

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENWOOD) EIGHTH JUDICIAL CIRCUIT

Karen Petit,) Civil Action No. 2017-CP-24-01343
)

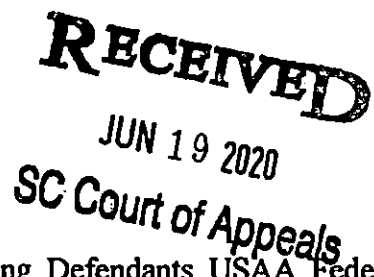
Plaintiff,)
)

vs.)

ORDER

Phyllis Jean Krohn, USAA Federal)
Savings Bank, and USAA Investment)
Management Co.,)

Defendants.)
)



On January 15, 2020, the Court issued an order granting Defendants USAA Federal Savings Bank, and USAA Investment Management Co.’s (collectively “the USAA Defendants”) Motion for Summary Judgment (the “Order”). On January 27, 2020, Karen Petit (“Plaintiff”) filed a Motion to Reconsider the Order. Having reviewed the record in this case and the submissions of the parties, Plaintiff’s Motion to Reconsider is denied.

BACKGROUND AND PROCEDURAL HISTORY

On November 8, 2017, Plaintiff filed this lawsuit against the USAA Defendants and Phyllis Krohn (“Ms. Krohn”), asserting claims for breach of contract, negligence, and breach of a fiduciary duty against the USAA Defendants. (See Compl.) On August 5, 2019, the USAA Defendants moved for summary judgment on all of Plaintiff’s claims asserted against them. The grounds for the USAA Defendants’ motion were as follows: Plaintiff lacked standing to bring her causes of action; Plaintiff could not, as a matter of law, establish a breach of contract; there was no fiduciary relationship between the USAA Defendants and Plaintiff, and Plaintiff could not, as a matter of law, establish a breach of a fiduciary duty; Plaintiff could not, as a matter of law, establish that the USAA Defendants were negligent, and; that Plaintiff’s claims against the USAA Defendants were

barred by the Statute of Limitations. (See USAA Defendants Mot. Summ. J.) On September 4, 2019, a hearing was held on the USAA Defendants' Motion for Summary Judgment, at which time the Court heard arguments from counsel for all parties.

LEGAL STANDARD

Rule 59(e) 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). A motion to reconsider pursuant to Rule 59(e), SCRCPP, is appropriate in two basic situations. First, "[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." *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.* The decision to grant relief under Rule 59 rests within the sound discretion of the trial judge and will not be disturbed on appeal unless the "findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law." *Brinkley v. S.C. Dep't of Corr.*, 386 S.C. 182, 184, 687 S.E.2d 54, 56 (Ct. App. 2009).

Under Rule 59(f), SCRCPP, a Rule 59(e) motion "may in the discretion of the court be determined on the briefs filed by the parties without oral argument." *Pollard v. Cty of Florence*, 314 S.C. 397, 402, 444 S.E.2d 534, 536 (Ct. App. 1994).

ARGUMENTS

I. Plaintiff's Motion Does Not Establish Grounds for Relief Under SCRCPP 59(e).

A. The Court Properly Considered the Lack of Evidence of Incompetence.

Plaintiff claims that the Court should reconsider its Order because the Order cites a lack of

medical records as a reason for granting the USAA Defendants' Motion for Summary Judgment. Plaintiff claims the lack of medical records was not cited in the USAA Defendants' motion, supporting memorandum, nor included in their oral argument. However, in its supporting memorandum, and at the hearing on the motion, the USAA Defendants argued that there was no evidence that Dr. Petit was incompetent when he signed the Designation of Beneficiary Form, and that the only evidence showed that a competent Dr. Petit signed the Designation of Beneficiary Form. (*See* USAA Memo. in Supp. Mot. Summ. J. at 3, 7-8, 14, 16, 17.) The USAA Defendants' argued, and the record reveals, that Plaintiff provided no evidence that Dr. Petit was medically incompetent. Dr. Petit having health issues, even if there was evidence that USAA was aware of them, does not equate to evidence of incompetence.

In determining a motion for summary judgment, a court considers all evidence in the record. *Anthony v. Padmar, Inc.*, 307 S.C. 503, 415 S.E.2d 828 (Ct.App.1992). The Rules of Civil Procedure allow the Court to note the lack of medical evidence in the record. Thus, not only was the issue brought to the Court's attention, but a review of the record reveals the lack of any medical evidence that Dr. Petit was incompetent at the pertinent time. Accordingly, Plaintiff's Motion to Reconsider is denied.

B. The Order Accurately Stated that Plaintiff Failed to Establish a Contract or Contractual Provision that was Breached

Plaintiff claims that the Order "inaccurately states Plaintiff did not specify a contract which was breached, when Defendants USAA admitted a contract existed in its Answer to Plaintiff's Complaint." (Pl.'s Mot. to Recons. At 2.) A review of the pleadings reveals that the USAA Defendants admitted that a contract existed with Dr. Petit, not with Plaintiff. There was no admission, and no evidence in the record, showing that a contract existed between the USAA Defendants and Plaintiff. Thus, the Order accurately states that Plaintiff did not point to a contract

to which she was a party or a contractual provision that was breached. Accordingly, Plaintiff's Motion to Reconsider is denied.

C. The Order Appropriately Declined to Rule on the Statute of Limitations Argument.

Plaintiff argues that the Court erred because it did not rule on the USAA Defendants' statute of limitations argument. (Pl.'s Mot. to Recons. at 3.) However, in its Order granting the USAA Defendants' Motion for Summary Judgment, the Court noted: "[b]ecause of the rulings made in this Order, the Court finds that it need not reach [the statute of limitations issue]." (Order Granting USAA Defs.' Mot. Summ. J. at 9 n.4.) A court is not required to rule on every issue presented where its other rulings are dispositive. *Walbeck v. I'On Co., LLC*, 426 S.C. 494, 527, 827 S.E.2d 348, 365 (Ct. App. 2019), reh'g denied (May 22, 2019); *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999); *Whiteside v. Cherokee Cty. Sch. Dist. No. One*, 311 S.C. 335, 340, 428 S.E.2d 886, 889 (1993). Further, because this issue is not an adverse ruling against Plaintiff, there is no prejudice to her in not reaching this potential additional grounds for summary judgment. Accordingly, Plaintiff's Motion to Reconsider is denied.

D. The Order Accurately Stated Its Reasoning for Granting Summary Judgment.

Plaintiff claims the Court did not consider all of the evidence that she claims supports her position in the Order granting the USAA Defendants' Motion for Summary Judgment.

Plaintiff inserted a list of bullet points in her motion for reconsideration claiming that the Court failed to consider the listed "evidence" in the Orders.¹

¹ Plaintiff has addressed the Orders granting Summary Judgment to the USAA Defendants and Ms. Krohn together. Some of the bullet points relate only to Ms. Krohn and cannot be a basis to challenge the Order regarding the USAA Defendants (points 1, 2, and 5).

Bullets 3 and 4 relate to Dr. Petit's health, which the Court did consider in its Order. Specifically, the Court stated that there was no evidence that the USAA Defendants knew of Dr. Petit's hospitalization. (Order Granting USAA Defs.' Mot. Summ. J. at n.1.) Further the Court found that a competent Dr. Petit signed the change of beneficiary form.² (Order Granting USAA Defs.' Mot. Summ. J. at 2, 4, 9.) Thus, this was included in the Order.

In Bullet 6, Plaintiff claims that Dr. Petit had more than a banking relationship with the USAA Defendants. (Pl.'s Mot. to Recons. at 5.) The Court's Order contains over two pages of analysis regarding the lack of a fiduciary relationship between Dr. Petit (and/or Plaintiff) and the USAA Defendants. (Order Granting USAA Defs.' Mot. Summ. J. at 6-8.) The Court even expressly considered that a USAA Defendants' employee visited Dr. Petit's house, and the Court expressly rejected Plaintiff's argument that this was evidence of a fiduciary duty. (Order Granting USAA Defs.' Mot. Summ. J. at 7.)

In Bullet 7, Plaintiff claims that the Court failed to consider that Ms. Krohn filled out the Designation of Beneficiary Form. (Pl.'s Mot. to Recons. at 5-6.) However, this is noted in the Order (Order Granting USAA Defs.' Mot. Summ. J. at 2), but is rendered irrelevant by Plaintiff's admission that Dr. Petit, himself, signed the form, not Ms. Krohn.

Finally, in Bullet 8, Plaintiff discusses the FedEx label that was provided to Dr. Petit for him to return his Designation of Beneficiary Form. (Pl.'s Mot. to Recons. at 6.) Plaintiff's argument does not change the evidentiary impact of the FedEx label, which shows that Dr. Petit received the Designation of Beneficiary Form at his record address, signed it, and returned it to

² Although Plaintiff now argues that Dr. Petit was not competent to sign the Designation of Beneficiary Form, Plaintiff never alleged in her Complaint that Dr. Petit was incompetent. She merely alleged that the USAA Defendants were liable because Dr. Petit did not sign the Designation of Beneficiary Form. During discovery, this allegation was proven to be false, and Plaintiff has admitted that Dr. Petit signed the Designation of Beneficiary Form.

the USAA Defendants using the FedEx label. Regardless of the address it was returned to, it was returned to the USAA Defendants. Further, Plaintiff's distinction regarding whether the label was provided to Dr. Petit at his request, or as a courtesy, is insignificant to the central issue in this case, which is, did Dr. Petit sign the Designation of Beneficiary Form. Plaintiff concedes that he did.

Summary judgment shall be granted if the evidence in the record shows that there is no genuine issue of material fact. *Anthony*, 307 S.C. 503, 415 S.E.2d 828. In this case, the Court issued the Order based on its review of the record, the oral arguments, and the submissions of the parties and determined that Plaintiff failed to present any genuine issue of material fact, and thus, granted the USAA Defendants' Motion for Summary Judgment. There is no requirement that the Court include all arguments of the non-prevailing party in its order. Accordingly, Plaintiff's Motion to Reconsider is denied.

CONCLUSION

Plaintiff has not shown that the Court erred in granting the USAA Defendants' Motion for Summary Judgment. Further, Plaintiff failed to meet the standard for altering or amending a judgment under Rule 59(e) of the South Carolina Rules of Civil Procedure. Therefore, Plaintiff's Motion to Reconsider is denied.

IT IS SO ORDERED.

Honorable Donald Hocker
Presiding Judge, Eighth Judicial Circuit

_____, South Carolina
_____, 2020



Greenwood Common Pleas

Case Caption: Karen Petit VS Phyllis Jean Krohn , defendant, et al

Case Number: 2017CP2401343

Type: Order/Other

Circuit Court Judge

s/Donald B. Hocker, Judge Code 2167

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