

STATE OF SOUTH CAROLINA)
)
COUNTY OF FAIRFIELD)
)
Broad River Campground, LLC,)
)
)
Plaintiff,)
)
v.)
)
Jenkinsville Water Company, Inc.,)
)
)
Defendant.)
)
_____)

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

C/A No. 2014-CP-20-00349

**ORDER DENYING PLAINTIFF’S MOTION
TO ALTER OR AMEND**

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Jul 10 2020

SC Court of Appeals

This matter came before the Court by way of Plaintiff Broad River Campground, LLC’s (“BRC”) Motion to Alter or Amend the Court’s April 30, 2020, Order granting Defendant Jenkinsville Water Company’s (“JWC”) Renewed Motion for Summary Judgment. (“Plaintiff’s Motion”). The Court finds that for the reasons stated below that Plaintiff’s Motion was untimely filed, and therefore, the Court lacks jurisdiction to consider Plaintiff’s Motion.

PROCEDURAL HISTORY¹

1) On April 30, 2020, the Honorable Judge Brian M. Gibbons issued an Order Granting Defendant JWC’s Renewed Motion for Summary Judgment. (“Summary Judgment Order”). The Summary Judgment Order dismissed this case in its entirety with prejudice.

2) The Summary Judgment Order was executed and e-filed with the Fairfield County Clerk of Court’s Office on April 30, 2020.

3) All counsel of record received written electronic notice of the entry of the Summary Judgment Order on April 30, 2020.

¹ This case has a long and complex procedural history. The Summary Judgment Order outlined the case’s relevant procedural history prior to the Court issuing the Summary Judgment Order. In the interest of brevity, the Court fully incorporates the Procedural History from the Summary Judgment Order herein.

4) Plaintiff's Motion to Alter or Amend the Summary Judgment Order was filed on May 27, 2020.² Plaintiff's Motion made no reference to any specific factual or legal finding that it is seeking the Court to reconsider, nor did it cite any statutory or case law to support its filing.

5) On June 5, 2020, Defendant JWC filed a Response to Plaintiff's Motion on the limited ground that Plaintiff's Motion was not timely filed. Defendant JWC's Response did not address the substantive merits of Plaintiff's Motion.

LEGAL CONCLUSIONS

Plaintiff's Motion to Alter or Amend was not timely filed.

This Court finds that it does not have jurisdiction to consider Plaintiff's Motion as the motion was not timely filed.

Under Rule 59(e), SCRCPP, "[a] motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the order."

This ten-day deadline is an **absolute** deadline that cannot be extended by the Court.³ See *Overland v. Nance*, 423 S.C. 253, 815 S.E.2d 431 (2018). To be timely, Plaintiff was required to file its motion within ten days from its counsel's receipt of notice of the entry of the Summary Judgment Order. Since Plaintiff's counsel received notice of the entry of the Summary Judgment Order on April 30, 2020, any Motion to Alter or Amend under Rule 59, SCRCPP must

² Plaintiff's Motion has never been properly served on my office as required under Rule 59(g), SCRCPP.

³ Pursuant to the South Carolina Supreme Court's Order dated April 3, 2020, regarding the Operation of the Trial Courts during the Coronavirus Emergency any extensions of deadlines or forgiveness of procedural defaults allowed during the pandemic specifically did not apply to the deadlines of Rule 59.

have been filed on or before May 11, 2020.⁴

After this May 11, 2020, deadline passed, this Court no longer had jurisdiction to consider Plaintiff's Motion. *See Leviner v. Sonoco Prod. Co.*, 339 S.C. 492, 494, 530 S.E.2d 127, 128 (2000) ("When no timely Rule 59 motion was made nor timely *sua sponte* order filed under Rule 59(e), the [Order] 'matured' into a final judgment...because the trial judge no longer had jurisdiction over the matter."); *see also Russell v. Wachovia Bank, N.A.*, 370 S.C. 5, 20, 633 S.E.2d 722, 730 (2006) ("Generally, a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed.").

Since Plaintiff filed this Motion sixteen (16) days after the ten (10) day deadline expired, Plaintiff's Motion was untimely, and the Summary Judgment Order became a final order. *See Overland, Inc. v. Nance*, 423 S.C. 253, 256, 815 S.E.2d 431, 432 (2018) ("The failure to serve a Rule 59(e) motion within ten days of receipt of notice of entry of the order converts the order into a final judgment, and the aggrieved party's only recourse is to file a notice of intent to appeal.").

⁴ The tenth day after April 30, 2020, was Sunday, May 10, 2020. Pursuant to Rule 6(a), SCRCPP, Plaintiff's deadline was thereby extended until the next business day, or Monday, May 11, 2020.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED Plaintiff's Motion to Alter or Amend the Court's April 30, 2020, Order was not timely filed as required under Rule 59(e), SCRPC. Accordingly, the Court does not have jurisdiction to consider the Plaintiff's Motion and thus denies it for lack of jurisdiction.

AND IT IS SO ORDERED.

Winnsboro, South Carolina

Dated: _____

Brian M. Gibbons, Chief Administrative Judge
Sixth Judicial Circuit



Fairfield Common Pleas

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Case Caption: Broad River Campground Llc VS Jenkinsville Water Co Inc

Case Number: 2014CP2000349

Type: Order/Other

So Ordered

s/Brian M. Gibbons #2168 Circuit Judge