THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

Appeal from the Court of Common Pleas
Richland County, South Carolina

Alison Renee Lee, Chief Administrative Judge

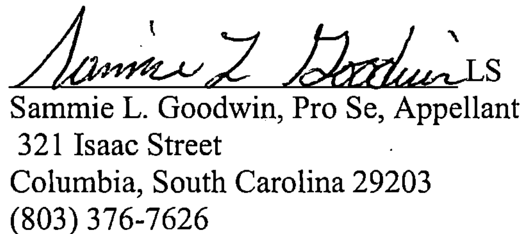
Appellate Case No. 2019-000566

Richland County Sheriff Department ....Respondent,

v.

Sammie L. Goodwin...Appellant.

INITIAL BRIEF OF APPELLANT



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STATEMENT OF THE CASE

Appellant, Sammie L. Goodwin, filed an action against the Richland County Sheriff Department and Office L.A. Daiz for excess force and false arrest in the Richland County Court of Common Pleas on January 14, 2016. A hearing was held on March 28, 2018 on the respondent's motion to dismiss. The Court had heard previous motions relating to discovery and to dismiss and ruled in favor of the appellant. (Transcript page 5).

Respondents asked the Court to dismiss the case with prejudice under Rule 41(b), as a sanction. Respondent's attorney acknowledged he had never made such a radical request in his twenty-four (24) year of practice of law. Respondent knew what a radical remedy he was requesting.

The lower court held the believed that the proper sanction was dismissal of the complaint pursuant to Rule 41(b), SCRCP. The trial court granted the Respondents renewed motion to dismiss and that the causes against the Respondent were dismissed with prejudice.

FACTS

Appellant, Sammie L. Goodwin, was arrested by the Richland County Sheriff Department on January 14, 2014. Deputy L. A. Diaz used excessive force to detain the appellant. The appellant was injured in the left arm when Deputy L. A. Diaz tazed the appellant even though he was handcuffed.

Appellant, Sammie L. Goodwin had an argument with his girlfriend, Lelsia, but he did not touch her in any way. He left the bedroom and went into the living room and sat down. He heard the front door bell ring and got up and went to the window and saw two (2) Richland County Sheriff Deputies at the door. One was White and the other was Black. They said they were looking for Lelsia Branham. Lelsia Branham came out of the bedroom into the hallway. The Black deputy went into the hallway to talk with Lelsia Branham and the White Deputy, L. A. Diaz told the appellant to put his hands behind his back because he was under arrest. Deputy L. A. Diaz proceed to arrest the appellant. Lelsia Branham tried to explain to the Deputies that the appellant didn't do this to her and that she poured it on herself.

Appellant was taken outside and put into the back seat of the Sheriff car. Appellant asked the Deputy why he was being arrested and was told to shut his mouth. Appellant asked the White deputy, L. A. Diaz, if he was a racist and if he didn't like Black men because a black man dated his wife. Deputy L. A. Diaz took out his stun gun and started to stun the appellant at least three (3) times. Appellant was taken to Richland County Detention Center and charged with criminal domestic violence and resisting arrest. A few months went by and both charges were dismissed and the arrest records were expunged because the state of South Carolina found out that the appellant didn't commit these charges. The Richland County Sheriff issued a letter that the Deputy L. A. Daiz is guilty of excessive force. (Exhibit "B")

ARGUMENT

Respondent was denied his day in court. The dismissal of his case was a sanction for act he never committed. He never altered or falsified any medical record because he never had any medical records in his possession to alter.

The trial court judge ruled that the appellant tampered with or falsified his medical records and then adopted the compromised version at his deposition constitutes knowing and fraudulent conduct. That theory of events was argued by the defendant at the hearing but there was never any evidence to prove that happened. Moreover, it was impossible for the appellant to alter his medical records because his medical records were never in the appellant's possession.

Respondent's false accusation that the appellant tampered or falsified his medical is the basis for respondent trial court argument to persuade that dismissal of the respondent was a proper remedy. The event and circumstances of the appellant are in no way equal to what happened in Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238 (1944). Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238 (1944) is very distinguishable from this case. In Hazel-Atlas, attorneys fabricated a trade journal to bolster a patent application. There was no fabrication on the part of the appellant. He pursued a case on the basis the pain and discomfort he experienced.

There was no medical evidence or testimony by a medical witness that the appellant alter the records. A thorough review of the transcript provides no mention of the appellant having altered the records.

The South Carolina case cited in the judges discussion in the order is has no resemblance to the situation in our case. QZO, Inc., v. Moyer, 358 S.C. 246, 594 S.E. 2d 541 (Ct. App.2004) involved the destruction of relevant evidence which was a fraud on the court. Appellant was accused of altering the medical records, but it was never established that he did. The accusation could not have been proven because the appellant never had possession of the records to destroy them.

Appellant was not involved in either destruction or alteration of evidence. The medical records received by the respondent were directly from the doctor. That is evidenced by the released signed by the appellant. (See Exhibit "A" attached). Even more convincing that there was no either destruction or alteration of the medical records, the trial judge at the hearing where the case was dismissed was the judge at a previous hearing the she compelled and the appellant singed authorization to the respondent for the release of appellant's medical records. The records came to the respondent directly from the medical records provider and the appellant had not ability to alter the records. At the trial court hearing, the responded cited Quo Incorporated v. Moyer, Qzo, Inc., d/b/a Palmetto Ambulance Service, and Respondent, v. Darrin Moyer, Jerry Benenhaley, and Alice Childers, of whom Darrin Moyer is appellant. 594 SE. 2nd 541. The court stated: the decision of whether or not to award sanctions is generally entrusted to the discretion of the trial court. See fields v. Regional med. Ctr. Orangeburg, 354 S.C. 445, 581 S.E.2d 489 (ct.app.2003) (decision of what kind and whether to impose discovery sanctions is left to sound discretion of *256 circuit court); karppi v. Greenville Terrazzo Co., 327 S.C. 538, 489 S.E.2d 679 (ct.app.1997) (noting that imposition of sanctions is generally entrusted to sound discretion of circuit court); see also Stone v. Reddix-Smalls, 295 S.C. 514, 369 S.E.2d 840 (1988) (stating that contempt decision should be reversed only when without evidentiary support or upon an abuse of discretion by the trial court). An appellate court will not disturb this decision unless the trial court abused its discretion. Griffin grading & clearing, Inc. V. Tire serv. Equip. Mfg. Co., 334 S.C. 193, 511 S.E.2d 716 (ct.app.1999); see also Karppi, 327 S.C. At 542, 489 s.e.2d at 681 (stating that trial court's exercise of its discretionary powers with respect to sanctions imposed

in discovery matters will be interfered with by the court of appeals only if abuse of discretion has occurred).

The burden is on the appealing party to show the trial court abused its discretion in imposing sanctions for failing to comply with a discovery order. *Halverson v. Yawn,* 328_S.C._618, 493_S.E.2d_883 (Ct.App.1997); *Karppi,* 327 S.C. at 542, 489 S.E.2d at 681. An abuse of discretion may be found where the appellant shows that the conclusion reached by the trial court was without reasonable factual support and resulted in prejudice to the rights of appellant, thereby amounting to an error of law. *Kershaw County Bd. of Educ. v. United States Gypsum Co.,* 302_S.C._390, 396 S.E.2d_369 (1990); *Karppi,* 327 S.C. at 542, 489 S.E.2d at 681. When a party fails to obey an order relating to discovery, the trial court may strike that party's pleadings and enter a default judgment. *Griffin,* 334 S.C. at 198, 511 S.E.2d at 718 (citing Rule 37(b)(2)(c), SCRCP); *see also Karppi,* 327 S.C. at 542, 489 S.E.2d at 682 (explaining that Rule 37, SCRCP, expressly grants trial court power to order judgment by default for either the violation of a court order or, upon motion, for party's failure to respond to certain discovery requests). When a court orders a sanction that results in default or dismissal, "the end result is harsh medicine that should not be administered lightly." *Griffin,* 334 S.C. at 198, 511 S.E.2d at 718; *see also Karppi,* 327 S.C. at 547, 489 S.E.2d at 684 (Anderson, J., concurring) ("A sanction which results in a default or dismissal is harsh punishment which should be *257 imposed only if there is some showing of willful disobedience or gross indifference to the rights of the adverse party."). The sanction should be aimed at the specific misconduct of the party sanctioned and should not be used improvidently to prevent a decision on the merits. *Griffin,* 334 S.C. at 198, 511 S.E.2d at 719; *Karppi,* 327 S.C. at 543, 489 S.E.2d at 682. The sanction imposed should 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. Finally, when a 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,* 334 S.C. at 198-99, 511 S.E.2d at 719; *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.").

The appellant acknowledges the discretion of the trial court to impose sanctions. The appellant contends the trail court did not obey the guideline established in the above referenced cases. The appellant complied with the discovery order.

The trial court abused its discretion in imposing sanctions for failing to comply with a discovery order because the appellant complied to all discover orders.

"When a sanction would be tantamount to granting a judgment by default, the moving party must show bad faith, willful disobedience or gross indifference to its right to justify the sanction." Appellant testified before the judge and respondent that he testified at all the depositions and even testimony that the respondent left out. (Transcript pages 24-26). Appellant testified to the inaccuracies in the deposition record.

The trial court abused its discretion in imposing sanctions. The appellant complied with all discovery request as acknowledged by all parties at the hearing. Appellant complied with the discovery order.

CONCLUSION

The Court erred in granting respondent's motion to dismiss based upon the trial court judge's belief that the appellant alter and falsified record when the records were never in his possession to alter. In the interest of fundamental fairness the court should remand the case to the circuit court so that the appellant can receive his constitutional right of due process and be allowed to appeal the probate court ruling.

Certificate of Counsel

The undersigned hereby certifies that the Reply to the Respondent Initial Briefing complies with Rule 211(b), SCACR.

____________________________ LS,

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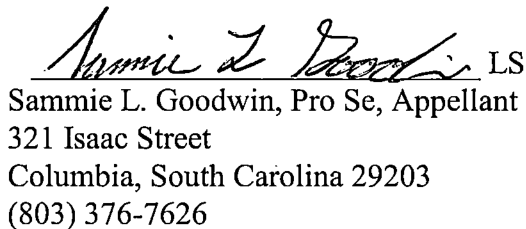
PROOF OF SERVICE

I certify that I have served the Brief and Designation of Matters on the Respondent by depositing a copy of it in the United States Mail, postage prepaid, on June 19, 2019, Davidson & Lindemann, PA, 1611 Devonshire Dr. #200, Columbia, SC 29204, on September 6, 2019.

September 6, 2019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