

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Rene Hale Shelley, Individually and as
Personal Representative of the Estate of
Michael Mann Lindler)

CASE NO. 2014-CP-40-05663

Plaintiff,)

vs.)

ORDER AMENDING JUDGMENT

South Carolina Highway Patrol)

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Defendant.)

OCT 31 2016

SC Court of Appeals

RICHLAND COUNTY
FILED
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JEANETTE M. HARRIS
C.C.P. & G.S.

This matter comes before the Court on Plaintiff's, Rene Shelley, individually and as personal representative of the Estate of Michael Lindler, ("Plaintiff") Motion to Reconsider, in the Alternative, Alter or Amend Judgment pursuant to Rule 59(e), SCRPC. This matter came before the Court as a jury trial on March 14 – 18, 2016. By Order dated July 19, 2016, this Court granted a Motion for Directed Verdict on behalf of Defendant, South Carolina Highway Patrol, ("Defendant"), finding that certain sections of the Tort Claims Act barred Plaintiff's claims. Plaintiff filed the Motion to Reconsider on August 2, 2016. It was not served on the Court as required by Rule 59, SCRPC.

Plaintiff states two arguments were raised during trial by Plaintiff's counsel that the Court failed to address in the Order, and as a result, the omissions justify reconsideration. First, Plaintiff states the Order omitted arguments regarding Defendant's liability under the "voluntary undertaking" doctrine. Plaintiff cites the ruling in *Russell v. Columbia*, 305 S.C. 86, 406 S.E.2d 338 (1991) to support its argument. However, this Court ruled at the hearing that *Russell* did not control the present case since it was prior to the enactment of the S.C. Tort Claims Act, codified at S.C. Code Ann. § 15-78-10 et seq., and none of the immunities provided for in the Tort Claims Act were considered by the Supreme Court in *Russell*.

Second, Plaintiff states that the arguments relating to Defendant's duty of care based on the exceptions to the "public duty" rule were omitted from the Order. During the trial, Plaintiff cited *Edwards v. Lexington County Sheriff's Dept.*, 386 S.C. 285, 688 S.E.2d 125 (2010) to support its argument that Defendant's officer, by his conduct, created a special relationship with Plaintiff,

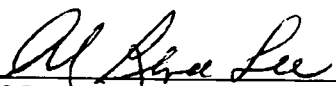
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which is one of five exceptions to the "public duty" rule. This Court ruled that the issues relating to the duty of the Defendant was a jury question; however, Plaintiff's claims were barred by the immunities under the Tort Claims Act. These issues were specifically raised and ruled upon during the trial as reflected in the transcript of the hearing on Defendant's motion for a directed verdict.

Accordingly, after careful consideration of the motion made and the record in this case, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered. Plaintiff's Motion to Reconsider is **DENIED**; however, Plaintiff's Motion to Alter or Amend Judgment is **GRANTED** to include Plaintiff's additional arguments and this Court's ruling on those respective arguments as stated in the Transcript of Record. Pursuant to Rule 59(f), SCRPC, the Court is of the opinion that oral argument is not necessary.

AND IT IS SO ORDERED.



ALISON RENEE LEE
Presiding Judge

September 23, 2016
Columbia, South Carolina

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