

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2020-CP-10-02811

William Davis, Jr. as Power of Attorney for
Betty Davis

Plaintiff,

ORDER DENYING MOTION TO
RECONSIDER

vs.

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BKD Charleston South Carolina, LLC
d/b/a Brookdale West Ashley and Kathryn
Daughtery,

DEC 29 2020

Defendants.

SC Court of Appeals

The Defendants BKD Charleston South Carolina, LLC d/b/a Brookdale West Ashley ("Brookdale") and Kathryn Daughtery ("Daughtery") (collectively, "Defendants") filed a motion asking this Court to reconsider its Order dated November 3, 2020. Specifically, Defendants ask the Court to reconsider the following findings within the Order: (1) Mrs. Jennifer Poston ("Ms. Poston") did not have the capacity to contract on behalf of Mrs. Betty Davis ("Mrs. Davis" or "Resident"); and (2) Mrs. Davis did not sign the Agreement herself. Also, additional findings of the Order including that a residency agreement and arbitration agreement are two separate agreements and cannot be bound by the other, that the Federal Arbitration Act ("FAA") does not apply to this case, and that Defendants are not entitled to jurisdictional discovery.

STANDARD OF REVIEW

Motions for reconsideration will not be granted absent "highly unusual circumstances." U.S. ex rel. Becker v. Washington Savannah River Co., 305 F.3d 284, 290 (4th Cir. 2002) (stating

that simple disagreements with the court's ruling will not support Rule 59(e) relief.¹ Courts have recognized three circumstances in which a court should grant a Rule 59(e) motion: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993). Importantly, a motion for reconsideration is not a vehicle to re-litigate previously raised issues or "to raise argument or present evidence that could have been presented prior to the entry of judgment." Dash v. Mayweather, C/A No. 3:10-1036-JFA, 2010 U.S. Dist. LEXIS 95277, *2 (D.S.C. Sept. 13, 2010) (quoting Exxon Shipping Co. v. Baker, 554 U.S. 471, n.5 (2008)). In other words, "[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." Stevens & Wilkinson of S.C., Inc. v. City of Columbia, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014); Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995). Nor does "[a] party's mere disagreement with the court's ruling . . . warrant a Rule 59(e) motion." In re Pella Corp. Architect & Designer Series Windows Mktg., Sales Practices & Prods. Liab. Litig., 269 F.Supp. 3d 685, 691 (D.S.C. 2017); *see also* Lyons v. Fid. Nat'l Title Ins. Co., 415 S.C. 115, 135, 781 S.E.2d 126, 137 (Ct. App. 2015).

After consideration of the issues raised in Defendants' motion and the parties' memoranda in support and in opposition, the Court hereby DENIES Defendants' Motion for Reconsideration.

AND IT IS SO ORDERED.

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¹ Rule 59 is substantially the same as the Federal Rule. *See* Elam v. S.C. Dep't of Transp., 361 S.C. 9, 21, 602 S.E. 2d 772, 779 (2004) ("Rule 59(e) in the South Carolina and federal rules of civil procedure is practically identical.").



Charleston Common Pleas

Case Caption: William Davis Jr , plaintiff, et al VS Bkd Charleston South Carolina Llc , defendant, et al
Case Number: 2020CP1002811
Type: Order/Other

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

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