

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 ) Civil Action No. 2016-CP-32-04163  
COUNTY OF LEXINGTON )

Valerie Drafts; Veronica Drafts; and )  
Tarance F. Drafts, III, )

Plaintiff, )

vs. )

R.O. Levy, South Carolina Department of )  
Revenue; The United States of America; )  
Batesville Casket Co., )

Defendant(s). )

ORDER

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SC Court of Appeals

THIS MATTER came before the undersigned on September 30, 2019. Present was Warren R. Herndon Jr. representing the Plaintiff. Defendant R.O. Levy was represented by Attorneys Thomas B. Levy and Joseph Henry.

There were two pending motions. At the hearing, Plaintiff withdrew its motion filed August 23, 2019 for a change of attorney for defendant R.O. Levy. The motion taken up was the Defendant's Motion to Rescind Foreclosure Order filed by Joseph Henry on behalf of R.O. Levy on March 29, 2019.

From the pleadings and the record, I find the following as a chronological history of the key actions in this matter:

- Dec. 9, 2016 Summons and Complaint filed.
- Dec. 20, 2016 Summons and Complaint served on R.O. Levy.
- Jan. 19, 2017 Answer filed by Thomas B. Levy, attorney for R.O. Levy.
- June 18, 2018 Thomas B. Levy sent Request to Admit and Interrogatories to Warren Herndon.
- July 13, 2018 Warren Herndon responds to discovery requests by mail to Thomas B. Levy.
- Oct. 17, 2018 E-mail from Leslie Shealy of this office to all attorneys of record for a Jan. 24, 2019 trial.

- Oct. 23, 2018 Letter mailed by Joseph Henry to Warren Herndon advising him that he was assisting in the defense and questioning the discovery response.
- Oct. 30, 2018 Letter mailed by Warren Herndon to Joseph Henry responding to the October 23, 2018 letter.
- Jan. 14, 2019 Warren Herndon sent Letter to all attorneys of record.
- Jan. 24, 2019 Trial held in contested format with witness who were sworn and testified before the court. (Creel Court Reporting, Inc. Amanda Creel Godfrey 803-252-3445). A thumb drive of the transcript was received by Court on or about March 7, 2019 and delivered thereafter to the Clerk of Court for Lexington County.).

Defendant argues several reasons to set aside the order:

In allegations No. 1 and 5 of his motion, Henry contends that he filed a Notice of Appearance on October 18, 2018 and thus was entitled to Notice of the Foreclosure hearing on January 24, 2019. It is undisputed that no Notice of Appearance on behalf of Joseph Henry was filed with the Clerk until March 29, 2019. Mr. Henry produced copies of his transmittal letter to the Clerk, but has not demonstrated diligence to assure that his appearance was properly noticed.

Lexington County joined other counties in the state e-filing system in September 2017. Previously, Court Administration developed a training program for attorneys and Clerk's Office. One component of this training was how, as an attorney, to respond to an attempted filing that the Clerk's Office rejected. Here, Henry does not explain why, when on October 18, 2018 his attempt to file notice of appearance was rejected and he was sent rejection notice, that he did not follow the materials provided in the South Carolina Courts Reference Guide Contents Attorney Reference Guide ARG-10: Resubmit or Delete a Rejected Filing .....3 as is required by the e-Filing System.

Henry further argues that: "Plaintiff's counsel asserted that notice to Attorney Levy was the same as notice to Mr. Henry as they were co-counsel on the case. In response to this assertion, Defendants asserted that Attorney Levy was not the attorney for R.O. Levy and was simply serving as a place holder until counsel could be obtained. This court is not aware of any rule or case law that supports this argument. Therefore, it appears to be an issue of first impression. Therefore, it will be scrutinized from the standpoint of notice and fundamental fairness. Defendant in the instant case is the biological brother of Attorney Levy."

Henry appears to make an equitable argument that South Carolina law has different rules for relative or family attorneys than for non-family or related attorneys. The Court is unaware of any such authority and declines to establish such an exception without further guidance from either our appellate courts or state legislature.

Henry further argues that his October 23, 2018 letter to Plaintiff amounted to an appearance. It is important to note that his notice was not from Levy, the attorney of record, but from Henry, who was not the attorney of record, claiming to be the authorized attorney. The court cannot agree with this reasoning. It was incumbent on Henry to file the proper Notices of Appearance, particularly since Thomas B. Levy had knowledge of the trial date by virtue of the October 17, 2018 e-mail to Thomas B. Levy from this office.

Henry argued, not persuasively in view of the chronology of facts, that he did not know that Thomas B. Levy was the attorney of record; however, he had reviewed the discovery requests in Mr. Levy's file. Defendant's Motion is grounded solely on the assertion that he was an attorney for the record and should have been noticed for the January 14, 2019 merits hearing for the foreclosure. Henry could not recall if Levy gave him notice of the hearing. The Court cannot find a duty on Plaintiff to notify Henry, who was not an attorney of record, notice of any proceedings.

Plaintiff has demonstrated that notice was given to attorney Thomas B. Levy, Mr. R.O. Levy's attorney of record, on January 14, 2019. Neither Thomas B. Levy nor the Defendant R.O. Levy appeared at the trial. Further, Plaintiff introduced a copy of an email from my office on October 17, 2018 to all attorneys of record notifying them of the trial date and time. In the absence of anything in the record demonstrating that attorney, Thomas B. Levy had filed any pleadings to withdraw as counsel or that Henry had moved to be substituted as counsel; the court finds that Plaintiff gave proper notice to Defendant of the trial.

Next, Defendant argues in allegations 2, 3 and 4 of his motion that Plaintiff failed to properly respond to discovery requests of Defendant. Defendant argues that an attorney in a contested case can make a unilateral determination that the discovery responses were inadequate,

without court involvement, a hearing or a chance for the opposing side to be heard, and is tantamount to an admission favorable to Defendant.

The court is aware of no law, nor even principle of western law, that allows one party to make a unilateral court ruling without the other side having an opportunity to be heard. It is very clear that questions and arguments about discovery responses are to be dealt with by the courts pursuant to Rule 37 (SCRCP). This argument is without merit.

For the foregoing reasons, the Defendant's motion is denied.

**AND IT IS SO ORDERED.**

Lexington, South Carolina

James O. Spence, Master In Equity

**JUDGES SIGNATURE PAGETO FOLLOW**



Lexington Common Pleas

**Case Caption:** Valerie Drafts , plaintiff, et al VS R O Levy , defendant, et al  
**Case Number:** 2016CP3204163  
**Type:** Master/Order/Other

AND IT IS SO ORDERED.

S/JUDGE JAMES O. SPENCE-3068