

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 2

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1 evidence, fraud, et-cetera, and go through all of
2 that, even assuming you get there with the timing
3 issue, it just doesn't exist here. And we'll --
4 we'll mark all of these documents, you know.
5 Everything was served properly on the insurance
6 company.

7 We're really here because we say, well,
8 there was a transposition of one number. And on
9 the very last thing served in this case, which is
10 Exhibit 1, which is their affidavit of service,
11 the lawyer representing Mr. Jackson's affidavit of
12 service, they use the same address that's always
13 been used. And that's because when you get to
14 1000 Turner Gate Road, there's no distinction
15 between 1000, 1001 through 1010. You go out
16 there, it's pretty easy to figure out where
17 Mr. Jackson lives. And in fact, when our process
18 server did go back out there, as his affidavit
19 states, he went right to the same place where
20 everybody knows that Mr. Jackson lives.
21 Mr. Jackson came out. Mr. Jackson spoke with him
22 and that was the same individual that has been
23 dealt with throughout the pendency of this case.
24 And so there's no basis. There's no basis to set
25 aside a money award to simply drag out these

1 peoples' suffering longer, so they have to come
2 back again and give the same heart-wrenching
3 testimony about their daughter, what she meant to
4 their granddaughter, what she meant to their
5 family and how this has affected them. There's no
6 reason to put these people through that.

7 And the fact that Greenville Casualty
8 Company is trying to do that through Mr. Jackson,
9 it's infuriating, frankly, given how they've
10 handled this case since the beginning. And now
11 they're trying to use him as a pawn when they are
12 the ones that left him out to dry.

13 MR. CHILDS: Let -- let me say a few
14 things about that and I don't like to interrupt
15 lawyers in their argument. And -- and the entire
16 argument about insurance coverage is improper for
17 you. I know you're not prejudiced --

18 THE COURT: I'm not --

19 MR. CHILDS: -- but --

20 THE COURT: I'm not -- I'm not gonna
21 consider that. I know that --

22 MR. CHILDS: But --

23 THE COURT: As far as I'm concerned,
24 the issues here are isolated to the application of
25 Rule 60. I am concerned -- I had -- in preparing

1 for this hearing, of course, as -- we -- as
2 lawyers, sometimes I find myself guilty of
3 forgetting to go back and read the rule, which is
4 always a pretty good place to start. And of
5 course, I ran in to the one-year limitation there.
6 So what I would like to do and I'm gonna allow you
7 to cover anything you want to cover regarding it,
8 but I would like to start off by asking you about
9 that, about the one-year limitation in the rule.

10 MR. CHILDS: Well, first of all, the
11 judgment is void because Mr. Jackson was not
12 properly notified of the default damages hearing.
13 And the reason defendants who are even in default
14 are notified of default damages hearing, which the
15 plaintiffs practically concede that the wasn't
16 properly notified by mail, is they still have an
17 opportunity to come forward and -- and contest the
18 issues of the damages. And -- and so there --
19 there is not a automatic provision in the law that
20 says that because we sent your notice to the wrong
21 location and you never knew you had a hearing and
22 then a judgment was entered back in 2017, but
23 wasn't filed until January of 2019, that you've
24 got some notice of that. The law affords due
25 process to each individual involved in a case.

1 And so where they're arguing languages, well, the
2 hearing was held or trying to argue that somehow a
3 defendant would know that a hearing was held. In
4 this case, the defendant didn't know a hearing was
5 held 'cause he wasn't properly notified.

6 THE COURT: So -- and -- and -- and I
7 hear that and I understand that position. So is
8 it your position that you are not arguing based on
9 categories (b) (1), (2) and (3)? You're arguing
10 based on (b) (4) that the judgment is void.

11 MR. CHILDS: I'm arguing (b) (1), (2)
12 and (3) also. Because my argument is that he had
13 no notice of a judgment at all until he was
14 informed of that in March of this year -- no,
15 March of last year, March 29th to be exact. And
16 -- and he filed a motion to set aside on April the
17 2nd of 2018. So there's no way he would have --
18 he would know that a judgment existed. Because
19 the plaintiffs' never served him with a judgment.
20 You know, that's one of things you got to do even
21 if you get a default judgment against somebody,
22 you serve 'em with it. Then the year runs, that's
23 how that works 'cause they got notice. And -- and
24 so, you know -- some of the problems here is that
25 nobody ever served Mr. Jackson with notice of the

1 default judgment. We had to dig it up. Okay. It
2 wasn't even filed with the clerk until January of
3 this year. They produced that document showing
4 the judgment to us back in March of -- of last
5 year. And so that's why we filed the motion to
6 set it aside. And so technically, you know, we
7 beat -- we beat the filing of the motion.

8 THE COURT: Okay.

9 MR. CHILDS: So I -- I -- I think that
10 -- the argument of that -- because the hearing was
11 held doesn't obviate the requirement that due
12 process provides some notice to a defendant. And
13 it may -- it certainly may apply to other cases
14 where a defendant was notified of the hearing and
15 then didn't go, but not in a case where he was --
16 he was not properly served notification to his
17 last known address as to going there. And so I
18 think it's timely in all respects, but I think
19 their argument that -- that he's past a year
20 overlooks the fact that he was never served with
21 the default judgment, that it had to be
22 discovered. And once it was discovered, we filed
23 within 30 days of discovery of that thing. And --
24 and so I think that -- that we're timely in all
25 respects for all elements of the motion to set

1 aside default --

2 THE COURT: Okay. And that's what I
3 wanted to figure out is your position on that.
4 And I'm gonna come back around and we'll address
5 those --

6 MR. CHILDS: But -- and let me also say
7 that they've introduced an affidavit of service.
8 I also have that Mr. Jackson, where he was
9 subpoenaed for this hearing today at 1010 West
10 Turner Gate Road. I apologize for any errors that
11 may have been -- typographical errors that may
12 have been about Mr. Jackson's address, but
13 clearly, Mr. Jackson says my proper address was
14 1010 West Turner Gate. The -- the process server
15 says, I'm sorry for my mistake about his address.
16 And -- and then the -- the plaintiffs' can't
17 produce a single document that shows that he was
18 mailed anything at 1010 West Turner Gate Road.
19 And -- and so Mr. Jackson is not trying to belabor
20 this. Mr. Jackson had -- had an entitlement under
21 due process to participate in a hearing. He
22 wasn't afforded that. He wants to be afforded
23 that opportunity. Any evidence or testimony they
24 have about insurance companies or letters to
25 insurance companies are irrelevant and

1 inadmissible. I don't think that's something for
2 your consideration today.

3 It's nice that the plaintiffs' counsel
4 wants to try to communicate with my client by
5 telling -- trying to tell him what he ought to do
6 with his claims. I will tell Your Honor, I have
7 done that throughout. Mr. Jackson loaned a car to
8 his daughter, who loaned it to Mr. Marks, who
9 drove the car and caused the accident. He doesn't
10 even know Mr. Marks. So he's upset that he got a
11 three-million-dollar judgment against him based
12 upon loaning his car to his daughter. And -- and
13 so Mr. Marks, they haven't done a thing against
14 him. He's still sitting out there --

15 THE COURT: Well, and -- and again,
16 that's not an issue either --

17 MR. CHILDS: Right.

18 THE COURT: -- here. I -- and I mean,
19 I think I --

20 MR. CHILDS: Well, when they say the
21 defendant's trying to drag things out --

22 THE COURT: No, I know. I -- and I'm
23 not -- I -- I mean I understand everybody wants to
24 move this along and -- and everybody's tired of it
25 lingering around. But none of that's a factor in

1 my looking at Rule 60 and whether or not Rule 60
2 applies. Let me ask this, as I rule -- read Rule
3 55, Rule 55, I don't think, has any application
4 here. Is that --

5 MR. CHILDS: Fifty-five (b)(2), about
6 the notice of the hearing?

7 THE COURT: Well, no. I -- I -- I know
8 about the notice of the hearing. I'm talking
9 about the actual relief being sought since a
10 judgment has been entered, Rule 55 --

11 MR. CHILDS: Is setting aside the
12 default.

13 THE COURT: Right.

14 MR. CHILDS: Right.

15 THE COURT: Right, okay. No, I -- I
16 certainly understand. And I don't think anybody's
17 contesting that there was a requirement for a
18 notice to be mailed concerning the -- the hearing
19 on damages.

20 MR. CHILDS: To his last known address.

21 THE COURT: Yes. Now, let me ask a
22 couple of questions that I think may be
23 potentially important. I've heard from you all
24 that that notice was mailed to 1001 whatever it
25 is. And that it was mailed certified mail, return

1 receipt requested, restricted delivery and also
2 regular mail. What I haven't heard is what if
3 anything happened to the regular mail? And the
4 reason I want to know that is -- and again, I
5 don't know. I've been told --

6 MR. WILLEY: Right.

7 THE COURT: And I -- I grew up in
8 Darlington, so I'm --

9 MR. WILLEY: Right.

10 THE COURT: -- familiar with out in the
11 country.

12 MR. WILLEY: Right.

13 THE COURT: But I guess my first
14 question is is there such a place as 1001 West --
15 what is it, Turner Gate --

16 MR. SUGGS: Turner Gate Road.

17 THE COURT: -- Road. Do -- do we know?

18 MR. WILLEY: The answer's no and I'll
19 -- you can -- as best we can tell.

20 MR. SUGGS: It's just one --

21 MR. CHILDS: I don't think Google's
22 appropriate --

23 MR. WILLEY: I mean we can drive out
24 there.

25 MR. CHILDS: I just -- I just drove out

1 there today. I mean --

2 MR. WILLEY: Yeah, I mean, it's --
3 it's --

4 MR. CHILDS: If you want to look it up,
5 I drove out here and picked him up at 1010.

6 MR. WILLEY: Yeah. Yeah, it's -- it's
7 not as best we can tell. And --

8 THE COURT: And certainly that's
9 y'all's position. Is it --

10 MR. WILLEY: Well -- well -- and -- and
11 here -- and here is fact and I -- I think you're
12 honed in to it. The question is what evidence is
13 -- is before you properly? And of course,
14 arguments of Counsel aren't evidence anyway, but
15 it was found at the default hearing that he was
16 given proper notice of the hearing. That's a
17 fact. In order to undo that, they have the
18 burden, even assuming timing's proper, which I
19 don't think it is, to show that it wasn't done.
20 And showing that it wasn't done requires something
21 more than we think they sent it to the wrong
22 address. They haven't presented any evidence to
23 that. And in fact, the evidence they did present,
24 which is his affidavit, on its face doesn't even
25 get them there. This affidavit says that his

1 proper address is 1010 West Turner Gate Road,
2 Pimilico, South Carolina. It's not a place.

3 So first, we can get to the credibility
4 aspect of the affidavit if we wanted to or we can
5 just take that evidence as what it is. It's not a
6 place. You can't mail something there. The
7 second piece is on the second page, he says 1001
8 West Pamlico is not my known address. That's
9 correct. No one contests that. He says, where I
10 was found in default for not answering the
11 complaint, I believe notice of that hearing went
12 to 1001 West Turner Gate Road, Pamlico, South
13 Carolina. Also not a place. There's not evidence
14 on this record today to indicate that that notice
15 of the hearing, which was found at the default --
16 it had to be found in order for us to move
17 forward, came anywhere but to Mr. Jackson. And in
18 fact, what he says in his affidavit, I think, is
19 telling. When he says, I remember someone serving
20 this or the other lawsuit on me. He remembers
21 that, but I assume the insurance company was
22 handling everything and I didn't understand what
23 the paperwork meant. Says that about the lawsuit.
24 Doesn't say later -- if I had notice of a damages
25 hearing, I would have understood. Although I

1 didn't understand what the lawsuit was, I would
2 have known what that meant and I would have
3 contacted my insurance company.

4 All of the evidence on the record
5 indicates that if he received it, which of course
6 we contend there's not evidence that he didn't, he
7 would have assumed the insurance company was
8 handling it or not known what it meant. It was
9 another legal document, which is why -- and you'll
10 recall perhaps asking us this, it's in the
11 transcript at the damages hearing, show me
12 everything that you sent, who you sent it to and
13 we showed you in depth. Not only were things sent
14 to Mr. Jackson because we understand sometimes
15 people may not know what's going on, they were
16 also sent to the insurance company. And his own
17 affidavit says I assume my insurance company was
18 handling it. I didn't need to take action. And
19 in fact, they knew about it. So there's no --
20 first of all, there's no evidence in this
21 affidavit of what his actual claimed address is.
22 There's no evidence that they presented that
23 notice was sent anywhere but to whatever that
24 address is. There's not evidence that he did not
25 get it. It's I think the process went to or I

1 think the process server wrote.

2 And then there's underlying evidence of
3 all of that of, okay, let's assume that what
4 Counsel has argued, although the affidavit doesn't
5 say this, what -- everyone else would -- would
6 happen. And he says -- he says it on page one, I
7 remember being served with the lawsuit. I assumed
8 the insurance company was handling it. I didn't
9 understand what it meant. No indication that this
10 -- this would have been any different or led to
11 any -- any result. And what he says -- he does
12 say by the way I've been informed the hearing was
13 held on June 6th, 2016. I was found in default.
14 And notice of that hearing went to 1001 West
15 Turner Gate Road, Pamlico, South Carolina. No
16 such place. There's no evidence on the record of
17 that. He couldn't know that unless he was there
18 and got it. 1001 West Pamlico is not my known
19 address. Everyone agrees with that. There's no
20 dispute about that. There's no such place. So
21 there's no evidence on this record by which this
22 damages finding could be overturned.

23 MR. CHILDS: Do I get to argue again?

24 THE COURT: Yes, you do.

25 MR. WILLEY: And in fact, I mean -- and

1 -- and that's the other evidence, which is their
2 affidavit of service that he was served with
3 notice of the hearing at 1001, which he never in
4 this affidavit says what his correct full address
5 is. It -- based on arguments of Counsel, my
6 position is he does say what it is and they got it
7 wrong. But...

8 THE COURT: Let me just -- to keep us
9 from going around and around on it. Let -- let me
10 tell you where I struggle with it. And it focuses
11 on one sentence in Mr. Jackson's affidavit. And
12 it has nothing to do with what was the right
13 address and what as the wrong address and all
14 that. And that's the sentence right in the middle
15 of page two, where it says, to my knowledge, I was
16 never notified of that hearing, period. Now,
17 let's assume as an analogy that the only thing his
18 affidavit had said is I found out later there was
19 a hearing and I found out later there was a
20 judgment, I never got notice that there was gonna
21 be a hearing --

22 MR. WILLEY: Right.

23 THE COURT: -- period. I don't know
24 why. I don't know why I didn't get notice. I
25 don't know where the notice went. All I know is I

1 never got notice.

2 MR. WILLEY: Right.

3 THE COURT: If I believe him that he
4 never got notice, now in my mind, that pushes the
5 burden back to you all to show we complied with
6 the requirement that we send notice. As I
7 understand Mr. Childs' position, it is all of the
8 -- the evidence that they presented shows we sent
9 notice to this address. And it's their contention
10 that that's not his address.

11 MR. WILLEY: Right.

12 THE COURT: That's why I think it might
13 be important -- I mean, I -- I'm sitting here as
14 the judge in this and I've got to determine -- one
15 of the things I need to determine, I think, is do
16 I believe that he never got notice of that
17 hearing? Now, if y'all had an affidavit or --

18 MR. WILLEY: Well --

19 THE COURT: -- or you had a mail saying
20 we mailed it to 1010 West whatever, in my mind,
21 that complies with Rule 55 and we're -- we're
22 done.

23 MR. WILLEY: Right. And let --

24 THE COURT: It really doesn't matter
25 whether he got it or not. You mailed it to the

1 right address.

2 MR. WILLEY: And let me address that if
3 I might.

4 THE COURT: Okay.

5 MR. WILLEY: Because -- because I agree
6 with you and I thought I had addressed that, but I
7 might have done it in a roundabout fashion as I
8 tend to do. The law in the case is that he
9 received proper notice. So what we are here on
10 now is to change the law in the case under 60.
11 And in order to do that, they have the burden to
12 meet. The rule does not require actual notice.
13 So even this one line in the middle that says to
14 my know--- it doesn't say I was never notified of
15 the hearing --

16 THE COURT: I -- I -- I know.

17 MR. WILLEY: It says to my knowledge,
18 which is why it's important to take the sentence
19 in page one where he says he didn't understand
20 what the lawsuit paperwork meant in accord with
21 that. Because it's quite possible under that that
22 he received it as another paperwork related to the
23 lawsuit, didn't understand what it meant and so
24 now he's able to say truthfully in an affidavit
25 prepared by Counsel, I don't know if I was

1 notified of that because he didn't understand what
2 the paper meant. They have that burden. That
3 burden can't shift. They have to meet it. It's
4 not a burden shifting test where, you know, once
5 you get past this, you've got to do this. They've
6 got to meet the burden. And the burden doesn't
7 require actual notice. So even if it said -- even
8 if this line about not knowing what lawsuit
9 paperwork was out and it said I was never notified
10 of that hearing, still not grounds under Rule 60.
11 Because it's not required that actual notice of
12 the hearing take place. If the legislature and
13 the supreme court --

14 THE COURT: I would agree totally with
15 what you're saying if I had an affidavit showing
16 that the Rule 55 had been complied with and there
17 was a notice mailed to his last known address.

18 MR. WILLEY: And we have that. We have
19 that with respect to the order on damages. You
20 had to find that in order to enter that order.
21 And it's contained in there. It's the law of the
22 case. They don't get to come --

23 THE COURT: No, I -- I -- I -- you
24 might be right and I'm -- I'm not gonna rule
25 today.

1 MR. WILLEY: Right.

2 THE COURT: I'm gonna look at this and
3 research it, but as I view that, you all presented
4 affidavits. You all presented testimony that
5 there had been notice of the hearing sent. You
6 even went in to detail that the certified mail had
7 been returned as unclaimed, which obviously isn't
8 unusual in -- in matters like this. But I don't
9 think my conclusion that he was properly served is
10 something that can't be overcome and I'll tell you
11 where my focus is on this is whether or not this
12 is a void judgment.

13 MR. WILLEY: Okay.

14 THE COURT: That's -- that's the whole
15 thing I'm struggling with. And if -- if we backed
16 up and I gave you a set of facts and the set of
17 facts were that, Scott, in trying to notify him of
18 the hearing, pulled up the wrong file and sent the
19 notice of hearing to Jim Peterson's address in
20 Florence instead of Mr. Jackson's address in
21 Pamplico and now we have a situation where, you
22 know, he comes in and said I never got notice of
23 the hearing. You all say, well, we mailed it. We
24 mailed it at 2711 Trotter Road, Florence, South
25 Carolina. Well, that's not his address. If that

1 were the situation, I don't think the fact that I
2 concluded, based on the evidence presented that
3 day, that proper notice had been given would mean
4 that we can't address that now. I might be wrong
5 and I will look at that before I make a ruling.

6 MR. CHILDS: Here -- here's my problem
7 and I don't want to interrupt you, but I just did.
8 But in the record, they say they showed you the
9 notice. But now they don't want to show you the
10 notice.

11 MR. WILLEY: Well, let -- let me
12 address --

13 MR. CHILDS: Well, I don't -- I
14 don't --

15 THE COURT: Well, the notice is part of
16 the record --

17 MR. CHILDS: I don't have -- well, no,
18 it's not. It -- I've got the transcript, but I
19 don't have the notice that they said they showed
20 you.

21 MR. WILLEY: Let -- let me address it a
22 little differently 'cause I think we're still on
23 this actual notice issue. And what the rule says
24 -- and let me just -- let me just make this point,
25 the rule says that notice of the damages hearing

1 must be sent to the last known address. Okay. It
2 doesn't say the correct address. It doesn't say
3 the person's residence. It doesn't say where the
4 person lives. It says the last known address.
5 And what you'll have when we mark the documents is
6 you'll have a few pieces of evidence on that.
7 You'll have a police report, which indicates that
8 Elroy Jackson lived at 1001 West Turner Gate Road
9 in Pamplico. You'll have the affidavit, that we
10 marked, that his own counsel just submitted,
11 indicating that he was served at 1001 West Turner
12 Gate Road in Pamplico, South Carolina on March
13 29th, 2018. And you'll have all of the other
14 documents in the case, which indicate his address
15 at 1001 West Turner Gate Road, Pamplico, South
16 Carolina. You'll then have his affidavit, which
17 indicates his address is in a city that doesn't
18 exist. Last known address is just that, the last
19 address we knew about. And the last address we
20 knew about probably was 1001 West Turner Gate Road
21 in Pamplico since that is what the whole bevy of
22 documents indicated including the regis---
23 including the police report, including everything
24 we have.

25 And the reason for that is simple under

1 the rules if you think about it, again, because
2 you get actual notice of the lawsuit with a
3 summons, you have to be properly served there,
4 which tells you what to do. And if you don't, the
5 plaintiff doesn't have to go track you down, you
6 know, a month of Sundays to tell you what you got
7 to do next if you didn't do what you're supposed
8 to do the first time. And so that's an important
9 part of the rule was the last known address. And
10 in this case, you found that in the order. And I
11 understand you're gonna look at that and -- and
12 may disagree that that's the law of the case.
13 It's my position, it is, of course.

14 But in any event, even if you buy all
15 that argument and you want to get down to what the
16 rule says about last known address, it doesn't say
17 actual notice, it doesn't say actual service, it
18 says last known address. And as late as April 12,
19 2018 in the affidavit they signed and submitted to
20 the Court, known address was 1001 West Turner Gate
21 Road in Pamplico. And the reason for that is
22 because there is no -- not a dime's worth of
23 difference between 1001 West Turner Gate Road and
24 1010 West Turner Gate Road in Pamplico. It's
25 where Mr. Jackson lives in the country. Everybody

1 that knows that area knows where to find him.

2 MR. CHILDS: So I -- I -- again, say
3 that they're not even answering the question about
4 where he was served at for the hearing. And their
5 last known address clearly was where the process
6 server went. And that's in the process server's
7 affidavit and he says, sorry -- sorry I put down
8 the wrong address. And -- and that's clearly
9 simple. All this other stuff, if they want to try
10 to introduce records and police records or
11 accident reports, all that's irrelevant to this
12 issue, I think the law implies that the last known
13 address would be where he got served, which was
14 1010 West Turner Gate Road. And -- and so their
15 -- their process server says he made a mistake
16 about the address. And I'm sure that mistake was
17 followed -- I mean, I -- I can see doing it
18 myself. The process server puts down 1001. I'm
19 gonna look at that -- I'm gonna send the mail out
20 to 1001 West Turner Gate Road. And that's
21 probably what happened. And -- and I -- I -- I --
22 I just keep hearing -- dancing around the issue,
23 but the issue is what -- that the proper address.
24 And unless we can determine what was provided to
25 you at the hearing -- and -- and even then when --

1 the defendant's not able to participate in that
2 hearing. So he's not there. He's not been
3 notified. So the -- the plaintiff could stand up
4 and say, you know, the address of the defendant
5 was, you know, 2100 Poinsett Highway, Greenville,
6 South Carolina. And here's the notice that we
7 sent to him. There's nobody there to say that's
8 wrong because the defendant wasn't notified to be
9 there. And -- and so I -- I think obviously your
10 decision about the default that was based upon the
11 information you were provided at the time and I
12 think you could research -- clearly revisit that.
13 And so I'd like to know what address they -- they
14 mailed that notice of hearing to.

15 MR. WILLEY: It went to the last known
16 address, which is what's required. It's not
17 required that it's the right address or that it's
18 the residence or that it's even an address of the
19 individual. It's the last known address. And
20 that's what we submitted at the hearing on
21 damages. That's what Your Honor found in order to
22 make the ruling on damages. And that's the law of
23 the case. And until they can meet their burden to
24 show somehow we knew of some other address, that's
25 what they li--- they would literally have to show

1 that is his last known address to us, the one
2 sending the notice to Mr. Suggs' office was
3 something different than where it was sent. They
4 haven't presented any evidence to do that.

5 MR. SUGGS: And -- and may I interrupt
6 or interject something? And I know we're not
7 talking about insurance or insurance companies,
8 but I -- I -- I do know that his insurance company
9 was also put on notice of the damages hearing by
10 certified mail, return receipt requested twice.
11 And they never responded and they never showed up
12 and -- and certainly, I can't assume any
13 communication between the carrier and Mr. Jackson.
14 But I would -- I would argue that any premiums
15 that Mr. Jackson paid to the insurance company got
16 to where they were supposed to go and Mr. Jackson
17 got the policy information he was supposed to get
18 whatever address, 10,000, 1001 and 1010. They
19 would have -- there would have been a delivery on
20 both sides of that correspondence.

21 THE COURT: Let me ask you all this,
22 and I've done a little bit of research in
23 preparation for this, are any of you aware of any
24 case law in South Carolina interpreting the
25 terminology of a void judgment as used in Rule 60

1 where the basis of a finding of a void judgment is
2 failure to -- I'm just gonna say properly notify.
3 And I get that it's on actual notice, but failure
4 to properly notify a defendant of the damages
5 hearing.

6 MR. WILLEY: I -- I looked and I didn't
7 find any under that specific issue. And I think
8 that the reason is quite simple. It's because of
9 what the rule says about last known address. And
10 unless the person who has the burden trying to set
11 aside that judgment is able to come forward and
12 say, no, that lawyer or that party should have --
13 knew that the address was something other than
14 where they sent it, it's impossible to meet that
15 burden. And I think we're -- we're seeing that
16 here where we have a lot of issues and kind of a
17 lot of muck in the water. But when you just get
18 right down to it, you've got to meet that burden
19 by proving the last known address was something
20 other than where it was sent. And -- and that's
21 -- that's nearly impossible to do absent an
22 admission.

23 THE COURT: Mr. Childs, are you aware
24 of --

25 MR. CHILDS: No, I'm not aware of any

1 case that talks about the lack of notice of a
2 default damages hearing making the judgment void
3 per se. I think there's a case about lack of
4 notice of the default hearing --

5 THE COURT: Right.

6 MR. CHILDS: -- making it void. So --

7 THE COURT: No, I found that.

8 MR. CHILDS: Yeah. And so I would
9 equate -- the same -- you know, the same notice
10 requirements are encompassed in both. And so I
11 think that -- that, you know, the idea that a
12 judgment should be void for lack of notice to the
13 defendant is a clear principle of the law. And --
14 and should be clear in this case. And -- and so
15 what we're not -- what we're asking for is due
16 process. And what we're asking for -- and the
17 legislature and the courts have agreed that unless
18 you have unliquidated damages, you're entitled to
19 notice of that hearing so that you can possibly go
20 and contest it. You know, the last known address
21 argument is interesting, but I think that it's
22 clear -- and if we're gonna get in to testimony
23 and evidence about records without the custodians
24 here, I'm gonna put in stuff, too.

25 THE COURT: Well -- and...

1 MR. CHILDS: 'Cause I've got his health
2 records. I've got his payroll records. I've got
3 all kind of records that show what his address is.

4 THE COURT: Well -- and -- and let me
5 -- let me just cut to the chase here a little bit.
6 As I'm sitting here right now, I have no doubt in
7 my mind that his correct address is 1010 West
8 Turner Gate Road. What I find interesting is the
9 position put forth by Mr. Willey 'cause I was not
10 aware of this until he just said it, that even the
11 police report used the 1001 West Turner Gate Road
12 address. I mean, you can have 10,000 pieces of
13 paper that say his right address is 1010, but if
14 all of the information that's available to the
15 plaintiffs' reasonably indicates to them that his
16 address is 1001 and then they personally serve him
17 and the process server comes back and says
18 mistakenly, I mean, I'm not -- I get it. He says
19 it was a mistake. But he then comes back and says
20 I served him. I saw him. I met him at 1001 West
21 Turner Gate Road. I can see an argument that they
22 sent the notice to the last known address.

23 Now, there's a piece of evidence
24 missing. If for a moment, we take -- I say, okay,
25 I'm worried about the affidavit of Mr. Jackson

1 that I'm interpreting and I get it, there are
2 arguments against it, but I'm interpreting as him
3 saying I didn't get notice of the hearing. He
4 then surmises why he didn't get notice, but let's
5 just say I didn't get notice. I also know that
6 actual notice does not -- a requirement, that that
7 alone doesn't get them there. It appears to me
8 that the logical response to that is we don't know
9 whether Mr. Jackson got the notice or not, but
10 what we do know is that he was sent notice at his
11 last known address. Well, what I'm missing today
12 -- and I'm taking y'all's word for it that it's
13 not part of the record 'cause I haven't gone back
14 through that. What I'm missing today is where the
15 heck was the notice sent? And I know that we're
16 dancing around that, but if I'm going down that
17 path, I've got to know where the notice was sent.
18 He says he didn't get it. You say his last known
19 address was actually 1001 West Turner Gate Road
20 because that's what was in the police report.
21 That's what the process server said. That's what
22 everybody said. The only thing that's missing in
23 that puzzle to me is where was it sent?

24 MR. SUGGS: Well, wouldn't the
25 information -- and this may not answer your

1 question, but partially, but wouldn't the
2 information on the police report concerning his
3 address be taken from the registration of the
4 vehicle after the wreck --

5 THE COURT: That -- that's my guess.

6 MR. WILLEY: But it -- but it also --

7 MR. SUGGS: And -- and --

8 MR. CHILDS: That -- that presumes --

9 THE COURT: I'm -- I'm making the
10 assumption that --

11 MR. CHILDS: -- that -- that
12 presumes --

13 THE COURT: Well, I mean -- yeah --

14 MR. WILLEY: Well, it doesn't matter --

15 THE COURT: Yeah, we can't -- the --
16 the court reporter is -- we're gonna drive her
17 crazy. We can't all talk at once. I mean, I -- I
18 -- I know and that may be taken from the
19 registration. It may have been a mistake. I
20 mean, I -- let's face it, police officer standing
21 out there at a bad wreck trying to write down
22 stuff and it may have been a mistake. I, right
23 now, don't care whether it was a mistake or not.
24 What I'm hearing you all say is that the last
25 known address that you had for Mr. Jackson was

1 1001 West Turner Gate Road. And I get that. And
2 I'm willing to accept that for a moment as I'm
3 thinking through this. Right or wrong, that was
4 your last known address. What I don't have in
5 evidence before me today is that's where we sent
6 the letter. Now, there's all sorts --

7 MR. WILLEY: Well --

8 THE COURT: -- of insinuations that's
9 where you sent the letter.

10 MR. WILLEY: Right. So the first thing
11 is I think you have on -- on Mack's affidavit that
12 that was the address he was served at. So in
13 terms of being last known address --

14 THE COURT: Absolutely. I'm good --

15 MR. WILLEY: And I think --

16 THE COURT: -- with that.

17 MR. WILLEY: I think the defendant has
18 admitted today through the affidavit, that's where
19 they think the letter was sent. There's no way...

20 THE COURT: But -- if -- and -- and I
21 just humor me for a minute.

22 MR. WILLEY: Right.

23 THE COURT: I get it. I'm not ruling
24 this.

25 MR. WILLEY: Right.

1 THE COURT: But humor me. If I say --
2 if I conclude as I'm analyzing this that
3 Mr. Jackson's saying I never heard a peep from
4 anyone giving me notice of a hearing, if -- if I
5 conclude that, then as I apply the rules, that
6 alone doesn't tell me he's entitled to relief.
7 That alone tells me, okay, all I need to know is
8 that he was sent notice at his last known address.

9 MR. WILLEY: Right. And I -- and I --

10 THE COURT: That's what I'm missing.

11 MR. WILLEY: Well, I don't think you're
12 missing it. As an officer of the Court, I have
13 said that. I have said, he was sent notice to his
14 last known address and by us -- by officers of the
15 Court. There's not third party or a document
16 required when an officer of the Court makes a
17 representation about what an officer of the Court
18 did. And I've said that in this hearing. He was
19 sent notice to his last known address. And what
20 you have is actually a little bit more than that
21 because you have the certified mail copy that was
22 also sent. You have the address on there that --
23 that you've seen and that it -- that it, you know,
24 was returned and Mack Harrelson's affidavit that
25 said, yes, this is where he was served. So in

1 terms of it being the last known address, you have
2 that and you have the statement that that's what
3 was done.

4 THE COURT: When y'all find yourselves
5 before the supreme court arguing whether or not
6 this thing was done --

7 MR. WILLEY: Right.

8 THE COURT: -- and the supreme court
9 says where is the evidence in this record that he
10 was sent a letter notifying him of the hearing at
11 1001 or whatever --

12 MR. WILLEY: Right.

13 THE COURT: -- you contend his last
14 known address was.

15 MR. WILLEY: Right.

16 THE COURT: I --

17 MR. WILLEY: Well, let --

18 THE COURT: You know, I've been at this
19 a long time.

20 MR. WILLEY: Right.

21 THE COURT: And they don't like judges
22 making rulings without seeing a piece of evidence.
23 Yeah, that's --

24 MR. WILLEY: So --

25 THE COURT: -- all I'm asking for.

1 MR. SUGGS: May -- may we have -- may
2 we take about a five-minute or ten-minute break --

3 THE COURT: Yeah, absolutely.

4 MR. SUGGS: -- and let me confirm with
5 Counsel?

6 THE COURT: Absolutely.

7 MR. SUGGS: Would that be okay with
8 everybody?

9 THE COURT: Sure. Why don't we
10 adjourn; everybody relax for five or ten minutes.
11 Just let me know when you're ready and we'll pick
12 back up.

13 (WHEREUPON, A BREAK WAS TAKEN
14 FROM THE PROCEEDINGS.)

15 MR. WILLEY: The affidavit of Mack
16 Harrelson, do you want us to file that and bring
17 you a copy since it's responsive or do you want us
18 to give you a copy? How would you like --

19 THE COURT: Oh, I think it would be
20 best if you filed it. And then --

21 MR. WILLEY: And then --

22 THE COURT: -- you can send me a copy.
23 You can just send it by e-mail or whatever.

24 MR. WILLEY: Okay. Yeah, 'cause it's
25 e-filing now.

1 THE COURT: Yeah.

2 MR. WILLEY: So we'll be able to
3 forward it. That'll be fine. That does include
4 an exhibit to it, which is noted in affidavit,
5 which is a police report. So you'll have that.

6 THE COURT: Oh, okay. And -- and
7 Robert had put that in.

8 MR. WILLEY: Mack Harrelson's
9 affidavit?

10 THE COURT: Yeah, that was what he put
11 in and I haven't studied it yet.

12 MR. WILLEY: Okay, very good.

13 THE COURT: I do not see a copy of the
14 police report on this one.

15 MR. WILLEY: I think it's made it to
16 the bottom of this stack there.

17 MR. SUGGS: The police report would
18 have been -- it's attached, I think, to Mack's
19 affidavit.

20 MR. WILLEY: It is.

21 THE COURT: Yeah, I got it.

22 MR. WILLEY: So the -- the only thing
23 in conference, we realized that I was speaking for
24 Scott as an officer of the Court, so he's gonna
25 make a staement and then we're -- we're gonna be

1 done with what we think we need to do.

2 THE COURT: Okay. Scott?

3 MR. SUGGS: Yes, sir, may it please the
4 Court? Since the issue seems to be notice of the
5 defendant, Mr. Jackson, on -- on the damages
6 hearing, normally as an office policy, we send
7 letters out to clients, for example, if we -- if
8 it's a disengagement letter, we will send it
9 certified mail, return receipt requested. We will
10 send it regular mail and or hand deliver that
11 letter. Certainly hand delivery was not done in
12 this case. But we did send a notice by certified
13 mail as well as by -- which was -- I don't think
14 we're required to do, but also by first class mail
15 to the last known address of the defendant, Elroy
16 Jackson.

17 THE COURT: And was that last known
18 address the 1001 West...

19 MR. SUGGS: Turner Gate Road --

20 THE COURT: Turner Gate?

21 MR. SUGGS: Yes, sir. Yes, sir.

22 THE COURT: Okay. Robert, anything
23 else you want to put on the record?

24 MR. CHILDS: Is -- is -- so the -- is
25 it that we do not have a copy of those? Is that

1 correct?

2 MR. SUGGS: I -- I -- if it's not in
3 this voluminous file, which we've tried to
4 organize as best we could, it would not be a
5 difficult process to produce it.

6 MR. WILLEY: Well, you -- you would
7 never have a copy of a first class mail that you
8 mailed --

9 MR. CHILDS: You would have a
10 certificate of mailing.

11 MR. WILLEY: Unless it -- no, you
12 wouldn't. On the letter?

13 MR. CHILDS: Yeah, normally I would.

14 MR. WILLEY: Maybe, but I -- I don't
15 think it's required under the rules --

16 MR. CHILDS: Do you have a copy of the
17 letter that was sent?

18 MR. WILLEY: Well, it's not required.
19 We're not gonna build your record for you. So...

20 MR. CHILDS: Well, you know, for the
21 record, I -- I say on page four of the hearing,
22 that Mr. Suggs stated that we notified Elroy
23 Jackson, the other defendant in this matter. The
24 certified mail, return receipt requested,
25 restricted delivery and I provided that notice to

1 you. The envelope was returned as undeliverable.
2 Actually we sent two letters to him. Why two
3 letter were sent? I don't know, but they were
4 both sent and returned.

5 MR. SUGGS: I know now. It was -- in
6 looking at the letters, one was West Turner Gate
7 Road and the other was West Turn Gate Road, just
8 to be sure that there was no misunderstanding of
9 the correct street address. So that was the
10 reason for the two certified letters to the same
11 defendant.

12 MR. CHILDS: So we don't have those
13 letters? I mean...

14 MR. SUGGS: Uh-huh.

15 MR. CHILDS: I just asked that they be
16 produced because I -- I can't determine from the
17 record what was presented to -- to Your Honor.
18 There's a reference to two letters and -- and I've
19 got a transcript that doesn't have those letters
20 associated with it.

21 MR. WILLEY: Well, just -- that's fine,
22 Scott.

23 MR. SUGGS: Okay.

24 MR. WILLEY: We're not -- we're not
25 doing discovery in the middle of a hearing.

1 MR. CHILDS: So one -- one address --
2 so just to clarify, one address was totally not
3 his address.

4 MR. SUGGS: For Turner Gate?

5 MR. CHILDS: Yeah.

6 MR. SUGGS: I -- I don't -- as far as I
7 know, you know.

8 THE COURT: Okay. Anything else that
9 you all want to present today as part of this
10 hearing either side?

11 MR. WILLEY: No, sir, we will -- we've
12 marked this. We will file that affidavit and then
13 send you a copy. Obviously, that'll be part of
14 the hearing. And I think that's -- that'll do it.

15 MR. CHILDS: I would have some
16 additional materials about his address that I
17 brought with me. I understand that probably that
18 would be a supplemental affidavit in this case.
19 And I'd like permission to submit that to you
20 following this hearing about, you know, his
21 address.

22 MR. WILLEY: And we -- we obviously
23 object to that. I don't think that is proper once
24 a hearing has been conducted and concluded that
25 the party with the burden have the opportunity to

1 submit additional evidence to meet their burden,
2 which they couldn't do in the first instance. Of
3 course, we wouldn't have the opportunity to
4 respond or prepare for that having already had the
5 hearing and already done the response. I don't --
6 I don't know of anything in the rules that allow
7 for that.

8 MR. CHILDS: I did in response mention
9 the subpoena for Mr. Jackson's appearance here
10 today, which I believe you've been copied with
11 also. And so I'd like to introduce that in to
12 evidence.

13 THE COURT: What I'd like to do is,
14 Robert, anything that you want to introduce, I
15 want to let's go ahead and have the court reporter
16 mark it. And I understand there's an objection.
17 We'll make sure we know which things are being
18 objected to. And in that way, I -- I will -- when
19 I make my ruling, I will also make a ruling on the
20 admissibility of those items. And I know I said
21 before that I wanted you just to file that and
22 then send me a copy, but just so it's all in one
23 place and one record, let's go ahead and mark that
24 as an exhibit to the record today, too. So
25 that --

1 MR. WILLEY: Just mark a copy?

2 THE COURT: Yeah, just mark a copy.

3 (Plaintiff's exhibit numbers 1-2
4 marked for identification.)

5 (Defendant's exhibit numbers 1-5
6 marked for identification.)

7 THE COURT: As I understand it, there's
8 no objection to Defense 1.

9 MR. WILLEY: Well, dif--- it's a
10 different objection. I -- we -- we do object to
11 1. The -- the basis of the hearing is the last
12 known address and so where Mr. Childs sent his
13 subpoena is totally irrelevant as of last week.
14 It was the last known address as of the date of
15 mailing notice of hearing.

16 MR. CHILDS: Does that make -- make
17 the --

18 MR. WILLEY: Now --

19 MR. CHILDS: -- March affidavit of
20 service irrelevant?

21 MR. WILLEY: You're free to make your
22 objections. You're free to -- you're free to make
23 that objection. I just thought that that --

24 THE COURT: I -- I understand that --

25 MR. WILLEY: You know, in terms of

1 judicial irony, you don't get it that often.
2 Okay. So I thought that was important. And
3 Heather actually found that. I didn't even see it
4 when I read through the first time.

5 THE COURT: I can -- I can recognize
6 that.

7 MR. WILLEY: So on -- on -- on 2
8 through 5, first of all, we don't have any
9 evidence of the authenticity of these documents.

10 THE COURT: So they're authentication.

11 MR. WILLEY: Authentication. They're
12 also irrelevant to the issue. There's no evidence
13 or testimony that we would have any knowledge
14 about his radiology report, his earnings
15 statements, any of his medical bills prior to
16 today. And so what Mr. Suggs knew as the last
17 known address, this has no bearing on, which is
18 the issue.

19 THE COURT: I understand. Okay. And
20 Robert, on -- as to their two exhibits...

21 MR. CHILDS: I will have the same
22 objection that he had to mine.

23 THE COURT: I gotcha.

24 MR. SUGGS: Never heard of a lawyer
25 objecting to his own submissions.

1 THE COURT: Well, most of what we do is
2 irrelevant anyway.

3 MR. CHILDS: That's why I left that to
4 last.

5 MR. SUGGS: Make sure that's off the
6 record, that last part.

7 MR. WILLEY: No, it's a good part.

8 THE COURT: No, I -- I do -- and I
9 thank all of you for being here and helping us go
10 through the issues. Here at the end, we start
11 making jokes, not because we don't think this is a
12 serious matter, it's a very serious matter and I'm
13 gonna take it very seriously. Sometimes in the
14 practice of law, we laugh to keep from crying and
15 so I don't want any of you to think that we think
16 this is not a serious matter. It is a very
17 serious matter.

18 MR. SUGGS: Very well put point.

19 THE COURT: What I -- what I will do is
20 study these and study the law and I -- I recognize
21 that this thing has been around forever and two
22 days. And that we need to go ahead and get this
23 done and it will be done. It will be done within
24 the next ten days at the latest. And I will draft
25 an order and send it to everyone. To avoid any --

1 I don't know if you all know what goes on with
2 special referees now and the new filing system.
3 As I did before, it's always been our practice
4 that we sent the orders to the attorneys for them
5 to file 'em so that they can make sure that they
6 were filed and indexed properly and all of that.
7 It's even a bigger problem now. I know this --
8 how crazy this sounds, but we are told that number
9 one, the order has to be filed using the
10 electronic filing system and number two, that I
11 can't file it. So when I send this order,
12 somebody needs to make sure that the order gets
13 filed and -- and properly done. And it's my
14 understanding that's one of the flaws in the
15 system that they are trying to correct as we
16 speak. And that's way above my knowledge level as
17 to how you do that. But they do tell us that we
18 cannot file 'em electronically.

19 So I tell you that on the record so
20 that when I send this out, I'll send it with a
21 letter asking you all to make sure that you get it
22 properly filed so that everything can go on
23 forward from there. Anything else today?

24 MR. CHILDS: No, sir.

25 MR. WILLEY: No, sir.

1 THE COURT: Thank you all for being
2 here and thank you for putting up with us all
3 talking over each other.

4
5 (The hearing concluded at 2:45 p.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 7th day of May, 2019.

Ashley Rogers

MY COMMISSION EXPIRES:
March 15, 2022

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**

**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:

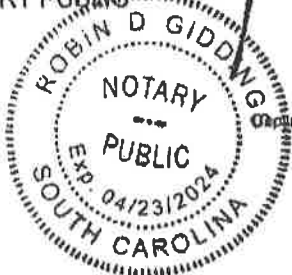
**SUBSTITUTE served by delivering a true copy of the LETTER, MOTION TO SET ASIDE JUDGMENT
and CERTIFICATE OF SERVICE with the date and hour of service endorsed thereon by me, to: Chris
Brown as Roommate at the address of: 1001 W. Turner Gate Road, Pamplico, SC 29583, the within
named person's usual place 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.**

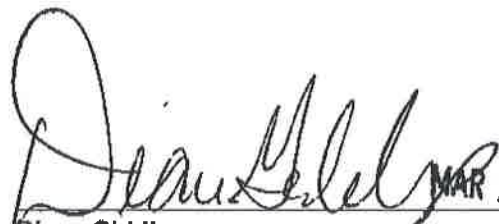
**Description of Person Served: Age: 35, Sex: M, Race/Skin Color: Black, Height: 5'10, Weight: 200, Hair:
Black, Glasses: N**

**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**

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

NOTARY PUBLIC




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**PLAINTIFF'S
EXHIBIT**

ROA 295

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2018 MAR 12 PM 3:20
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JUDICIAL BRANCH 1
FLORENCE COUNTY, SC

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/Affiant

SWORN TO and SUBSCRIBED before me,

this 14th day of April, 2019


NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 3/30/2026

CERTIFIED: A TRUE COPY

Carrie Reel Sheridan

CLERK OF COURT & C.S.
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. AND ELROY JACKSON,
DEFENDANT(S).

RETURN OF SERVICE

CASE NUMBER: 15-CP-21-2451

2015 SEP 22 PM 3:26

FILED

CARRIE REEL SHERIDAN
C.C.P. & C.S.
FLORENCE COUNTY, SC

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 PAUMPUCK, S.C. 29583
(Name of Person Served)

By delivering a copy to

Personally (Plaintiff or Defendant)

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

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:

SWORN to before me this
28 day of August, 2015

Don Max Harrelson
Notary Public for South Carolina

Mack Harrelson
MACK HARRELSON
P.O. BOX 6826

ROA 300

MEMORANDUM

TO: Mack Harrelson.
FROM: Tammy
DATE August 28, 2015
RE: Estate of Artrell Davis

Could you please serve the attached Summons and Complaint's to:

Michael Laverne Marks Jr.
1211 William Lane
Florence, S.C. 29506

AND

Elroy Jackson
1001 W. Turner Gate Rd.
Pamplico, S.C. 29583
(843) 624-8349

I have no information on these gentlemen other than what was provided on the S.C. Traffic Collision Report. Mr. Marks was the driver and unfortunately, I do not have a phone number for him.

ROA 301

ORIGINAL-AMENDED

FATAL

SOUTH CAROLINA DPS/CHS & DMV USE ONLY										SOUTH CAROLINA TRAFFIC COLLISION REPORT FORM TR-310 (Rev. 11/2011)										# Of Units 02		Amended - Attach Copy of Original Report ☒		Notified 0040		Arrived 0049											
Date 08-06-2014		Time of Collision 0030		County 21		1-Interstate 2-US Primary 3-SC Primary		4-Secondary 5-County 6-PP		Collision Location (Rt. # / Name) 5 184 / 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 S W		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 9-Other		GPS COORDINATES 00 00: 00.00: DEGREES MINUTES SECONDS Latitude 33 58 42.50 Longitude 79 34 08.92													
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										0-Main Line 2-Alternate 3-Spur		6-Connection 7-Business 9-Other													
E-841095 Driver/Pedestrian's Full Name MARKS, JR MICHAEL LAVERNE										E-841096 Driver/Pedestrian's Full Name MILES PAMELA ANN																											
Unit # 01		Sex M		Race B		Street 1211 WILLIAM LANE		City, State, & Zip FLORENCE SC 29508		State SC		Driver's License # 103474714		Class ID		Insurance Company GREENVILLE CASUALTY		Unit # 02		Sex F		Race W		Street 1020 LAKE CITY HWY		City, State, & Zip JOHNSONVILLE SC 29555		State SC		Driver's License # 7000098		Class D		Insurance Company ALLSTATE			
Year 1998		Body SU		Vehicle Make FORD		VIN # 1FMZU32BXWZB00048		State SC		Year 2016		Body 48		Vehicle Make DODG		VIN # 2B3KA43R27H842329		State SC		Year 2016		Body 48		Vehicle Make DODG		VIN # 2B3KA43R27H842329		State SC		Year 2016		Body 48		Vehicle Make DODG		VIN # 2B3KA43R27H842329	
Home Telephone (843) 824-8349		Bus. Telephone ()		Contributed To Collision Yes No		City, State, & Zip PAMPLICO SC 29563		Home Telephone (843) 580-0227		Bus. Telephone ()		Contributed To Collision Yes No		City, State, & Zip JOHNSONVILLE SC 29555		Home Telephone (843) 580-0227		Bus. Telephone ()		Contributed To Collision Yes No		City, State, & Zip JOHNSONVILLE SC 29555															
Estimated Speed 55		Speed Limit 80		C.D.L. Req. Yes No 2014A21		T/B S Req. Yes No 88		Alc/Drg Info (see back): Yes No GOINS		Estimated Speed 45		Speed Limit 86		C.D.L. Req. Yes No 2014A21		T/B S Req. Yes No 88		Alc/Drg Info (see back): Yes No GOINS																			
Driver/Pedestrian's Full Name JACKSON ELROY										Driver/Pedestrian's Full Name MILES CHARLES EDWARD																											
Unit # 01		Sex M		Race B		Street 1001 W. TURNER GATE RD		City, State, & Zip PAMPLICO SC 29563		Unit # 02		Sex F		Race W		Street 1020 LAKE CITY HWY		City, State, & Zip JOHNSONVILLE SC 29555																			
Year 2016		Body SU		Vehicle Make FORD		VIN # 1FMZU32BXWZB00048		State SC		Year 2016		Body 48		Vehicle Make DODG		VIN # 2B3KA43R27H842329		State SC																			
Home Telephone (843) 824-8349		Bus. Telephone ()		Contributed To Collision Yes No		City, State, & Zip PAMPLICO SC 29563		Home Telephone (843) 580-0227		Bus. Telephone ()		Contributed To Collision Yes No		City, State, & Zip JOHNSONVILLE SC 29555																							
Estimated Speed 55		Speed Limit 80		C.D.L. Req. Yes No 2014A21		T/B S Req. Yes No 88		Alc/Drg Info (see back): Yes No GOINS		Estimated Speed 45		Speed Limit 86		C.D.L. Req. Yes No 2014A21		T/B S Req. Yes No 88		Alc/Drg Info (see back): Yes No GOINS																			
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. 2																											
Unit 1: \$2000 Unit 2: \$10000 Unit 3: \$ Prop. Dam. 1: \$ Prop. Dam. 2: \$										Unit 1: \$2000 Unit 2: \$10000 Unit 3: \$ Prop. Dam. 1: \$ Prop. Dam. 2: \$																											
Property Owner/Witness: Address: State: Zip: Phone:										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.										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.																											
08/15/2014: AMENDED TO SHOW THAT UNIT 1 PASSENGER, ARTRELL DAVIS, DIED AS A RESULT OF INJURIES SUSTAINED IN COLLISION.										08/15/2014: 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 WARRANTY IS MADE AS TO THE FACTUAL ACCURACY THEREOF.										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 WARRANTY IS MADE AS TO THE FACTUAL ACCURACY THEREOF.																											
Investigating Officer's Name POSTON - L N		Rank LCPL		Badge # 793		Jurisdiction Code H P O 5		Review Date 08-15-2014		Reviewer's Name F T Cherry		Rank DCI		Internal Agency Code FL100																							

ROA 302

FATAL

2014585400

Unit	Date of Birth	Sex	Race	INJ	Seat	R/S/D	A.B.P.	Eject	LAI	Tran	Name	Street Address	Zip Code
01	07-21-1968	M	B	2	01	00	4	0	1	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	1	MILES PAMELA ANN	1028 LAKE CITY HWY JOHNSONVILLE SC 29555
01	12-02-1965	F	B	2	03	00	4	0	1	1	1	JACKSON ZANDRIA	428 RIVER RD LOT 10 PAMPICO SC 29563
01	07-28-1984	M	B	2	04	00	4	0	1	1	1	BARDEN REDONSEA	930A JUNE LN FLORENCE SC 29501
01	10-20-1992	F	B	4	06	00	4	0	1	1	1	DAVIS ARTRELL	814 BABY LN PAMPICO SC 29563
01	08-08-1994	F	B	2	08	00	4	0	1	1	1	MCWHITE LATRICE	1001 TURNER GATE RD PAMPICO SC 29568

Race	A - Asian/Pacific Islander	W - Caucasian	b) Injury Status	2-Non-Incapacitating	Seating Loc.	20-Pedestrian	80-Sleeper of Cab	Restraint/Safety Device
B - African American	H - Hispanic	O - Other	0-Not Injured	3-Incapacitating	01 02 03	30-Trailing Unit	70-Riding on Unit Exterior	00-None Used
1 - American Native or American Indian	U - Unk.		1-Possible Injury	4-Fatal	04 05 06	40-Bus or Van (4th row or Higher)	00-Lap	11-Shoulder belt
					07 08 09	50-Other Enclosed Area (non-trailing)	99-Unk./NA	12-Lap Belt Only
						61-Other Unenclosed Area (non-trailing)		13-Shoulder & Lap Belt
								99-Other
								09-Other

Air Bag Deployment / Switch	Ejection	b) 2 or 3 Wheel Motorized Vehicle	Head Injury	1-Yes	2-No	3-Freed (non-mech.)	4-Not Applicable	Transported to Medical Facility
1-Deployed Front	4-Not Deployed	1-Not Ejected	1-Not Trapped	3-Extricated (Mechanical Means)	9-Unknown	1-Yes	2-No	3-Unknown
2-Deployed Side	7-Not Applicable	2-Port Ejected	2-Extricated (Mechanical Means)			1-Yes	2-No	3-Unknown
3-Deployed Both	9-Deployment Unk.	3-Tot Ejected				1-EMS	2-Police	3-Other
4-Switch in On Position	3-No Switch	7-Not App.				1-EMS	2-Police	3-Other
5-Switch in Off Position	9-Unknown	9-Unk.				1-EMS	2-Police	3-Other

Non-Collision	01-Equipment Failure	02-Overrun/Retover	03-Animal (Deer Only)	04-Animal (All Other)	05-Motor Veh. (In Transport)	06-Motor Veh. (Stopped)	07-Motor Veh. (Other Roadway)	08-Motor Veh. (Parked)	09-Pedestrian
01-Original Equip Loss or SHIP	02-Plat/Explosion	03-Overrun/Retover	04-Animal (Deer Only)	05-Motor Veh. (In Transport)	06-Motor Veh. (Stopped)	07-Motor Veh. (Other Roadway)	08-Motor Veh. (Parked)	09-Pedestrian	10-Other Non-Collision
02-Cross Median/Center	03-Immersion	04-Animal (All Other)	05-Motor Veh. (In Transport)	06-Motor Veh. (Stopped)	07-Motor Veh. (Other Roadway)	08-Motor Veh. (Parked)	09-Pedestrian	10-Other Non-Collision	11-Other Non-Collision
03-Overrun/Retover	04-Immersion	05-Motor Veh. (In Transport)	06-Motor Veh. (Stopped)	07-Motor Veh. (Other Roadway)	08-Motor Veh. (Parked)	09-Pedestrian	10-Other Non-Collision	11-Other Non-Collision	12-Other Non-Collision

Collision: Not Fixed	Collision: Fixed Object	17-Embarkment	18-Well Box	19-Other
20-Animal (Deer Only)	21-Animal (All Other)	22-Embarkment	23-Well Box	24-Other
22-Motor Veh. (In Transport)	23-Motor Veh. (Stopped)	24-Embarkment	25-Well Box	26-Other
24-Motor Veh. (Other Roadway)	25-Motor Veh. (Parked)	26-Embarkment	27-Well Box	28-Other
26-Motor Veh. (Parked)	27-Pedestrian	28-Embarkment	29-Well Box	30-Other

Sequence of Events	1st / Most	1st Deformed	1st / Most Deformed	1st / Most Deformed
1-Not Trapped	2-Extricated (Mechanical Means)	3-Extricated (Mechanical Means)	4-Extricated (Mechanical Means)	5-Extricated (Mechanical Means)
2-Extricated (Mechanical Means)	3-Extricated (Mechanical Means)	4-Extricated (Mechanical Means)	5-Extricated (Mechanical Means)	6-Extricated (Mechanical Means)
3-Extricated (Mechanical Means)	4-Extricated (Mechanical Means)	5-Extricated (Mechanical Means)	6-Extricated (Mechanical Means)	7-Extricated (Mechanical Means)
4-Extricated (Mechanical Means)	5-Extricated (Mechanical Means)	6-Extricated (Mechanical Means)	7-Extricated (Mechanical Means)	8-Extricated (Mechanical Means)

Manner of Collision (If Truck Veh.)	30-Rear-to-Rear	31-Side-to-Side Opposite Dir.	32-Side-to-Side Same Dir.	33-Backed Into	34-Unknown
30-Rear-to-Rear <td>31-Side-to-Side Opposite Dir. <td>32-Side-to-Side Same Dir. <td>33-Backed Into <td>34-Unknown <td>35-Unknown </td></td></td></td></td>	31-Side-to-Side Opposite Dir. <td>32-Side-to-Side Same Dir. <td>33-Backed Into <td>34-Unknown <td>35-Unknown </td></td></td></td>	32-Side-to-Side Same Dir. <td>33-Backed Into <td>34-Unknown <td>35-Unknown </td></td></td>	33-Backed Into <td>34-Unknown <td>35-Unknown </td></td>	34-Unknown <td>35-Unknown </td>	35-Unknown
31-Side-to-Side Opposite Dir. <td>32-Side-to-Side Same Dir. <td>33-Backed Into <td>34-Unknown <td>35-Unknown <td>36-Unknown </td></td></td></td></td>	32-Side-to-Side Same Dir. <td>33-Backed Into <td>34-Unknown <td>35-Unknown <td>36-Unknown </td></td></td></td>	33-Backed Into <td>34-Unknown <td>35-Unknown <td>36-Unknown </td></td></td>	34-Unknown <td>35-Unknown <td>36-Unknown </td></td>	35-Unknown <td>36-Unknown </td>	36-Unknown
32-Side-to-Side Same Dir. <td>33-Backed Into <td>34-Unknown <td>35-Unknown <td>36-Unknown <td>37-Unknown </td></td></td></td></td>	33-Backed Into <td>34-Unknown <td>35-Unknown <td>36-Unknown <td>37-Unknown </td></td></td></td>	34-Unknown <td>35-Unknown <td>36-Unknown <td>37-Unknown </td></td></td>	35-Unknown <td>36-Unknown <td>37-Unknown </td></td>	36-Unknown <td>37-Unknown </td>	37-Unknown

Vehicle Type	15-Full Size Van	16-Mini Van	17-Sport Utility	18-Pickup Truck	19-Truck Tractor	20-Other Truck	21-Pedestrian	22-Other	23-Train
15-Full Size Van	16-Mini Van	17-Sport Utility	18-Pickup Truck	19-Truck Tractor	20-Other Truck	21-Pedestrian	22-Other	23-Train	24-Other
16-Mini Van	17-Sport Utility	18-Pickup Truck	19-Truck Tractor	20-Other Truck	21-Pedestrian	22-Other	23-Train	24-Other	25-Other
17-Sport Utility	18-Pickup Truck	19-Truck Tractor	20-Other Truck	21-Pedestrian	22-Other	23-Train	24-Other	25-Other	26-Other

Vehicle Use Code	04-Ambulance	05-Military	06-Farm Use	07-Fire Fighting	08-Logging	09-Other
04-Ambulance	05-Military	06-Farm Use	07-Fire Fighting	08-Logging	09-Other	10-Other
05-Military	06-Farm Use	07-Fire Fighting	08-Logging	09-Other	10-Other	11-Other
06-Farm Use	07-Fire Fighting	08-Logging	09-Other	10-Other	11-Other	12-Other

Vehicle Attachment	4-Utility Trailer	5-Towed Motor Vehicle	6-Other Trailer	7-None	8-Flat Bed	9-Twin Trailers
4-Utility Trailer	5-Towed Motor Vehicle	6-Other Trailer	7-None	8-Flat Bed	9-Twin Trailers	10-Other
5-Towed Motor Vehicle	6-Other Trailer	7-None	8-Flat Bed	9-Twin Trailers	10-Other	11-Other
6-Other Trailer	7-None	8-Flat Bed	9-Twin Trailers	10-Other	11-Other	12-Other

Action Prior to Impact	(Vehicle)	(Non-Motorist)	1-Approaching/Leaving Vehicle	2-Entering/Crossing Location	3-Playing/Working on Vehicle	4-Pushing Vehicle	5-Stranding	6-Walking, Playing, Cycling	7-Working
1-Approaching/Leaving Vehicle	2-Entering/Crossing Location	3-Playing/Working on Vehicle	4-Pushing Vehicle	5-Stranding	6-Walking, Playing, Cycling	7-Working	8-Other	9-Unknown	10-Other
2-Entering/Crossing Location	3-Playing/Working on Vehicle	4-Pushing Vehicle	5-Stranding	6-Walking, Playing, Cycling	7-Working	8-Other	9-Unknown	10-Other	11-Other
3-Playing/Working on Vehicle	4-Pushing Vehicle	5-Stranding	6-Walking, Playing, Cycling	7-Working	8-Other	9-Unknown	10-Other	11-Other	12-Other

Weather Condition	3-Cloudy	4-Fog, Smog, Smoke	5-Blowing Sand	6-Severe Crosswinds	7-Other
3-Cloudy	4-Fog, Smog, Smoke	5-Blowing Sand	6-Severe Crosswinds	7-Other	8-Other
4-Fog, Smog, Smoke	5-Blowing Sand	6-Severe Crosswinds	7-Other	8-Other	9-Other
5-Blowing Sand	6-Severe Crosswinds	7-Other	8-Other	9-Other	10-Other

Light Condition	3-Dusk	4-Dark (Lighting Unspecified)	5-Dark (Street Lamp Not Lit)	6-Dark (No Lights)	7-Other
3-Dusk	4-Dark (Lighting Unspecified)	5-Dark (Street Lamp Not Lit)	6-Dark (No Lights)	7-Other	8-Other
4-Dark (Lighting Unspecified)	5-Dark (Street Lamp Not Lit)	6-Dark (No Lights)	7-Other	8-Other	9-Other
5-Dark (Street Lamp Not Lit)	6-Dark (No Lights)	7-Other	8-Other	9-Other	10-Other

Junction Type	03-Five/More Points	04-Four-way Intersection	05-T-Intersection	06-Nonjunction	07-Other
03-Five/More Points	04-Four-way Intersection	05-T-Intersection	06-Nonjunction	07-Other	08-Other
04-Four-way Intersection	05-T-Intersection	06-Nonjunction	07-Other	08-Other	09-Other
05-T-Intersection	06-Nonjunction	07-Other	08-Other	09-Other	10-Other

Primary Contributing Factors	01-Disregarded Signs, Signals, Etc.	02-Disregarded/Inattention	03-Driving Too Fast for Conditions	04-Exceeded Authorized Speed Limit	05-Failed to Yield Right of Way	06-Ran off Road	07-Fatigue/Asleep	08-Followed Too Closely
01-Disregarded Signs, Signals, Etc.	02-Disregarded/Inattention	03-Driving Too Fast for Conditions	04-Exceeded Authorized Speed Limit	05-Failed to Yield Right of Way	06-Ran off Road	07-Fatigue/Asleep	08-Followed Too Closely	09-Other
02-Disregarded/Inattention	03-Driving Too Fast for Conditions	04-Exceeded Authorized Speed Limit	05-Failed to Yield Right of Way	06-Ran off Road	07-Fatigue/Asleep	08-Followed Too Closely	09-Other	10-Other
03-Driving Too Fast for Conditions	04-Exceeded Authorized Speed Limit	05-Failed to Yield Right of Way	06-Ran off Road	07-Fatigue/Asleep	08-Followed Too Closely	09-Other	10-Other	11-Other

Roadway	30-Debris	31-Non-Highway Work	32-Obstruction in Roadway	33-Road Surface Condition (i.e., Wet)	34-Rut, Holes, Bumps	35-Shoulders (None, Low, Soft, High)	36-Traffic Control Device (i.e., Missing)	37-Work Zone (Const./Main./Utility)	38-Worn, Travel-Poached Surface
30-Debris	31-Non-Highway Work	32-Obstruction in Roadway	33-Road Surface Condition (i.e., Wet)	34-Rut, Holes, Bumps	35-Shoulders (None, Low, Soft, High)	36-Traffic Control Device (i.e., Missing)	37-Work Zone (Const./Main./Utility)	38-Worn, Travel-Poached Surface	39-Other
31-Non-Highway Work	32-Obstruction in Roadway	33-Road Surface Condition (i.e., Wet)	34-Rut, Holes, Bumps	35-Shoulders (None, Low, Soft, High)	36-Traffic Control Device (i.e., Missing)	37-Work Zone (Const./Main./Utility)	38-Worn, Travel-Poached Surface	39-Other	40-Other
32-Obstruction in Roadway	33-Road Surface Condition (i.e., Wet)	34-Rut, Holes, Bumps	35-Shoulders (None, Low, Soft, High)	36-Traffic Control Device (i.e., Missing)	37-Work Zone (Const./Main./Utility)	38-Worn, Travel-Poached Surface	39-Other	40-Other	41-Other

Non-Motorist	60-Intoxicated	61-Lying or Jostling in Roadway	62-Failure to Yield R. of W.	63-Not Visible (Dark Clothing)	64-Disregard Signs, Signals, Etc.	65-Improper Crossing	66-Daring	67-Wrong Side of Road	68-Other
60-Intoxicated	61-Lying or Jostling in Roadway	62-Failure to Yield R. of W.	63-Not Visible (Dark Clothing)	64-Disregard Signs, Signals, Etc.	65-Improper Crossing	66-Daring	67-Wrong Side of Road	68-Other	69-Other
61-Lying or Jostling in Roadway	62-Failure to Yield R. of W.	63-Not Visible (Dark Clothing)	64-Disregard Signs, Signals, Etc.	65-Improper Crossing	66-Daring	67-Wrong Side of Road	68-Other	69-Other	70-Other
62-Failure to Yield R. of W.	63-Not Visible (Dark Clothing)	64-Disregard Signs, Signals, Etc.	65-Improper Crossing	66-Daring	67-Wrong Side of Road	68-Other	69-Other	70-Other	71-Other

Environmental	60-Animal in Road	61-Birds	62-Weather Cond.	63-Other	64-Other
60-Animal in Road	61-Birds	62-Weather Cond.	63-Other	64-Other	65-Other
61-Birds	62-Weather Cond.	63-Other	64-Other	65-Other	66-Other
62-Weather Cond.	63-Other	64-Other	65-Other	66-Other	67-Other

Vehicle Defect	70-Brakes	71-Steering	72-Power Plant	73-Tires/Wheel	74-Lights	75-Signals	76-Other	77-Other	78-Other
70-Brakes	71-Steering	72-Power Plant	73-Tires/Wheel	74-Lights	75-Signals	76-Other	77-Other	78-Other	79-Other
71-Steering	72-Power Plant	73-Tires/Wheel	74-Lights	75-Signals	76-Other	77-Other	78-Other	79-Other	80-Other
72-Power Plant	73-Tires/Wheel	74-Lights	75-Signals	76-Other	77-Other	78-Other	79-Other	80-Other	81-Other

ROA 303

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF FLORENCE

The Estate of Artell Davis, by and through Personal
Representative Lynette Gibbs and Jerome Davis,
Plaintiff

SUBPOENA IN A CIVIL CASE

Case Number: 2015-CP-21-023451

v.

Michael Laverne Marks, Jr.

Defendant

Pending in FLORENCE County

☐ TO: Elroy Jackson, 1010 W. Turner Gate Rd, Pamplico, SC 29583

X YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY:

620 W. Evans Street
Florence, South Carolina 29501

DATE AND TIME April 25, 2019, 1:00PM

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects:

PLACE

DATE AND TIME

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney/Issuing Officer's Signature
Indicate if Attorney for Plaintiff or Defendant
Attorney's Address and Telephone Number

4/12/19
Date

Robert C. Childs, III, Esq. #1218
Print Name

PROOF OF SERVICE

SERVED	DATE <u>April 16, 2019</u>	FEES AND MILEAGE TO BE TENDERED TO WITNESS UPON DAILY ARRIVAL ☐ YES ☒ NO AMOUNT \$
	PLACE <u>1010 W. Turner Gate Rd. Pamplico, S.C. 29583</u>	
SERVED ON	<u>Elroy Jackson</u>	MANNER OF SERVICE <u>Personally</u>
SERVED BY	<u>Marion J. Brown II</u>	TITLE <u>Private Investigator</u>

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on April 17, 2019


SIGNATURE OF SERVER

P.O. Box 12243 Florence, S.C. 29504
ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

SCCA 254F (05/2015)

ROA 305

CO. FILE DEPT. CLOCK VCHR. NO. 032
PZC 004297 020170 0000020107 2

Earnings Statement



WELLMAN ADVANCED MATERIALS, LLC
PO BOX 188
JOHNSONVILLE, SC 29555

Period Ending: 01/07/2018
Pay Date: 01/11/2018

Taxable Marital Status: Married
Exemptions/Allowances:
Federal: 8
SC: 8

00000000107

ELROY JACKSON
1010 W. TURNERGATE ROAD
PAMPLICO SC 29583

Earnings	rate	hours	this period	year to date
Regular			152.76	988.77
Holiday				203.36
Gross Pay			\$152.76	1,192.13

Deductions	Statutory		
Social Security Tax	-9.47		64.05
Medicare Tax	-2.22		14.98
SC State Income Tax			0.93
Other			
Dep Life Bu			0.28
Glifc			2.64
Ltd-Bu			4.90
Union			16.90
125 Denbu			14.28
125 Medbu			144.82
Net Pay	\$141.07		
Savings 1	-141.07		
Net Check	\$0.00		

Your federal taxable wages this period are \$152.76

VERIFY DOCUMENT AUTHENTICITY - COLORED AREA MUST CHANGE IN TONE GRADUALLY AND EVENLY FROM DARK AT TOP TO LIGHTER AT BOTTOM

WELLMAN ADVANCED MATERIALS, LLC
PO BOX 188
JOHNSONVILLE, SC 29555

Advice number: 00000020107
Pay date: 01/11/2018

Deposited to the account of
ELROY JACKSON

account number	transit ABA	amount
xx8029	xxxx xxxx	\$141.07

THIS IS NOT A CHECK

DEFENDANT'S
EXHIBIT

NON-NEGOTIABLE

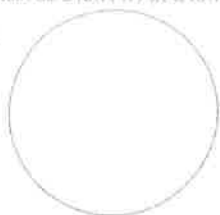
ROA 306

2

W725431050

THIS SIDE OF DOCUMENT CONTAINS ADP WATERMARKS. HOLD AT AN ANGLE TO VIEW.

HOLD AT AN ANGLE TO VIEW
ADP WATERMARKS



ROA 307

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42 REV CD										43 DESCRIPTION										44 HCPCS / RATE / HPSS CODE										45 SERV DATE										46 SERV UNITS										47 TOTAL CHARGES										48 NON COVERED CHARGES										49																																																																																																																																											
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S 98

JACKSON, ELROY
1010 W TURNER GATE RD
PAMPLICO SC 29583

HEALTH INSURANCE CLAIM FORM

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

PICA		CASE ID: 00139320147		PICA	
1. MEDICARE (Medicare#)		MEDICAID (Medicaid#)		TRICARE (ID#DoD#)	
CHAMPVA (Member ID#)		GROUP HEALTH PLAN (ID#)		FECA BLK LUNG (ID#)	
OTHER (ID#)		1a. INSURED'S I.D. NUMBER (For Program in Item 1)		251289837	
2. PATIENT'S NAME (Last Name, First Name, Middle Initial)		3. PATIENT'S BIRTH DATE MM DD YY		4. INSURED'S NAME (Last Name, First Name, Middle Initial)	
JACKSON, ELROY NMN		07 21 66 M ☒ F ☐		JACKSON, ELROY	
5. PATIENT'S ADDRESS (No., Street)		6. PATIENT RELATIONSHIP TO INSURED		7. INSURED'S ADDRESS (No., Street)	
1010 W TURNER GATE RD		Self ☒ Spouse ☐ Child ☐ Other ☐		429 E RIVER RD. APT. 10	
CITY		8. RESERVED FOR NUCC USE		CITY	
PAMPLICO				PAMPLICO	
STATE				STATE	
SC				SC	
ZIP CODE		9. OTHER INSURED'S NAME (Last Name, First Name, Middle Initial)		ZIP CODE	
29583				29583	
TELEPHONE (Include Area Code)		10. IS PATIENT'S CONDITION RELATED TO:		TELEPHONE (Include Area Code)	
(843) 584-3568				(843) 584-3568	
11. INSURED'S POLICY GROUP OR FECA NUMBER		a. EMPLOYMENT? (Current or Previous)		999999	
		☐ YES ☒ NO		a. INSURED'S DATE OF BIRTH MM DD YY	
		b. AUTO ACCIDENT?		07 21 66 M ☒ F ☐	
		☐ YES ☒ NO		b. OTHER CLAIM ID (Designated by NUCC)	
		c. OTHER ACCIDENT?			
		☐ YES ☒ NO		c. INSURANCE PLAN NAME OR PROGRAM NAME	
d. INSURANCE PLAN NAME OR PROGRAM NAME		10d. CLAIM CODES (Designated by NUCC)		JACKSON, ELROY	
				d. IS THERE ANOTHER HEALTH BENEFIT PLAN?	
				☐ YES ☒ 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.		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 PATIENT SIGNATURE ON FILE DATE 09 07 18		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)		20. OUTSIDE LAB? \$ CHARGES		22. RESUBMISSION CODE ORIGINAL REF. NO.	
		☐ YES ☒ NO			
21. DIAGNOSIS OR NATURE OF ILLNESS OR INJURY Relate A-L to service line below (24E) ICD Ind. 0		23. PRIOR AUTHORIZATION NUMBER			
A. E119 B. Z794 C. I10 D. N179					
E. F. G. H. I. J. K. L.					
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	
1 08 28 18 21 99232 ABCD 90 00 1		1508286550		NPI 1508286550	
2 08 29 18 21 99239 ABC 149 00 1		1508286550		NPI 1508286550	
3				NPI	
4				NPI	
5				NPI	
6				NPI	
25. FEDERAL TAX I.D. NUMBER SSN EIN		26. PATIENT'S ACCOUNT NO.		27. ACCEPT ASSIGNMENT? (For gov. claims, see back)	
570370242 ☒ ☐		82500055590G0		☒ YES ☐ NO	
31. SIGNATURE OF PHYSICIAN OR SUPPLIER INCLUDING DEGREES OR CREDENTIALS (I certify that the statements on the reverse are true and correct.)		32. SERVICE FACILITY LOCATION INFORMATION		33. BILLING PROVIDER INFO & PH #	
E. SIGNATURE AND APPROVED STAMP (Physician or Supplier)		MCLEOD REGIONAL MEDICAL C		(843) 777-2955	
09/07/18 DATE		555 E CHEVES STREET		CBO MRMC HOSPITALISTS	
		FLORENCE SC 29506		555 E CHEVES ST	
		a. 1699756221 b. 570370242		FLORENCE SC 29506-2617	
				a. 1154371433 b. 570370242	

NUCC Instruction Manual available at: www.nucc.org

PLEASE PRINT OR TYPE

APPROVED OMB-0938-1197 FORM 1500 (02-12)

RADIOLOGY REPORT

MCLEOD REGIONAL MEDICAL CENTER
555 E. CHEVES STREET FLORENCE, SC 29506-2617
PHONE (843) 777-2087

PATIENT NAME: JACKSON, ELROY NMN DISCHARGE DATE:
PT ACCOUNT#: 000139320147 MR/RAD#: 167523
ACCESSION#: 8777132 CID#: 633703

DOB: 07/21/1966 AGE: 52Y SEX: M RACE: B
PHONE: 843-584-3568 PT CLASS: I FIN CLASS: S
ADDRESS: 1010 W TURNER GATE RD PT TYPE: I PT NS/ROOM: MIC1-MC1001
PAMPLICO, SC, 29583 DATE OF SERVICE: Aug 27 2018 2:37AM

ORDER DR: REBECCA A. BROWN F.N.P.
ATTEND DR: MARWAN K. ELYA M.D.
COPY TO:

DIAGNOSIS:

POORLY CONTROLLED DIABETE

ORDER DR: REBECCA A. BROWN F.N.P.
ATTEND DR: MARWAN K. ELYA M.D.
TRANSCRIBED D/T: Aug 27 2018 8:24AM

PROCEDURE: XR CHEST 1 VIEW PORT BEDSIDE / ORD #: 90004 Accession#: 8777132 CPT: 71045

ORDERED FOR: Aug 27 2018 5:00AM COMPLETED: Aug 27 2018 3:23AM

INDICATIONS/COMMENTS: Atelectasis

RESULT: Portable chest

HISTORY atelectasis.

COMPARISON:: 8/26/2018

FINDINGS: Heart is enlarged. Mild congestion. Peripheral lungs grossly clear.

CONCLUSION: Cardiomegaly with vascular congestion.

Increase in heart size and pulmonary vascularity compared with 8/26/2018

READING DR: CHENEY M MEIERE JR M.D.
READING DATE: Aug 27 2018 8:24AM

Final Result

Printed: August 27, 2018 (8:28AM)

Page 1

CAROLINA RADIOLOGY ASSOCIATES

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DEFENDANT'S
EXHIBIT

RADIOLOGY REPORT

MCLEOD REGIONAL MEDICAL CENTER
555 E. CHEVES STREET FLORENCE, SC 29506-2617
PHONE (843) 777-2087

PATIENT NAME: JACKSON, ELROY NMN

DISCHARGE DATE:

PT ACCOUNT#: 000139320147

MR/RAD#: 167523

ACCESSION#: 8777132

CID#: 633703

ELECTRONICALLY SIGNED BY:

CHENEY M MEIERE JR M.D.

On: Aug 27 2018 8:25AM

Printed: August 27, 2018 (8:28AM)

Page 2

CAROLINA RADIOLOGY ASSOCIATES

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UnitedHealthcare, Inc.
CDB 6055 Operations
P.O. Box 30979
Salt Lake City, UT 84130



12/18/2017

3551095BR0106005-03761-01

ELROY JACKSON

1010 W TURNER GATER ROA

PAMPLICO SC 29583



DEFENDANT'S
EXHIBIT

5

12/18/2017

Important Tax Information

Under federal health reform law, individuals must have health insurance called minimum essential coverage. They must report this to the Internal Revenue Service (IRS) when they file their taxes. If they don't have coverage or it's not reported, they may have to pay a fee to the IRS. To show the IRS that you had coverage with UnitedHealthcare, we are sending Form 1095-B.

What is minimum essential coverage?

Minimum essential coverage may include health insurance through a government-sponsored program, eligible employer-sponsored plan, individual market plan or other coverage designated by the Department of Health and Human Services. Your UnitedHealthcare plan is minimum essential coverage.

What is Form 1095-B?

This is the IRS form you will use when you prepare your tax return to show you had minimum essential coverage. The form shows this information about your health insurance:

- Type of coverage you have
- Period of coverage
- Who was covered (including Dependents)

Why did you get more than one Form 1095-B?

You may have been covered under more than one policy during the year. You will get a separate Form 1095-B for each policy.

How will the IRS know who has health insurance?

Under IRS rules, health insurance issuers, such as UnitedHealthcare, must report who had coverage to the IRS. The IRS matches the information we send with the information taxpayers put on their tax return to determine who had minimum essential coverage.

Will dependents over age 18 covered under your plan get a separate copy of this form?

Dependents over age 18 covered under your plan will **not** get a separate copy of Form 1095-B. You should give a copy to individuals covered under your plan, if they need it for their records.

What if you had minimum essential coverage with another company?

You should receive a form 1095 from any other company that provided you minimum essential coverage.

What if you didn't have minimum essential coverage for the entire year?

If you didn't have minimum essential coverage for the entire year, you may have to pay a fee when you file your tax return. If you had a gap in coverage for less than three months, you may not have to pay a fee. If the gap was longer than three months and you couldn't afford coverage, you may qualify for an exemption. For more information on exemptions, visit HealthCare.gov.

Can you get this form electronically?

We encourage you to choose to get this form electronically. For more information about electronic delivery, please visit myuhc.com.

Will this form be sent again next year?

You will get a form 1095 every year (to use when preparing your tax return) from any company that provided you minimum essential coverage.

Questions?

If you have any questions, please call us toll-free at the phone number on your health plan ID card. TTY users can dial **711**.

Sincerely,
UnitedHealthcare

Enclosure: Form 1095-B

This communication is not intended, nor should it be construed, as legal or tax advice. Please contact a legal or tax professional for legal advice, tax treatment and restrictions. Federal and state laws and regulations are subject to change. You may also visit IRS.gov.

Health Coverage

☐ VOID

560116

Department of the Treasury
Internal Revenue Service

OMB No. 1545-2252

Department of the Treasury
Internal Revenue ServiceDo not attach to your tax return. Keep for your records.
Go to www.irs.gov/Form1095B for instructions and the latest information.☐ CORRECTED

2017

Part I Responsible Individual

1 Name of responsible individual
ELROY JACKSON2 Social security number (SSN) or other TIN
***-**-9837

3 Date of birth (if SSN or other TIN is not available)

4 Street address (including apartment no.)
1010 W TURNER GATER ROA5 City or town
PAMPLICO6 State or province
SC7 Country and ZIP or foreign postal code
UNITED STATES 29583

8 Enter letter identifying Origin of the Health Coverage (see instructions for codes):

B

Part II Information about Certain Employer-Sponsored Coverage (see instructions)

10 Employer name
WELLMAN PLASTICS RECYCLING LLC12 Street address (including room or suite no.)
520 KINGSBURG HWY13 City or town
JOHNSONVILLE14 State or province
SC11 Employer identification number (EIN)
26-3552985

Part III Issuer or Other Coverage Provider (see instructions)

16 Name
UnitedHealthcare, Inc.19 Street address (including room or suite no.)
601 Brookner Creek Blvd20 City or town
Oldsmar21 State or province
FL17 Employer identification number (EIN)
41-192251118 Contact telephone number
866-633-244622 Country and ZIP or foreign postal code
UNITED STATES 34677

Part IV Covered Individuals (Enter the information for each covered individual.)

(a) Name of covered individual(s)	(b) SSN or other TIN	(c) DOB (if SSN or other TIN is not available)	(d) Covered all 12 months	(e) Months of coverage											
				Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1 ELROY JACKSON	***-**-9837		☒	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
2 SHIRLEY JACKSON	***-**-1403		☒	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
3 ZANDRIA JACKSON	***-**-5802		☒	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
4 URANIA F JACKSON	***-**-3724		☒	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

Cat No 60704B

Form 1095-B (2017)

2017_CS_0716202_834055781_2017-12-04-21-41-12-100000

ROA 314

Instructions for Recipient

This Form 1095-B provides information needed to report on your income tax return that you, your spouse (if you file a joint return), and individuals you claim as dependents had qualifying health coverage (referred to as "minimum essential coverage") for some or all months during the year. Individuals who don't have minimum essential coverage and don't qualify for an exemption from this requirement may be liable for the individual shared responsibility payment.

Minimum essential coverage includes government-sponsored programs, eligible employer-sponsored plans, individual market plans, and other coverage the Department of Health and Human Services designates as minimum essential coverage. For more information on the requirement to have minimum essential coverage and what is minimum essential coverage, see www.irs.gov/Affordable-Care-Act/Individuals-and-Families/Individual-Shared-Responsibility-Provision.

TIP

Providers of minimum essential coverage are required to furnish only one Form 1095-B for all individuals whose coverage is reported on that form. As the recipient of this Form 1095-B, you should provide a copy to other individuals covered under the policy if they request it for their records.

Additional information. For additional information about the tax provisions of the Affordable Care Act (ACA), including the individual shared responsibility provisions, the premium tax credit, and the employer shared responsibility provisions, see www.irs.gov/Affordable-Care-Act/Individuals-and-Families or call the IRS Healthcare Hotline for ACA questions (1-800-919-0452).

Part I. Responsible Individual, lines 1–9. Part I reports information about you and the coverage.

Lines 2 and 3. Line 2 reports your social security number (SSN) or other taxpayer identification number (TIN), if applicable. For your protection, this form may show only the last four digits. However, the coverage provider is required to report your complete SSN or other TIN, if applicable, to the IRS. Your date of birth will be entered on line 3 only if line 2 is blank.



If you don't provide your SSN or other TIN and the SSNs or other TINs of all covered individuals to the sponsor of the coverage, the IRS may not be able to match the Form 1095-B with the individuals to determine that they have complied with the individual shared responsibility provision.

Line 8. This is the code for the type of coverage in which you or other covered individuals were enrolled. Only one letter will be entered on this line.

- A. Small Business Health Options Program (SHOP)
- B. Employer-sponsored coverage
- C. Government-sponsored program
- D. Individual market insurance
- E. Multiemployer plan
- F. Other designated minimum essential coverage



If you or another family member received health insurance coverage through a Health Insurance Marketplace (also known as an Exchange), that coverage will generally be reported on a

Form 1095-A rather than a Form 1095-B. If you or another family member received employer-sponsored coverage, that coverage may be reported on a Form 1095-C (Part III) rather than a Form 1095-B. For more information, see www.irs.gov/Affordable-Care-Act/Questions-and-Answers-About-Health-Care-Information-Forms-for-Individuals.

Line 9. Reserved.

Part II. Information About Certain Employer-Sponsored Coverage, lines 10–15. If you had employer-sponsored health coverage, this part may provide information about the employer sponsoring the coverage. This part may show only the last four digits of the employer's EIN. This part also may be left blank, even if you had employer-sponsored health coverage. If this part is blank, you do not need to fill in the information or return it to your employer or other coverage provider.

Part III. Issuer or Other Coverage Provider, lines 16–22. This part reports information about the coverage provider (insurance company, employer providing self-insured coverage, government agency sponsoring coverage under a government program such as Medicaid or Medicare, or other coverage sponsor). Line 18 reports a telephone number for the coverage provider that you can call if you have questions about the information reported on the form.

Part IV. Covered Individuals, lines 23–28. This part reports the name, SSN or other TIN, and coverage information for each covered individual. A date of birth will be entered in column (c) only if the SSN or other TIN isn't entered in column (b). Column (d) will be checked if the individual was covered for at least one day in every month of the year. For individuals who were covered for some but not all months, information will be entered in column (e) indicating the months for which these individuals were covered. If there are more than six covered individuals, see Part IV, Continuation Sheet(s), for information about the additional covered individuals.

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS

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

Plaintiffs,

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

vs.

Michael Laverne Marks,
Jr., and Elroy Jackson,

Defendants.

VIDEOCONFERENCE HEARING

BEFORE SPECIAL REFEREE JAMES W. PETERSON, JR.

NOVEMBER 17TH, 2020

A hearing was held via videoconference on Tuesday, November 17th, 2020, before Special Referee James W. Peterson, Jr., at 2:00 p.m.

KAREN A. BELANGER
FOOTHILLS COURT REPORTING
-Certified Court Reporters-
1-864-991-2570
SPANDENDO@GMAIL.COM

ROA 316

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..... On behalf of the Defendants

* * * * *

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1 THE COURT:

2 We're here today of course to hear oral arguments
3 on the Motion by the Defendant seeking an Order to
4 Alter and Amend or, I guess in the alternative, a
5 Motion for New Trial in this matter. With COVID
6 we're way late in hearing this. So I wanted to go
7 ahead and get this set up so that we could move
8 this matter forward. I know everybody needs it to
9 move forward, and we will do so. Karen is the
10 court reporter. I've made her a co-host on the
11 Zoom meeting so that she can actually record the
12 Zoom meeting. So hopefully by doing it in this
13 fashion, we'll have a good record of what is said.
14 Having said that, I'm going to turn it over to
15 Robert for him to present his motion.

16 MR. CHILDS:

17 All right, thank you very much and thank you all
18 for going to Zoom and not making me drive to
19 Florence today. I love Florence. I don't mind
20 coming to Florence at all. I really filed this
21 motion initially because the primary concern I
22 had, and I want to refer The Court to my Amended
23 Motion and Memorandum that's been filed. It was
24 filed on October the 21st of 2019. So without
25 reciting all the grounds I've stated in that

1 motion, I refer to it on the record so that I
2 don't miss any grounds.

3 THE COURT:

4 Okay.

5 MR. CHILDS:

6 I had to remember a bit going back, but my primary
7 concern was this Court's Order referencing the
8 police report. So The Court does make a good bit
9 of references to the traffic collision report and
10 that it formed a basis to The Court's conclusion
11 that the address known to the Plaintiffs for the
12 Defendant was 1001 West Turner Gate Road,
13 Pamplico, South Carolina. I do appreciate The
14 Court's finding that his actual address was 1010
15 West Turner Gate Road, Pamplico, South Carolina.
16 I think The Court made an error in referring to
17 that accident report under 56-5-1340. And that
18 says, "No such report shall be used as evidence in
19 any trial, civil or criminal, arising out of an
20 accident, except that the Department of Motor
21 Vehicles shall furnish upon demand of any person
22 who has or claims to have made such a report, or
23 upon demand of any Court, a certificate showing
24 that a specified accident report has or has not
25 been made to The Department of Motor Vehicles

1 solely to prove a compliance or a failure to
2 comply with the requirement that such a report be
3 made to The Department of Motor Vehicles." So I
4 think the law's pretty clear. I've cited some
5 case law in my Memorandum that The Court's
6 reference to the accident report and that accident
7 report information bolster in the Plaintiff's
8 contention that they were proper in their belief
9 that the last known address of the Defendant was
10 the 1001 West Turner Gate Road, when in fact I
11 think the evidence has shown from the record, and
12 in looking at the record, if you look at the
13 affidavit of the process server, he clearly lays
14 it out and says, "Regardless of the error on my
15 Affidavit of Service as it relates to the address,
16 there is no doubt I did my job correctly except
17 for the address listed on my Affidavit of
18 Service." So, I mean, the process server admits
19 that he put the wrong address on his Affidavit of
20 Service. And I think more importantly is that the
21 Plaintiffs themselves in their statements to The
22 Court said at the initial hearing, the damages
23 hearing that they had before you, they advised The
24 Court that mailing to the Defendant was returned
25 as undeliverable. And so I think that given that

1 fact and given the fact that the accident report
2 shouldn't have been considered by The Court, the
3 Plaintiffs knew that there was an error in the
4 address because the mailings were returned back to
5 them as undeliverable. Not as unclaimed.
6 Undeliverable, which indicates that there's
7 something wrong with the address because the mail
8 -- and I know we have problems with the mail. But
9 the mail says we can't find these people, which
10 put them on notice that they should investigate
11 further to determine if they had the proper
12 address for the Defendant. The Defendant says you
13 served me with a Summons and Complaint. I admit
14 that. I'm not trying to lie about it. But I
15 never knew about the damages hearing because you
16 sent the notice of the damages hearing to the
17 wrong address. So I think that shows that we were
18 correct that they served notice to the wrong
19 address. And so also I've got other errors in
20 there, but those are the primary ones. And the
21 second one, some of the others, are that the trial
22 court erred in considering the Plaintiff's
23 counsel's statement that their regular mailing did
24 not come back, as far as I know. When The Court
25 refused to consider evidence outside the

1 affidavits, it then considered the statement of
2 counsel that the mailings didn't come back, as far
3 as I know, which contradicted the statements to
4 The Court at the damages hearing which said those
5 mailings came back as undeliverable. I think the
6 other thing that was striking about this hearing
7 was that the hearing court, you'll see in the
8 transcript, and I know you have that -- they filed
9 it with their motion. I encourage you to look at
10 the transcript where you, as the hearing officer,
11 spent a good deal of time trying to convince the
12 Plaintiff's attorneys to disclose what address
13 they actually mailed the notice to. And they
14 never did disclose that. And so we think that the
15 evidence is pretty clear that it was mailed to the
16 wrong address, that it was erroneous. And the
17 reason I make the Motion to Alter or Amend
18 primarily is I want to make sure I'm protected on
19 the record as far as the statute as it relates to
20 the use of the report as evidence for determining
21 the proper address of the Defendant. And I think
22 the other issues, and I've got case law cited and
23 announced in my Memorandum that I referenced to.
24 And I think procedurally from a due process
25 perspective, these facts are unique in that you

1 have a Defendant honest enough to say -- you know,
2 honest enough to not lie, which we'll see often,
3 and say I didn't get it, you know, the guy didn't
4 serve me with the Summons and Complaint. That's
5 what we typically hear. But he says, no, I got
6 served with it. But if I knew I was going to have
7 these kind of implications of having a 3 million
8 dollar judgement against me because I let my
9 daughter borrow my car, who then loaned it to a
10 fellow that was driving drunk, I would have showed
11 up the damages hearing. And I didn't get notice
12 of it. That's what he's saying. And so I think
13 that under the unique circumstances of the fact
14 that the process server admits that he made a
15 mistake in the address on his affidavit of service
16 and that the notices were sent back to the
17 Plaintiff's counsel as undeliverable, Plaintiff's
18 counsel had notice that they had the wrong last
19 known address for the Defendant when in fact the
20 Defendant's address was 1010 West Turner Gate as
21 established by The Court. So I'll let my Memo
22 speak for itself on the other issues. I know
23 you've read it all, and I appreciate your time.
24 And I'll be glad to answer any questions you have
25 or I'll turn it over to the Plaintiff's counsel.

1 THE COURT:

2 Let's go ahead and turn it over to the Plaintiffs.
3 I've been marking some stuff down. I may have a
4 couple questions when they finish.

5 MR. CHILDS:

6 Yes, sir.

7 MR. JEFFRIES:

8 Outstanding, thank you. Jim, do I refer to you as
9 Your Honor today, or how do I refer --

10 THE COURT:

11 No, no.

12 MR. JEFFRIES:

13 -- to you?

14 THE COURT:

15 No, just hey you or something like that.

16 MR. JEFFRIES:

17 How about Mr. Peterson? That sounds a little
18 more --

19 THE COURT:

20 That's fine.

21 MR. JEFFRIES:

22 All right, may it please The Court. You know
23 there are a lot of allegations of err, assignments
24 of err in Mr. Childs' memo. And we can go through
25 those kind of one by one by one. But before we do

1 that, back up and let's take a look at the big
2 picture of what we've got here. This is not a
3 motion where they're seeking to let this Defendant
4 out of default. They concede he's in default.
5 The only thing sought here is a new damages
6 hearing, all right? So that's the only relief
7 sought. So as you think about that, what does
8 that tell you? It tells you that this motion,
9 number one, is moot; and number two; it's
10 fruitless. And I'll explain what I mean by that.
11 You hear Mr. Childs say earlier that this
12 Defendant said if I'd have known there was a
13 damages hearing, I'd have showed up. Okay, fair
14 enough, but we know more than that. We know more
15 than that he would have just shown up. The
16 Defendant said in his sworn affidavit, and I'm
17 quoting here, "Had I known there were going to be
18 hearings about this, I would have come and told
19 them I wasn't involved and that I didn't
20 negligently entrust anyone with my car," end
21 quote. All right, that's the only thing that this
22 Defendant says he would have done at that hearing.
23 Then he goes on to say it seems completely unfair
24 that I have to do this and that and the other.
25 The only thing this Defendant says he'd have done,

1 if he'd had gotten the kind of notice he wanted,
2 was he'd have showed up and challenged liability.
3 And as we all know, black letter law, Limehouse
4 vs. Hulsey, he can't do that. The only thing a
5 defaulting Defendant can do is show up and object
6 to evidence and cross examine the Plaintiffs'
7 witnesses. He can't make liability arguments. So
8 even if he would have gotten exactly the notice
9 that he thinks he's entitled to in a perfect
10 world, the only thing he says he wanted to do is
11 show up and do something he's absolutely forbidden
12 from doing. So it's completely moot whether he
13 got notice or not. He couldn't have done what he
14 wanted to do. So that's one thing. That's
15 mootness. Now there's fruitlessness, all right?
16 Let's say this Court finds some little technical
17 error buried down in amongst all these assignments
18 of errors and says, okay, we're going to amend and
19 we're going to have a new damages hearing. All
20 right, what then? This is not a slip and fall in
21 a walmart and somebody goes to the hospital six
22 months later and there's a big question about what
23 medical bills are related and what medical bills
24 are not related, and there's objection to this
25 bill coming in and that. This is a simple case.

1 A young woman, a mother, a daughter died. Those
2 are the damages. She died. So let's say there's
3 a new damages hearing. Now as we know, the
4 Defendant can do two things. He can object to
5 evidence and he can cross examine. So what does
6 that look like? Mind you there are no medical
7 bills coming in here of any consequence. What
8 evidence is he going to object to? The testimony
9 of the grieving parents? How would that even be
10 objectionable, of course. Of course they're
11 allowed to testify about that. So there are no
12 objections that he could actually make were there
13 to be a new damages hearing. Now what he could do
14 is cross examine. So how does that look? And
15 what's he going to cross them about? Whether they
16 loved their daughter today as much as they loved
17 her the last time we had this hearing? I mean
18 it's unthinkable to pull the scab off of these
19 wounds for this family, to put them through
20 another damages hearing that is going to be
21 literally identical to the last damages hearing.
22 And because it's going to be all the same
23 evidence, The Court will have the same damages. I
24 mean The Court didn't guess the last time it
25 established damages. It listened to the evidence.

1 It looked at the evidence and put a number on that
2 evidence, put a number for damages. When the same
3 evidence comes up the next time, it's going to be
4 the same number. It has to be the same number.
5 That's how the system works. So not only is it
6 moot, it's also fruitless. If The Court allowed
7 this, we'd just go back and put the grieving
8 family through all this and come up with exactly
9 the same number we came up with the last time.
10 That's why The Court shouldn't do it, because it
11 doesn't make any sense. But now we can go through
12 all the technical reasons why The Court shouldn't
13 do it, all right? The first of those, you heard
14 Mr. Childs mention the police report. All right,
15 well, he's focusing on the wrong statute, to start
16 off with. All right, section 56-5-1340 is not the
17 statute that applies to the police report's filled
18 out by cops. There's a separate section that
19 deals specifically with that. Section 56-5-1340
20 applies only to, quote, "Accident reports made by
21 persons involved in accidents." And The Court has
22 gone on to say the reason for that is to, quote,
23 "Clothe with statutory immunity only such
24 statements and communications as the driver, the
25 owner, or the occupant of a vehicle is compelled

1 to make in order to comply with his or her
2 statutory duty." So that section that Mr. Childs
3 is citing, 56-5-1340, applies to the driver or the
4 occupant, or the owner's duty to -- you get in a
5 wreck, there's certain things you've got to say.
6 Like imagine if somebody is killed, you've got to
7 report that to the police. That's a report made
8 by the owner, the occupant, or the driver. That's
9 what section 56-5-1340 refers to. And it says,
10 yeah, you can't use that at trial. But it only
11 applies where it's one of the people in the wreck.
12 There's a whole separate section that governs
13 police reports, reports filled out by police
14 officers. That's section 56-5-1270, which says,
15 and I quote, "Every law enforcement who, in the
16 regular course of duty, investigates a motor
17 vehicle accident that results in injury or death
18 of any person must forward a written report of the
19 accident to The Department of Motor Vehicles."
20 All right, so that's the statute that governs this
21 report, a report made by an officer in the course
22 of his duty about a wreck involving injury or
23 death, 56-5-1270. And what the statute goes on to
24 say you can't do with those police reports is
25 actually fairly narrow. They can't be used as

1 evidence of the negligence or due care of either
2 party. That's what they can't be used for,
3 evidence of negligence or due care by either
4 party. Of course they can be used for other
5 things, and they routinely are. That's where you
6 get insurance information from, phone numbers
7 from, addresses from. They're used all the time
8 for all these other purposes. The only thing you
9 can't do with that TR-310 report, or the MAIT
10 report where somebody dies, is walk into Court and
11 say, see, here the report says that XYZ driver
12 caused the wreck, and so that shows their
13 negligence. Or that they didn't cause the wreck,
14 and that shows their exercise of due care. That's
15 what you can't do with those reports. But you can
16 use them for everything else, and of course
17 routinely people do obviously. That's how you
18 know who to sue. That's how you know what
19 insurance company to contact. So by referring to
20 the wrong statute, yeah, Mr. Childs might be right
21 if that were the statute that governed it, but
22 it's simply not. The statute he cites covers
23 reports made by drivers and occupants and owners.
24 A separate statute covers reports by police
25 officers, and that statute that covers reports by

1 police officers doesn't apply to using it to look
2 up an address. Simply not in there. The next
3 assignment of error that Mr. Childs talked about
4 this morning, or this afternoon, was that the
5 mailing was returned as undeliverable. All right,
6 it doesn't matter if the mailing was returned as
7 undeliverable. The rule is that the letter must
8 be sent, the notice must be sent to the last known
9 address. And there's some key words in there.
10 The first key word is sent. Can you hear me all
11 right?

12 THE COURT:

13 Yes.

14 MR. JEFFRIES:

15 The first key word in there is sent. Service is
16 accomplished when it's sent, regardless of whether
17 it is ever actually received. Doesn't matter if
18 it's received or not. What matters is that it is
19 sent. The second thing is that it need only be
20 sent to the last known address. Last known
21 address, all right? That does not mean the
22 address where the person currently lives. Indeed
23 it very well may not be the address where the
24 person currently lives. I'll give you an example.
25 On January 20 of 2021 the last known address I

1 have for Donald Trump is Pennsylvania Avenue.
2 That will very likely not be his address on the
3 21st. I don't know where he's going after that.
4 And if I wanted to serve him, I wouldn't need to
5 know as long as I had a last known address. So I
6 mail it to him. Of course it gets returned as
7 undeliverable. He doesn't live in the White House
8 anymore. But that's until I get a new address,
9 till he tells me what his new address is, my last
10 known address is Pennsylvania Avenue. And that's
11 all the rule requires. And if there's any doubt
12 about that, you look in the statutes. And what
13 you'll see is hundreds of uses of the term
14 "address". Some of the time the legislature says
15 current address and other times it says last known
16 address. It knows the difference between where
17 somebody currently lives and the last known
18 address that we have them. And beyond that, it
19 makes sense. Why do you only need to send to the
20 last known address for somebody who's involved in
21 a lawsuit? Because they're already involved in
22 the lawsuit. They've been served. They have any
23 number of ways to make sure that they stay
24 current. In fact, they're required to stay
25 current with their case. A party has a duty to

1 monitor the progress of his case. Even a pro se
2 party has a duty to monitor the progress of his
3 case. So that party could, for instance, update
4 the Clerk of Court when he moves or if the address
5 on file is not right in his mind. He could hire a
6 lawyer. He could call his insurance company. He
7 could do any number of things to make sure that he
8 gets actual delivery of notice. And because he
9 can help himself, all that's required by the rules
10 is to deliver it to his last known address. The
11 next point of error that the Defendant raises here
12 is that The Court did not require Plaintiff to
13 reveal the address the envelope was mailed to.
14 well, it's not an error. Remember this is the
15 Defendant's motion. It's the Defendant's burden
16 to come forward with evidence, right? It's not
17 the Plaintiff's burden to come forward with
18 evidence. And I'm going to refer you to a section
19 of the transcript here, if you'll bear with me
20 just one moment while I look it up. That issue
21 was raised in the transcript. It's in the
22 transcript of the April 25th, 2019 hearing. It's
23 page 8. And Mr. Childs said, you know, what about
24 this address, Mr. Williey? Are you going to tell
25 us this address? And Mr. Williey replies, quote,

1 "Well, it's not our burden to prove." And Mr.
2 Childs acknowledges that. He says okay and they
3 move on. So Mr. Childs acknowledges there, that
4 the burden of showing that something went wrong is
5 his. He's the movant. All of the evidence has to
6 come from the movant. The non-movant isn't
7 required to produce anything. And he just hasn't
8 met that burden. Your Honor, I would now go
9 through and let's just address some of the things
10 in the Memo. We've already talked about mootness.
11 We've already talked about the fact that it's
12 fruitless. We've talked about that the notice is
13 given by first-class mail sent to the last known
14 address of the party, and that last known address
15 is different from current address. The framers of
16 the rules know the difference. I would also say,
17 Your Honor, with respect to that, that our Courts
18 have said, Sleicher vs. Sleicher 310 SC 275,
19 service is effective, quote, "when notice is
20 properly mailed regardless of its receipt by the
21 addressee." So the Defendant, he could have done
22 any number of things to keep up with this to get
23 actual notice. And the key point here is this is
24 Mr. Child's motion. So the burden is on him to
25 come forward with evidence, and he has not. He's

1 not come forward with anything but arguments of
2 counsel, and arguments of counsel are not
3 evidence. Likewise he's come forward with no
4 evidence that Plaintiff should have known that the
5 address used was not where Defendant actually
6 lived at the time Plaintiff mailed the envelope.
7 All right? So even if that were a good legal
8 argument, there's no evidence for it. Likewise he
9 hasn't come forward with any evidence that
10 Plaintiff has the wrong last known address.
11 There's just simply no evidence on the record at
12 all. Then we can go through the specific
13 assignments of error. The first assignment is
14 that hearing Court failed to consider that
15 Defendant never received any notice. Well, that's
16 not correct. The Court considered it in the
17 transcript, page 4, line 10. He alleges that The
18 Court failed to consider the certified mailing was
19 returned as undeliverable. Incorrect. Considered
20 in the transcript page 4, line 7. Hearing Court
21 failed to consider that the process server, in his
22 affidavit, admits a mistake. That's incorrect.
23 Considered. Transcript page 5, 6, and 19, it
24 looks like. And again in the transcript pages 32
25 and 33. So all these things that Mr. Childs is

1 saying The Court didn't consider, The Court did
2 consider. It's right there in the transcript.
3 The Court reached a different conclusion than Mr.
4 Childs likes, but The Court has discretion to do
5 that. The Court considered these items. It's
6 right there in the record, as referred to in
7 detail in our Memo. Hearing Court erred in
8 considering Plaintiff's counsel statement about
9 the mailing not coming back, as far as I know.
10 well, it doesn't matter whether the mailing came
11 back. So The Court doesn't need to consider that.
12 The return of the mailing doesn't matter. Service
13 is accomplished when the mailing is sent. So
14 whether or not The Court considered Plaintiffs'
15 counsel statement is completely immaterial. If it
16 was an error, it's a harmless error because it's
17 utterly irrelevant as to whether the mailing came
18 back. We've discussed about disclosing what
19 address was mailed to. That was the Defendant's
20 burden. The sixth assignment of error is that The
21 Hearing Court erred in considering irrelevant
22 evidence about Defendant's insurance carrier.
23 well, no, The Court did not consider evidence
24 about the insurance carrier. The Court
25 specifically said that. Mr. Childs raised that

1 objection. He said, quote, "The entire argument
2 about insurance coverage is improper for you."
3 And The Court said, "I'm not going to consider
4 that. I know that. As far as I'm concerned, the
5 issues here are isolated to the application of
6 Rule 60," end quote. So The Court did not
7 consider irrelevant evidence about insurance. It
8 specifically says on page 24 of the transcript,
9 "I'm not considering that." We've talked about
10 how The Court did not err in considering the
11 accident report. You consider it to assign blame?
12 Yeah, that would be an error. You consider it to
13 determine an address? No, that's absolutely
14 permissible. There's no statute that says
15 otherwise. The due process argument. We address
16 that in our Memo, Your Honor. What the Defendant
17 hasn't done there, in addition to no evidence, is
18 hasn't come forward with any kind of authority to
19 say that this is a due process problem. If it's a
20 due process problem, it's a due process problem
21 with Rule 55, right? Because the rule says what
22 it says. Plaintiff complied with the rule. And
23 in all the years we've had Rule 55, which is what,
24 30 years now? There's not one piece of authority
25 that we could find that says Rule 55 violates due

1 process by only requiring last known address. So
2 that's out there. The burden is on the movant,
3 Mr. Childs, to come forward with that authority.
4 He hasn't. The closest he came is this McCall vs.
5 IKON case. It's absolutely not on point. The
6 problem with McCall vs. IKON was not that there
7 was something sent to the wrong address. It's
8 that there were two Defendants and only one
9 letter, when obviously they both can't get the
10 same letter. It was literally one sheet of paper.
11 So clearly two Defendants can't get the one sheet
12 of paper. Had nothing to do with what address it
13 was sent to. So McCall v. IKON, absolutely not on
14 point. So you go through all those things, Your
15 Honor, and what you see is that there were no
16 errors. The Court considered the things.
17 Defendant says, well, didn't consider this, that,
18 and the other. The Court clearly did right there
19 in the transcript. Defendant says, well, The
20 Court improperly considered insurance in the
21 police report. Well, no, The Court didn't
22 consider insurance, and considering the police
23 report was absolutely proper. So there's not even
24 a technical basis to undo this Court's Order. The
25 Court got it right the first time. And on top of

1 that, as we already said, in addition to no
2 technical basis to undo this order, there's no
3 reason to undo it because holding a second damages
4 hearing would accomplish exactly nothing. The
5 Defendant can't get his wish of challenging
6 liability at the damages hearing. There's no
7 evidence that's reasonably objectionable to. And
8 what is the cross examination of the grieving
9 parents going to be? It's done. It was done over
10 a year ago. The Court ruled correctly, time to
11 let it rest.

12 THE COURT:

13 Thank you Mr. Jeffries. Mr. Childs, any response?

14 MR. CHILDS:

15 I would have a response. What the Defendant wants
16 to do and what his lawyer would do at a damages
17 hearing may be fundamentally different. And so in
18 respect to what he's saying that Mr. Jackson
19 wanted to do at a damages hearing may be far
20 different than what his lawyer would do. I
21 disagree that the record shows from the damages
22 hearing that this is not a case about medical
23 bills and things like that, that it is just a
24 foregone conclusion that there's going to be a
25 decision for 3 million dollars when, in fact, the

1 evidence is that they introduced a medical bill
2 from McLeod Hospital for \$393,000 at the hearing.
3 And so a good large component of all that. But
4 what the Defendant wants is not an opportunity to
5 pull the scab back. He wants an opportunity to
6 test the evidence presented by the Plaintiff.
7 Obviously if we go back in front of a damages
8 hearing, in front of Your Honor, we're not going
9 to be saying this person is, you know, worthless
10 or there's no monetary recovery available to her.
11 But what the Defendant wants is his right to test
12 that evidence. I don't know how The Court will
13 come out with that. The Court could come out with
14 a greater verdict or a lesser verdict. But what
15 the Defendant requests is the right to test that
16 evidence. The police report. I think the police
17 report actually does enter into the appropriate
18 statutory framework as determining liability of
19 the Defendant. And I say that because liability
20 for what and for how much. And so I think the
21 police report should not have come in, despite the
22 arguments about the officer's report and the
23 person making the report. The last known address.
24 The last known address should be a no brainer.
25 And it's pretty easy. It says you go out and you

1 serve the guy, and you write down what his address
2 is. And in this case, what the process server did
3 obviously was go out to this guy's house and
4 you'll see from his affidavit he couldn't
5 determine his address. You know what he did. He
6 went back to what we consider to be the
7 inadmissible report, but he went back to a report
8 that even if it were admissible is like third-hand
9 hearsay that tells him where a person's address
10 might be. Because the police officer gets it from
11 somebody, we don't know who, puts it on the
12 report. The guy goes out to serve and says I
13 can't determine the address. And so I'm just
14 going to write down the address that I found on a
15 report. And so is that the last known address of
16 the Defendant? No. The Defendant has an unknown
17 address at this point, the reason being because
18 the server doesn't specify that he doesn't know
19 what his address is when he serves. And so that's
20 the fundamental flaw. And the whole idea is that
21 there was no last known address for the Defendant
22 because their server, their agent didn't go to the
23 trouble of confirming the address he served the
24 Defendant at. And it's clear from his affidavit
25 that that was a problem. And so they want to

1 shift that problem over to the Defendant and say,
2 okay, Defendant, our server couldn't figure out
3 where you lived. So our server went to a report
4 and found an address there and put it down, and
5 that's your last known address. That's not
6 fundamentally fair from a due process perspective.
7 If that's what the meaning of the rule is, that
8 the Plaintiff gets to pick the last known address
9 of the Defendant, yes, there's a flaw in that
10 rule. But the fact is the Plaintiff doesn't get
11 to pick last known address. What the rule is, is
12 it wants to, when you serve a Defendant, you write
13 down the address you serve them at. It's part of
14 the Affidavit of Service. So we think that The
15 Court should reconsider its decision and allow the
16 Defendant to test the evidence presented by the
17 Plaintiff at this damages hearing. It's not a
18 foregone conclusion. It's just a fundamental
19 basic right. The mere fact that you decide not to
20 answer a Complaint doesn't mean that they get to
21 go pick out what your address is and not let you
22 know, and then find out that the address we picked
23 out results in all your mail coming back to us as
24 undeliverable and then we don't investigate it and
25 go ahead and have a hearing. By the way, a

1 hearing, you know, that was -- I don't know. That
2 was a July 28th, 2009 hearing, is that right, that
3 was held five years later?

4 MR. JEFFRIES:

5 2009 sounds awfully early.

6 MR. CHILDS:

7 Yes, maybe so.

8 MR. JEFFRIES:

9 Like by a decade.

10 THE COURT:

11 The 2009 date you're saying, Robert, was
12 referencing what?

13 MR. CHILDS:

14 Let me get the accident date here.

15 MR. JEFFRIES:

16 Because she was still alive in 2009, I'm sure.

17 MR. CHILDS:

18 Right. Let's see, it's a 2015 accident. So it
19 was a 2015 wrongful death automobile accident
20 case. That's an awful long time to even not
21 bother to go check and make sure that the address
22 you had for the Defendant was correct. The
23 accident occurred on September 6th of 2014. And
24 so the hearing was four years after the accident
25 -- more than two years after the accident. That's

1 all I have in response.

2 MR. JEFFRIES:

3 Your Honor, if I may, I have actually two brief
4 comments if I may make them.

5 THE COURT:

6 Yes, sir.

7 MR. JEFFRIES:

8 The first is with respect to the last known
9 address. I mean let's just talk a common sense
10 about that for a second. Mr. Childs said the
11 process server goes out and, quote, "couldn't
12 figure out where Defendant lived." All right?
13 But that's not so. The process server had an
14 address off the police report. He went out and he
15 found the Defendant. Remember he served the
16 Defendant. The Defendant agrees he got served.
17 So it's not that the process server couldn't
18 figure out where Defendant lived. He did. He
19 served the guy. He got an address. He went
20 there. He found the guy and he served him. So
21 it's not that Plaintiff gets to pick the
22 Defendant's address. It's that the process server
23 had an address. He went there. The guy was
24 there, and he served him. That's the address. It
25 may have been four years after the wreck that this

1 hearing was held, but it was also several years
2 after the suit or at least a year after the suit
3 was filed. So if this guy was worried about his
4 address being wrong -- and by the way, all this
5 is, of course, the Affidavit of Service and all
6 that, in the record. He could have checked it.
7 He could have updated his address. There's
8 nothing in the statute that says Plaintiff has to
9 go back out and re-up the address, re-up the
10 address. This is the address the guy was found
11 at. The guy concedes he was served. Process
12 server served him, went to the address he had, the
13 same address we sent to. Boom, found the guy and
14 served him. So that's one thing. Second thing,
15 let's talk about the medicals just for a second.
16 All right, so test the evidence as to meds,
17 \$393,000 Mr. Childs says in medical bills. Well,
18 what does testing that evidence look like? She
19 was in a horrific wreck. She went in the
20 hospital. She died. Is there any serious
21 argument that some of these medical bills are
22 unrelated to the wreck? You know, you can talk
23 about preexisting conditions, somebody falls down
24 in a walmart of whatever. This is a young healthy
25 girl, gets in a wreck, has catastrophic injuries

1 that take her life. So, really, test the
2 evidence? I mean theoretically, yeah, I get it.
3 But as a practical matter, there's no test in this
4 evidence. Those bills are all coming in, because
5 anyone with common sense understands that when you
6 get in a horrific wreck and die the hospital bills
7 are related to the wreck. I mean that's so
8 obvious, it almost doesn't even take saying. So
9 again, Your Honor, there's no error. Court got it
10 right the first time. There is no reason, no
11 reason at all to put this family through this
12 again to arrive at the exact same result.

13 THE COURT:

14 Okay, guys, thank you both for your presentations.
15 What I want to do is I'm going to consider these.
16 I am well aware and I want to get this to a
17 conclusion. My time schedule is that I'm going to
18 give this some thought. I've looked up the cases
19 that everyone's cited in your Memorandums. I
20 don't think there was any that were new today.
21 I'm going to go back and read them again. And
22 then probably what I will do is send an email to
23 everyone, and I will request that one of the two
24 parties prepare an Order for me. And I'm almost
25 hesitate to do what I'm about to do, but I want to

1 ask what I consider to be just a practical
2 question. And in doing this, I'm certainly not
3 belittling. I certainly understand that the
4 hearing was hard for the family the first time and
5 that it would be hard for them again. And we all
6 know that nothing in the system can make up for
7 the loss of a loved one, and that going through
8 that makes it hard. My question is more of a
9 practical question that we as lawyers and the
10 judicial system deals with all the time. As I sit
11 here right now, I believe that my initial Order
12 was right. Doesn't mean I might not change my
13 mind when I go back and look at everything again.
14 The part of me that makes me even seriously doubt
15 that decision is my recognition, and of course all
16 of you recognize this, that we've got two choices
17 here. One is I stick with my ruling. The ruling
18 becomes final, and what we have successfully done
19 is built in an appeal issue. The second is even
20 though I might think I'm right, I go back and say,
21 you know, I'm not real sure why I'm doing this,
22 but I'm changing my ruling. And the reason I'm
23 doing that is we can go have the hearing again.
24 Now the appeals issue is gone. And we go have the
25 hearing. Of course I would certainly consider

1 everything that happened, certainly consider any
2 testing of the evidence that occurs and I would
3 make a decision again. What that would do is
4 effectively eliminate any appeal issue. Assuming
5 I don't change my mind, that I made an error of
6 law, while that might be the practical way to move
7 forward, I don't feel good about it, because if I
8 think I was right I think I need to stick with
9 what I think was right. But I wanted to raise
10 this practical issue with both sides and just make
11 sure that we all recognize that. And that you
12 know in essence we don't want to say, Jim, let's
13 just have another hearing. Let's go back, have a
14 hearing, move on forward and eliminate any appeal
15 issue so we're not sitting here talking to the
16 Court of Appeals or the South Carolina Supreme
17 Court in six years. I bring that up too, because
18 it's going to ultimately have anything to do with
19 my decision, because I think I'm bound to apply
20 the law as best I can. And that's what I'm going
21 to ultimately do. I really debated, but I wanted
22 to at least raise that issue with all the parties
23 sitting here in this hearing so everybody can
24 think about it and tell me from your standpoint
25 whether we want to go about it another way. So,

1 Robert, obviously from your standpoint, you're
2 obviously protecting the record. And that's our
3 job, too. We're all protecting the record.
4 Obviously you feel an error was made, and I
5 understand the basis of that. I really think this
6 is more of a question for Lane and his side. And
7 I'm assuming from the way they vigorously defended
8 this, that they want me to do my best to apply the
9 law. And they feel that should mean that I uphold
10 my previous ruling and move forward. And if it
11 creates an appeal issue, it creates an appeal
12 issue and so be it. But, Lane, let me let you
13 respond to that.

14 MR. JEFFRIES:

15 Your Honor, we agree. I'll say two things about
16 that. The first is this. I think that you're
17 right. The law is the law. And you apply the law
18 right, and the consequences of that are the
19 consequences. What we shouldn't do is take a
20 proper ruling and say, well, I'm going to do away
21 with it for the convenience of getting rid of an
22 appeal or for any other reason, because of
23 consequences with an insurance company or anything
24 else. The law is the law. We believe in the rule
25 of law. We believe Your Honor is correct, the

1 first ruling was the right ruling. And that if
2 your Honor still believes that, that it was the
3 right ruling, then as a matter of law we'd ask you
4 to uphold it regardless of what the practical
5 consequences are, because what's right is right.
6 So that's one thing. The second thing is this. I
7 don't know that having another hearing would
8 eliminate an appeal. And the reason for that is
9 this. There's only three outcomes that could come
10 about at that hearing; a smaller verdict, a bigger
11 verdict, or the same verdict. Well, if it's a
12 smaller verdict, then there's a high likelihood of
13 an appeal from the Plaintiffs' side saying now
14 wait a minute, if the damages were here and the
15 same evidence and now they're down here, that
16 can't be right. So there's an appeal. If it's a
17 bigger verdict, well, then Mr. Childs, heaven, you
18 know, he's really going to have an issue. How did
19 it go up? So there's a likely appeal. And the
20 only way to avoid that is to pick the middle, the
21 same verdict. And if we're going to do that,
22 well, we already have that. And so, Your Honor,
23 from a practical standpoint it doesn't achieve
24 anything. From a legal standpoint, we believe the
25 law is the law. And the consequences, let the

1 chips fall where they may.

2 THE COURT:

3 Robert, anything you'd like to add? And I'm not
4 trying to make you. I know this is a weird even
5 question from your standpoint.

6 MR. CHILDS:

7 No, I mean, that's the relief I'm seeking. And so
8 that's what my client wants. And I think that
9 there is an outcome, and I don't know what it may
10 be, but he wants to be able to test that evidence
11 to determine a more appropriate outcome that
12 involves his participation. That's it. And so
13 whether the outcome is you certainly do eliminate
14 issues for an appeal if you have a new damages
15 hearing, because those issues are gone. You know,
16 the Plaintiff says, well, there will be other
17 issues. There may be, but they won't be this
18 issue. And, you know, that certainly refines the
19 case for any appeals on either side. So I would
20 be certainly happy to participate in a damages
21 hearing and certainly wouldn't object if we all
22 agreed to that. I know you're not saying what
23 you're going to decide and you're inclined to stay
24 with your Order. And I understand that, but I
25 would say that it would probably benefit the

1 parties if we agreed just to have a damages
2 hearing. But I don't think the Plaintiffs are
3 going to agree to that. I understand their theory
4 about it, too. And I get you and I respect you
5 for that, and sometimes we have cases where we
6 just can't agree on what to do.

7 THE COURT:

8 Oh, I know, and that's why the Court exists. I
9 mean, I appreciate both sides. I think everybody
10 has thoroughly briefed it. Certainly everybody's
11 done a good job presenting their side of it. And
12 it's now time for me to do that, and I will assure
13 everyone that I'm going to do it now while all
14 this is fresh on my mind so that we can move on
15 forward with this.

16 MR. CHILDS:

17 I wanted to tell Mr. Jeffries that I've got a
18 background that has law books, that it shows law
19 books behind you. You might think about that.

20 MR. JEFFRIES:

21 This makes me so much happier than law books,
22 though.

23 THE COURT:

24 It's the best background I've seen. I like that
25 background.

1 MR. CHILDS:

2 It was kind of mesmerizing, though. I'm kind of
3 looking at the beach.

4 THE COURT:

5 I think we can all agree that we would rather be
6 there, where that picture was taken.

7 MR. JEFFRIES:

8 That's right.

9 MR. SUGGS:

10 Guys, can you all hear me?

11 THE COURT:

12 We can. Go ahead, Scott.

13 MR. SUGGS:

14 I'm still here. I've been listening very intently
15 to both sides. And, Jim, I see your point of
16 view. Certainly from an expedience point of view,
17 it would probably be best for the parties -- and
18 I'm not saying this to influence anyone, but for
19 the parties maybe to talk a minute or two, later
20 on maybe this week, before you issue a ruling. No
21 one wants to see this thing drag out for another
22 five or six years. I mean on that, I think we all
23 agree. And that's really all I wanted to say
24 about it. I recognize the points made by everyone
25 and particularly by the Plaintiffs' counsel and

1 myself, sitting here listening. But expedience
2 might be the key word that everybody needs to
3 focus on at this stage of the litigiousness.

4 THE COURT:

5 Okay, well, thank everyone for participating.
6 Karen, do you need anything from us for your
7 records standpoint or are you good?

8 COURT REPORTER:

9 I just have a couple questions. Mr. Suggs, who do
10 you represent?

11 MR. SUGGS:

12 I represent the Personal Representatives of the
13 Estate of Artrell Davis. And so I'm associated
14 with Roy Williey and with Lane Jeffries in this
15 matter.

16 COURT REPORTER:

17 All right, you're all co-counsel then.

18 MR. SUGGS:

19 Correct.

20 COURT REPORTER:

21 And, Lane, do you need a copy of this transcript?

22 MR. JEFFRIES:

23 If you don't mind, an e-tran would be fine.

24 COURT REPORTER:

25 Your Honor, do you want me to send you the

1 original sealed copy?

2 THE COURT:

3 Yes.

4 COURT REPORTER:

5 And, Robbie, you'll get your usual copy. Okay,
6 thank you all.

7 THE COURT:

8 Thank you everyone. Appreciate you doing it this
9 way. At least if we get COVID, it won't be
10 because we got together on a hearing.

11 (Hearing ended at 2:52 p.m.)

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CERTIFICATE

I, the undersigned, Karen A. Belanger, CVR-M,
Notary Public in and for the State of South Carolina,
do hereby certify that the foregoing deposition was
taken on the aforementioned date;

That the within deponent was sworn to tell the
truth, and that the foregoing is an accurate
transcription of the testimony taken under oath;

That all exhibits entered herein are attached
hereto (if requested by counsel) and made a part of
this deposition.

I further certify that I am neither counsel nor
solicitor to any of the parties in said suit, nor
interested in the event of the cause.

In witness whereof, I have hereunto set my hand
and seal this 3rd day of November, 2020.

Karen A. Belanger, CVR
Notary Public for South Carolina
My Commission Expires: 4/18/2023

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Civil Action No. 2015-CP-21-02451
Appellate Case No. 2021-

RECEIVED

Feb 08 2021

SC Court of Appeals

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.,

Defendants,

Of Whom Elroy Jackson is the Appellant.

NOTICE OF APPEAL

Elroy Jackson timely appeals the Special Referee's January 18, 2021 Order denying his Motion to Alter/Amend and Motion for a New Trial. A copy of the written order is attached hereto as Exhibit A. Appellants received written notice of the entry of the Order on January 18, 2021.

s/ Shanon N. Peake

Jonathan M. Robinson (S.C. Bar 68285)

Shanon N. Peake (S.C. Bar #102723)

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Attorneys for Appellant

Columbia, South Carolina
February 8, 2021

ROA 358

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Plaintiffs/Respondents,

v.

Elroy Jackson and Michael Laverne Marks, Jr.,

Defendants,

Of Whom Elroy Jackson is the Appellant.

PROOF OF SERVICE

I, the undersigned attorney of the law offices of Smith Robinson Holler DuBose and Morgan, LLC, do hereby certify that on February 8, 2021, I have served all counsel in this action with a copy of the pleading(s) hereinbelow in accordance with the Supreme Court's May 29, 2020 Administrative Order by emailing a copy to each attorney listed below using their primary email address listed in the Attorney Information System. I also certify that I am contemporaneously filing a copy of the Notice of Appeal with the lower court.

Documents Served: Notice of Appeal

Counsel Served: **E-Mail**

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ROA 359

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February 8, 2021

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Subject: Estate of Davis v. Jackson, et al.
Date: Monday, February 8, 2021 1:19:00 PM
Attachments: [Notice of Appeal, 2.pdf](#)
[Proof of Service - Notice of Appeal, 2.pdf](#)
[Exhibit A - Order on Appeal, 1.pdf](#)

RECEIVED

Feb 08 2021

SC Court of Appeals

Good Afternoon,

Please find attached a Notice of Appeal in the above-referenced case that we are filing in the Court of Appeals today, served on you pursuant to the Supreme Court's subsection (g)(3) of the South Carolina Supreme Court's May 29, 2020 Amended Order discussing the operation of the appellate courts during the coronavirus emergency.

Thank you,
Shanon

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ROA 361

EXHIBIT A

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

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.

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

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

RECEIVED

Feb 08 2021

SC Court of Appeals

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, SCRCP 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), SCRCp.

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



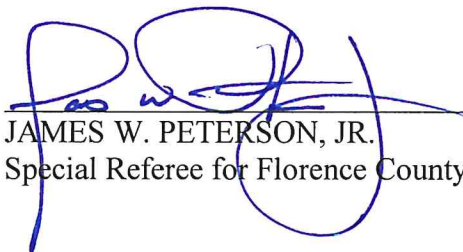
discussed above, these are exactly the two things that the law does not require: (1) use of the current address (See Section II), or (2) actual delivery (See Section III).

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



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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP-21-02451

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 : ☐ 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
- ☐ **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:

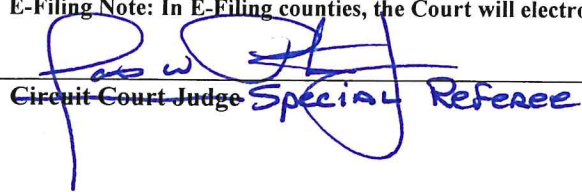
RECEIVED

Feb 08 2021

SC Court of Appeals

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.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


Circuit Court Judge

Special Referee

Judge Code

Date

Jan. 14, 2021

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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.

Motion by Defendant Elroy Jackson to Alter/Amend and Motion for New Trial is Denied as set out in the attached Order.

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.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

s/Shanon N. Peake

Shanon N. Peake, SC Bar No. 102723

Smith Robinson Holler DuBose and Morgan, LLC

2530 Devine Street

Columbia, SC 29205

T: (803) 254-5445

shanonp@smithrobinsonlaw.com

Counsel for Appellant

August 9, 2021.

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Aug 25 2021

SC Court of Appeals

ROA 379