

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

DR. SCOTT F. DUNCAN, M.D.,
Plaintiff,

v.

ORTHOSC, LLC, a South Carolina
limited liability company; DR. GENE
M. MASSEY, M.D.; and HCA
HEALTHCARE, INC., a Delaware
corporation,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2021-CP-26-07488

**ORDER DENYING PLAINTIFF DR. SCOTT
F. DUNCAN, M.D.'S MOTION TO
PARTIALLY ALTER OR AMEND ORDER**

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Oct 10 2023

SC Court of Appeals

On September 8, 2022, Plaintiff Dr. Scott F. Duncan, M.D. (“Plaintiff”) filed a motion in this action to compel compliance with and to enforce two subpoenas dated August 3, 2022 issued in a separate arbitration action involving Plaintiff, Grand Strand Surgical Specialists, LLC, Grand Strand Regional Medical Center, LLC and HCA Physician Services, Inc. assigned American Health Lawyers Association Claim No. 7029 (“Arbitration Proceeding”). The subpoenas sought the production of documents from OrthoSC, LLC (“OrthoSC”) and Dr. Gene M. Massey, M.D. (“Massey”), non-parties to the Arbitration Proceeding. After a hearing, the Court denied the motion by order dated February 24, 2023 (“February Order”). Thereafter, Plaintiff filed a Motion to Partially Alter or Amend the February Order on March 6, 2023 (“Motion to Amend”) under Rules 54 and 59(e). This Court heard the Motion to Amend on July 11, 2023.

Under Rule 59(e), SCRCF, parties may file a motion to alter or amend a judgment “not later than 10 days after receipt of written notice of the entry of the order.” Similarly, under Rule 52(b), SCRCF, “[u]pon motion of a party made not later than 10 days after receipt of written notice of entry of judgment the court may amend its findings or make additional findings and may amend

the judgment accordingly[.]” Broadly, “[I]t is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court ‘alter or amend the judgment,’ but also as a vehicle to seek ‘reconsideration’ of issues and arguments. A motion under Rule 59(e) long has been viewed as [a] ‘motion for reconsideration’ despite the absence of those words from the rule.’ Consequently, a party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented.” *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778-79 (2004). More specifically, as held by the *Elam* court,

[O]ur rules contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. A party *may* wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.

Elam, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (emphasis in original). “A party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not.” *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990).

After reviewing the applicable law, the parties’ filings, and considering the arguments raised at the hearing, the Court is unable to discover any material fact or principle of law that has either been overlooked or disregarded and further finds no error of law or fact not appropriately considered. Consistent with this Court’s prior ruling, this Court may not compel compliance with the Arbitration Subpoenas issued in a separate arbitration to non-parties. This determination is based on the plain language of South Carolina Code Ann. § 15-48-80(a) as well as the rationale of the federal circuit courts when analyzing the Federal Arbitration Act, that have held arbitrators do not have authority to compel a non-party to produce documents pre-hearing, including *Hay Group, Inc. v. EBS Acquisition Corp.*, 360 F.3d 404 (3rd Cir. 2004) and *Life Receivables Trust v. Syndicate 102*, 549 F.3d 210 (2d Cir. 2008). In addition, the parties have not come forward with any South

Carolina law indicating that this Court may compel OrthoSC and Massey—who are non-parties to the Arbitration Proceeding—to comply with the Arbitration Proceeding subpoenas or anything else in connection with the Arbitration Proceeding.

Consequently, the Motion to Amend and the relief requested therein is **DENIED**.

AND IT IS SO ORDERED!

Kristi F. Curtis
Presiding Circuit Court Judge
Court of Common Pleas
Fifteenth Judicial Circuit

_____, 2023

_____, South Carolina



Horry Common Pleas

Case Caption: Scott F Duncan MD VS OrthoSC LLC , defendant, et al

Case Number: 2021CP2607488

Type: Order/Other

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762