

Jul 20 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 DEWBERRY 334 MEETING)
 STREET, LLC,)
 Appellant-Petitioner,)
)
 v.)
)
 CITY OF CHARLESTON and)
 CITY OF CHARLESTON BOARD OF)
 ARCHITECTURAL REVIEW-LARGE,)
 Respondents.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Case No.: 2018-CP-10-00148

**ORDER ON APPELLANT’S MOTION
FOR RECONSIDERATION**

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|------------------------|--------------------------------|
| Presiding Judge: | Hon. Deadra L. Jefferson |
| Appellant’s Attorney: | G. Trenholm Walker, Esq. |
| Respondents’ Attorney: | Daniel S. McQueeney, Jr., Esq. |
| Date of Hearing: | January 4, 2021 |
| Court Reporter: | N/A |

This matter came before the Court on Appellant’s Motion to Reconsider, Alter, or Amend, filed March 8, 2021. The Appellant asks the Court to reconsider its Order on Appeal, filed February 25, 2021. The Court received a copy of the Motion to Reconsider, Alter, or Amend on March 9, 2021. Counsel for the Respondents advised the Court that they did not intend to file a response to the Motion to Reconsider, Alter, or Amend. After consideration of the record, as well as the various interests balanced by the Court at the time of the ruling, the Appellant’s to Reconsider, Alter, or Amend is heard and respectfully Denied.¹

CONCLUSIONS OF LAW

“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

¹ This Motion is disposed of without the necessity of a hearing and decided on the record and briefs. Rule 59(f), SCRPC; Pollard v. City of Florence, 314 S.C. 397, 401–402, 444 S.E.2d 534, 536 (Ct. App. 1994).

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)).

“A party filing a written motion under this rule shall provide a copy of the motion to the judge within ten (10) days after the filing of the motion.” Rule 59(g), SCRPC; See also Smith v. Fedor, 422 S.C. 118, 126, 809 S.E.2d 612, 161 (Ct. App. 2017) (“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.”).

I. The Motion to Reconsider, Alter, or Amend is heard and respectfully Denied.

The gravamen of the Appellant’s Motion to Reconsider, Alter, or Amend is that the Court erred in finding that the Respondent had the authority to determine the exterior illumination of buildings in Charleston’s Old and Historic District, and that the Court erred in holding that the Respondent’s ordinances as applied to the Appellant were unconstitutionally vague.

A. The Appellant’s contention that the Respondent did not have the authority to determine the exterior illumination of buildings in Charleston’s Old and Historic District is without merit.

The Court conducted a thorough review of the record and analyzed in detail whether the Respondent had the authority to determine the exterior illumination of building Charleston’s Old and Historic District and concluded that the Charleston Zoning Ordinances (“CZO”) expressly authorized the Respondent to review and approve, disapprove, or conditionally approve any alterations to the exterior architectural appearance of a building or structure within Charleston’s Old and History District.. See Court’s February 25, 2021 at 8-10. Accordingly, the Motion to Reconsider, Alter, or Amend as to this ground is Denied.

B. The Appellant’s contention that the Respondent’s ordinances as applied to the Appellant were unconstitutionally vague is without merit.

The Court conducted a thorough review of the record and analyzed in detail whether the Respondent’s application of the CZO as to the Appellant was unconstitutionally vague, and concluded that the Respondent failed to meet its burden of establishing by clear and convincing evidence that the governing ordinances are unconstitutionally vague. See Court’s February 25, 2021 Order at 10-15. Accordingly, the Motion to Reconsider, Alter, or Amend as to this ground is Denied.

CONCLUSION

After fully considering the Appellant's Motion to Reconsider, Alter, or Amend, the Court finds that the Appellant seeks only to reargue the issues on the same basis previously presented to the Court and presents no novel facts, arguments, or theories in support of its position. The Appellant has not highlighted any portions of the record this Court may have misunderstood, failed to fully consider, or perhaps failed to rule on. Accordingly, the Motion to Reconsider, Alter, or Amend is heard and respectfully Denied.

AND IT IS SO ORDERED.

Hon. Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

June _____, 2021
Charleston, South Carolina



Charleston Common Pleas

Case Caption: Dewberry 334 Meeting Street LLC VS Charleston City Of ,
defendant, et al
Case Number: 2018CP1000148
Type: Order/Other

IT IS SO ORDERED.

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