

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF ORANGEBURG)

CASE NO.: 2011-CP-38-1047

First Citizens Bank and Trust Company,
Inc. f/k/a Orangeburg National Bank,)

Plaintiffs,)

ORDER DENYING MOTION TO
TO RECONSIDER

vs.)

The Estate of Dorothy S. Johnson a/k/a
Dorothy Sistrunk a/k/a Dorothy B.S.
Johnson; B. Delores Sistrunk; James L.
Johnson; Rodney L. Sistrunk; Coleman B.
Sistrunk; George M. Sistrunk; David B.
Sistrunk; Daniel R. Sistrunk; Denatra Lynne
Green-Stroman; and The Estate of Clarece
Green,)

Defendants.)

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SC Court of Appeals

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ORANGEBURG SC

This matter comes before me as Special Referee for Orangeburg County on February 18, 2016, upon Motion of the Defendant, B. Delores Sistrunk ("Defendant") pursuant to Rule 59(e)(e) of the South Carolina Rules of Civil Procedure, seeking a reconsideration of the findings of fact and conclusions of law in my Order granting a Writ of Assistance. After consideration of the motion, the motion is denied

Based upon a review of the file and statements of the attorneys at the previous hearing, there is no basis to alter or amend the judgment. In order to alter or amend findings under SCRCF 52, the original findings must be "without evidentiary support or against the clear preponderance of the evidence." *Geddings v. Geddings*, 319 S.C. 213, 460 S.E.2d 376, 378 (1995). "In an action at law tried without a jury, the trial court's findings will be upheld if they are supported by any reasonable evidence." *Palmettonet, Inc. v. S.C. Tax Comm*, 318 S.C. 102, 456 S.E.2d 385, 387 (1995). Rule 60 allows amendment of a judgment if the court discovers

MRS


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ORANGEBURG COUNTY, SOUTH CAROLINA

evidence. This requires a particularized showing of any mistake or newly discovered evidence. *Tobias v. Rice*, 386 S.C. 306, 688 S.E.2d 552, 554 (2010). The burden is on the moving party, and the motion is in the sound discretion of the judge and will not be disturbed absent an abuse of discretion. *Tri-County Ice and Fuel v. Palmetto Ice*, 303 S.C. 237, 399 S.E.2d 779, 782 (1990). Abuse of discretion "arises where the trial judge was controlled by error of law or where his order is based on factual conclusions that are without evidentiary support. *Id.*

Here, Defendant has not made a particularized showing of any mistake of law or new evidence. Furthermore, Defendant cannot show that the factual findings of the original Order are without evidentiary support. All the conclusions of law in the Order were based on reasonable evidence presented by the Plaintiff after an extensive trial on the matter. Defendant cannot show that the clear preponderance of the evidence warrants overturning the previous judgment. Therefore, there is no abuse of discretion as there are no clear errors of law and all factual findings have evidentiary support.

Due to the foregoing, it is therefore, **ORDERED, ADJUDGED, AND DECREED**, that the Defendant's Motion to Reconsider is denied;

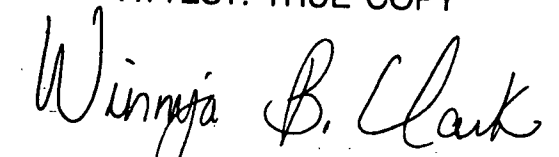
AND IT IS SO ORDERED.


The Honorable Martin Banks
Special Referee

Orangeburg, South Carolina

2/19, 2016

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CRAWFORD & von KELLER, LLC.

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April 13, 2016

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SC Court of Appeals

B. Deloris Sistrunk
PO Box 2952
Orangeburg, SC 29116

RE: First Citizens Bank and Trust Company, Inc. vs. The Estate of Dorothy S. Johnson, et al.

Case No.: 2011-CP-38-01047

Our File No.: 1308.1529

Sir/Madam:

Enclosed for your information please find a copy of the Order Denying Motion to Reconsider in regard to the above referenced matter.

Should you have any questions, comments or concerns, please do not hesitate to call.

Sincerely,

Crawford & von Keller, LLC.


Joyce Lackey, Paralegal

Enclosures