

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

) Civil Action No.: 2018-CP-40-01224

Kevin L. Paul,

) Plaintiff,

v.

ORDER

Walmart Stores East, L.P.; Wal-Mart Supercenter, d/b/a Wal-Mart Store #1339; and Richland County Sheriff's Office,

) Defendants.

RECEIVED

MAR 26 2020

SC Court of Appeals

This matter comes before this Court by way of Plaintiff's motion (hereinafter, "Plaintiff's motion") to alter or amend the Order issued on February 24, 2020 granting Defendant Richland County Sheriff's Office's motion for summary judgment in the above-captioned matter. For the reasons set forth below, this Court denies Plaintiff's motion.

STANDARD OF REVIEW

Under South Carolina law, a motion to alter or amend pursuant to Rule 59(e), S.C.R.P., is normally employed in two circumstances. First, it is a device for correcting factual errors in a court's order. *See, Doe v. Doe*, 324 S.C. 492, 502 (Ct. App. 1996). Second, if a losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellate review. *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422 (2000).

In addition, South Carolina courts have repeatedly and unequivocally held that "[a] party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not." *Hickman v. Hickman*, 301 S.C. 455, 456 (Ct. App. 1990); *see also, Eaddy v. Oliver*, 345 S.C. 39, 44 (Ct. App. 2001). It would stand to reason under the same *Hickman* rationale, that a party also should not be permitted to use Rule 59(e) to raise issues that a court has already addressed in an attempt to have those issues relitigated in the party's favor.

ANALYSIS

In Plaintiff's Motion, he asks that this Court:

[R]econsider its prior Order, and deny Defendant RCSO's motion for Summary Judgment. In the alternative, the Plaintiff asks the Court ***to address the various issues above and explain how they do not preclude Summary Judgment*** under the standard in *Hancock v. Mid-South Management Co., Inc.*, 381 S.C. 326, 329 (2009).

See, Pl.'s motion, p. 13. (Emphasis added)

This Court views the bases listed in Plaintiff's Rule 59(e) motion as primarily the same grounds outlined in Plaintiff's memorandum in opposition to Defendant's motion for summary judgment filed January 22, 2020 and those argued before this Court on January 30, 2020. To this extent, Plaintiff's present motion to reconsider simply repeats his arguments attempting to defeat absolute sovereign immunity based upon the administration or quasi-judicial actions or inactions under S.C. Code Ann. §15-78-60(1);¹ the criminal actions of a third person under S.C. Code Ann. §15-78-60(20); as well as the tort of malicious prosecution.² Plaintiff also fails to present any intervening changes in controlling law or that the Court made a clear error of law. Therefore, Plaintiff appears to have no basis for this motion other than their disagreement with this Court's application of the law in this case.

Furthermore, Plaintiff presents no arguments regarding factual errors that should be corrected. The undisputed factual record clearly reflects that Plaintiff's charge directly stemmed from the criminal activities of his brother, Mack Brown. Plaintiff was never detained, handcuffed, arrested, taken into custody, transported to a detention facility, booked at the detention center, subjected to a bond hearing, or ever appeared in a courtroom in connection to these events. The RCSD, at a minimum, had communications with the Sumter County Sheriff's Department (which possessed background information of Plaintiff and his brother); the Pontiac Magistrate's Court

¹ In this Court's Order, the Court found that, assuming *arguendo* that there had been a delay by either law enforcement or judicial authorities in correcting or curing the errors, the nature and timing of RCSD employees' actions simply constitute immune functions under the SCTCA. As a result, any such administrative actions -- or even inactions -- on the part of this Defendant's employees were of a judicial or quasi-judicial nature and as a result, the Defendant RCSD is entitled to absolute sovereign immunity pursuant to S.C. Code Ann. §15-78-60(1).

² In his motion, Plaintiff does not point to any factual errors or otherwise present legal challenges to this Court's Order with respect to the claim of defamation, and therefore, ostensibly does not seek reconsideration of this Court's dismissal of the defamation cause of action.

(the court with jurisdiction over Plaintiff and the shoplifting charge); as well as Plaintiff and his attorney, with whom RCSD officials personally met for purposes of remedying the administrative errors. Approximately three months transpired from the date of the shoplifting until the dismissal of the charge. Plaintiff's charge was thereafter expunged one month later. These facts, taken in a light most favorable to Plaintiff, are the *material facts* in which this Court relies in determining the appropriateness for summary judgment. See, *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 329 (2009), citing Rule 56(c), SCRPC ("Summary judgment is appropriate where there is no genuine issue of *material fact* and it is clear the moving party is entitled to a judgment as a matter of law.") (emphasis added)

CONCLUSION

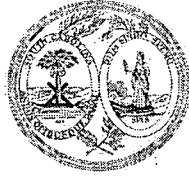
Based upon the foregoing reasons, **IT IS THEREFORE ORDERED** that Plaintiff's motion to alter or amend the Order granting Defendant's Motion for Summary Judgment is **DENIED**.

IT IS SO ORDERED.

The Honorable L. Casey Manning
Circuit Court Judge, Fifth Judicial Circuit

Columbia, South Carolina

March ____, 2020



Richland Common Pleas

Case Caption: Kevin L Paul vs Walmart Stores East L P , defendant, et al
Case Number: 2018CP4001224
Type: Order/Other

So Ordered

s/L. Casey Manning, 2061