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Aug 23 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Edward W. Miller, Circuit Court Judge

Case No. 2018-CP-23-04516
Appellate Case No. 2021-001461

Ironwork Productions, LLC, Appellant,

v.

Bobcat of Greenville, LLC, and Bobcat Company, Inc., Respondents.

APPELLANT'S FINAL REPLY BRIEF

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ARGUMENT

Appellants submit this brief reply to address two points raised by Respondents. First, Respondents argue that because neither the first nor second motions to amend were sent to the trial judge, “the matters raised in this appeal are not properly preserved for appellate review.” Clark Initial Brief at p. 10-11; Bobcat Initial Brief at p. 20-21. In support of this position, Respondents cite to a Court of Appeals case that upheld a trial court’s decision to deny a Rule 59 motion based on non-compliance with Rule 59(g). *Smith v. Fedor*, 422 S.C. 118, 126, 809 S.E.2d 612, 616 (Ct. App. 2017).

A Rule 59 motion can be denied on the basis that it was not sent to the trial judge, but the trial judge is not required to deny the motion on that basis. Instead, whether to deny a motion on that basis is within the sound discretion of the trial court. *Gallagher v. Evert*, 353 S.C. 59, 63, 577 S.E.2d 217, 219 (Ct. App. 2002) (“we find no error with the trial court’s decision to decide the motion despite [the appellant’s] failure to comply with Rule 59(g), SCRC.P.”). Respondents raised their Rule 59(g) arguments at the hearing on Appellant’s motion to reconsider. The court was aware of those arguments and could have chosen to deny the motion on Rule 59(g) grounds. He did not and the issues raised by the motion to reconsider are properly preserved. (R. pp. 7-9); (R. p. 643, line 23-p. 644, line 13).

Second, Respondent Bobcat accuses Appellant of “vacillat[ing]” between attempting to justify Appellant’s prior counsel’s conduct and arguing that Appellant’s prior counsel abandoned Appellant. Bobcat Initial Brief at p. 17. Bobcat’s argument misunderstands Appellant’s position. Appellant’s position is not that its prior counsel’s conduct is justified. Appellant’s position is that his prior counsel’s conduct does not rise to the level of meriting the “harsh medicine” of dismissal

or default. *Griffing Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co.*, 334 S.C. 193, 198, 511 S.E.2d 716, 718 (Ct. App. 1999). Said differently, an attorney can “willfully and unilaterally abandon” his client without engaging in “bad faith, willful disobedience, or gross indifference to the rights of the adverse party” in discovery practice sufficient to support the “severe punishment” of default of dismissal. Although Mr. Rosemond abandoned his client, his conduct was not sufficiently egregious to merit dismissal as a discovery sanction.

CONCLUSION

For these reasons, and for the reasons stated in Appellant’s initial brief, the order dismissing Appellant’s complaint against Respondents should be reversed.

Respectfully submitted,

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RULE 211(b) CERTIFICATION

The undersigned certifies that Appellant's Final Reply Brief complies with Rule 211(b) of the South Carolina Appellate Court Rules.

August 23, 2022

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PROOF OF SERVICE

I certify that I have served Appellant's Final Reply Brief on the Respondents, Bobcat of Greenville, LLC and Bobcat Company Inc., by electronic mail, on August 23, 2022, addressed to their attorneys of record:

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