STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
DEBORAH MIHAL, and the AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF SOUTH CAROLINA,	)	Civil Action No. 2021-CP-40-01599
Plaintiffs,	)	**ORDER DENYING PLAINTIFFS' MOTION TO RECONSIDER**
vs.	)	
GOVERNOR HENRY D. MCMASTER, in his official capacity; and MARCIA S. ADAMS, Executive Director of the South Carolina Department of Administration, in her official capacity,	)	
Defendants.	)	

This matter comes before the Court on Plaintiffs Deborah Mihal and the American Civil Liberties Union Foundation of South Carolina's ("ACLU") April 12, 2021 Motion to Reconsider the Court's April 9, 2021 Order Denying Plaintiffs' Motion for Temporary Restraining Order ("TRO") and/or Preliminary Injunction. Defendants Governor Henry D. McMaster, in his official capacity ("Governor McMaster" or "Governor"), and Marcia S. Adams, Executive Director of the South Carolina Department of Administration, in her official capacity ("Director Adams"), filed Responses opposing the Motion on April 12, 2021. Plaintiffs have asked the Court for a decision "as quickly as practicable and without delay." Pls.' Mot. to Recons. at 3, ¶ 10. For the reasons that follow, Plaintiffs' Motion to Reconsider is **DENIED**.

The Supreme Court of South Carolina has recognized "two basic situations in which a party should consider filing a Rule 59(e)[,SCRCP,] motion." Elam v. S.C. Dep't of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). Under the rule, "[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." Id. But "[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." Id. In their Rule 59(e) motion, Plaintiffs ask the Court to reconsider its Order denying their Motion for TRO and/or Preliminary Injunction. "The remedy of an injunction is a drastic one and ought to be applied with caution." Strategic Res. Co. v. BCS Life Ins. Co., 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). "Whether to grant a preliminary injunction is left to the sound discretion of the trial court and will not be overturned unless it is clearly erroneous." Compton v. S.C. Dep't of Corr., 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011). Against this backdrop, the Court finds reconsideration is unwarranted.

At the outset, Plaintiffs' argument that a hearing was necessary is misplaced. See Pls.' Mot. to Recons. at ¶¶ 1–3, 5–7. Rule 65, SCRCP, does not require the Court to hold a hearing for Plaintiffs. Instead, a hearing would only have become necessary to give Defendants an opportunity to respond if the Court had granted Plaintiffs' request for a TRO. See Rule 65(a)–(c), SCRCP; cf. S.C. Progressives Network Educ. Fund v. Andino, No. 3:20-cv-03503-MGL, 2020 WL 5995325, at *4 (D.S.C. Oct. 9, 2020) ("As a preliminary matter, 'Rule 65 does not require an evidentiary hearing[,]' so long as 'the party opposing the preliminary injunction [has] a fair opportunity to oppose the application and to prepare for such opposition.'" (quoting Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Loc. No. 70 of Alameda Cty., 415 U.S. 423, 432 (1974))). But that did not occur. After convening a status conference via WebEx, the Court denied Plaintiffs' Motion for TRO and/or Preliminary Injunction. On that note, Plaintiffs were the ones who styled the Motion as requesting both forms of extraordinary injunctive relief.

What is more, under the Supreme Court of South Carolina's Order governing trial court operations during COVID-19, the Court had wide discretion to decide the Motion in this manner:

> While the practice has been to conduct hearings on virtually all motions, this may not be possible during this emergency. If, upon reviewing a motion, a judge determines that the motion is without merit, the motion may be denied without waiting for any return or other response from the opposing party or parties. In all other situations except those where a motion may be made on an ex parte basis, a ruling shall not be made until the opposing party or parties have had an opportunity to file a return or other response to the motion. A trial judge may elect not to hold a hearing when the judge determines the motion may readily be decided without further input from the lawyers. If a hearing is held, the hearing shall be conducted in the manner specified by (c)(3) above. Consent motions should be decided without a hearing; in the event a party believes that the order issued exceeds the scope of the consent, the party must serve and file a motion raising that issue within ten (10) days of receiving written notice of entry of the order.

In re Operation of the Trial Courts During the Coronavirus Emergency, App. No. 2020-000447, Am. Order No. 2021-03-04-01, ¶ (c)(4) (S.C. Sup. Ct. filed Mar. 4, 2021). Even assuming, arguendo, that Rule 65 required the Court to hold a hearing on Plaintiffs' Motion prior to denying the requested relief, the Supreme Court of South Carolina's recent Order plainly states that "[i]n the event of a conflict between this order and the South Carolina Rules of Civil Procedure . . . , this order shall control." Id. at ¶ (a). Moreover, in discussing the Court's comments about a potential hearing, see Pls.' Mot. to Recons. at ¶ 3, Plaintiffs omit that the Court also said it may decide not to hold a hearing in the matter at all.

Here, Plaintiffs submitted an unverified Complaint, Motion for TRO and/or Preliminary Injunction, Affidavit of Ms. Mihal, unsworn Declaration of their counsel Susan Dunn, and a proposed order in support of their arguments. Cf. Calcutt v. Calcutt, 282 S.C. 565, 572, 320 S.E.2d 55, 59 (Ct. App. 1984) (stating "the party seeking the injunction and restraining order must show such facts and circumstances entitling her thereto"). Both Defendants then submitted memoranda

in opposition. Following the status conference, and after thoroughly reviewing and considering the evidence and the parties' arguments in their respective filings, the Court determined a hearing was unnecessary in this matter. In doing so, the Court exercised its "sound discretion," Compton, 392 S.C. at 366, 709 S.E.2d at 642, by denying Plaintiffs' interlocutory Motion on the record before it "without further input from the lawyers," Am. Order No. 2021-03-04-01, ¶ (c)(4).

Next, notwithstanding Plaintiffs' assignment of error, the Court did not make a premature "finding that the [Executive] Order furthered the health, safety, and welfare of South Carolinians." Pls.' Mot. to Recons. at ¶ 8. Contrary to Plaintiffs' assertions, that would be a legal conclusion.[1] And in this case, it would constitute an ultimate—and perhaps unnecessary—decision on the merits of Plaintiffs' claims and disagreements with the Governor's determinations. In the context of a preliminary injunction, however, the Court "examine[s] the merits of the underlying case only to the extent necessary to determine whether the plaintiff has made a sufficient prima facie showing of entitlement to relief." Compton, 392 S.C. at 367, 709 S.E.2d at 642. In its Order, the Court merely found Plaintiffs failed to meet their burden of making a prima facie showing that they were likely to succeed on the merits.

As for the Governor's emergency powers, Plaintiffs' arguments are incompatible. On the one hand, they acknowledge the Governor had the authority to issue an emergency executive order authorizing or directing certain nonessential state employees to work remotely during the pandemic. But on the other hand, they argue the Governor cannot modify or rescind that directive, in whole or in part, and require state employees to return to the workplace. According to Plaintiffs, the latter is impermissible because—in their opinion—it does not further the health, safety, and welfare of South Carolinians. Plaintiffs' argument, however, is incongruous with subsection (a)(1)

[1] Plaintiffs appear to conflate legal conclusions and factual findings. See Pls.' Mot. to Recons. at ¶¶ 8–9.

of section 25-1-440 of the South Carolina Code of Laws, which gives the Governor the authority to "issue emergency proclamations and regulations and amend or rescind them." Executive Order No. 2021-12 rescinded the previous directives imposing restrictions and restored the status quo. Compare Executive Order No. 2020-11, § 1(A) (Mar. 19, 2020), with Executive Order No. 2021-11, § 8(A) (Mar. 1, 2021), and Executive Order No. 2021-12, § 5(D) (Mar. 5, 2021).

Further, in raising this argument, Plaintiffs seemingly ask the Court to substitute their preferences—or the opinions of their proffered expert—for the Governor's discretionary decisions and policy determinations. Respectfully, that is not the standard. As the Court noted in its Order, Plaintiffs simply "disagree with the policy determinations of the Governor in ordering State Employees to return to the workplace on a full-time basis." Order Den. TRO & Prelim. Inj. at 4. When guiding the State of South Carolina through its response to a global pandemic, or any other State of Emergency, the power to impose naturally contemplates the power to rescind. At this stage, the Court believes any other interpretation would contravene the intent of the General Assembly and lead to an absurd result.[2] Accordingly, the Court did not err in finding Plaintiffs failed to make the requisite prima facie showing that they are likely to succeed on the merits of their constitutional and ultra vires claims.

As for adequate remedies at law, Plaintiffs still have not addressed why the myriad legal remedies identified in Defendants' briefs and the Court's Order are neither readily available nor

[2] See Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) ("The cardinal rule of statutory construction is to ascertain and effectuate the intent of the [General Assembly]."); State v. Sweat, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010) ("Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the [General Assembly] or would defeat the plain legislative intention."); Hodges, 341 S.C. at 91, 533 S.E.2d at 584 ("If possible, the court will construe the statute so as to escape the absurdity and carry the intention into effect." (quoting Ray Bell Constr. Co., Inc. v. Sch. Dist. of Greenville Cty., 331 S.C. 19, 26, 501 S.E.2d 725, 729 (1998))); State v. Neuman, 384 S.C. 395, 402, 683 S.E.2d 268, 271 (2009) ("A possible constitutional construction must prevail over an unconstitutional interpretation." (quoting Curtis v. State, 345 S.C. 557, 569–70, 549 S.E.2d 591, 597 (2001))).

adequate. Finally, while Plaintiffs' Motion to Reconsider rehashes the same factual allegations and policy-based arguments on irreparable harm, the Court has considered and rejected those assertions. Plaintiffs' argument on irreparable harm, for example, overlooks their failure to identify a legal right to work remotely. Stated differently, Plaintiffs have not raised "a fair question . . . as to the existence of such a right." Levine v. Spartanburg Reg'l Servs. Dist., Inc., 367 S.C. 458, 465, 626 S.E.2d 38, 42 (Ct. App. 2005) (quoting Williams v. Jones, 92 S.C. 342, 347, 75 S.E. 705, 710 (1912)), holding modified on other grounds by Poynter Invs., Inc. v. Century Builders of Piedmont, Inc., 387 S.C. 583, 694 S.E.2d 15 (2010).

In sum, Plaintiffs have not articulated any basis for reconsideration. Exercising its sound discretion, the Court stands by its prior determination that Plaintiffs failed to sufficiently allege or establish that they were entitled to a TRO and/or Preliminary Injunction. Plaintiffs' Motion to Reconsider is therefore **DENIED**.

AND IT IS SO ORDERED.

The Honorable L. Casey Manning
Chief Administrative Judge
Court of Common Pleas for Richland County
Fifth Judicial Circuit of South Carolina

Columbia, South Carolina

April _____, 2021

Richland Common Pleas

Case Caption: Deborah Mihal , plaintiff, et al vs Herny D Mcmaster , defendant, et al

Case Number: 2021CP4001599

Type: Order/Other

So Ordered

s/L. Casey Manning, 2061