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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT, CHESTER COUNTY

The Honorable Paul M. Burch, Circuit Court Judge

Appellate Case No. 2025-001021

Jai Anne Bullin as Guardian and Conservator for Lillian Anne Brown Rayfield (an incapacitated person),
Appellant,

v.

Merri Rowe Thomas,
Respondent,

AND

Merri Rowe Thomas,
Respondent,

v.

Jai Anne Bullin,
Appellant.

INITIAL BRIEF OF RESPONDENT

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INTRODUCTION

It is undisputed that the Appellants, Jai Anne Bullin as Guardian and Conservator for Lillian Anne Brown Rayfield (an incapacitated person) ("Appellant G/C") and Jai Anne Bullin ("Appellant Bullin") (together, Appellant G/C and Appellant Bullin may be referred to collectively as "Appellants" hereinafter, as appropriate) did absolutely nothing to prosecute or defend the underlying civil action for approximately twenty (20) months. During this period, neither Appellant G/C nor Appellant Bullin took any action in connection with the multiple Counterclaims and Third-Party Claims they faced.

Based on these undisputed facts and surrounding circumstances, the trial court exercised its discretion to dismiss this action for failure to prosecute. Subsequently, the trial court reviewed Appellants' Rule 59 motion and reached the conclusion that its prior decision to dismiss the case was proper.

Nevertheless, Appellants contend in this appeal that they "diligently prosecuted the matter" when the trial court dismissed the case. (Apl. Br. p. __) Appellants further contend that the trial court "failed to exercise is [sic] direction [sic] in any manner." (Apl. Br. p. 8) These contentions are inconsistent with the facts in the record, repugnant to the well-established principles governing the trial court's inherent and independent power to dismiss an action for failure to prosecute, and make very little sense.

Clearly, Appellants' arguments that the trial erred are fundamentally flawed and without merit. Accordingly, this Court should affirm all of the trial court's rulings, decisions, orders, and Final Judgment in this matter *in toto*.

STATEMENT OF ISSUES ON APPEAL

Did the Court of Common Pleas for Chester County, the Sixth Judicial Circuit ("trial court"), err in (i) entering a *Form 4 Order* on February 21, 2025, dismissing the underlying civil action being appealed for "[f]ailure to prosecute," and/or (ii) entering an *Order* on May 15, 2025, denying the *Motion to Amend or Alter Judgment* filed by the Appellants on March 3, 2025, where (i) Appellants took no action whatsoever to prosecute or defend the pending action for approximately twenty (20) months while failing to respond to the trial court's correspondence?

STATEMENT OF THE CASE

In this civil action—which was originally filed on September 7, 2017—Appellant G/C alleged, *inter alia*, that the Respondent, Merri Rowe Thomas ("Respondent"), who is Appellant Bullin's own biological sister, has engaged in such tortious conduct as exertion of undue influence over the Parties' biological mother to procure a quitclaim deed for certain tract of land located in Chester County, South Carolina.

On February 14, 2022, this case was called for trial after being placed upon this Court's Jury Roster for eleven (11) months or so. Prior to the trial and pursuant to this Court's instructions, Respondent timely filed and served multiple pretrial documents, including *Defendant's Pretrial Brief*, *Defendant's Motion in Limine*, *Defendant's Potential Trial Exhibits*, and *Defendant's Proposed Jury Instructions*. Additionally, Respondent served multiple requests for trial testimony and subpoenas upon several witnesses in preparation for the scheduled trial.

Also on February 14, 2022—the first day of the scheduled trial—Appellants did not appear in court. A lengthy discussion, *in camera*, about Appellants' absence in court ensued. During this discussion, counsel for Appellants offered an explanation that Appellants' absence

resulted from the Parties' mother's alleged injury and sudden illness of both of her two (2) caregivers. However, no evidence showing said injury or illness—such as medical records, physician letters, and Affidavits—was submitted.

Based upon Appellants' unexpected absence unsupported by any evidence whatsoever, counsel for Respondent announced Respondent's intent to pursue an involuntary dismissal/non-suit, pursuant to Rule 41(b), SCRCP. Subsequently, counsel for the Parties explored at length the possibility of striking the case from any docket, pursuant to Rule 40(j), SCRCP, under certain conditions. On February 15, 2022, the trial court entered an *Order/Dismissal Rule 40J*[1], as shown in the court record.

On March 31, 2023, upon Appellant G/C's motion, the trial court entered a *Form 4 Order* restoring this action under Rule 40(j), SCRCP. On April 26, 2023, Respondent timely filed her *Answer* to Appellant G/C's *Second Amended Complaint*, along with her Counterclaims against Appellant G/C and Third-Party Claims against Appellant Bullin. On June 26, 2023, Appellants filed their responses to Respondent's Counterclaims and Third-Party Claims.

Following these responses, neither Appellant G/C nor Appellant Bullin took any action whatsoever regarding this action for approximately twenty (20) months[2]. In fact, Appellants did absolutely nothing to prosecute or defend this action.

On February 21, 2025, the trial court issued a *Form 4 Order* dismissing this case in its entirety for "[f]ailure to prosecute." On March 3, 2025, Appellant G/C filed a *Motion to Amend*

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[1] This *Order* was partially amended on June 8, 2022.

[2] The Court record clearly shows that nothing was filed by either Plaintiff or Third-Party Defendant Jai Anne Bullin from June 27, 2023, through March 2, 2025. During this period, neither Plaintiff nor Third-Party Defendant Jai Anne Bullin engaged in discovery, settlement discussion, or any correspondence with Defendant or her counsel regarding this action.

or Alter Judgment, challenging the validity of the trial court's decision to dismiss the action. On May 15, 2025, the trial court denied Appellant G/C's *Motion to Amend or Alter Judgment*.

On May 23, 2025, Appellants filed a *Notice of Intention to Appeal*.

STANDARD OF REVIEW

"[T]rial judges possess the inherent power to dismiss actions *sua sponte* for a party's failure to prosecute the relevant claims." *See, e.g.*, *Crestwood Golf Club, Inc. v. Potter*, 328 S.C. 201, 211-12, 493 S.E.2d 826, 832 (1997) (recognizing that "it is within the inherent power of the court to dismiss an action for failure to prosecute"; noting that "*the power of trial courts to dismiss a case for failure to prosecute with due diligence is generally considered inherent and independent of any statute or rule of court*. Such power is deemed to be necessarily vested in trial courts to manage their own affairs so as to achieve orderly and expeditious disposition of cases"; and observing that "federal court's exercise of inherent power to dismiss a case *sua sponte* for lack of prosecution operated as *an adjudication on the merits* just as would a dismissal pursuant to Rule 41, FRCP") (emphasis added).

"The question of whether an action should be dismissed . . . for failure to proceed is left to the discretion of the circuit judge and his decision will not be disturbed except upon a clear showing of an abuse of such discretion." *Small v. Mungo*, 254 S.C. 438, 442, 175 S.E.2d 802, 804 (1970). "The plaintiff has the burden of prosecuting her action, and the trial court may properly dismiss an action for plaintiff's unreasonable neglect in proceeding with her cause." *Don Shevey & Spires, Inc. v. Am. Motors Realty Corp.*, 279 S.C. 58, 60, 301 S.E.2d 757, 758 (1983). "This authority is necessary if the courts are to control and efficiently manage an ever-expanding docket." *Id*. "[The circuit judge's] decision [to dismiss a case for failure to prosecute]

will not be disturbed except upon a clear showing of an abuse of such discretion." *Small*, *supra*, 254 S.C. at 442, 175 S.E.2d at 804.

The decision to grant or deny a motion made pursuant to Rule 59(e) is within the sound discretion of the trial judge. *See, e.g.*, *Pollard v. County of Florence*, 314 S.C. 397, 401-02, 444 S.E.2d 534, 536 (Ct. App. 1994).

The appellate standard of review is limited to determining whether there was an abuse of discretion. *See, e.g.*, *BB&T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 502-03 (2006). An abuse of discretion occurs when the order of the court is controlled by an error of law or where the order is based on factual findings that are without evidentiary support. *Id.*

Importantly, "all parties should raise all necessary arguments to the lower court and attempt to obtain a ruling." *I'On, L.L.C. v. Town of Mr. Pleasant*, 338 S.C. 406, 422-23, 526 S.E.2d 716, 725 (2000). "Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments." *Id.* at 422, 526 S.E.2d at 724 (noting that the purpose of an appeal is to determine whether the trial judge erroneously acted or failed to act and when appellant's contentions are not presented or passed on by the trial judge, such contentions will not be considered on appeal). "The requirement also serves as a keen incentive for a party to prepare a case thoroughly." *Id.* "It prevents a party from keeping an ace card up his sleeve—intentionally or by chance—in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case." *Id.*

ARGUMENTS

THE TRIAL COURT DID NOT ERR IN DISMISSING THE ACTION OR DENYING APPELLANTS' RULE 59 MOTION BECAUSE IT PROPERLY EXERCISED ITS SOUND DISCRETION WITHIN ITS INHERENT POWER TO DO SO.

The question before this Court is whether the trial court committed reversible error when dismissing the underlying action and/or when denying Appellants' Rule 59(e) motion. Respondent respectfully submits that it did not. The absence of Appellants' cogent arguments based on facts and applicable legal authority in South Carolina confirms that the trial court did not commit reversible error.

First, Appellants contend that "[t]he [trial] court's three-word Form 4 dismissal—"Failure to prosecute"—reflects no legal reasoning, factual basis, or exercise of discretion." (Apl. Br. p. 8) From this, Appellants leap to the conclusion that "[t]he lower court failed to exercise is [sic] direction [sic] in any manner" and "[a Form 4 entered with a three-word ruling] definitively establishes that the lower court abused its discretion and warrants reversal of the Dismissal Order." (*Id.*) Essentially, Appellants are asking this Court to reverse the trial court's ruling simply because the Form 4 Order being challenged contained only three words.

"[T]rial judges possess the inherent power to dismiss actions *sua sponte* for a party's failure to prosecute the relevant claims." *See, e.g.*, *Potter*, *supra,* 328 S.C. at 211-12, 493 S.E.2d at 832.

Here, when issuing the Form 4 Order being challenged, the trial court was exercising its sound discretion within its inherent power to dismiss an action for failure to prosecute. At that time, it was not required to include a factual summary or detailed analysis supporting its ruling. Appellants do not and cannot identify any legal authority showing otherwise. The mere fact that

the trial court issued a Form 4 Order concisely explaining the grounds therefor—"Failure to prosecute"—does not and cannot invalidate its ruling.

Thus, Appellants' contention that "[a Form 4 entered with a three-word ruling] definitively establishes that the lower court abused its discretion and warrants reversal of the Dismissal Order" is wholly without merit. Furthermore, no argument regarding the trial court's discretion before this Court is available to Appellants. Because Appellants failed to raise an issue regarding the trial court's authority or discretion to dismiss the case for failure to prosecute prior to the filing of this appeal, such an issue cannot be reviewed by this Court at this time. As the record on appeal would clearly show, Appellants failed to preserve any issue regarding the trial court's discretion. Therefore, any and all of Appellants' contentions regarding the trial court's discretion sought to be presented to this Court for the first time now should be wholly disregarded.

Second, in contending that the trial court's ruling "constitute[ed] an error of law requiring reversal of the Dismissal Order[,]" Appellants rely on the Fourth Circuit's four-prong test utilized in *McComas*. (Apl. Br. p. 10) However, *McComas* is easily distinguishable from the instant case.

In *McComas*, there was no indication that the plaintiff failed to prosecute her case. *McComas v. Ross*, 368 S.C. 59, 63, 626 S.E.2d 902, 905 (Ct. App. 2006). The plaintiff in *McComas* spent many months, engaged in discovery, and subpoenaed a total of five witnesses for trial. *Id.* She actively pursued her case and was only personally delayed on the date of trial. *Id.* Unlike other cases where our courts in South Carolina found unreasonable neglect by the plaintiff, the plaintiff in *McComas* simply arrived late on the day of trial. *See id.* That is not the case here.

Here, Appellants clearly failed to prosecute her case or defend the multiple Counterclaims and Third-Party Claims they respectively faced. For the period of approximately twenty (20) months following their responsive pleadings to Respondent's Counterclaims and Third-Party Claims, neither of them engaged in discovery, participated in settlement discussion, or subpoenaed any witness for trial. Appellants did not actively pursue her case or attempt to defend Respondent's claims against them for nearly twenty (20) months. Appellants' assertion that "[t]he record demonstrates steady prosecution of the case and readiness for trial since 2022" is simply incorrect and only misleading. (Apl. Br. p. 10) The record on appeal clearly shows that Appellants did absolutely nothing in connection with this case from June 27, 2023, to the trial court's Form 4 Order dated February 21, 2025.

Furthermore, the *McComas* factors were never presented to the trial court, precluding this Court from reviewing them as additional sustaining grounds. To be sure, the *McComas* factors were never presented to and/or ruled upon by the trial court. Because the trial court never ruled upon the *McComas* factors, there is nothing to reverse based on the same here. By failing to present the *McComas* factors to the trial court[3], Appellants simply failed to preserve any issue concerning the *McComas* factors for appellate review. They cannot now invoke *McComas* for the first time.

Thus, any and all of Appellants' contentions seeking to invoke *McComas* for the first time at appeal should be disregarded *in toto*.

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[3] It should be noted that Appellants' Rule 59 motion and the accompanying documents entitled "Affidavit"—which were not properly executed before a notary public—were silent about any of the factors pertinent to the *McComas* analysis. At or prior to the hearing on Appellants' Rule 59 motion, Appellants did not submit any additional documents, briefs, or memoranda in support of their motion.

Third, Appellants appear to argue that the trial court's decision "plainly constitutes an abuse of discretion" because "[t]he docket in the original 2017 case reflects extensive litigation and, most importantly, that the case was ready for trial on February 14, 2022." (Apl. Br. p. 11-12) This argument ignores the important developments in this case since 2022.

As more fully described above, the trial court restored this action under Rule 40(j), SCRCP, on March 31, 2023, upon Appellant G/C's motion. Subsequently, Respondent timely filed her *Answer* to Appellant G/C's *Second Amended Complaint*, along with multiple Counterclaims against Appellant G/C and multiple Third-Party Claims against Appellant Bullin. By virtue of such Counterclaims and Third-Party Claims, this action was substantially reshaped as a whole after its restoration to the docket in March 2023. Appellants' baseless assertion that "[w]hen restored, the case was ready for trial; all that remained was for the court to set a date" and "[t]he parties were simply waiting for the court to set a trial date" is simply inaccurate and inconsistent with the record on appeal. (Apl. Br. p. 11-12) Despite these substantial changes in the case, Appellants did absolutely nothing in response for approximately twenty (20) months.

Thus, the mere fact that the docket in the original 2017 case reflects extensive litigation is irrelevant and immaterial to this Court's analysis in determining whether the trial court committed reversible error by abusing its discretion. Accordingly, Appellants' attempt to link the parties' activities in the original 2017 case to their inaction after its restoration to the docket cannot and should not impact this Court's analysis.

Fourth, in arguing that the trial court applied the wrong standard in deciding Appellants' Rule 59 motion, Appellants contend that the trial court "required [Appellants] to show a clear abuse of discretion" (Apl. Br. p. 12) (internal quotation marks omitted). Additionally, Appellants brutally attack the trial court for "a nonsensical and ineffective approach to deciding

Rule 59 motions to say the least." (Apl. Br. p. 12; n. 1) From this, Appellants leap to the conclusory contention that "[t]his misapplication of law effectively insulated [the trial court's] prior ruling from correction and itself constitute an abuse of discretion." *Id.* In so doing, however, they do not and cannot identify or articulate the proper trial court's standard in granting or denying Rule 59 motions they contend should have been applied.

The decision to grant or deny a motion made pursuant to Rule 59(e) is within the sound discretion of the trial judge. *See, e.g.*, *Pollard*, *supra*, 314 S.C. at 401-02, 444 S.E.2d at 536. Such a motion "may in the discretion of the court be determined on briefs filed by the parties without oral argument." Rule 59(f), SCRCP.

Shortly after Appellants filed their Rule 59 motion, the trial court scheduled a hearing for oral arguments. Prior to hearing, Respondent filed a memorandum of law in opposition to Appellants' motion; however, Appellants never submitted anything in writing to the trial court in response or in support of their own motion, except those entitled, "Affidavit," which had not been property notarized.

At the hearing, counsel for the Parties presented extensive oral arguments. Upon careful consideration of the procedural history of this case, along with the Parties' filings and oral arguments, and upon careful review of the applicable law in South Carolina and the Parties' respective proposed orders, the trial court exercised its discretion to deny Appellants' Rule 59 motion, observing that "[Appellants'] Motion is devoid of any facts or law forming the basis for a challenge to [its] prior ruling." (Rule 59 Order, p. 5) The mere fact that the trial court referenced or utilized the appellate standard of review governing the trial court's discretion, and/or an abuse thereof, in denying Appellants' motion does not mean that it abused its

discretion, which is within its sound discretion. *See, e.g.*, *Pollard*, *supra*, 314 S.C. at 401-02, 444 S.E.2d at 536.

Accordingly, Appellants' contention that the trial judge "[ignored] the Rule 59(e) grounds fir amendment, manifest injustice and clear error" and "[denied] reconsideration under an incorrect standard" is wholly without merit.

Finally, Appellants appear to contend that the trial court "[relied] on [the Rule 50(g)] technicality to deny substantive relief[.]" (Apl. Br. p. 13) This contention tends to mischaracterize the trial court's ruling in that it incorrectly portrays the trial court's order as being based solely upon Appellants' non-compliance of Rule 59(g). (Apl. Br. p. 13) While correctly observing and pointing out that Appellants' Rule 59 motion was technically defective due to their failure to comply with Rule 59(g)[4], the trial court's order cannot be deemed to rely upon such technicality exclusively—which the trial court never stated it did—in denying Appellants' motion. As clearly explained in the trial court's order denying Appellants' motion, the trial court's ruling was based upon the "facts, procedural history, and legal authorities in South Carolina and upon careful consideration of the Parties' filings and oral arguments[.]" (Rule 59 Order, p. 5)

Furthermore, Appellants failed to preserve the issue concerning their non-compliance with Rule 59(g) for appellate review by failing to address the same with the trial court at the motion hearing or otherwise. Thus, Appellants' non-compliance with Rule 59(g), even assuming *arguendo* that the trial court relied upon it in denying Appellants' motion, cannot be presented for this Court's review at this time.

[4] While the record on appeal would clearly reveals that Appellants failed to comply with Rule 59(g), Appellants' brief also appears to acknowledge and confirm such non-compliance.

Therefore, any and all of Appellants' contentions relating to their own non-compliance with Rule 59(g) should be disregarded.

CONCLUSION

As shown above, the trial court did not commit reversible error in dismissing the underlying civil action or denying Appellants' Rule 59 motion. In dismissing the matter and denying Appellants' motion, the trial court exercised its sound discretion within its inherent and independent power based upon the facts in the record, procedural history, and legal authorities in South Carolina and upon careful consideration of the Parties' filings and oral arguments. There is no reversible error here.

In pursuing this appeal, Appellants are seeking to introduce and present multiple issues, such as the *McComas* factors, which they failed to preserve for this Court's review. Appellants are further seeking to present to this Court such inconsequential matters as the Parties' activities in the original 2017 case and Appellants' own non-compliance with Rule 59(g), which should not be considered in determining whether the trial court abused its discretion.

It is plain that Appellants' appeal is without merit. Therefore, this Court should affirm the trial court's rulings, decisions, orders, and judgment *in toto*.

Given the foregoing, Respondent respectfully requests that this Court affirm and uphold all of the trial court's rulings, decisions, orders, and Final Judgment in this matter.

[SIGNATURE APPEARS ON THE FOLLOWING PAGE.]

Respectfully submitted,

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December 10, 2025

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CERTIFICATE OF SERVICE

The undersigned certifies that on December 10, 2025, a copy of the foregoing ***Initial Brief of Respondent*** was filed with this Court and served upon all counsel of

record in this matter, including the following, pursuant to the relevant Order of the Supreme Court[5]:

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This 10th day of December, 2025.

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[5] Order, *RE: Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended April 24, 2024)*, Appellate Case No. 2020-000447, April 24, 2024.