

STATE OF SOUTH CAROLINA)
)
COUNTY OF LAURENS)
Mosi A. Bundu,)
)
Plaintiff,)
)
v.)
)
Maria Youmans and Dean Youmans,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
C.A. No.: 2021-CP-30-00473

**ORDER GRANTING DEFENDANTS'
MOTION FOR SANCTIONS**

RECEIVED

OCT 11 2022

SC Court of Appeals

This matter came before the Court on August 25, 2022, for a hearing on defendants Maria Youmans and Dean Youmans' Motion for Sanctions dated April 28, 2022. Attorney John Harjehausen was present for the defendants. Plaintiff Mosi Bundu was present and represented himself *pro se*. The defendants' motion seeks sanctions for the plaintiff's failure to comply with the Court's Order dated December 10, 2021, which instructed the plaintiff to serve proper and complete responses to "Defendants' Interrogatories to Plaintiff, Numbers 2, 4, 5, 12-14, 21, 22, 27 and 28, and Defendants' Requests for Production to Plaintiff Numbers 8, 9, 10, and 11." For the reasons discussed below, the Court finds that the plaintiff has not complied with the Order despite multiple hearings and has not provided complete responses to Defendants' Interrogatories No. 2 and 5 and Defendants' Requests for Production Numbers 8, 9, 10, and 11. Moreover, the Court finds that dismissal of the plaintiff's complaint is appropriate because the plaintiff has willfully failed to provide material information related to the plaintiff's claimed injuries and damages and the defendants would be substantially prejudiced in defending against the plaintiff's claims in the absence of the requested information.

I. Factual Background

Defendants served plaintiff with interrogatories and requests for production on July 23, 2021. On August 10, 2021, the plaintiff served defendants with a document titled “Answers to Defendants.” However, the plaintiff objected to answering certain interrogatories, failed to answer some of them, and provided no responses or documents in response to defendants’ requests for production. On September 23, 2021, defendants’ counsel wrote to Mr. Bundu regarding the deficient responses. On October 28, 2021, defendants filed a Motion to Compel against the plaintiff. After a hearing on the motion, the Court issued an Order dated December 10, 2021, stating in pertinent part:

IT IS HEREBY ORDERED that Plaintiff shall have 60 days from the date of this Order to serve proper and complete responses to Defendants’ Interrogatories to Plaintiff, Numbers 2, 4, 5, 12-14, 21, 22, 27 and 28, and Defendants’ Requests for Production to Plaintiff Numbers 8, 9, 10, and 11. Should the Plaintiff fail to properly and completely respond to the outstanding discovery requests, then the Plaintiff will be subject to sanctions that may include, without limitation, payment of Defendants’ attorney’s fees and costs associated with the filing, arguing and prosecution of Defendants’ Motion to Compel, as well as the dismissal of Plaintiff’s Complaint.

On January 31, 2022, plaintiff filed a document with the Court “[r]equesting a hearing regarding scope of order to comply and protected information, falling under the 1974 privacy protections, covering government ID numbers.”

On February 1, 2022, the plaintiff filed and served defendants with a document titled “Answers to Defendants Amended.” Notably, the plaintiff’s amended responses failed to, among other things, provide any responses to defendants’ requests for production.

On April 12, 2022, a hearing was held in front of the Honorable Eugene Griffith, Jr. At the hearing, discussion occurred related to the Order dated December 10, 2021, and plaintiff was advised to look to the terms of that Order and provide defendants with responsive information

supporting his claims. On April 18, 2022, Judge Griffith issues a Form-4 Order stating: "This Plaintiff sought a hearing to address clarification of discovery order issued by Judge Addy. No motion was filed by the Plaintiff. Thus no order was issued as a result of the hearing. This Form 4 was issued to close the "motion" on the roster."

On June 23, 2022, the plaintiff filed with the Court and served the defendants with a document titled "Answers to Defendants" [Interrogatories]. The plaintiff stated that he was "[s]till in [the] process of determining what photos plaintiff has of residential issues." With respect to claimed damages, the plaintiff stated: "No itemized statement of damages has been made, plaintiff is trying to reach plaintiff's insurance company which only provided a lump sum of charges for medical and a couple of prescription charges." With respect to the defendants' request for tax returns due to the plaintiff's claimed loss of earnings, the plaintiff "request[ed] the [defendants'] attorneys subpoena tax records. Plaintiff does not have an accurate list at present of all losses. Working to complete such a list." The plaintiff admitted that "[p]laintiff has made comments about injuries and therapy on his Facebook account." However, he noted "plaintiff has not typically posted photos of injuries related to this case on his social media sites." Significantly, the plaintiff's "Answers to Defendants" dated June 23, 2022, did not include the production of any medical records, medical bills, pictures of injuries, or Facebook posts about his injuries and therapy.

On August 25, 2022, the Court heard arguments on the defendants' Motion for Sanctions. At the hearing, plaintiff acknowledged that he had not itemized his damages as requested by Defendants' Interrogatory No. 5 and he had not produced medical records, medical bills or prescription bills for his claimed injuries as requested by Defendants' Request for Production No. 8 and 9. Further, he acknowledged that he had not produced his tax returns as requested by

Defendants' Request for Production 10 and 11, despite claiming a loss of earnings from his alleged injuries. Plaintiff suggested that the information was in the possession of his medical providers and the Internal Revenue Service and defendants could subpoena these records. Plaintiff indicated that he was unable to "bifurcate" the medical records and bills related to his claimed injuries from other medical conditions unrelated to his fall. Plaintiff indicated that only his medical providers could provide the information related to his itemization of damages or medical bills.

II. Discussion

Pursuant to South Carolina Rule of Civil Procedure Civil Rule 37(b)(2), if a party "fails to obey an order to provide or permit discovery, including an order under Rule 26(f), 35, or 37(a), the court where the action is pending may issue further just orders. They may include the following:

- (i) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;
- (ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;
- (iii) striking pleadings in whole or in part;
- (iv) staying further proceedings until the order is obeyed;
- (v) dismissing the action or proceeding in whole or in part;

Further, South Carolina Rule of Civil Procedure 37(b)(2)(C) provides that "[i]nstead of or in addition to the orders above, the court must order the disobedient party, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust." Under Rule 37(b)(2)(C), SCRCP, when a party fails to comply with a discovery order, the trial court has the discretion to impose a sanction it deems just, including an order dismissing the action. Barnette v. Adams Bros. Logging, Inc., 355 S.C. 588, 593, 586 S.E.2d 572, 575 (2003).

“In determining the appropriateness of a sanction, the court should consider such factors as the precise nature of the discovery and the discovery posture of the case, willfulness, and degree of prejudice.” Griffin Grading & Clearing, Inc., 334 S.C. at 199, 511 S.E.2d at 719.

The Court believes that the plaintiff's failure to produce the requested documents over eight months and despite multiple hearings equates to willful disobedience of this Court's Order dated December 10, 2021. The Order explicitly and clearly required plaintiff to serve proper and complete responses to “Defendants' Requests for Production to Plaintiff Numbers 8, 9, 10, and 11.” Request for Production No. 8 asked the plaintiff to produce, among other things, “all medical records, medical reports, medical bills, drug bills, and other written documents pertaining to the care . . . for the injuries which the plaintiff allegedly received [regarding] the incident referred to in the plaintiff's Complaint.” To date, the plaintiff has not responded or produced any documents related to Request to Produce No. 8. Request to Produce No. 9 requested similar records “pertaining to the care, treatment, examination, testing or other observation of the plaintiff by medical doctors or other medical personnel during the five years immediately preceding the date of accident.” The plaintiff has not responded or produced any records related to Request to Produce No. 9. Request to Produce No. 10 asked the plaintiff to produce “Any written document of any type, nature, or description . . . upon which the plaintiff will rely in the proof of his case at trial. The plaintiff has not responded or produced any records related to Request to Produce No. 10. Lastly, to the extent the plaintiff is claiming lost wages due to the accident, Request to Produce No. 11 requested the plaintiff's tax returns from 2016-2020. The plaintiff has not responded or produced any tax returns. Plaintiff also acknowledged at the hearing that he possessed a picture of himself in a neck brace related to the accident that he had not produced. Moreover, he has not produced any pictures or comments posted to his Facebook account.

Although dismissal of the plaintiff's Complaint is a harsh sanction, I find that no less drastic sanction would be effective in this case. Despite multiple hearings, plaintiff has not produced a complete damages itemization or produced any medical records, medical bills, or pictures related to his claimed incident or injuries. Further, at the time of the hearing, the case had been placed on the trial roster for September 6, 2022. Accordingly, the Court finds the defendants would be substantially prejudiced in their ability to investigate plaintiff's allegations prior to trial. Further, defendants would be forced to defend against unknown evidence that plaintiff might attempt to admit at trial, or rebut unidentified injuries or claimed damages only brought to light at trial without the opportunity to complete discovery prior to trial. Multiple hearings have occurred related to the defendants' discovery requests and the plaintiff has disregarded the instruction of the Court with regard to discovery to get the case ready for trial. The plaintiff has had over 8 months to produce the documents requested by the defendants since their Motion to Compel was filed on October 28, 2021. Accordingly, for all of the reasons discuss above, the Court finds that dismissal of the plaintiff's complaint is an appropriate sanction. See McNair v. Fairfield County, 379 S.C. 462, 665 S.E.2d 830 (Ct. App. 2008)(holding trial court did not abuse discretion in striking party's pleading due to inadequate discovery responses from party).

IT IS HEREBY ORDERED that the defendants' Motion for Sanctions is **GRANTED**. The plaintiff's Complaint is dismissed with prejudice. Following execution of this Order, defendants shall serve the plaintiff via regular U.S. Mail and Certified Mail with a copy of this Order at plaintiff's address of record.

[JUDGE'S SIGNATURE PAGE TO FOLLOW]



Laurens Common Pleas

Case Caption: Mosi A Bundu VS Maria Youmans , defendant, et al
Case Number: 2021CP3000473
Type: Order/Sanctions

So Ordered

S/ Frank R. Addy, Jr.

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STATE OF SOUTH CAROLINA

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IN THE COURT OF COMMON PLEAS

COUNTY OF LAURENS

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Plaintiff,

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CERTIFICATE OF SERVICE

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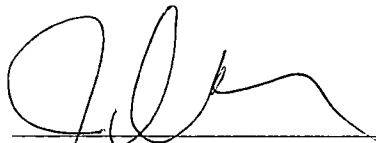
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The undersigned hereby certifies that a copy of the Filed Order Granting Defendants' Motion for Sanctions was served upon the pro se plaintiff by depositing in the via certified mail proper postage affixed thereto, a true and accurate copy thereof on this 30th day of August, 2022, as follows:

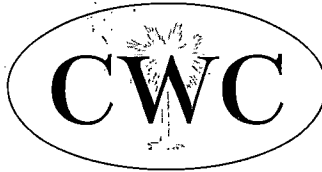
Mosi A. Bundu
206 B Kelly Street
Laurens, SC 29360



Julie Brown, Paralegal
Clarkson, Walsh & Coulter, P.A.

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SC Court of Appeals

Greenville, SC



CLARKSON | WALSH | COULTER
Attorneys at Law

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(864)232-4400

August 30, 2022

VIA CERTIFIED MAIL, RETURN RECEIPT

Mosi A. Bundu
206B Kelly Street
Laurens, SC 29360

Re: Mosi Bundu v. Maria Youmans and Dean Youmans
C.A. No. 2021-CP-30-00473

Dear Mr. Bundu:

Enclosed please find filed Order Granting Defendants' Motion for Sanctions along with a Certificate of Service for same.

Should you have any questions, please do not hesitate to contact our office.

Yours very truly,

Clarkson, Walsh & Coulter, P.A.

James P. Walsh

JPW/jab
Enclosure