

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Honorable Maite Murphy, First Judicial Circuit

Appellate Case No. 2022-000419

Molly M. Morphew, Appellant,

v.

Stephen Dudek and Doreen Cross, Respondents.

APPELLANT'S INITIAL BRIEF

RECEIVED

MAY 04 2022

SC Court of Appeals

Molly M. Morphew, pro se
121 Sterling Rd.
Rincon, GA
(843) 514-7299

Table of Contents

ISSUES ON APPEAL	1
TABLE OF AUTHORITIES	2
STANDARD OF REVIEW	2
BRIEF HISTORY AND FACTS	3
ARGUMENTS	5
1. Is <i>dismissal</i> of a 59(e) motion appropriate, especially where Appellant’s motions raise errors in fact, incorrect application of standards of review, severe ambiguity, lack of ruling on issues presented, lack of fact finding and conclusions of law, and a contrary position of the court where it shows prejudice and partiality in its review, and where the effect of these issues determined the legal standing of the litigants and triable issues?	5
2. Did the lower court err or abuse its discretion in its refusal or failure to find the facts specially and state separately its conclusions of law thereon in accordance with Rule 52(a) SCRC?	10
3. Does dismissal of a 59(e) motion result in a failure to preserve the issues raised or waive Appellant’s right to later raise those issues, and if so, did the trial court err or abuse its discretion in dismissing Appellant’s 59(e) motions?	10
CONCLUSION	11

ISSUES ON APPEAL

1. Is *dismissal* of a 59(e) motion appropriate, especially where Appellant’s motions raise errors in fact, incorrect application of standards of review, severe ambiguity, lack of ruling on issues presented, lack of fact finding and conclusions of law, and a contrary position of the court where it shows prejudice and partiality in its review, and where the effect of these issues determined the legal standing of the litigants and triable issues?
2. Did the lower court err or abuse its discretion in its refusal or failure to find the facts specially and state separately its conclusions of law thereon in accordance with Rule 52(a) SCRC?
3. Does dismissal of a 59(e) motion result in a failure to preserve the issues raised or waive Appellant’s right to later raise those issues, and if so, did the trial court err or abuse its discretion in dismissing Appellant’s 59(e) motions?

TABLE OF AUTHORITIES

Cases

<i>Foman v. Davis</i> , 371 U.S. 178, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962)	7
<i>Creech v. South Carolina Wildlife and Marine Resources Dep't</i> , 328 S.C. 24, 491 S.E.2d 571 (1997).....	7
<i>Dockside Ass'n v. Detyens, Simmons & Carlisle</i> , 297 S.C. 91, 374 S.E.2d 907 (Ct.App.1988).....	7
<i>Doe v. Clark</i> , 318 S.C. 274, 457 S.E.2d 336 (1995)	2
<i>Flagstar Corp. v. Royal Surplus Lines</i> , 341 S.C. 68, 72, 533 S.E.2d 331, 333 (2000).....	9
<i>Griffith v. Griffith</i> , 332 S.C. 630, 646, 506 S.E.2d 526, 534-35 (Ct.App.1998)	10
<i>Hagood v. Sommerville</i> , 607 SE 2d 707 - SC: Supreme Court 2005	9
<i>Parker v. Baltimore & Ohio R.R.</i> , 652 F.2d 1012, 1018, 1020 (D.C.Cir.1981)	7
<i>Pruitt v. State</i> , 310 S.C. 254, 423 SE 2d 127 - SC: Supreme Court 1992.....	8
<i>Pruitt v. State</i> , 423 SE 2d 127, 310 S.C. 254 - SC: Supreme Court 199.....	10
<i>Pruitt v. State</i> , 423 SE 2d 127, 310 S.C. 254 - SC: Supreme Court 1992.....	12
<i>State v. Nelson</i> , 331 S.C. 1, 5 n. 6, 501 S.E.2d 716, 718 n. 6 (1998).....	8
<i>Washington v. Washington</i> , 308 S.C. 549, 551, 419 S.E.2d 779, 781 (1992).....	8

Other Authorities

C.J.S. <i>Appeal and Error</i> § 213 (1993)	8
---	---

Rules

Rule 11 SCRPC	3
Rule 12, SCRPC.....	4
Rule 15(a) SCRPC	3
Rule 15, SCRPC.....	4
Rule 52(a) SCRPC	5, 6, 8, 10
Rule 59 SCRPC	7, 10
Rule 7, SCRPC.....	4

STANDARD OF REVIEW

In an appeal from an action in equity, this Court has jurisdiction to find facts in accordance with its own view of the preponderance of the evidence. *Doe v. Clark*, 318 S.C. 274, 457 S.E.2d 336 (1995).

BRIEF HISTORY AND FACTS

March 9, 2020, Appellant pro se served an amended complaint as a matter of right or course. All motions and supporting documents in relation to the original complaint are no longer before the court for its review of any filing or subsequent filing¹. Respondents' Answer to the Amended Complaint was due within 15 days of service of the amended complaint or March 29, 2020², or May 4, 2020³.

March 26, 2020, Respondents electronically filed their Rule 15 motion to dismiss, contending only Appellant was not allowed to amend its complaint without leave and that she violated Rule 11 by not conferring with opposing attorney before amending. Rule 11 SCRCF. No memorandum or affidavits included. Motion served on Appellant pro se via USPS mail.

April 9, 2020, Appellant pro se served its response and motion to dismiss or strike Respondents' Rule 15 motion as irrelevant. Rule 15(a) SCRCF. Respondents had not filed their Answer (i.e., responsive pleading) to the original complaint so no leave was required, therefore their Rule 15 motion to dismiss the amended complaint was moot.

April 13, 2020, Respondents electronically filed a skeleton Rule 12(b)(6) motion to dismiss the amended complaint. No arguments contained in the motion or memorandum attached to support. Motion served on Appellant pro se via USPS mail.

April 19, 2020, Appellant pro se served its first response and motion for default and default judgment, and motion to strike or dismiss Respondents' 12(b)(6) motion to dismiss the amended

¹ See **Order**, August 23, 2021

² 5 days added for service by USPS mail.

³ Regardless, whether the Answer was due in March, 2020 or May, 2020, is irrelevant. The Respondents did not serve their Answer until September 3, 2021, almost a year and a half after it was due.

complaint, due to their motion having no legal standing as a 12(b)(6) motion, let alone an action in which to toll the time to answer an amended complaint.⁴ Rule 12, SCRCF, Rule 15, SCRCF, Rule 7, SCRCF

May 1, 2020, Appellant pro se serves a response and motion to strike both Respondents' 12(b)(6) motion and Rule 15 motion to dismiss the amended complaint.

May 26, 2021, a hearing was conducted on several pending motions.

August 23, 2021, the trial court issued an Order ruling on several motions or issues regarding the amended complaint, entry of default and default judgment, protection from discovery and motions to compel discovery. (**Order**, August 23, 2021). The order contained many errors in fact, contrary positions taken by the court, review of matter not before the court for its review, incorrect applications of standards of review, and improper and/or incomplete rulings.

September 7, 2021, Appellant filed a 59(e) motion to reconsider or amend, and motion for default judgment and default judgment. (**59e Motion and Motion for Entry of Default and Default Judgment**, September 7, 2021) For the sake of possible process error, a duplicate motion for default and default judgement was filed September 13, 2021. (**Motion, Default and Default Judgment**, September 13, 2021)

March 8, 2022, the trial court issued an order *dismissing* Appellant's 59e motion. (**Order**, March 8, 2022) The court included no reason for its *dismissal*, and the order contained no findings

⁴ Unlike other types of defenses, a party may raise any of the Rule 12(b) defenses either by responsive pleading or by pre-answer motion. FED. R. CIV. P. 12(b). Doing so by pre-answer motion tolls the time to answer until the court disposes of the motion, FED. R. CIV. P. 12(a)(4) though a pre-answer motion in response to an amended complaint may not. The Federal Courts Law Review, Volume 7, Issue 1, 2013, Hon. Amy St. Eve1 & Michael A. Zuckerman: The Forgotten Pleading, pg. 159 (Emphasis added)

of facts specially nor did it state separately its conclusions of law thereon in accordance with Rule 52(a) SCRCF, where the action was tried upon the facts without a hearing or jury.

March 18, 2022 and March 23, 2022, accordingly, Appellant filed a 59e motion and then its additional memorandum raising issue to the trial court's *dismissal* of Appellant's 59e motion and lack of reason, plus raising issue to its failure to include findings of facts specially and that it did not state separately its conclusions of law thereon in accordance with Rule 52(a) SCRCF, where the action was tried upon the facts without a hearing or jury. **(59(E) Motion, March 18) (Memorandum, March 23, 2022)**

March 25, 2022, the trial court issued an order *dismissing* Appellant's March 18th 59e motion. **(Order, March 25, 2022)** The court included no reason for its *dismissal*, and the order contained no findings of facts specially nor did it state separately its conclusions of law thereon in accordance with Rule 52(a) SCRCF, where the action was tried upon the facts without a hearing or jury.

April 3, 2022, due the severe ambiguity of the order due the material errors of fact, improper application of standards of review, contrary positions taken by the court, material change in the record in accordance with the serving of the amended complaint, lack of rulings and improper rulings and/or lack of fact finding and conclusions of law, the legal standing of the Respondents and what mode of trial are in question, let alone that Appellant's right to issue or error preservation has been violated, Appellant filed its notice of appeal.

ARGUMENTS

1. Is *dismissal* of a 59(e) motion appropriate, especially where Appellant's motions raise errors in fact, incorrect application of standards of review, severe ambiguity, lack of ruling on issues presented, lack of fact finding and conclusions of law, and a contrary position of

the court where it shows prejudice and partiality in its review, and where the effect of these issues determined the legal standing of the litigants and triable issues?

The trial court *dismissed* Appellant's 59(e) motions to reconsider and/or amend its orders, where those motions were based on errors in fact, incorrect applications of standards of review, ambiguity, lack of ruling on issues raised, a change in the record which the trial court observed only in regards to Appellant and not Respondents in its review, resulting in a contrary position of the court where it shows prejudice and partiality, and where the effect of these issues and errors determined triable issues and/or the legal standing of the litigants and triable issues. Further, the trial court's orders critically failed to find the facts specially and state separately its conclusions of law thereon in accordance with Rule 52(a) SCRPC. Consequently, dismissing Appellant's 59(e) motions is improper and an abuse of the trial court's discretion resulting in severe prejudice. **(Plaintiff's 59(e) Motion, September 7, 2021) (Plaintiff's 59(e) Motion, March 18, 2022 (Plaintiff's Memorandum in Support of its 59(e) Motion, March 23, 2022).**

There does not appear to be any view of the courts on the appealability or review of an order *dismissing* a 59e motion to amend and/or reconsider in a civil case. Meaning, Appellant was unable to discover any case or case law where a trial court *dismissed* a 59(e) motion and without reason. Let alone where *dismissing* a 59(e) motion was either appropriate or did not contradict other court rules, especially in regards to a litigant's right to error and issue preservation for Appellate review. Further, there is nothing in the court rules that supports *dismissal* of a 59(e) motion, especially in this instant case, where a 59(e) motion has a 10-day statute of limitations from upon receipt of in which to file, so even if the dismissal were allowed and it was without prejudice, the time constraint to file a 59(e) motion does not allow amendment of the motion before

the statute expired⁵; therefore *dismissing* a Rule 59e motion, especially without findings of fact or conclusions of law violates Rule 52 and contradicts the effect of a Rule 59(e) motion, is an abuse of the trial court's discretion and severely prejudices Appellant. Rule 59 SCRPC and Rule 52(a), SCRPC.

Additionally, *dismissal* of Appellant's 59(e) motions would in affect 'remove' the motions, thus any issues and errors raised, from the record or the courts' review as if it were never there and if those issues and errors were never raised. Inevitably, the trial court's order contradicts Rule 59 and Rule 52 by denying Appellant's right to issue preservation and/or forces Appellant to waive its right to preserving the issues and errors raised in its motions.

It is well-settled that an issue cannot be raised for the first time on appeal but must have been raised to and ruled upon by the trial court to be preserved for appellate review. *E.g., Creech v. South Carolina Wildlife and Marine Resources Dep't*, 328 S.C. 24, 491 S.E.2d 571 (1997). Error preservation requirements are intended "to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments." *Staubes v. City of Folly Beach*, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000) (quoting *I'On v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000); *see also State v. Nelson*, 331 S.C. 1, 5 n. 6, 501 S.E.2d 716, 718 n. 6

⁵ The Supreme Court stated in *Foman* that while the decision to grant or deny leave to amend is within the trial court's discretion, "outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the Federal Rules." 371 U.S. at 182, 83 S.Ct. at 230. We too have emphasized that a proper exercise of discretion requires that the district court provide reasons. *See Parker v. Baltimore & Ohio R.R.*, 652 F.2d 1012, 1018, 1020 (D.C.Cir.1981) (reversing district court's denial of leave to amend, and remanding to the district court either to grant plaintiff leave to amend or provide sufficient reasons for its denial). *Foman v. Davis*, 371 U.S. 178, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962); *Dockside Ass'n v. Detyens, Simmons & Carlisle*, 297 S.C. 91, 374 S.E.2d 907 (Ct.App.1988)

(1998) ("the ultimate goal behind preservation of error rules is to insure that an issue raised on appeal has first been addressed to and specifically ruled on by the trial court."); C.J.S. *Appeal and Error* § 213 (1993). Without an initial ruling by the trial court, a reviewing court simply is not able to evaluate whether the trial court committed error. *Id.* Therefore, when an appellant neither raises an issue at trial nor through a Rule 59(e), SCRCF, motion, the issue is not preserved for appellate review. *Washington v. Washington*, 308 S.C. 549, 551, 419 S.E.2d 779, 781 (1992). The failure to specifically rule on the issues precludes appellate review of the issues.

Further, it deprived the Appellant of rulings and/or proper rulings on its issues raised in its motions in which its 59(e) motions arise from, let alone causing further undue difficulty, time, costs, and resources for all involved, including this Court.

“Not only does this deprive the parties of rulings on the issues raised, but it makes review by the appellate court more difficult and ultimately increases the workload of all involved where, as in this case, a new hearing is required to secure the rulings which should have been made initially. Counsel preparing proposed orders should be meticulous in doing so, opposing counsel should call any omissions to the attention of the judge prior to issuance of the order, and the judge should carefully review the order prior to signing it. Even after an order is filed, counsel has an obligation to review the order and file a Rule 59(e), SCRCF, motion to alter or amend if the order fails to set forth the findings and the reasons for those findings as required by § 17-27-80 and Rule 52(a) SCRCF.”

Pruitt v. State, 310 S.C. 254, 423 SE 2d 127 - SC: Supreme Court 1992

In this instant case, for Appellant pro se to properly defend or proceed to a proper mode of trial, which is in itself a well-established substantial right⁶, or proceed to trial with clear knowledge of the issues in which it can present or knowing the legal position of the Respondents, all motions to dismiss, strike or for default and the issues presented within must be *properly* and/or fully ruled on first.

Appellant is not asking for the trial court to go beyond its scope or duties by asking it to properly and fully rule on all issues raised where it failed to rule on, or to correct errors of fact or to apply the correct facts and standards of review to its ruling or to provide findings of facts or conclusions of law in its order. (**Memorandum**, March 23, 2022). Appellant is only asking for what any litigant, whether pro se or represented, has a right to under the rules and processes of the courts. It is clear the rules of the court already dictate these requirements or provide for a proper and full ruling on any issue raised before it.

Further, without proper and full rulings of all issues and corrections of the errors of fact, the legal position of the Respondents is in question. Proceeding to trial with such prejudice and ambiguity would render the proceeding a debacle or severely prejudice any lawyer, let alone a pro se litigant, in its attempt to navigate the proceeding.

Regardless, the issues raised by the Appellant must be *properly* ruled upon by the trial court, and not denied, let alone improperly *dismissed without reason, fact finding and conclusions*

⁶ *Hagood v. Sommerville*, 607 SE 2d 707 - SC: Supreme Court 2005 [In a well-established exception to the general rule, we repeatedly have held that the denial of a party's right to a particular mode of trial is immediately appealable as a substantial right under Section 14-3-330(2). See *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 72, 533 S.E.2d 331, 333 (2000) ("Pursuant to § 14-3-330(2), this Court has held on numerous occasions that when a trial court's order deprives a party of a mode of trial to which it is entitled as a matter of right, such order is immediately appealable.")]

of law. *Pruitt v. State*. Therefore, dismissal is inappropriate, contrary to Rule 59, prejudices Appellant's rights and is an abuse of the trial court's discretion to do so.

2. Did the lower court err or abuse its discretion in its refusal or failure to find the facts specially and state separately its conclusions of law thereon in accordance with Rule 52(a) SCRPC?

#1 repeated here.

"An order or judgment pursuant to issues raised in a 59e motion shall set forth the specific findings of fact and conclusions of law to support the court's decision." Rule 52(a) SCRPC. South Carolina Case law and court rules make clear that when an issue is raised and not decided, the trial court must make specific findings of fact on the record for each of the required factors to be considered. *Griffith v. Griffith*, 332 S.C. 630, 646, 506 S.E.2d 526, 534-35 (Ct.App.1998).

This Court must find the facts specially and state separately its conclusions of law thereon, and its Orders amended if applicable⁷. Rule 52 and Rule 59 SCRPC. (**Plaintiff's Memorandum**, March 23, 2022). To do any different is an abuse of the trial court's discretion and violates Appellant's due process or its right to have all issues presented fully and properly ruled on before proceeding to trial.

3. Does dismissal of a 59(e) motion result in a failure to preserve the issues raised or waive Appellant's right to later raise those issues, and if so, did the trial court err or abuse its discretion in dismissing Appellant's 59(e) motions?

#1 and #2 above repeated here. Again, Appellant was unable to discover any case or case law where a trial court *dismissed* a 59(e) motion. Let alone where *dismissing* a 59(e) motion without reason, findings of fact and conclusions of law was either appropriate or did not contradict

⁷ *Pruitt v. State*, 423 SE 2d 127, 310 S.C. 254 - SC: Supreme Court 1992

other court rules, especially in regards to a litigant's right to error and issue preservation for Appellate review.

As argued, *dismissal* of Appellant's 59(e) motions would remove those motions, thus any issues and errors raised, from the record for the courts' review as if they were never there and/or if those issues and errors were never raised. Thus, in essence, result in a failure to preserve the issues raised or waive Appellant's right to raise those issues on appeal.

Regardless, the trial court's orders are a contradiction of Rule 59 by denying Appellant a ruling on all issues raised in its motions in which its 59(e) motions arose, denying her right to issue preservation and/or forcing Appellant to waive her right to preserve the issues and errors raised in her motions; thus is an abuse of the trial court's discretion.

CONCLUSION

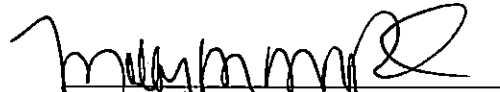
Based on the above, Appellant demonstrates the trial court's order in which Appellant's 59(e) motion(s) arose from, contains several errors in fact, incorrect application of arguments, incorrect application of standards of review, and contrary positions that cannot be maintained and demonstrates severe discrimination, notwithstanding its failure to dispose of critical and material matters raised by Appellant, and not defended by Respondents, including but not limited to, Respondents' legal standing or ability to defend/their default. Further, the lack of dispositioning, or the sufficient dispositioning, *all* motions or issues presented to the trial court since the amended complaint was filed, including an insufficient or improper *dismissal* of Appellant's 59(e) motions, warrants this Court's attention before this case can proceed or a proper mode of trial can be had.

Regardless, the errors in fact and/or issues raised in both Appellant's 59(e) motions must be reconsidered and properly addressed, not *dismissed* without reason, and the trial court must find the facts specially and state separately its conclusions of law thereon where it has critically and

completely failed to do so, and its Orders amended where applicable⁸. Rule 52 and Rule 59 SCRPC
To do any different is an abuse of discretion and violates Appellant's due process or its right to
have all issues fully and properly ruled on before proceeding to trial.

Consequently, the Appellant's 59(e) Motion was improperly *dismissed*, and warrants
reversal and/or reconsideration and amended appropriately.

Respectfully submitted,



Molly M. Morpew, pro se
121 Sterling Dr.
Rincon, GA 31326

April 28, 2022

⁸ *Pruitt v. State*, 423 SE 2d 127, 310 S.C. 254 - SC: Supreme Court 1992

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Honorable Maite Murphy, First Judicial Circuit

Appellate Case No. 2022-000419

RECEIVED

MAY 04 2022

SC Court of Appeals

Molly M. Morpew, Appellant,

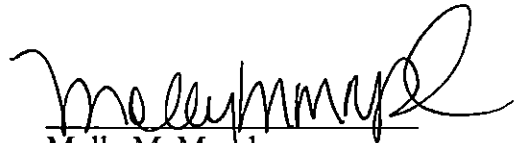
v.

Stephen Dudek and Doreen Cross, Respondents.

CERTIFICATE OF SERVICE

I, Molly M. Morpew, Appellant [and pro se] for said case, hereby certify that I have, on this date indicated below, served counsel below with an Appellants INITIAL BRIEF, CERTIFICATE OF SERVICE, CERTIFICATE OF COMPLIANCE pursuant Rule 208(b), and its DESIGNATION OF MATTER to be included in Record on Appeal, by mailing a copy of same via United States Mail, postage prepaid and return address clearly indicated on said envelope, to counsel at the following address:

Zachary Closser, Esquire
P.O. Box 40578
Charleston, SC 29423-0578
Attorney for Respondents:
Stephen Dudek
Doreen Cross


Molly M. Morphey, pro se

April 30, 2022

April 28, 2022

RECEIVED
MAY 04 2022
SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29211

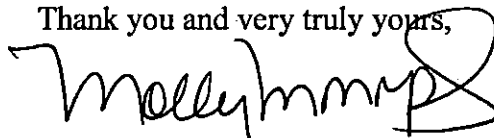
Re: Appellate Case No. 2022-000419
Molly M. Morphew v. Stephen Dudek and Doreen Cross

Dear Ms. Kitchings:

Please find enclosed Appellants INITIAL BRIEF, the CERTIFICATE OF SERVICE, CERTIFICATE OF COMPLIANCE, and its DESIGNATION OF MATTER to be included in Record on Appeal, to be recorded and filed.

Also enclosed is a copy of above to be kindly recorded and returned in the self-addressed, stamped envelope.

Thank you and very truly yours,

A handwritten signature in black ink, appearing to read 'Molly Morphew', with a large, stylized flourish at the end.

Molly Morphew, pro se

Cc: Zachary Closser, Esq.

PRESS FIRMLY TO SEAL



PRESS FIRMLY TO SEAL

PRIORITY MAIL
FLAT RATE ENVELOPE
POSTAGE REQUIRED



PRIORITY MAIL

- Expected delivery date specified for domestic use.
- Most domestic shipments include up to \$50 of insurance (restrictions apply).
- USPS Tracking® Included for domestic and many international destinations.
- Limited international insurance.
- When used internationally, a customs declaration form is required.

*Insurance does not cover certain items. For details regarding claims exclusions see the Domestic Mail Manual at <http://pe.usps.com>.
 ** See International Mail Manual at <http://pe.usps.com> for availability and limitations of coverage.

FLAT RATE ENVELOPE
ONE RATE ■ ANY WEIGHT

TRACKED ■ INSURED



PS00001000014

EP14F May 2020
OD: 12 1/2 x 9 1/2

To schedule free Package Pickup,
scan the QR code.



USPS.COM/PICKUP

P

04/20/2022 Mailed from 31326 10001000

9405 5036 9930 0237 0979 19 0052 0001 0332 0201

US POSTAGE
Legal Post for Env

U.S. POSTAGE PAID

DELIVERED

PRIORITY MAIL 2-DAY™

Expected Delivery Date: 05/03/22
Rate: TRSF BRP
0006

MAY 04 2022

SC Court of Appeals **C076**

SHIP TO:
HON. JENNY ABBOTT KITCHINGS
SOUTH CAROLINA COURT OF APPEALS
1015 SUMNER ST
COLUMBIA SC 29201-3726

USPS TRACKING #

9405 5036 9930 0237 0979 19

Electronic Rate Approved #038555749

This packaging is the property of the U.S. Postal Service and is provided solely for use in sending Priority Mail and Priority Mail International shipments. Misuse may be a violation of federal law. This package is not for resale. EP 14F © U.S. Postal Service May 2020. All rights reserved.