

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

EMIL P. KONDRA individually, and as)
Trustee of the Emil P. Kondra)
Revocable Trust, EMIL P. KONDRA,)
LLC, EMIL P. KONDRA FAMILY)
TRUST, EILEEN SAXTON AND)
DOUGLASS E. KONDRA, as Trustees)
of the Emil P. Kondra Family Trust,)
DOUGLASS E. KONDRA, HELEN)
PERRY, and LAWRENCE F. D')
ALESSIO,)

Civil Action Nos. 2012-CP-23-06289
2012-CP-23-06281

FILED-CLERK OF COURT
GREENVILLE, S.C.
PAUL B. WICKENSNER
DEC 21 AM 10:58

ORDER DENYING MOTION TO
RECONSIDER

Plaintiffs,)

vs.)

ROBERT A. NITSCH and VERONICA)
G. NITSCH, Individually, and as)
Trustees of the Amended and Restated)
Veronica G. Nitsch Revocable Trust and)
the Amended and Restated Robert A.)
Nitsch Revocable Trust,)

Defendants.)

John M. Campbell, Jr., Esq.,)

Plaintiff,)

vs.)

ROBERT A. NITSCH and VERONICA)
G. NITSCH, Individually, and as)
Trustees of the Amended and Restated)
Veronica G. Nitsch Revocable Trust and)
the Amended and Restated Robert A.)
Nitsch Revocable Trust,)

Defendants.)

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SC Court of Appeals

This matter is before me on a Motion to Reconsider filed on October 12, 2015 by counsel for Defendants Robert and Veronica Nitsch ("the Nitsches") as to the Report and Recommendation of the Discovery Referee which was filed with this Court on August 21, 2015

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and adopted by this Court as the findings of fact and conclusions of law of the Court by Order entered September 29, 2015.

A hearing was held before me on Thursday, December 3, 2015. The Nitsches appeared and were represented by Stephanie Burton of Gibbes & Burton, LLC and Blair Fensterstock of Fensterstock & Partners, LLP. Plaintiffs Emil P. Kondra individually, and as Trustee of the Emil P. Kondra Revocable Trust; Emil P. Kondra, LLC; Emil P. Kondra Family Trust; Eileen Saxton and Douglass E. Kondra, as Trustees of the Emil P. Kondra Family Trust; Douglass E. Kondra; Helen Perry; and Lawrence D'Alessio (collectively "the Kondra Plaintiffs") and John M. Campbell, Jr. ("Campbell") (collectively "Plaintiffs") appeared and were represented by A. Marvin Quattlebaum, Jr. and Samuel W. Outten, of Nelson Mullins Riley and Scarborough, LLP.

The Nitsches argue that this Court should reconsider its Order entered September 29, 2015 adopting the Report and Recommendation of the Discovery Referee, contending that essentially every finding of fact and conclusion of law by the Discovery Referee is in error.

I. PROCEDURAL HISTORY

In ruling on this Motion, the Court has considered the extensive proceedings before the Discovery Referee.

First, the issues surrounding the documents taken from Emil Kondra's home office (the "At-Issue Documents") began with a letter sent by Mr. Quattlebaum requesting their return on May 3, 2013. Subsequently, counsel for the Kondra Plaintiffs filed a Motion to Compel the return of the At-Issue Documents, which this Court heard on September 18, 2013. At the deposition of John M. Campbell on February 11, 2014, counsel for the Nitsches attempted to question Mr. Campbell with privileged At-Issue Documents, which resulted in a Motion for Protective Order and Motion for Sanctions filed on April 10, 2014. A hearing was held on this

Motion on April 29, 2014, at which time the Court heard extensive argument from counsel for the Nitsches, as well as counsel for the Kondra Plaintiffs and counsel for Mr. Campbell.

On July 25, 2014, the Nitsches filed a motion to appoint a Discovery Referee to address these issues, to which Plaintiffs consented. The Court granted this Motion, and Mason A. Goldsmith, Esquire, who was suggested by the Nitsches, was appointed as Discovery Referee by Order dated February 12, 2015.

Counsel for the Nitsches submitted over 550 pages of materials in the proceedings before Mr. Goldsmith. On April 1, 2015, the Discovery Referee conducted a hearing, and provided the Parties' counsel all the time they requested to present oral argument, submit materials, or otherwise argue their positions with regard to these discovery issues.

After conducting an extensive analysis, the Discovery Referee submitted a letter to the parties on July 9, 2015 outlining his findings and requesting that counsel for the Plaintiffs prepare a proposed Report and Recommendation consistent with his findings. Counsel for the Nitsches requested an opportunity to make objections to the proposed Report and Recommendation. The Discovery Referee agreed, and counsel for the Nitsches submitted their objections on August 11, 2015, including an objection to the finding that the statute of limitations had run on the Nitsches' claims.

After thoroughly considering all the information described above, the Discovery Referee submitted a Report and Recommendation with his findings of fact and conclusions of law to this Court on August 21, 2015. I reviewed and considered the Report and Recommendation, and after this review, and based on my knowledge of the record in this case and the applicable law, adopted it to be the findings of fact and conclusions of law of this Court by Order entered September 29, 2015.

II. STANDARD OF REVIEW

A Rule 59(e) motion may be granted where 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.” Elam v. South Carolina Dep’t of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). The decision to grant relief under Rule 59, S.C. R. Civ. P., rests within the sound discretion of the trial judge and will not be disturbed on appeal unless the “findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law.” Brinkley v. South Carolina Dep’t of Corrections, 386 S.C. 182, 184, 687 S.E.2d 54, 56 (Ct. App. 2009).

III. ANALYSIS

The Nitsches are making the same arguments before this Court that they have made previously, and the same arguments that they made to the Discovery Referee. The record of proceedings before the Discovery Referee demonstrate that he understood and carefully considered the issues before making findings of fact supported by the evidence and conclusions of law which correctly apply the law. I agreed with and accepted the Discovery Referee’s findings and conclusions and decline to change my order to that effect.

With regard to the Discovery Referee’s finding on the expiration of the statute of limitations, the Court finds that the Discovery Referee appropriately brought this to the Court’s attention. This Court would not direct a Discovery Referee to ignore material issues raised by the documents and evidence submitted to him, especially when such issues in turn affect the discovery issues. After all, the Discovery Referee’s finding concerning the statute of limitations is based on sworn affidavits by Veronica Nitsch, which counsel for the Nitsches voluntarily submitted to the Discovery Referee during their litigation of discovery issues. The purpose of the appointment of the Discovery Referee was to assist the Court in the resolution of various

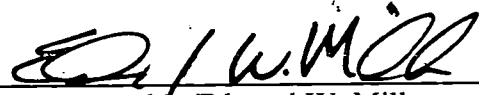
discovery issues in this civil litigation. When an issue like the statute of limitations is recognized in the process of analyzing discovery issues, it should be called to the Court's attention, and set forth in the Report and Recommendation of the Discovery Referee, as discovery issues would be thereby affected. Therefore, I reject the argument of counsel for the Nitsches that the Report and Recommendation of the Discovery Referee should be set aside because Mr. Goldsmith acted outside the scope of the authority given him by this Court.

IV. CONCLUSION

Therefore this Court hereby denies the Motion to Reconsider for the foregoing reasons.

IT IS SO ORDERED.

12/21, 2015
Greenville, South Carolina


The Honorable Edward W. Miller