

RECEIVED

Nov 21 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Robert Klomparens and Whitney Klomparens,

Petitioners,

v.

South Carolina Department of Health and
Environmental Control,

Respondent.

Docket No. 21-ALJ-07-0310-CC

**ORDER DENYING
RESPONDENT'S MOTION
FOR RECONSIDERATION**

This matter is before the Administrative Law Court (Court) pursuant to the motion of counsel for Respondent, South Carolina Department of Health and Environmental Control, seeking reconsideration of the Court's Order issued on September 6, 2022. Because the Motion was filed more than ten days after the Final Order was issued, it is not clear that this Court has jurisdiction to entertain the motion. Generally, a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed. See, Russell v. Wachovia Bank, N.A., 370 S.C. 5, 633 S.E.2d 722 (2006). Nevertheless, in light of the fact that the parties consented to an extension for the filing of the Motion for Reconsideration, I will address the substance of the motion.

Much of the motion merely reiterates the arguments made at the hearing, which were carefully considered and ruled upon by this Court. The motion does not seek to correct manifest errors of law or fact or to present newly discovered evidence. Respondent's argument that the Court failed to consider Mr. Williams' testimony is without merit. The Court was simply persuaded by other, contradictory, evidence and made a finding in keeping with that evidence after carefully weighing all the testimony and documentary evidence presented by both parties.

In other respects, the motion presents new arguments which are inconsistent with the position argued by the Department at the hearing. I disagree that the word "generally" in the regulation renders the regulation ambiguous and subject to interpretation by the Department or this Court. I do not find the language of the regulation to be ambiguous and the Final Order issued September 6, 2022 applied the plain language of the regulation according to the facts as found by the Court. At the hearing, the Department relied upon this same interpretation of the regulation but

FILED

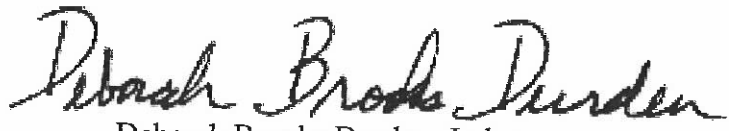
10/25/2022

SC Admin. Law Court

presented testimony and evidence advocating for a different finding of fact. I do not find the Department's new-found position that its regulation is inherently ambiguous to be persuasive.

Likewise, the Department's argument that a neighbor's potential claim of ownership of marsh property is an obstacle to the permit is raised in the Motion for Reconsideration for the first time. A party cannot use a motion for reconsideration to raise for the first time an issue the party could have raised prior to judgment but did not, nor bring before the court theories or arguments that were not advanced earlier. Hickman v. Hickman, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990). Therefore,

IT IS HEREBY ORDERED that Respondent's Motion for Reconsideration is **DENIED**.
AND IT IS SO ORDERED.


Deborah Brooks Durden, Judge
S.C. Administrative Law Court

October 25, 2022
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Robin E. Coleman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

Robin Coleman

Robin E. Coleman
Judicial Aide to Judge Deborah Brooks Durden

October 25, 2022
Columbia, South Carolina

