

STATE OF SOUTH CAROLINA

COUNTY OF HAMPTON

Renee S. Beach, as Personal Representative of
the Estate of Mallory Beach,

Plaintiff,

v.

Gregory M. Parker, Inc. d/b/a Parker's
Corporation, Richard Alexander Murdaugh,
Richard Alexander Murdaugh, Jr., John Marvin
Murdaugh, as P.R. of The Estate of Margaret
Kennedy Branstetter Murdaugh, and Randolph
Murdaugh, IV, as P.R. of the Estate of Paul Terry
Murdaugh,

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Civil Action No.: 2019-CP-25-00111

**CO-RECEIVERS' RESPONSE IN
OPPOSITION TO ALEX
MURDAUGH'S MOTION TO
RECONSIDER**

Peter M. McCoy, Jr. and John T. Lay, Jr. ("Co-Receivers"), by and through undersigned counsel, hereby respond to Defendant Richard Alexander Murdaugh's ("Murdaugh") Motion to Reconsider this Court's May 12, 2023, Order denying his application for access to and use of \$160,000 of receivership funds for payment of attorneys' fees and costs related to the appeal of his recent murder convictions and the sentences imposed thereon. For the reasons stated herein, in the briefings submitted in opposition to Murdaugh's Motion for Payment of Attorneys fees and those presented at the hearing thereof, Murdaugh's Motion to Reconsider should be denied.

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 Importantly, a motion for reconsideration is not a vehicle to re-litigate archived issues or "to raise argument or present evidence that could have been presented prior to the entry of judgment." *Dash v.*

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.").

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 for the first time raise an issue by way of a Rule 59(e) motion which could have been raised” before the decision was rendered. *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, and such a motion should not be used to rehash arguments previously presented or to submit evidence which should have been previously submitted.” *In re Pella Corp. Architect & Designer Series Windows Mktg., Sales Practices & Prods. Liab. Litig.*, 269 F.Supp. 3d 685, 691 (D.S.C. 2017). South Carolina courts have delineated the proper purposes of a Rule 59(e) motion stating,

our rules contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. 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. 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. S.C. Dep’t of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004).

Murdaugh presents no new arguments and instead rehashes those previously presented to and rejected by this Court. As such, the Co-Receivers incorporate herein by reference the arguments presented in prior briefing on this matter and those presented at the hearing of the underlying motion. Murdaugh’s Motion to Reconsider should be denied on the same grounds.

Regardless, there remains no Constitutional right to choice of counsel on appeal. *See, Tamalini v. Stewart* (249 F.3d 895) (10th Cir. 2001) (“Simply put, none of the Sixth Amendment’s protections, including a criminal defendant’s qualified right to choice of counsel extends to a

criminal appeal.”); *U.S. v. Marshall* (872 F.3d 213 (4th Cir. 2017) (“The Supreme Court has never held that defendants enjoy the right to counsel of choice on appeal.”); *Martinez v. Court of Appeal of California*, 528 US 152 (2000) (“The Sixth Amendment identifies the basic rights that the accused shall enjoy in “all criminal prosecutions. They are presented strictly as rights that are available in preparation for trial and at the trial itself.”). Additionally, Murdaugh provides no theory overcoming his express waiver of the claim being made. Specifically, Murdaugh voluntarily relinquished the funds in question to the Co-Receivers for their control consistent with the receivership. By and through Murdaugh’s motion, Murdaugh now argues the Co-Receivers exercise of control over the funds (which control was voluntarily provided by Murdaugh himself) violates his Constitutional rights. As discussed in prior briefing, whether through operation of judicial estoppel or waiver, Murdaugh’s arguments fail and his motion should be denied.

CONCLUSION

For the reasons stated herein and at any hearing of this matter, the Co-Receivers respectfully request Murdaugh’s Motion to Reconsider be denied.

s/Jordan M. Crapps

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