

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF DORCHESTER

) C/A NO. 2018 CP-18-01661

MOLLY M. MORPHEW,

)

Plaintiff,

)

vs.

)

STEPHEN DUDEK and DOREEN
CROSS,

)

Defendant.

)

ORDER

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SC Court of Appeals

2023 APR 29 11:19:47
CLERK OF COURT

This matter came before this Court by way of Plaintiff's third motion to reconsider an Order granting summary judgement brought pursuant to South Carolina Rules of Civil Procedure 59. After reviewing the materials submitted, I find that oral arguments will not assist in ruling on Plaintiff's third Motion to Reconsider. The motion is denied.

After considering Plaintiff's third Motion to Reconsider, I find that there is nothing new presented by Plaintiff that would cause me to change or alter my original decision in any form in this matter.

An Order granting summary judgment was signed on December 29, 2022, and filed on December 30, 2022. This order was mailed to Plaintiff on January 4, 2023. On January 13, 2023, Plaintiff's first Motion for Reconsideration was filed with the clerk's office.¹ On January 26, 2023, an Order was signed denying Plaintiff's first motion for reconsideration (this order was

¹ The first Motion for Reconsideration was dated January 9, 2023.

filed January 27, 2023).² Plaintiff failed to provide a copy of her first motion for reconsideration to the Judge pursuant to Rule 59(g).

On February 14, 2023, Plaintiff filed a second motion for reconsideration. On the cover page of the second motion for reconsideration, it states Plaintiff submitted the documents February 10, 2023. Further, the second motion for reconsideration, according to the certificate of service, was served upon the defendant, only. The certificate of service is dated February 10, 2023. On March 15, 2023, this court entered its order denying Plaintiff's second motion for reconsideration.³ Plaintiff failed to provide a copy of her second motion for reconsideration to the Judge pursuant to Rule 59(g).

On March 30 2023, Plaintiff filed her third motion for reconsideration. This motion was served on the Court on March 30, 2023 and was the first time Plaintiff had served her motion for reconsideration on the court. Further, the motion's certificate of service, on the defendants, is dated March 26, 2023, which is a Sunday.

As an initial matter, in this third motion for reconsideration Plaintiff claims the filing date of her second motion "is irrelevant"⁴ because the Rule 59(e) says the motion "shall be served not later than 10 days after receipt of the order"⁵ and she had 15 days⁵ to file the second motion for

² The order stated: "After reviewing the materials submitted, I find that oral arguments will not assist in the ruling of Plaintiff's Motion to Reconsider and the Motion to Reconsider is denied. I find no reason to alter the previous rulings. Because the Plaintiff's motion does not raise any novel issues for the Court's consideration, Plaintiff's Motion to Reconsider is denied." *see* Form 4 Order filed January 27, 2023.

³ The order stated, in part: "The order denying Plaintiff's first Motion to Reconsider was filed on January 27, 2023. Plaintiff's second Motion to Reconsider was filed on February 14, 2023, which is outside of the 10-day period allowed under South Carolina Rule of Civil Procedure 59(e). Furthermore, as of March 15, 2023, Plaintiff has failed to provide a copy of the motion to the Court as required by South Carolina Rule of Civil Procedure 59(g). Furthermore, I find that oral argument will not assist in the ruling of Plaintiff's second Motion to Reconsider and the second Motion to Reconsider is denied. I find no reason to alter the previous rulings and the requirements of Rule 59 have not been met. The second Motion to Reconsider was untimely, but even if it had been timely, it fails to raise any novel issues for the Court's consideration; therefore, Plaintiff's second Motion to Reconsider is DENIED." *see* Form 4 order dated March 15, 2023.

⁴ *See* Plaintiff's third Motion for Reconsideration, page 5.

⁵ In accordance with SCRCP 6 (e) which states: "Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or

reconsideration, pursuant to Rule 59. Even if the 10-day time period was extended to 15 days, the second motion would have been denied because the motion was not timely provided to the Judge, pursuant to Rule 59. If the first order denying the motion to reconsider was received by Plaintiff on February 2, 2023,⁶ this would require her second motion for reconsideration to be provided to the Judge by March 6, 2023.⁷

Even assuming the dates Plaintiff asserts in her third motion, her second motion for reconsideration was untimely because she did not provide the Judge with a copy of her motion within 10 days after filing the motion. The second motion for reconsideration was filed by the clerk's office on February 14, 2023; therefore, Plaintiff would have had to provide a copy of the motion to the Judge by February 24, 2023. Furthermore, even if a copy of the motion did not have to be given to the Judge until March 6, 2023, this was not done. When the second order denying reconsideration was signed on March 15, 2023, Plaintiff had not provided a copy of the motion to the Judge as required by SCRCP 59(g). Therefore, even if Plaintiff's second motion for reconsideration was served on the defendants and filed with the clerk of court in a timely manner, the failure to provide a copy of the motion to the Judge is fatal.

Failing to provide a copy of a Rule 59 motion is not a novel issue. In the case of *Smith v. Fedor*, when a trial court issued an Order denying a motion for reconsideration "because the [c]ourt did not receive a copy of the motion within ten days of the motion being filed," the Court

paper is served upon him by mail or upon a person designated by statute to accept service, five days shall be added to the prescribed period."

⁶ As she claims in her third motion of reconsideration on page 6. However, the time could start running upon the mailing of the order on January 27, 2023.

⁷ "The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court." SCRCP 5(e). "All papers required to be served upon a party except as provided in Rule 26(g)(1), shall be filed with the court within five (5) days after service thereof." SCRCP 5(d). The running of 10 days would fall on March 4, 2023, but in accordance with SCRCP 6(a), if the last day is a Saturday, Sunday or a State or Federal holiday, "the period runs until the end of the next day which is neither a Saturday, Sunday nor such holiday."

of Appeals affirmed the decision of the trial court. 422 S.C. 118, 124, 809 S.E.2d 612, 615 (Ct. App. 2017). Similar to this situation, the appellant filed a subsequent motion for reconsideration, arguing the original motion was timely because it was properly mailed to the respondent and the clerk of court. Appellant further argued the respondent suffered no prejudice from the failure to provide the court with the motion within ten days of filing. *Id.* The Court of Appeals held

The trial court properly denied [appellant's] motion for reconsideration because he failed to provide the motion to the trial judge within ten days of filing. Rule 59(g) would lack any purpose if trial courts committed error by denying the motion for failure to comply with the rule. Further, our language in *Gallagher v. Evert*, 353 S.C. 59, 63-64, 577 S.E.2d 217, 219 (Ct. App. 2002) implies a trial court may deny the motion solely on the basis of the rule. *See* 353 S.C. at 63, 577 S.E.2d at 219 (“Because the [trial] court found it appropriate to hear the matter, we find no error in the [trial] court’s decision to decide the motion despite [the appellant’s] failure to comply with Rule 59(g), SCRCP.” (emphasis added)). Accordingly, the trial court properly denied [appellant’s] motion for reconsideration because he did not timely provide a copy of the motion to the judge.

Id. at 616.

Just like the court in *Smith v. Fedor*, this court denied Plaintiff’s second motion for reconsideration because she failed to provide a copy of the motion to the trial judge within ten days of filing, making the motion untimely.

In this third motion for reconsideration, Plaintiff claims the fax and mail she sent to the clerk of court is sufficient and satisfies Rule 59(g). However, this assertion is contradictory to the holding in *Smith*. Just as mailing a copy of the motion to the opposing party and filing it with the clerk’s officer was not sufficient in *Smith*, Plaintiff’s mailing of the second motion and filing with the clerk’s office is not sufficient to satisfy Rule 59(g).

Furthermore, in this third motion for reconsideration, Plaintiff claims that her cover letter in the second reconsideration to the clerk’s office satisfied Rule 59(g)

because she instructs the clerk of court to provide a copy of the motion to the Judge. The rule states “[a] party filing a written motion under [Rule 59] shall provide a copy of the motion to the judge.” SCRCP 59(g). The rule makes clear the filing party has the duty to provide a copy of the motion the Judge. The rule does not mandate the clerk’s office, or any other person, provide a copy of the motion to the Judge. The clerk’s office does not take direction from or deliver documents to a Judge upon direction of a party. Rule 59(g) makes clear that the filing party has the responsibility to provide the Judge with a copy of the motion and Plaintiff failed to fulfill that duty.

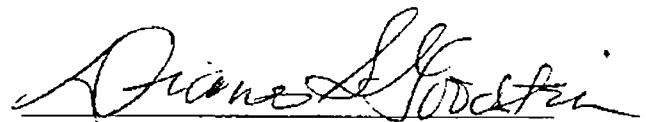
Additionally, in the same cover letter Plaintiff instructed the clerk’s office to “advise if this is incorrect.”⁸ The clerk’s office cannot give advice to parties because it would constitute the unlicensed practice of law. Our Supreme Court has recognized that “[t]he practice of law is not confined to litigation, but extends to activities in other fields which entail specialized legal knowledge and ability.” *State v. Buyers Serv. Co.*, 292 S.C. 426, 430, 357 S.E.2d 15, 17 (1987); see *Franklin v. Chavis*, 371 S.C. 527, 531–32, 640 S.E.2d 873, 876 (2007); see *Boone v. Quicken Loans, Inc.*, 420 S.C. 452, 460, 803 S.E.2d 707, 711 (2017). The Supreme Court has also held that “[b]y giving legal advice to individuals about preparing and processing legal documents for others, [one] has engaged in the unauthorized practice of law. *State v. Despain*, 319 S.C. 317, 320, 460 S.E.2d 576, 578 (1995). The clerk’s office is not allowed to give advice to persons about the practice of law. Plaintiff cannot rely on a cover letter where she instructed the clerk’s office advise her if she was in compliance with Rule 59, or otherwise.

⁸ Plaintiff’s third motion for reconsideration, page 7.

It is important to state that our Supreme Court has held “[a] pro se litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law.” *Patrick v. Bryan*, No. 2019-000803, 2023 WL 234559, at *3 (S.C. Ct. App. Jan. 18, 2023) (quoting *State v. Burton*, 356 S.C. 259, 265 n.5, 589 S.E.2d 6, 9 n.5 (2003)).

After review, the court determines that Plaintiff’s third motion fails to raise any issues for which the court would reconsider its earlier determinations. Therefore, Plaintiff’s third motion is denied.

IT IS SO ORDERED!



Hon. Diane S. Goodstein
Presiding Judge, First Judicial Circuit

April 26, 2023
St. George, South Carolina