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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 (as incapacitated person) …….Appellant,

v.

Merri Rowe Thomas, ……..…Respondent,

AND

Merri Rowe Thomas …….Respondent,

v.

Jai Anne Bullin, ……..…Appellant.

APPELLANT'S FINAL REPLY BRIEF

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I. INTRODUCTION

Respondent's brief confirms the fundamental problem with the dismissal below: the case was not dismissed because of any identified act of neglect, any warning, or any finding of prejudice, but solely because the court later characterized a period of docket inactivity as "failure to prosecute." That is not the law in South Carolina.

Nor does Respondent identify any authority permitting *sua sponte* dismissal of a case, without notice, without findings, and without consideration of lesser sanctions.

Instead, Respondent advances three principal arguments: (1) the trial court need not explain its reasoning; (2) docket inactivity alone suffices to support dismissal; and (3) Appellant "failed to preserve" governing legal standards by not reciting them by name below. Each argument is incorrect as a matter of law and contradicted by the record.

II. LEGAL ARGUMENTS AND ANALYSIS

A. A Three-Word Form 4 Order Does Not Constitute an Exercise of Discretion

Respondent contends the trial court was not required to articulate any factual or legal basis for dismissing this case and that a Form 4 order stating only "Failure to prosecute" suffices. That position cannot be reconciled with South Carolina law.

Discretion is not an incantation; it is a process. Our appellate courts consistently hold that when a ruling "reveals no discretion was, in fact, exercised," the decision constitutes an error of law. *Morris v. BB&T*, 438 S.C. 582, 586–87, 885 S.E.2d 394, 396–97 (2023); *Fontaine v. Peit*, 291 S.C. 536, 538, 354 S.E.2d 565, 566 (1987).

> The exercise of discretion is not to simply make a decision. The exercise of discretion requires first that the trial court recognize it has the responsibility of discretion. *See Jordan*, 435 S.C. at 505, 868 S.E.2d at 402 ("We cannot determine if the commission recognized it had the discretion ...."); *Lunneborg v. My Fun Life, Idaho* 856, 421 P.3d 187, 194 (2018) (stating one of the "essential" considerations for reviewing a discretionary decision is "[w]hether the trial court ... correctly

> perceived the issue as one of discretion"); *Johnson v. United States*, 398 A.2d 354, 367 (D.C. 1979) ("[R]eversal should follow if ... the trial court did not recognize its capacity to exercise discretion ...."). The exercise of discretion is then to follow a thought process that begins with the trial court's clear understanding of the applicable law, continues with the court's sound analysis of the situation before it in light of the law, and ends with the trial court's ruling that follows the law and is supported by the facts and circumstances.

Morris, 438 S.C. at 587, 885 S.E.2d at 397.

Here, the Form 4 order does not reference:

- any act of neglect,
- any warning to the parties,
- any prejudice to Respondent,
- any evaluation of lesser sanctions, or
- any factual circumstance supporting dismissal.

Respondent cites no authority holding that a court may dispense with discretion altogether when imposing the harshest sanction available. On the contrary, dismissal for failure to prosecute is a last resort, reserved for extreme cases. *McComas v. Ross*, 368 S.C. 59, 62–63, 626 S.E.2d 902, 904–05 (Ct. App. 2006). The circumstances justifying imposition of this harsh sanction were not present in the case below and imposition of it in their absence without the exercise of discretion was an error warranting reversal.

A ruling that contains no reasoning reflects no discretion. That alone warrants reversal.

B. Docket Inactivity is Not "Failure to Prosecute" Where a Case is Ready for Trial

Respondent repeatedly asserts that Appellants "did absolutely nothing" for approximately twenty months and that this fact alone justifies dismissal. That assertion misunderstands both the record and governing law.

After restoration to the docket in March 2023, the record reflects amended pleadings were filed by the parties. It was then up to them to do whatever they thought necessary to prepare the

case for trial if they believed anything further needed to be done that was not already complete before it was taken off the active roster in early 2022. Nothing was presented to the lower court to show that any further discovery or the like needed to be done or was not complete following restoration in 2023. Respondent, and the lower court upon acceptance of his draft order, just accepted the unfounded notion that the period of "inactivity" between restoration and dismissal required something further be done by the parties to prepare the matter for trial. Therefore, while Appellant disagrees with Respondent's contention that much needed to be done in that time period that was not accomplished, nothing in the record shows the lower court was presented with anything indicating that was the case, much less establishing Appellants needed to but had not completed pretrial tasks necessary to prepare the matter for trial once it was restored to the docket. Respondent simply wants this Court to accept the unsupported assertion that things needed to be done that were not, just like the lower court did. It was incumbent on the lower court to determine what needed to but had not been done by the parties and find that dereliction was unreasonable and prejudicial to their opposition before dismissing the case for failure to prosecute. All it did was enter a Form 4 Order reflecting none of those findings were made and then, in denying Appellant's Rule 59 Motion challenging it, accept Respondent's draft order in which the unsupported position was parroted. That does not suffice as appropriate exercise of discretion nor permit imposition of the harsh sanction of dismissal for failure to prosecute.

Absence of docket activity does not establish inaction. Nor does South Carolina law require parties to manufacture docket activity while waiting for a trial date or to establish their diligent prosecution of a case. Much can and does happen in litigating a matter that does not show up on the public docket. Indeed, courts routinely hold that inactivity does not constitute failure to prosecute absent unreasonable neglect, warnings, or prejudice. *Small v. Mungo*, 254 S.C. 438,

442–43, 175 S.E.2d 802, 804 (1970).

Respondent identifies no warning, no status conference, and no order directing action. The only communications cited (one email and one voicemail on the same day) did not threaten dismissal and were never followed by any formal court action before entry of the Form 4 order dismissing the case.

A case that is trial-ready cannot logically be dismissed for failure to prosecute merely because the court has not yet set it for trial. Nor can one be rightfully dismissed without the court first giving a litigant warning and opportunity to cure any actual or perceived failure to move the case forward to prepare it for trial. Therefore, regardless of whether the case was trial ready, the record reflects none of the prerequisite circumstances justifying dismissal for failure to prosecute were present in this case before issuance of the Form 4 order challenged on appeal.

C. Respondent's "Preservation" Argument Misstates the Law

Respondent argues Appellants failed to preserve error because they did not expressly cite the *McComas* factors below or other case law cited on brief. That argument fails for three independent reasons.

First, Appellants challenged the dismissal through a timely Rule 59(e) motion. Given the circumstances, and arguments presented in support, that is sufficient to preserve appellate review of the dismissal itself. Preservation does not require reciting case names so long as the issue is presented. *I'On, L.L.C. v. Town of Mount Pleasant*, 338 S.C. 406, 422–23, 526 S.E.2d 716, 725 (2000).

Second, *McComas* does not create a pleading or motion requirement; it defines the legal standard governing dismissal. A trial court's failure to consider controlling law is reversible error regardless of whether counsel labels it by name below. Appellate courts do not affirm legally erroneous rulings on the theory that the moving party failed to cite the correct case in challenging

the lower court's action.

Third and finally, the lack of substance in the Dismissal Order made it very difficult for Appellant to challenge the basis for the dismissal given none was articulated. Appellant was left to guess why the Court dismissed the case and could only presume it was due to ADR noncompliance, which resulted in that being the focus of her Rule 59 motion argument seeking reinstatement of the case.

D. The Case Was Not "Substantially Reshaped" After Restoration

Respondent asserts that counterclaims and third-party claims filed after restoration "substantially reshaped" the case, rendering it unready for trial. The record refutes this claim.

Those pleadings were filed in April 2023 and answered in June 2023. Respondent identifies no discovery taken, no witnesses added, no motions filed, and no unresolved issues arising from those claims during the ensuing twenty months. If additional preparation had been required, Respondent could have pursued it. He did not. If Appellant thought additional preparation was needed, she could have pursued it. She did not. Regardless, nothing in the record reflects that something needed to be done within the time between case restoration and dismissal that was not done by the Appellant. The entirety of the Respondent's (and lower court's) contention that Appellant failed to prosecute the case is a blanket statement that the docket reflected no filing after amended pleadings were submitted shortly after case restoration in 2023. That alone does not suffice to establish a lack of diligence in prosecuting the matter, nor establish the case was not ready for trial when it was dismissed as Respondent contends. All it reflects is that no public filing occurred after the parties submitted amended pleadings. If Appellant decided to proceed to trial without conducting additional discovery, then that was her prerogative and did not justify dismissal for failure to prosecute.

The suggestion that pleadings alone convert a trial-ready case into one abandoned by its

proponent is unsupported by law or logic.

Furthermore, whether the case was trial ready represents a factual dispute that was never presented, and certainly not resolved by the lower court. Disposition of matters where genuine issues of material fact remain is expressly prohibited under the Rules and well-established case law. That same prohibition in the summary judgment context should apply equally to dismissal for failure to prosecute when there is a genuine dispute over whether the matter is ready for trial, although Appellants contend there is none in this case.

Ultimately, whether the case was trial ready or not is irrelevant and does not alleviate the errors infecting the lower court's decision. No inquiry was made into whether the case was ready for trial or if Appellant needed and failed to do something to prepare her case for trial after amended pleadings were filed in 2023, before the lower court dismissed the case for failure to prosecute. Then, in arguing against Appellant's Rule 59 Motion, Respondent asserted that the Appellant "did absolutely nothing to defend the underlying civil action for approximately twenty (20) months." (Resp. Br. p. 3).[1] That alone does not establish a lack of diligence in prosecuting the matter and relies upon the unsupported assumption that something needed to be done in those twenty months.

E. The Trial Court Applied the Wrong Legal Standard to the Rule 59(e) Motion

Respondent concedes the trial court evaluated the Rule 59(e) motion under an appellate "clear abuse of discretion" standard but argues this was harmless. It was not. Rule 59(e) exists to allow a trial court to correct its own errors, prevent manifest injustice, and amend judgments unsupported by law or evidence. Requiring a movant to prove "clear abuse of discretion" at the trial-court level nullifies Rule 59(e)'s purpose and insulates erroneous rulings from correction.

[1] The lower court, in denying Appellant's motion, adopted that language but did nothing to evaluate whether anything needed to be done during that time to prepare the matter for trial.

That is precisely what occurred in this case.

F. Rule 59(g) Does Not Support Denial of Relief

Finally, Respondent's reliance on Rule 59(g) is misplaced. Appellants filed their motion through the court's e-filing system, the motion was placed on a roster, and the judge who made the challenged ruling heard argument. Rule 59(g)'s purpose of ensuring the judge that issued the challenged order receives the motion and decides it was fully satisfied. *Gallagher v. Evert*, 353 S.C. 59, 63, 577 S.E.2d 264, 266 (Ct. App. 2002). No authority permits denial of substantive relief on this basis, particularly where the court reached the merits, and Respondent cites to none.

III. CONCLUSION

Respondent's brief confirms what the record already shows: this case was dismissed without warning, without findings, without legal analysis, and without regard for controlling law. South Carolina precedent does not permit dismissal of a case under these circumstances.

The Form 4 Dismissal Order and the Order denying Rule 59(e) relief should be reversed, and this matter remanded for trial on the merits.

Respectfully Submitted,

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