

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

KIMBERLY BILLUPS, MICHAEL WARFIELD, and MICHAEL NOLAN,)	Civil Action No. 2:16-cv-00264 DCN
)	
Plaintiffs,)	
vs.)	ORDER
)	
CITY OF CHARLESTON, SOUTH CAROLINA,)	
)	
Defendant.)	
)	
)	

This matter is before the court pursuant to defendant City of Charleston’s Motion pursuant to Fed. R. Civ. P. 52(b), 59(e) and/or 60(b). The plaintiff filed its Opposition and the City has filed its Reply. Thus, the matter is ripe for resolution.

I. STANDARDS

Reconsideration of a final judgment is an extraordinary remedy. *Pac. Ins. Co. v. Am. Nat. Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998) (quoting 11 Charles Alan Wright et al., Federal Practice and Procedure § 2810.1, at 124 (2d ed. 1995)). The City seeks relief pursuant to Federal Rules of Civil Procedure (“FRCP”) 59(e), 60(b), and 52(b).

A. FRCP 59(e)

Rule 59(e) governs motions to alter or amend a judgment. It provides an “extraordinary remedy which should be used sparingly.” *Pac. Ins. Co.*, 148 F.3d at 403; *see also Hula Dogs 2, LLC v Town of Hollywood*, 2:11-CV-00452-DCN, 2011 WL 3300032, at *2 (D.S.C. Aug. 1, 2011). The Fourth Circuit has articulated “three grounds for amending an earlier judgment: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or

(3) to correct a clear error of law or prevent manifest injustice.” *Pac. Ins. Co.*, 148 F.3d at 403.

The first two grounds found in *Pacific Insurance* are inapplicable to the City’s Motion. The City identifies no intervening change in controlling law nor any new evidence not available at trial. The third ground for relief under Rule 59(e) requires establishing a “clear error of law” or “manifest injustice.”

A party’s disagreement with the court’s application of the law is not a valid ground for a Rule 59(e) motion. *See Hutchinson v. Staton*, 994 F.2d 1076, 1082 (4th Cir. 1993). ([M]ere disagreement does not support a Rule 59(e) motion”). In its Motion, the City claims that the court’s Findings of Fact and Conclusions of Law (ECF 115) (“Order”) conflict with *Reynolds v. Middleton*, 779 F.3d 222 (4th Cir. 2015). Because the court finds that its analysis of Reynolds was not "clear error of law," the court denies the motion under Rule 59(e).

B. FRCP 60(b)

Rule 60(b) allows for “relief from a final judgment, order, or proceeding” in certain circumstances. Those circumstances include (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud by an opposing party; (4) void judgment; (5) the judgment has been satisfied or is based on an earlier judgment that has been reversed or vacated; and (6) “any other reason that justifies relief.” Fed. R. Civ. P. 60(b). The first five grounds are clearly inapplicable here. As to the sixth ground, relief under Rule 60(b) is only appropriate when the movant demonstrates “extraordinary circumstances.” *Wells Fargo Bank, N.A. v. AMH Roman Two NC, LLC*, 859 F.3d 295, 299 (4th Cir. 2017) (quoting *Dowell v. State Farm Fire & Cas. Auto Ins. Co.*, 993 F.2d 46, 48 (4th Cir. 1993)). The City’s Motion is nothing more than a request that this court change its mind, which this court declines to do.

C. FRCP 52(b)

Rule 52(b) is no less demanding. Indeed, a court may “amend its findings or make additional findings and may amend the judgment accordingly.” Fed. R. Civ. P. 52(b). But the standard for motions pursuant to Rule 59(e) also applies to motions brought under Rule 52(b). See, e.g., *G&P Trucking Co., Inc. v. Zurich Am. Ins. Co.*, No. 3:14-cv-501-MBS, 2015 WL 7783553, at *2 n.3 (D.S.C. Dec. 3, 2015). Motions made under Rule 52(b) “are intended to correct manifest errors of law or fact or to present newly discovered evidence.” *Goodwin v. Cockrell*, No. 4:13-cv-199F, 2015 WL 12851581, at *1 (E.D.N.C Dec. 30, 2015) (quoting *Wahler v. Countrywide Home Loans, Inc.*, No. 1:05CV349, 2006 WL 3327074, at *1 (W.D.N.C. Nov. 15, 2006)). As noted above the City has presented no newly discovered evidence nor has it uncovered any manifest errors of law. Thus, the City’s motion is denied.

IT IS SO ORDERED.

December 10, 2018
Charleston, South Carolina



DAVID C. NORTON
UNITED STATES DISTRICT JUDGE