RECEIVED
Apr 15 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM YORK COUNTY

Circuit Court of Common Pleas

Daniel B. Hall, Circuit Court Judge

Case No. 2024-CP-46-00110
Appellate Case No.: 2024-001466

In re: Estate of John Dale Williamson

Doug Williamson, Respondent

v.

Errick L. Williamson, individually and as personal representative of the Estate of John Dale Williamson; Derrick Williamson; and Robin Beckler, Respondents below,
of whom Errick L. Williamson, individually, and Errick L. Williamson, as personal representative of the Estate of John Dale Williamson is the Appellant.

FINAL REPLY BRIEF OF APPELLANT

Edward B. Davis, S.C. Bar No. 16713
Bell, Davis & Pitt, P.A.
227 West Trade Street, Suite 1800
Charlotte, NC 28202
(704) 227-0400
ward.davis@belldavispitt.com
Counsel for Appellant

INDEX

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

ARGUMENTS

I. *Baughman* provides the applicable framework for how the Probate Court and Circuit Court should have applied Rule 36(b).

Baughman provides the framework for how the two-part test in Rule 36(b), *South Carolina Rules of Civil Procedure*, should be interpreted, and Doug Williamson ("Doug") misapplied this rule. *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991). In *Baughman*, South Carolina's Supreme Court evaluated the trial court's application of Rule 36(b) and held that the trial court made two independent—yet equally sufficient—errors of law, each justifying reversal. *Id*. at 109-10, 410 S.E.2d at 542. First, timely seeking a protective order meant the requests for admissions should not have been deemed admitted. *Id*.

Separately from seeking a protective order, and more importantly to this case, the plaintiffs' "late response" to the requests for admission "should have been" accepted, and any deemed admission should have been withdrawn because both elements of Rule 36(b) were met. *Id*. at 109-10, 410 S.E.2d at 542. It was clear error for the trial court not to apply the Rule 36(b) test. *Id*. In practice, this means that, when the two-prong test is satisfied and the litigant provides answers to Requests for Admission before they are "ordered admitted," then the responses should be allowed to be withdrawn or amended. *See id*.; *see also Bennett v. Carter*, No. 2015-UP-491, 2015 WL 5968253, at *1 (S.C. Ct. App. Oct. 14, 2015) (unpublished), *aff'd as modified,* 421 S.C. 374, 807 S.E.2d 197 (2017). Doug missed this in his brief.

Doug tries to differentiate *Baughman* by arguing that the facts were not analogous. Respondent's Brief p. 17. The facts of this matter may not be the same

as in *Baughman*, but the key fact in *Baughman* was that the party against whom admission was sought had submitted responses to Requests for Admissions before they were deemed admitted. *Baughman*, 306 S.C. at 109-10, 410 S.E.2d at 542. That fact is present here, as it is undisputed that Errick Williamson ("Errick") served responses to the Requests just a few days late. (R. p. 3 and Respondent's Brief p. 4). Because the responses were served before they were "ordered admitted," it was mandatory for the court to analyze the two-part test in Rule 36(b) and, if satisfied, allow withdrawal.

Doug also notes that "Errick did not request any relief from the Court," which the party against whom admission was sought did do in *Baughman*. Respondent's Brief p. 18 (citing the Probate Order). But that fact—seeking a protective order—drove the *alternative* reason why the deemed admissions should have been set aside in *Baughman*. *Baughman*, 306 S.C. at 109, 410 S.E.2d at 542. But, as described above, it was not the only reason. Not only is Doug wrong about the significance of the lack of seeking a formal protective order, but the Probate Court was wrong, too, which justifies reversal. (R. pp. 7-8, ¶ 15).

II. Applying the two-part test in Rule 36(b).

Now that the mandatory nature of the Rule 36(b) test in certain scenarios has been established, the next step is to apply the test. The two-part test for withdrawal is satisfied if: (1) the withdrawal or amendment of a deemed admission would further the presentation of the merits; and (2) "the party who obtained the admissions fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining

his action or defense on the merits." Rule 36(b). Both prongs are satisfied here, so withdrawal should have been allowed in this case. To hold otherwise, as the Probate Court and Circuit Court did, was an abuse of discretion. *See Baughman*, 306 S.C. at 109, 410 S.E.2d at 542.

A. Factor one – merits.

Doug argues that "Errick clearly has failed to prove that the presentation of the merits in this case would be furthered if he were allowed to withdraw his admission." Respondent's Brief pp. 13-14. But based upon the Probate Order and Doug's *own words*, that cannot possibly be true. First, the deemed admission to Request 9 was the controlling factor for the determination that the Will was not properly executed. (R. p. 10, ¶ 24).

Doug has confirmed the same. First, the entire premise of Doug's lawsuit is to set aside the Will. (R. pp. 21-70). On Page 4 of his brief, Doug noted that it was "[i]mportant[]" that Request 9 was deemed admitted. Respondent's Brief p. 4; *see also* p. 10. It was so important because, given that Request 9 was deemed admitted, the Will was held to be invalid, and summary judgment was required. Respondent's Brief pp. 21-22. Thus, the admission of just Request 9 led directly to the summary judgment; without Request 9, there would have been no summary judgment. Further, when the party seeking admission itself emphasizes the importance of an admission (like Doug did), then the first part of the test in Rule 36(b) is necessarily satisfied. *Barber v. Hobbs*, 313 S.C. 319, 321, 437 S.E.2d 409, 410 (Ct. App. 1993) ("The first part of the test is necessarily satisfied because Barber's attorney called the

admission "a crucial issue in this case" (citing *Baughman*, 306 S.C. at 110, 410 S.E.2d at 542)).

B. Factor two – prejudice.

Because Doug is the party who obtained the admission, he has the burden to prove that amendment will prejudice him. Rule 36(b); *Barber v. Hobbs*, 313 S.C. 319, 321, 437 S.E.2d 409, 410 (Ct. App. 1993). In Respondent's Brief, Doug has not shown this Court how amendment would prejudice him. And for good reason, too. As more fully addressed in Errick's Appellant Brief, Doug has not been prejudiced in a manner that is legally significant to Rule 36(b). Appellant Brief pp. 18-19. The facts alleged by Doug in his brief simply do not show that his discovery rights will be trampled or that Errick failed to participate in discovery in good faith. *See* Respondent's Brief pp. 15-16. The discovery issues were minor, and any issues that did exist were unrelated to Request 9. (*See* R. pp. 100-08, 140-144, 145-161, and 222-23 (all showing the discovery issues related to Errick's employment records, confidential spousal communications, verification of discovery responses, and the existence of certain documents)). Moreover, Errick complied with additional requests to provide documents that exist and were required to be produced by law (two additional years of employment records and verification of the discovery responses). (*See* R. pp. 92 and 100-08).[1]

[1] Doug also alleges that Errick failed to timely respond to the Petition. Respondent's Brief p. 3 FN 1. In actuality, however, Errick was never actually served. (R. pp. 90-91). There was no second bite at the apple or handout from the Probate Court.

Discovery was and is in its infancy, so there was no detrimental reliance on deemed admissions. (R. pp. 83-84, 92, and 99). If there were other discovery issues, which Errick denies exist, then the Probate Court has other levers it can pull to address those alleged issues. In the simplest terms, there is nothing related specifically to the withdrawal of Request 9 that will legally prejudice Doug. Doug still has the full opportunity to prove his case.

III. The Probate Court abused its discretion by misapplying the law.

A. Abuse of discretion standard.

Errick's argument is that the lower courts abused their discretion by failing to show a clear understanding of the applicable law and failing to properly apply that law. Appellant Brief p. 6 (citing *Morris v. BB & T Corp.*, 438 S.C. 582, 885 S.E.2d 394 (2023) and *City of Charleston Hous. Auth. v. Brown*, 437 S.C. 514, 878 S.E.2d 913 (Ct. App. 2022)). In Doug's brief, however, he did not address either *Morris* or *City of Charleston Housing Authority* or argue why those cases alone do not require reversal based upon the misapplication of *Baughman*, *Scott*, and other cases. Appellant Brief p. 6.

B. How the Probate Court and Circuit Court got it wrong.

As described above, the Probate Court misapplied *Baughman* by ignoring a key component of its holding, and Doug failed to adequately explain that misapplication. Instead, Doug repeats the Probate Court's analysis regarding a protective order,

which ignores the other part of *Baughman* where the Supreme Court required application of the two-part test in Rule 36(b) in certain contexts.[2]

Next, Doug misapprehends *Scott*. In Errick's brief, he set out how the first part of *Scott* concerns whether it is proper for Requests for Admission to go to the heart of the matter. *Scott v. Greenville Hous. Auth.*, 353 S.C. 639, 645-50, 579 S.E.2d 151, 154-57 (Ct. App. 2003). It is proper (*id.*), but that is not disputed by either party. Still, Doug seemingly argued that because Requests for Admission can go to the heart of the matter, which Request 9 does, then Errick has "clearly" failed to show that the merits of the case would be furthered by allowing withdrawal. Respondent's Brief p. 13. That is inaccurate, and the opposite is true.

Precisely because Request 9 goes directly to the merits of the case shows that the merits would be furthered by allowing withdrawal. Doug and the lower courts both got this wrong. Moreover, the second prong of Rule 36(b), prejudice, is "not simply that the party who obtained the admission will now have to convince the factfinder of its truth. Rather, it relates to the difficulty a party may face in proving its case, e.g., caused by the unavailability of key witnesses, because of the sudden need to obtain evidence." *Hadley v. United States*, 45 F.3d 1345, 1348 (9th Cir. 1995). Doug does not now have difficulties based upon withdrawing the response to Request

[2] Doug also argued that Errick said the Probate Court should have "relied" on two unpublished opinions, *Phillips* and *Bennett*. Respondent's Brief p. 16 (citing Appellant's Brief p. 15). Errick relied upon *Baughman* and *Scott*. *Phillips* and *Bennett*, on the other hand, were: (1) exemplars of how *Baughman* and *Scott* are applied in practice (Appellant's Brief pp. 9-10); and (2) examples of legal errors made by the Probate Court justifying reversal. Appellant's Brief p. 15.

9. Put another way, all difficulties that Doug alleges he has would have been present even if Request 9 was denied from the beginning.

In his brief, Doug described some of the facts relevant in *Scott*. *See* Respondent's Brief p. 14. Conspicuously absent from Doug's brief, however, was the truly egregious conduct by the defendant in the *Scott* case, specifically causing problems at multiple trials, wholly failing to respond to discovery, preventing the plaintiff from obtaining key documents, and surprising the plaintiff with records *during* a trial. *Scott* at 353 S.C. at 652, 579 S.E.2d at 158; Appellant's Brief pp. 10-12. The problem with the Probate Court's Order—and what Doug missed in his brief—is that the Probate Court failed to properly analyze the prejudice (or lack thereof) that Doug would incur if the admissions were withdrawn. *See* Respondent's Brief pp. 15-16. The court simply said that, if the admissions were withdrawn, Doug's opportunity for "full and fair trial preparation is further prejudiced." (R. p. 10, ¶ 24). But, by relying only on this conclusory statement regarding prejudice and without articulating even a single specific impact on Doug's ability to prepare for trial, the court obliterated the need for *any* trial and decided the case. Essentially, because of an error of a few days, the Probate Court implemented one of the—if not *the*—harshest discovery sanctions imaginable, which simply did not have to be done and should not have been done.

IV. Doug did not address the purpose of the modern Rules of Civil Procedure.

Finally, the Probate Court's drastic remedy and refusal to allow withdrawal of the deemed admission to Request 9 wholly ignored the purpose of the modern Rules

of Civil Procedure, which is to decide matters on the merits. Doug also failed to address this in his brief. "It is too late in the day and entirely contrary to the spirit of the Federal Rules of Civil Procedure for decisions on the merits to be avoided on the basis of such mere technicalities." *Foman v. Davis*, 371 U.S. 178, 181, 83 S. Ct. 227, 230 (1962). The same is true for the South Carolina Rules of Civil Procedure: "The spirit of the Rules is to settle controversies upon their merits rather than to dismiss actions on technical grounds, to permit amendments liberally, and to avoid, if possible, depriving a litigant of a chance to bring a case to trial." *Patton v. Miller*, 420 S.C. 471, 493, 804 S.E.2d 252, 263 (2017) (citing 3 *Cyclopedia of Federal Procedure* § 8.2 (3d ed., rev. 2017) in the context of whether to allow amendment based upon Rule 15, SCRCP). The philosophy of wanting to decide cases on the merits was also addressed by a case that Doug cited in the Respondent's Brief. *See Ex parte Trustgard Ins. Co.*, 442 S.C. 485, 511, 900 S.E.2d 448, 461 (Ct. App. 2023) (discussing preference of merits in the default judgment context).

This case has significant importance, as it will determine how the Will should be administered. Doug argues that Errick took advantage of a dying man to benefit himself. Respondent's Brief pp. 1-3. But Errick believes the evidence will show that Errick was the one there to provide necessary care to John Dale before he died, and John Dale captured his wishes for Errick in the Will. (*See* R. pp. 71-79). These are important matters that can and should be decided on the merits, as opposed to being decided pursuant to a slight procedural mishap by a matter of a few days. This Court

should require that the Probate Court and Circuit Court allow the matter to be decided on its merits.

CONCLUSION

This Court should enter an Order: (1) holding that the Probate Court and Circuit Court abused their discretion by not allowing the deemed admissions to the Requests to be withdrawn and amended; (2) requiring the Probate Court and Circuit Court to properly follow the law in *Baughman*, *Bennett*, and *Scott*; and (3) specifically requiring the Probate Court and Circuit Court to enter Orders allowing the deemed admissions to the Requests to be withdrawn and stating that Errick's responses from October 11, 2023, are accepted as the official responses to the Requests.

Respectfully submitted this the 2nd day of April 2025.

/s/ *Edward B. Davis*
Edward B. Davis, S.C. Bar No. 16713
Bell, Davis & Pitt, P.A.
227 West Trade Street, Suite 1800
Charlotte, NC 28202
(704) 227-0400
ward.davis@belldavispitt.com
Counsel for Appellant