

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

R. E. Hood, Circuit Court Judge

Appellate Case No. 2019-001782

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SC Court of Appeals

Brenda White and Kimberly Gail White. *Appellants,*

v.

Jamie Melton..... *Respondent.*

INITIAL BRIEF OF APPELLANTS BRENDA WHITE AND KIMBERLY GAIL WHITE

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STATEMENT OF ISSUE ON APPEAL

I. WHETHER THE CIRCUIT COURT ERRED IN STRIKING THE ANSWERS OF APPELLANTS BRENDA WHITE AND KIMBERLY GAIL WHITE.

STATEMENT OF THE CASE

This matter arises out of a motor vehicle accident that occurred on January 31, 2018, in Richland County, South Carolina. Respondent Jamie Melton (“Respondent”) submitted her Summons and Complaint on July 18, 2018. Appellants Brenda White and Kimberly Gail White (“Appellants”) submitted their Answer on October 22, 2018. Respondent served Interrogatories, Requests to Admit, and Requests for Production on Appellants on October 24, 2018. Appellants responded to Respondent’s Requests to Admit on November 19, 2018, and Interrogatories and Requests for Production on December 7, 2018. Appellants amended their responses to Respondent’s Requests to Admit on November 28, 2018.

Respondent served Supplemental Requests to Admit on January 12, 2019, and Appellants responded on January 17, 2019. Respondent submitted her Motion to Strike Defendants’ Answer or Determine the Sufficiency of Defendant Brenda White’s Answers to Plaintiff’s Requests for Admission on June 7, 2019. Appellants submitted their Defendants’ Notice of Motion and Motion to Amend Answer to Complaint to admit simple liability on behalf of Defendant driver Kimberly Gail White on July 26, 2019. The Court held a hearing on Respondent’s Motion to Strike Defendants’ Answer on July 30, 2019. The Court entered an Order striking Defendants’ Answer on September 4, 2019, and Appellants submitted a Motion to Reconsider on September 27, 2019. The Court entered an Order denying the Motion to Reconsider on September 27, 2019. Appellants submitted the Notice of Appeal on October 22, 2019.

STATEMENT OF THE FACTS

This case arises out of a motor vehicle accident that occurred on January 31, 2018. According to the Complaint, Respondent was stopped in traffic on Harden Street in Richland County, South Carolina. Respondent alleges that Appellant Kimberly Gail White impacted her

vehicle from the rear, and then left the scene. Respondent brought a negligence action against Appellant Kimberly Gail White, and a negligent entrustment action against Appellant Brenda White. Respondent alleged actual damages, special damages, consequential damages and punitive damages.

STANDARD OF REVIEW

A motion to strike a pleading is addressed to the sound discretion of the Circuit Court and will not be disturbed in the absence of a clear showing of prejudicial error. S.C. Dep't of Health & Envtl. Control v. Fed-Serv Indus., Inc., 294 S.C. 33, 39, 362 S.E.2d 311, 314-15 (Ct. App. 1987). The imposition of sanctions is generally entrusted to the sound discretion of the Circuit Court. Karppi v. Greenville Terrazzo Co., 327 S.C. 538, 542, 489 S.E.2d 679, 681 (Ct. App. 1997) (quoting Downey v. Dixon, 294 S.C. 42, 45, 362 S.E.2d 317, 318 (Ct. App. 1987)). A Circuit 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 Circuit Court abused its discretion. Id. An abuse of discretion may be found when the appellant shows that the conclusion reached by the Circuit Court was without reasonable factual support and resulted in prejudice to the rights of appellant, thereby amounting to an error of law. 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. McNair v. Fairfield County., 379 S.C. 462, 467, 665 S.E.2d 830, 832-33 (Ct. App. 2008) (quoting Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co., 334 S.C. 193, 199, 511 S.E.2d 716, 719 (Ct. App. 1999)). Therefore, the sanction should be aimed at the specific conduct of the party sanctioned and not go beyond the necessities of the situation to foreclose a

decision on the merits of a case. Griffin Grading & Clearing, Inc., 334 S.C. at 198, 511 S.E.2d at 719. When the 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. Id. at 198-99, 511 S.E.2d at 719.

ARGUMENT

I. THE TRIAL COURT ERRED IN STRIKING THE ANSWERS OF APPELLANTS IN THIS ADMITTED LIABILITY ACTION.

A. RESPONDENT FAILED TO SHOW BAD FAITH, WILLFUL DISOBEDIENCE, OR GROSS INDIFFERENCE TO ITS RIGHTS TO JUSTIFY SUCH ACTION.

Appellants have failed to cooperate with their automobile liability insurance company Allstate Property and Casualty Insurance Company (“Allstate”) in this matter. However, pursuant to S.C. Code Ann. §38-77-142, Allstate is required to provide liability insurance to a non-cooperative insured up to the minimum limits of \$25,000 per individual and \$50,000 per occurrence, which situation arises frequently to many automobile insurance carriers throughout the state of South Carolina. Allstate, through Appellants’ counsel, complied with its statutory obligations and vigorously defended their insureds throughout this litigation. On December 7, 2018, Appellants’ counsel produced Answers to Interrogatories where they raised this statute as a response to Interrogatories Nos. 6, 7, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19, which provides clear notice to the Respondent of the nature of situation. See Defendants’ Answers to Interrogatories. Appellants’ counsel fully answered all Interrogatories and Requests for Admission served by Respondent and produced all discovery materials in its possession in response to Requests for Production.

Further, Appellants submitted a Motion to Amend Answer to Complaint to admit simple liability on behalf of the driver Appellant Kimberly Gail White, effectively reducing the remaining

issues in the case to proximate cause, damages, and potential punitive damages. In short, Appellants' counsel answered all written discovery of Plaintiff and admitted the simple negligence in the matter on behalf of the driver Kimberly Gail White, eliminating the legal requirement of Plaintiff to prove a breach of a legal duty. Importantly, Appellants did not violate any Court orders in this matter.

As the McNair Court holds, the Circuit Court should consider the precise nature of the discovery and the discovery posture of the case, willfulness, and the degree of prejudice when determining the appropriateness of a sanction. The Griffin Grading Court holds, when the sanction is essentially a judgment by default, the moving party must show bad faith, willful disobedience, or gross indifference to its right to justify the sanction. In our case, Appellants' counsel has fully participated in the written discovery, Appellants have not violated any Orders from the Court, and Appellants would endure extreme prejudice. With their Answers stricken, Appellants are placed in a situation as if they have not properly submitted Answers to the Summons and Complaint, which they did timely submit. The Court will hold a damages hearing where Appellants cannot present any evidence or call any damages witnesses at the hearing. Given the large gaps in medical treatment and alleged reasonably and necessary injections to Plaintiff's back that arose months after the motor vehicle accident, Appellants are prejudiced in their ability to properly engage in written discovery, issue subpoenas to medical providers, take depositions of the Plaintiff and potentially any medical providers, and otherwise engage in the discovery process. See Plaintiff's Answers to Interrogatories and Requests for Production.

A review of South Carolina cases where the Circuit Court struck a party's pleadings generally finds willful disobedience with a Court Order to justify the extreme sanction. In Barnette v. Adams Bros. Logging, 355 S.C. 588, 586 S.E.2d 572 (2003), the Court dismissed one of

Plaintiff's actions due to Plaintiff's persistent refusal to comply with the trial court's orders. In McNair, 379 S.C. 462, 665 S.E.2d 830, the Court struck a defendant's Answer because the defendant failed to 1) produce documents requested during discovery, 2) coherently organize the documents it did produce, and 3) provide complete responses to Interrogatories, and importantly the Court told this Defendant to correct the discovery issues several times and in fact warned the Defendant "it was inclined to strike the Defendant's Answer." In OZO, Inc. v. Moyer, 358 S.C. 246, 594 S.E.2d 541 (Ct. App. 2004) the Court struck an Answer because the defendant intentionally defied a Court's temporary restraining order and willfully destroyed evidence. The Griffin Grading Court struck a Defendant's Answer when the Defendant "admitted at oral argument that the failure to comply with certain discovery in the case was 'indefensible' and had failed to comply with four prior orders from the court." Finally, in Halverson v. Yawn, 328 S.C. 618, 493 S.E.2d 883 (Ct. App. 1997) the Court struck a Complaint because the Plaintiff failed to comply with the Court's order to comply with the discovery and presented no evidence showing she complied with the Order.

Conversely, in Skywaves I Corp. v. Branch Banking & Trust Co., 423 S.C. 432, 814 S.E.2d 643 (2018), the Court did not strike a pleading as the Defendants in that case never violated a court order.

Although the imposition of sanctions is generally entrusted to the sound discretion of the Circuit Court, the extremely punitive nature of striking Appellants' Answers is without reasonable factual support and results in significant prejudice to the rights of the Appellants, as explained above. Further the record is devoid of any bad faith, willful disobedience, or gross indifference to Respondent's rights to justify the sanction against Appellants.

B. RULE 37(b)(2) OF THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE ALLOWS FOR SANCTIONS WHEN A PARTY FAILS TO

COMPLY WITH AN ORDER. THE CIRCUIT COURT DID NOT ISSUE ANY ORDERS IN THIS CASE, SO THE COURT ERRED IN STRIKING THE ANSWERS OF THE DEFENDANTS AS THE DEFENDANTS DID NOT VIOLATE ANY COURT ORDERS.

Rule 37(b) of the South Carolina Rules of Civil Procedure is entitled “**Failure to Comply with Order.**” Rule 37(b)(2) holds, in relevant part, “If a party **fails to obey an order** to provide or permit discovery...or if a party **fails to obey an order** entered into under Rule 26(f), the court...may make such orders in regard to the failure as are just, and among others the following.” The clear prerequisite for sanctions is when a party fails to obey an order.

The Order striking Defendants’ Answers references Rule 37(b)(2)(C) SCRCPP, which holds “An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.”

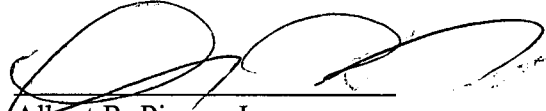
This Rule does not apply to this case as the Circuit Court did not issue any orders. Therefore, Appellants did not, and could not, violate any orders. The context of the sanctions allowed under this Rule is that sanctions may be applied when a party fails to comply with a Court order, which did not occur in this case. Therefore, the Court’s striking of Defendants’ Answers pursuant to Rule 37(b) SCRCPP was improper and constitutes an abuse of discretion.

CONCLUSION

For the reasons discussed above, as well as for any other ground appearing on the record, Appellants respectfully requests this Court reverse the Circuit Court’s striking of their Answers.

SIGNATURE PAGE TO FOLLOW

Respectfully submitted,



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February 18, 2020

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Robert E. Hood, Circuit Court Judge

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Brenda White and Kimberly Gail WhiteAppellants,


v.

Jamie MeltonRespondent.

PROOF OF SERVICE

The undersigned hereby certifies that on this 18th day of February, 2020, he served all counsel of record with the foregoing, **Initial Brief of Appellants Brenda White and Kimberly Gail White and Appellants Brenda White's and Kimberly Gail White's Designation of Matter to be Included in the Record on Appeal** by having a copy of it deposited in the United States Mail, postage prepaid, addressed to the following:

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February 18, 2020

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
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1220 Senate Street
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RE: Jamie Melton v. Brenda White and Kimberly Gail White
Appellate Case No.: 2019-001782
Our Matter No.: 267-366

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Dear Ms. Kitchings:

Enclosed for filing, please find the following documents in the above-referenced matter:

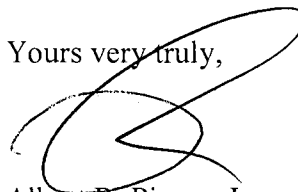
1. An original and three (3) copies of the *Initial Brief of Appellants Brenda White and Kimberly Gail White* and its *Proof of Service*; and
2. An original and three (3) copies of *Appellants Brenda White's and Kimberly Gail White's Designation of Matter to be Included in the Record on Appeal* and its *Proof of Service*.

Please return a clocked copy of each of these documents to me via our courier. By copy of this letter I am serving all counsel of record with a copy of these filings.

If you have any questions concerning this matter, please do not hesitate to contact me.

With kind regards, I am

Yours very truly,



Albert R. Pierce, Jr.

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Enclosures

cc: J. Eric Cavanaugh, Esquire
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