

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BERKELEY)
)
 Doretta McHugh as Personal Representative)
 of the Estate of Daniel E. Coy,)
 Plaintiff,)
)
 v.)
)
 John Doe,)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT

Case No.: 2017-CP-08-02153

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

RECEIVED

May 12 2020

SC Court of Appeals

Presiding Judge:
 Plaintiff's Attorney:
 Defendant's Attorney:
 Date of Trial:
 Court Reporter:

Hon. Deadra L. Jefferson
 Daniel C. Boles, Esq.
 Michael T. Coulter, Esq.
 November 12-13, 2019
 Phyllis Norton

This matter came before the Court on Plaintiff's Motion for Reconsideration, filed December 2, 2019. Plaintiff asks the Court to reconsider its Order Denying Plaintiff's Motion for New Trial, which was entered by the Court on November 27, 2019. After consideration of the record, as well as the various interests balanced by the Court at the time of the ruling, the Plaintiff's Motion for Reconsideration is hereby Denied.¹

PROCEDURAL HISTORY

This case came before the Court on November 12-13, 2019 for a jury trial on Plaintiff's negligence cause of action. On comparative negligence, the jury returned a verdict in favor of the Defendant. After publication of the verdict, the Court required post-trial motions pursuant to Rule 50(e), SCRCF. The Plaintiff moved for judgment notwithstanding the verdict ("JNOV"). The Court Denied the Plaintiff's Motion for JNOV and made contemporaneous findings of fact and conclusions of law for the record. The Court required any further motions or matters for the Court's

¹ This Motion is disposed of without the necessity of a hearing and decided on the record and briefs. Rule 59(f), SCRCF; Pollard v. City of Florence, 314 S.C. 397, 401-02, 444 S.E.2d 534, 536 (Ct. App. 1994).

consideration. The parties did not have any further matters to bring before the Court. The Court ruled from the bench on November 13, 2019 and thereafter issued its written Order Denying Plaintiff's Motion for JNOV, which was signed by the Court on November 13, 2019 and filed by the Clerk of Court on November 19, 2019.

On November 19, 2019, the Plaintiff filed a Motion for New Trial or to Alter or Amend the Judgment. The Defendant filed its Response to Plaintiff's Motion on November 26, 2019. The Court issued an Order Denying Plaintiff's Motion for New Trial or to Alter or Amend the Judgment on November 27, 2019. The Plaintiff filed its Motion for Reconsideration on December 2, 2019, but failed to serve its Motion on the Court within the ten (10) days required by Rule 59(g), SCRCP. Likewise, counsel failed to serve a copy of its motion on opposing counsel. Ultimately the Court was provided with a copy of the Plaintiff's Motion for Reconsideration on March 9, 2020 by the Clerk of Court. The Court provided Defense counsel with a copy of the motion on March 9, 2020. Subsequently, the Defendant filed its Response to Plaintiff's Motion for Reconsideration on April 14, 2020.

CONCLUSIONS OF LAW

- I. **Plaintiff's Motion for Reconsideration is Denied (1) for Plaintiff's failure to file its Motion for New Trial in compliance with Rule 50(e), SCRCP, (2) for Plaintiff's failure to serve the Court with its Motion for Reconsideration within ten days of receipt of written notice of the entry of the Court's Order Denying Plaintiff's Motion for New Trial as required by Rule 59(e), SCRCP; and (2) because the Motion for Reconsideration is without merit.**

- A. **Rule 50, SCRCP Standard**

As an initial matter, the Court finds that Plaintiff's November 19, 2019 Motion for New Trial was improperly filed. Rule 50(e), SCRCP states that a motion for JNOV "shall be made promptly after the jury is discharged, or in the discretion of the court, not later than 10 days thereafter." Rule 50(e), SCRCP. "A motion for new trial may be joined with this motion, or a new

trial may be prayed for in the alternative.” Rule 50(b), SCRPC. The Supreme Court of South Carolina has interpreted this language to mean, “... a party must make a motion for a new trial promptly after the jury is discharged or request ten days within which to make the motion.” Boone v. Goodwin, 314 S.C. 374, 444 S.E.2d 524 (1994).

At the close of trial, the Court required post-trial motions. The Plaintiff made a motion for JNOV, which the Court heard, denied, made contemporaneous findings of fact and conclusions of law for the record, and issued its written Order. Plaintiff did not move for a new trial, and did not request ten (10) days within which to make a motion for new trial. As a result of Plaintiff’s failure to request additional time to file further post-trial motions, the Court deemed all post-trial motions not made, waived. Therefore, Plaintiff’s November 19, 2019 Motion for New Trial was filed without leave of the Court in violation of Rule 50(e), SCRPC.

Accordingly, the Court could have summarily denied Plaintiff’s Motion for New Trial without a detailed order. However, for clarity and in the interests of justice, the Court issued its November 27, 2019 Order denying Plaintiff’s Motion for New Trial with detailed findings of fact and conclusions of law. In issuing its Order the Court had the full benefit of the Plaintiff’s motion, the Defendant’s response and the trial record. The Plaintiff now seeks reconsideration of the Court’s Order denying its Motion for New Trial when Plaintiff failed to comply with the rules entitling him to file a Motion for New Trial, as he failed to request ten (10) days within which to file a motion for new trial at the close of the trial. However, for clarity and in the interest of justice, the Court will rule on the substantive allegations of Plaintiff’s Motion for Reconsideration.

B. Rule 59(e), SCRPC Standard

“The purpose of Rule 59(e), SCRPC, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits.” Arnold v. State,

309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). “A party may wish to file such a motion when she 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. 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.” Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (emphasis in original). “A party cannot use a motion to reconsider to present an issue he could have raised prior to judgment but did not.” Anderson Memorial Hosp., Inc. v. Hagen, 313 S.C. 497, 498, 443 S.E. 2d 399, 400 (Ct. App. 1994) (citing C.A.H. v. L.H., 315 S.C. 389, 434 S.E. 2d 268 (1993)); See also Arnold v. State, 309 S.C. 157, 172–73, 420 S.E.2d 834, 842 (1992).

“A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order.” Rule 59(e), SCRPC. “[T]he ten-day deadline in Rule 59(e) is an absolute deadline. A trial court does not have the power to alter or amend a final order if more than ten days passes and no Rule 59(e) motion has been served, nor does a trial court have any power to grant the moving party an extension of time in which to file a Rule 59(e) motion.” Overland, Inc. v. Nance, 423 S.C. 253, 256-57, 815 S.E.2d 431, 433 (2018) (citation omitted) (citing Leviner v. Sonoco Prods. Co., 339 S.C. 492, 530 S.E.2d 127 (2000)).

1. Plaintiff’s Motion for Reconsideration is Denied for Plaintiff’s failure to serve its Motion on the Court within ten (10) days of receipt of written notice of the entry of the Court’s Order Denying Plaintiff’s Motion for New Trial.

As an initial matter, Plaintiff’s Motion for Reconsideration is Denied for failure to comply with Rule 59(g), SCRPC. In Smith v. Fedor, the Court of Appeals upheld the trial court’s decision to deny Smith’s motion for reconsideration on the basis that Smith failed to provide its motion to the trial judge within ten days of filing. 422 S.C. 118, 126, 809 S.E.2d 612, 161 (Ct. App. 2017). The Smith Court held, “Rule 59(g) would lack any purpose if trial courts committed error by

denying the motion for failure to comply with the rule. Further, our language in Gallagher v. Evert, 353 S.C. 59, 63-64, 577 S.E.2d 217, 219 (Ct. App. 2002) implies a trial court may deny the motion solely on the basis of the rule.” Id.

The Court’s Order denying Plaintiff’s Motion for New Trial was filed on November 27, 2019. Plaintiff received electronic notice of the Court’s Order on November 27, 2019. However, the Plaintiff never served a copy of its Motion on the Court as required by Rule 59(g), SCRCP. The Court was not made aware of the outstanding Motion for Reconsideration until March 9, 2020 when it was notified by the Berkeley County Clerk of Court that counsel for the Plaintiff was seeking to schedule a hearing on the Motion.

Therefore, Plaintiff’s Motion is time-barred as a matter of law. Accordingly, Plaintiff’s Motion for Reconsideration is Denied pursuant to Rule 59(g), SCRCP for failure to serve the Court with the Motion within ten (10) days of its filing.

2. Plaintiff’s argument that the Court should reconsider its November 27, 2019 Order Denying Plaintiff’s Motion for New Trial is without merit.

Alternatively, the Court will address the merits of the Plaintiff’s Motion for Reconsideration despite the fact that the Motion is time-barred for failure to comply with Rule 59(g), SCRCP. Plaintiff’s only argument in support of its Motion for Reconsideration is that the Plaintiff “had not yet had the chance to supplement their Motion for New Trial before a judgment was rendered.” Plaintiff’s Motion for Reconsideration at 1.

Plaintiff cites no law, and the Court can find no law, supporting the proposition that an order may be altered or amended for counsel’s failure to file its motion with particularity as required by the rules, file all accompanying documents with its motion, or promptly supplement its motion with supporting memorandum. On the contrary, Rule 7(b)(1), SCRCP requires that motions, “shall state with particularity the grounds therefor and shall set for the relief or order

sought.” Plaintiff’s Motion for a New Trial states, “[t]his motion is made pursuant to South Carolina law, including but not limited to, Rule 59 of the South Carolina Rules of Procedure, and Rule 404 South Carolina Rules of Evidence.” Plaintiff’s Motion for New Trial at 1. Plaintiff failed to state with particularity the grounds upon which it sought a new trial. However, the Court carefully considered Plaintiff’s Motion for a New Trial and completed a thorough analysis of Rule 59, SCRPC and Rule 404, SCRE in its Order Denying Plaintiff’s Motion for a New Trial.

On Pages 2-3 of its Order Denying Plaintiff’s Motion for New Trial, the Court reiterated its reasons for denying Plaintiff’s Motion for JNOV. Further, the Court found that Plaintiff made no other motions at the close of the jury trial, and that any other motions were therefore waived. See Rule 59(b), SCRPC (“The motion for a new trial shall be made promptly after the jury is discharged, or in the discretion of the court not later than 10 days thereafter.”); see also Boone, 314 S.C. at 374, 444 S.E.2d at 524. The Court required motions pursuant to Rule 59(b), SCRPC and, in its discretion, deemed all motions not made at the close of the case waived. Order Denying Plaintiff’s Motion for New Trial at 3. The Court also discussed Plaintiff’s Rule 404, SCRE argument, stating:

Plaintiff also seeks a new trial pursuant to Rule 404, SCRE. However, Plaintiff does not present any specific arguments as to Rule 404, SCRE. All objections as to the admissibility of evidence were heard and ruled upon at trial. The Court made contemporaneous findings of fact and conclusions of law for the record as to evidentiary issues and incorporates those findings as if stated verbatim therein. Accordingly, Plaintiff’s Motion is Denied.

Order Denying Plaintiff’s Motion for New Trial at 4.

Approximately four (4) months have elapsed since Plaintiff filed its Motion for New Trial, and Plaintiff has yet to identify any basis for its Rule 404, SCRE argument. Further, Plaintiff’s Motion for New Trial was filed on November 19, 2019. The Defendant filed its Reply to Plaintiff’s Motion on November 26, 2019. The Court issued its Order on November 27, 2019. Plaintiff was

afforded nine (9) days to supplement its Motion with a supporting memorandum. To this date, Plaintiff has not filed a memorandum in support of either its Motion for New Trial or the present Motion to Reconsider.

Furthermore, the Court stands by its decision that the Plaintiff presented no argument at the close of the hearing or in its Motion for New Trial that would justify disregarding the verdict of the jury and granting the Plaintiff a new trial. The Court must deny a motion for JNOV if the evidence yields more than one reasonable inference or its inference is in doubt. Strange v. S.C. Dep't of Highways & Pub. Transp., 314 S.C. 427, 445 S.E.2d 439 (1994). Moreover, a motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict. Gastineau v. Murphy, 331 S.C. 565, 568, 503 S.E.2d 712, 713 (1998). In considering a motion for JNOV, the court is concerned with the existence of evidence, not its weight. Curcio v. Caterpillar, Inc., 355 S.C. 316, 585 S.E.2d 272 (2003). The Court made contemporaneous findings of fact and conclusions of law for the record in denying Plaintiff's Motion for JNOV. The Court found that viewed in the light most favorable to Plaintiff, ample evidence existed to support the jury's finding in favor of the Defendant. The Court also found that the verdict was well within the evidence presented, was not unduly liberal, and was not actuated by passion, prejudice, caprice or some motive outside of the evidence of the case.

The Court reiterates that decision and finds that Plaintiff presented no argument that would justify disregarding the verdict of the jury and granting the Plaintiff a new trial. The jury heard and considered testimony from Daniel E. Coy via deposition,² Doretta McHugh, and two (2) eyewitnesses to the accident. As the finders of the fact, the jury is "imbued with broad discretion in determining credibility or believability of witnesses." Small v. Pioneer Machinery, Inc., 329

² Daniel E. Coy was deceased at the time of trial. His transition was unrelated to this accident.

S.C. 448, 465, 494 S.E.2d 835, 843 (Ct. App. 1997). Ample evidence existed from the witness testimony to support the jury's finding that Defendant was not negligent, and the Court will not disturb the findings of the jury when sufficient evidence existed to support its verdict.

The Plaintiff has not cited any deficiencies in the record such as misconduct, lack of evidence, or newly discovered evidence that would entitle the Plaintiff to a new trial. By its verdict, the jury, in its fact-finding province found the Defendant was not culpable in comparative negligence. Their findings are amply supported by the any evidence standard. See Parker v. Evening Post Pub. Co., 317 S.C. 236, 247, 452 S.E.2d 640, 646 (Ct. App. 1994) (holding that in reviewing a motion for new trial, the standard of review is limited to whether any evidence supports the trial court's decision); Proctor v. Dept. of Health and Environmental Control, 368 S.C. 279, 320, 628 S.E.2d 496, 518 (Ct. App. 2006) ("The grant or denial of new trial motions rests within the discretion of the trial judge, and his decision will not be disturbed on appeal unless his findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law.").

In conclusion, the Plaintiff has failed to identify any portion of the record that it believes the court has misunderstood, failed to fully consider, or perhaps failed to rule upon. Accordingly, Plaintiff's Motion for Reconsideration is Denied pursuant to Rule 59(e), SCRCF.

CONCLUSION

For the foregoing reasons, pursuant to Rules 50(e), 59(e) and 59(g), SCRCF, Plaintiff's Motion for Reconsideration is Denied.

AND IT IS SO ORDERED.

[Signature Page to Follow]

Hon. Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

April _____, 2020
Charleston, South Carolina
At Chambers.



Berkeley Common Pleas

Case Caption: Daniel E Coy , plaintiff, et al VS John Doe

Case Number: 2017CP0802153

Type: Order/Other

IT IS SO ORDERED.

s/D.L. Jefferson Ninth Judicial Circuit Judge 2128

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