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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 E. Van Slambrook, Circuit Judge

Appellate Case No. 2025-001683

Patrick Montgomery,Appellant,

v.

Kanisha Nash,Respondent,

INITIAL REPLY BRIEF OF APPELLANT PATRICK MONTGOMERY

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Appellant, Patrick Montgomery (“Appellant”), hereby replies to the Initial Brief of Respondent, Kanisha Nash (“Respondent”).

ARGUMENT

Despite Respondent’s arguments to the contrary, the trial court abused its discretion by imposing monetary sanctions against Appellant “and/or” his counsel, striking Appellant’s answer and entering default judgment against Appellant.

This appeal stems from alleged discovery deficiencies. Thus, for this Court to evaluate whether the trial court abused its discretion in issuing sanctions, it must know the nature and extent of the actual alleged discovery deficiencies. *See McNair v. Fairfield County*, 379 S.C. 462, 467, 665 S.E.2d 830, 832-833 (Ct. App. 2008) *quoting Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co.*, 334 S.C. 193, 199, 511 S.E.2d 716, 719 (Ct. App. 1999) (“[i]n determining the appropriateness of a sanction, the court should consider such factors as the precise nature of the discovery and the discovery posture of the case, willfulness, and degree of prejudice.”).

Appellant detailed that from Respondent’s perspective, there were two major disputes that needed to be resolved through discovery, which were (1) “the applicability of the three different reported insurance coverages maintained by the defendants” and (2) “the defendants’ financial condition and ability to pay a judgment in excess of policy limits.” (Plaintiff’s Memorandum in Support of Motion to Compel Supplemental Discovery Responses from P. Montgomery at p. 2; and Plaintiff’s Memorandum in Support of her Motion for a Rule to Show Cause at p. 3).

Thus, Appellant provided this Court, and the trial Court below, with a detailed review of the challenges faced by Appellant and the discovery asked of, and provided by, Appellant.

Specifically, Appellant detailed how he had invoked his Fifth Amendment rights and how his mental competency was at issue. (P. Montgomery Answer at ¶ 3; P. Montgomery Answer to Amended Complaint; Transcript of January 6, 2025 hearing at p. 15; Exhibit B to Plaintiff's Supplemental Memorandum in Support of Her Rule to Show Cause; and Motion to Protect Defendant's Interests pursuant to Rule 1.14(B)). Further, Appellant noted that the full bodily injury limits available to Appellant had been tendered to Respondent and that there was no other applicable insurance for Appellant. (Plaintiff's Memorandum in Support of her Motion for a Rule to Show Cause at p. 2). Finally, Appellant detailed his responses to written discovery and supplements of the same, which once fully supplemented, answered every interrogatory and every request for production of document, including those identified in the trial court's orders and provided all the information concerning Appellant's insurance coverage and his financial condition and ability (or lack thereof) to pay a judgment in excess of insurance. (P. Montgomery responses to interrogatories and requests for production of documents; P. Montgomery Supplemental Answers to Interrogatories; and P. Montgomery Second Supplemental Answers to Interrogatories and Requests for Production).

Put simply, Appellant provided this Court with a detailed background of the "precise nature of the discovery and the discovery posture of the case," including what was represented as needed, what was provided (or could be provided in the context of Constitutional rights) and whether any deficiencies remained. Despite providing this detail, Respondent countered with blanket statements that the discovery was generically deficient. Respondent fails to provide any specificity as to any alleged deficiencies, other than timeliness. The lack of specificity by Respondent is telling, and makes it impossible for this Court to conclude the trial court did not abuse its discretion in awarding sanctions. This is particularly so with the sanction of striking

Appellant's answer requires a showing of bad faith, willful disobedience or gross indifference. *See Griffin Grading*, at 198-199, 511 S.E.2d at 719 (when "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.").

Rather, than provide arguments, let alone evidence of any specific discovery deficiencies, Respondent's argument appeared to be that Appellant had not raised his opposition to the award of attorney fees, the consideration of lesser sanctions and the argument of substantial compliance prior to this appeal and has waived those arguments. Respondent is incorrect.

"There are four basic requirements to preserving issues at trial for appellate review. The issue must have been (1) raised and ruled upon by the trial court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity." *S.C. Dept. of Transp. V. First Carolian Corp. of S.C.*, 372 S.C. 295, 301-302, 641 S.E.2d 903, 907 (2007). Appellant raised opposition to the award of attorney fees, the extreme nature of striking his answer and that his discovery responses were sufficient and complete before the trial court. The court rejected those arguments. Thus, the arguments have been preserved.

Appellant raised his opposition to an award of attorney fees in the Motion for Reconsider when he argued that attorney fees were unwarranted due to the "repeated attempts" to ask for "clarification" on what specific discovery requests were outstanding. (P. Montgomery Motion to Reconsider). The trial court denied the Motion for Reconsideration and awarded attorney fees against Appellant "and/or" counsel.

Similarly, Appellant raised his concerns over the severity of the sanctions requested by Respondent in the Motion for Reconsideration when Appellant argued that striking Appellant's answer was an "extreme remedy" and should not be "awarded by the Court." (P. Montgomery

Motion to Reconsider). The trial court denied the Motion for Reconsideration and imposed what he described as the “severest sanction of striking the answer.” (Transcript of June 18, 2025 at p 18).

Finally, Appellant raised the issue of whether he had complied or substantially complied with the trial court’s discovery orders both at oral argument on June 18, 2025 and in the Motion for Reconsideration. At oral argument, Appellant’s counsel argued that Respondent’s counsel refused to respond to specific requests as to how Appellant’s supplemental discovery responses were insufficient and that Appellant’s position was that it had provided “complete responses.” (Transcript of June 18, 2025 at pp. 10-11). The Court obviously disagreed and awarded sanctions based on the idea that the discovery responses were not complete or substantially complete. Additionally, in Appellant’s Motion to Reconsider, he pointed out that Respondent had all the information needed to “aid [her] in the resolution of the dispute” and had a “thorough grasp” of the information as to the two main issues of dispute – the extent and limits of Appellants insurance coverage and his ability (or lack thereof) to pay a judgment in excess of policy limits. (P. Montgomery Motion to Reconsider). Again, the Motion to Reconsider was denied.

Accordingly, the issues Appellant raised before this Court have been preserved for appellate review. Given that even Respondent does not, likely because she cannot, articulate any specific way in which the discovery was deficient at the time sanctions were awarded, it was an abuse of discretion by the trial judge to award sanctions.

CONCLUSION

For the reasons stated herein, this Court should reverse the decision of the trial court.

March 23, 2026

Respectfully submitted,

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