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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 BRIEF OF APPELLANT

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STATEMENT OF THE CASE

John Dale Williamson ("John Dale") passed away in November 2022. (R. p. 23, ¶ 16). Appellant Errick Williamson ("Errick"), John Dale's nephew, is a beneficiary of John Dale's will, which bears John Dale's signature. (R. pp. 24, ¶ 22, and 66-70). The Will was witnessed by two independent witnesses, Jeff Hawkins and Kaleb Kidd. (R. pp. 66-70). John Dale, Jeff Hawkins, and Kaleb Kidd all signed the Will in front of Jessica Lynn Hawkins, a notary public in North Carolina. (R. pp. 66-70). The Will appoints Errick as the personal representative of John Dale's estate. (R. p. 63, ¶ 11).

Respondent Doug Williamson ("Doug") is one of John Dale's brothers. (R. p. 22, ¶ 8). He filed a Petition to Set Aside Will and for Appointment of Personal Representative in York County's Probate Court in March 2023 (the "Petition"). (R. p. 21). In the Petition, Doug argued that the Will should be set aside or found invalid, Errick should be removed as the personal representative, property should be returned to the estate, and a new personal representative should be appointed. (R. pp. 22, ¶ 8 and 24-28). If the Will is set aside, then Doug will benefit as one of John Dale's

heirs. (R. p. 25, ¶ 33). Additionally, Errick receives eighty percent of John Dale's residual estate per the Will, but he would likely receive significantly less or nothing if the Will is invalid. (R. p. 63, ¶ 7).

While litigating the Petition, Doug served Interrogatories and Requests for Production on August 30, 2023 (the "Interrogatories and RFPs"). (R. p. 121). He then served Rule 36 Requests for Admission (the "Requests") on August 31, 2023, which were served by mail and received by Errick's counsel on September 7, 2023. (R. pp. 123 and 258). One of the Requests, Request No. 9, stated: "Admit that John Dale Williamson did not sign the Last Will and Testament attached hereto as Exhibit B." (R. p. 123).

On October 10, 2023, through counsel, Errick requested an additional ten days to respond to both the Requests and Interrogatories and RFPs. (R. p. 164, ¶ 17). Doug denied the request for more time to serve responses to the Requests, and he did not even allow Errick ten additional days to respond to the Interrogatories and RFPs. (R. p. 165, ¶ 19). Errick responded to the Requests on October 11, 2023. (R. p. 164, ¶ 18). In his responses, Errick denied Request 9. (R. p. 142).

Doug then immediately served a Motion to Compel regarding the Interrogatories and RFPs on October 12, 2023, which he did without even attempting to work out any discovery disputes or waiting to see Errick's discovery responses. (R. p. 165). The Motion to Compel was filed on October 19, 2023, which was actually after Errick served his responses to the Interrogatories and RFPs on October 17, 2023. (R. pp. 145 and 162). Peculiarly, Doug did send a discovery deficiency letter to

Errick, but he did so only *after* he filed the Motion to Compel. (R. p. 181). Ultimately, as noted in his response letter and during the hearing, Errick complied and provided additional documents and responses to the *extent they existed* as required by law or the court. (R. pp. 100-08 and 222). Perhaps most importantly, however, the disputes within the Motion to Compel—whether Doug should get five- or two-and-a-half-years of employment records, whether Doug is entitled to confidential spousal communications, the requirements of verifying responses to Interrogatories, and whether certain documents exist—are not impacted by the Requests. (*See* R. pp. 100-08, 140-61, and 222-23).

In November 2023, Doug filed a Motion for Partial Summary Judgment and supporting brief (the "Partial MSJ"). The Partial MSJ relates to Doug's fifth cause of action, failure of due execution. (R. pp. 27, ¶¶ 48-50, and 188-95). Doug argued that Errick was late in responding to the Requests, so the Requests are deemed admitted, including Request 9. (R. pp. 193-94). If Errick cannot prove the Will was executed by John Dale, then there was no way that Errick could meet his burden to prove the Will was properly executed. (R. pp. 193-94). That would mean the Will is invalid. (R. p. 194). To make his argument, in addition to relying on the deemed admitted Request 9, Doug actually also relied on Errick's October 11 responses to the Requests. (R. pp. 193-94). Later in November, 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 and supporting brief (the "Motion to Withdraw or Amend"). (R. pp. 230-242).

The Partial MSJ and Motion to Withdraw or Amend were heard in the Probate Court in December 2023. (R. p. 80). Probate Court Transcript, p. 1. The Probate Court granted the Partial MSJ, invalidated the Will, and denied the Motion to Withdraw or Amend on January 5, 2024 (the "Probate Order").[1] (R. pp. 4-11). The Probate Order was based on the deemed admission to Request 9. (R. pp. 7, ¶¶ 10-12, and 10, ¶¶ 23-24). The Court reasoned that Errick did not timely respond to the Requests, so Request 9 was deemed admitted (along with all other Requests). (R. p. 7, ¶ 12). The Probate Court also refused to allow Errick to withdraw the deemed admissions. (R. pp. 9-10, ¶¶ 21-24). Because Errick "admitted" that John Dale did not sign the Will, the Court held that Errick cannot meet his burden of presenting *prima facie* evidence that the Will was duly executed. (R. pp. 9-10, ¶¶ 21-24). Thus, the witnessed and notarized Will was invalidated by the Probate Court. (R. pp. 9-10, ¶¶ 21-24).

The Probate Court issued these findings and holdings even though Errick's actual responses were served only days after the deadline and, importantly per South Carolina's Supreme Court, months before the responses were ordered admitted. (R. pp. 4, 123, and 142). The Probate Court issued these findings and holdings even though Errick attempted to withdraw the admissions in advance of the hearing on the Partial MSJ, which the Court of Appeals has held to be significant. (R. p. 230). And the Probate Court issued these findings and holdings even though no depositions had been taken, no experts were disclosed, no admissions had been relied upon, there

[1] The Probate Court also granted the Motion to Compel on the same day.

were still five to six months of discovery left, and trial was not set. (R. pp. 83-84, 92, and 99).

Because the Probate Order involved the merits and finally determined the validity of the Will—a substantial matter in the Petition—Errick timely appealed the Probate Order to York County's Circuit Court of Common Pleas on January 11, 2024. (R. p. 243). The matter was briefed, and oral argument was held on August 2, 2024. (R. p. 109). On August 6, 2024, the Circuit Court entered a two-sentence Order that affirmed the Probate Order based upon the record from the Probate Court (the "Circuit Court Order"). (R. p. 17). Errick timely appealed the Circuit Court Order and Probate Order by filing and serving the Notice of Appeal on September 4, 2024. (R. pp. 300-11). The transcript of the August 2, 2024 hearing was ordered on September 10, 2024, and Errick received it on October 4, 2024. (R. pp. 312-13). After a Consent Motion, this Court extended the deadline for Errick to file the initial brief and designation of matter until December 4, 2024. (R. p. 21).

As it currently stands, John Dale's wishes for how his estate should be distributed will not even be evaluated, let alone fulfilled. Instead, his assets will be distributed in a manner counter to his intentions because of a purely procedural issue, which is contrary to South Carolina precedent.

STANDARD OF REVIEW

A lower court's refusal to allow a party to withdraw admissions pursuant to Rule 36(b), SCRCP, is reviewed for an abuse of discretion. *Scott v. Greenville Hous. Auth.*, 353 S.C. 639, 650, 579 S.E.2d 151, 157 (Ct. App. 2003). It is an abuse of

discretion "when the court's decision is unsupported by the evidence or controlled by an error of law." *State v. King*, 422 S.C. 47, 54, 810 S.E.2d 18, 22 (2017). "It is an equal abuse of discretion to refuse to exercise discretionary authority when it is warranted as it is to exercise the discretion improperly." *City of Charleston Hous. Auth. v. Brown*, 437 S.C. 514, 525, 878 S.E.2d 913, 919 (Ct. App. 2022) (citation omitted). Thus, properly exercising discretion "begins with the trial court's clear understanding of the applicable law, continues with the court's sound analysis of the situation before it in light of the law, and ends with the trial court's ruling that follows the law and is supported by the facts and circumstances." *Morris v. BB & T Corp.*, 438 S.C. 582, 587, 885 S.E.2d 394, 397 (2023).

The standard of review for motions for summary judgment is the same as the standard in Rule 56, SCRCP. *Matter of Est. of Smith*, 419 S.C. 111, 116, 796 S.E.2d 158, 160 (Ct. App. 2016). Summary judgment should only be affirmed "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgement as a matter of law." *Id.* (citing Rule 56, SCRCP). "Summary judgment is a drastic remedy which should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues." *Jones ex rel. Jones v. Enter. Leasing Co.-Se.*, 383 S.C. 259, 263, 678 S.E.2d 819, 821 (Ct. App. 2009) (citing *Baughman v. Am. Tel. & Tel. Co.,* 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991)).

ARGUMENTS

I. The Probate Court should have allowed the deemed admissions to the Requests to be withdrawn.

Rule 36(b), SCRCP, states that "the court may permit withdrawal or amendment [of an admission] 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." Thus, there are two questions that the Court evaluates: (1) Does allowing amendment or withdrawal further the presentation of the merits of the matter? (2) Would an amendment or withdrawal prejudice the party that obtained the admission? *Id*.

"The prejudice contemplated by Rule 36(b) 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); *see Scott*, 353 S.C. at 648-49, 579 S.E.2d at 156 (noting that Federal Rule 36 is substantively similar to Rule 36, SCRCP, and favorably citing to Federal interpretations) and *Gardner v. Newsome Chevrolet-Buick, Inc.*, 304 S.C. 328, 330, 404 S.E.2d 200, 201 (1991) ("Since our Rules of Procedure are based on the Federal Rules, where there is no South Carolina law, we look to the construction placed on the Federal Rules of Civil Procedure.").

South Carolina's Supreme Court has had the opportunity to evaluate the interpretation and application of Rule 36(b), SCRCP. *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 110, 410 S.E.2d 537, 542 (1991). In *Baughman*, Requests for

Admission were served on July 29, 1988. *Id*. at 306 S.C. at 106, 410 S.E.2d at 540. Because of the nature of the *Baughman* Requests, the plaintiffs filed for a protective order before any responses were due. The plaintiffs did not timely serve responses to the *Baughman* Requests, and the *Baughman* Requests were ultimately ordered admitted on October 28, 1988, and partial summary judgment was granted. *Id*. This was so, even though the plaintiffs provided responses to the *Baughman* Requests on October 24, 1988, which was before the *Baughman* Requests were ordered admitted by the trial court and partial summary judgment was granted. *Id*. Plaintiffs moved to have the deemed admissions withdrawn, the October 24, 1988 responses substituted, and the partial summary judgment vacated, but they were unsuccessful at the trial court. *Id*. at 306 S.C. at 106-07, 410 S.E.2d at 540-41.

The Supreme Court held that the refusal to allow withdrawal of the deemed admissions was an error for two separate—yet each individually sufficient—reasons. *Id*. at 306 S.C. at 109-10, 410 S.E.2d at 542. First, the timely Motion for Protective Order was alone sufficient reason to justify withdrawing the deemed admissions. *Id*. at 306 S.C. at 109, 410 S.E.2d at 542 (citing the Federal interpretation in Wright & Miller).

Another alternative reason also justified withdrawal. *Id*. "Furthermore, Plaintiffs *should have been permitted* to withdraw the deemed admissions and file the responses of October 24, 1988. Rule 36(b), S.C.R.C.P., sets forth the test for withdrawal of an admission and, by implication, the filing of a late response." *Id*. (emphasis added). The Supreme Court stated that both prongs of Rule 36(b) were

satisfied because the admissions involved "key factual elements" and "since Plaintiffs' responses were filed even before the requests were *ordered admitted*, [the] defense could not possibly have been prejudiced." *Id.* at 306 S.C. at 110, 410 S.E.2d at 542 (emphasis added). Because of the error, the matter was "remanded for further proceedings consistent with [the] opinion." *Id.* at 306 S.C. at 118, 410 S.E.2d at 547. Thus, the Supreme Court has interpreted Rule 36(b), SCRCP, to mean that, when the two-prong test is satisfied and the litigant provides answers to Requests for Admission before they are "ordered admitted," the defense could "not possibly have been prejudiced," and the responses should be allowed to be withdrawn or amended.

In unpublished opinions, the Court of Appeals has recognized the mandatory nature of applying the two-step test and identified another key factor. *Phillips v. Bayless*, No. 2006-UP-379, 2006 WL 7287200, at *4 (S.C. Ct. App. Nov. 21, 2006) ("Once a party moves for withdrawal or amendment of the admission, *the court applies* [the two-part test in Rule 36(b), SCRCP.]" (emphasis added)). The Court in *Bennett v. Carter* also confirmed that the trial court had to apply the Rule 36(b) test and remanded because, even though the test was satisfied, the trial court did not permit withdrawal. *Bennett v. Carter*, No. 2015-UP-491, 2015 WL 5968253, at *1 (S.C. Ct. App. Oct. 14, 2015), *aff'd as modified,* 421 S.C. 374, 807 S.E.2d 197 (2017). In the same case, the Court also held that it was timely to submit a motion to withdraw or amend *even after* the trial court stated it was going to grant summary judgment based upon deemed admissions but before the order was entered. *Id.*

Holding otherwise, the Court said, was an error. *Id.* ("We also believe the trial court erred in finding the motion to amend or withdraw the response was untimely.").

Errick met the standard outlined in *Baughman*: He satisfied the two-part test in Rule 36(b), SCRCP, and he served responses to the Requests before the Requests were "ordered admitted." (R. pp. 4 and 140). He also met the standard outlined in *Bennett* because he moved to withdraw or amend the deemed responses before any Probate Order was entered. (R. pp. 4 and 230). The Probate Court and Circuit Court erred by not following this established precedent and guidance. Thus, this Court should follow the Supreme Court's analysis and the unpublished opinions and direct the Probate Court and Circuit Court to allow withdrawal and amendment of Errick's deemed admissions.

II. The Probate Court abused its discretion by misapplying the two-step test in *Scott and* ignoring relevant authority in other cited cases.

A. *Scott v. Greenville Hous. Auth.*

1. The defendant's egregious conduct in *Scott*.

The Probate Order stated that the "*Scott* case is on point and controls the outcome in this case." (R. p. 7, ¶ 14). Thus, it is important to detail the actual facts in *Scott* and the Court of Appeals' ultimate holdings. In *Scott*, a parent, Edgar Scott, left his three-year-old (the "Child") with a babysitter at a property owned by the defendant, Greenville Housing Authority (the "Authority"). *Scott*, 353 S.C. at 642, 579 S.E.2d at 152. The Child severely burned his hands while washing them in a bathroom, and Scott sued the Authority. *Id.* As detailed below, *Scott* involved

egregious actions by the defendant that prejudiced the plaintiff's ability to prosecute its case. Those actions are not present in this case.

Scott served discovery in November 2000, which included requests for inspection of records of the hot water heaters and Requests for Admission. The *Scott* Requests went right to the heart of whether the Authority had knowledge about the hot water heaters and whether the Authority was liable for the Child's injuries. *Id.* at 353 S.C. at 642, 579 S.E.2d at 153. The Authority did not respond to the discovery within thirty days, only produced documents two days before the first-scheduled trial, and never responded to the Requests for Admission. *Id.* The first trial was continued "to allow Scott to file motions to compel and for [the Authority] to provide Scott with discovery." *Id.* at 353 S.C. at 643, 579 S.E.2d at 153. The trial court did, however, strike the Authority's admissions regarding liability and negligence because similar allegations existed in the Complaint and were denied in the Answer. *Id.* Scott's motion to reconsider striking the admissions was unsuccessful. *Id.*

Scott then moved to compel records, and the trial court granted the motion. *Id.* at 353 S.C. at 644, 579 S.E.2d at 153. Still, the Authority refused to timely produce records. When the Authority finally produced additional records, it also produced an affidavit stating "all of the documents concerning the hot water heaters" were given to the Authority's attorney. *Id.* No responsive documents "regarding other inspections or the purchase, manufacture, maintenance, warranty, or any other requested information regarding the hot water heater" were produced. *Id.*

The matter was called for trial a second time on April 23, 2001. *Id*. At trial, the Authority stated that it actually did have more records. *Id*. at 353 S.C. at 644, 579 S.E.2d at 154. After the Authority obtained the new records during a lunch break, a mistrial was granted. *Id*. Scott's request for attorneys' fees and sanctions was granted, "but the court denied Scott's request to strike [the Authority's] denial of knowledge regarding the hot water heaters." *Id*.

The Court of Appeals was forceful in its description of the Authority's actions. *Id*. The "record exemplifies a paradigm of contumacy and intransigence in the discovery arena. A review of the record does *not* reveal a paucity or a modicum of response. The activity by [the Authority] demonstrates a nihility in the discovery activity." *Id*. (emphasis in original).

2. Legal analysis in *Scott*.

The first part of *Scott* is about whether it is proper for Requests for Admission to go to the heart of the matter. *Id*. at 353 S.C. at 645-50, 579 S.E.2d at 154-57. The answer is yes, it is proper. *Id.* at 353 S.C. at 650, 579 S.E.2d at 157 ("if the language of the request for admission specifically goes to an issue in the pleadings, the admission resulting from a party's failure to respond to the request may override the pleadings"). But that issue is not at dispute in this appeal.

The second part of *Scott* is about when admissions can be withdrawn. In *Scott*, it was an abuse of discretion for the trial court to allow the deemed admissions to be withdrawn, but that was only in the context of a "paradigm of contumacy and intransigence in the discovery arena" without any "paucity or a modicum of response."

Id. at 353 S.C. at 652, 579 S.E.2d at 158. The Court held that the "gist and gravamen of the discovery rules mandate full and fair disclosure to prevent a trial from becoming a guessing game or one of ambush for either party. Essentially, the rights of discovery articulated by the rules give the attorney the means to prepare for trial." *Id.* at 353 S.C. at 652, 579 S.E.2d at 158 (internal citations omitted). Only "[w]hen discovery rights are trampled, prejudice must be presumed." *Id.* But otherwise, prejudice is not presumed, and the burden remains on the party who obtained the admission to prove prejudice. Rule 36(b), SCRCP.

The Court found that the trial court failed to address the prejudice caused by the Authority. *Scott* at 353 S.C. at 652, 579 S.E.2d at 158. The Authority did a host of things: (1) "either denied the existence of or did not provide Scott with discovery records it clearly had access to prior to the first date the trial was scheduled;" (2) prevented Scott from obtaining needed discovery, which was in the exclusive control of the Authority; and (3) continued to impede Scott's ability to present his case, including by surprising Scott with records during the second trial. *Id.* Thus, because Scott's discovery rights were trampled and his ability to prosecute the case was clearly prejudiced, the Court of Appeals held it was an abuse to allow the admissions to be withdrawn. *Id.*

B. The Probate Order.

1. Initial findings and holdings.

In the Probate Order, the Probate Court found that Errick's responses to Doug's Interrogatories and RFPs were due October 4, 2023, and his responses to the

Requests were due October 5, 2023. (R. pp. 4-5, ¶¶ 1-3). Per the Court, Errick was late in responding to all Doug's discovery. (R. p. 5, ¶ 6). In its analysis, the Probate Court stated that Doug's Partial MSJ was based on Errick's failure to timely respond to the Requests, specifically Request 9. (R. p. 5, ¶¶ 7 and 9).

The Probate Court cited S.C.Code Ann. § 62-3-407 and held that proponents of a will have the burden to establish *prima facie* proof of execution. (R. p. 6, ¶ 5). Because the Probate Court deemed Request 9—that John Dale did not sign the Will—to be admitted, the Probate Court held there was no way Errick could make a *prima facie* case that the Will was executed. (R. pp. 6-7, ¶¶ 6-12). Thus, summary judgment was appropriate, and the Will was set aside. (R. p. 7, ¶ 12).

2. <u>The Probate Court missed an important aspect of *Baughman* and other important caselaw</u>.

Ultimately, the Probate Court held that Errick could not have the admissions to the Requests withdrawn or amended. (R. p. 10, ¶ 23). To get to this holding, the Probate Court first distinguished cases where withdrawal was permitted, which are generally helpful to Errick. (R. pp. 7-8, ¶ 15). One such case is *Baughman*, which is discussed above. The Probate Court claimed *Baughman* was distinguishable because it included a timely Motion for Protective Order. (R. pp. 7-8, ¶ 15 (implying that *Baughman* was based *only* upon the timely protective order)).

But, as detailed above, that was only one independent and sufficient reason justifying withdrawal of the Requests for Admission in *Baughman* that were ordered admitted. The Probate Court failed to consider the second independent reason, satisfaction of the two-prong test and providing answers before the Requests for

Admission are "ordered admitted." Errick satisfied the test and fulfilled the requirement to provide answers before the Requests were ordered admitted. In sum, the trial court did not have a clear understanding of the applicable law in *Baughman*, which is an error that justifies reversal. *Morris*, 438 S.C. at 587, 885 S.E.2d at 397.

The Probate Court also did not fully consider *Phillips* (only briefly citing in Paragraph 13) or *Bennett*. There was no mention of the holding in *Bennett* that "the trial court erred in finding the motion to amend or withdraw the response was untimely." *Bennett*, 2015 WL 5968253, at *1. In *Bennett*, the motion to withdraw the deemed admitted requests was filed *after* the trial court orally granted summary judgment (but before the order was officially entered). *Id*. In this case, Errick submitted the Motion to Withdraw or Amend before the hearing on the Partial MSJ and well before the Probate Court entered a formal Order. Again, that is an error that justifies reversal.

3. The Probate Court misapplied *Scott*.

Next, the Probate Court applied *Scott*, but it failed to properly analyze and contextualize meaningful factual differences. The Probate Order is somewhat opaque, but it does state that "the necessity of taking prejudice into consideration" is an important consideration, which is true. (R. p. 9, ¶ 21). The Probate Order also states that the Federal Rules are similar to South Carolina's Rules and favorably cited to Federal Law, which is proper. (R. pp. 9-10, ¶ 22). But the Probate Court failed to properly analyze prejudice or compare the facts of *Scott* to the facts of this case, ignored or misinterpreted important Federal guidance on the definition of

"prejudice" as applied to Rule 36(b), and made sweeping conclusions not grounded in fact. (R. pp. 9-10, ¶¶ 22-23).

In Paragraph 22, the Probate Court cited discovery rights in *Scott* that were trampled. Then, the Probate Court concluded in Paragraph 23 that Errick failed to engage in discovery in "good faith" and that Doug's "opportunity for full and fair trial preparation is further prejudiced." Neither conclusion is justified.

First, in *Scott*, the Authority repeatedly failed to comply with the Rules and a judicial Order, caused the first trial to be reset, and conveniently found responsive documents during the middle of the second trial, thus necessitating a mistrial, the need for a third scheduled trial, and severe sanctions. Only then was there a trampling of rights that meant the trial court abused its discretion by allowing withdrawal. None of these facts are present here, and there was no trampling.

Further, Errick participated in discovery in good faith, and Doug has a full and fair opportunity to prepare for trial. Discovery is still ongoing, no trial has been set, no depositions have been taken, experts have not been disclosed or relied upon admissions, and Doug has not identified any specific documents that he is entitled to that will not be produced. To the contrary, Errick's counsel—acting in good faith—provided answers, made supplemental responses, and expressed a willingness to comply with any Order granting Doug's Motion to Compel. (R. p. 92). In stark contrast to *Scott*, Errick missed a deadline by a few days, and there is not sufficient evidence that the delay prejudiced Doug. The entire discovery dispute pre-appeal

lasted significantly shorter than the dispute in *Scott*, and Doug would separately have the opportunity to seek relief for any alleged refusal to comply with future discovery.

Finally, Errick both: (1) served his responses (October 11, 2023); and (2) moved to have the admissions withdrawn (November 27, 2023) well before the Requests were deemed admitted by Order (January 5, 2024). That particular timing was compelling in *Baughman* and *Bennett*, and those courts both found the trial courts erred by ignoring the significant dates. *Baughman*, 306 S.C. at 110, 410 S.E.2d at 542; *Bennett*, 2015 WL 5968253, at *1. This Court should also hold that the lower courts erred and abused their discretion.

III. Proper application of *Scott*, *Baughman*, and other caselaw shows that the Probate Court abused its discretion because it should have allowed Errick to withdraw or amend his responses to the Requests. Consequently, the Probate Order and Circuit Court Order should be reversed.

Errick should have been able to withdraw or amend his responses to the Requests. *Baughman*, *Scott*, *Bennett*, and other cases provide a path for how the lower courts should resolve this type of matter, but that path was ignored in this case. The Probate Court did not evaluate the second independent reason justifying withdrawal identified in *Baughman*, failed to consider *Bennett*, and did not properly weigh the facts present in *Scott*. Consequently, the test in Rule 36(b), SCRCP, that the Probate Court purported to apply was not properly followed. That was an abuse of discretion.

The first part of the Rule 36(b) test—subserving the merits—is satisfied because Request 9 was a crucial issue that was outcome determinative. (R. pp. 7, ¶

12, and 10, ¶¶ 23-24); *see also Barber v. Hobbs*, 313 S.C. 319, 321, 437 S.E.2d 409, 410 (Ct. App. 1993). The second prong—lack of prejudice—is also satisfied because Doug cannot meet his burden to show he is prejudiced by allowing the responses to be amended.

First, the fact that, after withdrawal or amendment, Doug would now have to prove his case on the merits is not prejudice in the context of Rule 36(b), SCRCP. *See Hadley*. Discovery had just started, there was no detrimental reliance on admissions, there was still ample time to find facts and review documents, and trial had not yet been set. Given the early stage, there is no risk of a "guessing game" or "ambush" based on allowing amendment to the responses to the Requests, which are factors that were present in *Scott*. Doug has not shown how he would be prejudiced by having the admissions withdrawn or what different strategic decisions would have been made (other than having to argue the merits). *See Barber*, 313 S.C. at 322, 437 S.E.2d at 410.

Further, although slightly dilatory, Errick has complied with discovery requirements and has not trampled on Doug's discovery rights. *See Scott*. The disputes related to the Motion to Compel were brief, were not in bad faith, and have not caused prejudice relevant to the Requests. Errick's counsel also expressed a willingness to produce any necessary additional responses during discovery (and did provide such documents). (R. p. 92). Therefore, there was no bad faith by Errick, Errick has not trampled Doug's discovery rights, and prejudice cannot be assumed. Instead, it must be proven by Doug. It was not. There is no evidence in the record

that would support a finding that Doug's ability to fully and fairly prepare for trial was specifically impaired by the short delay in providing responses to the Requests.

Moreover, allowing withdrawal will further the purposes of the Rules of Civil Procedure. "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). South Carolina's Supreme Court has expressed the same sentiment: "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). With that fundamental policy backdrop, Rule 36(b) and the applicable caselaw specifically identifies means to have ordered admissions withdrawn so that matters may be tried on their merits. This Court should require the Probate Court and Circuit Court to employ those methods.

By granting partial summary judgment, the Probate Court "improperly deprived" Errick of his right to "a trial of the disputed factual issues." *See Jones ex rel. Jones*, 383 S.C. at 263, 678 S.E.2d at 821. The record before the Probate Court, Circuit Court, and this Court all contains the signed and notarized copy of the Will, which is prima facie evidence sufficient to defeat the Partial MSJ. This case is not simply about Errick's rights, but it is also about protecting all beneficiaries of the

Will, not just Errick. And, more importantly, it is about making sure that John Dale is not improperly deprived of the ability to control the disposition of his estate. The questions presented in this case should be decided on the merits, and, if appropriate, the Will should be enforced by the courts.

In sum, the Probate Order was both controlled by an error of law and based upon evidence not in the Record. The trial court did not have a clear understanding of the applicable law, did not apply sound analysis to the situation, and issued a ruling that failed to follow the law or be supported by the facts. Without the improper refusal to allow the admission to Request 9 to be withdrawn, there is no basis for the Probate Order. Thus, the Probate Court abused its discretion when it granted summary judgment based upon the deemed admission to Request 9. (R. p. 10, ¶ 24); *Morris*, 438 S.C. 582 at 587, 885 S.E.2d at 397. The Probate Order and the Circuit Court Order, which simply affirms the Probate Order, should both be reversed. Errick's responses from October 11, 2023, should be accepted as the official responses to the Requests.

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.

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