

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Alison Renee Lee, Circuit Court Judge

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Appellate Case No. 2019-000566  
Case No. 2016-CP-40-0387

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**RECEIVED**  
JAN 22 2020  
SC Court of Appeals

Sammie L. Goodwin,..... Appellant,

v.

Richland County Sheriff Department, Richland County  
Sheriff Leon Lott in his official capacity, ..... Respondents.

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**INITIAL BRIEF OF RESPONDENTS**

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## **TABLE OF AUTHORITIES**

### **Cases**

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368 S.C. 618, 630 S.E.2d 259 (2006).

*Griffin Grading & Clearing, Inc. v. Tire Service Equipment  
Manufacturing Co., Inc.*,  
334 S.C. 193, 511 S.E.2d 716 (Ct. App. 1999).

*Halverson v. Yaun*,  
328 S.C. 618, 493 S.E.2d 883 (Ct. App. 1997).

*Karppi v. Greenville Terrazzo Co.*,  
327 S.C. 538, 489 S.E.2d 679 (Ct. App. 1997).

*QZO, Inc. v. Moyer*,  
358 S.C. 246, 594 S.E.2d 541 (Ct. App. 2004)

### **Rules and Statutes**

Rule 41(d), SCRCP.

Rule 59(e), SCRCP.

## STATEMENT OF THE CASE

This is an appeal from a discovery order that dismissed this action as a sanction for discovery abuses including the fraudulent alteration of a medical record.

In his Complaint, the Appellant Sammie L. Goodwin alleges claims for false arrest and battery against the Respondents Richland County Sheriff's Department and Richland County Sheriff Leon Lott in his official capacity (hereafter referred to collectively as "Sheriff Lott"). The Appellant alleges that on January 14, 2014, Richland County sheriff's deputies responded to his resident after his live-in girlfriend called dispatch regarding a domestic dispute. The Appellant further alleges that, following some interactions between the Appellant, his girlfriend, and two deputies, he was placed under arrest for Criminal Domestic Violence and was escorted to the patrol vehicle whereupon he was unjustifiably tased multiple times in his left arm. Protesting his arrest and the force instituted by one or more deputies, the Appellant kicked the inside door of the patrol vehicle. He was also charged by the deputies with Resisting Arrest. The charges were ultimately dismissed.

The procedural history of the case, which is discussed in greater detail below, demonstrates that defense counsel experienced difficulties in obtaining basic discovery from the Appellant, including a complete set of medical records.

That necessitated the filing of a motion to compel which was heard by Circuit Court Judge George McFaddin on June 6, 2017, and resulted in the issuance of a form order requiring the Appellant to produce the medical records within thirty days. (Form Order, June 7, 2017). When the medical records produced thereafter were incomplete, partially illegible or cut-off, and were largely duplicative of the incomplete records produced earlier, Sheriff Lott filed a Motion to Dismiss on August 14, 2017, seeking dismissal as a sanction for the Appellant's failure to comply with Judge McFaddin's discovery order. (Motion to Dismiss). That motion was heard by Circuit Court Judge Alison Renee Lee on August 30, 2017. Judge Lee denied dismissal as a sanction, but by Form Order, she did require the Appellant to "provide written answers to the Defendant's interrogatories by September 15, 2017. Plaintiff must respond to questions concerning criminal convictions and medical records in the deposition to be rescheduled." (Form Order filed August 30, 2017). The Appellant also provided signed medical authorizations at that time.

With those medical authorizations, Sheriff Lott's counsel obtained a complete copy of the medical records from Providence Orthopedic Group. Those records included the original copy of the "MRI Patient Medical History Screening Form," dated September 12, 2014. On that original form, the reason for the MRI was listed as "Back pain left shoulder. Hurt at work lifting a motor." (R. \_\_\_\_).

Earlier in discovery, the Appellant had produced a copy of that same MRI screening form except that version had been altered to omit the words “Hurt at work lifting a motor.” (R. \_\_\_\_).

As a result, on January 26, 2018, Sheriff Lott filed a Renewed Motion to Dismiss requesting that the action be dismissed with prejudice “as a sanction for the Plaintiff having engaged in fraud during the course of discovery in addition to introducing and/or stipulating to a fraudulent document during his deposition.” (Renewed Motion to Compel). A hearing was held on that motion on March 28, 2018, before Judge Lee.

Judge Lee thereafter issued an Order on May 16, 2017, dismissing the Appellant’s Complaint as a sanction for discovery abuses including the fraudulent alteration of a medical record. She ruled that “based upon the record, Plaintiff’s discernable attempts to alter his medical record clearly amounts to a discovery abuse.” (Order, p. 6). She further concluded that “Plaintiff tampering with or falsifying his medical records and then adopting the compromised version at his deposition, constitutes knowing and fraudulent conduct” and that “[t]his conduct by Plaintiff is, therefore, bad faith or gross indifference to the rights of Defendant.” (Order, p. 6). Judge Lee also recognized that “Plaintiff has engaged in a pattern of discovery abuses dating back to his unwillingness to comply with simply discovery

requirements, necessitating three motions including the instant dispositive motion before this Court.” (Order, p. 6).

The Appellant filed a Motion to Reconsider which was denied by Form Order filed March 21, 2019. This appeal followed.

## STANDARD OF REVIEW

“The imposition of sanctions is generally entrusted to the sound discretion of the Circuit Court.” *Karppi v. Greenville Terrazzo Co.*, 327 S.C. 538, 489 S.E.2d 679, 681 (Ct. App. 1997). “A 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 an abuse of discretion has occurred.” *Id.* “The burden is upon the party appealing from the order to demonstrate the trial court abused its discretion.” *Id.* “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.” *Id.*

“The selection of a sanction for discovery violation is within the trial court’s discretion.” *Griffin Grading & Clearing, Inc. v. Tire Service Equipment Manufacturing Co., Inc.*, 334 S.C. 193, 511 S.E.2d 716, 718 (Ct. App. 1999). The appellate court “will not interfere with that decision unless the trial court abused its discretion.” *Id.*

This Court has, nonetheless, recognized that “when 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*, 489 S.E.2d at 682. Therefore, “[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.* “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. The sanction should be aimed at the specific misconduct of the party sanctioned. Furthermore, whatever sanction is imposed should serve to protect the rights of discovery provided by the Rules of Civil Procedure.” *Id.* “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.” *Griffin Grading*, 511 S.E.2d at 719.

## ARGUMENTS

The Appellant challenges the trial court's dismissal of his Complaint as a sanction for perpetrating a fraud on the court by producing in discovery an altered medical record. In its Order, the trial court ruled:

[T]his court finds that Plaintiff tampering with or falsifying his medical records and then adopting the compromised version at his deposition, constitutes knowing and fraudulent conduct. This conduct by Plaintiff is, therefore, bad faith or gross indifference to the rights of Defendant. Consequently, this Court believes that the proper sanction is a dismissal of the Complaint pursuant to Rule 41(b), SCRCP.

(Order, p. 6).

In his Renewed Motion to Dismiss, Sheriff Leon Lott sought the dismissal of the Plaintiff's Complaint as a sanction for the Appellant's production of an altered medical record. On September 14, 2016, the Appellant was served with sets of interrogatories and requests for production. On November 5, 2016, the Appellant produced eight pages of records, including what appeared to be five pages of orthopedic medical records. One of those documents was a "MRI Patient Medical History Screening Form," dated September 12, 2014. On that form, the Appellant indicated to the imaging technician that the body part to be examined was "left shoulder" and gave the reason for the MRI as "Bad pain [in] left shoulder." (R. \_\_\_\_).

Sheriff Lott concluded that the medical records produced by the Appellant were not complete. A request was made for complete records by letter dated February 17, 2017 (R. \_\_\_\_), and when none were forthcoming, Sheriff Lott filed a motion to compel on March 13, 2017. (Motion to Compel). That motion was heard by Circuit Court Judge George McFaddin on June 6, 2017, and during that hearing, defense counsel requested an order requiring the Appellant to produce all medical records. Counsel offer to have the Appellant sign medical authorizations to allow him to obtain the medical records directly from the medical providers, which the Appellant opposed. (Tr. 7). The Appellant refused to sign the medical authorizations and advised the Court that he would provide the additional records. (Tr. 9-10). Judge McFaddin declined to require the Appellant to provide medical authorizations but ordered him to produce the medical records within thirty days. (Tr. 9-10; Form Order, June 7, 2017).

On June 29, 2017, the Appellant hand delivered eight pages of orthopedic medical records which were incomplete, partially illegible or cut-off, and were largely duplicative of what was produced earlier. (R. \_\_\_\_). On August 14, 2017, Sheriff Lott filed a Motion to Dismiss, with supporting memorandum, based upon the Appellant's failure to comply with Judge McFaddin's discovery order. (Motion to Dismiss). That motion was heard by Circuit Court Judge Alison Renee Lee on August 30, 2017. Judge Lee denied dismissal as a sanction, but by Form

Order, she did require the Appellant to “provide written answers to the Defendant’s interrogatories by September 15, 2017. Plaintiff must respond to questions concerning criminal convictions and medical records in the deposition to be rescheduled.” (Form Order filed August 30, 2017). The Appellant also agreed to provide medical authorizations.

With those medical authorizations, Sheriff Lott’s counsel thereafter obtained a complete copy of the medical records from Providence Orthopedic Group. Those records included the original copy of the “MRI Patient Medical History Screening Form,” dated September 12, 2014. On that original form, the reason for the MRI was listed as “Back pain left shoulder. Hurt at work lifting a motor.” (R. \_\_\_\_).

On January 26, 2018, Sheriff Lott filed a Renewed Motion to Dismiss requesting that the action be dismissed with prejudice “as a sanction for the Plaintiff having engaged in fraud during the course of discovery in addition to introducing and/or stipulating to a fraudulent document during his deposition.” (Renewed Motion to Compel). A hearing was held on that motion on March 28, 2018, before Judge Lee. During the hearing, defense counsel presented the court with two versions of the MRI screening form, which was clear and conclusive evidence that the form initially produced in discovery was altered to omit the words “Hurt at work lifting a motor.” As Judge Lee concluded in her Order, the Appellant offered no explanation at the hearing for the omitted information on the

form. Instead, he argued that defense counsel failed to discuss key testimony in his deposition, which had no relevance to the issue regarding the fraudulent MRI screening form.

Judge Lee requested a copy of the Appellant's deposition. She also reviewed the deposition of Dr. Mickey Plymale, who was the treating orthopedist. Thereafter, on May 16, 2018, Judge Lee issued a detailed order in which she discussed the Appellant's deposition testimony and its discrepancies with the medical records:

In his deposition, Plaintiff testified that through the entire course of treatment for his injury by the emergency department, his primary care physician, treating orthopedist (Mickey Plymale, M.D.), a radiologist, and MRI technicians, Plaintiff verbalized to every medical and health care personnel that the pain in left shoulder and/or upper arm area was the express result of having been tased by the police. *See* Pl.'s depo. pp. 70-71, 79-80. However, the medical records do not support Plaintiff's claims and no other medical records have been produced by Plaintiff. Medical records reveal Plaintiff was first seen by Dr. Plymale on September 5, 2014, several months after the incident with the deputies. During that visit Plaintiff complained of shoulder pain that was of slow onset, no trauma was mentioned. An MRI was ordered by Dr. Plymale and the MRI screening form has previously been discussed.

(Order, p. 3). Judge Lee also compared the Appellant's testimony to the deposition testimony of Dr. Plymale, where he explained "during an office visit on October 2,

2014, Plaintiff told him that ‘he was moving a motor at work when he suddenly felt pain.’” (Order, p. 3).

In her Order, Judge Lee explained that “the Defendant must establish bad faith, willful disobedience, or gross indifference to its rights in order to justify the severe sanction of dismissal of a Complaint.” (Order, p. 6). Judge Lee ruled that “based upon the record, Plaintiff’s discernable attempts to alter his medical record clearly amounts to a discovery abuse.” (Order, p. 6). She ultimately concluded that “Plaintiff tampering with or falsifying his medical records and then adopting the compromised version at his deposition, constitutes knowing and fraudulent conduct” and that “[t]his conduct by Plaintiff is, therefore, bad faith or gross indifference to the rights of Defendant.” (Order, p. 6). Judge Lee also recognized that “Plaintiff has engaged in a pattern of discovery abuses dating back to his unwillingness to comply with simply discovery requirements, necessitating three motions including the instant dispositive motion before this Court.” (Order, p. 6).

Judge Lees was also critical that the “Plaintiff filed his suit despite being told by his treating orthopedist six months earlier that there had been no causal connection between the tasing event with the Defendant’s deputies and his ultimate diagnosis of a SLAP and/or labrum tear. In the twenty-eight months that this lawsuit has been litigated and appeared on multiple trial rosters, Plaintiff has failed to identify any physician who would opine that his injury was proximately caused

by the tasing event. In fact, the record in this case reveals just the opposite, even when the facts are taken in a light most favorable to Plaintiff. Based on his orthopedist's opinion to a reasonable degree of medical certainty, Plaintiff's injury actually was not caused by the event with the Defendant's deputies. According to Plaintiff's orthopedist, the injury was not caused by trauma, such as a taser, but a chronic 'wear and tear,' which clearly is associated with work-related injuries, such as lifting engines or motors." (Order, p. 6).

Although the Appellant provided no explanation for the omitted information on the MRI screening form during the hearing, he did file a Rule 59(e) motion wherein he denied altering the medical record and claimed that he "could not have altered his medical records when they were not in his possession." (Rule 59(e) Motion, p. 2). Judge Lee rejected those arguments and denied the Rule 59(e) motion by Form Order filed March 21, 2019.

On appeal, the Appellant makes the same argument. He contends that "it was impossible for the appellant to alter his medical records because his medical records were never in the appellant's possession." *See*, Appellant's Brief, p. 2. The Appellant's conclusory and self-serving explanation is defied by the record. The Appellant seems to suggest that he provided medical authorizations and that is how defense counsel received the MRI screening form. However, the medical authorizations were not provided until the August 30, 2017 motion hearing. The

fraudulent and altered MRI screening form was produced in the initial discovery production on November 5, 2016, by the Appellant himself. Thereafter, that MRI screening form was made an exhibit at the Appellant's deposition held on June 2, 2017. The Appellant had, in fact, opposed providing medical authorizations for the records previously at the initial hearing before Judge McFaddin on the Sheriff's motion to compel, which was held several days later on June 6, 2017. The medical authorizations, once provided at the August 30, 2017 hearing, are actually what allowed defense counsel to obtain the original and non-altered MRI screening form which included the critical language "Hurt at work lifting a motor." In short, the Appellant's explanation that the MRI screening form was never in his possession before it was produced in discovery is simply false and unsupported in the record. That false explanation offered to this Court is a further basis for affirming the dismissal as a sanction. There is no question that the altered MRI screening form was in the Appellant's possession and was actually produced by him.

The dismissal of the Appellant's Complaint as a sanction for discovery abuses including the fraudulent alteration of a medical record is fully supported by the case law. In *QZO, Inc. v. Moyer*, 358 S.C. 246, 594 S.E.2d 541 (Ct. App. 2004), this Court found that the circuit court did not abuse its discretion by striking the defendant's answer in response to the appellant's intentional defiance of the court's temporary restraining order and willful destruction of evidence. Evidence

demonstrated that the appellant had reformatted a hard drive the day before it was produced in discovery thereby destroying or altering critical evidence.

Similarly, in *Griffin Grading & Clearing, Inc. v. Tire Service Equipment Manufacturing Co., Inc.*, 334 S.C. 193, 511 S.E.2d 716 (Ct. App. 1999), this Court held that the circuit court did not abuse its discretion in striking the appellant's answer where the appellant had failed to comply with four discovery orders. *See also, Halverson v. Yaun*, 328 S.C. 618, 493 S.E.2d 883 (Ct. App. 1997) (affirming circuit court's order striking appellant's complaint because plaintiff failed to comply with court's order to comply with discovery and presented no evidence to show that there was compliance).

The most instructive case appears to be *Brandt v. Gooding*, 368 S.C. 618, 630 S.E.2d 259 (2006), in which the Supreme Court sanctioned the appellant for perpetrating a fraud on the court by producing during discovery a fraudulent letter that had been fabricated. The Supreme Court explained that "[d]ismissal of the complaint is a proper sanction against a complainant who submits fraudulent documents to the court." 630 S.E.2d at 264. The Supreme Court concluded that the trial court did not abuse its discretion in dismissing the complaint as a sanction for perpetrating a fraud upon the court.

This case is no different from *Brandt*. As discussed above, the applicable standard of review is abuse of discretion. To overturn the Circuit Court's dismissal

of his Complaint as a discovery sanction, the Appellant must show that the Circuit Court's decision was "without reasonable factual support and resulted in prejudice to the rights of appellant." Here, there was ample evidence in the record, as discussed in detail above, to support Judge Lee's ruling. In addition, there was ample evidence to support her finding that the Appellant's alteration of the MRI screening form constitutes bad faith and gross indifference to the rights of Sheriff Lott. Judge Lee also noted that Appellant's pattern of discovery abuses and unwillingness, despite being given several opportunities, to comply with "simple discovery requirements." (Order, p. 6). Judge Lee did not abuse her discretion as evident from her well-reasoned and thorough Order which further reflects that the court considered all of the factors required in determining the appropriateness of the sanction. That Order should be affirmed on appeal.

## CONCLUSION

Based on the foregoing discussion and analysis, the Respondents Richland County Sheriff Department and Richland County Sheriff Leon Lott respectfully request that this Court affirm the orders issued by Circuit Court Judge Alison Renee Lee and uphold the dismissal of this action as a sanction for discovery abuses including the fraudulent alternation of a medical record.

Respectfully submitted,

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January 17, 2020

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Alison Renee Lee, Circuit Court Judge

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Appellate Case No. 2019-000566  
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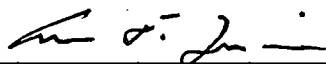
**CERTIFICATE OF SERVICE**

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The undersigned employee of Lindemann, Davis & Hughes, P.A., counsel for the Respondents, does hereby certify that service of **Initial Brief of Respondents** and **Respondents' Designation of Matter to be Included in the Record on Appeal** was made upon the *pro se* Appellant and all other counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 17th day of January 2020:

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January 17, 2020

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
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RE: Sammie L. Goodwin v. Richland County Sheriff Department, Richland County Sheriff  
Leon Lott in his official capacity  
Appellate Case Number: 2019-000566  
Civil Action Number: 2016-CP-40-0387  
Claim Number: Risk Management  
Our File Number: 314.20152

Dear Ms. Kitchings:

Please find enclosed for filing the originals and one copy each of the **Initial Brief of Respondents** and **Respondents' Designation of Matter to be Included in the Record on Appeal** in the above referenced matter. Please find the originals and returned a clocked-in copy of each document to me in the enclosed envelope.

By copy of this letter, I am serving copies on the *pro se* Appellant and all other counsel of record. If you have any questions, please advise.

Sincerely,

LINDEMANN, DAVIS & HUGHES, P.A.

Andrew F. Lindemann

AFL/jmb  
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JAN 22 2020

SC Court of Appeals

The Honorable Jenny Abbott Kitchings  
November 6, 2019  
Page Two

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