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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

The Honorable Daniel Coble

Appellate Case No.: 2023-001226

Home River Group.....Respondent,

vs.

Ernest McKnight, Jr.....Appellant.

**BRIEF OF RESPONDENT**

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**STATEMENT OF ISSUES ON APPEAL**

1. Did the presiding Judge in the Court of Common Pleas act within his authority in denying Appellant’s Motion for Reconsideration?

**STATEMENT OF THE CASE**

An Application for Ejectment for nonpayment of rent was filed in the Richland County Magistrate’s Court on December 28, 2023. Said matter was assigned Magistrate’s Case No.: 2023CV4010902025.

On February 21, 2024, a bench trial occurred in Case No.: 2023CV4010902025 at Appellant’s request. At said trial, the presiding magistrate judge requested clarification as to the Appellant’s ledger and the matter was continued to a subsequent date without a dispositive ruling.

On or about March 6, 2024, Appellant, through his counsel, filed an Answer and Counterclaim in Case No.: 2023CV4010902025. In reacting to this, Respondent filed a Reply and Motion to Amend Complaint on March 15, 2024.

The Magistrate’s Court set a subsequent hearing in Case No.: 2023CV4010902025 for March 25, 2024. Defendant’s counsel requested a continuance and said hearing was rescheduled to be heard April 5, 2024.

Prior to said hearing, The Parties came to a settlement of the matter, and a Consent Order was filed in Case No.: 2023CV4010902025. Under the terms of the Consent Order, Appellant agreed to vacate the subject premises on or before 5:00pm of Friday, April 19, 2024.

Appellant failed to adhere to the terms of said Consent Order and upon being notified of Appellant's breach, the magistrate's court issued a Writ of Ejectment in Case No.: 2023CV4010902025 on or about April 24, 2024.

Prior to Appellant's removal from the subject premises, Appellant filed an appeal of the magistrate's issuance of the writ of ejectment *pro se* on or about May 1, 2024. Said Appeal was assigned Case No. 2024-CP-40-02696.

On May 3, 2024, the magistrate's court issued a Bond to Stay Execution on Appeal in 2024-CP-40-02696. Upon Appellant's failure to adhere to the terms of the Bond to Stay Execution on Appeal, the magistrate's court had Case No. 2024-CP-40-02696 dismissed by the filing of a Dismissal on Appeal submitted June 12, 2024.

The Writ of Ejectment was subsequently reissued and a "set-out" date to remove Appellant from the subject premises was scheduled for June 25, 2024.

On June 14, 2024, Appellant through his counsel filed the Motion to Reconsider which is currently before this Court.

Said Motion alleged in Paragraph 3 that Appellant "tendered the rent payment pursuant to the bond to the Defendant's [*sic*] representative on June 5, 2024, at the offices of Crawford and Von [*sic*] Keller, Attorneys at Law." An affidavit filed June 28, 2024 on behalf of Respondent attested that the preceding assertion was inaccurate. Said affidavit attests in relevant part: "[Appellant's] Counsel called me [Respondent's Counsel] and said the [Appellant] had failed to pay the bond timely to the court and the late payment was refused. [Appellant's] Counsel informed me that the Appellant was on his way to my office to pay the bond to my firm's office, but no payment was ever tendered or proffered and I informed the Appellant that I could not accept the late payment as I believed it to be in violation of the Bond to Stay Execution on Appeal."

On July 9, 2024, a hearing was held on Appellant's Motion to Reconsider. Said Motion was denied and a formal Order memorializing the denial was filed on July 19, 2024.

### **STANDARD OF REVIEW**

The Motion of Appellant's which is currently before the Court was made pursuant to Rules 52(b); 59; & 60 of the South Carolina Rules of Civil Procedure.

Rule 52(b) of the South Carolina Rules of Civil Procedure states in relevant part: "[w]hen findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the trial court an objection to such findings or has made a motion to amend them or a motion for judgment."

Motions for reconsideration will not be granted absent "highly unusual circumstances." *U.S. ex rel. Becker v. Washington Savannah River Co.*, 305 F.3d 284, 290 (4th Cir. 2002) (stating that simple disagreements with the court's ruling will not support Rule 59(e) relief). Courts have recognized three circumstances in which a court should grant a Rule 59(e) motion: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." *Hutchinson v. Staton*, 994 F.2d 1076, 1081 (4th Cir. 1993). Importantly, a motion for reconsideration is not a vehicle to re-litigate previously raised issues or "to raise argument or present evidence that could have been presented prior to the entry of judgment." *Dash v. Mayweather*, C/A No. 3:10-1036-JFA, 2010 U.S. Dist. LEXIS 95277, (D.S.C. Sept. 13, 2010) (quoting *Exxon Shipping Co. v. Baker*, 554 U.S. 471, n.5 (2008)). In other words, "[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." *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014); *Patterson v. Reid*, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995). Nor does "[a] party's mere disagreement with the court's ruling . . . warrant a Rule 59(e) motion." *In re Pella Corp. Architect & Designer Series Windows Mktg., Sales Practices & Prods. Liab. Litig.*, 269 F.Supp. 3d 685, 691 (D.S.C. 2017); see also *Lyons v. Fid. Nat'l Title Ins. Co.*, 415 S.C. 115, 135, 781 S.E.2d 126, 137 (Ct. App. 2015).

The decision to grant or deny a motion made pursuant to Rule 60(b) is within the sound discretion of the trial judge. The appellate standard of review is limited to determining whether there was an abuse of discretion. An abuse of discretion occurs when the order of the court is controlled by an error of law or where the order is based on factual findings that are without evidentiary support. *Gainey v. Gainey*, 382 S.C. 414, 423, 675 S.E.2d 792, 797 (Ct. App. 2009) (*Internal citations omitted*).

## **ARGUMENT**

### **i. The Circuit Court Judge Properly Denied Appellant’s Rule 59(e), SCRPC Motion.**

As indicated above, courts have recognized three instances in which a motion made pursuant to Rule 59(e) should be granted: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice. None of these scenarios are applicable to the instant case and as such the Circuit Court Judge correctly denied Appellant’s Motion.

The Undertaking and Order issued by the magistrate’s court in Case No. 2024-CP-40-02696 uses substantially the same form found in S.C. Code Ann. § 27-40-800. Said Order, entitled “Bond to Stay Execution on Appeal,” (“Bond Order” hereinafter) states in relevant part: “Pursuant to the findings of the Magistrate, the Tenant(s) is obligated to pay \$5,090 by May 6, 2024 and then the monthly rent due on the 5th of each month before 3:00pm of each day.” As such, the Bond Order sets an apparent, obvious, and clear deadline for payment, going so far as to include a time of day upon which payment must be made.

Having used a form in compliance with S.C. Code Ann. § 27-40-800, said Bond Order includes the following standard language near the bottom of the form:

*Upon execution of the above bond, execution on the Judgment of Ejectment is hereby stayed until the action is heard on appeal and decided by the Circuit Court. If Tenant(s) fails to make any rental payment within five days of the due date, upon application of the Landlord, the stay of execution shall dissolve, the appeal by the Tenant(s) to the Circuit Court on issues dealing with possession must be dismissed and the Sheriff may dispossess the Tenant(s).*

This standard language, taken directly from the model form in S.C. Code Ann. § 27-40-800, refers to the “due date” of any “rental payment.” The underlying subject Lease Agreement indicates, as most do, that the “[t]enant will pay the monthly rent so that Landlord receives the monthly rent on or before the first day of each month during this lease.” *Lease* § 5 ¶ ‘A’. As such, the due date of any rental payment under the operative document of the instant case is the first of a given month. The Lease Agreement further provides a notice in substantial compliance with that contained in S.C. Code Ann. § 27-40-710 (B), indicating that rent is considered late if not paid within five days of the due date. *Lease id.* As such, the standard language in S.C. Code Ann. § 27-40-800 tracks that of the subject Lease Agreement, and the payment of rent as dictated in S.C. Code Ann. § 27-40-710. It would be nonsensical for the undertaking to provide significantly more lenience than the underlying Lease Agreement.

Further, Appellant failed to present any evidence whatsoever supporting the assertions made in its Motion for Reconsideration. The sole filing made in support of Appellant’s Motion was an Affidavit executed by opposing counsel himself on June 28, 2024, attesting to “personal knowledge that the [Appellant] tried to pay the rent money to the Magistrate at 3:06 pm ,June [sic] 5,2024 [sic]. *McKnight Aff.* filed June 28, 2024.

It seems apparent that Appellant had actual knowledge of the due date and time upon which the supersedeas bond was to be paid. Appellant’s claimed interpretation of the Bond Order is a contrivance produced out of desperation following his breach of the same. The presiding Circuit Court Judge rightly recognized that there was no intervening change in controlling law, no new evidence that was not available prior, no clear error of law, and no manifest injustice. For the foregoing reasons, the denial of Appellant’s 59(e) Motion was a correct decision made well within the lower court’s authority.

**ii. The Circuit Court Judge Properly Denied Appellant’s Rule 60(b), SCRPC Motion.**

Appellant fails to specify the provision of Rule 60(b) of the South Carolina Rules of Civil Procedure under which he is proceeding. As such, Respondent will outline the inapplicability of each provision of the Rule below.

*Rule 60(b)(1): mistake, surprise, or excusable neglect;*

“The movant in a Rule 60(b) motion has the burden of presenting evidence proving the facts essential to entitle him to relief.” *Nelson v. Nelson*, 428 S.C. 152, 173-74, 833 S.E.2d 432, 443 (Ct. App. 2019) (quoting *Bowers v. Bowers*, 304 S.C. 65, 67, 403 S.E.2d 127, 129 (Ct. App. 1991)). “In order to gain relief under Rule 60(b)(1), SCRCF, a party must first show a good faith mistake of fact has been made...” *id.* (quoting *Williams v. Watkins*, 384 S.C. 319, 324, 681 S.E.2d 914, 917 (Ct. App. 2009)). As stated above, aside from an affidavit executed by Appellant’s counsel himself, no evidence was presented in this matter to support Appellant's assertion that a good faith mistake of fact had been made. For that reason, Appellant has failed to meet its burden of proof.

“In determining whether to grant relief under Rule 60(b)(1), the court must consider the following factors: '(1) the promptness with which relief is sought; (2) the reasons for the failure to act promptly; (3) the existence of a meritorious defense; and (4) the prejudice to the other party.’” *id.* (quoting *Rouvet v. Rouvet*, 388 S.C. 301, 309, 696 S.E.2d 204, 208 (Ct. App. 2010) (*internal citation omitted*)). Appellant’s filing of its Motion was reasonably prompt. However, Appellant had no meritorious defense in its underlying Appeal. Both Appellant’s circuit court appeal and the instant appeal were filed solely for delay. Appellant filed its appeal in the Court of Common Pleas after having agreed to a settlement order attesting that he would willingly vacate the property and that, should he fail to do so, a writ of ejectment would be issued against him. Appellant had no reasonable defense whatsoever in the underlying appeal. Further, Respondent was and continues to endure extreme prejudice by the apparent impossibility of having Appellant removed from the subject premises. Appellant has amassed a significant arrearage on his account with Respondent without any consequence, meanwhile Respondent’s property rights continue to be denied. Failing Appellant’s removal, Respondent cannot realize its investment in the subject property by instituting a new tenant therein at market rate. The presiding Circuit Court Judge correctly surmised that Appellant could not prevail under Rule 60(b)(1).

*Rule 60(b)(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);*

Respondent asserts that Rule 60(b)(2) is entirely inapplicable to the facts of the instant Appeal. Respondent is entirely unaware of any assertion Appellant has made regarding newly discovered evidence.

*Rule 60(b)(3) fraud, misrepresentation, or other misconduct of an adverse party;*

Respondent asserts that Rule 60(b)(3) is entirely inapplicable to the facts of the instant Appeal. Respondent is entirely unaware of any assertion Appellant has made regarding fraud, misrepresentation, or other misconduct.

*Rule 60(b)(4) the judgment is void;*

Respondent asserts that Rule 60(b)(4) is entirely inapplicable to the facts of the instant Appeal. Respondent is entirely unaware of any assertion Appellant has made that judgment in this matter is void.

*Rule 60(b)(4) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application;*

Respondent asserts that Rule 60(b)(5) is entirely inapplicable to the facts of the instant Appeal. Respondent is entirely unaware of any assertion Appellant has made which includes satisfaction, release, or discharge.

As is indicated above, there is no evidence indicating an abuse of discretion on the part of the Circuit Court. Appellant has failed to show that the Circuit Court made any error of law or that its decision made on the subject Motion was made based on factual findings that are without evidentiary support.

**CONCLUSION**

For the foregoing reasons, Respondent requests that this Court uphold the decision of the Court of Common Pleas, dismiss the instant Appeal, and remand the matter so that a writ of ejectment may be issued against the Appellant.

RESPECTFULLY SUBMITTED

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**PROOF OF SERVICE**

I, Jason Hunter certify that I have served the foregoing Brief of Respondent in this matter on December 18, 2024, by mailing it to opposing counsel addressed as follows:

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