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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Dale Van Slambrook, Circuit Court Judge

Appellate Case No.: 2025-001683

Kanisha Nash.....Respondent,

v.

Montgomery Construction, LLC, Patrick Montgomery, and Sabrina Montgomery,
individually, and as owner/registered agent for Montgomery Construction, LLC

of which Patrick Montgomery and Sabrina Montgomery
are.....Appellants.

APPELLANT SABRINA MONTGOMERY'S INITIAL BRIEF

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February 11, 2026

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Orlando v. Boyd, 320 S.C. 509, 466 S.E.2d 353 (1996)

QZO, Inc. v. Moyer, 358 S.C. 246, 594 S.E.2d 541 (Ct. App. 2004)

STATEMENT OF ISSUE ON APPEAL

- I. Were the sanctions ordered against Sabrina Montgomery appropriate considering that the monetary amounts are significant to her because of her limited finances and the impact that striking Sabrina Montgomery's Answer to the Amended Complaint could have on Montgomery Construction Company, LLC?

STATEMENT OF THE CASE

The underlining lawsuit arises from a horrific and tragic automobile incident on April 14, 2023 on Highway 176 in Berkeley County. Respondent, Kanisha Nash, was injured and her 2-year old child was killed. Patrick Montgomery was the driver of a 2014 GMC Sierra vehicle with a trailer attached to the vehicle. Sabrina Montgomery was not in the vehicle at the time of the accident and did not witness the accident. Patrick Montgomery faces criminal charges from the incident, including felony driving under the influence and other charges.

Allstate Fire and Casualty Insurance Company insured the 2014 GMC vehicle under policy number 968905683. That Policy also listed Sabrina Montgomery and Patrick Montgomery as named insureds. Allstate Policy. Allstate tendered the available insurance coverage for each claim before litigation.

Kanisha Nash filed the underlying lawsuit on June 16, 2023 with the Berkeley County Court of Common Pleas. Complaint. The lawsuit named Patrick Montgomery, Sabrina Montgomery, and Montgomery Construction Company, LLC as defendants. Id. Montgomery Construction Company is a business owned and run by Sabrina Montgomery that hauls debris using a dump truck. Defendant Sabrina Montgomery's answer to Interrogatory 10. The dump truck was not involved in the accident. Montgomery Construction is insured by American Millennium Insurance Company. Montgomery Construction's answer to Interrogatory 5. That carrier has filed a Declaratory Judgment Action over the coverage issues. American Millennium Ins. Co. v. Patrick Montgomery et al., Civil Action No.: 2:25-cv-11601-RMG (D.S.C. filed August 27, 2025).

The Complaint alleged, among other things,:

- ¶ 7: “At all times relevant, Patrick Montgomery was an officer, director, agent, and/or employee of Defendant Montgomery Construction and was acting within the course and scope of his employment, agency, and/or work with Defendant Montgomery Construction at the time of the subject incident described herein.”
- ¶ 9 “At all times relevant, Defendants Montgomery Construction and Sabrina Montgomery were the employers and/or principals of Defendant Patrick Montgomery and exercised control over the conduct of Defendant Patrick Montgomery and had the right to control the time, manner, method and performance of Defendant Patrick Montgomery’s employment and/or work and use of the vehicle he was driving at the time of the subject incident described herein.”
- ¶ 11: “The subject vehicle was owned by Defendants Montgomery Construction and/or Sabrina Montgomery.”

Id. The Complaint asserted the following causes of action: (1) Negligence/Recklessness against Patrick Montgomery; (2) Doctrines of Respondent Superior and Agency against Montgomery Construction and Sabrina Montgomery; (3) Direct Negligence/Recklessness against Montgomery Construction and Sabrina Montgomery; (4) Negligent/Reckless Entrustment against Montgomery Construction and Sabrina Montgomery; (5) Negligent/Reckless Hiring, Training, Retention, and Supervision against Montgomery Construction and Sabrina Montgomery; and (6) Negligent Infliction of Emotional distress against Patrick Montgomery, Sabrina Montgomery, and Montgomery Construction. Complaint.

Sabrina Montgomery answered the lawsuit, and in her answer denied that Montgomery Construction employed Patrick Montgomery. Sabrina Montgomery Answer. In addition, financial documents produced by Sabrina Montgomery and various entities do not show that Montgomery Construction employed Patrick

Montgomery. FSU Accounting Group records (Sabrina Montgomery's Fifth Supplemental Responses to Requests for Production). In fact, Patrick Montgomery worked for the City of North Charleston Sewer District at the time of the accident. Sabrina Montgomery's Answer to Interrogatory 29 and Patrick Montgomery's Records from North Charleston Sewer District (Nash documents 1688-2359 and 3304-3310). North Charleston Sewer District terminated Patrick Montgomery on May 4, 2023 (20 days after the accident). Nash document 2985.

Nash filed an Amended Complaint on January 21, 2025. Amended Complaint. This pleading added additional allegations, including that Sabrina Montgomery and/or Montgomery Construction owned the trailer attached to the 2014 GMC vehicle. Amended Complaint ¶ 15. Sabrina Montgomery denied that Montgomery Construction owned the trailer and repeated her denial that Montgomery Construction employed Patrick Montgomery at the time of the accident. Sabrina Montgomery's Answer to Amended Complaint. On May 14, 2025, Andrew Shepherd, Esq. as Special Administrator of the Estate of Ms. Nash's minor child filed a lawsuit against Montgomery Construction, LLC, Patrick Montgomery, and Sabrina Montgomery, individually, and as owner/registered agent for Montgomery Construction, LLC. Shepherd Complaint (Docket No.: 2025-CP-08-1662). Sabrina Montgomery answered that lawsuit and denied that Montgomery Construction employed Patrick Montgomery at the time of the accident. Sabrina Montgomery Answer to Shepherd Complaint.

As part of the discovery in the lawsuit, Sabrina Montgomery was to make her cell phone available for a forensic download by a third-party. March 28, 2025 Order Granting Plaintiff's Rule to Show Cause. When Sabrina Montgomery provided the phone, the forensic examiner determined the phone had been manually wiped the day before it was produced for inspection. Subsequently, the trial court held a hearing on June 18, 2025 on Nash's Motion for Rule to Show Cause and granted the motion by Form 4 Order filed June 20, 2025 with a statement that a formal order would follow. June 20, 2025 Order. The trial court then filed the formal order filed on July 1, 2025. Supplemental Order Granting Plaintiff's Motion for Rule to Show Cause. That order

awarded attorney fees and costs against Sabrina Montgomery of \$10,914.32¹ and costs and fees associated with the forensic download against Sabrina Montgomery of \$2,375.00. Id. The order also struck her answer and declared her in default. Id.² This appeal of the sanctions followed. Notice of Appeal filed August 25, 2025.

STANDARD OF REVIEW

As stated in Karppi v. Greenville Terrazzo Co., Inc., 327 S.C. 538, 489 S.E.2d 679 (Ct. App. 1997):

The imposition of sanctions is generally entrusted to the sound discretion of the Circuit Court. Downey v. Dixon, 294 S.C. 42, 45, 362 S.E.2d 317, 318 (Ct. App. 1987). A trial court's exercise of its discretionary powers with respect to sanctions imposed in discovery matters will be interfered with by the Court of Appeals only if an abuse of discretion has occurred. Clark v. Ross, 284 S.C. 543, 328 S.E.2d 91 (Ct. App. 1985). The burden is upon the party appealing from the order to demonstrate the trial court abused its discretion. Clark, 284 S.C. at 570, 328 S.E.2d at 107. An abuse of discretion may be found where the appellant shows that the conclusion reached by the trial court was without reasonable factual support and resulted in prejudice to the rights of appellant, thereby amounting to an error of law. Dunn v. Dunn, 298 S.C. 499, 502, 381 S.E.2d 734, 735 (1989) (citing Darden v. Witham, 263 S.C. 183, 209 S.E.2d 42 (1974)).

STATEMENT OF FACTS

Sabrina Montgomery references the Statement of the Case.

ARGUMENT

¹ The initial order awarded those fees and costs against “Sabrina Montgomery and/or defense counsel.” However, the trial court granted a Rule 59(e), SCRCP, motion to remove him from being responsible for this amount because he did not participate or encourage the actions and Nash’s attorney indicated defense counsel was included in the draft order submitted to the judge in error. July 25, 2025 Order on Defendant Sabrina Montgomery’s Motion to Reconsider, Alter, or Amend.

² The order also sanctioned Patrick Montgomery \$10,914.32 and counsel for the fees and costs and struck his answer. Id.

I. THE TRIAL COURT ERRED BY ASSESSING THE SIGNIFICANT MONETARY PENALTY AGAINST SABRINA MONTGOMERY AND BY STRIKING HER ANSWER.

Counsel for Sabrina Montgomery does not condone her actions. The trial court could have used, however, lesser sanctions that would have protected Nash's rights while also adequately punishing Sabrina Montgomery. Sabrina Montgomery is of limited financial means, as indicated by the documents produced in discovery. Sabrina Montgomery's Tax Returns and Statements from REV Federal Credit Union (produced in Fourth Supplemental Discovery Responses). Her discovery responses show that as of September 9, 2024, Sabrina Montgomery had accounts at REV Federal Credit Union with balances of \$5.00, \$4,013.92, and \$6.79; approximately \$9,000.00 at First Citizens Bank; approximately \$6,000.00-11,000.00 at Wells Fargo; an interest in the land and trailer in Ridgeville where she lives with her husband; several vehicles; and no other significant assets. Sabrina Montgomery's Fourth Supplemental Discovery Responses (Answers to Interrogatories 30-37). Respectfully, the sanctions award did not consider the financial impact to Sabrina Montgomery. Sanctions serve a purpose to deter misconduct, but the significant financial impact that the amount would cause her should be have been factored into the penalty. This monetary sanction is a significant burden for her. Other less burdensome sanctions, such as a lower financial penalty, would have been reasonable under these particular circumstances. See Alexes Harris, "The Cruel Poverty of Monetary Sanctions," The Society Pages (March 4, 2014).³ See also Rule 37(a)(4), SCRCP (stating that "other circumstances" could be factored into determination of an award of expenses).⁴ See also "The Impact of Criminal Financial Sanctions: A Multi-State Analysis of Survey and Administrative Data," National Bureau of Economic Research (August 2023).⁵

³ thesocietypages.org/papers/monetary-sanctions

⁴ Rule 37(a)(4) uses the term "unjust." A dictionary definition of "unjust" includes "not equitable." Merriam -Webster. Under these circumstances, a lesser monetary penalty would have been proper.

⁵ nber.org/papers/w31581

Further, the striking of Sabrina Montgomery's Answer was error. She was not involved in the accident and was sued because she owned the vehicle involved in the accident and also owns Montgomery Construction Company. Montgomery Construction Company also did not have a vehicle involved in the accident. In addition, the records produced by Sabrina Montgomery for herself and her company and obtained by Nash's counsel by subpoena show that Patrick Montgomery was not an employee of Montgomery Construction Company at the time of the accident.

As stated in Karppi v. Greenville Terrazzo Co., Inc., 327 S.C. 538, 489 S.E.2d 679 (Ct. App. 1997):

Rule 37 expressly grants the trial court power to order judgment by default for either the violation of a court order, or, upon motion, for a party's failure to respond to certain discovery requests. Rule 37(b)(2)(C) and (d), SCRPC. However, when the court orders default or dismissal, or the sanction itself results in default or dismissal, the end result is nevertheless harsh medicine that should not be administered lightly. See generally Orlando v. Boyd, 320 S.C. 509, 466 S.E.2d 353 (1996); Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991). Before invoking this severe remedy, the trial court must determine that there is some element of bad faith, willfulness, or gross indifference to the rights of other litigants. See Orlando; Baughman. 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. Balloon Plantation v. Head Balloons, 303 S.C. 152, 399 S.E.2d 439 (Ct.App.1990). The sanction should be aimed at the specific misconduct of the party sanctioned. Balloon Plantation, 303 S.C. at 154, 399 S.E.2d at 440. Furthermore, whatever sanction is imposed should serve to protect the rights of discovery provided by the Rules of Civil Procedure. Downey, 294 S.C. at 45, 362 S.E.2d at 318; Kershaw Co. Bd. of Educ. v. United States Gypsum Co., 302 S.C. 390, 396 S.E.2d 369 (1990).

Further, as stated in QZO, Inc. v. Moyer, 358 S.C. 246, 594 S.E.2d 541 (Ct. App. 2004),

... When a court orders a sanction that results in default or dismissal, "the end result is harsh medicine that should not be administered lightly." Griffin Clearing & Grading, Inc.

v. Tire Serv. Equip. Mfg Co., 334 S.C. 193, 198, 511 S.E.2d 716, 718. The sanction should be aimed at the specific misconduct of the party sanctioned and should not be used improvidently to prevent a decision on the merits. Griffin, 334 S.C. at 198, 511 S.E.2d at 719; Karppi, 327 S.C. at 543, 489 S.E.2d at 682. 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. Karppi, 327 S.C. at 543, 489 S.E.2d at 682. Finally, when a 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, 334 S.C. at 198-99, 511 S.E.2d at 719; see also Karppi, 327 S.C. at 543, 489 S.E.2d at 682.

The holding in Karppi applies to this matter. In Karppi, this Court held that the trial court's sanction that struck the answer of one defendant was unduly harsh under the circumstances because of the profound effect it had on the co-defendant to the litigation. That court stated:

We reluctantly agree with the appellant that the trial court abused its discretion by ordering the sanction involved in this appeal, because the sanction imposed was unduly harsh under the circumstances, and because the sanction was not limited in scope with regard to the violation by the appellant of the court's order. See Balloon Plantation. The need for the trial court to narrowly tailor its sanction to the offense committed by a party is never more evident than in cases involving multiple parties. 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. Although the trial court made the requisite finding that Ogden Teck "intentionally and willfully violated the Orders of this Court," the court failed to properly tailor its sanction to address the specific violation committed by Ogden Teck vis-a-vis Karppi.

327 S.C. at 543, 489 S.E.2d at 682.

Striking Sabrina Montgomery's Answer significantly and adversely impacts co-defendant Montgomery Construction Company because Sabrina Montgomery is the owner of Montgomery Construction Company. That impact also distinguishes this current issue from the facts found in QZO. The North Charleston Sewer District records and the Montgomery Construction financial records produced in this lawsuit showed that Montgomery Construction did not employ Patrick Montgomery at the time of this horrible incident, but the default order against Sabrina Montgomery would deem those allegations admitted against her.

CONCLUSION

For these reasons, Appellant Sabrina Montgomery respectfully asks this court to reverse the sanctions rulings against her.

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