

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Deborah Mihal, and American Civil Liberties Union Foundation of South Carolina,

Plaintiffs,

v.

Governor Henry McMaster, in his official capacity, and Marcia S. Adams, Executive Director of the South Carolina Department of Administration, in her official capacity,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A No.: 2021-CP-40-01599

RESPONSE OF DEFENDANT MARCIA ADAMS TO PLAINTIFFS' MOTION TO RECONSIDER

Following this Court's Order of April 9, 2021, denying Plaintiffs' Motion for Temporary Restraining Order ("TRO") and/or Preliminary Injunction, Plaintiffs filed today – April 12, 2021 – a Motion to Reconsider.

For the reasons set forth below, Defendant Marcia S. Adams, Executive Director of the South Carolina Department of Administration ("SCDOA"), respectfully requests that the Court DENY the Plaintiffs' Motion to Reconsider.

STANDARD OF REVIEW

As an initial matter, Courts have long viewed a motion under Rule 59(e), SCRPC, as a "motion for reconsideration" despite the absence of those words from the rule. Consequently, a party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778-79 (2004).

Also, under Rule 65, SCRPC, “[a]n injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff.” *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004) (emphasis added). In order to obtain this type of relief, Plaintiffs must establish three elements. First, the Plaintiffs must convince the Court that they have a likelihood of success on the merits. Second, the Plaintiffs must show that they have an inadequate remedy at law. Third, the Plaintiffs must demonstrate that they will suffer irreparable harm in the absence of an injunction. *County of Richland v. Simpkins*, 348 S.C. 664, 669, 560 S.E.2d 902, 904 (2002); *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 50, 674 S.E.2d 505, 508 (S.C. App. 2009)

PLAINTIFFS’ MOTION TO RECONSIDER

In their Motion to Reconsider, Plaintiffs make the following general complaints about the Order of April 9, 2021:

- Plaintiffs were not “afforded an opportunity to present additional evidence on disputed factual issues central to the Court’s determination, including the premise that Plaintiffs would be able to obtain effective vaccination intime for their mandated return in person, that adequate childcare arrangements were available to Plaintiffs, and that adequate safety precautions and/or accommodations were available to their workplace.” (Plaintiff’s Motion, pp. 2-3).
- Plaintiffs also argue that the court committed errors of law, primarily those incorporated by reference from their “Reply” brief filed before the Court entered its Order on April 9, 2021. (Plaintiff’s Motion, p. 3).

LEGAL DISCUSSION

Plaintiffs’ Motion to Reconsider simply rehashes the same arguments that were already before the Court earlier. Notably, Plaintiffs have failed to demonstrate that the Court abused its discretion in denying their Motion for Temporary Restraining Order (“TRO”) and/or Preliminary Injunction. The granting of temporary injunctive relief is within the sound discretion of the trial

court and will not be overturned absent an abuse of that discretion. *City of Columbia v. Pic-A-Flick Video, Inc.*, 340 S.C. 278, 282, 531 S.E.2d 518, 520–21 (2000). “An abuse of discretion occurs when a trial court’s decision is unsupported by the evidence or controlled by an error of law.” *County of Richland v. Simpkins*, 348 S.C. 664, 668, 560 S.E.2d 902, 904 (S.C. App. 2002); *MailSource, LLC v. M.A. Bailey & Assocs.*, 356 S.C. 363, 367, 588 S.E.2d 635, 637–38 (Ct. App. 2003), *holding modified by Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 694 S.E.2d 15 (2010).

Plaintiffs are utterly unable to meet the remarkably high standard required to show that to Plaintiffs’ argument, it appears that the Court carefully considered the positions of the parties through their extensive briefing and the documentary evidence submitted to the Court by both parties for consideration. The Court was perfectly able to consider the evidence that had been submitted to the Court and had been served on opposing parties.

If anything, Plaintiffs’ Motion to Reconsider reaffirms one of this Court’s findings. Plaintiffs may strongly disagree with the policy determinations of the Governor in ordering State Employees to return to the workplace on a full-time basis, but have failed to set forth a *legal* reason why the Governor cannot act to return State employees to work. Plaintiffs’ mere disagreement concerning the policy determinations of the Governor cannot justify this Court’s taking the drastic step of issuing a preliminary injunction against the Executive Branch of government.

In any event, for the reasons listed in the Order of April 9, 2021, Defendant Adams respectfully requests that the Court affirm its earlier Order and deny Plaintiffs’ Motion to Reconsider.

Dated this the 12th day of April, 2021.

Respectfully submitted,

RICHARDSON PLOWDEN & ROBINSON, P.A.

s/ Eugene H. Matthews

Eugene H. Matthews

Post Office Drawer 7788

Columbia, South Carolina 29202

T: (803) 771-4400

F: (803) 779-0016

E-mail: gmatthews@RichardsonPlowden.com

**COUNSEL FOR DEFENDANT MARCIA ADAMS, IN HER
OFFICIAL CAPACITY AS EXECUTIVE DIRECTOR OF
THE SOUTH CAROLINA DEPARTMENT OF
ADMINISTRATION**