

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT

Jim Washington,)
)
) Plaintiff,)
)
) vs.)
)
 Trident Medical Center, LLC,)
)
) Defendant.)

Civil Action No. 2015-CP-10-5000

**ORDER DENYING PLAINTIFF'S
MOTIONS TO VACATE JUDGMENT
AND MOTION TO AMEND PLEADINGS**

FILED
2019 FEB 14 PM 12:55
JULIE J. ARMSTRONG
CLERK OF COURT

Presiding Judge:
Plaintiff's Attorneys:
Defendants' Attorneys:

Hon. Deadra L. Jefferson
Pro Se
Blake Williams, Esq.
Dave Batten, Esq.
February 7, 2019
Melissa Singletary

Date of Hearing:
Court Reporter:

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SC Court of Appeals

This matter came before the Court on February 7, 2019 upon Plaintiff's Motion to Vacate Judgment and Motion to Amend the Pleadings, filed October 25, 2018. Plaintiff Jim Washington ("Plaintiff") appeared *pro se*. Blake Williams, Esq. and Dave Batten, Esq. appeared on behalf of Defendant Trident Medical Center, LLC ("Defendant"). Having considered Plaintiff's Motion, the various interests balanced by the Court at the time of the ruling, and the applicable law, the Plaintiff's Motion is hereby DENIED.

PROCEDURAL HISTORY

This action, filed September 11, 2015, is one for medical malpractice arising out of medical treatment rendered to Mr. Washington at Trident Medical Center between September 23 and 26, 2012. On October 16, 2015, the Defendant filed a Motion to Dismiss pursuant to S.C. Code Ann. Sections 15-79-125 and 15-36-100, as well as Rules 12(b)(1), 12(b)(6), and 12(c) of the South Carolina Rules of Civil Procedure. The Motion to Dismiss was fully briefed and heard

before the Honorable Judge R. Markley Dennis on January 7, 2016. On January 14, 2016, Judge Dennis entered a Form 4 Order dismissing the action for failure to comply with the pre-suit requirements for a medical malpractice action provided by S.C. Code Ann. § 15-79-125(a). Judge Dennis entered a formal written order of dismissal on February 5, 2016. Thereafter, Plaintiff appealed to the Court of Appeals by filing a Notice of Appeal on March 4, 2016. Through an Opinion dated January 10, 2018, the Court of Appeals affirmed Judge Dennis' Order granting Defendant's Motion to Dismiss. Plaintiff then moved for a rehearing, which the Court of Appeals denied by Order dated February 22, 2018. Plaintiff then filed a petition for a writ of certiorari to the Supreme Court of South Carolina, which denied the petition on May 25, 2018. The remittitur from the Court of Appeal was issued on May 30, 2018, and filed with the Charleston County Clerk of Court's office on June 1, 2018.

CONCLUSIONS OF LAW

After the remittitur, the Circuit Court "acquires jurisdiction to *enforce* the judgment and take any action *consistent* with the appellate court's ruling." Martin v. Paradise Cove Marina, Inc., 348 S.C. 379, 385, 559 S.E.2d 348, 351-52 (Ct. App. 2001) (emphasis added); See also Muller v. Myrtle Beach Golf & Yacht Club, 313 S.C. 412, 415, 438 S.E.2d 248, 250 (1993). As the Court of Appeals has explained, matters decided by the appellate court "cannot be reheard, reconsidered, or relitigated in the trial court, even under the guise of a different form," and the "decision of the appellate court is *final as to all questions decided*." Ackerman v. McMillan, 324 S.C. 440, 443, 477 S.E.2d 267, 268 (Ct. App. 1996) (emphasis added). Thus, "[i]t is the duty of the trial court to follow the decision of the appellate court." Id. Accordingly, the Court lacks jurisdiction to rehear any of Plaintiff's arguments about the merits of his claims or whether he complied with the pre-

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suit requirements for filing a medical malpractice action. After thorough review of Plaintiff's motions, the Court finds that they improperly seek relitigation of these issues.¹

Moreover, "[o]ne Circuit Court Judge does not have the authority to set aside the order of another." Enoree Baptist Church v. Fletcher, 287 S.C. 602, 604, 340 S.E.2d 546, 547 (1986). The undersigned further lacks jurisdiction because Judge Dennis entered the original order of dismissal, and the undersigned cannot set aside or modify the order of another trial judge. See also State ex rel. Medlock v. Love Shop, Ltd., 286 S.C. 486, 488, 334 S.E.2d 528, 529 (Ct. App. 1985) ("It is settled that one circuit judge does not have the power to review, modify, affirm or reverse the findings of another circuit judge.").

At the hearing, Plaintiff also argued that he filed a Rule 59(e), SCRPC and Rule 60(b), SCRPC motion after Judge Dennis entered the Form 4 Order that was not ruled upon. Plaintiff, however, never made Judge Dennis or the Court of Appeals aware of this issue. Instead, Plaintiff chose to proceed with filing the notice of appeal and briefing the appeal on the merits. By failing to raise this issue on appeal, it was abandoned. See, e.g., Cannon v. Cannon, 321 S.C. 44, 54, 467 S.E.2d 132, 138 (Ct. App. 1996) (holding an issue not argued in the appellant's brief is deemed abandoned on appeal); First Sav. Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (holding appellant was deemed to have abandoned issues on appeal, where he failed to provide any argument or supporting authority). This argument is improper at this stage and is not a proper ground warranting relief from the judgment.

Finally, Plaintiff's Rule 60(b) motion asserts that the judgment should be set aside due to extrinsic fraud on the Court. The Court has thoroughly reviewed Plaintiff's filings and finds that

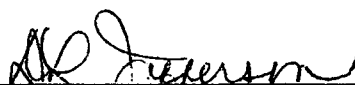
¹ At the hearing, the Plaintiff also argued for a change of venue, but the Court does not reach this issue because the other grounds upon which Plaintiff has moved to vacate Judge Dennis' Order are dispositive, and as stated herein, the Court lacks jurisdiction on issues not decided on appeal.



there is no evidence of any fraud. The standard under Rule 60(b) is “rigorous” and requires a “particularized showing.” Sundown Operating Co. v. Intedge Indus., Inc., 383 S.C. 601, 608, 681 S.E.2d 885, 888 (2009). To obtain relief from a judgment on the basis of fraud, a party must show that extrinsic fraud occurred. See Raby Const., L.L.P. v. Orr, 358 S.C. 10, 20, 594 S.E.2d 478, 483 (2004); See also Chewning v. Ford Motor Co., 354 S.C. 72, 81 579 S.E.2d 605, 610 (2003) (noting that extrinsic fraud “induces a person not to present a case or deprives a person of the opportunity to be heard.”). Intrinsic fraud, which is fraud that “misleads a court in determining issues and induces the court to find for the party perpetrating the fraud,” is not sufficient to warrant relief under Rule 60(b). Raby Const., 358 S.C. at 20, 594 S.E.2d at 483. After reviewing the record, the Court finds that Plaintiff has failed to meet his burden of making a particularized showing of extrinsic fraud. See Lanier v. Lanier, 364 S.C. 211, 215, 612 S.E.2d 456, 458 (Ct. App. 2005) (“A party seeking to set aside a judgment pursuant to Rule 60(b) has the burden of presenting evidence entitling him to the requested relief.”).

Therefore, for the aforementioned reasons, Plaintiff’s “Motion to Vacate Judgment and Motion to Amend the Pleadings” is heard and respectfully **DENIED**.

IT IS SO ORDERED.



The Honorable Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

12th day of Feb. 2019
Charleston, SC

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