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Oct 13 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA  
COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS  
CIVIL ACTION NO.: 2020-CP-36-00382

Jefferson Davis, Jr.,

Plaintiff,

v.

Chad Connelly, Dave Wilson, Stephen Kirkland,  
Tom Persons, Neil Mellen, E3 Software, LLC,  
Endurance International Group Holdings, Inc.,  
John Doe #1, John Doe #2, & John Does 3-40,

Defendants.

**ORDER DEEMING ADMITTED  
DEFENDANTS STEPHEN KIRKLAND,  
CHAD CONNELLY, DAVE WILSON,  
TOM PERSONS, AND NEIL MELLEN'S  
REQUESTS FOR ADMISSION TO  
PLAINTIFF AND DENYING  
PLAINTIFF'S REQUEST FOR  
ENLARGEMENT OF TIME TO  
RESPOND OR TO WITHDRAW OR  
AMEND THE ADMISSIONS**

This matter came before the Court for hearing on October 7, 2021, upon Defendant Stephen Kirkland's Motion to Compel filed on July 20, 2021, and the Motion to Compel on Behalf of Defendants Chad Connelly, Dave Wilson, Tom Persons, and Neil Mellen filed on September 27, 2021 ("Motions to Compel"). The Court previously filed an Order Compelling Discovery on October 15, 2021, in which the Court expressly reserved consideration of Defendants Stephen Kirkland, Chad Connelly, Dave Wilson, Tom Persons, and Neil Mellen's ("Defendants") motions for an Order deeming admitted each of Defendants' requests for admission after Plaintiff failed to respond to the requests for admission in accordance with Rule 36, SCRCP, and Plaintiff's request at the hearing for an enlargement of time to provide responses to the requests or otherwise withdraw or amend the admissions. After careful review and consideration of the parties' original submissions and arguments, Plaintiff's supplemental memorandum in support of the request for an enlargement of time to respond or otherwise withdraw or amend the admissions, and Defendants' supplemental responses to that memorandum, this Court grants the Motions to Compel and hereby orders each matter of which an admission was requested of Plaintiff admitted and conclusively established for trial. This Court also

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denies Plaintiff's request for an enlargement of time to submit responses to the requests for admission or otherwise withdraw or amend the admissions.

### FINDINGS

Plaintiff, who, though an attorney licensed to practice law in the State of Georgia, prosecutes this action as a *pro se* litigant, filed the Summons and Complaint in this matter on September 10, 2020. Plaintiff shortly thereafter commenced the action against Defendants Stephen Kirkland, Chad Connelly, Dave Wilson, Tom Persons, and Neil Mellen ("Defendants") by serving the Summons and Complaint upon them individually between September 15, 2020, and September 18, 2020. In commencing this action, Plaintiff assumed full responsibility for complying with the substantive and procedural requirements of the South Carolina Rules of Civil Procedure. State v. Burton, 356 S.C. 259, 265 n.5, 589 S.E.2d 6, 9 n.5 (2003).

On May 12, 2021, Defendant Stephen Kirkland ("Defendant Kirkland") properly served Plaintiff with Defendant Stephen Kirkland's First Set of Interrogatories to Plaintiff, Defendant Stephen Kirkland's First Set of Requests for Production to Plaintiff, and Defendant Stephen Kirkland's First Set of Requests for Admission to Plaintiff. Although Plaintiff admits proper service and timely receipt of these written discovery requests and the requests state on their respective front pages that they were being served in accordance with Rules 33, 34, and 36, SCRCP, respectively, Plaintiff failed to provide any response to any of the written discovery requests within the time periods expressly prescribed in the clear and unambiguous language of Rules 33, 34, and 36, SCRCP. Plaintiff also failed to make any effort to obtain an enlargement of time to respond to the written discovery requests, including either by requesting an extension from Defendant Kirkland or by petitioning the Court for an enlargement of time to respond.

On July 7, 2021, Defendant Kirkland notified Plaintiff by U.S. Mail and electronic mail that the deadline to respond to the written discovery requests had passed and that "Pursuant to Rule 36 of

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the South Carolina Rules of Civil Procedure, failure to respond to the Requests for Admission results in the matters requested being deemed admitted.” In the correspondence, Defendant Kirkland also sought to elicit voluntary responses to the interrogatories and requests for production and avoid judicial intervention to compel responses pursuant to Rule 37, SCRPC. Again, Plaintiff failed to provide any response to Defendant Kirkland. As a result, Defendant Kirkland filed a Motion to Compel responses from Plaintiff on July 20, 2021, which included a request for an Order deeming each of the requests for admission admitted in accordance with Rule 36, SCRPC. Again, Plaintiff failed to provide any response to Defendant Kirkland or petition the Court for relief.

On July 27, 2021, Defendants Chad Connelly, Dave Wilson, Tom Persons, and Neil Mellen also properly served Plaintiff with their respective interrogatories, requests for production, and requests for admission.<sup>1</sup> Although Plaintiff also admits proper service and timely receipt of these written discovery requests and the requests state on their respective front pages that they were being served in accordance with Rules 33, 34, and 36, SCRPC, respectively, Plaintiff again failed to provide any response to any of the written discovery requests within the time periods expressly prescribed in the clear and unambiguous language of Rules 33, 34, and 36, SCRPC. Plaintiff also failed to make any effort to obtain an enlargement of time to respond to the written discovery requests, including either by requesting an extension from the defendants who served the requests or by petitioning the Court for an enlargement of time to respond.

On September 8, 2021, Defendants Chad Connelly, Dave Wilson, Tom Persons, and Neil Mellen notified Plaintiff by U.S. Mail and electronic mail that the deadline to respond to their written

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<sup>1</sup> These written discovery requests included Defendant Chad Connelly’s First Set of Interrogatories to Plaintiff, Defendant Chad Connelly’s First Set of Requests for Production to Plaintiff, Defendant Chad Connelly’s First Set of Requests for Admission to Plaintiff, Defendant Dave Wilson’s First Set of Interrogatories to Plaintiff, Defendant Dave Wilson’s First Set of Requests for Production to Plaintiff, Defendant Dave Wilson’s First Set of Requests for Admission to Plaintiff, Defendant Tom Persons’ First Set of Interrogatories to Plaintiff, Defendant Tom Persons’ First Set of Requests for Production to Plaintiff, Defendant Tom Persons’ First Set of Requests for Admission to Plaintiff, Defendant Neil Mellen’s First Set of Interrogatories to Plaintiff, Defendant Neil Mellen’s First Set of Requests for Production to Plaintiff, and Defendant Neil Mellen’s First Set of Requests for Admission to Plaintiff.

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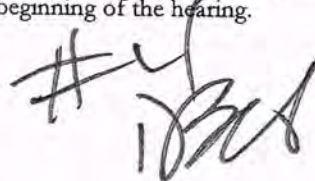
discovery requests had passed. In the correspondence, these defendants also sought to elicit voluntary responses to the interrogatories and requests for production and avoid judicial intervention to compel responses to those requests. After Plaintiff again failed to provide any response, Defendants Chad Connelly, Dave Wilson, Tom Persons, and Neil Mellen filed a motion to compel responses from Plaintiff on September 27, 2021, that similarly included a request for an Order deeming each of the requests for admission admitted in accordance with Rule 36, SCRCP. Again, Plaintiff failed to provide any response or petition the Court for relief.

Only at the properly noticed hearing of the Motions to Compel on October 7, 2021,<sup>2</sup> did Plaintiff make any effort to obtain an enlargement of time to provide responses to the Defendants' requests for admission or otherwise withdraw or amend any admissions resulting from his failure to respond. As a result of Plaintiff's request at the hearing, the Court provided all parties with the opportunity to supplement their submissions and arguments to address Plaintiff's request.

On October 13, 2021, Plaintiff filed a memorandum in support of his request for an enlargement of time to provide responses to the Defendants' requests for admission or otherwise withdraw or amend any admissions resulting from his failure to respond. On October 20, 2021, Defendants Chad Connelly, Dave Wilson, Tom Persons, and Neil Mellen filed a reply to Plaintiff's memorandum. Defendant Kirkland also provided a response to Plaintiff's memorandum in the form of correspondence to the Court dated October 20, 2021, upon which Plaintiff and all counsel were copied.

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<sup>2</sup> Defendants Chad Connelly, Dave Wilson, Tom Persons, and Neil Mellen served their motion to compel on Plaintiff on September 28, 2021, which was nine days prior to the date of the hearing; however, Plaintiff consented to consideration of the motion at the hearing on October 7, 2021, after counsel for Defendants Chad Connelly, Dave Wilson, Tom Persons, and Neil Mellen raised the issue and sought Plaintiff's consent at the beginning of the hearing.

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## ORDER

“A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request.” Rule 36(a), SCRCPP. “The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow or as stipulated in writing by the parties pursuant to Rules 29 and 6(b), the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney[.]” Id. “Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission.” Rule 36(b), SCRCPP.

“South Carolina has long had the discovery rule that failure to respond to requests for admissions renders any matter listed in the request conclusively admitted for trial.” Scott v. Greenville Housing Authority, 353 S.C. 639, 645, 579 S.E.2d 151, 154 (Ct. App. 2003). “The purpose of Rule 36 is to allow parties to narrow the issues and determine which facts do not need to be proven because they are admitted.” Id. at 650, 579 S.E.2d at 157. “[The South Carolina Court of Appeals] has affirmed the seriousness of the ramifications for a failure to respond to requests in a timely manner.” Nexstar Media Group, Inc. v. Davis Roofing Group, LLC, 431 S.C. 593, 602, 848 S.E.2d 597, 602 (Ct. App. 2020). “[O]ur courts have repeatedly found that failure to respond to requests for admissions deems matters contained therein admitted for trial, regardless of whether the admission concerns a matter responded to in a party’s pleadings.” Id. at 603, 848 S.E.2d at 602 (quoting Scott, 353 S.C. at 646, 579 S.E.2d at 154-55). “Discovery is the quintessence of preparation for trial and, when discovery rights are trampled, prejudice must be presumed.” Scott, 353 S.C. at 652, 579 S.E.2d at 158.

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In commencing this action, Plaintiff assumed full responsibility for complying with the substantive and procedural requirements of the South Carolina Rules of Civil Procedure. Burton, 356 S.C. at 265 n.5, 589 S.E.2d at 9 n.5. Plaintiff admits to proper service and timely receipt of each of the requests for admission and to his failure to respond to them either by admission, denial, or objection within the time allotted by Rule 36, SCRPC. Plaintiff, however, seeks relief from these substantive and procedural requirements based upon the demands of various work and personal commitments outside the scope of this litigation, including those required by his concurrent prosecution of six other civil actions as a *pro se* litigant.

While the Court understands that parties have commitments outside of their involvement with litigation and is very sorry for some of the personal matters encountered by Plaintiff, the fact remains that Plaintiff made no effort to obtain an extension of time to respond to the requests from opposing counsel or by petitioning the Court for an enlargement of time to respond prior to the hearing on October 7, 2021—almost five months after the service of Defendant Kirkland’s requests for admission and almost two and a half months after service of Defendants Chad Connelly, Dave Wilson, Tom Persons, and Neil Mellen’s requests for admission. In fact, Plaintiff failed to communicate in any manner with the Defendants regarding the requests for admission despite opposing counsel’s subsequent correspondence, filing and service of the Motions to Compel, and receipt of notice of the hearing on the Motions to Compel.

Plaintiff’s assertion that any request for an extension of time to respond to the requests for admission from opposing counsel would have been fruitless and, therefore, constitutes grounds for relief from the clear and unambiguous language of Rule 36, SCRPC, is unpersuasive. As indicted in Rule 36(a), SCRPC, Plaintiff could have petitioned the Court for an enlargement of time to respond “for cause shown” prior to the expiration of the period prescribed in Rule 36, SCRPC, pursuant to

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Rule 6(b), SCRPC. After the expiration of the specified period, the petitioning party must demonstrate “good cause shown”. Rule 6(b), SCRPC.

Plaintiff has failed to demonstrate the good cause now necessary to excuse his failure to respond in any manner to Defendants’ requests for admissions for several months. Again, Plaintiff has elected to prosecute this action as a *pro se* litigant and, therefore, has assumed full responsibility for complying with the substantive and procedural requirements of the South Carolina Rules of Civil Procedure. This holds true for each of the seven currently pending civil actions that Plaintiff has elected to prosecute as a *pro se* litigant. The mere fact that Plaintiff has had various work and personal commitments outside the scope of this litigation is not grounds to relieve him of his obligation to comply with the South Carolina Rules of Civil Procedure or seek timely relief pursuant to Rule 6(b), SCRPC.

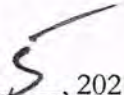
Furthermore, Defendants have been prejudiced by Plaintiff’s failure to respond to the requests for admission. The purpose of written requests for admission is to allow the parties to narrow the issues and determine which facts do not need to be proven. Plaintiff’s failure to respond to the requests for admission, to seek timely relief, and to otherwise engage in written discovery has frustrated the discovery process during the five months since initial service of written discovery upon him. Plaintiff’s contention that there will be no delay in the case by granting him a belated reprieve to respond to the requests for admission is insufficient to demonstrate lack of prejudice to Defendants because it ignores Defendants’ rights to engage in the discovery process outlined in the South Carolina Rules of Civil Procedure.

**THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Defendant Stephen Kirkland’s Motion to Compel filed on July 20, 2021, and the Motion to Compel on Behalf of Defendants Chad Connelly, Dave Wilson, Tom Persons, and Neil Mellen filed on September 27, 2021, are hereby **GRANTED** in accordance with the above order and each matter of

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which an admission was requested of Plaintiff in Defendant Stephen Kirkland's First Set of Requests for Admission to Plaintiff served on May 12, 2021, and Defendant Chad Connelly's First Set of Requests for Admission to Plaintiff, Defendant Dave Wilson's First Set of Requests for Admission to Plaintiff, Defendant Tom Persons' First Set of Requests for Admission to Plaintiff, and Defendant Neil Mellen's First Set of Requests for Admission to Plaintiff served on July 27, 2021, are hereby deemed admitted and the matters conclusively established for trial. Plaintiff's request for an enlargement of time to submit responses to these requests for admission or otherwise withdraw or amend the admissions is hereby **DENIED**.

**AND IT IS SO ORDERED.**

November , 2021

  
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~~The Honorable~~ Donald B. Hocker

