

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Anne Wiggins Smith, Appellant,

v.

John L. Wiggins, III, Individually and as Trustee of the
John L. Wiggins, Jr. Revocable Trust, as Trustee of the
Margaret Eugenia Utsey Wiggins Revocable Trust, and
as Personal Representative of the Estate of Margaret
Eugenia Utsey Wiggins, Respondent.

Appellate Case No. 2024-001266

Appeal From Orangeburg County
James B. Jackson, Jr., Special Circuit Court Judge

Unpublished Opinion No. 2026-UP-461
Submitted September 1, 2026 – Filed October 28, 2026

AFFIRMED

Russell Allen Blanchard, IV, of Williams & Williams, of
Orangeburg, for Appellant.

Amy L.B. Hill and Dixie Nicole McCollum, both of
Richardson Thomas, LLC, of Columbia, for Respondent.

PER CURIAM: This appeal arises from the special circuit court's order granting Respondent John L. Wiggins, III's motion to dismiss for failure to prosecute and motion for summary judgment based on the statute of limitations. On appeal, Appellant Anne Wiggins Smith argues (1) the statute of limitations did not begin to run on her claim on September 5, 2014; (2) the circuit court incorrectly found that Appellant failed to prosecute her case; and (3) the circuit court abused its discretion by failing to consider sanctions less harsh than outright dismissal. We affirm.

1. Appellant and Respondent are biological siblings. On August 24, 2017, Appellant filed an action against her mother (Mother) and Respondent in the Orangeburg County Probate Court¹ asserting mismanagement of a marital trust created by the parties' parents (the Marital Trust) due to alleged improper loans made to Respondent. Appellant argues the statute of limitations did not begin to run on her claim on September 5, 2014; therefore, the circuit court erred in granting Respondent's motion for summary judgment. We disagree.

"[A] moving party is entitled to summary judgment 'if the [evidence before the court] show[s] that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 459, 892 S.E.2d 297, 299 (2023) (second and third alterations in original) (quoting Rule 56(c), SCRPC). "When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." *Bluestein v. Town of Sullivan's Island*, 429 S.C. 458, 462, 839 S.E.2d 879, 881 (2020) (quoting *Turner v. Milliman*, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011)). "Summary judgment is appropriate when a plaintiff does not commence an action within the applicable statute of limitations." *Allwin v. Russ Cooper Assocs.*, 426 S.C. 1, 11, 825 S.E.2d 707, 712 (Ct. App. 2019) (quoting *McMaster v. Dewitt*, 411 S.C. 138, 143, 767 S.E.2d 451, 453 (Ct. App. 2014)). "[A]ctions concerning the administration of trust accounts fall squarely within the Probate Code statute of limitations." *Mayer v. M.S. Bailey & Son*, 347 S.C. 353, 359, 555 S.E.2d 406, 409 (Ct. App. 2001). Article 7 of the Probate Code² controls the administration of trusts and "establishes either a one or three year statute of limitations, depending on the extent of disclosure, within which a beneficiary is required to initiate a lawsuit against the

¹ On September 7, 2017, the probate court sua sponte transferred the case to circuit court. By order dated February 1, 2019, the circuit court referred the case to the Master in Equity, James B. Jackson, as special circuit court judge.

² See S.C. Code Ann. §§ 62-7-101 to -1106 (2022 & Supp. 2025).

trustee for mismanagement of the trust accounts." *Mayer*, 347 S.C. at 359–60, 555 S.E.2d at 409. Section 62-7-1005 provides:

(a) Unless previously barred by adjudication, consent, or limitation, a beneficiary may not commence a proceeding against a trustee for breach of trust more than one year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust.

(b) A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or representative knows of the potential claim or should have inquired into its existence.

S.C. Code Ann. § 62-7-1005(a) to (b). If subsection (a) does not apply, a beneficiary's proceeding "against a trustee for breach of trust must be commenced within three years after the first to occur of: (1) the removal, resignation, or death of the trustee; (2) the termination of the beneficiary's interest in the trust; or (3) the termination of the trust." § 62-7-1005(c).

Here, we agree with the circuit court that Appellant's claims are barred by both the one-year Probate Code statute of limitations and the discovery rule three-year statute of limitations proscribed in sections 15-3-530³ and 15-3-535⁴ of the South Carolina Code. The loan transactions Appellant complained of were fully disclosed in previous reports supplied to Appellant more than a year prior to her filing this action in August 2017. This is evidenced by Appellant's own correspondence, as acknowledged by the circuit court. For example, in her brief in opposition to the motion to dismiss and motion for summary judgment, Appellant claimed, "On August 10, 2004, [Respondent] started taking monies for his personal use from the Marital Trust when he wrote himself a check in the amount of

³ "Within three years: (1) an action upon a contract, obligation, or liability, express or implied . . . [and] (5) an action for assault, battery, or any injury to the person or rights of another, not arising on contract and not enumerated by law" S.C. Code Ann. § 15-3-530 (2005).

⁴ "[A]ll actions initiated under [s]ection 15-3-530(5) must be commenced within three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action." S.C. Code Ann. § 15-3-535 (2005).

\$10,000." She continued by stating Respondent "continued this practice until June 30, 2014, after he had been caught and confronted." Further, in Appellant's affidavit filed in July 2019, she explicitly acknowledged a division of assets report provided to her by M. Joseph Binnicker, CPA, with McGregor and Company (the McGregor Report) dated August 25, 2014, which "sets out a division of assets into the Marital Trust assets" The McGregor Report was prepared pursuant to Appellant's request. In the same affidavit, Appellant later acknowledged, "Up until 8/9/14 [Appellant] was privy to the bank statements and checks on the account of [the Marital Trust]." We find the record shows Appellant received the McGregor Report by September 5, 2014, and that upon receiving the McGregor Report, she began making further inquiries as to any claims she might have regarding the loans at issue. As such, we find the statute of limitations clock began when the McGregor Report was received. To the extent legitimate claims existed that related to those loans, Appellant failed to initiate the same within one year of receiving the McGregor Report. Accordingly, we affirm the circuit court's grant of summary judgment based upon the statute of limitations. *See Jackson v. Bermuda Sands, Inc.*, 383 S.C. 11, 14 n.2, 677 S.E.2d 612, 614 n.2 (Ct. App. 2009) (explaining appellate courts review the grant of a summary judgment motion under the same standard applied by the trial court pursuant to Rule 56(c), SCRPC); Rule 56(c), SCRPC (providing that summary judgment shall be granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law"); *Mayer*, 347 S.C. at 360-61, 555 S.E.2d at 409–10 (affirming the dismissal of beneficiaries' claims against a trustee according to both a one and a three-year statute of limitations when the suit was initiated four years after receiving the bank letter and five years after receiving the trust bank statements).

2. Appellant argues the trial court incorrectly found that she failed to prosecute her case. We disagree. "The plaintiff has the burden of prosecuting [her] action, and the trial court may properly dismiss an action for plaintiff's unreasonable neglect in proceeding with [her] cause." *Don Shevey & Spires, Inc. v. Am. Motors Realty Corp.*, 279 S.C. 58, 60, 301 S.E.2d 757, 758 (1983).

[T]he trial court 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 (Ct. App. 2006). "In granting dismissal for failure to prosecute, there must be some showing of indifference to the rights of the defendant." *Id.* at 62–63, 626 S.E.2d at 904.

We agree with the circuit court and find Appellant failed to prosecute her case and dismissal was the adequate remedy. We find no abuse of discretion on the part of the circuit court as it expressly detailed the circumstances of this case that led to the ultimate dismissal.⁵ Respondents made the first request for a damages calculation on December 17, 2018, and, in fact, at the time the underlying order on appeal was filed in November 2023, Appellant had still not provided a damages calculation. Appellant actively participated in litigation following the December 2018 request. Further, at the time Respondent first moved to dismiss for failure to prosecute, it had been over three years since the original request for damages. In addition, at the hearing on the motion to dismiss for failure to prosecute, Appellant reassured the court she would provide an expert damages report in thirty to sixty days following the hearing. She failed to do so, which led to the request for and filing of a scheduling order setting forth a deadline to provide the expert's report. The order explicitly provided that should Appellant fail to produce the damages calculation, her action would be dismissed. The circuit court even afforded Appellant an additional fifteen days to provide the report. Again, she failed to do so. Instead, Appellant produced a letter from Ronny Burkett, CPA, dated June 30—the same day of the deadline—which did not provide a damages calculation, but rather requested additional information so that a damages calculation could be conducted. Respondent noted much of the information requested by Burkett in the June 30 letter was already within the possession of Appellant because she had previously disclosed such information to Respondent. We find the allegations regarding the financial mismanagement of the Marital Trust were first raised years before the case was filed and a financial analysis could have been done years prior. We affirm. *See* Rule 41(b), SCRCP ("For failure of the plaintiff to prosecute . . . , a defendant may move for dismissal of an action or of any claim against him.");

⁵ The court's order extensively details the intricacies and complications arising from familial disputes. Of import, the court noted Mother's death in September 2022 and found it "very unfortunate" that the matter could not be resolved in her final years. It further noted that "tens of thousands of dollars have been spent on legal fees to defend this matter, not to mention the emotional toll this has taken on a family."

Georganne Apparel, Inc. v. Todd, 303 S.C. 87, 92, 399 S.E.2d 16, 19 (Ct. App. 1990) (noting dismissal with prejudice was warranted because the plaintiff was "given abundant opportunity to litigate" and exceeded the "limit beyond which the court should allow a litigant to consume the time of the court and to prolong unnecessarily time, effort, and costs to defending parties").

3. Appellant argues the trial court abused its discretion by failing to consider sanctions less harsh than outright dismissal. We disagree. "Pursuant to Rule 37(b)(2)(C), SCRCF, when a party fails to obey an order to provide or permit discovery, the court may 'make such orders in regard to the failure as are just,' including an order dismissing the action or proceeding, or any part thereof." *Barnette v. Adams Bros. Logging*, 355 S.C. 588, 593, 586 S.E.2d 572, 575 (2003). "[W]hen the court orders default or dismissal, or the sanction itself results in default or dismissal, the end result is nevertheless harsh medicine that should not be administered lightly." *Karppi v. Greenville Terrazzo Co.*, 327 S.C. 538, 542–43, 489 S.E.2d 679, 682 (Ct. App. 1997). "The sanction imposed should be reasonable" and "[b]efore 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." *Id.* at 543, 489 S.E.2d at 682. "A dismissal under Rule 37(b)(2)(C) is not mandatory; rather, the trial court is allowed to make such orders as it deems just under the circumstances, and the selection of a sanction is within the court's discretion." *Kershaw Cnty. Bd. of Educ. v. U.S. Gypsum Co.*, 302 S.C. 390, 395, 396 S.E.2d 369, 372 (1990). However, a party engaging in a deliberate pattern of discovery abuse may be grounds for imposing a sanction "tantamount to granting a judgment by default." *Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co.*, 334 S.C. 193, 198, 511 S.E.2d 716, 718–19 (Ct. App. 1999). Before the trial court imposes such a sanction, "the moving party must show bad faith, willful disobedience[,] or gross indifference to its rights to justify the sanction." *Id.* at 198–99, 511 S.E.2d at 719.

After our review of the record, we determine the circuit court did not err in rejecting sanctions less harsh than dismissal. The court properly considered the length of time the case had been pending, the number of opportunities afforded to Appellant to comply with discovery, the nature of the damages request, and the prejudice to Respondent and the family as a whole. The court agreed with Respondent that without a damages calculation, he could not move forward in defense of his case. See Rule 37(b)(2)(C) (providing a court may "order [the] striking out [of] pleadings . . . or rendering a judgment by default against the disobedient party" for failure to comply with an order compelling discovery); *Downey v. Dixon*, 294 S.C. 42, 45, 362 S.E.2d 317, 318 (Ct. App. 1987) ("The

imposition of sanctions is generally entrusted to the sound discretion of the [c]ircuit [c]ourt."); *Karppi*, 327 S.C. at 542, 489 S.E.2d at 682 ("Rule 37 expressly grants the [circuit] court power to order judgment by default for either the violation of a court order, or, upon motion, for a party's failure to respond to certain discovery requests."); *Griffin Grading & Clearing, Inc.*, 334 S.C. at 199, 511 S.E.2d at 719 ("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.").

Based on the foregoing, the order of the circuit court is

AFFIRMED.⁶

THOMAS, KONDUROS, and CURTIS, JJ., concur.

⁶ We decide this case without oral argument pursuant to Rule 215, SCACR.