RECEIVED
Apr 03 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM YORK COUNTY
Circuit Court of Common Pleas
The Honorable Daniel D. Hall, Circuit Court Judge

Case No. 2024-CP-46-001100
Appellate Case No. 2024-001466

Errick L. Williamson, individually
and as Personal Representative of
the Estate of John Dale Williamson……Appellant,

v.

Doug Williamson……..……..Respondent.

RESPONDENT'S FINAL BRIEF

Respectfully Submitted,

JOHNSTON, ALLISON & HORD, P.A.

s/ J. Nathanial Pierce
J. Nathanial Pierce, S.C. Bar No. 102803
npierce@jahlaw.com
1065 E. Morehead Street
Charlotte, North Carolina 28204
Telephone: (704) 332-1181
Counsel for Respondent

April 3, 2025
Charlotte, North Carolina

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules of Court

STATEMENT OF ISSUES ON APPEAL

I. Did the Probate Court abuse its discretion by denying Errick's Motion to Withdraw in accordance with Rule 36, SCRCP?

II. Did the Probate Court properly grant Doug's Motion for Partial Summary Judgment in accordance with Rule 56, SCRCP, and did the Circuit Court properly affirm the Probate Court's Order?

STATEMENT OF THE CASE

John Dale Williamson ("Decedent" or "Dale") suffered from Parkinson's disease. (R. p. 22). As early as May 20, 2022, Dale received in-home hospice care from Agape Care, Inc. ("Agape"). (R. pp. 22-23). From May to November 2022, Agape regularly visited Dale with home health aides, nurses, and social workers. (*Id.*).

In the final months leading up to his death, Dale's condition worsened, and he was not of sound mind, as his Parkinson's disease progressed. (R. p. 22). Dale received a substantial amount of palliative medicine, as well as daily assistance with the most basic tasks. (R. p. 23). Particularly during the last six to eight weeks of Dale's life, Dale needed around-the-clock care, as the advanced stages of his disease left him bedridden. (R. pp. 22-23). Dale passed away on November 29, 2022, from, *inter alia*, complications caused by the Parkinson's disease. (R. p. 23).

Dale was not married, and he had no children, but he was one of three surviving siblings: Doug Williamson ("Doug"), the respondent in this appeal; Derrick Williamson ("Derrick"); and Robin Beckler ("Robin"). (R. p. 22). Derrick is the father of Errick L. Williamson ("Errick"), the appellant in this matter. (*Id.*).

During Dale's last few months, Errick and his wife Chantelle moved into Dale's house at 1153 Deas Street, Rock Hill, South Carolina, to allegedly care for Dale. (R.

pp. 22-23). Errick and Chantelle also asserted control over Dale's medical, legal, and financial matters, even controlling which family members and friends could visit Dale. (R. pp. 22-23, 26).

After Dale's death, Doug and his wife, Crystal Williamson ("Crystal"), tried to speak with Errick about the disposition of Dale's estate to ensure that everything was carried out per Dale's final wishes. (R. p. 23). On multiple occasions, Errick represented to Doug and Crystal that Dale did not have a will, and neither Doug nor Crystal had any indication that Dale may have executed a will. (*Id.*). However, out of the blue, Errick filed the purported Last Will and Testament of John Dale Williamson (the "Will") with the York County, South Carolina Probate Court on January 3, 2023. (R. pp. 23, 62-70). Errick was also simultaneously appointed as the personal representative of Dale's estate (the "Estate"). (R. p. 23). Rather than provide any notice to Doug and Crystal of these events, Errick merely sent them a letter containing an Information to Heirs filing – this was the first time Doug and Crystal learned of the purported Will. (R. p. 23).

Since Errick's appointment as personal representative, Errick has taken no meaningful steps to administer the Estate, has failed to pay property taxes that were due, and has failed to redeem a substantial Estate asset from tax sale. (R. p. 163).

It is crucial to note that Dale allegedly signed the Will on November 24, 2022, a mere five days before his death. (R. p. 24). At the time, Dale was receiving around-the-clock hospice care and near-constant palliative medication. (R. pp. 22-23). Dale was not of sound mind on November 24, 2022, and he could no longer understand or

know the extent of his estate, the objects of his affection, or to whom he wished to give his property. (R. pp. 22-23, 26).

Under the Will, Errick would take eighty percent (80%) of Dale's residual estate, which is defined as "real and personal property wherever situated including any life insurance policies…." (R. pp. 24, 63). Meanwhile, Derrick, Errick's father, would take the other twenty percent (20%) of Dale's residual estate. (*Id.*). For some reason, the Will explicitly excludes Crystal, who is not a legal heir of the Estate. (R. pp. 24, 62). The Will also purports to devise non-probate assets, such as life insurance policies. (R. pp. 24, 63).

On March 15, 2023, Doug filed a Petition to Set Aside Will and for Appointment of Personal Representative.[1] On August 30, 2023, Doug served Errick with Interrogatories and Requests for Production ("RFPs") via United States Mail, in compliance with Rule 5(a), South Carolina Rules of Civil Procedure ("SCRCP"). (R. pp. 4-5, 12-13). According to Rules 6(e), 33, and 34 of the SCRCP, Errick's responses to the Interrogatories and Requests for Production were due on or before October 4, 2023. (R. pp. 4, 12).

On August 31, 2023, Doug served Errick with nine (9) Requests for Admission ("RFAs") pursuant to Rule 36 of the SCRCP. (R. pp. 5, 122-139). RFA No. 9 specifically stated, "Admit John Dale Williamson did not sign the Last Will and Testament

[1] Errick failed to timely respond to the Petition, and Doug moved for entry of default. Ultimately, the Court set aside the Default and allowed Errick to file an Answer. (R. p. 163).

attached hereto as Exhibit B."[2] (R. p. 123). Pursuant to Rules 6(e) and 36, SCRCP, Errick's responses to the RFAs were due on or before October 5, 2023. (R. p. 5).

Errick failed to respond to the Interrogatories, RFPs, and/or RFAs during the time prescribed by the SCRCP. (R. p. 5). Further, Errick failed or refused to seek an extension of time during the time prescribed by the SCRCP. (*Id.*). As such, each of the RFAs was deemed to be admitted pursuant to Rule 36, SCRCP. (R. p. 7). Importantly, according to RFA No. 9, Errick admitted that "John Dale Williamson did not sign the [Will]." (R. pp. 7, 123).

On October 10, 2023, after Errick's responses to the discovery requests were due, Errick's counsel requested ten (10) additional days to respond. (R. p. 164). On October 11, Errick untimely served responses to the RFAs. (*Id.*). On October 12, Doug's counsel notified Errick's counsel that Errick's extension request was denied and that a Motion to Compel responses to Doug's Interrogatories and RFPs had been mailed to the Court for filing. (R. p. 165). However, Doug's counsel indicated that Doug would not seek a hearing on the Motion to Compel before October 20, 2023, the date on which Errick represented he would respond to the Interrogatories and RFPs. (*Id.*). The Probate Court filed the Motion to Compel on October 19, 2023, which is the same date on which Errick served responses to Doug's Interrogatories and RFPs. (R. pp. 13, 165).

Upon review of Errick's responses, Doug's counsel sent a deficiency letter to Errick's counsel on October 24, 2023 (the "Deficiency Letter"). (R. p. 13). The

[2] The Last Will and Testament that was attached as Exhibit B to Doug's RFAs to Errick, and which is referenced specifically in RFA No. 9, is the same will referenced throughout this brief as "the Will."

Deficiency Letter noted a myriad of problems with Errick's responses, including his responses to Interrogatories 3, 5, 8, 10, 12, 13, 15, and 18. (*Id.*). Errick had not signed and served a verification for the Interrogatories, as required by Rule 33, SCRCP. (*Id.*). Additionally, the Deficiency Letter also flagged issues with Errick's responses to RFPs 2, 6, 8, 12, and 13. (*Id.*).

On November 6, 2023, Doug filed a Motion for Partial Summary Judgment, pursuant to Rule 56, SCRCP, regarding his fifth cause of action related to the execution of the Will. (R. pp. 188-221). In particular, Doug's Motion for Partial Summary Judgment related to Errick's admission to RFA No. 9, indicating that "John Dale Williamson did not sign [the Will]." (R. pp. 123, 192-194).

On November 21, 2023, Errick filed a Motion to Withdraw/Amend Admissions, or Alternatively, for Additional Time to Serve Discovery Responses, and Motion to Strike Petitioner's Motion to Compel ("Motion to Withdraw"). (R. pp. 230-233). This was Errick's first attempt to remedy his failure to timely respond to the RFAs. Errick simultaneously filed a brief in support of his Motion to Withdraw, which contained no exhibits or affidavits, and Errick failed to respond to Doug's Motion for Partial Summary Judgment. (R. pp. 234-242).

Further, Errick did not respond to the Deficiency Letter until November 22, 2023, at which point he supplemented certain discovery responses, without supplementing all of them. (R. p. 14). In particular, Errick refused to supplement his responses to Interrogatories 3, 5, 10, and 13. (*Id.*). Errick also refused to supplement his responses to any of the outstanding RFPs. (R. pp. 14, 222-223).

Errick filed a Motion to Strike Petitioner's Motion to Compel on November 27, 2023. (R. pp. 230-233). Again, Errick did not file anything directly in opposition to Doug's Motion for Partial Summary Judgment.

On December 7, 2023, the Honorable Carolyn Woodruff, the presiding Judge for the York County Probate Court, heard Doug's Motions to Compel and for Partial Summary Judgment, along with Errick's Motion to Withdraw. (R. pp. 80-108). Pursuant to her written Orders filed on January 5, 2024, Judge Woodruff granted Doug's Motions to Compel and for Partial Summary Judgment and denied Errick's Motion to Withdraw. (R. pp. 4-16).

On January 11, 2024, Errick appealed Judge Woodruff's Order. On August 2, 2024, the York County Circuit Court of Common Pleas heard oral arguments from counsel for Doug and Errick. (R. pp. 109-110). Via a written Order filed on August 6, 2024, the Court affirmed the Probate Court's ruling. (R. pp. 17-19).

Subsequently, on September 4, 2024, Errick appealed the Circuit Court's Order, along with the Probate Order, by filing and serving a Notice of Appeal with the Court of Appeals. (R. pp. 300-311). Errick then filed and served his initial appellant brief on December 4, 2024. Initial Br. of App.

ARGUMENT

I. The Probate Court did not abuse its discretion by denying Errick's Motion to Withdraw.

The Probate Court did not abuse its discretion by denying Errick's Motion to Withdraw in accordance with Rule 36(b), SCRCP, and precedential South Carolina caselaw.

A. The standard of review for the Probate Court's denial of Errick's Motion to Withdraw is abuse of discretion.

"A trial court's ruling in matters related to discovery generally will not be disturbed on appeal in the absence of a clear abuse of discretion." *Stokes-Craven Holding Corp. v. McKenzie*, 416 S.C. 517, 536, 787 S.E.2d 485, 495 (2016) (citing *Dunn v. Dunn*, 298 S.C. 499, 502, 381 S.E.2d 734, 735 (1989)). "An abuse of discretion occurs when the trial court's order is controlled by an error of law or when there is no evidentiary support for the trial court's factual conclusion." *Id.* (citing *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009)); *see also Wilson v. Dallas*, 403 S.C. 411, 425, 743 S.E.2d 746, 754 (2013).

South Carolina appellate courts largely defer to the decision-making of the trial court, as the judges who consider the evidence presented to them are in the best position to observe and rule on the credibility of the parties and/or witnesses. *Trustgard Ins. Co. v. Full Logistics, Inc.*, 442 S.C. 485, 505–06, 900 S.E.2d 448, 459 (Ct. App. 2023) ("Credibility determinations regarding testimony are a matter for the finder of fact, who has the opportunity to observe the witnesses, and those determinations are entitled to great deference on appeal. Because the appellate court lacks the opportunity for direct observation of the witnesses, it should accord great deference to [circuit] court findings where matters of credibility are involved.") (internal citations omitted); *see also South Carolina Dep't of Social Services v. Forrester*, 282 S.C. 512, 515–16, 320 S.E.2d 39, 42 (Ct. App. 1984).

"The burden is upon the party appealing from the order to demonstrate the trial court abused its discretion." *Dunn*, 298 S.C. at 502, 381 S.E.2d at 735 (internal

citation omitted). The burden of proof for abuse of discretion is a high bar, as "the exercise of [a judge's] discretion will not be disturbed on appeal absent a clear showing of an abuse of discretion, the commission of legal error in its exercise *and* prejudice to the rights of the appellant." *Clark v. Ross*, 284 S.C. 543, 549, 328 S.E.2d 91, 97 (Ct. App. 1985) (emphasis added); *see also First Sav. Bank v. McLean*, 314 S.C. 361, 362, 444 S.E.2d 513, 514 (Ct. App. 1994) ("Mere allegations of error are not sufficient to demonstrate an abuse of discretion. On appeal, the burden of showing abuse of discretion is on the party challenging the trial court's ruling.") (internal citation omitted).

B. The Probate Court adhered to the clear terms of Rule 36, SCRCP, when it denied Errick's Motion to Withdraw.

Rule 36(a), SCRCP, in relevant part states,

> 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 facts or of the application of law to fact, including the genuineness of any documents described in the request….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 attorney…R. 36(a), SCRCP (emphasis added).

"Under Rule 36(a), SCRCP, all matters contained in a Request for Admission are admitted unless the party serves answers or objects within a certain time." *Scott v. Greenville Hos. Auth.*, 353 S.C. 639, 647, 579 S.E.2d 151, 155 (Ct. App. 2003).

Further, Rule 36(b), SCRCP, in relevant part, says,

> Any matter admitted under this rule is **conclusively established** unless the court on motion **permits** withdrawal or amendment of the admission. Subject to the provisions of Rule 16 governing amendment of a pre-trial order, the court **may permit** withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and 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. R. 36(b), SCRCP (emphasis added).

The "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." *Scott*, 353 S.C. at 646, 579 S.E.2d at 154–55. Per the plain language of Rule 36, if a party fails to timely respond to requests for admission, those requests are conclusively deemed to be admitted for purposes of that litigation. Rule 36, SCRCP. Not only does the failure to respond mean that those requests for admission are considered true for purposes of the litigation, but "an admission [also] precludes the admitting party from arguing facts at trial contrary to its responses to a request to admit, absent an amendment to or revocation of the admission as allowed under the rules." *Id.*, 353 S.C. at 648, 579 S.E.2d at 155–56.

Here, Errick indisputably and admittedly did not respond to the RFAs before the deadline to do so. On August 31, 2023, Doug served Errick with the RFAs. Pursuant to Rules 6(e) and 36, SCRCP, Errick's responses to the RFAs were due on or before October 5, 2023. This included Errick's response to RFA No. 9, which asked Errick to admit that "John Dale Williamson did not sign [the Will]." Errick admittedly failed and refused to respond to the RFAs, including RFA No. 9, by the October 5 deadline. Pursuant to the clear wording of Rule 36, SCRCP, all of the RFAs, including RFA No. 9, are deemed to be admitted. Errick's argument that an admission must be

"ordered" to be deemed admitted contradicts the plain language of Rule 36 and cases like *Scott*.

C. South Carolina courts are not required to allow the withdrawal of admissions.

Rule 36(b), SCRCP, states, "Any matter admitted under this rule is conclusively established ***unless*** the court on motion permits withdrawal or amendment of the admission. . . [T]he court ***may*** permit withdrawal or amendment. . ." R. 36(b), SCRCP (emphasis added). Rule 36 does not require or mandate South Carolina courts to permit withdrawal or amendment of admissions. Rule 36(b) merely enables South Carolina judges to evaluate whether they believe withdrawal may be appropriate given the circumstances. "South Carolina jurisprudence also establishes a trial court may use its discretion in finding requests to admit are not deemed admitted when the circumstances indicate otherwise." (R. pp. 8-9) (quoting *Nexstar Media Grp., Inc. v. Davis Roofing Grp., LLC*, 431 S.C. 593, 848 S.E.2d 597 (Ct. App. 2020)). Again, the discretion as to whether to allow a withdrawal of admissions lies solely with the trial court. *See also* (R. p. 9) ("When a party moves to withdraw or amend the admissions after the time for responding expires, the Court ***may*** engage in the analysis outlined in Rule 36(b) to determine whether the presentation on the merits would be subserved by the withdrawal of the admission and whether the party who obtained will be prejudiced if the court allows the withdrawal of the admission.") (emphasis added).

D. Although South Carolina trial courts are not required to allow the withdrawal of admissions, they may do so when both elements of a two-part test are met.

Rule 36(b) explains that the trial court may permit withdrawal if (1) "the presentation of the merits of the action will be subserved thereby" 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" (i.e., the "Rule 36(b) test"). Rule 36(b), SCRCP. Both elements of the Rule 36(b) test must be met for the withdrawal of admissions to be permissible. *See Scott*, 353 S.C. at 650–51, 579 S.E.2d at 157; *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 110, 410 S.E.2d 537, 542 (1991); *Bennett v. Carter*, No. 2015-UP-491, 2015 WL 5968253, 2015 S.C. App. Unpub. LEXIS 627, at *2–3 (Ct. App. Oct. 14, 2015), *aff'd in part*, 421 S.C. 374, 807 S.E.2d 197 (2017); *Phillips v. Bayless*, No. 2006-UP-379, 2006 WL 7287200, 2006 S.C. App. Unpub. LEXIS 423, at *9 (App. Nov. 21, 2006).

Here, Errick waited to file his Motion to Withdraw until November 21, 2023, which was seven weeks after his RFA responses were due. In support of his Motion, Errick analyzed the Rule 36(b) test, alleging that he met both required elements. Errick explained, "[T]he court may permit withdrawal or amendment when the presentation of the merits of the action would be subserved thereby and 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." (R. p. 236). Errick then claimed that RFA No. 9 went "to the heart of the case and, if deemed admitted, could eliminate any presentation of the merits of the case." (*Id.*). Errick also argued that Doug would not be prejudiced by the withdrawal. (R. pp. 236-237).

Ultimately, the Probate Court determined that Errick's Motion to Withdraw failed both elements of the Rule 36(b) test, as (1) Errick failed to meet his burden of showing that the presentation of merits would be furthered by his amendment to the Requests for Admission, and (2) Doug would be prejudiced if Errick were permitted to withdraw his admission. (R. p. 10). For the same reasons, this Court should affirm the Probate Court and Circuit Court's denial of Errick's Motion to Withdraw.

a. **The Probate Court properly determined that Errick's presentation of the merits would not be furthered by the withdrawal of his admissions.**

First, the Probate Court appropriately determined that Errick failed to meet his burden of showing that the presentation of merits would be furthered by his amendment to the RFAs. Before the Probate Court, Errick attempted to assert that "RFA #9 goes to the heart of the case, and if deemed admitted, could eliminate any presentation of the merits of the case." (R. pp. 261-262). However, the Court in *Scott* debunked this exact argument. As the Probate Court's Order explains:

> In *Scott*, the trial court allowed an admission to be withdrawn because of its view that the failure to respond was not binding if it would conflict with answers in a pleading. It stated that the admission was "superfluous" to the pleadings and therefore could not be determinative of an ultimate issue. The Court of Appeals reversed, stating that <u>even if an admission goes to the heart of the case: "if the language of the request for admission specifically goes to an issue in the pleadings, the admission resulting from the party's failure to respond may override the pleadings</u>.

(R. p. 8) (citing *Scott*, 353 S.C. at 650, 579 S.E.2d at 157) (emphasis added). The Probate Court then concluded,

> Based on the facts at bar and the reasoning of the cases the Court has reviewed, and based in particular on *Scott*, the arguments of counsel,

> the Court's review of the discovery exchanges in the record, and weighing the furtherance of a presentation on the merits against prejudice as a result of failure to engage in discovery in good faith, the Court concludes that (a) the allowance of the withdrawal or amendment of Errick's RFA #9 should not be granted on the ground that it goes to the heart of the case, whether or not the Will is valid – this is one of the reasons that the Court of Appeals reversed the trial court in *Scott* . . .

(R. p. 10). Errick clearly has failed to prove that the presentation of merits in this case would be furthered if he were allowed to withdraw his admission based on the precedential holding in *Scott*, which dealt with the same issue Errick now seeks to raise.

b. **The Probate Court properly determined that Doug would be prejudiced if Errick were permitted to withdraw his admissions**.

Second, the Probate Court appropriately determined that Doug would be prejudiced if Errick were permitted to withdraw his admission. According to the second element of the Rule 36(b) test, the trial court may permit withdrawal of an admission if "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." R. 36(b), SCRCP.

In particular, South Carolina courts have held that prejudice is apparent when a party's discovery rights are affected: "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 (internal citation omitted). In *Scott*, the plaintiff needed defendant's discovery responses "in order to prove his case." *Id.* Without the defendant's good faith cooperation during discovery, the plaintiff lacked key records

and information which were in the defendant's sole custody. *Id.* Because the defendant failed to participate in discovery in good faith, the Court of Appeals determined that "[t]he trial court erred in failing to find that [the plaintiff] was prejudiced." *Id.*

During the Probate Court Hearing, counsel argued Errick's failure to participate in discovery in good faith, and the attendant prejudice to Doug, at length. (R. p. 86, line 2-p. 90, line 9; p. 94, line 5-p. 95, line 21; p. 97, line 19-p. 98, line 6). Doug's counsel argued that Errick had failed to participate in discovery in good faith. (R. p. 85, line 10-p.87, line 1; p.88, line 5-p.90, line 9). Doug also argued that key documents and information were solely in Errick's possession. (R. p. 88 line 19-p.90, line 9). In support, Doug argued that Errick was, before and after Dale's death, living in Dale's house; Errick assumed control over Dale's finances and medical care; Errick was receiving Dale's mail; Errick was controlling who could come in and out of Dale's house; Errick was dealing directly with Agape, Dale's in-home medical care provider; Errick is the personal representative of the Estate; and Errick was in possession of the communications between himself and the witnesses to the Will. (R. p.88, line 19-p. 89, line 4). In addition to hearing arguments by counsel, the Probate Court evaluated the credibility of the arguments presented by reviewing and considering Doug's initial discovery requests; Errick's untimely and deficient discovery responses; Doug's deficiency letter to Errick; and Errick's response to the same. (R. p. 10).

After its thorough review of the facts, discovery and related responses, oral arguments, caselaw, and case file, the Probate Court properly concluded that:

> Based on the facts at bar and the reasoning of the cases the Court has reviewed, and based in particular on *Scott*, the arguments of counsel, the Court's review of the discovery exchanges in the record, and weighing the furtherance of a presentation on the merits against prejudice as a result of failure to engage in discovery in good faith, the Court concludes that . . . (b) the Respondent [i.e., Errick] has failed to respond to discovery requests in a timely manner and in good faith, and if the Respondent is allowed to withdraw his admissions, the Petitioner's [i.e., Doug's] opportunity for full and fair trial preparation is further prejudiced."

(*Id.*). The Circuit Court, after its own review, affirmed Judge Woodruff's denial of Errick's Motion to Withdraw as properly supported.

E. The Probate Court did not misapply *Scott*, nor did it misapply other important caselaw.

The Probate Court did not err in its reliance on, or application of, *Scott*, a precedential South Carolina case that is directly on point. Errick argues to the contrary, positing that the Probate Court's application of *Scott* constitutes abuse of discretion, meaning that the Probate Court's application was an "error of law" or based on factual conclusions that have "*no* evidentiary support." *See Stokes-Craven Holding Corp.*, 416 S.C. at 536, 787 S.E.2d at 495. (emphasis added). Similarly, the Probate Court did not misapply *Baughman*, nor did it miss "important aspect[s]" of "other important caselaw." *See* Initial Br. of App., p. 14. In support of this argument, Errick contends the Probate Court should have relied on *Phillips* and *Bennett*, two unpublished South Carolina opinions. *See* Initial Br. of App., p. 15; *Phillips*, 2006 WL 7287200, 2006 S.C. App. Unpub. LEXIS 423; *Bennett*, 2015 WL 5968253, 2015 S.C. App. Unpub. LEXIS 627.

The Probate Court did not misapply *Scott*. After analyzing arguments by counsel, Doug's initial discovery requests; Errick's untimely and deficient discovery responses; Doug's deficiency letter to Errick; and Errick's response to the same, the Court ruled that Errick had "failed to respond to discovery requests in a timely manner and in good faith . . . ." (R. p. 10). Errick takes exception with the factual distinctions that he believes the Probate Court should have drawn between *Scott* and the case at bar. *See* Initial Br. of App., pp. 16–17. However, that is not the question on an abuse of process review. Rather, the question is whether the Probate Court's Order is controlled by an error of law, or if it has any factual support. *See Stokes-Craven Holding Corp.*, 416 S.C. at 536, 787 S.E.2d at 495. The Probate Court considered, as set forth in more detail herein, "the arguments of counsel" and "the discovery exchanges in the record." (R. p. 10). As the trial court, the Probate Court was in the best position to evaluate the evidence presented, to determine the credibility of the arguments presented, and to draw factual conclusions in light of the same. *See generally Trustgard*, 442 S.C. at 505–06, 900 S.E.2d at 459. The Probate Court's application of *Scott* was not controlled by an error of law, and it was factually supported by the record.

Errick next alleges that the Probate Court misapplied the *Baughman* case, despite the lack of analogous case facts. The parties in *Baughman* were embroiled in years-long litigation, involving "more than 300 depositions" and "900 pages" of requests for admission. *Baughman*, 306 S.C. at 104, 106, 410 S.E.2d at 539–40. Given the sheer volume of discovery requests, during plaintiff's time for responding to the

requests for admission, "Plaintiffs filed a motion for protective order," indicating that the requests were unduly burdensome and in improper form, asking the Court for additional time to prepare responses and collect necessary information. *Id.*, 306 S.C. at 106, 410 S.E.2d at 540. In turn, the defendants argued the plaintiff had admitted to the 900 pages of requests by failing to timely respond. *Id.* The Supreme Court of South Carolina disagreed. Importantly, the Supreme Court determined that a timely motion for protective order, which is "made in good faith . . . operates to prevent the matters from being deemed admitted." *Id.*, 306 S.C. at 106, 109, 410 S.E.2d at 540, 542. The responding party was attempting to participate in discovery in good faith, even though "[t]he amount and form of Nassau's requests were arguably oppressive.:" *Id.* n.2 (internal citations omitted).

The case at bar is not analogous to *Baughman*, with hundreds of pages and too many requests for the plaintiff to timely respond to. Unlike the plaintiff in *Baughman*, Errick did not request any relief from the Court (in the form of a motion for protective order, an extension of time to answer, or otherwise) during the prescribed time period for responding to the RFAs. As such, the Probate Court found that "Errick failed to timely answer, object, or otherwise respond to the Interrogatories, RFPs, or RFAs;" that "Errick responded to RFA 9, but after the expiration of the time for answer;" and "Errick did not request an extension of time to respond or move for a protective order prior to the expiration of the time for answering." (R. p. 5). Additionally, Doug's RFAs were limited in number and scope and were for the proper purpose of asking for admissions, or conversely, denials. Yet

Errick failed to respond to the limited number of clearly worded requests for admission before the deadline. The Probate Court specifically found that Errick satisfied neither prong of the Rule 36(b) test, outlined in *Baughman*. (R. p. 10).

Errick's reliance on *Bennet* is similarly misplaced. In *Bennett*, there were 171 requests for admission, some of which, including the request at issue in the case, were ambiguous. *Bennett*, 2015 WL 5968253, 2015 S.C. App. Unpub. LEXIS 627, at *2. Given "the sheer number of requests for admission" or "the confusing language" of the request at issue, there was conflicting evidence as to what the responding party's position on the facts was. *Id.* Importantly, the responding party seemingly tried to timely answer the request for admission but later realized she had answered incorrectly. *Id.* The Court held that "[b]ecause the record contains conflicting evidence, presentation of the merits would be furthered by the withdrawal or amendment of the response." *Id.* at *2–3. Unlike the responding party in *Bennett*, Errick did not timely respond to discovery, had not given contradictory deposition testimony, nor had he been asked to respond to 171 requests. Instead, Errick failed and refused to respond to a mere nine RFAs. Further, the Probate Court determined that RFA No. 9 "was unambiguous." (R. p. 7). Unlike the responding party in *Bennett*, who timely, but incorrectly, answered an ambiguous request, Errick asked the Court to allow him to withdraw his admission because he simply failed to timely answer the RFAs.

The Probate Court also distinguished other South Carolina cases, including *Commerce Center of Greenville v. McElveen*, 347 S.C. 545, 556 S.E.2d 718 (Ct. App.

2001) ("allowing modification of admissions where the responding party timely responded and reserved the right to supplement responses"); *Adams v. Orr*, 260 S.C. 92, 194 S.E.2d 232 (1973) ("allowing withdrawal of admission where the subject request, as worded, was subject to more than one reasonable interpretation"); and *Collins Entm't v. White*, 363 S.C. 546, 611 S.E.2d 262 (Ct. App. 2005) ("allowing withdrawal of admission where the first set of requests for admission was sent to an incorrect address and failure to respond to the second requests for admission was not raised until trial"). (R. pp. 7-8). None of these mitigating circumstances are present in the case at bar; the Probate Court properly distinguished the facts in this case from those where admissions were allowed to be withdrawn.

Therefore, based on the clear wording of Rule 36, SCRCP, and relevant South Carolina caselaw, it was proper for the South Carolina Probate Court to deny Errick's Motion to Withdraw and for the Circuit Court to affirm this denial.[3]

II. The Probate Court did not abuse its discretion by granting Doug's Motion for Partial Summary Judgment.

The Probate Court properly granted Doug's Motion for Partial Summary Judgment pursuant to Rule 56, SCRCP.

A. The standard of review for the Probate Court's appropriate granting of partial summary judgment in favor of Doug is stated in Rule 56, SCRP.

When "reviewing the grant of a summary judgment motion," South Carolina appellate courts "apply the same standard which governs the trial court under Rule

[3] The Probate Court did in fact review *Baughman* (*see* R. p. 7), despite Errick's assertion that the Probate Court did not analyze the case in full (*see* Initial Br. of App., pp. 14–15, 17–18).

56(c), S.C.R.P: summary judgment is proper when 'there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCP; *Baughman*, 306 S.C. at 114–15, 410 S.E.2d at 545 (internal citation omitted). "Once the moving party carries its initial burden, [the] opposing party must, under Rule 56(e), 'do more than simply show that there is some metaphysical doubt as to the material facts' but 'must come forward with "specific facts showing that there is a genuine issue for trial."'" *Baughman*, 306 S.C. at 115, 410 S.E.2d at 545 (citing internal citation omitted) (emphasis in original). "Indeed, Rule 56(e) specifically prohibits the nonmoving party from resting upon the mere allegations or denials of its pleadings." *Id.* (internal citations omitted).

B. The Probate Court properly granted Doug's Motion for Partial Summary Judgment in accordance with Rule 56, SCRCP.

The Probate Court properly granted Doug's Motion for Partial Summary Judgment on his fifth cause of action. In support of his Motion, Doug explained that Errick had admitted RFA No. 9 and was therefore "unable to show that Dale signed the Will, or instructed another individual to sign the Will in his name at his direction, and therefore the Will is invalid for failure of due execution." (R. pp. 192-193). Errick also failed to offer any factual evidence in opposition to Doug's Motion for Partial Summary Judgment. Errick merely filed a Motion to Withdraw. As such, Errick did not "come forward with 'specific facts showing that there is a genuine issue for trial.'" *Baughman*, 306 S.C. at 115, 410 S.E.2d at 545 (internal citation omitted) (emphasis in original). The Probate Court properly granted Doug's Motion for Partial Summary Judgment in accordance with Rule 56, SCRCP, ruling "Errick has not carried his

burden of establishing *prima facie* proof of due execution . . . . There is therefore no question of fact, partial summary judgment is appropriate on the issue of due execution, and the failure of execution invalidates the Will." (R. p. 10).

CONCLUSION

The Probate Court did not abuse its discretion in denying Errick's Motion to Withdraw based on the clear wording of Rule 36(b), SCRCP, and precedential South Carolina caselaw. Errick failed to meet his burden of proving both elements of the Rule 36(b) test. Additionally, the Probate Court properly granted Doug's Motion for Partial Summary Judgment, as Errick failed to respond to the Motion and to provide any facts in opposition thereto. Doug therefore respectfully requests that the Court affirm the Probate Court and Circuit Court's denial of Errick's Motion to Withdraw and granting of Doug's Motion for Partial Summary Judgment.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM YORK COUNTY
Circuit Court of Common Pleas
The Honorable Daniel D. Hall, Circuit Court Judge

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

Errick L. Williamson, individually and as Personal Representative of the Estate of John Dale Williamson……Appellant,

v.

Doug Williamson……..Respondent.

PROOF OF SERVICE

The undersigned certifies that he served Respondent's Final Brief on Appellant Errick Williamson via his attorney, Edward B. Davis, via electronic mail to ward.davis@belldavispitt.com and via United States Mail, postage prepaid, on April 3, 2025, addressed to Bell, Davis & Pitt, P.A., Attention: Edward B. Davis, Esq., 227 W. Trade Street, Suite 1800, Charlotte, NC 28202.

The undersigned also certifies that he served Respondent's Final Brief via United States Mail, postage prepaid, on April 3, 2025, to Derrick Williamson at 1154

Deas Street, Rock Hill, SC 29732 and Robin Beckler at 300 Thomasboro Road SW, Calabash, NC 28467.

JOHNSTON, ALLISON & HORD, P.A.

s/ J. Nathanial Pierce
J. Nathanial Pierce, S.C. Bar No. 102803
npierce@jahlaw.com
1065 E. Morehead Street
Charlotte, North Carolina 28204
Telephone: (704) 332-1181
Counsel for Respondent

April 3, 2025
Charlotte, North Carolina