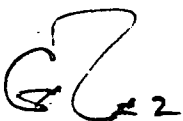


SCDC was transitioning from a VHS filing system to a digital filing and somehow the video was lost." Plaintiff argues that at no time did Defendant's counsel state that this information was being presented due to a witness affidavit and that Plaintiff would have objected had he understood this to be the case. Plaintiff's argument is unpersuasive. Plaintiff acknowledges that he was provided with Defendant's Summary Judgment Memorandum and supporting affidavits prior to the August 7, 2013 hearing and the issue relating to the unavailability of video of the incident is addressed in Anthony Wright's affidavit. Mr. Wright stated in paragraph 7 of his affidavit that the incident was videoed, but the video of the incident could not be located. He further stated "at about this time, SCDC switched from a videotape system to a digital recording system and the video of the incident cannot be located." This matter was addressed in the affidavit which was submitted in support of Defendant's Motion for Summary Judgment and Plaintiff acknowledges he had the affidavit prior to the August 7, 2013 hearing. Plaintiff could have addressed this issue at that time, but failed to do so. This does not qualify as newly discovered evidence and certainly does not qualify as fraud and Plaintiff's Motion on this issue is denied.

Plaintiff next argues in his Memorandum that he served discovery requests on Defendant and Defendant's counsel mailed responses to Plaintiff the day before the hearing so the responses were not available to Plaintiff at the hearing. Plaintiff submitted a copy of Defendant's responses to his Request to Produce and the Court has reviewed these responses, but Plaintiff fails to show how these materials would have changed or had an impact on the Court's ruling. Regardless, this does not satisfy the requirements of Rule 60. There was no fraud or misrepresentation and this is also not newly discovered evidence. Plaintiff was aware at the August 7, 2013 hearing that he did not have the responses and could have raised the issue at that time and his Motion is denied.

Plaintiff next argues that there was mistake or inadvertence on the part of the Court by failing



to address his Motion for Summary Judgment, Motion for Appointment of Guardian ad Litem, Motion for Medical Examination, and Motion to Alter/Amend the Complaint. Even if this were determined to be mistake or inadvertence on the part of the Court, which it is not, this would not entitle Plaintiff to relief from judgment. Plaintiff was aware at the August 7, 2013 hearing that the Court did not address these Motions and could have raised this to the Court at that time. Furthermore if the Court did not consider these Motions, the proper ground for relief would be a motion to alter or amend judgment pursuant to Rule 59(e), SCRCF. A party has only 10 days to file a motion pursuant to Rule 59(e) and this time has long since passed. Plaintiff's Motion on this issue is denied.

The Court issued its Order denying Plaintiff's Motion on January 26, 2015 and Plaintiff then filed Objections to the proposed Order dated January 27, 2015. The Court did not receive Plaintiff's Objections until after the Order was signed and is submitting this Amended Order to address issues raised by Plaintiff in his Objections. Plaintiff argues that Defendant's counsel committed perjury or made false statements to the Court at the August 7, 2013 hearing in which Judge Russo granted Defendant's Motion for Summary Judgment and that Defendant's counsel concealed evidence. Based on the arguments presented by the parties at the January 12, 2015 hearing, I find that Defendant's counsel, Steven M. Pruitt, did not commit perjury or submit false evidence and did not conceal evidence. Based on the arguments presented by the parties, I find that Mr. Pruitt did not act inappropriately or in an improper manner.

GT 3

Based on the above, Plaintiff fails to show that he is entitled to relief from judgment pursuant to Rule 60(b), SCRCF, and his motion is denied.

IT IS SO ORDERED.



The Honorable G. Thomas Cooper, Jr.
Eleventh Judicial Circuit

FEB. 16, 2015
McCormick, South Carolina
COLUMBIA