

STATE OF SOUTH CAROLINA
 COUNTY OF YORK
 IN THE COURT OF COMMON PLEAS

RECEIVED FORM 4
 OCT 16 2017
 SC Court of Appeals

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2017CP4600867

Michael Frank

Department Of Social
 Services South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: The Court

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- STAYED DUE TO BANKRUPTCY
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

S/S. Jackson Kimball

Master In Equity

3063

Judge Code

08/29/2017

Date

For Clerk of Court Office Use Only

This judgment was entered on **August 30, 2017**, and a copy mailed first class or placed in the appropriate attorney's box or **August 30, 2017**, to attorneys of record or to parties (when appearing pro se) as follows:

P. John Freeman 238 Rockmont Drive Fort Mill, SC 29708

Walter Keith Martens PO Box 10940 Rock Hill, SC 29731

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Michael Frank, individually and as the)
parent and guardian of Samuel Frank, a)
minor,)

Case No. 2017-CP-46-00867

Plaintiff,)

v.)

South Carolina Department of Social)
Services,)

Defendant.)

**ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION**

FILED - RECEIVED
AUG 30 AM 8:42
DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

This matter came before the court on August 24, 2017, for a hearing on Plaintiff's motion pursuant to Rule 59(e), SCRCP, to alter or amend the court's order of June 23, 2017. P. John Freeman appeared on behalf of Plaintiff. W. Keith Martens appeared on behalf of Defendant.

The purpose of a motion under Rule 59(e) S.C.R. Civ. P., to alter or amend a judgment, is to request that the trial judge ". . . reconsider matters properly encompassed in a decision on the merits." *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992)(internal citations omitted). A party cannot use a motion to reconsider, alter or amend a judgment to present an issue that could have been raised prior to judgment, but was not. *See Poch v. Bayshore Concrete Products/South Carolina, Inc.*, 386 S.C. 13, 686 S.E.2d 689 (Ct. App. 2009); *Johnson v. Sonoco Products Co.*, 381 S.C. 172, 672 S.E.2d 567 (2009).

I find no matter presented in Plaintiff's motion that was not addressed expressly or by clear implication in my prior order. Plaintiff's complaint does not allege facts sufficient to support a cause of action against Defendant under any theory of liability. Therefore, dismissal pursuant to Rule 12(b)(6), SCRCP, was appropriate.

In seeking reconsideration of the prior order, Plaintiff contends that the "more appropriate" remedy would have been for this court to permit Plaintiff to amend his complaint, rather than for the court to dismiss the complaint entirely. While Rule 12(b)(6) generally affords a plaintiff an opportunity to remedy a defective pleading through amendment, the plaintiff must first demonstrate that "the allegations *set forth on the face of the complaint* . . . and inferences reasonably deducible therefrom would entitle the plaintiff to relief on [some] theory of the case."

DM
#1

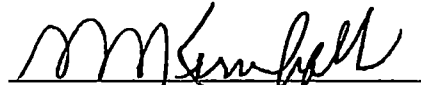
Toussaint v. Ham, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987). Here, Plaintiff has failed to meet that standard. Instead, Plaintiff seeks an opportunity to amend his complaint to assert new theories of liability based upon entirely different factual allegations and events, all of which would be outside the statute of limitations.

In my judgment, Rule 59(e) will not permit a plaintiff to resurrect a time-barred complaint by amending the pleading to assert "alternative" theories of liability premised upon different alleged acts or omissions. That is particularly true where, as here, any claim based on those later events is now, also, time-barred.

After careful consideration of the arguments of both parties, and a review of the pleadings of record, I find and conclude that Plaintiff's motion for reconsideration must be denied.

AND IT IS SO ORDERED.

August 29, 2017



S. Jackson Kimball
Special Circuit Court Judge
York County

DZ

LAW OFFICES

HALFORD, NIEMIEC & FREEMAN, L.L.P.

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J. Cameron Halford ^
Matthew R. Niemiec
P. John Freeman

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jfreeman@fortmilllaw.com

October 11, 2017

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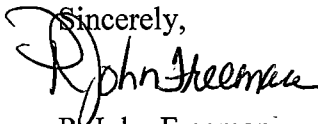

SC Court of Appeals

Jenny Abbott Kitchings, Clerk of Court
The South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: Michael Frank, individually, and as the parent of a minor vs. South Carolina
Department of Social Services
Civil Case No.: 2017-CP-46-00867
Appellate Case No.: 2017-002024

Dear Ms. Kitchings:

Pursuant to your letter of October 6, 2017, enclosed please find the Order that is being appealed by my client, Michael Frank, in the above-referenced matter. I apologize for omitting this document. If you have any questions regarding the enclosed or this matter, please do not hesitate to contact my office.

Sincerely,

P. John Freeman


PJF:tml

Enclosure

cc: Mr. Michael Frank
W. Keith Martens, Esquire
w/enclosure

^ MEDIATOR AND ARBITRATOR

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SC Court of Appeals

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