

The South Carolina Court of Appeals

Candace Dowell, Individually and as the PR of the Estate
of Roger Alan Dowell, Appellant,

v.

Putzmeister America, Inc.; Concrete & Materials
Placement, LLC; R.E. Goodson Construction Co., Inc.;
Mead & Hunt, Inc.; Benton Concrete & Utilities, LLC;
and Thomas Concrete, Inc., Defendants,


of which Benton Concrete & Utilities, LLC is the
Respondent.

Appellate Case No. 2021-000899

ORDER

After careful consideration, Appellant's motion to remand to the circuit court for consideration of her Rule 60(b), SCRCF, motion is denied. *See* Rule 60(b)(5), SCRCF ("On motion and upon such terms as are just, the court may relieve a party . . . from a final judgment, order, or proceeding for the following reasons: . . . the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application."); *Mullarkey v. Mullarkey*, 397 S.C. 182, 191, 723 S.E.2d 249, 254 (Ct. App. 2012) ("[R]elief under Rule 60(b)(5) is available only in cases of fraud upon the court or rare, special, exceptional or unusual circumstances that may warrant equitable relief, including accident or mistake." (internal quotations omitted)); *Perry v. Heirs at L. of Gadsden*, 357 S.C. 42, 49, 590 S.E.2d 502, 505 (Ct. App. 2003) ("The test typically applied to determine whether an order has prospective application is whether it is executory or involves supervision of changing conduct or conditions by the court." (internal quotations omitted)); *Wright v. Cordesville Pentecostal Holiness Church*, 310 S.C. 321, 323, 426 S.E.2d 772, 773 (1993) ("We hold, in

accordance with the weight of authority, that Rule 60(b)(5) does not apply to a change in the law.").


FOR THE COURT

Columbia, South Carolina

cc:

Nina Fields Britt, Esquire

Michael J. Brickman, Esquire

Caleb Michael Hodge, Esquire

Edward Raymond Moore, III, Esquire

FILED
Oct 14 2021