

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION**

Mary C. Randall,)	
)	Civil Action No.: 1:16-cv-00255-JMC
Plaintiff,)	
)	
v.)	ORDER AND OPINION
)	
R.M. Tierney, C.P.C.U., ACI Branch)	
Manager; M.C. Pederson, AMICA)	
Adjuster,)	
)	
Defendants.)	
_____)	

This matter is before this court upon Plaintiff’s *pro se* Motion to Reconsider the court’s Order entered on June 7, 2017, dismissing Plaintiff’s Complaint with prejudice and granting Defendant’s Motion to Dismiss. (ECF No. 71.) For the reasons discussed below, the court **DENIES** Plaintiff’s Motion to Reconsider.

I. PROCEDURAL BACKGROUND

On January 27, 2016, Plaintiff filed a Complaint against Defendants. (ECF No. 1.) On February 25, 2016, Defendants filed a Motion to Dismiss. (ECF No. 22.) On April 18, 2016, the Magistrate Judge issued a Report and Recommendation (“Report”) recommending that the court grant Defendants’ Motion to Dismiss, but that Plaintiff be allowed 15 days to file an amended complaint. (ECF No. 32.) On May 6, 2016, Plaintiff filed her Amended Complaint. On August 3, 2016, the court adopted the Magistrate Judge’s Report and dismissed Plaintiff’s original Complaint without prejudice, but finding Plaintiff’s Amended Complaint as timely filed. (ECF No. 44.) On September 28, 2016, Defendants filed a Motion to Dismiss Plaintiff’s Amended Complaint. (ECF No. 50.) On January 11, 2017, the Magistrate Judge filed a second Report and

Recommendation (“Report II”) recommending that Plaintiff’s Amended Complaint be dismissed with prejudice. (ECF No. 60.) On June 7, 2017, this court adopted the Magistrate Judge’s Report II and dismissed Plaintiff’s Amended Complaint with prejudice. On June 20, 2017, Plaintiff filed an Objection to the Order and Opinion, which shall be construed, according to the rules governing the liberal construction of *pro se* litigants, as a Motion to Reconsider. (ECF No. 74.)

II. LEGAL STANDARD AND ANALYSIS

Plaintiff is a *pro se* litigant and her complaint is afforded liberal construction so as to give her an opportunity to have a claim stated where her alleged facts would merit one. *Erickson v. Pardus*, 551 U.S. 89, 94 (2014) (per curiam). A *pro se* complaint, regardless of how inartfully pled, must be held to less stringent standards than formal pleadings drafted by lawyers. *Estelle v. Gamble*, 429 U.S. 97, 111 (1976). Here, the closest recognized motion to an “Objection to Order and Opinion” is a Motion for Reconsideration, and therefore Plaintiff’s filing shall be construed as such to give her the best opportunity to succeed on her claim.

One may be relieved of a judgment or order where the court either makes a clerical error, oversight, or mistake, or where one of the following occurred in court proceedings: “(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief.” Fed. R. Civ. P. 60 (2016).

Here, Plaintiff does not attempt to claim (1) mistake, inadvertence, or neglect on the part of the court, (2) new evidence, (4) void judgment, or (5) satisfied, released, or discharged judgment.

Plaintiff instead claims (3) that the other party committed fraud, misrepresentation and misconduct throughout the trial and will be considered for (6) any other reason.

Plaintiff's Motion does not bring new allegations to light, but does claim that the findings in the case were non-factual, that the other party was speeding, and that she was braking and not accelerating during the crash. (ECF No. 74.) Plaintiff however provides no new evidence to back up these allegations, and in fact, the court did take into account the fact that Plaintiff was braking and not accelerating, however, this did not adjust the finding against Plaintiff, as her fault in the accident was determined to be the result of an improper lane change, albeit going at only 16 miles an hour. (ECF No. 60, *adopted* by this court in ECF No. 71.) Plaintiff alleges that this court acted in an unconstitutional fashion and relied upon non-factual/fabricated findings, but fails to allege in what manner this court acted unconstitutionally and fails to list which findings are alleged to be non-factual and her evidence for said allegations. Therefore, Plaintiff has failed to show that she is entitled to reconsideration of her original claim against AMICA and its employees.

Plaintiff's Motion for Reconsideration may also lie under Rule 59(e). Rule 59 allows a party to seek an alteration or amendment of a previous order of the court. Fed. R. Civ. P. 59(e). Under Rule 59(e), a court may "alter or amend the judgment if the movant shows either (1) an intervening change in the controlling law, (2) new evidence that was not available at trial, or (3) that there has been a clear error of law or a manifest injustice." *Robinson v. Wix Filtration Corp.*, 599 F.3d 403, 407 (4th Cir. 2010); *see also Collison v. Int'l Chem. Workers Union*, 34 F.3d 233, 235 (4th Cir. 1994). It is the moving party's burden to establish one of these three grounds in order to obtain relief. *Loren Data Corp. v. GXS, Inc.*, 501 F. App'x 275, 285 (4th Cir. 2012). The decision whether to reconsider an order under Rule 59(e) is within the sound discretion of the district court. *Hughes v. Bedsole*, 48 F.3d 1376, 1382 (4th Cir. 1995). A motion to reconsider should not be used as a "vehicle for rearguing the law, raising new arguments, or petitioning a

court to change its mind.” *Lyles v. Reynolds*, C/A No. 4:14-1063-TMC, 2016 WL 1427324, at *1 (D.S.C. Apr. 12, 2016) (citing *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 485 n.5 (2008)).

Here, Plaintiff does not allege that there has been an intervening change in the controlling law, nor does she raise new evidence that was not available at trial. (ECF No. 74.) While Plaintiff does make the legal conclusion that the initial decision resulted in legal error and manifest injustice, Plaintiff fails to allege any facts in support of her claim. (ECF No. 74.) Therefore, Plaintiff’s Motion to Reconsider fails under the requirements of both Rules 59(e) and 60 of the Federal Rules of Civil Procedure.

III. CONCLUSION

Based on the aforementioned reasons, the court **DENIES** Plaintiff’s Motion to Reconsider (ECF No. 74).

IT IS SO ORDERED.



United States District Judge

July 18, 2017
Columbia, South Carolina