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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

Kanisha Nash, Respondent,

v.

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

of which Patrick Montgomery and Sabrina Montgomery are, Appellants.

AMENDED FINAL BRIEF OF APPELLANT PATRICK MONTGOMERY

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STATEMENT OF ISSUES ON APPEAL

1. Whether the trial court abused its discretion in awarding sanctions against Appellant, including monetary sanctions against Appellant “and/or” his counsel, striking Appellant’s answer, and entering default judgment.

STATEMENT OF THE CASE

Respondent filed her initial complaint on June 16, 2023. (R pp 53-66). Respondent alleged that on April 14, 2023, Appellant was operating a motor vehicle while intoxicated and proximately caused an automobile accident, which injured Respondent and killed her minor son. (R pp 53-66 at ¶¶ 10, 13-15, 18 & 21). As to Appellant, Respondent alleged he is liable for negligence and negligent infliction of emotional distress. (R pp 53-66 at ¶¶ 19-24 & 56-63).

On July 14, 2023, Appellant answered the initial complaint and asserted his Fifth Amendment rights. (R pp 67-70 at ¶ 3).

On September 11, 2023, Respondent moved to compel Appellant's responses to interrogatories and requests for production of documents. (R pp 102-103).

On October 9, 2023, Appellant provided Respondent with answers to Respondent's interrogatories and requests for production of documents. (R pp 673-712). While each interrogatory and request for production of documents was answered, Appellant indicated the need to supplement many of his responses and asserted his Fifth Amendment rights as to some others. (R pp 673-712).

On December 15, 2023, Respondent filed her memorandum in support of a motion to compel supplemental responses from Appellant. (R pp 133-218). Respondent made clear there were two major disputes, 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." (R p 134). Respondent acknowledged that Appellant "may not be effectively communicate[ng] with his attorney" and that part of the aim of the discovery requests was to find "additional insurance coverage or other sources of recovery." (R p 134).

Respondent primarily took issue with the 32 interrogatories that Appellant indicated would need to be supplemented, the 23 requests for production of documents that needed to be supplemented, the lack of a privilege log, and discovery of the insurer's claim file. (R pp 138-144).

On January 22, 2024, Appellant provided supplemental responses to Respondent's request for production numbers 2 and 32, including the pre-suit claims notes from Appellant's insurer and a privilege log, which indicated that the only documents withheld were the claim notes dated after Plaintiff's lawsuit was filed. (R pp 713-827).

On February 2, 2024, the trial court ordered Appellant to provide substantive responses to interrogatory numbers 4, 8, 10-12, 14, 16-27, 29, and 36-51. (R p 2). Further, it ordered Appellant to provide substantive responses to request for production numbers 12, 16-25, 27-31, and 50-56. (R p 2). Additionally, Appellant was ordered to supplement his response to interrogatory 3, 30, 34 and 35 and request for production 2, 32, and 37-39. (R pp 3-4). Finally, Appellant was ordered to confirm the application of his assertions of his Fifth Amendment rights with respect to his responses. (R pp 4-5).

On February 20, 2024, Appellant provided supplemental responses to Respondent's interrogatories. (R pp 829-835). Specifically, Appellant provided answers to interrogatory numbers 10-12, 20, 37, 38, 43. (R pp 829-835). These responses made clear that Appellant was not acting in the course of scope of any employer when he was involved in the accident; he was employed by the Sewer District but was terminated after the accident; and he identified his bank account with Federal Credit Union. (R pp 829-835).

On May 22, 2024, Respondent moved to amend her complaint to add a cause of action related to piecing the corporate veil for Sabrina Montgomery and Montgomery Construction, LLC. (R pp 219-249).

On October 24, 2024, Respondent moved for a rule to show cause against Appellant. (R pp 250-261). As to Appellant, Respondent alleged he had failed to comply with the Court's order to compel as to "numerous" unspecified interrogatories and request for production, failed to provide a compliant privilege log and failed to provide an affidavit from an insurance claims representative. (R pp 250-261).

On January 6, 2025, Respondent filed a memorandum in support of her motion for a rule to show cause. (R pp 262-370). In her memorandum, Respondent noted Appellant was covered by insurance from Allstate, whose bodily injury limits had been tendered to, but not accepted by, Respondent. (R p 263). Additionally, Respondent was aware of a separate insurance policy issued by USAA covering Appellant, but USAA had denied coverage. (R p 263). Respondent noted she had not accepted Appellant's insurance coverage limits due to the "belief that additional commercial liability insurance coverage maintained by Montgomery Construction is applicable for this loss." (R p 263).

Again, Respondent reiterated that there were two major disputes, 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." (R p 264).

Additionally, on January 6, 2025, the trial court held a hearing. (R pp 5626-650). Counsel for Respondent, counsel for Appellant and the court agreed to allow Appellant ten days to supplement the outstanding discovery responses. (R pp 635-636). Moreover, Appellant's

mental competency was raised with the Court. (R p 640). It was noted that Respondent had subpoenaed all the financial institutions Appellant and his wife used. (R p 641). Finally, it was noted that the Allstate insurance files for Sabrina Montgomery and Appellant are the same. (R pp 644-645).

Seven days later, on January 13, 2025, Appellant provided his second supplemental responses to Respondent's interrogatories and requests for production of documents. (R pp 1181-1232). Appellant answered every interrogatory, including those identified in the Court's order. (R pp 1181-1206). He appropriately asserted his Fifth Amendment rights with respect to interrogatory numbers 15, 16, 25 and 26. (R pp 1181-1206 at ¶¶ 15, 16, 25 & 26). Of note, Appellant provided information concerning his insurance coverage. (R pp 1181-1206 at ¶¶ 5, 50 & 51). Further, he provided information concerning his financial condition and ability (or lack thereof) to pay a judgment in excess of any insurance. (R pp 1181-1206 at ¶¶ 10, 37-49).

Additionally, Appellant answered every request for production of documents, including those identified in the Court's order. (R pp 1207-1232). He appropriately asserted his Fifth Amendment rights with respect to requests for production numbers 13 and 15. (R pp 1207-1232 at ¶¶ 13 & 15). Appellant provided documents concerning his insurance coverage. (R pp 1207-1232 at ¶¶ 1 & 47). Further, he provided documents or identified the absence of documents concerning his financial condition and ability to pay a judgment in excess of any insurance. (R pp 1207-1232 at ¶¶ 16 & 50-56).

On January 15, 2025, counsel for Appellant emailed the trial court to inform it that Appellant had served supplemental discovery responses following a third in-person meeting with Appellant. (R pp 434-435). Appellant's counsel noted there existed some competency issues for Appellant that were being evaluated in his criminal case. (R pp 434-435).

On January 21, 2025, the trial court entered a consent order granting Respondent's Motion to Amend her Complaint. (R pp 10-12). On that same day, Respondent filed his Amended Complaint. (R pp 378-405).

On February 12, 2025, Appellant filed his answer to the amended complaint. (R pp 412-420). Appellant asserted his Fifth Amendment rights with respect to a number of the allegations. (R pp 412-420).

On March 4, 2025, Sabrina Montgomery provided an Attestation that Respondent "has been provided a copy of the Allstate claim file without redaction from the inception of the claim until counsel was retained on June 27, 2023." (R pp 1233-1356). The claims notes, which make up the bulk of the disclosure, were the same claim notes Appellant had provided on January 22, 2024.

On March 28, 2025, the trial court entered its order granting Respondent's Motion for Rule to Show Cause against Appellant. (R pp 13-23). As to Appellant, despite the trial court acknowledging that Appellant had served supplemental discovery responses on January 13, 2025, the trial court incorrectly stated that Appellant "had not provided supplemental responses to most of the" twenty-nine interrogatories and twenty-six requests for production. (R p 19). The only allegedly deficient discovery responses identified by the trial court were interrogatory number 42 and request for production number 32. (R pp 19-20). Additionally, the court ordered a verification from Appellant as to his discovery responses. (R p 21). The trial court withheld ruling on an award of attorney fees and costs until after Appellant was given an opportunity to comply with the Order. (R pp 21-22). Importantly, there was no indication or warning that the trial court might strike Appellant's answer and enter default judgment. (R pp 13-23).

On April 14, 2025, Appellant filed a Motion to Protect Defendant's Interests pursuant to Rule 1.14(B) of the South Carolina Rules of Professional Conduct. (R pp 421-422). In the motion, Appellant's counsel noted Appellant has diminished capacity, that a competency evaluation was being sought as part of the criminal case against him, and the need for a guardian ad litem or conservator to be appointed. (R pp 421-422).

On May 1, 2025, Respondent filed a supplemental memorandum in support of her rule to show cause against Appellant. (R pp 423-450). Even though she had received the second supplemental responses, which provided responses to every interrogatory and request for production of documents, Respondent argued that Appellant "did not produce any documents or serve any supplemental written responses" despite having been "ordered the same on two (2) separate occasions." (R p 424). Further, Respondent took issue with the motion to protect Appellant's interests under Rule 1.14(B) of the South Carolina Rules of Professional Conduct. (R pp 423-450).

On May 13, 2025, Respondent requested an emergency status conference so the trial court could hear the Respondent's Motion for a Rule to Show Cause and Appellant's Motion to Protect his Interests pursuant to Rule 1.14(B) on the same day. (R pp 451-482). Similarly, on that same day Respondent moved to continue the hearing on Appellant's Motion to Protect his Interests pursuant to Rule 1.14(B). (R pp 483-484). Two days later, on May 15, 2025, a consent order granting the motion to continue the hearing was entered. (R pp 24-25).

The hearing on the Motion for a Rule to Show Cause and Appellant's Motion to Protect his Interests pursuant to Rule 1.14(B) occurred on June 18, 2025. (R pp 651-670). On June 20, 2025, the trial court granted Appellant's Motion to Protect his Interests pursuant to Rule 1.14(B) and required the appointment of a Guardian Ad Litem and a review of Appellant's competency.

(Form 4 Judgment in a Civil Case). The Court further granted Respondent's Motion for a Rule to Show Cause and indicated an award of costs would be forthcoming with a formal order. (R pp 26-29). Again, there was no indication that Appellant's answer would be stricken or default judgment entered against him.

On July 1, 2025, the trial court entered a Supplemental Order Granting Plaintiffs' Motion for Rule to Show Cause. (R pp 30-44). The Order suggests that despite ordering Appellant to supplement written responses on "two (2) separate occasions," "[t]o date, no supplemental discovery has been issued...." (R p 32). The order does not acknowledge Appellant's second supplemental discovery responses, which, at most, failed to provide sufficient responses to all but one interrogatory and one request for production. (R pp 30-44).

The trial court continued that despite granting Appellant's motion to appoint a guardian ad litem for Appellant, that sanctions against him were appropriate. (R p 32). The trial court awarded a sanction of \$10,914.32 against Appellant "and/or defense counsel." (R pp 37-38). Additionally, the trial court struck Appellant's Answer and placed Appellant in default. (R p 38).

On July 11, 2025, Appellant filed a Motion to Reconsider pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. (R pp 526-532). Appellant noted the severity of the sanctions against him and the fact that Respondent has more than sufficient enough information to prosecute her case against Appellant and the other defendants. (R pp 526-532). On July 25, 2025, the trial court denied the Motion to Reconsider. (R pp 45-47).

On July 18, 2025, Appellant moved the trial court for additional time to have a guardian ad litem appointed for Appellant. (R pp 535-611). Appellant noted his ongoing mental health treatment, efforts to have a mental health expert complete competency forms, and the

requirement by the State Solicitor in Appellant’s criminal case to have a competency evaluation by the State’s selected medical professional. (R pp 535-611). Additional time was granted. (R pp 51-52).

On August 22, 2025, Appellant filed a notice of appeal of the award of sanctions against him.

STATEMENT OF THE FACTS

On April 14, 2024, Appellant was driving a 2014 GMC vehicle. (R pp 378-405 at ¶¶ 11 & 39). Respondent alleges Appellant was intoxicated. (R pp 378-405 at ¶¶ 11, 41 & 44). Appellant’s vehicle crashed into Respondent’s vehicle causing injuries to Respondent and the death of her minor son. (R pp 378-405 at ¶¶ 41-43).

APPELLATE JURISDICTION

Pursuant to S.C. Code Ann. § 14-3-330, this Court has appellate jurisdiction to correct errors of law, including those errors in an order affecting a substantial right made in an action when such order “strikes out an answer or any part thereof or any pleading in any action.” *See* S.C. Code. Ann. § 14-3-330(2). As part of error of law by the trial court as to Appellant involved the imposition of the sanction of striking his answer and entering default judgment, this Court has appellate jurisdiction.

STANDARD OF REVIEW

“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). An abuse of discretion may be shown when the conclusions reached by the trial court were without reasonable factual support and resulted in prejudice to the rights of appellant, thereby amounting to an error of law. *See QZO, Inc. v. Moyer*, 358 S.C. 246, 256, 594 S.E.2d 541, 547 (Ct. App.

2004); *Dunn v. Dunn*, 298 S.C. 499, 502, 381 S.E.2d 734, 735 (1989); *Darden v. Witham*, 263 S.C. 183, 209 S.E.2d 42 (1974).

ARGUMENT

Appellant does not dispute that the trial court had the authority to impose sanctions, including striking his answer and entering default judgment. *See* SCRCP 37(b)(2)(C). However, the imposition of such harsh sanctions in this matter was unwarranted and an abuse of discretion. *See Karppi v. Greenville Terrazzo, Inc.*, 327 S.C. 538, 489 S.E.2d 679 (Ct. App. 1997); *Orlando v. Boyd*, 320 S.C. 509, 466 S.E.2d 353 (1996). “In 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.” *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). “Whe[n] 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.” *Griffin Grading*, at 198-199, 511 S.E.2d at 719.

This case does not involve complicated facts that must be developed through extensive written discovery. Respondent alleges Appellant was intoxicated when he proximately caused an automobile accident leading to tragic consequences. Appellant, as is his Constitutional right, asserted his Fifth Amendment rights from the beginning of the litigation and it limited some of what he was able to disclose in discovery. Moreover, as was identified by counsel and eventually ruled upon by the trial court, Appellant may have competency issues that prevented his ability to meaningfully understand or participate in discovery.

Despite those challenges, while admittedly untimely, by January 13, 2025, more than five months before the trial court struck Appellant's answer and imposed financial sanctions on Appellant "and/or" his counsel, Appellant had provided complete answers to all the written discovery Respondent had propounded. In fact, when the trial court issued its March 28, 2025 order on Respondents Motion for Rule to Show Cause, the only alleged deficiencies to any of the responses to the interrogatories and requests for production of documents identified was to interrogatory number 42 and request for production number 32.

Interrogatory number 42 asked how much money Appellant had in banks, savings and loan, credit unions, and other financial institutions. As an initial point, Respondent does not need this information to prosecute her case against Appellant. Regardless, in Appellant's second supplemental responses, Appellant had responded to the previous interrogatory that he had \$200.00 in the REV Federal Credit Union Bank. Further, Respondent's counsel had subpoenaed all of the financial records from the financial institutions identified by Appellant and separately by his wife Sabrina Montgomery. Finally, Appellant's responses to about a dozen interrogatories and several requests for production of documents clearly demonstrated his limited financial ability to pay a judgment in excess of his available insurance limits. Put simply, Respondent had the information she claims was not properly identified to determine whether Appellant could satisfy a judgment in excess of the available insurance.

Request for Production 32 requested the pre-litigation claim and investigation files from Appellant's insurer, Allstate. By January 22, 2024, Appellant had provided Respondent the insurance declaration page and the claim file notes for the time prior to the litigation. Moreover, Sabrina Montgomery provided an attestation from Allstate that Respondent "has been provided a copy of the Allstate claim file without redaction from the inception of the claim until counsel

was retained on June 27, 2023.” Given that Respondent and the trial court were informed that the claim file at Allstate was the same for Sabrina Montgomery and Appellant, again, Respondent had in her possession the documents she claims were not disclosed.

Further, Respondent repeatedly insisted the main thrust of the written discovery was to determine available insurance coverage and whether Appellant had the ability to pay a judgment in excess of his policy limits. Long before the trial court imposed sanctions and struck Appellant’s answer and entered default judgment, Appellant had provided all available information concerning his insurance coverages and had repeatedly demonstrated his financial condition and his lack of ability to pay a judgment in excess of his policy limits, which were tendered by his insurer, but rejected by Respondent.

Finally, while the trial court threatened financial sanctions against Appellant, the trial court did not warn Appellant that alleged discovery deficiencies, apparently no matter how few or how slight, would result in the harshest of sanctions. *See Karppi*, 327 S.C. at 550, 489 S.E.2d at 686-687 (Anderson, J. concurring) *citing Hatchcock v. Navistar Int’l Transp. Corp.*, 53 F.3d 36, 40 (4th Cir. 1995).

Accordingly, while Appellant’s discovery responses were untimely, which is mitigated by the court recognized mental competency issues of Appellant and Appellant’s right to invoke his Fifth Amendment privilege, Respondent received all the information and all the documents to which she was entitled months before the trial court imposed financial sanctions and struck Appellant’s answer and entered default judgment against him. Imposition of those sanctions are unjustifiably harsh. Moreover, given that it appears Respondent was provided with complete discovery responses and that striking his answer undoubtedly prejudices him, the trial court’s

imposition of sanctions against Appellant “and/or” his counsel “amount[s] to an error of law.”
See *QZO, Inc.*, 358 S.C. at 256, 594 S.E.2d at 547; *Dunn*, 298 S.C. at 502, 381 S.E.2d at 735.

CONCLUSION

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

Respectfully submitted,

April 22, 2026

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