

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)
)
Gunther Pettighofer and Carole Pettighofer,)
)
)
Plaintiffs,)
)
vs.)
)
Nathaniel Eldridge and Pava Logistics, Inc.,)
)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
OF THE SEVENTH JUDICIAL CIRCUIT
C/A NO.: 2021-CP-42-03274

**ORDER GRANTING MOTION
TO SANCTION DEFENDANT
NATHANIEL ELDRIDGE**

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SC Court of Appeals

On November 30, 2023, Plaintiffs Gunther Pettighofer and Carole Pettighofer (“Plaintiffs”) moved this Court pursuant to Rule 37(b)(A) of the South Carolina Rules of Civil Procedure for sanctions against Defendant, Nathaniel Eldrige, for his failure to participate in discovery. On January 22, 2024, the Court held a hearing via WebEx. Present representing the Plaintiffs were J. Christopher Pracht, V, Esquire and Kyle L. Brady, Esquire. R. Hawthorne Barrett, Esquire, was present representing Defendants.

After reviewing the brief submitted to the court and hearing arguments from counsel, it is hereby ORDERED that:

1. Plaintiffs’ motion for sanctions is GRANTED.
2. Pursuant to Rule 37(b)(A) of the South Carolina Rules of Civil Procedure, if Defendant Eldridge fails to fully respond to Plaintiffs’ discovery requests and appear for his deposition pursuant to the South Carolina Rules of Civil Procedure by March 4, 2024, the following sanctions will be imposed against Defendant Nathaniel Eldridge:
 - a. Defendant Nathaniel Eldridge’s Answer will be stricken; and
 - b. It will be deemed admitted that Defendant Eldridge was driving impaired under the influence of cocaine at the time of the accident.

3. Regardless of whether Defendant Eldridge fully responds to discovery by March 4, 2024, Defendant Eldridge will pay the reasonable attorney's fees and costs incurred by Plaintiffs in connection with prosecuting their motion to compel and motion for sanctions.
4. Plaintiffs' counsel shall submit a detailed statement of attorney's fees and costs within fourteen (14) days of this order for this Court's consideration.

FACTS

The facts are undisputed. This is a negligence case arising out of a trucking accident which occurred in Spartanburg County, South Carolina. On July 30, 2020, Plaintiffs were traveling north on I-85. On or about the same date and time, Defendant Eldridge was driving a tractor-trailer leased by his employer, Defendant Pava Logistics, Inc., in the same lane and traveling in the same direction as Plaintiffs. Defendant Eldridge crashed his tractor-trailer into the rear of Plaintiffs' vehicle, causing serious personal injury to Plaintiffs. After the accident, Defendant Eldridge submitted to a drug test which came back positive for cocaine metabolites.

In all respects other than responding to discovery, Defendant Eldridge has been an active participant in this case. Plaintiffs filed suit on September 29, 2021, which Defendant Eldridge answered on December 29, 2021. Defendant Eldridge also promptly answered Plaintiffs' Second Amended Complaint. Most notably, Defendant Eldridge, along with his co-defendant, served Plaintiffs with discovery requests on August 10, 2022, which Plaintiffs answered pursuant to Rules 33 and 34, SCRCP.

Despite Defendant Eldridge's active role in this case, he has failed to respond to any of Plaintiffs' discovery and has failed to appear for his deposition. On February 18, 2023, Plaintiffs' counsel served Interrogatories and Requests for Production upon Defendant Eldridge through his legal counsel. Plaintiffs have made several attempts to obtain his responses to no avail. As a result,

on August 10, 2023, Plaintiffs' counsel filed a Motion to Compel Defendant Eldridge to respond to Plaintiffs' written discovery requests. A hearing occurred on August 22, 2023, and on September 15, 2023, this Court granted Plaintiffs' motion and ordered as follows:

THEREFORE, IT IS ORDERED that Defendant Nathaniel Eldridge respond to Plaintiff's Interrogatories and Requests for Production within thirty (30) days of this order. In the event Defendant Eldridge does not fully respond to Plaintiff's written discovery requests within the timeframe specified by this order, Plaintiff may petition the Court for sanctions, including attorney's fees and costs, for failure to comply with this Court's order.

It has now been more than four months since the Court entered its order requiring Defendant Eldridge's responses within 30 days. Yet, Defendant Eldridge has still failed to respond. Furthermore, Defendant Eldridge failed to appear for his deposition which was scheduled to be held on September 13, 2023.

To protect their right to obtain discovery from Defendant Eldridge, Plaintiffs filed a motion for sanctions on November 30, 2023. The parties were heard on January 22, 2024. For the reasons more fully set forth below, this Court GRANTS Plaintiffs' motion for sanctions.

ANALYSIS

I. The sanctions imposed by this Court against Defendant Eldridge are necessary to protect Plaintiffs' rights to discovery under the South Carolina Rules of Civil Procedure:

“In deciding what sanction to impose for failure to disclose evidence during the discovery process, the trial court should weigh the nature of the interrogatories, the discovery posture of the case, willfulness, and the degree of prejudice.” Teseniar v. Pro. Plastering & Stucco, Inc., 407 S.C. 83, 94, 754 S.E.2d 267, 273 (Ct. App. 2014) (quoting Samples v. Mitchell, 329 S.C. 105, 112, 495 S.E.2d 213, 216 (Ct.App.1997)). “A failure to weigh the required factors demonstrates a failure to exercise discretion and amounts to an abuse of discretion.” Id. “Where the sanction would be tantamount to granting a judgment by default, the moving party must show bad faith, willful

disobedience or gross indifference to its rights to justify the sanction.” Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co., 334 S.C. 193, 198–199, 511 S.E.2d 716, 719 (Ct. App. 1999).

Upon careful examination of each of the above factors, this Court finds that the sanctions imposed by this Order are necessary to protect Plaintiffs’ rights to discovery under the South Carolina Rules of Civil Procedure. Each factor is discussed in turn, below.

a. Nature of Interrogatories and Discovery Posture:

The nature of interrogatories in this case involves inquiries crucial to establishing liability and damages in a negligence claim arising from a trucking crash. Clearly, responses to Plaintiffs’ interrogatories and requests for production would shed light on Defendant Eldridge’s acts or omissions that contributed to the collision. **(Plaintiffs’ Exhibit 5, Plaintiffs’ Discovery Requests to Defendant Eldridge)**. Considering the fact that Defendant Eldridge tested positive for cocaine metabolites soon after the collision, Eldridge’s responses could have also provided evidence that he was impaired under the influence of cocaine when the collision occurred. **(Plaintiffs’ Exhibit 1, Pava_000045-000050, Eldridge’s Failed Drug Test)**.

Ultimately, Plaintiffs’ interrogatories strike at the core of their allegations against Defendant Eldridge, the only individual with knowledge of how he crashed his tractor trailer into Plaintiffs’ car. Accordingly, the Court finds that this prong weighs in favor of the sanctions imposed herein.

b. Willfulness:

The facts presented suggest a willful disobedience by Defendant Eldridge. Despite being an active participant in the case, he failed to respond to Plaintiffs’ discovery requests and failed to appear for his deposition. The court had previously issued an order on September 15, 2023, explicitly directing Defendant Eldridge to respond to the discovery requests within 30 days or he

would be subjected to sanctions. His non-compliance with this Court's order demonstrates a willful disregard for the court's directives.

Further, Defendant Eldridge's involvement in other aspects of the case, such as promptly filing answers to the original complaint and amended complaint and serving discovery requests of his own indicates an awareness of the litigation process and the significance of complying with discovery obligations. Nevertheless, Defendant Eldridge continues to willfully disregard his obligations pursuant to the South Carolina Rules of Civil Procedure and this Court's orders. Accordingly, the Court finds that this prong weighs in favor of the aforementioned sanctions.

c. Degree of Prejudice:

The degree of prejudice faced by the Plaintiffs is substantial. As asserted in Plaintiffs' motion, Defendant Eldridge's failure to participate in the discovery process has significantly prejudiced Plaintiffs from obtaining information relevant to Defendant Eldridge's negligence and the cause of his tractor-trailer crashing into Plaintiffs. Particularly, Plaintiffs have been prejudiced from asking Defendant Eldridge about his impairment level, whether he was distracted, whether he failed to take evasive action, or other ways in which his negligence may have caused Plaintiffs' injuries.

In addition to the arguments set forth in Plaintiffs' Motion, Eldridge's refusal to engage in the discovery process prejudices Plaintiffs from questioning Eldridge regarding numerous inconsistencies in his version of events. In particular, after the crash Defendant Eldridge drafted a written statement in which he reported as follows:

On July 30, 2020 I was proceeding N on I 85 in Duncan, SC. As I approached in the far rt lane of the interstate I noticed traffic coming on to frwy and not yielding at which point I quickly went into the middle lane of traffic. As soon as I did this I immediately came up on or behind a car going slower than normal in my lane that I changed into but by this time and the quicknest [sic] that this occurred in I got up into the rear of their vehichel [sic]."

(Plaintiffs' Exhibit 10, Nathaniel Eldridge, Jr., Written Statement).

However, a review of the dash camera footage exposes several inconsistencies in Eldridge's written account of the accident. First, Eldridge claimed that immediately prior to the accident he "noticed traffic coming on to the frwy [sic] and not yielding." However, the dash camera video does not show any traffic attempting to merge onto the freeway remotely close to Plaintiffs or Defendant Eldridge. (Plaintiffs' Exhibit 11, 26 seconds).

Next, Defendant Eldridge claimed that in order to avoid the traffic merging onto the freeway, he moved over to the middle lane of traffic where he ended up hitting Plaintiffs. (Plaintiffs' Exhibit 10). However, immediately before the crash, Plaintiffs' dashcam video shows Plaintiffs' car is in the far-right lane of traffic when Defendant Eldridge crashes into them. (Plaintiffs' Exhibit 11, 32 & 33 seconds).

Finally, Defendant Eldridge claims in his written statement that he "came up on or behind a car going slower than normal in my lane that I changed into but by this time and the quickest [sic] that this occurred in I got up into the rear of their vehichel [sic]." (Plaintiffs' Exhibit 10). Again, the video shows a completely different story. The entire video, Plaintiffs remain in the right lane of traffic traveling at highway speeds. (Plaintiffs' Exhibit 11).

Clearly, Defendant Eldridge's version of events is pivotal to Plaintiffs' case. While Plaintiffs can prove that Eldridge's written statement is almost entirely inaccurate, Plaintiffs are prejudiced from asking Eldridge under oath why he drafted an inaccurate statement, how fast he was going, whether he was distracted, whether he was impaired, or generally what happened to cause his truck to slam into Plaintiffs' car.

This court previously recognized the potential harm of Defendant Eldridge's non-compliance by issuing an order compelling Defendant Eldridge to respond to discovery. His

continued non-compliance exacerbates the prejudice, hindering the Plaintiffs' ability to fully discover the cause of the accident. Accordingly, the degree of prejudice weighs in favor of the aforementioned sanctions.

d. Bad Faith, Willful Disobedience, or Gross Indifference:

“Where the sanction would be tantamount to granting a judgment by default, the moving party must show bad faith, willful disobedience or gross indifference to its rights to justify the sanction.” Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co., 334 S.C. 193, 198–199, 511 S.E.2d 716, 719 (Ct. App. 1999). Defendant Eldridge's failure to respond to discovery despite active involvement in other aspects of the case, along with his non-appearance for deposition, indicates bad faith and willful disobedience. His actions demonstrate a disregard for the court's orders and a lack of concern for the Plaintiffs' rights. Accordingly, this Court finds bad faith, willful disobedience, and gross indifference necessary for the imposition of the aforementioned sanctions.

II. The sanctions imposed herein are proportionate and necessary to protect Plaintiffs' right to discovery:

Despite acknowledging that Defendant Eldridge's conduct may be sanctionable, Counsel for Defendant Eldridge and Defendant Pava Logistics, Inc., argued that the imposition of sanctions against Defendant Eldridge would unduly prejudice the rights of Pava Logistics, Inc. Defendants acknowledged that sanctions may be appropriate but argued that if sanctions are imposed, they should be limited to monetary sanctions only addressed at Defendant Eldridge. However, as explained fully below, the sanctions imposed herein are proportionate and necessary to protect Plaintiffs' right to discovery, and milder sanctions would undermine important policy goals of Rule 37, SCRPC.

South Carolina courts have consistently held that “[w]hatever sanction is imposed should serve to protect the rights of discovery provided by the Rules.” Kershaw Cty. Bd. of Educ. v.

United States Gypsum Co., 302 S.C. 390, 395, 396 S.E.2d 369, 372 (1990). "[O]verleniency [in the imposition of sanctions] is to be avoided where it results in inadequate protection of discovery." Downey v. Dixon, 294 S.C. 42, 45, 362 S.E.2d 317, 318 (Ct. App. 1987). "Without adequate sanctions, the procedure for discovery would be ineffectual." C. Wright, The Law of Federal Courts § 90 at 596 (4th ed. 1983).

It is undisputed that Eldridge possesses crucial information. He was the sole occupant of the tractor trailer and is the only witness who knows precisely what contributed to his tractor trailer crashing into Plaintiffs' vehicle. His failure to respond to any discovery requests, to appear for his deposition, or to respond to any order of this Court compelling discovery leaves unanswered questions about how the accident occurred, the influence of his cocaine use on the accident, and potential violations of applicable laws and regulations.

Additionally, while Defendant Pava Logistics may be vicariously liable for Defendant Eldridge's tortious conduct, see Karppi v. Greenville Terrazzo Co., 327 S.C. 538, 543, 489 S.E.2d 679, 682 (Ct. App. 1997) ("Where, as here, multiple parties are involved, the trial court must closely scrutinize the dynamics of the litigation and be extremely cautious before striking the pleadings of a transgressing party because of the effects such action is likely to have on the other parties."), any proposed alternative sanction is insufficient to protect the Plaintiffs' right to discovery from Defendant Eldridge. Defendant Eldridge has consistently and willfully ignored prior orders from this Court. There is no reason to believe that an order imposing monetary sanctions or holding Defendant Eldridge in contempt would cause him to produce discovery responses or sit for a deposition.

Nevertheless, this Court is providing Defendant Eldridge an additional thirty (30) days to comply with Plaintiffs' discovery responses prior to the non-monetary sanctions taking effect. The

imposition of sanctions after thirty (30) more days of non-compliance would further underscore their necessity.

Next, mild sanctions would undermine important policy goals of Rule 37, SCRPC. The policy goals behind the implementation of sanctions under Rule 37 are, “to penalize those whose conduct may be deemed to warrant such a sanction, [and] to deter those who might be tempted to such conduct in the absence of such a deterrent.” National Hockey League v. Metropolitan Hockey Club, Inc., 427 U.S. 639, 643, 96 S.Ct. 2778, 2781, 49 L.Ed.2d 747 (1976). Inadequate sanctions in cases such as this would create a perverse incentive for tortfeasor employees to deliberately flout South Carolina's discovery rules and court orders, aiming to mitigate their liability for tortious conduct. Defendants could simply circumvent compliance with our rules by accepting a minor sanction which may not adequately rectify the prejudice caused by their noncompliance. See Downey, 294 S.C. at 45, 362 S.E.2d at 318 (finding a monetary sanction imposed for failing to respond to discovery “did no more than minimally enrich the county tax coffers. The rights of discovery provided by the Rules were not protected in any way”). This could result in an unjust benefit for the offending party and their employers, at the expense of those significantly harmed by their tortious actions.

Here, Defendant Eldridge is represented by the same counsel representing his former employer, Defendant Pava Logistics. The South Carolina Rules of Professional Conduct prevent Plaintiffs from contacting Defendant Eldridge directly. Without adequate sanctions from this Court, Plaintiffs would be powerless to obtain discovery from him given his noncompliance to numerous requests, notices, and court orders. Given these circumstances, the only appropriate remedy to safeguard Plaintiffs' right to discovery is to presume that Defendant Eldridge's responses to discovery would substantiate the allegations in Plaintiffs' Amended Complaint.

Accordingly, it is hereby **ORDERED** that:

1. Plaintiffs' motion for sanctions is GRANTED.
2. Pursuant to Rule 37(b)(A) of the South Carolina Rules of Civil Procedure, if Defendant Eldridge fails to fully respond to Plaintiffs' discovery requests and appear for his deposition pursuant to the South Carolina Rules of Civil Procedure by March 4, 2024, the following sanctions will be imposed:
 - a. Defendant Nathaniel Eldridge's Answer will be stricken; and
 - b. It will be deemed admitted that Defendant Eldridge was driving impaired under the influence of cocaine at the time of the accident.
3. Regardless of whether Defendant Eldridge fully responds to discovery by March 4, 2024, Defendant Eldridge will pay the reasonable attorney's fees and costs incurred by Plaintiffs in connection with prosecuting their motion to compel and motion for sanctions. See McMillan v. Morin, 319 S.C. 331, 461 S.E.2d 43, 45 (1995) ("An award of attorney's fees and costs is within the sound discretion of the trial court and will not be reversed on appeal absent an abuse of that discretion."); LeFurgy v. Long Cove Club Owners Assoc., Inc., 313 S.C. 555, 443 S.E.2d 577, 580 n.4 (Ct. App. 1994) ("The six factors to consider in determining an award of attorney fees are: 1) the nature, extent and difficulty of the legal services rendered; 2) the time and labor devoted to the case; 3) the professional standing of counsel; 4) the contingency of compensation; 5) the fee customarily charged in the locality for similar services, and; 6) the beneficial results obtained.").
4. Plaintiffs' counsel shall submit a detailed statement of attorney's fees and costs within fourteen (14) days of this order for this Court's consideration.

[JUDICIAL SIGNATURE PAGE TO FOLLOW]



Spartanburg Common Pleas

Case Caption: Gunther Pettighofer , plaintiff, et al VS Spectrum Express, Inc ,
defendant, et al
Case Number: 2021CP4203274
Type: Order/Sanctions

IT IS SO ORDERED.

S/GRACE GILCHRIST KNIE - 2760