

LEGAL STANDARD

In granting a motion for summary judgment, it is unnecessary for the trial court to articulate its findings of fact and conclusions of law. Rule 52(a), SCRPC; *Woodson v. DLI Properties, LLC*, 406 S.C. 517, 753 S.E.2d 428 (2014). A party may move to alter or amend a judgment. Rule 59(e), SCRPC. Notwithstanding, a party cannot use a motion to alter or amend a judgment to present to the lower court an issue the party could have raised prior to judgment but did not. *Miller Constr. Co., LLC v. PC Constr. of Greenwood, Inc.*, 418 S.C. 186, 206, 791 S.E.2d 321, 332 (Ct. App. 2016); *see also Gartside v. Gartside*, 383 S.C. 35, 43, 677 S.E.2d 621, 625 (Ct. App. 2009). A motion to alter or amend judgment is limited to issues raised before judgment but not ruled on by the trial judge, issues raised before judgment that the party believed were ruled incorrectly, or preservation of issues for appellate review. *See I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000).

ANALYSIS

A. This Court's exercise of jurisdiction is proper because the Defendant's motion to reconsider, alter, and/or amend was timely filed within the 10 days required under Rule 59(e) and the 5 additional days provided by Rule 6(e).

As a preliminary matter, this Court must address the timeliness of the Defendant's motion. A party must file a motion to alter or amend [or reconsider] not later than 10 days after *receipt* of written notice of the entry of an Order. Rule 59(e), SCRPC (emphasis added). The time for taking any action under rules 50(b), 52(b), 59, and 60(b) may not be extended except to the extent and under the conditions stated in them. Rule 6(b), SCRPC. Whenever a party has the right or *is required to do some act... within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail...* five [5] days shall be added to prescribed period. Rule 6(e), SCRPC (emphasis added). "Rule 6(e) is a pleadings rule and only applies when service is effective upon mailing." *Witzig v. Witzig*, 325 S.C. 363, 479

S.E.2d 297 (1996). “The extra five days provided by Rule 6(e) compensates for the time notice is in the mail.” *Id.*

Rule 6(b)’s bar to a time extension for Rule 59(e) motions is inapplicable to the facts of this case. The Plaintiff’s argument regarding timeliness rests upon its interpretation of Rule 6(b), which relates to enlargement of time by the parties’ consent or court order. However, Rule 6(b) is inapplicable to this case because the court did not enlarge or extend the Defendant’s time to file its 59(e) motion, but merely evaluated the timeliness of the filing under a Rule 6(e) interpretation. Because court neither enlarged the time to file nor granted an extension, Rule 6(b) does not apply.

This Court’s exercise of jurisdiction is proper because the Defendant’s motion was timely filed under Rules 59(e) and 6(e). The Defendant had a right to file a motion to alter or amend [a pleading] and was required to do so within 10 days from receipt of the Form 4 Order Granting Summary Judgment (“Summary Judgment Order”). Mail was the only method of service on the Defendant, who received notice of the Summary Judgment Order via mail on April 15th. As a result, the Defendant was provided 5 days under 6(e) in addition to the 10 days required by 59(e). The Defendant filed the motion on April 27th, within the 15 days allowed under the rules. Thus, the Defendant’s motion was timely filed, and this Court is not deprived of jurisdiction.

B. The Defendant’s motion is denied because the Court does not find the Plaintiff’s attorney violated Rule 11 by arguing a motion signed and filed by previous counsel.

The Court does not find a violation of Rule 11 by the Plaintiff’s attorney. Every pleading, motion, or other paper of a party represented by an attorney must be signed by at least one attorney of record licensed to practice in South Carolina. Rule 11(a), SCRPC. A written or electronic signature of an attorney constitutes a certification that he has read the pleading or motion, and to the best of his knowledge, information, believes there is good ground to support

it. *Id.* The signature requirement of Rule 11(a) is intended to prevent frivolous filings. *See Ex parte Gregory*, 378 S.C. 430, 437-38, 663 S.E.2d 46, 50 (2008). An attorney may be changed by consent or...by order of the court. Rule 11(b), SCRCF.

The Defendant alleged the Plaintiff's attorney violated Rule 11 because the attorney of record did not certify the contentions in the motion for summary judgment. The Plaintiff filed the motion for summary judgment in November 2022, through her attorney of record at the time, Jordan Bell. The Plaintiff's current attorney, Clarke McCants, and Mr. Bell consented to a change of attorney, and the court entered an Order Substituting Counsel on February 6, 2023. This is a valid change under Rule 11(b).

Mr. McCants argued the motion filed by the previous attorney and, by doing so, adopted the motion and believed there was good ground to support it to the best of his knowledge. The filing was not frivolous and is proper under Rule 11(a). To find that a change of attorney invalidates a motion simply because it was filed by a previous attorney of record would frustrate the function of Rule 11, which allows for substitution of counsel. Thus, there is no violation.

C. The Defendant's motion is denied because the Defendant did not present sufficient evidence to show a genuine issue of material fact regarding the property boundary and encroachment.

This Court denies the Defendant's motion to reconsider, alter, and/or amend its grant of summary judgment for the Plaintiff. Summary judgment may be granted if the pleadings... and admissions on file, together with the affidavits, if any, show that there are no genuine issues as to any material fact and that the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCF. When considering a motion for summary judgment, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. *Knight v. Austin*, 396 S.C. 518, 522, 722 S.E.2d 802, 804 (2012). In cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere *scintilla* of

evidence in order to withstand a motion for summary judgment. *Hotel & Motel Holdings, LLC v. BJC Enterprises, LLC*, 414 S.C. 635, 651, 780 S.E.2d 263, 272 (Ct. App. 2015) (emphasis added). When a motion for summary judgment is made, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise...must set forth specific facts showing there is a genuine issue for trial. Rule 56(e), SCRPC.

This Court rejects the Defendant's argument that the court erred by granting summary judgment without considering arguments and case precedent from *Hammonds v. Lindsay*, 277 S.C. 182, 284 S.E.2d 581 (1981) and *Bodiford v. Spanish Oak Farms, Inc.*, 317 S.C. 539, 455 S.E.2d 194 (Ct. App. 1995). The Defendant did not raise these issues, and others, prior to judgment being rendered and may not raise new issues as this case has reached its final adjudication. Nonetheless, even under *Hammonds and Bodiford* precedents, summary judgment for the Plaintiff is proper.

In *Hammonds*, the Supreme Court held when maps, plats, or field notes are referred to in a grant or conveyance, they are incorporated into the instrument and are usually regarded as the true description of land. *Hammonds*, 277 S.C. at 184. In *Bodiford*, the Court of Appeals affirmed a special referee's conclusion that the high-water mark of a pond was the correct property boundary when both landowners' chain of titles designated the mark as the boundary, and subsequent surveys showed the mark as the boundary. *Bodiford*, 317 S.C. at 545. The pond's water mark, upon which the boundary was based, no longer existed at the time of surveyance, which created an ambiguity regarding the location of the boundary between the landowners' properties. *Id.* at 541. In its review, the court held a boundary dispute is an action at law, and the location of the boundary line is a question of fact. *Id.* at 544.

The facts of this case are distinguished from *Bodiford*. In August 2021, the Plaintiff's property was surveyed by Tripp Land Surveying. The Defendant's deed describes the property in reference to a plat made in 1922 by J.T. Wise, and such plat is incorporated into the deed. An image of the 1922 plat referenced in the Defendant's deed matches identically the 2021 land surveyance presented by the Plaintiff. *See* Def.'s Suppl. Doc.; Pl.'s Ex. B. The Plaintiff and Defendant's lands have remained geographically unchanged since the 1922 plat and the 2021 surveyance. There is no physical landmark or boundary-defining feature between the Plaintiff and Defendant's properties that once existed but no longer does to create ambiguity, unlike the disappearing pond water mark in *Bodiford*. Thus, as evidenced by the deed's description and subsequent surveyance, there is no genuine issue, or question, of fact regarding the location of the boundary line.

This Court rejects the Defendant's argument that the encroachment is merely a presumption. The 2021 surveyance presented by the plaintiff shows an encroachment onto the Plaintiff's property by the Defendant's mobile home. Pl.'s Ex. B.; White Aff. 3-5. Additionally, the Plaintiff submitted affidavits attesting to the encroachment. The Defendant did not file affidavits, but instead filed supplemental documents that included a deed describing the property and an image of a surveyance showing an encroachment. Def.'s Suppl. Doc. The Defendant did not present any other evidence to dispute the existence of an encroachment based on the established boundary line. Thus, the encroachment is not a presumption.

This Court rejects the Defendant's argument that the court erred because there is evidence that should have been presented to the court prior to the entry of summary judgment. The court afforded the parties ample time and opportunity to present evidence prior to judgment being entered and even granted the Defendant an additional day after the hearing to file

supplemental documents. The Defendant may not present additional evidence now that judgment has been entered.

This Court rejects the Defendant's argument that summary judgment is proper only when it is "clear" there is no genuine issue of material fact. The law does not require clarity but the non-moving party must present a mere scintilla of evidence to withstand summary judgment, which the Defendant has not shown. Thus, viewing the facts and inferences in the light most favorable to the Defendant, there is no genuine issue of material fact regarding the location of the boundary line and encroachment on the Plaintiff's property by the Defendant's mobile home. The Plaintiff is entitled to summary judgment as a matter of law.

CONCLUSION

Based on foregoing reasons, the Defendant's Motion to Reconsider, Alter, and/or Amend is DENIED.

IT IS SO ORDERED.

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Aiken Common Pleas

Case Caption: Da'Nita White VS Roshana Robins

Case Number: 2021CP0202344

Type: Order/Other

So Ordered

The Honorable Courtney Clyburn Pope