

Appellant's then counsel was suspended, and Appellant's current counsel was retained, filing a notice of appearance on April 1, 2022.

On January 4, 2023, the Probate Court heard arguments in both the James Marshall Shoemaker, Jr., and the Mary Sloan "Polly" Shoemaker matters. At the onset of the hearing, Appellant's Counsel informed the Court that as to the motion to compel discovery, the Appellant consented to a grant of the motion with a reasonable time to respond. Appellant's Counsel also consented to waive objections to discovery except for attorney-client privileged items. Both parties consented to the Appellant providing responses to discovery within thirty (30) days of the date of the hearing. On the record, the Court granted the motion to compel within thirty (30) days.

No order regarding the motion to compel discovery was issued at that time under the reasoning that the thirty-day deadline would run prior to the issuance of the order regarding the other matters before the Court on January 4 and based upon Appellant's Counsel's assurances. On February 24, 2023, Respondents' Counsel notified the Probate Court, via letter, that the Appellant had failed to respond to discovery as agreed to on the record and asked the Probate Court to strike Appellant's pleadings. The Probate Court was reluctant to sanction a party without an order in place, so rather than strike the Appellant's pleadings at that time, the Probate Court issued an Order on March 10, 2023, ordering Appellant to comply with discovery within ten (10) days.

Appellant then failed to comply with the Court's Order of March 10, 2023, and on March 22, 2023, Respondents' Counsel wrote a letter to the Probate Court renewing their request that Appellant's pleadings be stricken as a sanction. On March 23, 2023, Appellant's Counsel turned over a large box of documents to Respondents, including a letter stating this was his entire file as received from John Blincow, the former lawyer on the case. Appellant still did not issue answers to interrogatories or written responses to Respondents Requests for Production.

Respondents filed a Motion for Sanctions on April 6, 2023, and again asked the court to strike Appellant's pleadings and dismiss all pending claims of Appellant. On April 2, 2024, one day prior to the hearing on the Motion for Sanctions, Appellant submitted interrogatory responses to Respondents but still failed to respond to the Request for Production of Documents. Respondents argued that the evasive and incomplete answers provided by Appellant should be treated as a failure to answer under Rule 37(a)(3), SCRCP. Ultimately, the Probate Court struck Appellant's pleadings and dismissed his case as a sanction for his discovery abuses. This appeal followed.

Legal Standard

In a probate appeal, the circuit court, court of appeals, or supreme court shall hear and determine the appeal according to the rules of law. S.C. Code Ann. § 62-1-308(i) (Supp. 2018). “[I]f the action is at law, the circuit court should uphold the findings of the probate court if there is any evidence to support them.” *In re Estate of Weeks*, 329 S.C. 251, 260, 495 S.E.2d 454, 459 (Ct. App. 1997). Respondents submit that this is an action at law and as such, the findings of the Probate Court and circuit court must be upheld if there is any evidence to support them.

“A trial judge’s exercise of his discretionary powers with respect to sanctions imposed in discovery matters will not be disturbed on appeal absent a clear abuse of discretion. The burden is on the party appealing from the order to demonstrate the trial court abused its discretion.” *Karppi v. Greenville Terrazzo Co.*, 327 S.C. 538, 541-43, 489 S.E.2d 679, 681-82 (Ct. App. 1997). A decision on sanctions is undeniably with the lower court’s discretion and whether this Court would make a different decision is not the standard the Court must follow.

Under Rule 37, SCRCP, a trial judge may impose sanctions for a party’s failure to comply with the court’s order compelling discovery, including dismissal of the action. Rule 37(b)(2)(C),



Greenville Common Pleas

Case Caption: James Marshall Shoemaker III , plaintiff, et al VS Lesley R Moore ,
defendant, et al
Case Number: 2024CP2304068
Type: Order/Dismissal

So Ordered

G.D. Morgan Jr.