THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Bentley Price, Circuit Court Judge

Appellate Case No. 2020-000534
Civil Action No. 2017-CP-10-5824

John Mayers,……………………………………………………………………………… Appellant,

v.

Konan Henthorn,……………………………………………………………………….Respondent,

FINAL REPLY BRIEF OF APPELLANT

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ARGUMENT IN REPLY

Respondent's argument regarding the admission and exclusion of specific evidence, and the Motions for JNOV and New Trial do not raise any specific argument that requires reply argument. However, Appellant would urge the Court to read Respondent's one-word quotations and paraphrase with skepticism, and to review these exchanges in full and in context as transcribed.

Appellant replies to Respondent's remaining argument as follows:

I. Respondent's argument that it should be permitted to cherry-pick which phrases of which Rules apply, at which time, in order to reach an arbitrary result where it is not bound by the authority of Rule 36 of the South Carolina Rules of Civil Procedure fails because the argument neglects to account for a full reading of Rules 4, 5, and 36, which taken together reach the opposite conclusion.

As an initial matter, all of Respondent's arguments regarding how he plead his Answer are irrelevant and without merit concerning the Requests for Admission, as it is axiomatic that failure to respond to requests for admission deems matters contained therein admitted for trial, irrespective of whether the admission concerns a matter responded to in a party's pleadings. See e.g. *Scott v. Greenville Housing Authority*, 353 S.C. 646, 579 S.E.2d at 154-55 (Ct.App. 2003). [Respondent's Initial Brief, Argument A., pp. 5-8].

That argument being without merit, Respondent weaves in a similarly futile argument asserting that prior to serving the Summons and Complaint on him, Appellant should have complied with Rule 5 with respect to service of the initial pleading documents. That argument also fails, once unwoven, because Respondent neglects to acknowledge that his Answer, filed by his attorney, specifically raised inadequacy of service and demanded that he be personally served by Appellant, demanding dismissal of the Complaint if Appellant did not do so. [R. p. 24; Answer

¶ 33].[1] As a result, Appellant spent more than three months and considerable funds hiring multiple process servers to eventually track Appellant down in a trailer park in Moscow, Idaho, where Appellant was served with all initiating documents including the Summons and Complaint, Plaintiff's First Set of Requests for Admission, Plaintiff's Standard and Supplemental Interrogatories, and Plaintiff's First Requests for Production. [R. p. 27; Affidavit of Due Diligence, Affidavit of Service].

Notably, Rule 5 deals specifically with "pleadings subsequent to the original summons and complaint," and does not govern service of the summons and complaint itself, which is governed by Rule 4. Accordingly, the summons and complaint must first be served in accordance with Rule 4 before any subsequent pleadings may be served under the procedures established in Rule 5. Likewise, the Rules do not require that Plaintiff perfect service of the summons and complaint prior to serving requests to admit. Instead, Rule 36 expressly provides that requests to admit may be served "with" service of the summons and complaint.

Here, Respondent expressly took the position that the summons and complaint had not been served, and requested that Appellant do so, in strict compliance with Rule 4. Appellant complied, having the Respondent personally served with the summons and complaint as required by Rule 4 and, together therewith, attaching requests to admit as permitted by Rule 36.

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[1] Appellant's counsel notes for the Court that it is standard practice for Progressive (Respondent's insurance carrier) to not permit their attorneys to accept service for their insureds as the adjuster on this case admitted to the undersigned counsel, and as undersigned counsel has personally observed. This is despite Progressive having knowledge of the cases in suit, and as in this case even retaining counsel and filing an Answer, which only increases the cost, burden, and time for Plaintiffs unnecessarily in run of the mill auto wreck cases.

Rather than working amicably to arrange for or accept service, Respondent drew a line in the sand, demanding strict compliance with Rule 4. Respondent cannot now cry foul that Appellant did as instructed and complied with the rule. Nor can Respondent rightly seek to be relieved of the consequences of his violating the very rules he sought to enforce upon Appellant.

Respondent does not argue, because he cannot, that he ever moved for leave of the Court to extend the time to respond to the Requests for Admission, or to set aside the deemed admissions. As a result, the Requests for Admission that had been served on Respondent some 700+ days prior, established liability and proximate cause and the case should have been submitted to the jury on damages only.

CONCLUSION

Based on the foregoing legal arguments, and those contained in Appellant's Initial Brief, the Appellant respectfully prays that this Honorable Court **REVERSE** the trial court's February 21, 2020 Order/Verdict Form and the Court's March 4, 2020 Order and **REMAND** this matter back to the trial court for further proceedings consistent herewith.

Respectfully submitted,

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