

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

CHARLES BICKERSTAFF, M.D., and
BARBARA MAGERA, M.D.,

Plaintiffs,

vs.

ROGER PREVOST d/b/a PREVOST
CONSTRUCTION, INC.,

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

2004-CP-10-3867

RECEIVED

MAY 05 2016

SC Court of Appeals

ORDER DENYING PLAINTIFF'S
MOTION TO RECONSIDER

FILED
2016 APR 15 PM 12:02
JULIE J. ARMSTRONG
CLERK OF COURT

Presiding Judge:
Plaintiffs' Attorney:
Defendant's Attorney:
Date of Hearing:
Court Reporter:

Hon. Deadra L. Jefferson
Steven L. Smith, Esq.
Frank M. Cisa, Esq.
July 12, 2012
Mia Perron

THIS MATTER is before the Court on Plaintiff's Motion to Reconsider, filed with the Charleston County Clerk of Court on April 15, 2013 and received on April 11, 2016. This matter came before the Court on July 12, 2012 for a hearing pursuant to a remand from the South Carolina Court of Appeals in Bickerstaff v. Prevost, 398 S.C 231, 727 S.E.2d 769 (Ct. App. 2012). The Court of Appeals reversed this Court's determination that it lacked jurisdiction to determine post-judgment interest and remanded it for reconsideration of the issue of post-judgment interest. Steven L. Smith, Esquire was present at the hearing on behalf of the Plaintiffs, and Frank M. Cisa, Esquire was present on behalf of the Defendant. This Court issued an Order Setting Rate of Post-Judgment Interest, signed on March 29, 2013 and filed on April 1, 2013.

Having considered Plaintiff's Motion, as well as the various interests balanced by the Court at the time of the ruling, Plaintiff's Motion to Reconsider is hereby DENIED.

10/4
[Signature]

"Under Rule 59(e), SCRCP, a motion to alter or amend the judgment must be served not later than 10 days after the receipt of written notice of the entry of the order." Norris v. Heyward, 312 S.C. 67, 69, 439 S.E.2d 264, 265 (1993). The Supreme Court recently clarified the two situations in which a Rule 59(e) motion is appropriate. "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 v. South Carolina Dept. of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (emphasis in original). "A party cannot use a motion to reconsider to present an issue he could have raised prior to judgment but did not." Anderson Memorial Hosp., Inc. v. Hagen, 313 S.C. 497, 498, 443 S.E. 2d 399, 400 (Ct. App. 1994) (citing C.A.H. v. L.H., 315 S.C. 389, 434 S.E. 2d 268 (1993)).

Under Rule 59(g), SCRCP, "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), SCRCP. Jones v. State, 382 S.C. 589, 594, 677 S.E.2d 20, 22, n.2 (2009). Here, the Plaintiff failed to provide a copy of his Motion to Reconsider to the Court with within ten (10) days after the filing of the motion as required by the rules. This Court did not receive the Motion to Reconsider until April 11, 2016. A copy of the motion was provided to the Court by the Master-In-Equity's Office prior to the commencement of supplemental proceedings in this matter. Therefore, the motion is Denied as time barred.

Alternatively, this Court finds no basis to reconsider or alter or amend its previous Order and reiterates its original order finding Plaintiffs' constitutional claims as untimely. Plaintiffs' September 22, 2009 Motion to Set Interest Rate specifically requested the Court determine

A handwritten signature in black ink, appearing to be "J. H. Jones" or similar, written over the page number.

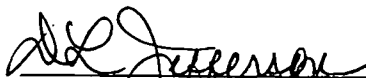
whether post-judgment interest should accrue at the statutory or contractual rate. It was at this time Plaintiffs could have raised the issue that the statutory rate should be applied because the contractual interest provision is unconscionable and violative of due process and public policy. However, Plaintiffs failed to do so, and the Court finds these claims are therefore waived. Moreover, based on the Court of Appeals' May 2012 decision, the Court finds the Court of Appeals remanded the matter solely for the determination of whether post-judgment interest should accrue at the statutory rate or the contractual rate of 1% per day, as requested in Plaintiffs' Motion to Set Rate of Interest.

Based on the foregoing, the Court declines to apply the statutory rate pursuant to Section 34-31-20(B). Accordingly, post-judgment interest shall accrue at the contractual rate of 1% per day from the date of judgment. See Renaissance Enters., Inc., 326 S.C. at 466, 483 S.E.2d at 799.

CONCLUSION

Considering Plaintiff's arguments presented in his Motion this Court finds Plaintiff failed to serve the motion upon the court in a timely manner, presented no novel facts, arguments, or theories in support of his Motion to Reconsider. Moreover, Plaintiff has not highlighted any portions of the record this Court may have misunderstood, failed to fully consider, or perhaps failed to rule on. Having considered the Plaintiff's motion, the record herein, as well as the various interests balanced by the Court at the time of the ruling, and incorporating its findings in its previous Order Setting Rate of Post-Judgment Interest, the Plaintiff's motion is hereby DENIED.

IT IS SO ORDERED.



Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

April 14, 2016
Charleston, South Carolina

HOA
SAB

Smith | Closser, P.A.

Attorneys at Law
7455 Cross County Road, Suite One
Post Office Box 40578
Charleston, South Carolina 29423-0578

Samuel M. Wheeler
swheeler@scnlaw.com

RECEIVED

MAY 05 2016

SC Court of Appeals

Office - 843-760-0220
Fax - 843-552-2678
www.smithclosser.com

May 3, 2016

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

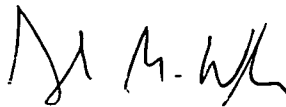
RE: Charles Bickerstaff, M.D., and Barbara Magera, M.D., Appellants v. Roger
Prevost d/b/a Prevost Construction, Inc., Respondent
Case No. 2004-CP-10-3867
Appellate Case No. 2016-000879
S/C File No. 06-537

Dear Ms. Kitchings:

In response to your letter, dated April 29, 2016, enclosed please find a copy of the ruling from April 14, 2016, on the Plaintiffs/Appellants' motion to reconsider in the above case.

Thank you for your assistance. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Samuel M. Wheeler

cc: Frank M. Cisa, Esq.
Attorney for the Respondent

Enclosures



MAY 03 2016

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

April 29, 2016

Mr. Steven L. Smith, Esquire
PO Box 40578
Charleston SC 29423-0578

Re: Charles Bickerstaff, M.D. v. Roger Prevost
Appellate Case No. 2016-000879

Dear Counsel:

Upon review of your notice of appeal in the above mentioned case, the notice references the order regarding the motion to reconsider. Please provide the Court with a copy of the ruling from April 14, 2016 on the motion to reconsider within ten (10) days of the date of this letter.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Samuel Melvil Wheeler, Esquire
Frank M. Cisa, Esquire

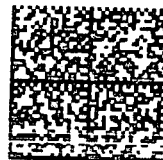
Smith | Closser, P.A.

Attorneys at Law

7455 Cross County Road, Suite One

Post Office Box 40578

Charleston, South Carolina 29423-0578



02 1P

\$ 000.67⁵

0001914762 MAY 03 2016

MAILED FROM ZIP CODE 29401

The Honorable Jenny Abbott Kitching
Clerk, S.C. Court of Appeals

P.O. Box 11629

Columbia, SC 29211

RECEIVED

MAY 05 2016

SC Court of Appeals

2921131629 8012

