

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Jefferson Davis, Jr.,

Plaintiff,

v.

Chad Connelly, Dave Wilson, Steven Kirkland,
Tom Persons, Neil Mellen, E3 Software, LLC,
Endurance International Group Holdings, Inc.,
John Doe #1, John Doe #2, & John Does 3-
40,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2020-CP-36-00382

**ORDER DENYING
PLAINTIFF'S MOTION FOR
RECONSIDERATION OF ORDER
(01/03/2023)**

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Oct 13 2023

SC Court of Appeals

This matter came before the Court upon Plaintiff's Notice and Motion for Reconsideration or Order (01/03/2023) filed on January 18, 2023, in which Plaintiff petitions the Court to reconsider the Court's Order Granting Defendants' Motion for Sanctions Against Plaintiff filed on January 3, 2023 ("Motion for Reconsideration"). After careful review and consideration, this Court denies the Motion for Reconsideration.

ORDER

South Carolina's Rules of Civil Procedure "contemplate two basic situations in which a party should consider filing a Rule 59(e) motion." Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). "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." Id. "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." Id. "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, 456-57, 392 S.E.2d 481, 482 (Ct. App. 1990).

“A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order.” Rule 59(e), SCRCF. Although Rule 6(b), SCRCF, gives trial courts limited authority to extend deadlines set forth in the rules, Rule (6)(b), SCRCF, explicitly excludes Rule 59, SCRCF, and certain other rules from that authority. Overland, Inc. v. Nance, 423 S.C. 253, 255, 815 S.E.2d 431, 432 (2018). Accordingly, “the ten-day limit for serving a Rule 59(e) motion is an absolute deadline” and any order entered after the 10-day time period is a nullity because the trial court no longer has jurisdiction over the matter. Id. (quoting Leviner v. Sonoco Prods. Co., 339 S.C. 492, 494, 530 S.E.2d 127, 128 (2000)). “The failure to serve a Rule 59(e) motion within ten days of receipt of notice of entry of the order converts the order into a final judgment, and the aggrieved party’s only recourse is to file a notice of intent to appeal.” Id. at 257, 815 S.E.2d at 433. “A party filing a written motion under this rule shall provide a copy of the motion to the judge within ten (10) days after the filing of the motion.” Rule 59(g), SCRCF.

As a threshold matter, this Court no longer has jurisdiction over this matter because Plaintiff’s Motion for Reconsideration was served more than 10 days after Plaintiff’s receipt of written notice of the entry of the Order Granting Defendants’ Motion for Sanctions Against Plaintiff on December 28, 2022. See Overland, Inc. v. Nance, 423 S.C. 253, 255, 815 S.E.2d 431, 432 (2018) (citing Leviner v. Sonoco Prods. Co., 339 S.C. 492, 494, 530 S.E.2d 127, 128 (2000)); Wells Fargo Bank, N.A. v. Fallon Props. S.C., LLC, 422 S.C. 211, 213, 810 S.E.2d 856, 857 (2018) (holding that an email that provides written notice of entry of an order or judgment sent from the court, an attorney of record, or a party, triggers the time to serve a notice of appeal).¹ On September 19, 2022, this Court filed an Order granting Defendants’ Motion for Sanctions against Plaintiff, *inter alia*, for refusing to comply with this Court’s Order Compelling Discovery

¹ In the Motion for Reconsideration, Plaintiff erroneously states that the motion was not required to be served within 10 days of written notice of the entry of the Order because Rule 6(e), SCRCF, provides that an additional five days shall be added to the period prescribed for response by the South Carolina Rules of Civil Procedure when the notice or paper is served upon him by mail. This Court previously addressed the inapplicability of Rule 6(e), SCRCF, to Rule 59(e), SCRCF, in its Order Denying Plaintiff’s Motions for Reconsideration in this matter filed on August 12, 2022.

and ordering Plaintiff to pay Defendants' reasonable expenses, including attorneys' fees, incurred as a result of the failure to comply with the Order Compelling Discovery and the South Carolina Rules of Civil Procedure.² After the submission of various affidavits of attorneys' fees, on December 28, 2022, this Court executed and sent to the parties by email an Order Granting Defendants' Motion for Sanctions Against Plaintiff.³ This Court filed the order on January 3, 2023, and mailed a copy to Plaintiff. Defendants also served a copy of the order upon Plaintiff by U.S. Mail and email on January 5, 2023. Plaintiff did not file the Motion for Reconsideration until January 18, 2023.⁴ In the Motion for Reconsideration, Plaintiff acknowledged that "[t]he Order was served on the Plaintiff by mail from Newberry County Clerk of Court." As Plaintiff did not serve the Motion for Reconsideration not later than 10 days after receipt of written notice of the entry of the order, this Court no longer has jurisdiction over the matter. Moreover, Plaintiff failed to provide a copy of the motion to this Court within ten (10) days after the filing of the motion.⁵

In addition, Plaintiff's motion fails to identify any issue or argument raised but not ruled upon or which this Court has misunderstood or failed to consider. Instead, the motion addresses matters wholly outside the scope of the Order Granting Defendants' Motion for Sanctions Against Plaintiff filed on January 3, 2023. Accordingly, this Court would alternatively also deny Plaintiff's Motion for Reconsideration because the motion fails to identify any issue or argument raised but not ruled upon or which this Court has misunderstood or failed to fully consider.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiff's Notice and Motion for Reconsideration of Order (01/03/2023) is **DENIED** in accordance with

² Plaintiff did not file a motion to alter or amend the Order Granting Defendants Chad Connelly, Dave Wilson, Tom Persons, and Neil Mellen's Motion for Sanctions against Plaintiff filed on September 19, 2022.

³ Plaintiff offered no opposition to the submitted fee affidavits.

⁴ Although Plaintiff filed a Certificate of Service indicating a mailing of the order to the Court on January 17, 2023, this Court never received Plaintiff's Motion for Reconsideration in January of 2023.

⁵ See n.4, supra.

the above order.

AND IT IS SO ORDERED.

The Honorable Donald B. Hocker

June ____, 2023



Newberry Common Pleas

Case Caption: Jefferson Davis Jr VS Chad Connelly , defendant, et al

Case Number: 2020CP3600382

Type: Order/Other

Circuit Court Judge

s/Donald B. Hocker, Judge Code 2167