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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

Patrick C. Fant, III, Circuit Court Judge

Appellate Case No. 2025-001957

Civil Action No. 2024-CP-42-01687

Donald Roth, ...Respondent,

v.

The River Bend Sportsman's Resort, Inc.; Riverbend Properties, Inc.; Ralph H. Brendle; Paul J. Barnwell; Robert T. Estes; and Paul Lehner,... Appellants,

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APPELLANTS' REPLY BRIEF

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I. THE TRIAL COURT ABUSED ITS DISCRETION IN STRIKING APPELLANTS' ANSWER

In general terms, an abuse of discretion occurs when the trial court's ruling is based on an error of law, lacks reasonable factual support, or results in prejudice to the rights of the appellant, thereby amounting to an error of law. See Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000); Johnson v. Dailey, 318 S.C. 318, 323, 457 S.E.2d 613, 616 (1995). As further shown herein, the trial court's Order Striking Appellants' Answer was governed by an error of law, lacks reasonable factual support, and has resulted in prejudice to Appellants' rights, and must therefore be reversed.

A. The Trial Court Abused its Discretion in Failing to Narrowly Tailor Discovery Sanctions to the Actual Conduct Involved.

Rule 37(b), SCRCP, grants our trial courts with the authority to issue sanctions for a party's failure to obey a discovery order, with the express direction that the trial court "may make such orders in regard to the failure as are just . . ." When awarding sanctions for the failure to comply with a discovery order, the sanction must be aimed at the specific misconduct of the party sanctioned and should not be used improvidently to prevent a decision on the merits. Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co., 334 S.C. 193, 198, 511 S.E.2d 716, 719 (Ct. App. 1999); Karppi v. Greenville Terrazzo Co, 327 S.C. 538, 543, 489 S.E.2d 679, 682 (Ct. App. 1997) The sanction imposed must 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. "[W]hen the court orders default or dismissal, or the sanction itself results in default or dismissal, the end result is harsh medicine that should not be administered lightly." Davis v. Parkview Apartments, 409 S.C. 266, 282, 762 S.E.2d 535, 544 (2014) (internal quotations omitted). As a result, "where 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." Id.; see also Karppi, 327 S.C. at 543, 489 S.E.2d at 682 ("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.")

Here, the trial court's Order Striking Appellants' Answer resulted in manifest injustice. This case involves Respondent's claim that he was denied the proper proceeds from his interest in a certain parcel of property, which Respondent ultimately valued at $1,127,225. Appellants have always denied Respondent's valuation and that would have been a key point of contention at an actual trial on the merits. Indeed, it would have been harsh medicine for the Order Striking Appellants' Answer to result in a judgment against Appellants for the $1,127,225 valuation. However, because Respondent plead a cause of action for a violation of the South Carolina Unfair Trade Practices Act, which carries treble damages and attorney's fees, the Order resulted in a windfall to Respondent, with $3,412,381 in damages being awarded, more than three times Respondent's own valuation. The end result was not merely harsh, but unjust.

Moreover, the trial court failed to acknowledge or follow the proper legal standard, which requires a showing of bad faith, willful disobedience or gross indifference to the rights of the party seeking discovery, and its Order is therefore governed by an error of law. This was no mere harmless error. The record reflects that Appellants made multiple attempts to comply with the discovery order to the best of their ability, yet the trial court made no inquiry into whether Appellants had acted in bad faith, with willful disobedience, or with gross indifference to the rights of Respondent before imposing the most severe sanction available. On this point alone, it is clear that the trial court's Order was governed by an error of law and must be reversed.

In addition, record fails to reflect any evidence of bad faith, willful disobedience, or gross indifference to the rights of Respondents and the trial court's Order Striking Appellants' Answer therefore lacks sufficient evidentiary support. The record reflects that Appellants responded to Respondent's discovery requests and issued supplemental responses. (See Answers to First Set of Interrogatories; 10/17/2024 Letter supplementing Appellants' Answers to Respondent's First Set of Interrogatories; Responses to First Set of Requests for Production; Answers to Second Set of Interrogatories; Supplemental Answers to Respondent's First Set of Interrogatories; 4/8/2025 Letter describing additional supplementation.) While admittedly, there was delay in Appellants' responses and the payment of monetary sanctions and, ultimately, not every request received a full response to the satisfaction of Respondent or the trial court, the evidence in the record nevertheless establishes that Appellants had made good faith attempts to comply with discovery and provide information and materials to which Respondent was entitled.

Appellants have consistently represented and argued that they have produced everything in their possession. For example, in its Responses to Respondent's First Set of Requests for Production, Riverbend Properties responded to multiple requests that it either did not have any responsive documents, had already provided all responsive documents, or "will produce all such documents if they can be obtained from the accountant or will sign a release for such documents." (See Riverbend Properties Responses to Respondent's First Set of Requests for Production 5, 29, 30, 31, 32, 33, 34, 46, 49, 50, 51, and 55.) Considering that the corporate Appellants had lost corporate records when moving offices, it is unsurprising that Appellants did not have the requested records readily available and could only obtain copies certain documents through the accountant. (1/8/2025 Transcript, 15:22 – 16:1.) Despite the lack of any evidence indicating that Riverbend Properties did in fact have the requested records or otherwise failed to comply to the extent it was capable, the trial court went on to order that Riverbend Properties "fully and completely respond to Requests 5, 29, 30, 31, 32, 33, 34, 46, 49, 50, 51, and 55". (3/26/2025 Order, p. 3.) By letter dated April 8, 2025, counsel for Appellants informed the trial court of additional actions that were undertaken in a good faith effort to search for responsive documents and comply with discovery, including the search of a computer and production of all records found, signing a release to permit the disclosure of records from financial institutions, and signing a release for the file of an attorney that had previously represented Riverbend. (See 4/8/2025 Letter.) These efforts appear to have been ignored, with the trial court stating (inaccurately) that the failure to fully respond to discovery was "acknowledged by the Defendants in a letter to this Court." (4/16/2025 Order, p. 5.)

There is no evidence in the record indicating that Appellants' representations were false. With no further discovery or even any depositions being conducted by Respondent, there is nothing to contradict Appellants' position. Had the Respondent been able to establish that Appellants had withheld or concealed any information that should have been disclosed, which would have been evidence of bad faith, willful disobedience, or gross indifference, that should have been presented to the Court. To the extent the record may reflect a failure by Appellants to provide full and complete discovery responses to the satisfaction of the trial court, the record does not show that Respondent met his burden to show bad faith, willful disobedience, or gross indifference to his rights and, as a result, the trial court's Order lacks reasonable factual support and must be reversed.

B. The Trial Court Abused its Discretion in Failing to Narrowly Tailor Discovery Sanctions to Avoid Unfairly Prejudicing Other Parties.

In addition to narrowly tailoring any discovery sanction to the misconduct involved, sanctions must also be narrowly tailored with regard to the responsible party and not unfairly prejudice other parties that were not responsible for the violation or otherwise bore a lesser degree of culpability. See Barnette v. Adams Bros. Logging, Inc., 355 S.C. 588, 595, 586 S.E.2d 572, 576 (2003); Karppi, 327 S.C. at 543, 489 S.E.2d at 682.

> 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.

Karppi, 327 S.C. at 543, 489 S.E.2d at 682. Sanctions must be aimed at the specific misconduct of the party at fault and should not unfairly prejudice other parties who were not responsible for the violation. See Barnette, 355 S.C. at 595, 586 S.E.2d at 576; id. Orders granting discovery sanctions without such consideration are subject to reversal. See id.

Here, the trial court struck the Answers of all Defendants without closely scrutinizing the dynamics of the litigation or exercising any caution to ensure that the discovery sanction was targeted toward the offending party and not unduly prejudicing others. For example, in Appellants Barnwell, Estes, and Lehner's July 19, 2024 Answers to Respondent's First Sets of Interrogatories, they all objected to Interrogatories 9, 10, 13, 14, and 17, which sought the disclosure of personal financial information. (See Appellants Barnwell, Estes, and Lehner's Answers to Respondent's First Set of Interrogatories.) At the January 8, 2025 hearing on Respondent's Motion for Order and Rule to Show Cause, it was revealed that the parties had agreed to hold all discovery requests relating to the personal finances of the individual defendants in abeyance for the time being. Counsel for Appellants stated:

> . . . everything that they have provided to me I have provided except for the personal financial information about the individuals. And Mr. Suggs and I think have agreed that, that we're going to withhold, he'll withhold his request for that for now, with not, I mean, without prejudice so he can ask later.

(1/8/2025 Transcript, 16:2-7.) Counsel for Respondent did not object to Appellant's counsel's representation, nor is there any indication in the record that the referenced agreement was withdrawn. Nevertheless, the trial court, in its January 24, 2025 Order Granting Respondent's Motion for Order and Rule to Show Cause, ordered that Appellants Barnwell, Estes, and Lehner supplement their answers to Respondent's First Set of Interrogatories, and fully and completely answer Interrogatories 9, 10, 13, 14, and 17." (1/24/2025 Order, p. 3.)

Thereafter, in Appellants Barnwell, Estes, and Lehner's January 24, 2024 Responses to Respondent's First Set of Requests for Production, they all objected to Requests 22 and 27, which sought the production of personal financial records. (See Appellants Barnwell, Estes, and Lehner's Responses to Respondent's First Set of Requests for Production.) Counsel for Appellants then reminded the trial court of the agreement to hold discovery on personal finances in abeyance, yet the trial court again ordered that Appellants Barnwell, Estes, and Lehner supplement their answers to Respondent's First Set of Interrogatories, and "fully and completely answer Interrogatories 9, 10, 13, 14, and 17" and further ordered that Appellants Barnwell, Estes, and Lehner supplement their responses to Respondent's First Set of Requests for Production and "fully and completely respond to Requests 5, 18, 22, and 27." (See 3/18/2025 Letter; 3/26/2025 Order, pp. 3-4.) Thereafter, counsel for Appellants again reminded the trial court of the agreement, but the trial court nevertheless struck the Answers of the individual Appellants. (See 4/8/2025 Letter; 4/16/2025 Order, pp. 4-5.)

Accordingly, the record shows that the trial court failed to narrowly tailor its discovery sanction with regard to the responsible party and avoid unfairly prejudicing other parties, and must therefore be reversed.

C. The Trial Court Abused its Discretion by Failing to Exercise the Discretion Afforded to it.

An abuse of discretion also occurs "when the trial court is vested with discretion, but the ruling reveals no discretion was exercised." State v. Allen, 370 S.C. 88, 94, 634 S.E.2d 653, 656

(2006). "It is an equal abuse of discretion to refuse to exercise discretionary authority when it is warranted as it is to exercise the discretion improperly." State v. Smith, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981).

Here, the record gives no indication that the trial court considered any sanction short of striking Appellants' Answer. The trial court even refused to consider Appellants' attempts to show the trial court the extent of their good faith efforts to comply with its discovery obligations. In response to the trial court's March 26, 2025 Supplemental Order, counsel for Appellants requested an extension of the trial court's deadline and asked for a hearing to present everything that had been produced. (See 4/8/2025 Letter.) This request was ignored. It appears that the trial court accepted Respondent's complaints and arguments at face value and awarded the most drastic sanction available. There was no consideration of whether any sanction short of striking Appellants' Answer would be sufficient to achieve the aims of Rule 37. Indeed, even had Respondent been able to demonstrate that information had been withheld or concealed, this could be handled through the trial court by its contempt powers or other sanctions short of striking Appellants' Answer, but this was never done nor does it appear to have even been considered.

Consequently, there is no indication that the trial court actually exercised the discretion afforded to it, the Order must be reversed.

* * * * *

Accordingly, and for the reasons stated herein, the trial court's Order Striking Appellants' Answer was governed by errors of law, lacks reasonable factual support, and has resulted in prejudice to Appellants' rights. Consequently, the trial court abused its discretion in striking Appellants' Answer and that Order must be revered.

II. THE TRIAL COURT'S DAMAGES AWARD IS NOT SUPPORTED BY THE EVIDENCE IN THE RECORD AND MUST BE REVERSED

Our trial courts have considerable discretion in awarding damages, and appellate review is limited to the correction of errors of law. See Austin v. Specialty Transp. Servs., Inc., 358 S.C. 298, 310-11, 594 S.E.2d 867, 873 (Ct. App. 2004). By the time of the damages hearing, the trial court had already stricken the answer of the Appellants and held them in default, and they were unable to present their own testimony and evidence as to damages, making the trial court's role as gatekeeper even more imperative. "In a default case, the plaintiff must prove by competent evidence the amount of his damages, and such proof must be by a preponderance of the evidence." Jackson v. Midlands Human Res. Ctr., 296 S.C. 526, 529, 374 S.E.2d 505, 506 (Ct. App. 1988) (citing Howard v. Holiday Inns, Inc., 271 S.C. 238, 246 S.E.2d 880 (1978)). When a defendant is placed into default, that default applies only to liability and "the award of damages must be in keeping not only with the allegations of the complaint and the prayer for relief, but also with the proof that has been submitted." Id. (citing Lewis v. Congress of Racial Equality, 275 S.C. 556, 274 S.E.2d 287 (1981); Renney v. Dobbs House, Inc., 275 S.C. 562, 274 S.E.2d 290 (1981)). As further explained herein, the trial court's damages award is not supported by competent evidence and must be reversed.

A. The Trial Court's Acceptance of Respondent's Valuation of the Property was Not Supported by Competent Evidence.

The simply stated axiom that a landowner is permitted to testify to the value of his land belies the full extent of the actual rule. At surface level, it is true, as Respondent argues, that an owner can generally testify as to his or her opinion as to the value of the property, even though he is not an expert. However, that valuation must still be based on competent evidence, and the judge or the jury is not required to accept that unqualified opinion.

A property owner's lack of knowledge regarding valuation can result in the owner's testimony being excluded, to the extent it evidences that his lack of qualification renders his testimony worthless. See Seaboard Coast Line R.R. v. Harrelson, 262 S.C. 43, 46, 202 S.E.2d 4, 5 (1974). Property valuations submitted by the owners themselves are generally accepted when there is some competent evidence to support the valuation. See, e.g., Stanley v. Atl. Title Ins. Co., 377 S.C. 405, 410, 661 S.E.2d 62, 65 (2008) ("[b]ased on the testimony offered by [Stanley] and other evidence, this court concludes that the value of Mr. Stanley's remaining 1.093 acres was $ 100,000 at the time of purchase."); Gauld v. O'Shaugnessy Realty Co., 380 S.C. 548, 561, 671 S.E.2d 79, 87 (Ct. App. 2008) ("In contrariety, a property owner's opinion of his commercial property was within the bounds of proper testimony when it was based on comparable land.") Consequently, while Respondent's testimony regarding the value of the property was not necessarily subject to exclusion, the trial court was certainly under no obligation to blindly accept that valuation.

The trial court ultimately adopted Respondent's valuation of $21,000 per acre which resulted in Respondent's interest being valued at $1,127,225, despite Respondent also submitting evidence that a portion of the property was subsequently sold at $20,000 per acre. (See 8/5/2025 Transcript, 11:15-19, 30:20-23.) The $20,000 an acre valuation was based on an actual sale of a portion of the exact same property and was therefore more competent evidence of the value of the property. The trial court should have accepted that valuation, which would have resulted in Respondent's interest being valued at $1,073,820.[1] Appellants submit that the record reflects the trial court's acceptance of Respondent's valuation at face value. The damages award must be

[1] Of course, Respondent's actual damages were then trebled, so the $53,405 difference then became a $160,215 difference.

reversed and this case remanded for a proper determination of the actual value of the Subject Property.

B. The Trial Court Failed to Properly Consider Multiple Mortgages on the Subject Property in Determining its Damages Award.

Additionally, as set forth in the Appellants' brief, no consideration was given by the Court to the true value of the property in light of mortgages, liens, and payments that were made by the Appellants to the benefit of the Respondent. The trial court accepted Respondent's top dollar valuation on the property, based on Respondent belief as to the fair market value of the property in 2023, while ignoring the fact that the subsequent sale was possible only by virtue of those mortgages. The trial court's determination that Respondent did not benefit from the refinances undertaken by Appellants to fund the operations of Sportsman's Resort is not supported by the evidence in the record or common sense and must therefore be reversed.

Respondent alleges that Riverbend Properties was formed in 1992 with the sole purpose of owning rural real estate which it leased to Sportsman's Resort. (See Compl. ¶ 10-12.) Respondent himself also alleges, and therefore concedes, that the proceeds from the mortgages on the property were used "to fund the operations of Sportsman's Resort." (See Compl. ¶¶ 17-22.) Indeed, Respondent alleges that a total of $3,626,000 in loans were taken out over the course of twenty-four years, all for the purpose of funding the operations of Sportsman's Resort. (See id.) Respondent also alleges that Sportsman's Resort was never profitable and would have been completely insolvent without those mortgages. (See Compl. ¶¶ 29-31.) In other words, Respondent agrees that the only way Sportsman's Resort was able to maintain operations for roughly a quarter century, and consequently the subsequent sale was possible, only by virtue of the funds derived from those mortgages.

Regardless of any complaint or argument Respondent may have regarding his knowledge of or consent to those mortgages, it cannot be said that Respondent did not derive any benefit. The fact is that the value of the Subject Property was derived from Appellants' efforts in operating the Sportsman's Resort. Indeed, it is uncontested that the transfer and sale of the Subject Property, which stands as the basis for Respondent's lawsuit, was because a third party was purchasing that and other properties, which were owned by Sportsman's Resort. (See 8/5/2025 Transcript, 11:21 – 12:6.) Based on Respondent's own claims, the Appellants would not have been able to operate without those loans. The subsequent sale of the property, which drives Respondent's valuation entirely, would not have been possible without the loans. Any conclusion that Respondent did not benefit from those loans defies logic. Respondent is claiming that he is entitled to the benefit, while disclaiming any responsibility for the cost in achieving that benefit. Respondent cannot have it both ways. He cannot claim he is entitled to the maximum value of the property while ignoring that the basis of that valuation was gained through the proceeds of those loans.

The trial court's damages award, which fails to take these mortgages into account, is not in keeping with the allegations of Respondent's Complaint or the evidence presented at the hearing and must therefore be reversed. See, e.g., Jackson, 296 S.C. at 529, 374 S.E.2d at 506

C. The Trial Court's Award of Treble Damages and Attorney's Fees was Improper and Must be Reversed.

The trial court determined, based on Appellants' default, that they admitted liability for all of Respondent's stated causes of action, including the South Carolina Unfair Trade Practices Act. (See 8/25/2025 Order, p. 2.) The trial court went on to award treble damages and attorney's fees, "pursuant to the South Carolina Unfair Trade Practices Act." (Id.) This increased the damages award against Appellants by $2,285,156. (Id.) However, the Order Awarding Damages, and the record as a whole, is devoid of any evidence of a willful and knowing violation of the UTPA.

By statute, if an unfair or deceptive act is found by a court to be willful or knowing, the court may award treble damages and reasonable attorney's fees and costs. See S.C. Code Ann. § 39-5-140 (2026). This is not a mere determination of liability, but a determination of damages and, as a result, cannot be determined summarily by reason of a party's default. See, e.g., Jackson, 296 S.C. at 529, 374 S.E.2d at 506. The treble damages and attorney's fees awarded by the trial court were not deemed admitted by virtue of Appellants' default. The trial court was required to inquire whether treble damages or attorney's fees were properly supported by competent evidence. See id.

Moreover, awards for punitive damages are subject to a de novo review to ensure the award is consistent with due process. See James v. Horace Mann Ins. Co., 371 S.C. 187, 194, 638 S.E.2d 667, 670 (2006); Mitchell v. Fortis Ins. Co., 385 S.C. 570, 583, 686 S.E.2d 176, 183 (2009); Hollis v. Stonington Dev., LLC, 394 S.C. 383, 396, 714 S.E.2d 904, 911 (Ct. App. 2011). While not strictly punitive damages, treble damages are not compensatory and are intended to punish. See, e.g., Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 30, 644 S.E.2d 663, 671 (2007). The trial court did not give proper consideration to Appellants' due process rights in its consideration and awarding of treble damages.

The trial court failed to perform the proper inquiry, did not properly consider whether Respondent was entitled to treble damages or attorney's fees, and the record is devoid of any evidence supporting such an award. Consequently, the trial court's summary award of treble damages and attorney's fees was improper, and the Damages Award must be reversed.

CONCLUSION

For the foregoing reasons, and for the reasons stated in Appellants' Initial Brief, Appellants respectfully request the Court reverse the trial court's Order Striking Appellants' Answer and the Order Awarding Damages.

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