

STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)
))
Marcus A. Joseph,)
))
Plaintiff,)
))
vs.)
))
Annelle G. Powell, H.M. Turbeville, Gary)
Martin Wades, Kolb Municipality of)
Manning, Clarendon County Sheriff's)
Department, SLED, South Carolina)
Department of Corrections, Solicitor's)
Office of Clarendon County, and the)
State of South Carolina,)
))
Defendants.)

IN THE COURT OF COMMON PLEAS
IN THE THIRD JUDICIAL CIRCUIT

Civil Action No. 2021-CP-14-00347

**ORDER REGARDING MOTION TO
ALTER OR AMEND**

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SC Court of Appeals

This matter is before the Court pursuant to the Plaintiff's Motion to Alter or Amend the Order of Dismissal Regarding the State of South Carolina, filed June 3, 2022.

Plaintiff filed this action on August 2, 2021. The State moved to dismiss Plaintiff's Complaint on September 21, 2021. On September 27, 2021, Plaintiff opposed the State's Motion. Plaintiff then filed a "Motion to Strike, Sanctions, and Judgment as a Matter of Law" opposing the State's Motion to Dismiss on October 14, 2021. Plaintiff also filed a "Motion to Judicially Estopp the Defendants" on October 29, 2021. Finally, on November 2, 2021, Plaintiff filed an "Objection to States Memorandum and Memorandum in Support of Judgment by Default Pursuant to Rule 55(A) 12(A)."

A hearing on these motions was held on May 20, 2022. Assistant Attorney General David Leggett represented the State, and Mr. Joseph attended on his behalf.

On June 3, 2022, an order was entered granting the State's Motion to Dismiss and Denying Mr. Joseph's Motions as moot.

Mr. Joseph has now filed a Motion to Alter or Amend pursuant to Rule 59. For the

foregoing reasons, the Motion to Alter or Amend is denied.

I. Standard of Review

Pursuant to South Carolina Rule of Civil Procedure 59(e), a party may move for a court to alter or amend a judgment. Rule 59(g) states that, “Judge to be Provided with Copy. A party filing a written motion under this rule shall provide a copy of the motion to the judge within ten (10) days after the filing of the motion.”

II. Analysis

Mr. Joseph’s Motion is denied because it was not served on the undersigned, as required by Rule 59(e), its arguments regarding the appearance of the State at the hearing are incorrect, and its other arguments do not raise new issues or bring to light new, binding law.

A. Plaintiff Failed to Serve the Judge with His Motion

Rule 59(g) requires a party moving to alter or amend to serve a copy on the judge. Mr. Joseph sent a copy of his Motion to the Attorney General’s Office. To date, the undersigned has not received a copy of the motion. Therefore, the Motion is denied.

B. Plaintiff’s Arguments Regarding the Appearance of the State at the Hearing are Incorrect

In his Motion, Mr. Joseph argues that by appearing at the May 20, 2022, the State waived its arguments for dismissal based upon improper service. Specifically, Mr. Joseph cites *Green v. Lewis Trucking Inc.*, 314 S.C. 303, 443 S.E.2d 906 (1994), and S.C. Code Ann. § 15-9-70. *Green* deals with the circuit court’s ability to require a mental examination by a psychologist. The case has no relevance to service of process. S.C. Code Ann. § 15-9-70 does not exist.

It is correct that a party may waive service arguments by making a voluntary appearance in court, *see Ex parte Cannon*, 385 S.C. 643, 658, 685 S.E.2d 814, 822 (2009) (“A defendant may waive any complaints he may have regarding personal jurisdiction by failing to object to the

lack of personal jurisdiction and by appearing to defend his case.”) However, as *Cannon* notes, a defendant who objects to service does not waive this argument by appearing in court to make his argument. Therefore, the Motion is denied.

C. Plaintiff’s Remaining Arguments Have Already Been Raised

The remainder of Mr. Joseph’s arguments center on his service of the State and whether his complaint states grounds sufficient to constitute a cause of action. His motion restates the theories put forward in his prior filings. The vigor of Mr. Joseph’s filings does not change the relevant law. Thus, the court is unaware of any errors in the prior order, and the Motion is denied.

III. Conclusion

For the aforementioned reasons, the Mr. Joseph’s Motion to Alter or Amend is denied.

IT IS SO ORDERED.

By: Kristi Curtis
CIRCUIT COURT JUDGE KRISTI CURTIS

June 17, 2022
DATE

Spartanburg, SOUTH CAROLINA.