (“Every law enforcement officer who, in the regular course of duty, investigates a motor vehicle accident that results in injury to or death of any person . . . must forward a written report of the accident to the Department of Motor Vehicles . . .”). Accordingly, the statute that applies to the report at issue here is S.C. Code Section 56-5-1290 (“Evidentiary use of reports”), which is not a blanket prohibition. Rather, it states that “None of the reports required by Sections 56-5-1260 to 56-5-1280 *may be evidence of the negligence or due care of either party* at the trial of any action at law to recover damages.” S.C. Code Ann. § 56-5-1290 (emphasis added).

In contrast, Section 56-5-1290 does not prohibit use of reports for *other* reasons besides showing negligence, such as determining a person’s last known address. Indeed, that is exactly the purpose to which an accident report was put in *Caldwell v. Wiquist*. There, the sheriff’s department “executed affidavits of non-service stating that it had been unable to complete service on Wiquist *at her last known address that was listed on the traffic collision report.*” *Caldwell v. Wiquist*, 402 S.C. 565, 568, 741 S.E.2d 583, 585 (Ct. App. 2013) (emphasis added). Although the *Caldwell* court found other issues with service in that case, it did not find any fault with using the accident report to obtain the last known address of a defendant.

Defendant has not come forward with any authority for the proposition that an accident report cannot be used to determine a person’s address. Accordingly, there is no error.

8. The hearing court erred in concluding that there was no evidence presented that indicates the Plaintiff's knew or should have known that 1001 West Turner Gate Road was not the correct address of the Defendant, when the evidence was that the certified mailing to the Defendant was returned "undeliverable" and the affidavit of the process server clearly implied that he was mistaken about the Defendant's address when he put it on his Affidavit of Service of the Summons and Complaint.

Defendant is incorrect. As described in **Section III** above, and as is readily apparent if one thinks through it logically, return of a letter as undeliverable is not evidence that the address used is not the "last known address" of the person. As described in **Sections I and III** above, service under Rule 55(b)(2) is effective when the notice is mailed to the last *known* address. Defendant has not come forward with any authority for the proposition that if a letter to the last known address is returned, the Plaintiff must now go on a scavenger hunt to find a new address. Nor has Defendant come forward with any evidence at all that the letter was actually returned. It is Defendant's burden. Accordingly, there is no error here.

9. The hearing court erred in considering the address specified in the accident report as evidence of the last known address of the Defendant.

Defendant is incorrect. Defendant has not come forward with any evidence at all showing that, at the time Plaintiff mailed the notice, Plaintiff knew of a more up-to-date address than the one specified in the accident report. As described above, the accident report is a perfectly acceptable source for address information. Defendant has not come forward with any authority to the contrary. Nor has Defendant come forward with any evidence that Plaintiff had a more current

address for Defendant. It is Defendant's burden to come forward with such evidence. Defendant has not met his burden. Accordingly, there is no error here.

10. The hearing officer erred in failing to find that due process requires that the Defendant be afforded some reasonable notice of the damages hearing even though he is in default of his answer and he should not be liable for the mistakes of the agents of the Plaintiff in verifying his proper address for mailing.

Defendant is incorrect. Defendant has not come forward with any authority for the proposition that a defaulting defendant is entitled to anything other than what Rule 55(b)(2) provides for. In support, Defendant cites *McCall v. IKON*, 363 S.C. 646, 654–55, 611 S.E.2d 315, 319 (Ct. App. 2005). However, Plaintiff fully complied with the requirements of *McCall*. The dispositive issue in *McCall* was not what address the letter was sent to, but that a *single* letter was sent to *two* defaulting Defendants.

Under Rule 55(b)(2), SCRCP, “[p]ursuant to Rule 5(a), notice of any trial or hearing on unliquidated damages shall also be given to parties in default by first class mail to the last known address of such party whether or not such party has appeared in the action.” The service requirements of Rule 5(a), SCRCP, incorporated into Rule 55(b)(2) mandate that “[e]very order required by its terms to be served, every pleading subsequent to the original summons and complaint ... *every written notice*, appearance, demand, offer of judgment, designation of record or case and exceptions on appeal, and similar papers shall be served upon *each* of the parties ...” (emphasis added). ***The plain language of the rule therefore requires that each party shall be served separately. Mailing one letter addressed to both IKON and CESC, therefore, was not sufficient to comply with Rule 55(b)(2) and Rule 5(a).***

McCall v. IKON, 363 S.C. 646, 654–55, 611 S.E.2d 315, 319 (Ct. App. 2005).

The *McCall* court's holding is shown in italics in the paragraph above. It is incontrovertible that the basis for the holding is the use of a single letter when there were two defendants. The

McCall court did not find any fault at all with the address used – just with the lack of one letter per defendant. Here, Plaintiff fully complied with *McCall*; Plaintiff sent one letter to the one Defendant at his last known address – just as provided by Rule 55(b)(2).

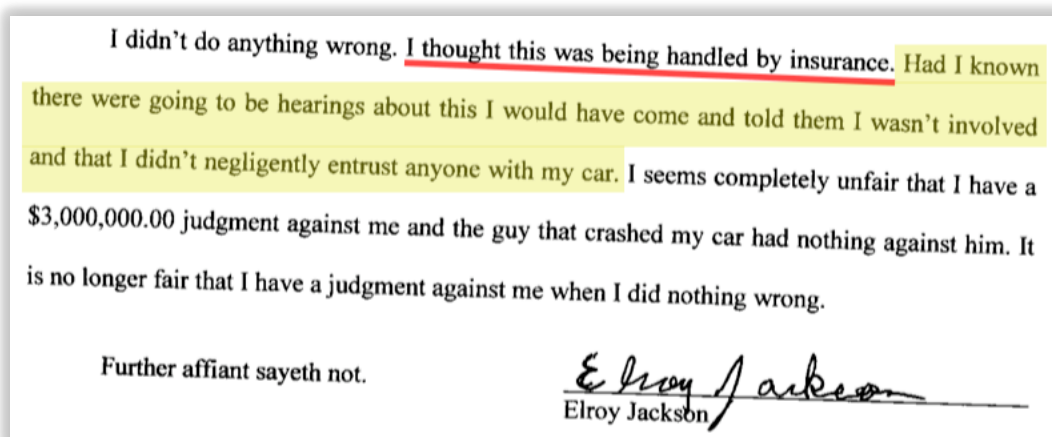
Plaintiff has shown that the issue is moot because Defendant’s only stated intention for the damages hearing was to impermissibly argue about liability. Plaintiff has explained how each of Defendant’s three main assertions in support of his Rule 59 motion are legally irrelevant. And Plaintiff has refuted each one of Defendant’s ten specific assignments of error. If the Court does not see fit quite yet to deny Defendant’s motion, there is one more thing, to wit, even if – despite all of the forgoing – it was indeed error to deny Defendant’s Rule 60 motion to set aside the damages order, that error was harmless. As described in **Section V** below, that alleged error was harmless because setting aside the damages order would simply result in another damages hearing, with the same evidence, and the same damages award.

V. It makes no sense to drag the grieving survivors through another damages hearing only to reach the same damages award.

Artrell Davis died as a direct and proximate result of the wreck. That is not in dispute. Nor is it in dispute that the medical bills she incurred were directly and proximately caused by the wreck. As a result, this is not the kind of case where there is some colorable argument about which damages are related and which are not. And in any event, the major component of damages is the fact that Artrell is dead. Accordingly, if there were to be another damages hearing, what exactly would Defendant do to achieve a different result? After all, all he is entitled to do is cross examine and object to Plaintiff’s evidence. *Limehouse v. Hulsey*, 404 S.C. 93, 117, 744 S.E.2d 566, 579 (2013).

So, how would that cross examination go? What would Defendant ask Plaintiff's witnesses? Would he challenge them as to how much they loved their daughter? Surely not. But really, what else is there? And what objections to evidence could Defendant possibly raise?

Moreover, keep in mind that the Defendant himself swears that the only thing he wants to do at a damages hearing is contest liability, and there is no legal possibility of that happening.



The fact is, a future damages hearing would look just like the first damages hearing. And it would achieve the same result – at the cost of dragging the grieving family through their nightmare all over again.

Let us call this Rule 59 motion what it is – a shameless and unconscionable ploy by an insurance company to delay justice.

Charleston, South Carolina
October 27, 2020

Respectfully Submitted,
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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF FLORENCE) 2015-CP-21-02451

GREENVILLE CAUSALITY)
INSURANCE CO., INC.,)

Plaintiff,) **Transcript of Record**

vs.)

June 26, 2016

LYNETTE GIBS, JEROME)
DAVIS, ELROY JACKSON, AND)
MICHAEL LAVERNE MARKS,)
JR. AS PERSONAL)
REPRESENTATIVES FOR THE)
ESTATE OF ARTRELL DAVIS,)

Defendants.)

B E F O R E:

Honorable J. Cordell Maddox, Jr.
Florence County Courthouse
Florence, South Carolina

A P P E A R A N C E S:

B. Scott Suggs, Esquire
Attorney for Plaintiff

W. James Hoffmeyer, Esquire
Guardian ad Litem for Defendant Marks

Kay H. Richardson
Circuit Court Reporter

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1 (JUNE 6, 2016 - 10:37 A.M.)

2 THE COURT: The Estate of Artrell Davis.

3 MR. SUGGS: Right here, Judge.

4 THE COURT: Hey, how are you? What -- this a motion to
5 dismiss?

6 MR. SUGGS: No, sir, for a default judgment. I'm Scott
7 Suggs, Judge.

8 THE COURT: Oh, I see. That one is gone. Hold on a
9 minute. Okay. We're down to 8.

10 MR. SUGGS: My pleasure, Judge.

11 THE COURT: How are you?

12 MR. SUGGS: Just fine. Good to see you.

13 Judge, I'm Scott Suggs. This is Mr. W. James Hoffmeyer.
14 He is an attorney representing one of the defendants in this
15 action who is currently incarcerated. He was appointed as
16 guardian ad litem for that defendant pursuant to Rule 17,
17 Judge.

18 May I continue, Your Honor?

19 THE COURT: Sure.

20 MR. SUGGS: Your Honor, this matter stems from a motor
21 vehicle accident which occurred on September the 6th, 2014.
22 Artrell Davis, she is deceased, she was a passenger in that
23 vehicle and that vehicle was being operated by Mr. Hoffmeyer's
24 client, who was Michael Laverne Marks, Jr., who has been named
25 as a defendant. Again, Judge, I think he is still -- is he

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1 still incarcerated?

2 MR. HOFFMEYER: I'm sure he is.

3 MR. SUGGS: Okay. Incarcerated at the Florence County
4 Detention Center, has been since this accident occurred and he
5 was charged with felony DUI.

6 THE COURT: Oh, okay.

7 MR. SUGGS: Yes, sir, Judge. He was not the owner of the
8 vehicle, he was -- had permissive use of the vehicle. The
9 actual owner of the vehicle was the other defendant, Mr. Elroy
10 Jackson. So, I named both defendants in my summons and
11 complaint for wrongful death and survival causes of action for
12 negligence and negligent entrustment of the vehicle, Your
13 Honor.

14 May I approach?

15 THE COURT: Sure. All right. So, Elroy Jackson was the
16 owner of the vehicle?

17 MR. SUGGS: Correct. And Mr. Marks was the ---

18 THE COURT: Driving it?

19 MR. SUGGS: --- driver.

20 THE COURT: All right. He was a permissive user?

21 MR. SUGGS: Yes, Your Honor.

22 THE COURT: Okay. All right.

23 MR. SUGGS: And that is just a short list of exhibits.
24 It should already be in your file, but I thought I would give
25 that to you for our uses, Judge, and this is a notice, Judge,

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1 if we can have that marked, notifying Mr. ---

2 THE COURT: That's Court's 1.

3 COURT'S EXHIBIT 1

4 MARKED FOR IDENTIFICATION

5 THE COURT: Okay.

6 MR. SUGGS: --- notifying the gentleman of the hearing.

7 The letter went out certified mail, return receipt requested,
8 restricted delivery, although I do not think the statute
9 requires us to send this correspondence by certified mail, but
10 it did go out. It appears the letters are dated May the 25th.
11 Judge, what we have -- we don't have the green card back; what
12 we have is an attachment that we were able to bring up on line
13 concerning the disposition of the letter.

14 Was it delivered?

15 MR. SUGGS: Judge, we don't know.

16 THE COURT: Oh, okay.

17 MR. SUGGS: We don't. Judge, and although I think that's
18 important, it appears -- it's apparent to me that this matter
19 has gone on for some time and this gentleman has ignored every
20 single thing that I've ever set to him, so it wouldn't
21 surprise me that he's also received this in a timely fashion
22 and also ignored it. Judge, what we'd like to do today, if it
23 pleases the Court is that I have already filed an affidavit of
24 default with the Court on January the 26th of this year as
25 part of your records, part of the file, and what I've

1 subsequently done is filed an affidavit in support of entry of
2 default judgment and for damages both liquidated and
3 unliquidated. What we have, Judge, is we have an itemized
4 list which I've presented to you of damages that are capable
5 of calculation such as the hospital bills, the funeral bills,
6 things of that nature. We also have -- we're still working on
7 an economic study which has not been completed. But at this
8 time, Judge, what we'd like is an order of default judgment
9 from the Court and then have this matter referred over to a
10 special referee or a master to determine the issue of damages.

11 Now, should the Court grant my motion for default
12 judgment and give us the order, certainly, we would certainly
13 would serve the order on Mr. Jackson and wait the perfunctory
14 period of time for him to respond. And certainly if he does
15 not object and respond in any fashion to the order issued by
16 this court which holds him in default, then at that point, I
17 can request an order of the court and appoint a special
18 referee or master to pursue the issue of damages. And by that
19 time, I should have a economic study in hand.

20 THE COURT: Okay. Now, he's filed no answer. The only
21 thing that concerns me, just in this -- you're right, the law
22 is a little muddy.

23 MR. SUGGS: Yes, sir.

24 THE COURT: But y'all's notice looks like it arrived at
25 the postal center June 1st, which would've been ---

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1 MR. SUGGS: Five days ago.

2 THE COURT: Five days ago. I mean, you know they're
3 still looking for him, but he's not responded at all?

4 MR. SUGGS: Not at all.

5 THE COURT: He's filed no answer and he was served with
6 the answer, don't make me -- I don't have to go through this
7 whole file; he was served, right?

8 MR. SUGGS: With a subsequent -- absolutely, Judge, he
9 was handed -- it was personally served upon him.

10 THE COURT: Okay.

11 MR. SUGGS: So, Judge, and I know the notice issued for
12 this hearing, again, as you say might be a little bit muddy.

13 THE COURT: And I don't like it. And I never know what
14 people are supposed to do to be honest with you.

15 MR. SUGGS: Well, I probably shot myself in the foot by
16 doing certified mail because then I can go back and find out
17 when exactly it went to the post office, but I think the rules
18 say that all I have to do a subsequent summons and complaint
19 is U.S. mail. But still we have the issue of the notice of 10
20 days. But if the Court were to grant the order and I sent
21 that to him, and he doesn't object or file any responsive
22 pleadings and say I didn't get enough notice and enough time
23 goes by that at that point the question is moot and then we
24 move forward with the damages hearing.

25 THE COURT: Well, I think as a result of the fact that

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1 he's not responded at all and has not filed an answer and
2 you're asking me just for a default, I'll grant that.

3 MR. SUGGS: Okay, Judge.

4 THE COURT: I mean, I don't see any reason not to. I
5 mean, the problem, just generally is that some courts -- some
6 clerk's office, I mean this is not a criticism at all because
7 I'm not gonna -- but they'll send notices and -- like in
8 Anderson, they send the notice, and when you travel, you run
9 into some places will send them, some don't. My advice is to
10 everybody is to send them.

11 MR. SUGGS: Yes, sir, Judge.

12 RULING OF THE COURT:

13 THE COURT: Okay. I'll grant your order of default
14 because he hasn't answered. And then you're gonna petition
15 the Court later for a special referee or you want me to ---

16 MR. SUGGS: I can do that in the same order, Judge, and
17 put the language in there if that suits the Court.

18 THE COURT: Yeah, okay.

19 MR. SUGGS: I'll be happy to do that, Judge.

20 THE COURT: I'll do it.

21 MR. SUGGS: Thank you, Your Honor.

22 THE COURT: Thanks.

23 (ADJOURNED - 10:44 A.M.)

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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of Greenville Causality Insurance Co., Inc. v. Lynette Gibs, et al., held in the Court of Common Pleas for Florence County, Florence County Courthouse, Florence, South Carolina, on June 6, 2016.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Kay H. Richardson
Official Court Reporter

May 25, 2018.

RECEIPT FOR EXHIBITS

CASE NO. 2015 CP 21-251 JUDGE J. Cardell Madday
PLAINTIFF: Estate of Arvell Jackson PLTF'S ATTY. B. Scott Biggs
DEFENDANT: Fray Jackson DEF'D ATTY. W. James Hoffmeyer
DATE TRIAL STARTED: 6/16/16 DATE TRIAL ENDED: 6/16/16

Received of Kay D. Brown, Court Reporter for the above case, these exhibits:

	This space for Clerk of court's use
1. <u>CF-LT 5/25/16 Biggs to Jackson</u>	
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This 16th day of June 20 16.

Page 1 of 1

FLORENCE COUNTY CLERK OF COURT

By: Dawn Peppers

THE SUGGS LAW FIRM

Professional Corporation
506 WEST EVANS STREET
POST OFFICE DRAWER 591
FLORENCE, S.C. 29503

B. Scott Suggs
ATTORNEY AT LAW
South Carolina Bar No.: 012896
Federal ID No.: 5846

May 25, 2016

Telephone: (843) 629-5050
Facsimile: (843) 629-8400
TheSuggsLawFirm@sc.twcbc.com
Toll Free: 1-855-877-3978

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RESTRICTED DELIVERY
7002 2410 0003 1697 6826

Elroy Jackson
1001 West Turner Gate Rd.
Pamplico, S.C. 29583

RE: The Estate of Artrell Davis v. Elroy Jackson and Michael L. Marks, Jr.
Docket No.: 2015-CP-21-2451

Dear Mr. Jackson:

Please be advised that a hearing in the above styled matter has been scheduled at the below listed location at the following date and time.

DATE: Monday, June 6, 2016
TIME: 9:30 o'clock a.m.
PLACE: Florence County Courthouse
181 N. Irby St., 10th Floor Courtroom
Florence, S.C. 29501
DESCRIPTION: Motion Hearing for Judgment by Default

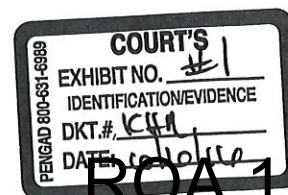
Also enclosed, please find the corresponding documents to support our Motion hearing.

With kind regards, I remain,

Sincerely Yours,

THE SUGGS LAW FIRM, P.C.
By: *B. Scott Suggs*
B. SCOTT SUGGS

BSS/tt
w/enclosures



ROA 175

THE SUGGS LAW FIRM

Professional Corporation
506 WEST EVANS STREET
POST OFFICE DRAWER 591
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B. Scott Suggs
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Toll Free: 1-855-877-3978

cc: File/GLF (Hand Delivery) w/enclosures
Lynette Gibbs (U.S. Mail) w/enclosures
Jerome Davis (U.S. Mail) w/enclosures
Rose Mary Parham (Hand Delivery) w/enclosures
W. James Hoffmeyer, GAL (Hand Delivery) w/enclosures

ROA 176

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

The Estate of Artrell Davis, by and through
her Personal Representatives, Lynette
Gibbs and Jerome Davis,

Plaintiff,

-vs-

Elroy Jackson and Michael Laverne Marks,
Jr.,

Defendants.

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

NOTICE OF HEARING

Docket No.: 2015-CP-21-2451

TO: ELROY JACKSON, DEFENDANT NAME ABOVE:

PLEASE BE ADVISED that a MOTION HEARING FOR JUDGMENT BY
DEFAULT has been set in the above matter as follows:

DATE: Monday, June 6, 2016
TIME: 9:30 o'clock a.m.
PLACE: Florence County Courthouse
181 N. Irby St., 10th Floor Courtroom
Florence, S.C. 29501
DESCRIPTION: Motion Hearing

THE SUGGS LAW FIRM, P.C.

BY: 

B. Scott Suggs
S.C. Bar No.: 012896
Federal I.D. No.: 5846
506 West Evans Street
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ROA 177

ATTORNEY FOR THE PLAINTIFF

Florence, South Carolina

May 27, 2016

ROA 178



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ROA 179

State of South Carolina

In Common Pleas Court

County of Florence

The Estate of Artrell Davis
by and through her Personal
Representatives Lynette Gibbs
and Jerome Davis,

Plaintiffs,

v. 2015-CP-21-2451

Elroy Jackson and
Michael Laverne Marks Jr.,

Defendants.

The Special Referee Damages Hearing
held before:

Honorable James W. Peterson, Jr., Esq.

Tuesday, December 13, 2016
Florence, South Carolina
10:33 a.m. - 11:23 a.m.

The Special Referee Hearing was taken
before Ashley Rogers, court reporter and notary
public for the State of South Carolina, at 620
West Evans Street, Florence, South Carolina, on
Tuesday, December 13, 2016.

Q & A Court Reporting Services
Post Office Box 4563 (29502)
273 West Evans ST. (29501)
Florence, South Carolina
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A P P E A R A N C E S

For the Plaintiff:
The Suggs Law Firm, P.C.
506 W. Evans Street
Florence, SC 29501
By: B. Scott Suggs, Esq.
thesuggslawfirm@sc.twcbc.com

Co-Counsel:
Anastopoulo Law Firm
62 Columbus Street
Charleston, South Carolina 29403
By: Roy Willie, Esq.

Also present: Lynette Gibbs, Jerome Davis

I N D E X

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Jerome Davis	
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E X H I B I T S

Premarked P-1 63 page packet of various documents

1 PROCEEDINGS:

2 (Plaintiff's exhibit number 1
3 premarked for identification.)

4 The Court: We are here today for a --
5 I think it's a damages hearing as I understand it
6 in the case of the Estate of Artrell Davis by and
7 through her personal representatives Lynette Gibbs
8 and Jerome Davis versus Elroy Jackson and Michael
9 Laverne Marks, Junior. It's civil action number
10 2015-CP-21-2451. It is my understanding that this
11 hearing was -- that notice of the hearing was
12 provided to everyone involved including -- I think
13 there are a couple of carriers if I'm not
14 mistaken, Scott. And I'll let you sort of go
15 through that and --

16 Mr. Suggs: Yes, sir.

17 The Court: -- make sure we put on the
18 record how the notice of hearing was done.

19 Mr. Suggs: Yes, sir, Mr. Peterson. We
20 notified Lynette Gibbs and Jerome Davis of the
21 hearing this morning. And they are present. We
22 notified -- and that was by regular mail. We
23 notified James Hoffmeyer, who is the attorney for
24 the codefendant, Michael Laverne Marks, Junior.
25 He was notified by regular mail. He has chosen

1 not to attend because this matter does not
2 specifically involve his client. And I will tell
3 you something else about that. I learned the
4 other day that Mr. Marks did plead guilty to
5 involuntary manslaughter in this case and was
6 sentenced, but I don't know the exact disposition
7 or number of years.

8 The Court: Okay.

9 Mr. Suggs: But Mr. Hoffmeyer has
10 chosen -- elected to voluntarily exclude himself
11 from this hearing. We notified Elroy Jackson, the
12 other defendant in this matter by certified mail,
13 return-receipt requested, restricted delivery and
14 I provided that notice to you. The envelope was
15 returned as undeliverable. Actually, we sent two
16 letters to him. Why two letters were sent, I
17 don't know, but they were both sent and returned.
18 We notified Greenville Casualty Insurance Company
19 by certified mail, return-receipt requested,
20 restricted delivery. The letters are dated
21 November the 10th, 2016 and we sent two separate
22 letters to that casualty company. One was
23 addressed to Lacy Arrowwood. And the other was
24 addressed to Kevin Owens. And those were the two
25 and only two adjustors who had ever communicated

1 with me either through the mail or over the
2 telephone.

3 And so out of an abundance of
4 precaution, we noticed both adjustors in a similar
5 fashion, both by certified mail, return-receipt
6 requested, restricted delivery. And the cards, I
7 think, were returned and you may have those --

8 The Court: Yes.

9 Mr. Suggs: -- in your submission. And
10 we have not marked those. I don't know that we
11 need to. If you think we do, then we will.

12 The Court: Don't know that they have
13 to be marked as exhibits. I do think it would
14 be -- for the -- for them to be filed as part of
15 the official record with the clerk's office to
16 show that service of the notice of hearing was
17 accomplished.

18 Mr. Suggs: Yes, sir. I'll do that.
19 I'll get those back from you after the hearing,
20 yes, sir. This lawsuit stems from a motor vehicle
21 accident, which occurred on September the 6th,
22 2014 in Florence County. It was a two-vehicle
23 accident. Artrell Davis was a passenger in the
24 vehicle, which was cited as being at fault for
25 causing the accident. The driver of that vehicle

1 being Michael Laverne Marks, Junior. The owner of
2 that vehicle being the other defendant, Elroy
3 Jackson. Mr. Marks -- there were some allegations
4 that Mr. Marks had been drinking at the time the
5 accident occurred and as I told you earlier, I
6 believe his case has been disposed of. He was
7 charged with felony D.U.I. I think ultimately he
8 pled to vol--- involuntary manslaughter and
9 received a -- a sentence followed by probation.
10 Ms. Davis, as a passenger in this vehicle, was
11 extremely -- she was injured very seriously and
12 passed away, let's see, on -- I have the death
13 certificate here. And that's marked as exhibit
14 number 2.

15 Ms. Gibbs: September 12th.

16 Mr. Suggs: September 12th. So she
17 died six days following our accident. So we do
18 have a viable survival cause of action, which we
19 have pled. Mr. Davis and Ms. Gibbs, who are
20 present today, are the parents of -- are the
21 biological parents of Artrell Davis. And they
22 were appointed personal -- co-personal
23 represent--- as personal representatives of her
24 estate here in Florence County under docket number
25 2014-ES-21-925. And were so appointed by Judge

1 Scott, Munford Scott, on December 17th, 2014. And
2 they have administered the estate since that time.
3 At some point after their appointment, Chauncey --
4 what's Chauncey's last name?

5 Ms. Gibbs: Robinson.

6 Mr. Suggs: Robinson. Chauncey
7 Robinson made an appearance in this case. As it
8 turns out, Artrell, when she passed away, she had
9 no -- she was an adult. She was over 18. She had
10 no last will and testament and she was not
11 married. And so her only heirs and assigns would
12 be a minor child that she had. Her name is
13 Myracle Robinson and her date of birth is...

14 Ms. Gibbs: July the 28th, '09.

15 Mr. Suggs: July 28th, 2009?

16 Ms. Gibbs: Uh-huh.

17 Mr. Suggs: July 28th, 2009. As she
18 was unmarried the father -- biological father of
19 Myracle is -- is Chauncey Robinson. So he made an
20 appearance during the probate part of this case
21 and prayed for certain relief from The Court.
22 Judge Scott held a hearing and ultimately decided
23 that Lynette Gibbs and Jerome Davis would be
24 appropriate individuals to serve as pers---
25 co-personal representatives of this estate. But

1 The Court could find no reason why it would not --
2 it would withdraw or -- or revoke the -- the prior
3 appointment. So we're still -- of course the
4 estate is still open.

5 The action was brought under
6 2015-CP-21-2451 by the Estate of Artrell Davis by
7 and through her co-personal representatives
8 against Michael Laverne Marks, Junior and Elroy
9 Jackson alleging the things that I've mentioned
10 concerning the accident and also setting forth
11 causes of action for wrongful death and for
12 survival causes of action. That would be under
13 exhibit number 4. The summons and complaints were
14 personally served on Elroy Jackson at his address
15 at 1001 West Turner Gate Road, Pamplico, South
16 Carolina 29583 by Mack Harrelson on August 28th,
17 2015 at 2:20 p.m.

18 A summons and complaint was also served
19 on the other defendant, Michael Laverne Marks,
20 Junior, by the same process server at his home at
21 209 Highland Point Drive, Apartment T in Lake
22 City, South Carolina 29560 on August the 5th --
23 excuse me, August 31st, 2015.
24 Mr. Harrelson provided his affidavits of service
25 on both defendants. They were filed with The

1 Court on September 22nd, 2015. And they are
2 marked as exhibits 5 and 6 in the package marked
3 as Plaintiff's 1. The guardian ad litem was
4 appointed for Michael Laverne Marks by the
5 Honorable Michael Nettles on October 16th, 2015
6 because Mr. Marks was incarcerated. I'm not sure
7 if that service was perfected on his mother at his
8 address or on him, but he was subsequently served
9 by -- through his guardian ad litem, W. James
10 Hoffmeyer, who was appointed by The Court to serve
11 in that capacity.

12 Mr. Hoffmeyer did file and serve an
13 answer to the summons and complaint. The motion
14 and order to appoint a guardian for Mr. Hoffmeyer
15 is contained under exhibit 7 as well as the answer
16 of Mr. Marks. More than 30 days elapsed since
17 Mr. Jackson was served with the summons and
18 complaint. No answer, no appearance by
19 Mr. Jackson or any of his representatives had
20 taken place by that time. So we filed our
21 affidavit of default against Mr. Jackson with the
22 clerk of court's office here in Florence County on
23 January 26th, 2016. And that is contained under
24 exhibit number 9.

25 The hearing on our affidavit of default

1 was held on June the 24th, 2016 in support of our
2 affidavit for entry of default judgment and for
3 damages. We filed for liquidated and unliqui---
4 unliquidated damages, the -- the exhibits which
5 were marked as Plaintiff's 1 for the purposes of
6 this hearing. And The Court made necessary
7 inquiries concerning whether service had been
8 perfected personally on both defendants before any
9 order of default were entered as to either
10 defendant.

11 Mr. Hoffmeyer had already answered for
12 one of the defendants, so the -- that default
13 judgment hearing did not apply to Mr. Marks. The
14 Court was satisfied that Mr. Jackson had been
15 effectively and personally served with the summons
16 and complaint and that more than 30 days had
17 elapsed since service of the summons and
18 complaint. No answer or responsive pleadings or
19 appearances had been made or filed. The Court
20 entered its judgment by default on June 24th, 2016
21 and also issued its order of reference appointing
22 you, Mr. Peterson, as -- as special referee or
23 master in equity or whatever the term is to hear
24 -- to entertain any subsequent hearing concerning
25 damages in this case. And that order of reference

1 is filed with The Court. It was submitted on --
2 it was signed by the judge -- excuse me, on August
3 the 1st, 2016 and filed with The Court on August
4 the 8th, 2016.

5 In the affidavit and support of entry
6 of default judgment and for damages liquidated and
7 unliquidated, we provided to The Court the -- the
8 name and age, date of birth of the decedent, which
9 was August the 30th, 1992. And we've already
10 covered the date of death and the date of
11 accident. She was not married, but she did have a
12 minor child in her care for whom she was
13 responsible for.

14 We also provided the bills associated
15 with her last illness including Florence County
16 E.M.S. bill for \$870.16, a bill from McLeod
17 hospital, which was \$393,127.86, which was one of
18 the bills. The total was \$402,965.86. Statement
19 from the E.R. physician who treated her for 528
20 dollars, x-rays from her treatment totaling 1,495
21 dollars, a bill from Hangar prosthetics and
22 orthotics for \$3,725.92, miscellaneous other bills
23 from McLeod hospital in the amount of 960 dollars
24 and 1440 dollars and ultimately a funeral bill in
25 the amount of \$7,969.50. Those were the bills

1 from the treatment that she received prior to her
2 death as a result of this accident and the funeral
3 bill.

4 And that brings us here today. Roy
5 Willie is present. He is -- he works for the
6 Anastopoulo Law Firm in Charleston representing
7 the interest of Chauncey Robinson as the
8 biological and presumptive father of Miracle
9 Robinson, the minor child of Artrell Davis and
10 Mr. Robinson. All parties have been notified of
11 -- properly notified of the damages hearing today
12 by certified mail, return-receipt requested,
13 restricted delivery. No one has attended other
14 than those present today. The court reporter is
15 here and taking a record of the proceeding so far,
16 which brings us up to date and if you would like
17 to hear some testimony concerning the decedent, we
18 can proceed with that now.

19 The Court: Yes. Roy, before we get
20 started, do you want to put anything on the record
21 about your participation on behalf of Mr. Robinson
22 -- Mr. Chauncey Robinson?

23 Mr. Willie: No. There was a
24 disagreement at that outset of the case about who
25 the proper personal representative would be. We

1 went through the process. The Court adjudicated
2 that. Thereafter, Scott and I were able to come
3 to an agreement that we would both, you know, go
4 through the representation for the estate on the
5 case that he would be the lead Counsel for the
6 case, the underlying case, and that we would
7 assist as needed, fund whatever was needed, work
8 together. And that we would revisit it after the
9 damages hearing or after a verdict was rendered
10 for a potential case if there is one against the
11 insurance company or -- or what have you. But at
12 this -- at this point, we're working together,
13 both representing, you know, the -- the estate and
14 have agreed on -- on all the terms of -- of that
15 representation and so forth.

16 The Court: Okay, great. Okay. You
17 may proceed.

18 Mr. Suggs: Thank you. Would you -- do
19 you need to swear...

20 The Court: Yes, I think we'll -- we'll
21 just have the court reporter swear in any witness
22 you wish to call.

23 Mr. Suggs: We call Lynette Gibbs.

24 Lynette Gibbs,
25 being first duly sworn by the court reporter, as

1 hereinafter certified, testified as follows:

2 DIRECT EXAMINATION

3 By Mr. Suggs:

4 Q Just a few questions, Lynette. How are
5 you this morning?

6 A Fine.

7 Q Okay. You were -- you're the mother of
8 Artrell Davis.

9 A Yes.

10 Q Okay. Artrell was -- was -- was born
11 when? Do you know the birth?

12 A October the 20th, 1992.

13 Q Okay. And you heard the date that I
14 announced of her passing, which was September the
15 12th --

16 A Twelfth.

17 Q -- of 2014.

18 A Uh-huh.

19 Q Is that correct?

20 A Yes.

21 Q Okay. At the time of her -- Artrell's
22 death, did she live with you?

23 A She was living with me.

24 Q Okay. Who else was living in the
25 household?

1 A Her sister, brothers and my cousin.

2 Q Okay. What about her daughter?

3 A Yeah.

4 Q And her daughter's name is...

5 A Myracle Robinson.

6 Q Myracle. How old is Myracle?

7 A Seven.

8 Q And what is Myracle's date of birth?

9 A July the 28th, '09.

10 Q Okay. And that's Artrell's daughter?

11 A Yes.

12 Q And Artrell was not married at the time
13 of her death, was she --

14 A No.

15 Q Had she ever been married?

16 A No.

17 Q Okay. And did she have a last will and
18 testament --

19 A No.

20 Q -- at the time of her death? Okay.

21 And the father of Myracle is -- was announced to
22 be Chauncey Robinson. Is that correct?

23 A Yes.

24 Q All right. Had any D.N.A. tests been
25 done to confirm whether -- to confirm the

1 paternity of Myracle?

2 A No.

3 Q Okay. But it's established and
4 accepted that Chauncey is in fact the father?

5 A Yes.

6 Q Okay. And -- and Artrell and Chauncey
7 were never married. Is that --

8 A No.

9 Q -- right? Okay. Now, at the time of
10 Artrell's death, was she -- was she working?

11 A No, she had -- yeah, she was working at
12 -- at Wellman.

13 Q Okay. Which -- the Wellman in -- in --

14 A Johnsonville.

15 Q -- Johnsonville? Okay. And did she
16 work full time?

17 A No.

18 Q Did she work part time?

19 A Uh-huh, as needed.

20 Q As needed, okay. Did she work every
21 day?

22 A No.

23 Q Did she work a certain number of days
24 per week?

25 A Not really.

1 Q Was she --

2 A Just as needed.

3 Q She was an on-call person?

4 A Uh-huh.

5 Q You have to say yes or no --

6 A Yes.

7 Q -- so the court reporter can take that
8 down. Okay?

9 A Yes.

10 Q All right. How often per week do you
11 think -- or per month, whichever is easier, do you
12 think she would work?

13 A Probably about once -- once out the
14 month.

15 Q Once a month?

16 A Uh-huh.

17 Q So not very much at all?

18 A Not very much.

19 Q How much was she paid when she worked?

20 A I think her last paycheck was 150 if
21 I'm not mistaken.

22 Q All right. Do you know whether that
23 was gross or net?

24 A That was gross.

25 Q Gross. Do you know how many hours that

1 would represent?

2 A She was working, I think, like six
3 hours a day.

4 Q All right. Do you know how much she
5 was making per hour?

6 A No.

7 Q All right. Do you know if she was on
8 salary or hourly?

9 A No.

10 Q Okay. Do you know how many hours she
11 worked to get that 150?

12 A She worked...

13 Q If she worked 10 hours, that would be
14 15 dollars an hour, right?

15 A I don't think it was 10 hours.

16 Q Okay. So she may have made more than
17 that per hour?

18 A Less than that.

19 Q Less than that, okay. Was she healthy
20 before --

21 A Yes, sir.

22 Q -- she died? Did she have any major
23 medical problems at all?

24 A No, sir.

25 Q All right. Did she go to the doctor

1 frequently or not?

2 A No, sir.

3 Q All right. Obviously she had the baby,
4 so she went to several trips with the
5 pediatrician, the obstetrician, that sort of
6 thing.

7 A Yes, sir.

8 Q Is that right? But she didn't go to
9 the doctor regularly?

10 A No, sir.

11 Q All right. And other than -- than that
12 job, did she have any other jobs?

13 A Before, she worked at Walmart.

14 Q All right.

15 A In Lake City.

16 Q Okay. And what -- what did she do
17 there?

18 A She was a cashier.

19 Q Did she work full time or part time?

20 A Full time.

21 Q How many hours per week did she work?

22 A She was working eight hours.

23 Q A day?

24 A A day.

25 Q Okay. So about 40 hours a week?

1 A Yeah.

2 Q And did -- how long did she hold that
3 job?

4 A For six months.

5 Q All right. And do you know what she
6 was making per hour?

7 A No, sir.

8 Q All right. Well, she had to be making
9 at least minimum wage though. Is that right?

10 A Yes, sir.

11 Q All right. Was she capable of working
12 a full-time job?

13 A Yes, sir.

14 Q All right. There was nothing stopping
15 her physically --

16 A No, sir.

17 Q -- or anything else to prevent her from
18 working?

19 A No, sir.

20 Q Okay. And she -- this accident was on
21 September the 6th of 2014. Is that right?

22 A Yes, sir.

23 Q And she -- she survived the accident
24 for several days before she died. Is that right?

25 A Yes, sir.

1 Q And she passed away on September the
2 12th of the same year?

3 A Yes, sir.

4 Q And did she pass away -- was she in the
5 hospital when she passed?

6 A Yes, sir.

7 Q Okay. Tell us a little bit about the
8 accident as far as you remember.

9 A Well, when we got to the hospital, she
10 had broken her neck and her back. And then she
11 was fine when we got there. That Wednesday, she
12 was fine. The doctor called us in and say she was
13 fine. That Thursday she died. Said she had
14 problems with her kidneys. She had blood in her
15 kidneys and all that stuff. And everything was
16 failing, so -- and -- and I -- me and him got
17 together and was like, ain't no need to let her
18 suffer.

19 Q When you say him, are you talking
20 about --

21 A Me and Jerome Davis.

22 Q -- Jerome?

23 A Got together --

24 Q Okay.

25 A -- and told the doctor there wasn't no

1 need for her to suffer. Don't cut on her anymore.

2 Just go ahead and let it be.

3 Q So what -- what did that mean for you?

4 A Just go ahead and let her pass.

5 Q Was she being -- was she on life
6 support?

7 A Yes, sir.

8 Q Did she need that life support to -- to
9 survive?

10 A Yes, sir.

11 Q All right. And so the decision was
12 made to -- to end her life?

13 A Yes, sir.

14 Q And who made that decision?

15 A Me and Jerome.

16 Q As the parents?

17 A Yes, sir.

18 Q Okay. And no one else could have made
19 that decision, could they --

20 A No, sir.

21 Q And did the doctors look at the two of
22 y'all as the ones who have the authority to make
23 that decision?

24 A Yes, sir.

25 Q And they didn't look at anybody else to

1 make that decision --

2 A No, sir.

3 Q Did they? And she wasn't married or
4 anything like that --

5 A No, sir.

6 Q Was Chauncey present?

7 A No, sir.

8 Q He was not. Where was he during this
9 time?

10 A Incarcerated.

11 Q Okay. What about Myracle was she
12 present --

13 A Yes, sir.

14 Q -- at the time? Did she know what was
15 going on?

16 A Yes, sir.

17 Q Okay. And how old was she at the time?

18 A Five.

19 Q And how old is she now?

20 A Seven.

21 Q Seven, okay. Are -- who has custody --
22 who had custody of her before Artrell's death?
23 Had there been in family court orders
24 concerning --

25 A No, sir.

1 Q -- custody? Okay. And she was never
2 married to -- to Chauncey, so she would have had
3 custody under the law. Is that right --

4 A Yes, sir.

5 Q Without a family court order?

6 A Yes, sir.

7 Q All right. Did -- you said Myracle
8 knew what had happened to her mother.

9 A Yes, sir.

10 Q And she -- was she present when her
11 momma passed?

12 A Yes, sir.

13 Q Okay. And what about Artrell's
14 educational background, what sort of educational
15 background -- did she go to high school?

16 A She graduated.

17 Q She did graduate. From which high
18 school?

19 A Hannah-Pamlico High.

20 Q Do you know what year?

21 A 2010.

22 Q Okay. She was right in the beginning
23 of her life, wasn't she?

24 A Yes, sir.

25 Q All right. Do you know anybody else

1 she was with when the accident happened other than
2 the driver?

3 A Latrice McWhite.

4 Q Were other people injured in the
5 accident?

6 A They wasn't injured as bad as Artrell.

7 Q Okay. Did Artrell have any college or
8 tech school background?

9 A She was going to Kenneth Shuler hair
10 school, cosmetology.

11 Q Which school?

12 A Kenneth Shuler.

13 Q Is that in Pamplico?

14 A Florence.

15 Q It's in Florence. Was she attending
16 that while --

17 A Yeah. Yes, sir.

18 Q How long had she been doing that?

19 A About two months.

20 Q All right. Was she set to graduate at
21 a certain time --

22 A No, sir, not yet.

23 Q How long of a program is that?

24 A I think it's like a -- a year. I think
25 it's a year.

1 Q Okay. And she had been there two
2 months?

3 A Uh-huh. Yes, sir --

4 Q Is that a yes?

5 A Yes, sir.

6 Q Okay. If she had finished that
7 program, would she have been a licensed
8 cosmetologist?

9 A Yes, sir.

10 Q And would she have been able to operate
11 a business as a cosmetologist?

12 A Yes, sir.

13 Q Would she have been able to cut hair
14 and style hair and -- and earn a living as a
15 cosmetologist?

16 A Yes, sir.

17 Q All right. Did she ever discuss with
18 you what sort of money she could make as a
19 cosmetologist?

20 A No, sir.

21 Q Do you have any idea what a
22 cosmetologist makes?

23 A No, sir.

24 Q Do you feel like they make more than
25 minimum wage?

1 A Yes, sir.

2 Q Okay. And is that -- was that her
3 career ambition to be a cosmetologist?

4 A Yes, sir.

5 Q Did she have any other dreams or hopes
6 to -- for her career that you knew of?

7 A No, sir.

8 Q Okay. All right. And she was a very
9 young woman when she died. Is that right?

10 A Yes, sir.

11 Q How old was she?

12 A Twenty-two.

13 Q Twenty-two, okay. Could she have had
14 other children if she had wanted to?

15 A No, sir.

16 Q She could not have other children. Why
17 not?

18 A She -- she -- Myracle was a twin.

19 Q Okay.

20 A And she was preeclampsia, so she lost
21 one of the twins.

22 Q Okay.

23 A Then she was pregnant again in June
24 with a boy and she lost him and the doctor told
25 her she couldn't be able to have any more.

1 Q Okay. So Myracle was a miracle, wasn't
2 she?

3 A Yes, sir.

4 Q And she'd be the only child that she
5 could have?

6 A Yes, sir.

7 Q All right. And did she intend on
8 raising Myracle?

9 A Yes, sir.

10 Q And did she want to see Myracle go to
11 school?

12 A Yes, sir.

13 Q And she wanted to see Myracle maybe go
14 to college?

15 A Yes, sir.

16 Q All right. She was responsible for
17 providing for her?

18 A Yes, sir.

19 Q Did anyone else help provide for
20 Myracle for money or anything like that?

21 A Me and her grandfather.

22 Q Okay. When you say --

23 A Gerald Gibbs.

24 Q Who?

25 A Gerald.

1 Q Gerald Gibbs, okay. Did -- did
2 Chauncey contribute when he could to help buy
3 things for Myracle when he could --

4 A Yes, sir.

5 Q Okay. All right. Now, you heard me go
6 over the medical bills from the time that -- that
7 the ambulance picked Artrell up until the time she
8 passed. Is that right?

9 A Yes, sir.

10 Q And you were sitting here listening to
11 me recite those figures.

12 A Yes, sir.

13 Q And did those figures sound correct to
14 you?

15 A Yes, sir.

16 Q Do you think there are any more that I
17 might have left out?

18 A Not as I know of.

19 Q Okay. Have any of these medical bills
20 been paid to your knowledge?

21 A Not as I know of.

22 Q Okay. Do you know whether or not SOVA
23 or crime victims assistance paid any of these
24 bills?

25 A If any bills should have been paid, I

1 think they paid off the funeral bill.

2 Q Okay. And the funeral bill was
3 \$7,969.50.

4 A Yes, sir.

5 Q Okay. And so the -- the bills that I
6 went through, there are a lot, aren't they?

7 A Yes, sir.

8 Q And none have been paid except maybe
9 the funeral bill?

10 A Yes, sir.

11 Q Okay. Did -- did Artrell have a lot of
12 money or any money in the bank or did --

13 A No, sir.

14 Q -- she leave any property or
15 anything --

16 A No, sir.

17 Q -- when she passed? Okay. Did -- she
18 didn't have a house or --

19 A No, sir.

20 Q -- a car? Okay. And no money in the
21 bank?

22 A No, sir.

23 Q So none of these bills could be paid by
24 any money that she would have had. Is that right?

25 A That's right.

1 Q Who's providing for Myracle now?

2 A Me, Gerald and -- and Chauncey.

3 Q Okay. Are y'all are living in the same
4 house?

5 A No, sir.

6 Q Okay. Does Myracle live with you or
7 with Chauncey?

8 A With me.

9 Q Okay. And who else lives with you?

10 A Gerald -- Artr--- Gerald, Jarrell,
11 Shakira, Gerald and Exavian.

12 Q Okay. How many people in the household
13 work?

14 A Two.

15 Q Okay. And what grade is Myracle in
16 now?

17 A First.

18 Q First grade. How is she getting along?

19 A She doing good.

20 Q She doing better?

21 A Yes.

22 Q Does she ever talk about her momma?

23 A More about her sisters.

24 Q Okay. Are you asking Mr. Peterson to
25 make an award today in money damages?

1 A Yes, sir.

2 Q Are you asking him to make -- to
3 consider the medical bills and the funeral bill
4 that -- that were incurred in this case?

5 A Yes, sir.

6 Q Are you asking him to take in to
7 consideration the mortality tables under title 19
8 of our code?

9 A Yes, sir.

10 Q Or the mortality tables under the --
11 under the federal -- under the federal statutes?

12 A Yes, sir.

13 Q Okay. What about -- let's talk about
14 punitive damages for a second. You understand how
15 the accident happened?

16 A No, sir.

17 Q All right. Do you know there was some
18 drinking involved in the accident?

19 A Yes, sir.

20 Q And were you aware that Mr. Marks was
21 operating the vehicle at the time of this
22 accident?

23 A Yes, sir.

24 Q And were you aware that he was drinking
25 or intoxicated or both at the time of the

1 accident?

2 A Yes, sir.

3 Q Okay. And that -- that this was a
4 two-car accident?

5 A Yes, sir.

6 Q And that he was the one who was listed
7 at fault for causing the accident?

8 A Yes, sir.

9 Q And that he was subsequently
10 incarcerated for his role in this -- causing this
11 accident?

12 A Yes, sir.

13 Q And then what I said earlier, that he
14 ultimately has pled guilty to -- to involuntary
15 manslaughter stemming from this accident?

16 A Yes, sir.

17 Q Are you asking the -- Mr. Peterson to
18 consider a punitive damages award also?

19 A Yes, sir.

20 Q All right. Now, Myracle -- excuse me.
21 Artrell did not die instantly in this -- as a
22 result of this accident, did she?

23 A No, sir.

24 Q We've already talked about that,
25 haven't we?

1 A Yes, sir.

2 Q She lived for at least six days
3 following this accident. Is that right?

4 A Yes, sir.

5 Q Was she conscious at any period of time
6 during these six days or any time after the
7 accident before she passed?

8 A No, sir.

9 Q Did she -- was she completely
10 unconscious or did she come in and out of
11 consciousness or do you know?

12 A No, sir, she never -- she always been
13 unconscious.

14 Q Did -- did the doctor try to make her
15 comfortable in her last hours or days?

16 A Yes, sir.

17 Q Do you know whether they gave her pain
18 medication and other -- other medications in order
19 to make her comfortable?

20 A Yes, sir.

21 Q And in fact you know they did?

22 A Yes, sir.

23 Q And do you recall what your discussion
24 was with the physician or doctors when you make --
25 made the decision to -- to end her life?

1 A No, sir.

2 Q Okay. Could she have lived longer if
3 y'all decided to keep her on life support?

4 A No, sir.

5 Q All right. Do you think that she would
6 have expired eventually anyway?

7 A Yes, sir.

8 Q But you don't know when?

9 A No, sir.

10 Q Could she have lived several more days,
11 do you think?

12 A No, sir.

13 Q Okay. Do you think the end was near?

14 A Yes, sir, 'cause he said her kidneys
15 had already -- everything had already failed.

16 Q Okay. Now, have I helped you with this
17 case from the very beginning?

18 A Yes, sir.

19 Q Okay. And have we tried very hard to
20 -- to conclude this matter?

21 A Yes, sir.

22 Q Are you satisfied with my services up
23 to now?

24 A Yes, sir.

25 Q Any complaints at all?

1 A No, sir.

2 Q And now Jerome is present today here as
3 well. Is that right?

4 A Yes, sir.

5 Q And he's Artrell's biological father?

6 A Yes, sir.

7 Q All right. And has he been with us --
8 all of us together have been working on this case
9 from the very beginning?

10 A Yes, sir.

11 Q Okay. Was he present when Artrell
12 passed away?

13 A Yes, sir.

14 Q Okay. And he also had to make that
15 decision, a very difficult decision?

16 A Yes, sir.

17 Mr. Suggs: Okay. I don't have any
18 other questions I don't think. Do you have some
19 questions?

20 Mr. Willie: No.

21 The Court: I -- I have none. Thank
22 you. I know that's hard. I appreciate your
23 effort getting through that.

24 Mr. Suggs: I -- I think if I were to
25 talk to Mister -- to the father, I think that it

1 would probably be redundant.

2 The Court: Okay.

3 Mr. Suggs: Unless you want to hear
4 from him.

5 The Court: Okay. I mean, either way.
6 Whatever you want to do.

7 D I R E C T E X A M I N A T I O N

8 By Mr. Suggs:

9 Q Okay. Just a few questions then. This
10 is Jerome Davis.

11 A Yes, sir.

12 Q Jerome, you're --

13 The Court: Let's let him be sworn in.

14 Jerome Davis,
15 being first duly sworn by the court reporter, as
16 hereinafter certified, testified as follows:

17 By Mr. Suggs:

18 Q Jerome, thank you for being here this
19 morning. And you're Artrell's biological father?

20 A Yes, sir.

21 Q And you've been sitting here as I've
22 been telling Mr. Peterson about this case and as
23 I've been questioning Lynette about these matters.
24 Is that right?

25 A Yes, sir.

1 Q And you -- are -- are there any -- are
2 there any questions that I failed to ask Lynette
3 or are there any -- any things that you feel that
4 are important that need to be expressed today that
5 have not come to light so far?

6 A Well, I just want to say, you know,
7 when we made that decision, we didn't want to, but
8 the doctor, chaplain, they all talked to us. They
9 like, you know, everything shutting down. That --
10 nothing else they could do medical, so we made
11 that decision.

12 Q How long was -- was Artrell in the
13 hospital in the bed before the doctors approached
14 y'all and said, you know, there's not much more
15 that we can do?

16 A That Saturday she went in -- or that
17 Friday night when it all happened. That Friday
18 she was gone, the following Friday.

19 Q So was the accident on -- on a Friday
20 or a Saturday?

21 The Witness: When -- when was it?
22 Fri--- that Friday night and Saturday somewhere in
23 there?

24 Ms. Gibbs: Yeah, that Friday night I
25 think it was.

1 The Witness: Yes.

2 Mr. Willie: It would have been early
3 in the morning.

4 The Witness: Yes, 'cause when I got
5 the phone call, I -- I came home and when I seen
6 her, she was like Lynette said. The halo was on,
7 neck broke, back broke and she was -- blood
8 everywhere. And they was telling us that in the
9 coming days, they had to do -- repair her elbow.
10 That was six hours and then do her back. That was
11 another eight hours. And I kept asking 'em all --
12 I asked -- too much, you know. It's too much on
13 her, but they had to relieve some of that pressure
14 and stuff like that. So like Lynette said, she
15 was doing -- I thought she was, you know, we
16 thought she was doing pretty good, you know,
17 holding up.

18 Got that phone call, just -- we went
19 back. By the end of the week, everything just
20 shut down. I -- I got back up there, my baby was
21 swol--- I mean, she was -- the casket is 26
22 inches, she was 26 inches in her cas--- casket.
23 We couldn't even open the casket. So she was
24 swollen and they start packing her mouth back with
25 gauze and blood everywhere and it's like -- and

1 it's all happen again. And I like -- I like --
2 and there's nothing they could do. They did all
3 they could. They was trying to do the -- what you
4 call it? I think dialysis in the room, but then
5 they wanted to move her downstairs and she
6 wouldn't survive in the elevator ride -- ride. So
7 they was just gonna try to do it in the room.
8 Tried to put a catheter in her; she wouldn't take
9 it. So that was it.

10 Q How many bones did -- did she break or
11 what were the degree and severity of her injuries,
12 Jerome? Do you remember?

13 A The doctor told -- I -- I asked. I had
14 two or three of 'em come to me and like -- I mean,
15 what you see is what you gonna get. She'll never
16 walk. She'll never do this. She'll -- you know,
17 from here on down, if she did survive...

18 Q She would have been paralyzed?

19 A All the way.

20 Q So she had a broken back and a broken
21 neck and a broken or messed up arm?

22 A Uh-huh.

23 Q And severe head injuries? Is that a
24 yes?

25 A Yes, sir.

1 Q Okay. And what -- how many children do
2 you have including Artrell?

3 A Six.

4 Q What number was she?

5 A She's my oldest.

6 Q She's your oldest.

7 A Uh-huh.

8 Q She was your baby, wasn't she?

9 A Yeah, she was -- Trell -- Trell -- I
10 mean, I -- I was driving truck -- I used to drive
11 truck on the road and stuff like that. She would
12 call me and we would bump head. And -- and my
13 momma passed back here and then she was like that
14 child is every spitting image of you. And we
15 would talk and stuff like that, but one thing
16 about Trell, Trell knew what she want. Trell went
17 and got it. She -- she's a lot like me. She's --
18 when she -- she's determined. And I listen to you
19 and you like what would she become and stuff like
20 that? I mean, that's -- that's out the question
21 now.

22 I mean, it might -- like I always told
23 my momma, you know, people like -- you -- you
24 don't want to bury your child. You want your
25 child to bury you. And I used to tell my momma

1 that because I -- like I would rather go before
2 you because I don't know how I would survive when
3 my momma go. Now, Trell gone and I -- I look at
4 the rest of my kids and -- and -- and, you know, I
5 like that -- just that one -- that one. And she
6 was -- what was Lynette, a couple weeks before her
7 20-something -- her other birthday would have
8 been?

9 Ms. Gibbs: Right.

10 The Witness: Yeah, just a couple weeks
11 -- in a couple weeks. And you know...

12 By Mr. Suggs:

13 Q Do you miss your daughter a lot?

14 A Yeah.

15 Q And --

16 A You don't -- you don't miss nobody --
17 like people tell you, like, I know what you go
18 through. You don't know what I'm going through.
19 They don't know.

20 Q It was difficult for you and -- and
21 Lynette and Miracle and the family to watch her
22 and that sort of situation and condition, wasn't
23 it? I'm sorry about all that. Thank you for
24 answering some questions for us.

25 A Yes, sir.

1 The Court: Thank you. I appreciate
2 you doing that.

3 Mr. Suggs: I think that'll be all I
4 want to put up.

5 The Court: Okay. Roy, anything you
6 can think of that we...

7 Mr. Willie: Just the -- the few things
8 I would say is my calculation of the life
9 expectancy was 60.28 years from the time of her
10 death. And, you know, the -- this case was
11 pending in Florence County. And while, you know,
12 your role obviously is to come up with the actual
13 damages that are cognizable from the testimony, we
14 have pled -- Scott pled in the complaint and asked
15 for punitive damages. And so I think it would be
16 important to consider, you know, how a jury in
17 Florence would look at damages. And -- I tried a
18 case a few months ago, about two months ago now,
19 and -- a broken leg case and a jury in Florence
20 came back with 5,000,000 dollars in damages on
21 that and no drinking, obviously no death.

22 And so I think it's important to -- to
23 take that in to account that in this case, it
24 really was a girl -- a young lady at the outset of
25 her life. And like her father said, what she

1 would do in those 60.28 years is unknown, but one
2 thing we would know based on what she had done in
3 the five prior years is she would have been taking
4 care of her daughter. And she would have been
5 working enough to make sure that her daughter was
6 taken care of. So that little girl, while her
7 grandparents and her father have stepped up and
8 are taking care of her, you know, she's lost her
9 mother. And I think with respect to the wrongful
10 death cause of action, a five year old who knows
11 what's going on, knows who her mom is, is talking,
12 having conversations with her and then one day,
13 she's gone without the opportunity to say goodbye.

14 You know, the testimony in this case as
15 you heard was she could never talk at the
16 hospital. She was quadriplegic in -- in the six
17 days that she did live and so, you know, the
18 quality of life in those last six days was -- was
19 pretty awful. So that's all that I would add,
20 just as a point of reference, but I - I think
21 Scott did a good job with the testimony.

22 The Court: Okay. Scott anything else
23 you want to...

24 Mr. Suggs: No, sir. I was actually
25 trying to think of the mortality tables. I think

1 they're under title 19, but I was trying to think
2 of the federal. I think those are -- the center
3 for disease control has their own mortality tables
4 as well for -- for African Americans, Hispanics,
5 and I think it might be a little longer for
6 females under that code section, maybe a year or
7 two more. I was just trying to recall the -- what
8 -- what statutory tables they were under. And I
9 think that is center for disease control, the
10 online version I think is the latest one. It's
11 2009.

12 The Court: Okay. I will give this
13 some -- some thought and we'll issue an order
14 entering a judgment. Obviously a -- this is a
15 default matter. There is no question about
16 liability. We're here just to dis--- set damages
17 for your benefit. Please understand that I know
18 -- I mean, there's no amount of money that can
19 replace a child. I -- I get that. I understand
20 that. Our statutes and court cases instruct me on
21 what I should consider as I try to determine a
22 correct amount of damages for a -- what we call a
23 wrongful death and survival action and I will
24 certainly try to apply those, but I want y'all to
25 know upfront that I certainly understand there's

1 nothing that I can award that adequately replaces
2 the loss of a child. And I feel for y'all. I
3 appreciate your being here today. I recognize
4 this is a hard thing to talk about and a hard
5 thing to do. I certainly appreciate your efforts
6 on behalf of Myracle. And will certainly take all
7 of that in to consideration as I try to come up
8 with an appropriate award.

9 Mr. Suggs: Thank you, Judge.

10 The Court: And I will try to do that
11 within the next few days. So that we don't drag
12 this thing out any longer than we need to drag it
13 out. I appreciate everybody being here.

14 Mr. Suggs: Thank you very much.
15 Appreciate you, too.

16 (WHEREUPON, A BREAK WAS TAKEN
17 FROM THE PROCEEDINGS.)

18 The Court: Back on the record. We are
19 -- you have submitted to me a package of materials
20 that you have marked as Plaintiff's exhibit 1.
21 And you have offered that for admission. Without
22 objection, that will be admitted and -- as part of
23 the record. And I will certainly consider those
24 as I make a determination in this case.

25 Mr. Suggs: Thank you, sir.

1 (The hearing concluded at 11:23 a.m.)

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CERTIFICATE OF REPORTER

State of South Carolina

County of Florence

I, Ashley Rogers, Court Reporter and Notary Public for the State of South Carolina, do hereby certify that the transcript of the foregoing proceedings contains a true record of the hearing in the above-captioned cause.

I further certify that I am neither attorney nor Counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this the 2nd day of January, 2017.

Ashley Rogers

MY COMMISSION EXPIRES:
March 15, 2022

State of South Carolina

In Common Pleas Court

County of Florence

The Estate of Artrell Davis
by and through her Personal
Representatives Lynette Gibbs
and Jerome Davis,

A blue icon of a document with a checkmark is positioned to the left of the word "COPY" which is written in large, bold, pink capital letters.

Plaintiffs,

v.

2015-CP-21-2451

Elroy Jackson and
Michael Laverne Marks, Jr.,

Defendants.

The Special Referee Hearing
held before:

Honorable James W. Peterson, Jr., Esq.

Thursday, April 25, 2019
Florence, South Carolina
1:06 p.m. - 2:45 p.m.

The Special Referee hearing was taken
before Ashley Rogers, court reporter and notary
public for the State of South Carolina, at 620
West Evans Street, Florence, South Carolina, on
Thursday, April 25, 2019.

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ROA 228

A P P E A R A N C E S

1
2 For the Plaintiff:
3 The Suggs Law Firm, P.C.
4 506 W. Evans Street
5 Florence, SC 29501
6 By: B. Scott Suggs, Esq.
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8
9 Co-Counsel:
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12 Charleston, South Carolina 29403
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15
16 For the Defendant:
17 Childs Law Firm, LLC
18 2100 Poinsett Highway
19 Suite D
20 Greenville, South Carolina 29609
21 By: Robert C. Childs, III, Esq.
22 robert@lawyerchilds.com

23 Also present: Elroy Jackson, Lynette Gibbs
24 Jerome Davis, Heather Honney

E X H I B I T S

Pg/Ln	Ex.	Description
18 62/3	P-1	Affidavit of Diane Giddings
19 62/3	P-2	Affidavit of Mack Harrelson
20 62/5	D-1	Subpoena
21 62/5	D-2	Earnings statement
22 62/5	D-3	McLeod medical bill
23 62/5	D-4	McLeod radiology record
24 62/5	D-5	United Healthcare form

25
26 ** uh-huh = affirmative
27 huh-uh = negative

P R O C E E D I N G S :

1
2 THE COURT: We're here in the case of
3 the Estate of Artrell Davis by and through her
4 personal representatives, Lynette Gibbs and Jerome
5 Davis versus Michael Laverne Marks, Junior and
6 Elroy Jackson, civil action number 2015-CP-21-0245
7 and we're here today to hear arguments regarding a
8 motion to set aside judgment that has been filed
9 on behalf of Mr. Jackson. So with that, I'm gonna
10 turn it over to Mr. Childs, who filed that motion
11 on behalf of Mr. Jackson.

12 MR. CHILDS: And is it okay if I sit?

13 THE COURT: Please do.

14 MR. CHILDS: It's contrary to my...

15 THE COURT: I know. I know, but, no.
16 No. Everybody, we're around a table -- huddled
17 around a table instead of in a courtroom, so we'll
18 be very informal.

19 MR. CHILDS: I became aware in March of
20 last year of a lawsuit that was pending or that
21 was -- well, actually still is pending against
22 Mr. Elroy Jackson and Michael Marks. And we had
23 -- Greenville Casualty Insurance Company has filed
24 an action -- basically a interpleader action about
25 that. But looking in to it, we determined that

1 there was a possible judgment against Mr. Jackson
2 and we notified Mr. Jackson of that in March of
3 2018. Actually received -- the actual judgment
4 against Mr. Jackson really wasn't actually filed
5 in this action until January of 2019. I think
6 that was the clerk's office mistake honestly. And
7 -- and in production in -- in -- the -- the
8 interpleader action, we were provided with Your
9 Honor's decision from that. And so then we
10 notified Mr. Jackson and we filed a motion to set
11 aside the damages decision. Mr. Jackson does not
12 contest that he was served with the lawsuit. He
13 contests that he was not served with notice of the
14 trial or the hearing on the damages. As shown in
15 his affidavit, previously filed back in May of
16 last year, his proper address is 1010 West Turner
17 Gate Road. Our information and belief is that he
18 was served notice of the hearing at 1001 West
19 Turner Gate Road. That's also from the record
20 from your hearing, Your Honor. Mr. Suggs says
21 that we notified Mr. Jackson and the other
22 defendant in this matter by certified mail, return
23 receipt requested, restricted delivery. I
24 provided that notice to you. The envelope was
25 returned as undeliverable. And the reason it was

1 returned undeliverable is because that was not
2 Mr. Jackson's address.

3 We have since then followed up with
4 documents that indicate what Mr. Jackson's address
5 was, pay stubs, and -- and medical records and
6 things such as that. And we're prepared to
7 introduce testimony as to that issue, but I see
8 here that -- we received an affidavit yesterday
9 from Mr. Mack Harrelson, who is the process
10 server, who says, indeed, he did serve Mr. Jackson
11 with the summons and complaint in this case, but
12 that he says regardless of the error on my
13 affidavit of service as it relates to address, the
14 man I spoke to did identify himself as Elroy
15 Jackson. And if you read the entire affidavit of
16 Mack Harrelson, it indicates that there was a
17 mistake about Mr. Jackson's address. And just to
18 be clear from the plaintiffs -- to the plaintiffs
19 in this case, Mr. Jackson does not say he was not
20 served with the initial summons and complaint.
21 The process server did serve him and we're not
22 contesting that. So what we're asking for is --
23 is for Your Honor to set aside the damages
24 judgment because Mr. Jackson was not properly
25 notified by first class mail at his last known

1 address in accordance with Rule 55(b)(2) and also
2 5(a). And that that notice, we think and we're
3 pretty sure, went to the wrong address, as that
4 was the address that the -- the service process
5 server wrote down for Mr. Jackson's address. If
6 that's still a bone of contention with the
7 parties, I'd be glad to go in to evidence on that,
8 but it seems to me like that -- that was almost
9 admitted by the process server that he had the
10 wrong address.

11 THE COURT: Let me -- let me ask a
12 couple of questions and we'll determine whether we
13 need to go in to more testimony on that. Scott
14 and Roy, are -- is it admitted -- I -- I know it's
15 from the transcript that the notice of hearing was
16 returned as -- I guess, as unclaimed since it was
17 sent certified mail, return receipt requested. Is
18 it admitted that that was addressed to the wrong
19 address?

20 MR. WILLEY: Sent certified and
21 regular.

22 THE COURT: Okay.

23 MR. WILLEY: So certified is different
24 than --

25 THE COURT: Sure.

1 MR. WILLEY: The regular.

2 THE COURT: And the regular did not
3 come back?

4 MR. WILLEY: Not as far as I know. So
5 anything that -- any -- if -- if that's the
6 evidence, I think we -- whatever evidence you have
7 that he was served with everything but that, I
8 think we do probably need to put on the record and
9 then I -- we've got multiple issues, but I don't
10 think --

11 THE COURT: Yeah, no, I mean, I know
12 there are multiple legal issues --

13 MR. WILLEY: Right.

14 THE COURT: -- that we're gonna have to
15 sort through. I'm just trying to make sure what
16 -- what factually is contested --

17 MR. WILLEY: Right.

18 THE COURT: -- and not.

19 MR. WILLEY: Right. We're not required
20 to send that notice certified.

21 THE COURT: No, I know that. I'm --
22 I'm aware of that.

23 MR. WILLEY: Right.

24 THE COURT: Okay. Let's go ahead and
25 -- you can call your witness and put on the

1 evidence your testimony regarding whether or not
2 -- I -- I certainly understand that he admits he
3 got the original summons and complaint and that
4 that's not where your assertion lies.

5 MR. CHILDS: Right.

6 THE COURT: But I think probably we
7 ought to go ahead and take testimony regarding
8 what, if anything else, he -- he received --

9 MR. WILLEY: Well -- well, let -- go
10 ahead.

11 MR. CHILDS: So let -- let me clarify
12 as to what the plaintiff's position is. What
13 address did you notify the defendant at? I mean,
14 what -- what's the address the --

15 MR. WILLEY: Well, it's not our burden
16 to prove that and we're not --

17 MR. CHILDS: Okay.

18 MR. WILLEY: You -- you've got to meet
19 your burden and then we'll defend against it.

20 MR. CHILDS: Okay. So Mr. Jackson,
21 could you --

22 MR. WILLEY: Before -- and -- and let
23 me just -- just put on the record as well, I don't
24 think at this hearing oral testimony is proper or
25 allowed. I think any testimony had to be

1 proffered by affidavit. Mr. Jackson --

2 THE COURT: Well, and we have an
3 affidavit --

4 MR. WILLEY: He did. He submitted an
5 affidavit and I think that's the extent of the
6 sworn testimony for purposes of this hearing that
7 he is allowed to give under the rules regarding
8 motions hearings. I don't think it's allowed to
9 take oral testimony and, certainly, today we
10 aren't prepared for that. We -- we prepared
11 responsive affidavits.

12 THE COURT: Well, have you filed them?

13 MR. WILLEY: Well, we're not required
14 to file 'em. We can serve 'em the day of the
15 hearing because they're responsive affidavits
16 under the rules.

17 THE COURT: Okay.

18 MR. SUGGS: And we do have those --

19 MR. WILLEY: And we do have those.

20 THE COURT: Okay. I mean, I haven't
21 seen any. That's why I was asking --

22 MR. WILLEY: Right. And we will
23 provide those when it's our turn to respond.

24 THE COURT: Okay.

25 MR. WILLEY: But I -- I -- I don't

1 think adding anything at this point is appropriate
2 because we wouldn't have the opportunity then to
3 respond.

4 THE COURT: Well -- and I'm not -- I'm
5 not convinced that that's a correct statement.

6 MR. WILLEY: Okay.

7 THE COURT: Of -- of procedural law.
8 However, my guess is that the affidavit that
9 Mr. Childs has submitted, it certainly makes the
10 reference that certainly indicates that he did not
11 receive any notice. And that it is -- I guess
12 it's based on information and belief that it was
13 addressed to 1001 West Turner Gate Road.

14 MR. CHILDS: Correct. And -- and in
15 addition to that, I would submit their only
16 affidavit, Mr. Harrelson's affidavit, is in
17 support of that as well.

18 THE COURT: Okay.

19 MR. SUGGS: Do you mean the affidavit
20 of service original or the subsequent affidavit?

21 MR. CHILDS: The affidavit we got
22 yesterday. I believe what's attached to it was
23 the affidavit of service and memorandum as to the
24 address.

25 THE COURT: All of this was part of --

1 MR. CHILDS: Yeah.

2 THE COURT: So am I correct,
3 Mr. Childs, that what you're saying is that you're
4 relying on the affidavit previously served and
5 filed, the affidavit of Mr. Jackson? And then you
6 have submitted today an affidavit that, as I
7 understand it, you received yesterday --

8 MR. CHILDS: Correct.

9 THE COURT: -- and it appears to be an
10 affidavit of Mack Harrelson.

11 MR. CHILDS: Correct.

12 THE COURT: Okay.

13 MR. SUGGS: We have the original, sir.

14 THE COURT: Okay. Anything else from
15 you, Mr. Childs, at this point?

16 MR. CHILDS: No, sir. I think that that
17 adequately addresses it. My client says that the
18 process server wrote the wrong address down on his
19 affidavit of service and after that, everything
20 went to the wrong address. I would refer back to
21 -- I don't know if you have the transcript of the
22 hearing before you on December 13th of 2016 where
23 Mr. Suggs says that we sent two letters to him.
24 Why both letters were sent? I don't know. But
25 both were sent and returned. And I'll just make

1 reference to page four of the transcript line nine
2 through 17.

3 THE COURT: Okay. I don't know who's
4 going first --

5 MR. WILLEY: All right. I -- I will.
6 So -- so as an initial matter, let -- let me just
7 say that -- that this -- I don't think this motion
8 can be considered because it's untimely. Under
9 Rule 55, it requires that -- or excuse me, under
10 Rule 60, any relief from a judgment -- what the
11 rule says is it can't be filed not more than one
12 year after the judgment order or proceeding was
13 entered or taken. And what they are attempting to
14 do today is set aside or get relief from a
15 judgment that is subject of a proceeding that took
16 place in December of 2016, an order that was
17 signed on March 7th of 2017 and was subsequently
18 filed. But that's not what the rule says. It
19 says entered or not and, entered or taken. And so
20 judgment in this case, the very latest that you
21 could argue it was taken is March 7th, 2017. This
22 motion, which is to set aside the judgment, was
23 signed March 29th of 2018 by Mr. Childs. And
24 subsequently filed on April 2nd. In any event,
25 that is more than a year after the proceeding and

1 more than a year after the order was taken. Now
2 --

3 THE COURT: Isn't the one-year statute
4 in essence statute of limitations contained in the
5 rule unless I'm reading the rule wrong? It only
6 applies to motions to set aside the judgment for
7 reasons one, two and three under the -- it does
8 not apply to reasons four and five.

9 MR. WILLEY: Well, and -- and one, two
10 and three are the only ones in this particular
11 case that can apply. There's -- there can be no
12 argument and there is no argument either in the
13 motion and any memos that were filed and any
14 affidavits that were filed or before Mr. Childs'
15 argument today that the judgment was void or that
16 the judgment has been satisfied. And so under --
17 under any reading, what we are looking at is a
18 one, two or three exclusion. And in any event,
19 the policy reason for that obviously is so that
20 people can't sit on their rights and then the
21 actual statute of limitations runs and then you
22 have no -- you have no recourse.

23 In this case, it's a little different
24 because Mr. Jackson does not contend that he was
25 not served with the summons and complaint. He --

1 he apparently admits that. And really what we're
2 here arguing about and the bigger picture, as --
3 as you know, Mr. Peterson, is whether or not the
4 insurance company was prejudiced. I mean, that's
5 where this is going. And what we have for you
6 today and will -- I mean, we're happy to enter it.
7 It's -- it's not before you, but all of these
8 things that were served on Mr. Jackson, were also
9 served on the insurance company, in some cases in
10 triplicate. And in fact, the notice of default
11 hearing in addition to being mailed by regular
12 mail and certified, which wasn't required -- I
13 mean, Mr. Suggs really did do a
14 belt-and-suspenders approach here in sending
15 everything out multiples ways -- were also served
16 certified by certified mail on the registered
17 agent at the time, Mr. Leon Hicks, of Greenville
18 Casualty Company, on both of the adjustors, who
19 had been on the -- on the case, and Mr. Kevin
20 O'Brian and a Ms. Lacy Underwood.

21 MR. SUGGS: O--- Owens.

22 MR. WILLEY: Owens, excuse me.

23 MS. HONNEY: Lacey Airwood.

24 MR. WILLEY: And Kevin Owens.

25 MS. HONNEY: Kevin Owens.

1 MR. WILLEY: Okay.

2 MR. CHILDS: All right. Multiple
3 arguments from multiple --

4 MR. WILLEY: No.

5 MS. HONEY: Sorry.

6 MR. WILLEY: And -- and -- and sent to
7 Mr. Jackson, which is all that's required. So
8 Mr. Jackson's remedy in this case is to sue his
9 insurance company. And what -- and what we have
10 offered and what we continue to offer through
11 Mr. Childs is we will allow him to sign an
12 assignment to obviate his personal responsibility
13 for this three-million-dollar judgment and
14 basically give that claim to the P.R. of this
15 estate for this tragic wreck. And allow them, in
16 his stead, to sue the insurance company to collect
17 it rather than to prosecute him. In addition to
18 that, he has actual claims against his insurance
19 company, which he could retain and potentially
20 make money off of including any claims for
21 consequential damages like them dragging the --
22 him in here today for their negligence or for
23 punitive damages. And we have gone through this
24 record at the original hearing. I don't think
25 it's necessary that we put all the green cards and

1 everything on the record again, but I -- I think
2 you will remember from this case, this is
3 situation where the insurance company was notified
4 at every step. I mean, it really -- it -- it's
5 the most egregious case that I've seen. And I've
6 done a lot of these where insurance companies
7 don't protect their insured.

8 And this stack of papers, which we've
9 prepared and we'll mark one of each before we go
10 so that you have it, it's complete with all the
11 green cards from the original letter of rep, from
12 Gardner Law Firm, who was original counsel for --
13 for the personal representatives now, from Mr.
14 Suggs' office once he associated on the case and
15 from my office, who initially came in the case --
16 we were contacted by the -- the man who has a
17 child with -- with the decedent. And so that's --
18 and we all ended up working together. All of
19 those things were served.

20 So the question, then, is, okay, what
21 -- what are we really trying to do? All we're
22 try--- all this would accomplish at all is get
23 another damages hearing. And they can't contest
24 the damages that have been presented. It's a
25 wrongful death case. It's not a case where, are

1 medical bills reasonable, did this actually
2 happen? It's what is the value of loss of
3 affection to the -- the family and what amount in
4 punitive damages, where we have essentially, you
5 know, an admitted D.U.I. negligent entrustment
6 claim? All that's still gonna be admitted. None
7 of that gets taken away. The only question is
8 what's the value of damage? And I think your -- I
9 was gonna say, Your Honor, I guess, in this case,
10 did take all of that in to account. Obviously
11 thought about it for a great period of time, you
12 know, a few months. This was not a situation
13 where we came in and handed you an order. In
14 fact, you awarded less, I think, than what we
15 asked for. I mean, you clearly considered it, so
16 all we're doing is an end-run to get right back to
17 where we were to start with.

18 And so the question is, okay, under
19 Rule 60, first of all, it has to be timely. It's
20 not in this case because it says ordered --
21 entered or taken. If it said entered and taken, I
22 would submit to you we might have a problem. But
23 the rule does not say that. Furthermore, in order
24 to get there under any of the sub-parts of that
25 rule, there has to be some type of mistake and

1 excusable neglect. And under the default rule,
2 the reason we only have to send that via certified
3 mail is because in the summons, it says, if you do
4 not answer this within so much time, this is what
5 is going to happen. That is your actual notice,
6 that if you don't answer the lawsuit, you will
7 have default entered and damages will be decided.
8 And so that's why if the court and if the
9 legislature who wrote the rules and the supreme
10 court who approved 'em were really concerned about
11 individuals, who didn't want to contest the
12 lawsuit, being able to show up and contest damages
13 hearing, particularly on a case like this, they
14 would require the same service under Rule four,
15 that is required on a summons and complaint. They
16 don't. They just require mail. So in this case,
17 that occurred.

18 Furthermore, and this is admitted in
19 the affidavit when you read Mr. Harrelson's
20 affidavit. Mr. Jackson lives in the country.
21 This is not a situation where it's an apartment
22 building and the difference between apartment 85
23 and 86 is next door. Okay. Rural mail carriers
24 know who he is. And in fact, what -- what we'll
25 submit as part of this is in the notice, the blue

1 tab there. And we'll -- we'll just mark this one
2 as -- as Exhibit 1, I guess --

3 MR. CHILDS: Are we introducing
4 evidence? Affidavits?

5 MR. WILLEY: Well, it's a court's
6 exhibit. You're allowed to -- you're allowed to
7 introduce court's exhibits --

8 MR. CHILDS: Can I see a copy?

9 MR. WILLEY: You sure can. This is a
10 copy of the affidavit of service -- give him --
11 give him a copy -- that Mr. Childs -- in this case
12 when he sent notice of this letter, motion to set
13 aside judgment and certificate of service, his
14 process server, Diane Giddings, said she served
15 Mr. Jackson at 1001 West Turner Gate Road in
16 Pamplico, which is the exact same address that
17 Mr. Harrelson put. And the reason is there's no
18 distinction on Turner Gate Road between 1001 and
19 1010. It's in the mid--- it's on a dirt road in
20 the middle of a field. And so if you're on West
21 Turner Gate Road and you drive out to the middle
22 of the cotton field, there's a house there. And
23 that's where Mr. Jackson lives and everybody knows
24 it including at least two process servers and the
25 rural mail carrier.

1 So to the extent that we're here to
2 argue about the transcription of a number, it's
3 unimportant in this case. Furthermore, I would
4 direct you to Mr. Jackson's affidavit, which has
5 been filed in this case. And I'll -- I'll give
6 you -- if you look on the fourth line of that
7 where they -- they had him sign this affidavit on
8 the first page, it says, my proper address is 1010
9 West Turner Gate Road, Pimilico, South Carolina.
10 Well, there's no such place. He lives in
11 Pamlico. Okay. So that's -- that's an initial
12 point where the affidavit itself is false on its
13 face. There's is no such place as Pimilico, South
14 Carolina. Second of all, and as Mr. Childs
15 indicated, Mr. Jackson does say, five lines later,
16 he remembers being served with the lawsuit. And
17 then on the next page, on page two, if you go down
18 to the fifth line, it says, I was found in default
19 for not answering the complaint. And notice of
20 that hearing went to 1001 West Turner Gate Road
21 Pamlico, South Carolina. There's not such a place
22 as Pamlico, South Carolina. There's no evidence
23 anywhere that that went to that address. And
24 Mr. Jackson, by virtue of him saying that he
25 didn't receive it, couldn't know that. He

1 couldn't swear where it went under oath unless he
2 actually received it and was able to read the
3 envelope that had the address on it. The very
4 next sentence says 1001 West Pamplico is not my
5 known address. Well, of course it's not. He
6 lives on West Turner Gate Road in Pamplico. We
7 know that. Mr. Jackson knows that.

8 And, you know, so this affidavit has to
9 be taken for what it is, which is a self-serving
10 affidavit prepared by Counsel with numerous
11 inaccuracies within it, including on the subject
12 of what they want to raise a stink about, which is
13 the transcription or transposition of two numbers
14 in an address, where they sent him mail, where
15 they served him with notice of the hearing we're
16 here for today. And guess what? He's here. He
17 got it. So the idea that any of that should be
18 taken in to account as somehow all of these
19 factors under Rule 60 even assuming it's timely,
20 which it's not, it's just not within the spirit of
21 the rule. And -- and -- and we're really just
22 here to delay the inevitable, which is Mr. Jackson
23 should assign his claims to these parents so that
24 they can pursue, for their daughter's child, who
25 is the beneficiary of this estate that they are

1 taking care of, the money that is due to her for
2 the loss of her mother. That's what should happen
3 in this case. And delaying it and delaying it and
4 delaying it, which Greenville Casualty has done
5 since the beginning by not notifying Mr. Jackson
6 that they were taking care of the lawsuit, by not
7 taking care of the lawsuit, by forcing Mr. Suggs
8 and Counsel for the estate to go through all of
9 these steps and processes over the course of many
10 years -- it's been three years now almost since we
11 had the hearing before you. It's two years since
12 the lawsuit was filed. It was another year in
13 negotiations where the insurance company refused
14 to respond. The estate offered to settle this
15 case for the policy limits. They were --

16 MR. CHILDS: Is that really admissible
17 evidence at this hearing?

18 MR. WILLEY: Well, they were ignored.
19 And so when we look at what we're trying to do
20 here today, all of that gets taken in to account
21 because one of the factors -- one of the factors
22 under Rule 60 is what's in the interest of
23 justice? What do we look for? And when you read
24 the section on mistakes, inadvertence, excusable
25 neglect -- excusable neglect, newly discovered