

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2008-CP-26-7941

John Sherrill and Estate of Gaye Marie Reynolds,)
)
)
Plaintiffs,)
)
Gary Moore and Robert Moore,)
)
Defendants.)

**AMENDED ORDER
DENYING PLAINTIFFS
MOTION FOR
RECONSIDERATION**

FILED
COUNTY
2013 JUN 12 PM 1:04
KELAMIE HUGHINS-WARD
CLERK
COURT

The underlying lawsuit is an action to collect on a civil judgment obtained by the Plaintiff against Gary Moore. In November of 2011, the Plaintiff moved for an Order compelling the sale of certain real property owned by Gary Moore and Robert Moore located at 5848 Creekside Drive; the Defendant Gary Moore filed a motion for an order declaring that his interest in the real property is subject to the homestead exemption of S.C. Code Ann. §15-41-30. Following a hearing on May 15, 2012, the undersigned ruled by Order dated April 15, 2013 and filed April 19, 2013 that Defendant Gary Moore is entitled to the homestead exemption in the real property located at 5848 Creekside Drive, Myrtle Beach, South Carolina, and that the successful bidder at a judicial sale of the property shall be required to pay the selling officer cash in an amount equal to the homestead exemption, even if the successful bidder is the judgment creditor, pursuant to *Holden v. Cribb*, 349 S.C. 132 (S.C.App. 2002).

The Plaintiff timely filed a Motion for Reconsideration pursuant to Rule 59, SCRPC, on the grounds that the case of *Holden v. Cribb* does not hold that a judgment debtor who was a criminal defendant is entitled to the homestead exemption, and that allowing the homestead exemption in this case violates the Victim's Bill of Rights as set forth in the South Carolina Constitution. The Defendant Gary Moore objected on the grounds that these issues were not raised prior to the issuance of the order.

Based upon the arguments of counsel and record I make the following findings of fact and conclusions of law:

1. The grounds for the Plaintiffs Motion for Reconsideration were raised for the first time in that Motion.

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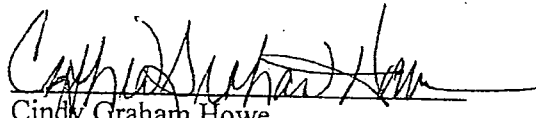
2. A party may not use a Rule 59 or other post trial motion to present the Court with issues that could have been, but were not raised earlier. *Hickman v. Hickman*, 301 S.C. 455, 392 S.E.2d 481 (Ct.App. 1990).

3. The Plaintiff argues that because the underlying case is in the nature of supplementary proceedings to collect a judgment that the rule articulated in *Hickman v. Hickman* should not apply because the Plaintiff could raise the issue in a subsequent supplementary proceeding. However, I find no basis for the contention that once an order is entered in the context of supplementary proceedings a litigant may use a Rule 59 or other post-judgment motion to argue issues that could have been but were not presented previously.

4. Because the Plaintiff did not raise these issues prior to the issuance of the Order filed April 19, 2013, I find that these issues are waived and the Plaintiff's Motion for Reconsideration should be denied.

The Plaintiff's Motion for Reconsideration is therefore denied.

IT IS SO ORDERED.


Cindy Graham Howe
Horry County Master in Equity

Dated: June 10, 2013
Conway, South Carolina