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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Circuit Court

J. Derham Cole, Circuit Court Judge

Case No. 2017CP1004371
APPELLATE CASE NO 2021-000446

Cary E. Fechter, MD

Appellant,

v.

Leon Martin Ortner, The Ortner Law Firm, LLC, Gerald Rosenthal,
And Rosenthal, Levy, Simon and Ryles, PA

Respondents.

RETURN TO MOTION TO DISMISS APPEAL

The Appellant in responding to the Motion to Dismiss Appeal filed on behalf of the Respondents, Gerald Rosenthal, and Rosenthal, Levy, Simon and Ryles, PA, would show the following:

The Procedural Background given by Respondents is not complete.

After Judge Cole issued the Form 4 Order on August 24, 2020 (Respondents' Exhibit J in its Motion to Dismiss Appeal), the Respondents, on September 3, 2020, filed a Motion to Reconsider the Court's August 24 Order Granting the Motion to Dismiss. See Appellant's Exhibit A. The Form 4 Order "**Vacated** the August Dismissal Order as being "identical" to the June Dismissal Order." See Respondents' Exhibit J.

The Appellant could not file an appeal to any of Judge Cole's Orders until after Judge Cole issued a ruling on the Respondents' said Motion to Reconsider.

On March 30, 2021 Judge Cole issued a Form 4 Order, which stated in part: "This Court has considered **Plaintiff's** (Appellant's) and **Defendants'** (Respondents') **Motions to Reconsider** and the respective briefs and argument submitted in support and opposition to, and now find that; (1) Plaintiff's motions to reconsider the Court's 06/08/2020 Order dismissing the Rosenthal defendants and the Court's 8/04/20 Order dismissing the Ortnier defendants, and (2) the Rosenthal defendants' motion to reconsider the Court's 08/24/2020 vacating an 08/04/2020 Order dismissing the Rosenthal defendants should be and **Are** therefore **Denied**. See Appellant's Exhibit B.

As stated above Appellant could not timely file an appeal until after Judge Cole ruled upon the Motions to Reconsider by the Plaintiff (Appellant) and the (Rosenthal) Defendants' (Respondents')

The Appellant timely filed his Notice of Appeal on April 21, 2021.

In conclusion, this Court would not have jurisdiction until after a final order was issued by Judge Cole, which disposed the Plaintiff's (Appellant's) and the (Rosenthal) Defendants' (Respondents') Motions to Reconsider.

Respectfully submitted.

s/ Melvin D. Bannister
Melvin D. Bannister (SC Bar No. 505)
PO Box 811
Columbia, SC 29202
(803) 782-8688; (803) 782-8677-fax
sctriallawyer@bellsouth.net
Counsel for the Appellant

June 3, 2021

APPELLANT'S EXHIBIT A

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Cary E. Fechter, MD,)
)
 Plaintiff,)
)
 v.)
)
 Leon Martin Ortner, The Ortner Law)
 Firm, LLC, Gerald Rosenthal, and)
 Rosenthal, Levy, Simon, and Ryles,)
)
 Defendants.)
)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Civil Action No.: 2017-CP-10-04371

**MOTION TO RECONSIDER THE
COURT’S AUGUST 24 ORDER
RESCINDING THE COURT’S AUGUST
4 ORDER GRANTING THE MOTION
TO DISMISS**

Named-Defendant Gerald Rosenthal (“Rosenthal”) and Named-Defendant Rosenthal, Levy, Simon, and Ryles, PA (incorrectly identified in the caption as Rosenthal, Levy, Simon, and Ryles) (“RLSR”) respectfully move this Court for an order reconsidering, altering, or amending,¹ the Court’s Order of August 24, 2020, vacating the Court’s Order of August 4, in which the Court denied Plaintiff’s June 17 “Motion to Reconsider Order Granting Gerald Rosenthal’s and Rosenthal, Levy, Simons, and Ryles’ Joint Motion to Dismiss” (“Initial Motion”). Reserving all rights to supplement this Motion further as the Court deems necessary or proper, and to reply to any response that Plaintiff may file, as an initial matter, Rosenthal and RLSR incorporate by reference (a) “Gerald Rosenthal’s and Rosenthal, Levy, Simon, and Ryles’ Joint Motion to Dismiss,” filed May 14, 2019 (“Motion to Dismiss”), (b) Response to Motion to Reconsider Gerald Rosenthal’s and Rosenthal, Levy, Simon, and Ryles’ Joint Motion to Dismiss,” filed June 29, 2020 (“Response to Initial Motion”), and “Response to Motion to Reconsider Gerald Rosenthal’s and Rosenthal, Levy, Simon, and Ryles’ Joint Motion to Dismiss,” filed contemporaneously with this Motion (“Response to Successive Motion”).

BACKGROUND

1. Rosenthal and RLSR filed their Motion to Dismiss.

¹For brevity, throughout, “reconsider.”

2. Rosenthal and RLSR's Motion to Dismiss was heard before the Court on January 27.
3. On February 5, the Court granted the Motion to Dismiss by filing a "Form 4 Order," noting "Counsel for the defendants are requested to prepare and submit a proposed order for the [C]ourt's consideration."
4. Undersigned counsel for Rosenthal and RLSR submitted a proposed order to the Court and all other counsel of record.
5. On June 8, the Court entered an "Order Granting Gerald Rosenthal's and Rosenthal, Levy, Simon, and Ryle's Joint Motion to Dismiss."
6. On June 17, Plaintiff filed an initial "Motion to Reconsider Order Granting Gerald Rosenthal's and Rosenthal, Levy, Simons, and Ryles' Joint Motion to Dismiss" ("Initial Motion").
7. On June 29, Rosenthal and RLSR provided their Response to the Initial Motion.
8. In response, on August 4, the Court issued an "Order Granting Gerald Rosenthal's and Rosenthal, Levy, Simon, and Ryle's Joint Motion to Dismiss," which appears to have been, in all substantive respects, identical to the Court's June 8 Order.
9. On August 4, the Charleston County Clerk of Court ("Clerk") issued a "Notice of Entry of Judgment/Order Pursuant to Rule 77 SCRPC," and referenced "Order of Dismissal as to Gerald Rosenthal et al."
10. Further, the public index for the Clerk of Court's Office referred to the case as having been disposed of, and e-filing for the case was closed.
11. Thus, ended the dispute as to Rosenthal and RLSR, or so Rosenthal and RLSR thought.
12. On August 12, Plaintiff sent a letter to the Court requesting the Court "render an order disposing of [Plaintiff's Initial Motion]." A copy of which is attached as Exhibit A
13. On August 12, Rosenthal and RLSR responded with a letter to the Court providing that interaction with the Court should properly be by motion. A copy of which is attached as

Exhibit B.

14. In response, Plaintiff filed Plaintiff's Successive Motion on August 13.
15. Plaintiff admits the Court filed an Order on August 4, which was identical to the Court's Order of June 17. (Successive Motion, ¶ 4).
16. Plaintiff summarily asserts the Court's August 4 Order "did not discuss or rule on Plaintiff's [Initial] Motion." (Successive Motion, ¶ 5).
17. Plaintiff admits Plaintiff's Successive Motion is essentially identical to Plaintiff's Initial Motion. (Successive Motion, ¶ 6).
18. Plaintiff's Successive Motion, however, does not provide any argument as to how the Court's August 4 Order did not rule on those issues raised by Plaintiff's Initial Motion. Rather, Plaintiff's Successive Motion is merely the June 17 motion refiled with a brief introduction and a recap of the same arguments Plaintiff made at the January 2020 Hearing.
19. Without any motion pending asking the Court to rescind or vacate its August 4 Order, on August 24, the Court *sua sponte* issued a "Form 4 Order," "vacating the Court's Order, filed August 4," noting the vacated Order "has no force or effect."

ARGUMENT

1. This Court lacked jurisdiction to issue the August 24 Order rescinding the Court's August 4 Order. *Cf. Doran v. Doran*, 288 S.C. 477, 343 S.E.2d 618 (1986) (holding the "the trial judge had no jurisdiction to modify the final order"). Further, in *Heins v. Heins*, 344 S.C. 146, 543 S.E.2d 224 (Ct. App. 2001), our Court of Appeals described the limited power a trial court maintains to alter its own orders on its own motion. Rule 59 and Rule 60(a), for example, may permit this, but, according to the Court of Appeals, only if the trial court takes action within 10 days of the entry of the "judgment." Relying on *Hidle v. Geneva County Board of Education*, 792 F.2d 1098, 1100 (11th Cir. 1986), the Court of Appeals explained:

Strong policy considerations militate against what occurred here. . . . [The Court's actions in *sua sponte* reversing an order] inhibits the error-correcting function of a Rule 59(e) motion. If the district court is correct, a successful plaintiff given a less-than-complete remedy could not ask for correction without putting at risk the judgment in her favor though the party cast in judgment has raised no question of the validity of the judgment. A defendant successful on five claims cannot safely seek for correction concerning claim six.

* * *

Nevertheless, the interest of the parties and society in the finality of judgments, and the legitimate expectation of the parties concerning the judgment to the extent it is not questioned by the parties, speak against pulling the rug from under the plaintiff [seven] months after she filed her motion to correct errors in the remedy granted her.

Although the *Hilde* court discussed the egregiousness of the shift because of the seven-month delay, our Supreme Court, in *Leviner v. Sonoco Products Company*, 339 S.C. 492, 530 S.E.2d 127 (2000), suggested the Circuit Court's jurisdiction evaporated at the end of ten days (not seven months). A month after entering its first order, the Circuit Court entered a subsequent, written order, that had the effect of reversing the court's original order. When the matter was ultimately reviewed by our Supreme Court, that Court concluded the second order was void (a term used for actions taken without jurisdiction, as opposed to a mere lack of authority) because ten days had run from the entry of the initial order. *Id.* at 494, 530 S.E.2d at 128.

The Court's August 24 Order was entered 20 days after the Court's August 4 Order. Thus, the Court lacked the jurisdiction to vacate the August 4 Order.

2. Further, Plaintiff wrote to the Court asking the Court to act with respect to the Court's August 4 Order. Plaintiff did not *move* the Court to grant any relief. As a result, Rosenthal and RLSR did not have proper notice or the opportunity substantively to respond but rather merely objected to the Court's considering correspondence as there is no required process in the South Carolina Rules of Civil Procedure for a party to respond to "correspondence" or a reasonable understanding that a court would rescind a valid order based on a party's e-mail to the ruling judge. *Cf. Loftis v. Loftis*, 286 S.C. 12, 331 S.E.2d 372 (Ct. App. 1985)

(holding a party is not entitled to receive relief not contemplated by the *pleadings*). Had Rosenthal and RLSR been faced with a motion and failed to respond, then the Court's August 24 Order would not have been so shocking. As a result, the Court's granting relief based on correspondence rather than a motion, without notice and an opportunity to respond, should not stand. *Id.* at 14, 331 S.E.2d at 373 (holding that liberally construing pleadings "cannot be stretched so as to permit the judge to award relief not contemplated by the pleadings")

3. The Court's August 4 Order was a proper order to address Plaintiff's Initial Motion. The Court's August 4 Order appears to be identical in all material respects to the Court's June 8 Order. However, rather than being improper as suggested in Plaintiff's correspondence, the Court's action makes perfect sense. A Court's issuing the same order in response to a party's motion to reconsider prevents (at least, it should prevent) parties from endlessly filing successive motions to reconsider by asserting some nuanced change in a court's ruling that a party must either challenge or run the risk of waiving on appeal because of that party's failure to file a (proper) successive motion to reconsider. This is consistent with our Supreme Court's policy of "striv[ing] to avoid an interpretation of procedural rules which routinely would place a party between the proverbial rock and a hard place." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 25, 602 S.E.2d 772, 780-81 (2004).
4. The Supreme Court's policy, as applied here, should have alleviated Plaintiff's own concerns over the uncertainty of Plaintiff's successive motion to reconsider. *See* Correspondence from Plaintiff's Counsel, dated August 18, 2020, attached to this Motion as Exhibit C.
5. Rosenthal and RLSR are not aware of any rule of civil procedure or judicial precedent that requires a court to file an order in exactly the form or address issues in exactly the manner that one party would prefer, particularly when issuing and then rescinding an order has the

effect of reviving a case of which the court had already disposed to the detriment of the prevailing party(ies).

6. Further, the Office of the Clerk of Court understood this Court's August 4 Order as *the order* issued in response to Plaintiff's Initial Motion. The Clerk's Office transmitted a Rule 77 Notice in response to the Court's August 4 Order and "disposed" of the case in the public index and prohibited further e-filings. As a result, Rosenthal and RLSR understood the August 4 Order to be *the Order* addressing Plaintiff's Initial Motion. To *sua sponte* rescind that order is fundamentally unfair to these Named-Defendants who have been disputing this matter for over a decade.
7. Substantively, the Court's August 4 Order addressed the sole, two issues raised in Plaintiff's Initial Motion: (1) service of process and (2) jurisdiction. These are the same issues Rosenthal and RLSR raised in their Motion to Dismiss, these are the same issues Rosenthal and RLSR and Plaintiff argued at the January 2020 Hearing, and these are the exact same issues addressed in this Court's June 8 Order. Regardless of how this Court elected to address those issues in the August 4 Order, they are, in fact, the same two issues.
8. Further, Plaintiff's Successive Motion is not a valid motion to reconsider. By Plaintiff's own admission, Plaintiff's Successive Motion does not raise any new argument to this Court but rather is substantively identical to Plaintiff's Initial Motion.
9. Further, Plaintiff's Successive Motion admits the Court's August 4 Order is substantively identical to the Court's June 8 Order. As a result, Plaintiff's Successive Motion does not seek to raise some issue that the Court's August 4 Order addressed for the first time. Rather, with apologies to three of the Gospels, it is Plaintiff's attempt to put seemingly new wine in the same old skins. *Elam*, 361 S.C. at 25, 602 S.E.2d at 780-81 (2004). (discussing the impropriety of filing a successive motion to reconsider in response to a court's ruling that does not result in a substantial alteration of the original).

10. Finally, Plaintiff's Successive Motion does not raise, with any specificity, how the Court's August 4 Order did not rule on every issue raised in Plaintiff's Initial Motion. Rather, Plaintiff's Successive Motion summarily states, without explanation or example, that the Court's August 4 Order "did not discuss or rule on Plaintiff's Motion to Reconsider." (Successive Motion, ¶ 5). However, as described above, the Court's June 8 Order ruled on two issues. Plaintiff's Initial Motion raised those two issues. The Court's August 4 Order ruled on those same, two issues. Yet, neither Plaintiff's correspondence nor Plaintiff's Successive Motion provides any specificity as to how the Court's August 4 Order failed to address Plaintiff's arguments. Again, as noted above, Rosenthal and RLSR are not aware of any rule of civil procedure or judicial precedent that requires a court to file an order in exactly the form or address issues in exactly the manner that one party would prefer, particularly when issuing and then rescinding an order has the effect of reviving a case of which the court had already disposed to the detriment of the prevailing party(ies). If, as Plaintiff suggests, the Court's August 4 Order did not adequately address Plaintiff's Initial Motion, then Plaintiff could have filed a successive motion to reconsider addressing the *specific* areas in which the Court failed to address Plaintiff's Initial Motion. Rather, Plaintiff filed the same motion with a new introduction and a brief rehash for the January 20 Hearing arguments.²

CONCLUSION

For the foregoing reasons, this Court should rescind its August 24 Order as being a nullity or otherwise improvidently granted, which would have the impact of reinstating the August 4 Order, which did, in fact, dispose of Plaintiff's Initial Motion.

[SIGNATURE PAGE FOLLOWS]
[REMAINDER OF PAGE INTENTIONALLY BLANK]

²Rosenthal and RLSR do not intend to suggest Plaintiff would have been justified in filing any successive motion to reconsider, but instead are simply stating that would have been an option. Instead, Plaintiff sent some correspondence to the Court, and the Court used that improperly relied on that correspondence to rescind a valid order disposing of this case as to Rosenthal and RLSR.

KOZLAREK LAW LLC

/s/ Michael E. Kozlarek

Michael E. Kozlarek (SC Bar #69330)

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330 South Main Street (29601)

Post Office Box 565

Greenville, South Carolina 29602-0565

O: 864.527-5941

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Attorney for:

Named-Defendant Gerald Rosenthal,

Named-Defendant Rosenthal, Levy, Simon,

and Ryles, PA

Greenville, South Carolina
September 3, 2020

Michael Kozlarek

From: Melvin D. Bannister <sctriallawyer@bellsouth.net>
Sent: Wednesday, August 12, 2020 14:51
To: jcolej@sccourts.org; Michael Kozlarek; Justin Novak; Melvin Bannister
Subject: Fechter v. Ortner, Rosenthal, et al; 2017-CP-10-4371
Attachments: J. Derham Cole 8-12-20.pdf

Dear Judge Cole:

Transmitted herewith is letter, which I have mailed and faxed to you.

Melvin D. Bannister
P. O. Box 811
Columbia, SC 29202
(p) 803-782-8688
(f) 803-782-8677

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MELVIN D. BANNISTER

Trial Lawyer

**1826 Bull Street
Columbia, SC 29201**

Email: sctriallawyer@bellsouth.net

Telephone: (803) 782-8688
Fax: (803) 782-8677

Mailing Address:
Post Office Box 811
Columbia, SC 29202

By US Mail, email jcolej@sccourts.org, and fax 864-596-3592

August 12, 2020

The Honorable Joseph Derham Cole
PO Box 1744
Spartanburg, SC 29304

Re: Fechter v. Ortner, Rosenthal, et al.
2017-CP-10-4371

Dear Judge Cole:

I am in receipt of notice of the filing of your order of August 4, 2020, entitled "ORDER GRANTING GERALD ROSENTHAL'S AND ROSENTHAL, SIMON, LEVY, AND RYLES' JOINT MOTION TO DISMISS". This Order relates to an action brought by Dr. Fechter against Gerald Rosenthal and others. I believe that this order, (which is exactly the same order which you issued on June 8, 2020) does not address the Plaintiff's motion to reconsider, filed under Rule 59, on June 17, 2020. I respectfully request that you render an order disposing of this motion to reconsider. If you believe a conference call among the Court and counsel would be in order to discuss this matter, I will make myself available at your convenience.

Thank you.


Melvin Bannister

cc: Michael E. Kozlarek, Esq. (by email)
Justin P. Novak, Esq. (by email)

Michael Kozlarek

From: Michael Kozlarek
Sent: Wednesday, August 12, 2020 15:07
To: jcolej@sccourts.org
Cc: Melvin D. Bannister; Justin Novak
Subject: RE: Fechter v. Ortner, Rosenthal, et al; 2017-CP-10-4371

Importance: High

Dear Judge Cole:

The South Carolina Rules of Civil Procedure ("Rules") provide a framework for all civil litigation. That framework involves pleadings, discovery, motions, hearings, and orders. Even pre-trial hearings ("status conferences"), according to Rule 16, require action initiated by the Court or by a "motion of any party." As far as Gerald Rosenthal and Rosenthal, Levy, Simon, and Ryles, PA are aware, "letters" do not feature in the Rules' framework.

As a result, Gerald Rosenthal and Rosenthal, Levy, Simon, and Ryles, PA object to the Court's considering (for any reason) Plaintiff's letter, dated August 12, 2020, as being improper under the Rules. If Plaintiff deems it appropriate to file a **motion** to seek some relief from the Court, then Plaintiff may file that motion according to the applicable Rule(s). And, Gerald Rosenthal and Rosenthal, Levy, Simon, and Ryles, PA would have the opportunity to respond to that motion according to the framework provided by the Rules.

Otherwise, litigation would devolve into precisely this: a letter writing campaign to the Court.

Thank you,

Michael E. Kozlarek
Admitted: SC, GA, NC, VA



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From: Melvin D. Bannister <sctriallawyer@bellsouth.net>
Sent: Wednesday, August 12, 2020 14:51
To: jcolej@sccourts.org; Michael Kozlarek <michael@kozlareklaw.com>; Justin Novak <jnovak@barnwell-whaley.com>; Melvin Bannister <sctriallawyer@bellsouth.net>
Subject: Fechter v. Ortner, Rosenthal, et al; 2017-CP-10-4371

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ELECTRONICALLY FILED - 2020 Sep 03 5:03 PM - CHARLESTON - COMMON PLEAS - CASE#2017CP1004371

Michael Kozlarek

From: Melvin D. Bannister <sctriallawyer@bellsouth.net>
Sent: Tuesday, August 18, 2020 09:42
To: jcolej@sccourts.org; Michael Kozlarek; Justin Novak; Melvin Bannister
Subject: Fechter v. Ortner, Rosenthal, et al; 17-CP-10-4371

Dear Judge Cole:

Due to the jurisdictional issue concerning appeals, I request that you issue a Form 4 order withdrawing the erroneously filed August 4, 2020 (Rosenthal) order. If you cannot issue the Form 4 order, I will have to file an appeal by September 3, since the time limit to file a notice of appeal cannot be extended, even by agreement.

Thank you for your kind consideration.

Melvin D. Bannister
P. O. Box 811
Columbia, SC 29202
(p) 803-782-8688
(f) 803-782-8677

Confidentiality Notice: This electronic transmission is intended for the individual or entity to which it is addressed. This communication may contain information that is privileged, confidential, or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify Melvin D. Bannister, immediately by phone or facsimile at the above numbers.

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2017-CP-10-04371

Cary E. FECHTER, MD,

Leon Martin ORTNER, The ORTNER LAW FIRM, LLC,
Gerald ROSENTHAL, and ROSENTHAL, LEVY, SIMON,
and RYLES, PA,

Plaintiff(s)

Defendant(s)

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED** (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN** (CHECK REASON): Rule 40(j) SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other

IT IS ORDERED AND ADJUDGED: formal order to follow; **Statement of Judgment by the Court:**

This matter is before the Court on Plaintiff's Rule 59(e) motions to reconsider Orders filed 06/08/2020 (Rosenthal) and 08/04/2020 (Ortner) dismissing the complaint against all defendants, and on Defendants' (Rosenthal) Rule 59(e) motion to reconsider an 08/24/2020 Order vacating an 08/04/2020 Order granting the Rosenthal defendants' motion to dismiss.

This matter was initially before this court on the defendants' motions to dismiss this civil action. The motions were granted as reflected in a Form 4 Order filed 02/05/2020. Formal orders were filed 06/08/2020 (Rosenthal Order) and 08/04/2020 (Ortner Order) explaining the rulings of the Court. The identical 06/08/2020 (Rosenthal) Order was inadvertently and erroneously filed a second time on 08/04/2020. On 08/24/2020 the Court, upon realization of the filing error, filed a Form 4 Order vacating the identical "Rosenthal" Order filed on August 4, 2020 and providing that "[t]he original order granting the defendants' [Rosenthal] motion to dismiss which was filed for record on June 8, 2020 shall stand alone as the ruling of this Court on the defendants' motion to dismiss".

This Court has considered **PLAINTIFF'S** and **DEFENDANTS' MOTIONS** to **RECONSIDER** and the respective briefs and argument submitted in support and opposition to, and now find that; (1) Plaintiff's motions to reconsider the Court's 06/08/2020 Order dismissing the Rosenthal defendants and the Court's 8/04/2020 Order dismissing the Ortner defendants, and (2) the Rosenthal defendants' motion to reconsider the Court's 08/24/2020 Order vacating an 08/04/2020 Order dismissing the Rosenthal defendants should be and **ARE** therefore **DENIED**.

J. DERHAM COLE,

PRESIDING JUDGE

This judgment was entered on the _____ day of _____ and a copy mailed first class this _____ day of _____ to attorneys of record or to parties (when appearing pro se) as follows:

MELVIN D. BANNISTER, Esq.

JUSTIN P. NOVAK, Esq.

MICHAEL E. KOZLAREK, Esq.

ATTORNEY(S) FOR PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

JULIE J. ARMSTRONG, CLERK OF COURT

ELECTRONICALLY FILED - 2021 Mar 30 10:28 AM - CHARLESTON - COMMON PLEAS - CASE#2017TCP1004371

APPELLANT'S EXHIBIT B

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2017-CP-10-04371

Cary E. FECHTER, MD,

Leon Martin ORTNER, The ORTNER LAW FIRM, LLC,
Gerald ROSENTHAL, and ROSENTHAL, LEVY, SIMON,
and RYLES, PA,

Plaintiff(s)

Defendant(s)

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED** (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN** (CHECK REASON): Rule 40(j) SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other

IT IS ORDERED AND ADJUDGED: formal order to follow; **Statement of Judgment by the Court:**

This matter is before the Court on Plaintiff's Rule 59(e) motions to reconsider Orders filed 06/08/2020 (Rosenthal) and 08/04/2020 (Ortner) dismissing the complaint against all defendants, and on Defendants' (Rosenthal) Rule 59(e) motion to reconsider an 08/24/2020 Order vacating an 08/04/2020 Order granting the Rosenthal defendants' motion to dismiss.

This matter was initially before this court on the defendants' motions to dismiss this civil action. The motions were granted as reflected in a Form 4 Order filed 02/05/2020. Formal orders were filed 06/08/2020 (Rosenthal Order) and 08/04/2020 (Ortner Order) explaining the rulings of the Court. The identical 06/08/2020 (Rosenthal) Order was inadvertently and erroneously filed a second time on 08/04/2020. On 08/24/2020 the Court, upon realization of the filing error, filed a Form 4 Order vacating the identical "Rosenthal" Order filed on August 4, 2020 and providing that "[t]he original order granting the defendants' [Rosenthal] motion to dismiss which was filed for record on June 8, 2020 shall stand alone as the ruling of this Court on the defendants' motion to dismiss".

This Court has considered **PLAINTIFF'S** and **DEFENDANTS' MOTIONS** to **RECONSIDER** and the respective briefs and argument submitted in support and opposition to, and now find that; (1) Plaintiff's motions to reconsider the Court's 06/08/2020 Order dismissing the Rosenthal defendants and the Court's 8/04/2020 Order dismissing the Ortner defendants, and (2) the Rosenthal defendants' motion to reconsider the Court's 08/24/2020 Order vacating an 08/04/2020 Order dismissing the Rosenthal defendants should be and **ARE** therefore **DENIED**.

J. DERHAM COLE, PRESIDING JUDGE

This judgment was entered on the _____ day of _____ and a copy mailed first class this _____ day of _____ to attorneys of record or to parties (when appearing pro se) as follows:

MELVIN D. BANNISTER, Esq.

ATTORNEY(S) FOR PLAINTIFF(S)

JUSTIN P. NOVAK, Esq.
MICHAEL E. KOZLAREK, Esq.

ATTORNEY(S) FOR THE DEFENDANT(S)

JULIE J. ARMSTRONG, CLERK OF COURT

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