

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Stephen Mueller,	)	Docket No. 21-ALJ-07-0144-CC
	)	
Petitioner,	)	
	)	
v.	)	
	)	<b>ORDER DENYING MOTION FOR</b>
South Carolina Department of Health and	)	<b>RELIEF</b>
Environmental Control and Carla Varn	)	
DuPre and Jasper B. Varn, III,	)	
	)	
Respondents.	)	
	)	

Before the Administrative Law Court (“ALC” or “Court), is a Motion for Relief (Motion) that was filed by Stephen Mueller (“Petitioner”) on December 16, 2022. Petitioner moves for relief from the Court pursuant to Rule 68 of the Rules of Procedure for the ALC, as well as Rule 60(b) of the South Carolina Rules of Civil Procedure (SCRCP).<sup>1</sup> Petitioner contends in his request for relief that the Court’s Final Order, filed on June 7, 2022, contains errors of a law and, furthermore, that relief is warranted under SCRCP 60(b) because of newly discovered evidence.

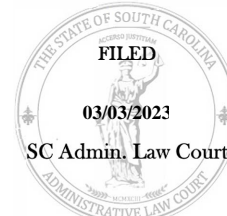
On December 13, 2022, Carla Varn DuPre and Jasper B. Varn, III (Respondents) filed a Return to Petitioner’s Motion, , arguing that the Court has already denied Petitioner’s attempts to introduce new evidence after the trial.<sup>2</sup> Additionally, Respondents contend that the Court lacks jurisdiction because the time to file a post-trial motion has passed.

A request for the Court to reconsider its final order is provided for under SCALC Rule 29 (D):

Any party may move for reconsideration of a final decision of an administrative law judge in a contested case to alter or amend the final decision, subject to the grounds for relief set forth in Rule 59, SCRCP, as follows:

<sup>1</sup> Petitioner may rely upon Rule 60(b), SCRCP by way of ALC Rule 68 which provides in pertinent part that the “The South Carolina Rules of Civil Procedure ... in contested cases ... may, in the discretion of the presiding administrative law judge, be applied to resolve questions not addressed by these rules.”

<sup>2</sup> The hearing on the merits in this matter was held at the ALC on November 8, 2021. As noted in the Court’s Final Order, Petitioner filed a Motion to Reopen the Record on March 22, 2022 based on newly discovered evidence. In the Final Order, the Court denied Petitioner’s motion based on the fact that it was considered premature inasmuch as the motion was filed before a final order was issued. Petitioner did not file an appeal of the Final Order.



- (1) Within ten (10) days after notice of the order concluding the matter before the administrative law judge, a party may move for reconsideration of the 18 decision, provided that a notice of appeal from the decision has not been filed. The opposing party may file a response to the motion within ten (10) days of the filing of the motion.

...

The Court's Final Order was filed and served upon the parties on June 7, 2022. Therefore, if either party wished to seek reconsideration of the Court's decision, the time to file a Motion for Reconsideration expired on June 17, 2022. Petitioner did not file his Motion until one hundred and eighty-two (182) days after the deadline. Therefore, the Court agrees with the Respondents that Petitioner's failure to timely file his Motion has divested it of jurisdiction to rule on the issues he raises as a motion for reconsideration.

However, Petitioner moves the Court to reconsider the decision based on SCRCP 60(b)(1) and (2) which sets forth that:

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);

...

The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken.

In the pending Motion, Petitioner argues that the primary oceanfront sand dune ("POSD") is incorrectly defined according to Section 48-39-10(I) and S.C. Code of Regulations 30-1(D)(44). Furthermore, Petitioner generally argues that the Court's decision is not supported by the evidence in the record. More importantly however, under SCRCP 60(2), Petitioner seeks to admit photographs evidencing escarpment of the primary dune. Petitioner argues that the current state of the beach requires the Department of Health and Environmental Control (Department) to redefine the POSD and the baseline.

The Court finds that Petitioner's Motion is not timely as a motion for reconsideration under SCALC Rule 29(D). The arguments that Petitioner proffers regarding errors of law and a lack of evidence should have been raised on or before June 17, 2022. In addition, Petitioner failed to appeal the Final Order to the South Carolina Court of Appeals.

As set out earlier, Rule 68, SCALC gives the presiding administrative law judge discretion to apply the South Carolina Rules of Civil Procedure when the administrative law court rules do not address an issue. Here, the Court chooses not to reopen this case under SCRCF Rule 60(b) (1) or (2). To the extent Petitioner believes that there are changes in the character of the beach at 410 Palmetto Boulevard that warrant regulatory intervention, the Court finds that the proper avenue for Petitioner is to proceed through the Department and its regulatory staff. Significantly, Special Condition 1 to the Respondents' permit reads, in pertinent part:

This permit is a Special Permit as described in SC Code of Regulations R.30-15(F). As such, in the event the beach erodes so that in the future the permitted habitable structure is located on the active beach, the permittee agrees to remove the structure at his own expense if and when the Department orders its removal. (Emphasis added)

This Special Permit condition sets forth the means by which the Department, using its authority, can reevaluate the project and its permit.

**IT IS HEREBY ORDERED** that Petitioner's Motion for Relief is **DENIED**.

**AND IT IS SO ORDERED.**



March 3, 2023  
Columbia, SC

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Milton G. Kimpson, Judge  
South Carolina Administrative Law Court

**CERTIFICATE OF SERVICE**

I, Anthony R. Goldman, 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).



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Anthony R. Goldman  
Judicial Law Clerk

March 3, 2023  
Columbia, SC