

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Michael Gene Putnam,)
)
Plaintiff,)
)
v.)
)
Robin Cary Maples, et.al.)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

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ORDER
SC Court of Appeals
AWARDING SANCTIONS-DISMISSAL
AS TO DEFENDANT MAPELS
AND SUMMARY JUDGMENT

C.A. NO. 2020CP2301450

This matter came before the Court upon 2 Motions filed by Defendant Robin Cary Maples’: (1) Motion to Strike Complaint (filed August 26, 2021) and (2) Motion to For Summary Judgment (filed November 2, 2021). Both Motions were heard on November 15, 2021 with Plaintiff appearing pro se and Defendant Maples represented by Douglas Churdar.

First, the tortured history of this case is needed:

1) On March 6, 2020, Plaintiff Michael Gene Putnam filed a Summons and Complaint against various defendants asserting causes of action for defamation/libel per se and specifically alleging that Defendant Maples made false allegations about Putnam regarding sex crime investigations.

2) Plaintiff filed an Amended Complaint on April 6, 2020 and the only cause of action asserted against Defendant Maples is found in Count 4 which alleges that Defendant Maple has made “false and defamatory statements about Plaintiff” to various individuals.

3) In his Amended Motion to Compel filed on January 20, 2021, Defendant Maples sought complete responses to discovery served on Putnam regarding all information supporting Putnam’s claims against Defendant Maples. This Motion was filed after repeated requests for

the information from counsel and also sought sanctions for failure to engage in meaningful discovery.

4) By Order of Judge Scott Sprouse filed on February 22, 2021, Putnam was ordered to provide “all financial documents requested in Defendant’s request for production, and the Plaintiff shall provide complete answers to the disputed interrogatories...within 30 days of the date of this Order. Should the Plaintiff not have said information in his possession, the Plaintiff shall provide answers alleging such to the Defendant and where such information may be obtained, if known to the Plaintiff. The Court declines to order attorney’s fees or sanctions at this time. This is conditioned on strict compliance with this Order. If the Plaintiff does not strictly comply with this Order, Defense Counsel may request a hearing to determine appropriate attorney’s fees, costs, and sanctions.”

5) By Order filed April 27, 2021, Judge Letitia Verdin denied Defendant Purkeson’s Motion for Summary Judgment but ordered that Plaintiff “provide with specificity” the names of individuals referenced in the Amended Complaint on which Plaintiff’s claims were based and further ordered that “plaintiff shall provide this information to all Defendants within 14 days of the date of this order. Failure to provide this information to Defendants will result in this Court granting Defendant Purkeson’ Motion for Summary Judgment.”¹

6) On May 12, 2021, this matter came before the Court upon Defendant Maples Motion for Sanctions and Summary Judgment for Plaintiff’s failure to comply with previous Orders of the Court regarding discovery and providing information to support his claim. Relevant portions of the Order filed on May 17, 2021 states as follows:

¹ Although this Order does not specifically relate to Defendant Maples, it is included in the summary for reference and show the pattern of discovery abuse practiced by the Plaintiff.

- a) "As of May 12, 2021, the Plaintiff was unable to show that he had provided 'complete answers' to Interrogatories to the Defendant or his prior counsel."
- b) "The Complaint makes serious allegations against the Defendants, but in review of the Orders in the file, the Plaintiff has not provided the defendants with information to support his claims."
- c) "The Court finds that it is imperative for the Plaintiff to provide specific answers to interrogatories supporting his claims or his case not be allowed to go forward."
- d) "The Court finds that the Plaintiff has intentionally and willfully violated the Order of Judge Sprouse and the Court must fashion an appropriate sanction."
- e) As a result of the violation of the previous Order, the Court awarded attorneys' fees to Defendant Maples in the amount of \$2750.
- f) "The Court orders that Plaintiff specifically provide complete responses to all discovery outlined in Defendant Maples' Amended Motion to Compel filed on January 20, 2021 within 20 days or additional sanctions will be warranted, including the dismissal of Plaintiff's Complaint."

7) By Order issued May 24, 2021, the Court denied Plaintiff's Motion for Reconsideration of the May 17, 2021 order.

Now the Court is presented with Defendant Maples' Motion for Sanctions for Plaintiff's failure to provide any discovery responses as specifically Ordered by Judge Sprouse on February 22, 2021 and this Court on April 27, 2021.

At the hearing, Plaintiff was asked several times what discovery responses or documentation that he had provided to Defendant Maples or his counsel since the Orders of

February 22, 2021 and April 27, 2021. Throughout the hearing, the Plaintiff refused to directly answer these questions and merely responded that he had, on several occasions, attempted to serve some papers on Defendant Maples by certified mail, but they had not been accepted. Plaintiff did not submit to the Court copies of any documents which he allegedly tried to serve on Defendant Maples, nor any evidence that the mail had been refused. Further, he did not attempt to serve these documents on Attorney Churdar once he made an appearance in the case in August, 2021. The Plaintiff also advised that in the past, he had provided numerous documents to Defendant Maples and his previous counsel, but those documents would have been prior to February 2021 and obviously not responsive since it resulted in Defendant Maples filing 3 Motions, either to Compel or Sanctions and 3 separate hearings have been held on the deficiency of his discovery responses since any documents or discovery was produced. When pressed at the hearing, Plaintiff never acknowledged that any documents or discovery had been provided to Defendant Maples or his counsel as Ordered by the Court. Douglas Churdar entered a Notice of Appearance on behalf of Defendant Maples on August 23, 2021 and filed this Motion for Sanctions on August 26, 2021. It has been over 2 ½ months since Defendant Maples moved to have Plaintiff's action dismissed and Plaintiff still failed to make any attempt to provide discovery responses to Defendant Maples' counsel. On September 9, 2021, Plaintiff filed a Response to the Defendant's Motion to Strike and served it on Attorney Churdar, but still failed to provide discovery responses or communicate with counsel about the discovery deficiencies. In his written response to Defendant Maple's Motion to Strike, Plaintiff argues that the Motion is frivolous and that all discovery has been provided and he has complied with all previous Orders of the Court—although he was unable to provide any documentation to support this argument at the hearing on November 15, 2021. Due to scheduling issues, the hearing on November 15 was

delayed for an hour or so, but Plaintiff failed to take this final opportunity to resolve any discovery deficiencies with Defendant Maples' attorney and claimed that he did not know who Mr. Churdar was.

Although Plaintiff is acting *pro se*, he appears to be very sophisticated in litigation practices and has been very involved in several lawsuits. The numerous memoranda and pleadings which Plaintiff has prepared and presented indicates that he has a working knowledge of litigation practice and the South Carolina Rules of Procedure. As the Supreme Court has stated in *State v. Burton*, 356 S.C. 259 (2003), a *pro se* litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law.

Throughout this process, Plaintiff has continued to attempt to circumvent the discovery process by not providing appropriate discovery responses and violate Orders of the Court specifically requiring him to provide such responses. Since the initiation of this case (and previous action in Federal Court), the Plaintiff has failed to provide a "scintilla" of evidence to support his claim against Defendant Maples. Plaintiff claims that he has provided numerous documents to Defendant Maples and his counsel, but as noted above, this "production" preceded the referenced orders, nor did they satisfy Plaintiff's obligation to provide Answers to Interrogatories. The Court must now fashion an appropriate sanction.

Rule 37 provides for a variety of sanctions for discovery abuses and violations of previous orders of the Court. The Court of Appeals has discussed such sanctions available under Rule 37 and the analysis to be performed by the Court:

The rule empowers the Court to impose a wide variety of sanctions. However, the sanction imposed should be reasonable, and the Court should not go beyond the necessities of the situation to foreclose a decision on the merits of a case. *Societe Internationale Pour Participations Industrielles et Commerciales, S.A. v. Rogers*, 357

U.S. 197, 78 S.Ct. 1087, 2 L.Ed.2d 1255 (1958). The sanction should be aimed at the specific misconduct of the party sanctioned “The courts have generally held that *Rogers* requires some element of bad faith, willfulness, or callous disregard of the rights of other litigants in order to justify imposition of such a sanction.” 4A J. Moore, J. Lucas & D. Epstein, *Moore's Federal Practice* ¶ 37.03[2], at 89 (2d ed. 1990).

Balloon Plantation, Inc. v. Head Balloons, Inc., 303 S.C. 152, 154–55, 399 S.E.2d 439, 440 (Ct. App. 1990).

Also, see *Barnette v. Adams Bros. Logging*, 355 S.C. 588, 586 S.E.2d 572 (2003) (the Court found it was in the trial judge’s discretion to dismiss her action). See also *Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co.*, 334 S.C. 193, 511 S.E.2d 716 (Ct. App. 1999). Previous Orders have required the Plaintiff to provide responses by a specific deadline to no avail. The April 27, 2021 Order even sanctioned the Plaintiff by awarding substantial attorneys’ fees to Defendant Maples, but the Plaintiff still did not feel compelled to provide discovery responses nor comply with the Court Order. This action has been pending since March 6, 2020 and a previous action was filed in 2019 which traveled through Federal Court before being dismissed, but the Plaintiff has failed to provide any evidence nor discovery responses to support any basis for his claim against Defendant Maples. Defendant Maples seeks dismissal of the Amended Complaint as sanctions. Even though dismissal of the Complaint is a drastic measure, nothing else has worked and the Court must uphold the sanctity of its Orders and the Court and assure that its Orders are complied with by all parties. The Plaintiff has been given numerous chances, but he has failed to take advantage of these chances and does not seem to take seriously the Rules of Civil Procedure, Court Orders or Court Hearings and apparently feels that he can disregard them. The Court has no choice but to declare this as the end of the road. The most recent order of April 27, 2021 clearly warns the Plaintiff that he must “specifically provide complete responses to all discovery outline in Defendant Maples’ Amended Motion to Compel filed on January 20, 2021 within 20 days or additional sanctions will be warranted, including the

dismissal of Plaintiff's Complaint." (emphasis added). That deadline, like several previous deadlines, have long expired. The Plaintiff was warned that the Court was serious, but he failed to do anything about it after being provided with ample opportunity to do so. After careful consideration of the record and matters presented at the hearing, the Court finds that the Plaintiff's action in this regard have been in bad faith and willful and have shown a "callous disregard of the rights of the litigants" and Court Orders. The only sanction appropriate at this point is the dismissal of the Complaint. Therefore, the Court finds the Plaintiff in contempt of the referenced Court Orders and the Count 4 and all claims against Defendant Maples contained in the Plaintiff's Complaint and Amended Complaint are stricken and the action is dismissed with prejudice as to Defendant Maples.

Defendant Maples' Motion for Summary Judgment. In his Motion for Summary Judgment filed on November 2, 2021, Defendant Maples alternatively seeks the dismissal of Plaintiff's Complaint (or the Amended Complaint in this case) on the basis that Plaintiff has failed to provide any evidence to support the allegations of defamation contained in his Amended Complaint.² In his sworn affidavit filed on November 2, 2021, Defendant Maples denies making any false statements about the Plaintiff nor publishing any such statements to 3rd parties. Plaintiff submitted an affidavit in opposition to the Motion which does not refute Defendant Maples' affidavit but merely states conclusions and suggestions about possible statements and publications to 3rd parties without any direct knowledge of these events and claims that Defendant Maples' affidavit is false without any factual support. As with the discovery responses or lack thereof, Plaintiff has still failed to provide any evidence of false statement made by

² The Motion refers to the plaintiff's Complaint which was filed on March 6, 2020. Plaintiff filed an Amended Complaint on April 6, 2020. Under *Gignilliat v. Gignilliat, Savitz & Bettis, L.L.P.*, 385 S.C. 452, 684 S.E.2d 756 (2009) the Motion for Summary Judgment would apply to the Amended Complaint. (the court granted summary judgment based off of the amended complaint)

Defendant Maples or publications to 3rd parties. At the hearing, Plaintiff did not indicate that any discovery was outstanding except for his subpoena to Google and Microsoft which is subject to the Motion to Compel which does not within the control of Defendant Maples. The Plaintiff, initially filed suit against these defendants on June 21, 2019 in state court for Greenville County, which was removed on July 30, 2021 to Federal Court on the basis of diversity jurisdiction, and ultimately dismissed. The Plaintiff then filed the present action on March 6, 2020. Since the initial filing in 2019, the Plaintiff has failed to provide any evidence of the false statements or publications nor provided reference to such in his discovery responses. In his affidavit, Plaintiff fails to present any facts to support a genuine issue of material fact or “scintilla” of evidence. As set forth in Rule 56(e):

supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein....When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegation or denial of his pleading, but his response, by affidavits or as otherwise provide in this rule, ***must set forth specific facts showing that there is a genuine issue for trial.***” (*emphasis added*).

Also see *Hall v. Fedor*, 349 S.C. 169 (Ct App 2002), (stating that the facts set forth in supporting or opposing affidavits must be admissible as well.) After consideration of the record and argument of the parties, the Court finds that the Plaintiff has failed to submit any evidence to support his claim against Defendant Maples in affidavits, discovery or at the hearing. Thus the Court finds that there is no genuine issue of material fact and Defendant Maples is entitled to Summary Judgment. Therefore, Defendant Maples’ Motion for Summary Judgment is granted and the Amended Complaint as to Defendant Maples is dismissed with prejudice.

Plaintiff's Motion to Compel. The dismissal of the Amended Complaint renders moot Plaintiff's Motion to Compel records from Google and Microsoft and therefore, the Court has not addressed this Motion and therefore, it is denied.

It is so Ordered.

E-signature of Judge Gravely to follow



Greenville Common Pleas

Case Caption: Michael Gene Putnam vs. Wake Christian Academy , defendant, et al
Case Number: 2020CP2301450
Type: Order/Summary Judgment

So Ordered

s/ Honorable Perry H. Gravely, #2755