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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2026-000911

Charity Lynn Miller.....Appellant,

James S. Blanton.....Respondant.

INITIAL BRIEF OF APPELLANT

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August 18th, 2026

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Herbert v. Saffell, 877 F.2d 267, 270 (4th Cir.1989);
Reizakis v. Loy, 490 F.2d 1132, 1135 (4th Cir. 1974);

STATUTES

Rule 41(b), SCRCP

STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN DISMISSING THIS CASE WITH PREJUDICE DUE TO A FAILURE TO PROSECUTE?
2. DID THE TRIAL COURT ERR IN DISMISSING THIS CASE WITHOUT CONSIDERING IF LESS DRASTIC PUNISHMENTS WOULD BE APPROPRIATE?

STATEMENT OF THE CASE

On February 17, 2022, Appellant Charity Lynn Miller brought this case alleging Breach of Contract/Partnership Agreement, Fraud, and Dissolution against Respondent James S. Blanton. (R. ____). Appellant sought damages in an amount to be determined at trial, dissolution of the partnership, and a jury trial on all matters so triable. (R. ____).

Following the filing of a Dormant File Notice on December 3, 2022, Appellant filed an Affidavit of Service on December 12, 2022, and an Affidavit of Default on August 4, 2023. (R. ____).

A Consent Scheduling Order and an Amended Consent Scheduling Order were filed on January 9, 2024. (R. ____). Respondent filed his Answer and Counterclaim on January 30, 2024. (R. ____). Respondent's Counterclaim sought partition of the real property jointly owned by the parties. (R. ____).

An Amended Consent Scheduling Order was filed on February 21, 2024, requiring the parties to mediate by May 1, 2024, complete discovery by May 1, 2024, and providing that the case was subject to be called for trial on or before June 15, 2024. (R. ____). Appellant filed her Reply to Respondent's Counterclaim on February 29, 2024. (R. ____). A further Amended Consent Scheduling Order was filed on August 14, 2024. (R. ____).

The mediation deadlines established by the scheduling orders were not met. Mediation was scheduled for October 18, 2024, but Appellant did not appear. (R. ____). Proofs of ADR concerning the October 18 mediation were filed on October 28 and October 29, 2024. (R. ____). Appellant was subsequently ordered to pay the \$1,800 mediator's fee arising from the October 18, 2024 mediation. (R. ____). Appellant complied with the Court's order and paid the assessed fee in December 2025. (R. ____).

On February 5, 2025, Respondent filed a Motion for Sanctions and a Motion for an Order of Reference to the Master in Equity. (R. ____). Respondent filed a Motion for Protective Order concerning his wife on February 10, 2025. (R. ____). A Form 4 was filed on April 7, 2025. (R. ____). Appellant's counsel filed a Motion to Withdraw on June 9, 2025, and the Court subsequently entered an Order permitting counsel to withdraw. (R. ____).

On October 24, 2025, Respondent filed a Motion to Dismiss Appellant's Complaint, based upon failure to prosecute and failure to comply with the scheduling and mediation requirements. (R. ____). The Motion also sought to proceed with Respondent's partition Counterclaim before the Master in Equity. (R. ____). A Notice of Motion to Dismiss was filed on November 17, 2025. (R. ____). A Notice of Motion Scheduling dated November 14, 2025, set the matter for hearing on December 3, 2025, at 9:00 A.M. (R. ____).

The Circuit Court held a hearing on December 3, 2025, on Respondent's Motion to Dismiss, Motion for Protective Order, and Motion for an Order of Reference to the Master in Equity. (R. ____). Appellant appeared pro se. The Court allowed Appellant until December 8, 2025, at 5:00 p.m. to retain counsel before ruling on the motions. Appellant retained new counsel within the time permitted by the Court, and her counsel subsequently filed a Memorandum in Opposition to Respondent's Motion to Dismiss on December 23, 2025. (R. ____). Respondent

filed his Reply on December 29, 2025. (R. ____). Appellant filed supplemental ADR documentation concerning the October 18, 2024 mediation on December 30, 2025. (R. ____).

On February 16, 2026, the Circuit Court entered an Order granting Respondent's Motion to Dismiss Appellant's Complaint for failure to prosecute, granting Respondent's Motion for Protective Order, and referring Respondent's Counterclaim for partition to the Spartanburg County Master in Equity. (R. ____). No trial was held on Appellant's claims.

On February 27, 2026, Appellant filed a Motion for Reconsideration of the February 16, 2026 Order, seeking to set aside the dismissal and reinstate the action. (R. ____). Appellant also filed supplemental ADR documentation concerning a January 22, 2026 mediation, followed by Proof of ADR on March 2, 2026. (R. ____).

The Circuit Court denied Appellant's Motion for Reconsideration by Order filed March 4, 2026. (R. ____). The corresponding Form 4 Order was filed on March 5, 2026. (R. ____). Appellant received written notice of entry of the March 5, 2026 Order on March 5, 2026. (R. ____). Appellant filed her Notice of Appeal on April 3, 2026, appealing the March 5, 2026 Order. (R. ____).

STANDARD OF REVIEW

Whether an action should be dismissed for failure to prosecute is left to the discretion of the trial court judge, and his decision will not be disturbed, except upon a clear showing of an abuse of discretion. *Small v. Mungo*, 254 S.C. 438, 442, 175 S.E.2d 802, 804 (1970), *McComas v. Ross*, 368 S.C. 59, 62, 626 S.E.2d 902, 904 (Ct. App. 2006).

FACTS

In March 2015 Appellant and Respondent entered into a personal romantic relationship. Appellant is an experienced remodeler and developer of residential property and informed Respondent that she had identified residential property located at 86 Lawrence Street, Lyman, South Carolina, 29365 with a purchase price of \$35,000.00. Appellant informed Respondent that she could purchase the foregoing real property for no cash down payment and pursuant to seller financing. Respondent responded that he would like to enter into a partnership with Appellant whereby he would provide the initial capital to purchase the real property and the funds to remodel the property, and the Respondent and Appellant would then split the gross sale proceeds on a 50/50 basis. Appellant and Respondent entered into a partnership agreement as set forth herein, and Appellant forewent purchasing the real property on her own. In reliance on their partnership agreement, the Appellant agreed to forego, and did forgo other business opportunities, including purchasing additional properties to remodel and resale, and focused primarily on working for the partnership.

On or about May 26, 2015, the Appellant and Respondent purchased real property located at 86 Lawrence Street, Lyman, South Carolina, 29365 for \$35,000.00 pursuant to their partnership agreement (hereinafter the "Partnership Property"). The Partnership Property was purchased in the names of Appellant and Respondent. Shortly after the Purchased Property was purchased, the Appellant began residing at the Partnership Property with the consent of the Respondent, and the Appellant began and completed remodeling. Appellant and Respondent continued their romantic personal relationship, spending time at the Partnership Property.

Respondent was in a marital relationship during all times relevant to this action. In December 2015, the Appellant ended the personal romantic relationship with Respondent;

however, the professional partnership continued. Respondent continued to pursue Appellant romantically. Appellant did not proceed with Respondent in any romantic nature.

In November 2018, the Appellant entered into an Agreement to Buy and Sell Real Estate (hereinafter “Real Estate Agreement”) with a third party, to sell the Partnership Property for a total purchase price of \$125,000.00. The closing date for the Partnership Property was in 2019. The Respondent did not consent to the Partnership Property and the Real Estate Agreement was, as a result, terminated in 2019. Respondent’s actions did not align with the Partnership Agreement. Appellant has not been able to resell the Partnership Property. Respondent has continued to refuse to consent to selling the Partnership Property.

Since 2019, Appellant and Respondent have had limited contact. Respondent has threatened Appellant in various forms, including through text messaging and oral communication. On February 17, 2022, the Appellant filed a Summons and Complaint with the Court of Common Pleas. The Respondent was served via FedEx Delivery the Summons and Complaint on March 16, 2022. Respondent never responded. The Appellant submitted an Affidavit of Default on August 4, 2023, claiming the Respondent was in default under the South Carolina Rules of Civil Procedure 6 and 55.

The Respondent hired counsel, filed an Answer and Counterclaim and Summons to answer the Counterclaim on January 30, 2024. The Appellant filed a Reply to the Counterclaim on February 29, 2024.

During the litigation, the parties entered into multiple scheduling orders establishing deadlines for discovery, mediation, and trial. A mediation was scheduled for October 18, 2024. The Appellant failed to appear for the scheduled mediation. As a result of the missed October 18, 2024, mediation, the Appellant was ordered to pay the mediator’s fee of \$1,800.00. The

Appellant complied with the Court's order and paid the assessed \$1,800.00 mediator's fee in December 2025.

On February 5, 2025, the Respondent filed a Motion for Sanctions and a Motion for an Order of Reference to the Master in Equity. He subsequently filed a Motion for Protective Order concerning his wife on February 10, 2025. The Appellant's counsel moved to withdraw from representing her on June 9, 2025, and the Court subsequently permitted counsel to withdraw. She cites the dissolution of her and her counsel's partnership, due to directional differences of this case. Following the withdrawal of her counsel, the Appellant proceeded without counsel for a period of time.

On October 24, 2025, the Respondent moved to dismiss Appellant's action pursuant to Rule 41, SCRCF, alleging failure to prosecute and failure to comply with the scheduling and mediation requirements. The Appellant appeared pro se at the December 3, 2025, hearing on the Respondent's pending motions. At the December 3, 2025, hearing, the Court gave the Appellant until December 8, 2025, at 5:00 p.m. to retain new counsel before ruling on the pending motions. The Appellant retained new counsel within the time permitted and complied in good faith with the Court orders.

Through her newly retained counsel, the Appellant filed a Memorandum in Opposition to the Respondent's Motion to Dismiss on December 23, 2025. The parties agreed to mediate this case again, and mediation was completed on January 22, 2026.

On February 16, 2026, the Circuit Court dismissed Appellant's claims for failure to prosecute, granted Respondent's Motion for Protective Order, and referred Respondent's partition Counterclaim to the Spartanburg County Master in Equity.

Appellant filed a Motion for Reconsideration on February 27, 2026, requesting that the dismissal be set aside and her action reinstated. The Appellant filed supplemental ADR documentation concerning the January 22, 2026 mediation on February 27, 2026, and Proof of ADR was filed on March 2, 2026. The Circuit Court denied Appellant's Motion for Reconsideration in an Order filed March 4, 2026. The Appellant thereafter appealed the dismissal of her action.

ARGUMENTS

1. BECAUSE DIMISSING A CASE FOR FAILURE TO PROSECUTE REQUIRES A CLEAR RECORD OF INTENTIONAL DELAY AND DELIBERATE INDIFFERENCE TO THE DEFENDANTS RIGHTS, THE TRIAL COURT ERRED IN DISMISSING THIS CASE.

The Fourth Circuit decided that “trial courts must consider four factors before dismissing a case for failure to prosecute: (1) the plaintiff's degree of personal responsibility; (2) the amount of prejudice caused the defendant; (3) the presence of a drawn out history of deliberately proceeding in a dilatory fashion; and (4) the effectiveness of sanctions less drastic than dismissal.” *McComas v. Ross*, 368 S.C. 59, 63, 626 S.E.2d 902, 904–05 (Ct. App. 2006). Dismissing a case requires all four criteria be considered. There is a lack of evidence to support that the Appellant's actions ever demonstrated “the presence of a drawn out history of deliberately proceeding in a dilatory fashion.” *McComas v. Ross*, 368 S.C. 59, 63, 626 S.E.2d 902, 904–05 (Ct. App. 2006). Appellant has repeatedly exhibited proactivity in moving this case forward, shown in part by representing herself *pro se* when the need arose.

In *McComas v. Ross*, the Court of Appeals of South Carolina surveyed precedent and found that dismissals for failure to prosecute upheld by the Court of Appeals typically involved

“repeated warnings to the offending party or multiple opportunities to proceed with trial, and [the case was dismissed] only then upon a finding of unreasonable neglect. *McComas v. Ross*, 368 S.C. 59, 62, 626 S.E.2d 902, 904 (Ct. App. 2006). The Appellant received no warnings alleging intentional delay or a failure to prosecute. The allegation of intentional delay on the part of the Appellant was not raised until the Appellee filed his *Motion to Dismiss*, despite the Appellee taking two years to participate in this case.

The Appellant has complied with all orders from the lower court. The Appellant participated in fulfilling the court ordered meditation requirement on two separate occasions. The Appellant’s case simply does not meet the standard required to be dismissed with prejudice due to a failure to prosecute.

When the Court of Appeals of South Carolina is reviewing a case dismissed with prejudice for a failure to prosecute pursuant to Rule 41(b), SCRPC, “an appellate court may reverse the trial court's decision upon an abuse of discretion.” *In re Miller*, 393 S.C. 248, 256, 713 S.E.2d 253, 257 (2011).

Furthermore, it is an abuse of discretion when the conclusions of the trial court are made “by an error of law or are based on unsupported factual conclusions.” *Kiriakides v. Sch. Dist. of Greenville County*, 382 S.C. 8, 20, 675 S.E.2d 439, 445 (2009). The allegations set forth by the Appellee’s *Motion to Dismiss* were unsubstantiated.

2. BECAUSE DISMISSAL SHOULD ONLY BE RESORTED TO IN EXTREME INSTANCES, THE TRIAL COURT ERRED IN DISMISSING THIS CASE WITHOUT CONSIDERING LESSER SANCTIONS.

It is an abuse of discretion to dismiss a case with prejudice without considering the effectiveness of lesser sanctions. *McCargo v. Hedrick*, 545 F.2d 393, 396 (4th Cir.1976)

maintained that dismissal is a severe punishment that “should be resorted to only in extreme cases.” Since dismissal is the ultimate sanction a court can apply, its use must be tempered. Dismissal is generally only sanctioned “in the face of a clear record of delay or contumacious conduct by the plaintiff.” *McComas v. Ross*, 368 S.C. 59, 63, 626 S.E.2d 902, 904 (Ct. App. 2006). Furthermore, “appellate courts frequently have found abuse of discretion when trial courts failed to apply sanctions less severe than dismissal.” *Bush v. U.S. Postal Serv.*, 496 F.2d 42, 44 (4th Cir. 1974). Trial court judges “may take sanctions of a less drastic nature, such as payment of costs, attorneys' fees, or dismissal without prejudice”, before handing out such severe punishment as dismissal with prejudice. *Chandler Leasing Corp. v. Lopez*, 669 F.2d 919, 921 (4th Cir. 1982).

Herbert v. Saffell, 877 F.2d 267, 270 (4th Cir.1989) shows that granting a dismissal under Rule 41(b) is improper unless there is evidence that “the district court considered other, less drastic, sanctions to compel compliance with its order.” Because of the harshness of a dismissal with prejudice, it should be considered against “the sound public policy of deciding cases on their merits.” *Reizakis v. Loy*, 490 F.2d 1132, 1135 (4th Cir. 1974).

The trial court failed to demonstrate that this is an extreme case, resulting in it needing to be dismissed with prejudice. There is a lack of evidence supporting the accusation that the Appellant has committed any contumacious conduct. Utilizing the harshest sanction, without prior warning or considering the application of lesser sanctions, is an abuse of discretion. The aforementioned legal precedent favors the reversal of dismissals with prejudice, in similar instances.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the trial court and remand this case for a new trial. Upholding the trial court's dismissal with prejudice will result in a fundamental unfairness due to the Appellant being barred from accessing the court system.

WHEREFORE, the Appellant respectfully prays that this court:

1. Reverse the February 16, 2026 Order from the trial court;
2. Remand this case back to the lower court for a new trial;
3. For such other and further relief as the court may deem just and proper.

Respectfully submitted,

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