

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

John E. Harbin,)
)
Plaintiff,)

Civil Action No. 2017-CP-04-02099

vs.)

ORDER RECEIVED

April Blair, Tracy Dunn, HUB)
Enterprises, Inc., Shawn Conway,)
Gallivan White & Boyd, Sam)
Nikopoulos and John Doe,)
)
Defendants.)

MAR 06 2020

SC Court of Appeals

Plaintiff John E. Harbin's Motion to Reconsider came before the Court for hearing on July 11, 2019. Donald L. Smith appeared on behalf of Plaintiff. Samuel W. Outten appeared on behalf of Gallivan White & Boyd and Sam Nikopoulos (collectively, "GWB"). Having heard the arguments and reviewed the submissions of the parties, Plaintiff's Motion to Reconsider is hereby denied for the reasons stated below.

BACKGROUND

In a prior lawsuit brought by Plaintiff, GWB represented one of the defendants, April Blair. After a trial before the Honorable J. Cordell Maddox, Jr., the jury returned a defense verdict in favor of GWB's client. Plaintiff appealed the jury verdict and made various post-trial motions, all of which were denied.

Plaintiff then filed the instant lawsuit on October 9, 2017. The allegations of the Complaint were nearly identical to those in the prior lawsuit. Plaintiff's Amended Complaint stated only one cause of action against GWB for tortious interference with contract, alleging that GWB interfered with the attorney-client contract between Plaintiff and his attorney, Donald L. Smith. GWB made

a Motion to Dismiss the Amended Complaint on November 22, 2017. This Motion, as well as similar motions filed by the other Defendants, was granted by this Court. This Court held that a lawyer cannot be liable to non-client third parties for actions taken in the representation of a client. Furthermore, this Court found that a law firm is not responsible pursuant to *respondeat superior* for actions taken by an investigative firm that it hires. Following the Court's Order, Plaintiff filed a Motion to Reconsider on February 15, 2019.

RULING

Rule 59(e) of the South Carolina Rules of Civil Procedure allows a court to alter or amend a judgment upon a party's timely motion. A motion under Rule 59(e) has long been viewed as a "motion for reconsideration." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004). Under South Carolina law, a motion to reconsider pursuant to Rule 59(e), SCRPC, is appropriate in two basic situations. First, "[a] party *may* wish to file such a motion when [he] believes 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." *Id.* at 24, 602 S.E.2d at 780. Second, "[a] party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." *Id.* However, "[a] party cannot use a Rule 59(e) motion to advance an issue the party could have raised to the circuit court prior to judgment, but did not." *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014).

Plaintiff's Motion to Reconsider does not identify any point of law or fact that the Court misunderstood, did not fully consider, or failed to rule upon. Plaintiff's dissatisfaction with the outcome of the underlying litigation and the instant action is not grounds for relief under Rule 59. *See Elam*, 361 S.C. at 24, 602 S.E.2d at 780.

Furthermore, the Court granted GWB's Motion to Dismiss based upon the clear legal principle that a lawyer has no liability to a non-client third party for actions taken in the representation of a client. See *Gaar v. North Myrtle Beach Realty Co., Inc.*, 287 S.C. 525, 399 S.E.2d 887 (Ct. App. 1986); *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995); *Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Solutions*, 388 S.C. 394, 697 S.E.2d 551 (2010). A review of the allegations of Plaintiff's Amended Complaint confirms that GWB is named as a defendant in this action solely by virtue of their representation of Blair in the underlying lawsuit. Thus, the Court dismissed Plaintiff's Complaint against GWB with prejudice based on the above-cited case law.

Furthermore, the Court granted GWB's Motion to Dismiss because GWB was not vicariously liable for the alleged torts of Defendant HUB Enterprises, Inc., an independent contractor that GWB hired to provide surveillance of Plaintiff during the underlying lawsuit. As a general rule, an employer is not vicariously liable for the torts of an independent contractor committed in the performance of contracted work. See *Rock Hill Tel. Co., Inc. v. Globe Commc'ns, Inc.*, 363 S.C. 385, 390, 611 S.E.2d 235, 238 (2005); *Duane v. Presley Constr. Co., Inc.*, 270 S.C. 682, 683, 244 S.E.2d 509, 510 (1978).

For these reasons, Plaintiff's Motion to Reconsider is hereby denied.

IT IS SO ORDERED.

J. Cordell Maddox, Jr.
Presiding Judge, Tenth Judicial Circuit

Anderson, South Carolina
_____, 2019



Anderson Common Pleas

Case Caption: John Harbin , plaintiff, et al VS April Blair , defendant, et al
Case Number: 2017CP0402099
Type: Order/Other

So Ordered

s/ J. Cordell Maddox Jr.