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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 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, ……Defendants,

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

FINAL BRIEF OF RESPONDENT KANISHA NASH (APPELLANT PATRICK MONTGOMERY)

BRINGARDNER INJURY LAW FIRM, LLC
Mark J. Bringardner
mark@bringardner.com
Mary K. Linton
mlinton@bringardner.com
41 Broad Street
P.O. Box 100 (29402)
Charleston, SC 29401
Office: 843-400-0550
Facsimile: 843-350-8290

Attorneys for Respondent Kanisha Nash

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STATEMENT OF ISSUES ON APPEAL

I. Did the trial court err in striking Appellant's Answer and awarding attorney's costs and fees for failing to comply with multiple Court Orders?

STATEMENT OF THE CASE

On June 16, 2023, Respondent Kanish Nash brought this action alleging various causes of action for negligence against Appellant Patrick Montgomery, Sabrina Montgomery, and Montgomery Construction, LLC. (R. pp. 53-66). All parties filed timely Answers. (R. pp. 67-73).

On June 23, 2023, Respondent served Appellant with Interrogatories and Requests for Production. (R. pp. 103-132). On September 11, 2023, after receiving no responses, Respondent filed a Motion to Compel. (R. p. 102). On October 9, 2023, Appellant served Respondent with incomplete and deficient responses. (R. pp. 177-216). Prior to the hearing, pursuant to Rule 11, SCRCP, Respondent made numerous attempts to informally resolve the discovery dispute. (R. pp. 176; 217-218). On December 15, 2023, the parties appeared before the Honorable Diane S. Goodstein regarding Respondent's Motion to Compel. Appellant did not file a memorandum in relation to the Motion. The Court made certain oral rulings from the bench and advised that a written order would be forthcoming.

On January 22, 2024, Appellant served supplemental discovery responses. (R. pp. 713-719). While the Court indicated that numerous responses to Requests for Production were required, Appellant only supplemented *two* responses and even those did not comply with the Court's instruction. On February 2, 2024, Judge Goodstein entered a formal Order Granting Plaintiff's Motion to Compel. (R. pp. 1-9). On February 20, 2024, Appellant served a second set of supplemental discovery responses which were still incomplete and contained deficiencies. (R. pp. 829-835).

On May 7, 2024, Respondent served a letter on counsel for Appellant advising of their failures to comply with the Order and requesting prompt compliance with the same. (R. pp. 338-340). By June 19, 2024, Appellant still had not complied with Judge Goodstein's Order.

Consequently, Respondent did not have the documents necessary to take informed depositions and was forced to cancel a previously scheduled deposition. Counsel for Respondent proposed that all counsel use the scheduled time to discuss the outstanding discovery issues related to non-compliance with the Order. On June 20, 2024, all counsel held an informal discovery status conference. Counsel for Respondent advised, again, of the remaining deficiencies and failures to comply with the Order. Counsel for Appellant gave assurance to Respondent that they would meet with their client to resolve the issues. The parties agreed to reschedule the deposition to September 12, 2024, but again had to postpone the deposition because discovery issues remained unresolved.

On October 24, 2024, Respondent filed a Motion for a Rule to Show Cause against Appellant, which was eight (8) months after Judge Goodstein's Order was entered, and after a significant grace period to comply was permitted by Respondent. (R. pp. 250-261). Appellant did not file a memorandum in relation to the Motion. On January 6, 2025, Respondent's Motion was heard and orally granted by Judge Van Slambrook, who instructed Appellant to serve a set of fully compliant discovery responses within ten (10) days. (R. p. 637: 17-25). At the hearing, Judge Van Slambrook indicated that sanctions against Appellant would be imposed given the gross delay and disregard for judicial order. (R. p. 637: 22-23). On January 13, 2025, Appellant served supplemental responses to discovery that, again, remained deficient. (R. pp. 1181-1232). Respondent advised the Court of the same, which was included in the Court's written Order granting the Rule to Show Cause, entered on March 28, 2025. (R. p. 19). A third and final deadline for compliance was set for April 14, 2025. (R. p. 21). The Court held its determination of sanctions in abeyance until the expiration of the deadline for compliance thereby allowing Appellant an additional opportunity to cure his discovery deficiencies. (R. p. 22). The Order was not Shakespearean in nature and very clearly explained each deficiency and the need to supplement.

(R. pp. 13-23). Appellant need only review the Order to determine exact compliance with it. However, full compliance did not occur and Appellant, for a third time, failed to comply with the Court mandated deadline.

On May 1, 2025, Respondent filed a Supplemental Memorandum for Rule to Show Cause against Appellant for his failure to comply with the Order Granting Plaintiff's Motion for Rule to Show Cause. (R. pp. 423-450). Appellant did not file a memorandum in relation to the Motion. On June 18, 2025, Judge Van Slambrook – for a second time – heard oral argument on Plaintiff's Motion for Rule to Show Cause. This hearing was the third before the Court on the exact same issue – discovery noncompliance. On June 20, 2025, Judge Van Slambrook issued a Form 4 granting Plaintiff's Motion for Rule to Show Cause, for a second time, and relayed that sanctions would be issued in a more detailed Order to be issued at a later date. (R. pp. 26-29).

On July 1, 2025, Judge Van Slambrook issued a Supplemental Order Granting Plaintiff's Motion for Rule to Show Cause. (R. pp. 30-44). In the Supplemental Order, Judge Van Slambrook struck Appellant's Answer and awarded attorney's costs and fees in the amount of $10,914.32 for the continuous failure to cooperate in discovery. (R. pp. 30-44). On July 11, 2025, Appellant filed a Motion for Reconsideration under Rule 59(e), SCRCP. (R. pp. 526-532). On July 24, 2025, Respondent filed a reply to the Motion for Reconsideration. (R. pp. 612-617). On July 25, 2025, the Motion was denied. (R. pp. 45-47). Appellant filed the present Notice of Appeal on August 22, 2025.

STATEMENT OF THE FACTS

On April 14, 2023, Appellant Patrick Montgomery, while driving drunk, crossed the center line and caused a nearly head-on collision with a vehicle driven by Respondent. (R. pp. 380 ¶¶ 11, 41). Respondent suffered severe, life-threatening injuries and was hospitalized for weeks. Her past medical bills total over $400,000. (R. p. 134). Tragically, Respondent's three-year-old son, who was a passenger in her vehicle, was killed as a result of the injuries he sustained in the crash. (R. p. 134).

At the time of the collision, Patrick Montgomery was driving a pick-up truck, owned by his wife, Sabrina Montgomery, and hauling a trailer, believed to be owned and/or used by Montgomery Construction, LLC ("Montgomery Construction"). (R. pp. 380 ¶¶ 13,16). Sabrina Montgomery is the sole owner of Montgomery Construction. (R. pp. 379 ¶ 6). Evidence shows that Sabrina Montgomery and Patrick Montgomery co-mingled the LLC's assets and used them for work and personal purposes. Montgomery Construction owned and/or used the trailer to haul materials.

At the time of the crash, the trailer held a large blue barrel containing off road diesel fuel and other materials/equipment believed to be owned by Montgomery Construction. (R. pp. 383 ¶¶ 28-29). Direct negligence, negligent entrustment, vicarious liability, alter-ego, and piercing the corporate veil have been alleged in the Amended Complaint.

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). The selection of a sanction for discovery violations is within the trial court's discretion. *Kershaw County Bd. of Educ. v. United States Gypsum Co.*, 302 S.C. 390, 396 S.E.2d 369 (1990). Nevertheless, whatever sanction is imposed should serve to protect the rights of discovery provided by the Rules. *See* (addressing the comparable Federal Rule) *Diaz v. Southern Drilling Corp.,* 427 F.2d 1118, 1126 (5th Cir.), *cert. denied,* 400 U.S. 878, 91 S. Ct. 118, 27 L.Ed.2d 115 (1970) ("[O]verleniency [in the imposition of sanctions] is to be avoided where it results in inadequate protection of discovery."); *National Hockey League v. Metropolitan Hockey Club, Inc.,* 427 U.S. 639, 643, 96 S. Ct. 2778, 2781, 49 L.Ed.2d 747 (1976) (dictum) ("[T]he most severe in the spectrum of sanctions provided by statute or rule must be available to the district court in appropriate cases, not merely to penalize those whose conduct may be deemed to warrant such a sanction, but to deter those who might be tempted to such conduct in the absence of such a deterrent.").

Under Rule 37(b)(3)(C) of the South Carolina Rules of Civil Procedure, when a party fails to comply with a discovery order, the trial court has the discretion to impose a sanction it deems just, including an order dismissing the action. *McNair v. Fairfield County*, 379 S.C. 462, 665 S.E.2d 830 (Ct. App. 2008); *see also*, *Barnette v. Adams Bros. Logging, Inc.,* 355 S.C. 588, 593, 586 S.E.2d 572, 575 (2003). Absent an abuse of discretion, the trial court's imposition of discovery sanctions will not be reversed on appeal, and the party appealing from the order of sanction carries the burden of proving an abuse of discretion occurred. *Id.*

In order to overturn the trial court's decision, the reviewing court must find that an abuse of discretion occurred to justify reversal of a trial court's order to impose discovery sanctions. *See*

Barnette v. Adams Bros. Logging, Inc., 355 S.C. 588, 593, 586 S.E.2d 572, 575 (2003); *see also Skywaves I Corp. v. Branch Banking & Trust Co.*, 423 S.C. 432, 814 S.E.2d 643 (Ct. App. 2018); *see also S.C. Dep't of Health & Envtl Control v. FedServ Indus. Inc.*, 294 S.C. 33 at 39, 325 S.E.2d 311 at 314-15 (Ct. App. 1987).

ARGUMENTS

I. The Trial Court Did Not Abuse Its Discretion in the Issuance of Sanctions Because Judge Van Slambrook's Decision was Based on Reasonable Factual Support.

Absent an abuse of discretion, the trial court's imposition of discovery sanctions will not be reversed on appeal, and the party appealing the order of the sanction carries the burden of proving an abuse of discretion occurred. *Barnette v. Adams Bros. Logging, Inc.,* 355 S.C. 588, 593, 586 S.E.2d 572, 575 (2003). An abuse of discretion may be found when the appellant shows that the conclusion reached by the circuit court was without reasonable factual support and resulted in prejudice to the rights of appellant, thereby amounting to an error of law. *Karppi v. Greenville Terrazzo Co.,* 327 S.C. 538, 542, 489 S.E.2d 672, 681 (Ct. App. 1997); *see also, Dunn v. Dunn*, 298 S.C. 499, 502, 381 S.E.2d 734, 735 (1989).

"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.

In the record to date, including the written materials produced by the parties to Judge Van Slambrook, the record from the multiple hearings regarding the same discovery noncompliance, and the statement of counsel at the hearings, there is overwhelming factual evidence to support Judge Van Slambrook's determination that the Appellant did not comply with either Judge Goodstein's Order or his own and that the sanction of striking his Answer and awarding costs and fees was appropriate in the third Order arising from the same discovery misconduct.

A. Appellant's On-Going Failure to Comply with Multiple Discovery Orders Provides Reasonable Factual Support.

Not only was the awarded relief appropriate, but it was necessary in the wake of such willful disobedience to two prior Court Orders. Judge Goodstein granted Plaintiff's Motion to Compel and ordered discovery compliance. (R. pp. 1-9). Such did not occur and necessitated the filing of a Motion for Rule to Show Cause. (R. pp. 250-261). Thereafter, in the Court's first Order Granting Plaintiff's Motion for Rule to Show Cause, Judge Van Slambrook graciously allowed the Appellant opportunity to comply with judicial instruction prior to determining an award of sanctions. (R. p. 22). Only after continued noncompliance was the award of sanctions issued. This is not a situation wherein Appellant was only given one opportunity to comply with judicial instruction:

i. For Nearly One (1) Year, Appellant Failed to Comply with Judge Goodstein's Order Granting Respondent's Motion to Compel.

On February 2, 2024, Judge Goodstein issued an Order Granting Respondent's Motion to Compel as Appellant's discovery responses were replete with evasive answers or otherwise nonresponsive. (R. pp. 1-9). Judge Goodstein remained mindful of Appellant's Fifth Amendment protections but nonetheless ordered supplemental responses as many requests could be answered without Fifth Amendment implications. (R. p. 5). Judge Goodstein's Order was straightforward, fair, and commanded compliance by March 3, 2024. (R. p. 8). On February 20, 2024, Appellant served discovery responses which were noncompliant with Judge Goodstein's Order and contained numerous deficiencies. (R. pp. 829-835).

From February 20, 2024 until the filing of Respondent's Rule to Show Cause, on October 24, 2024, Respondent advised counsel for Appellant, on numerous occasions, of the remaining discovery deficiencies and failures to comply with Judge Goodstein's Order. Despite this,

Appellant failed to supplement discovery to come into compliance with the outstanding Order. As a result, Respondent was left with no choice but to file a Motion for Rule to Show Cause.

ii. Appellant Failed to Comply with Judge Van Slambrook's Order Granting Respondent's Rule to Show Cause.

On October 24, 2024, Respondent filed a Motion for Rule to Show Cause against Appellant. (R. pp. 250-261). Respondent's Motion came before the Court on January 6, 2025, and was scheduled for an in-person hearing. Appellant failed to show. Counsel for Appellant also failed to show and instead, a colleague called the Court and requested to be heard by telephone. (R. p. 629: 13-17). Appellant offered no explanation for the failure to comply with Judge Goodstein's Order in the year that followed its issuance. At the hearing, Judge Van Slambrook granted Respondent's Motion for Rule to Show Cause and commanded Appellant to bring his discovery responses into full and complete compliance within ten (10) days. (R. p. 637: 17-25). He held sanctions in abeyance. (R. p. 22).

On January 13, 2025, Appellant served discovery responses that remained deficient, despite being ordered on two separate occasions (by Judge Goodstein and orally by Judge Van Slambrook) to bring them into compliance. Such defiance was brough to the Court's attention and, on March 28, 2025, Judge Van Slambrook issued a formal Order Granting Plaintiff's Motion for Rule to Show Cause. (R. pp. 13-23). In his Order, he (for the second time) admonished Appellant for his failure to comply with the Court's oral instruction. (R. p. 18). This was now the third time Appellant was ordered to fully comply with discovery by the Court. In his Order, Judge Van Slambrook held his determination of sanctions in abeyance, and, for a second time, ordered complete discovery compliance by April 14, 2025. (R. p. 21).

Upon the expiration of the April 14th deadline, Appellant failed to produce any documents or serve supplemental written responses, in direct defiance of Judge Van Slambrook's Order.

Instead of serving discovery responses, counsel for Appellant waited until the last day to comply with Judge Van Slambrook's Order and filed a motion styled "Motion to Protect Defendant's Interests Pursuant to Rule 1.14(B)." (R. pp. 421-422). Understandably, the Court was highly critical of the timing of the request. The Court also noted the same Motion was not filed in the companion criminal case. (R. p. 32). While the Court granted Appellant's Motion to Protect, the Court stressed that such relief in no way alleviated the year and a half long discovery noncompliance and noncompliance with two prior Court Orders. (R. p. 32). Based on the longstanding and pervasive pattern of discovery abuse and the pattern by which it continued, Judge Van Slambrook issued a second Order and struck Appellant's Answer and awarded attorney's costs and fees. (R. pp. 31-44). To date, no supplemental discovery addressing the deficiencies outlined by Judge Van Slambrook has been received from Appellant, nor has any further action been taken regarding Appellant's mental competency evaluation. The case remains at a standstill.

The Court first ordered complete and comprehensive discovery compliance on February 20, 2024, and this compliance has yet to be accomplished over two (2) years into this case. The Appellant has shown a disregard for his obligation to participate in even the most basic discovery under the Rules of Civil Procedure. This was evident when counsel for Appellant did not even appear for the in-person Rule to Show Cause hearing and offered no explanation whatsoever for the longstanding noncompliance. The clear factual evidence of the Appellant's gross indifference to the rights of the Respondent and his willful disobedience to multiple Court Orders is overwhelming and has severely prejudiced Respondent in the pursuit of her case.

The year-long delay in which Appellant failed to comply with Judge Goodstein's Order alone warrants the issuance of these sanctions. When the disobedience to Judge Van Slambrook's oral instruction and formal Order is compounded, it necessitates the issuance of these type of

sanctions to deter such conduct.

II. Prejudice to the Respondent Resulted from the Appellant's Delay and On-Going Refusal to Comply with Judicial Instruction.

The discovery process enables parties to know before the trial begins what evidence may be presented. "The primary objective of discovery is to ensure that lawsuits are decided by what the facts reveal, not by what facts are concealed." *In re Anonymous Member of South Carolina Bar,* 346 S.C. 177, 193, 552 S.E.2d 10, 18 (2001). "The entire thrust of the discovery rules involves full and fair disclosure, to prevent a trial from becoming a guessing game or one of surprise for either party." *Samples v. Mitchell,* 329 S.C. 105, 113, 495 S.E.2d 213, 217 (Ct. App. 1997) (internal quotations omitted). The discovery process is designed to prevent guessing games. *See, e.g. U.S.* v. *Proctor & Gamble Co.,* 356 U.S. 677, 682 (1958). "The rights of discovery provided by the Rules gives the trial lawyer the means to be prepared for trial. Where these rights are not accorded, *prejudice must be presumed.*" *Downey v. Dixon,* 294 S.C. 42, 46, 362 S.E.2d 317, 319 (Ct. App 1987) (*emphasis added).*

This action was filed in 2023. As of the filing of this Brief in March of 2026, Respondent is still without discovery compliance. The extended delay in the advancement of the case from 2023 to the present is highly prejudicial and emotionally draining to the Respondent, whose minor child perished as a result of this collision. Despite the fact that three (3) years have passed, the case still remains in the very early stages of discovery as Respondent has spent the last two (2) years trying to obtain full compliance with judicial instruction.

III. Appellant's Arguments in Support of His Appeal Were Not Preserved for Appellate Review and are Therefore Considered Waived.

A. Appellant Failed to Properly Preserve His Argument Related to the Imposition of Attorney's Fees.

Appellant's Rule 59(e), SCRCP Motion raised three limited objections to the Court's

ruling: counsel's hourly rate as it relates to the award of attorney's fees; who is to pay the monetary sanctions; and a request that the striking of Appellant's Answer be held in abeyance or withdrawn until the completion of Appellant's competency evaluation.

Contesting the actual award of attorney's fees was not properly preserved. Rather Appellant only objected to the *amount* of attorney's fees, not the actual award of the fees themselves. Further, the basis for the objection questioned counsel's fee arrangement with Respondent and criticized counsel's hourly rate as not being commiserate with their experience. The Court reviewed these arguments, utilized the *Glasscock* factors, and struck them down as unsubstantiated. *Glasscock v. Glasscock,* 304 S.C. 158, 403 S.E.2d 313 (1991). As to who was to pay the sanctions award, the Court rightfully declined to determine how the payment should be allocated by and between Defendant and defense counsel as the culpable party remains unknown.

Because the actual imposition of attorney's fees was not addressed by Appellant, it is not preserved for appellate review. *See Jackson v. Speed*, 326 S.C. 289, 311, 486 S.E.2d 750, 761 (1997) (holding because the appellant failed to object either at the hearing or in their motion to alter or amend that the trial judge failed to make findings of fact concerning the specific costs expended, the issue is not preserved for appellate review); *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review."); *Summer v. Carpenter*, 328 S.C. 36, 43, 492 S.E.2d 55, 58 (1997) (stating that when a trial court did not explicitly rule on an issue in its order and appellant did not make a Rule 59 motion for a ruling, the issue is not preserved for appellate review); *Padgett v. Mercado*, 341 S.C. 229, 233, 533 S.E.2d 339, 341 (Ct. App. 2000) (stating "[a]ny argument alleging an inaccuracy or inconsistency in an order must be raised by a post-trial motion"); *Dixon v. Besco Eng'g, Inc.*, 320

S.C. 174, 178, 463 S.E.2d 636, 638 (Ct. App. 1995) (holding an appellant's argument that the entry of default should be reversed because the trial court neglected to make specific findings of certain factors was not preserved for appellate review because the appellant failed to raise the issue to the trial court in a post-trial motion); *Buist v. Buist*, 410 S.C. 569, 577, 766 S.E.2d 381, 385 (2014) (stating argument that the family court did not adequately apply factors concerning award of attorney's fees was not preserved when husband's argument in Rule 59(e) motion was not sufficiently specific).

B. Appellant Failed to Properly Preserve His Argument Related to the Issuance of Lesser Sanctions.

Appellant also appears to argue that the trial court failed to consider whether lesser sanctions could achieve justice. This issue is also unpreserved because Appellant never raised this argument; instead, Appellant only generally asserted the striking of his Answer should be withdrawn or held in abeyance until after the competency evaluation. *See S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007) (stating "it is a litigant's duty to bring to the court's attention any perceived error, and the failure to do so amounts to a waiver of the alleged error"); *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.").

Regardless, the Motion did not identify any material fact or principle of law that was either overlooked or disregarded by the Court, nor did it identify any error of law or fact not appropriately considered. The issuance of sanctions was the result of longstanding discovery noncompliance which existed long before any alleged competency issues were raised to the Court.

C. Appellant Improperly Attempts to Argue Substantial Compliance.

In his initial brief, Appellant requests that this Honorable Court reverse Judge Van

Slambrook's ruling finding that he substantially complied with prior judicial instruction and that Respondent was able to obtain the requested information on her own accord. This argument completely ignores the longstanding procedural history that led to the issuance of sanctions. Further, when a Court orders a party to fully and completely comply with discovery – on three separate occasions – and the party still fails to fully and completely comply, severe sanctions are warranted to deter such conduct.

As an initial matter, this issue was not raised in Appellant's Rule 59(e) Motion and is not properly preserved for appellate review. Further, such an argument completely ignores Appellant's longstanding violations of multiple Court Orders. Appellant made no effort whatsoever to comply with Judge Goodstein's Order, even after the deficiencies were brought to light by Respondent. Appellant simply ignored the Order for nearly one (1) year at the expense of Respondent's pursuit of her case. Thereafter, on the eve of the Motion for Rule to Show Cause hearing, Appellant still made no effort to comply and even failed to show at the hearing demonstrating willful indifference.

After the hearing on Respondent's Motion for Rule to Show Cause, Appellant still provided incomplete discovery responses. Judge Van Slambrook thereafter issued a formal order outlining the scope of noncompliance by setting forth the exact discovery requests that necessitated supplementation. Even that was ignored. Appellant's discovery remains deficient up to the filing of this brief and no action has been taken with respect to the alleged mental competency evaluation.

D. Appellant Attempts to Improperly Argue the Trial Court Should Have Warned Appellant of Its Contemplation of the Issued Sanctions.

Appellant alleges surprise at the awarded relief, but such relief was expressly requested in Respondent's Supplement Memorandum and was again requested at the second Motion for Rule to Show Cause hearing. Frankly, the requested relief would have been appropriate at the first Motion for Rule to Show Cause hearing simply based on Appellant's longstanding and willful

noncompliance with Judge Goodstein's Order. Most particularly because counsel for Appellant was acutely aware of the noncompliance as it was brought to their attention by Respondent's counsel on numerous occasions. The idea that if Appellant had known of the severity of the impending punishment, it would have complied with judicial instruction further strengthens the need for this type of award. Parties should not have to be threatened or strong-armed into discovery compliance, most certainly not after the judiciary has already instructed them to comply.

IV. Judge Van Slambrook Gave the Matter Serious Consideration and Did Not Abuse His Discretion in Striking the Answer of Appellant and Awarding Costs and Fees.

The imposition of sanctions is generally entrusted to the sound discretion of the Circuit Court. *Morgan v. Jones*, 281 S.C. 270, 276, 315 S.E.2d 136, 139 (Ct. App. 1984). The selection of a sanction for discovery violations is within the trial court's discretion. *Kershaw County Bd. of Educ. v. United States Gypsum Co.*, 302 S.C. 390, 396 S.E.2d 369 (1990). In order to overturn the trial court's decision, the reviewing court must find that an abuse of discretion occurred to justify reversal of a trial court's order to impose discovery sanctions. *Barnette v. Adams Bros. Logging, Inc.*, 355 S.C. 588, 593, 586 S.E.2d 572, 575 (2003); *see also Skywaves*, 814 S.E.2d at 656; *see also S.C. Dep't of Health*, 325 S.E.2d at 314-315.

Judge Van Slambrook reviewed the evidence presented at both Motion for Rule to Show Cause hearings, listened to arguments of counsel, reviewed Respondent's numerous briefs (to date, Appellant has never filed a responsive brief in this matter), reviewed Judge Goodstein's prior Order, and thoughtfully questioned counsel for both parties related to the relevant facts. At the first Motion for Rule to Show Cause hearing, Judge Van Slambrook was heavily critical of Appellant and his gross failure to comply with the Court's prior Order. Nonetheless, he held sanctions in abeyance and orally commanded full and complete compliance. That was still not accomplished, and he was forced to again address the non-compliance in a more formal Order. Only after that

second direction was disobeyed did Judge Van Slambrook order the relief at issue.

Following the second Motion for Rule to Show Cause hearing, Judge Van Slambrook took the matter under advisement for nearly one (1) month before issuing a determination of sanctions. His consideration was thorough and reflective of the facts. He clearly used sound discretion based on the facts presented by both sides and made a determination that striking the Answer and issuing attorney's fees and costs was the proper sanction for the extreme and flagrant disregarding of Judge Goodstein's Order and his own. There is no evidence whatsoever that Judge Van Slambrook abused his discretion in any way. Thus, his decision must be upheld.

V. Judge Van Slambrook's Order Should be Affirmed Because Appellant Failed to Comply with Judge Goodstein and Judge Van Slambrook's Judicial Instruction.

By Appellant's own admissions, he did not fully comply with the Order. As such, Judge Van Slambrook was required to use his discretion to determine the appropriate sanction. Based on the extent and severity of the disregard of the Order of Judge Goodstein as well as his own prior Order, he was well within his discretion to order the relief.

If a party fails to obey an order to provide or permit discovery, the trial court may impose sanctions such as striking pleadings:

> If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35, or if a party fails to obey an order entered under Rule 26(f), the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:
>
> (A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;
>
> (B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as contempt of court the failure to obey any orders. . .

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

Rule 37(b)(2), SCRCP. Judge Van Slambrook was within his discretion to not only strike Appellant's Answer and award monetary sanctions, but it was also within his discretion to hold Appellant in contempt. He did not impose the harshest sanction at his disposal as Appellant was not held in contempt. Instead, he chose the sanction compatible with open admissions from Appellant that he did not comply with prior Court Orders, the Rules of Civil Procedure, and the applicable case law. It is clear that the relief was warranted.

The judiciary expects lawyers to police themselves and to participate fairly in the discovery process, but when that ideal is not met, the responsibility for preventing discovery abuse rests on the shoulders of the trial judges. *In re Anonymous Member of South Carolina Bar*, 346 S.C. 177, 193, 552 8.E.2d 10,18 (2001). It is Judge Van Slambrook's duty and responsibility to prevent blatant discovery abuse, as was seen in the conduct of the Appellant and which necessitates upholding his ruling.

CONCLUSION

The Appellant has acted with willful disobedience and gross indifference to the rights of the Respondent. His callous disregard of the orders of our trial courts and of the Rules of Civil Procedure warrant the sanctions he received. Striking the Answer of the Appellant and awarding

costs and fees was the appropriate sanction for his conduct and bad faith toward the Respondent and the tribunal. Our courts have held that the dismissal of an action is warranted in cases involving bad faith, willful disobedience, or gross indifference to the opposing party's rights. *See Orlando v. Boyd*, 320 S.C. 509, 511, 466 S.E.2d 353, 355 (1996).

Appellant was served with discovery from the Plaintiff on June 30, 2023. Now over two (2) years later, and despite three Court Orders, Respondent remains without full and complete discovery responses and has been substantially prejudiced in the advancement of her case. The failure of the Appellant to comply with the judiciary is evidence of bad faith, willful disobedience, and gross indifference to the rights of the Respondent and to the authority of the Court. The sanction of striking the Appellant's answer and awarding costs and fees is clearly warranted in this case and Judge Van Slambrook acted within his discretion to order the same.

For the reasons stated herein, this Court should affirm Judge Van Slambrook's Order Striking the Answer of Appellant and awarding attorney's fees and costs.

Respectfully Submitted,

BRINGARDNER INJURY LAW FIRM, LLC

s/Mary K. Linton

Mark J. Bringardner (SC Bar No.: 102465)
mark@bringardner.com
Mary K. Linton (SC Bar No.: 102815)
mlinton@bringardner.com
41 Broad Street
P.O. Box 100 (29402)
Charleston, SC 29401
Office: 843-400-0550
Facsimile: 843-350-8290

Attorneys for Respondent Kanisha Nash

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Charleston, South Carolina