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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM YORK COUNTY

Circuit Court of Common Pleas

The Honorable Daniel D. Hall, Circuit Court Judge

Appellate Case No. 2026-001130

In re: Estate of John Dale Williamson

Doug Williamson, Respondent

v.

Erick 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.

BRIEF OF RESPONDENT

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

November 2, 2026
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

Other Parties

Derrick Williamson
1154 Deas Street
Rock Hill, South Carolina 29732

Robin Beckler
300 Thomasboro Road SW
Calabash, North Carolina 28467

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COUNTER-STATEMENT OF ISSUES ON APPEAL

I. Did the Court of Appeals err in affirming the Circuit Court's affirmation of the Probate Court's denial of Errick's Motion to Withdraw?

II. Did the Court of Appeals err in affirming the Circuit Court's affirmation of the Probate Court's grant of Doug's Motion for Partial Summary Judgment?

COUNTER-STATEMENT OF THE CASE

John Dale Williamson ("Decedent" or "Dale") passed away on November 29, 2022 from, *inter alia*, complications caused by Parkinson's disease. (R. p. 24). Dale was unmarried and had no children but was survived by three siblings: Doug Williamson ("Doug"), the respondent in this appeal; Derrick Williamson ("Derrick"); and Robin Beckler ("Robin"). (R. p. 23). Derrick is the father of Errick L. Williamson ("Errick"), the appellant in this matter. (*Id.*).

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. 24, 63–71). 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, 64). Derrick, Errick's father, would take the remaining twenty percent (20%) of Dale's residual estate. (*Id.*). The Will specifically excludes Doug's wife, Crysal Williamson, who is not an intestate heir of Dale. (R. pp. 25, 63). The Will also purports to devise non-probate assets, such as life insurance policies. (R. pp. 24, 64).

On March 15, 2023, Doug filed a Petition to Set Aside Will and for Appointment of Personal Representative.[1] (R. p. 22). On August 30, 2023, Doug served Errick with Interrogatories and Requests for Production ("RFPs") via United States Mail, in compliance with Rule 5(a) of the South Carolina Rules of Civil Procedure ("SCRCP"). (R. pp. 5–6, 13–14). According to Rules 6(e), 33, and 34 of the SCRCP, Errick's responses to the Interrogatories and RFPs were due on or before October 4, 2023. (R. p. 5, ¶ 1; R. p. 13, ¶ 1).

On August 31, 2023, Doug served Errick with nine (9) Requests for Admission ("RFAs") pursuant to Rule 36 of the SCRCP. (R. p. 6, ¶ 2; R. pp. 123–25). RFA No. 9 asked Errick to "[a]dmit John Dale Williamson did not sign the Last Will and Testament attached hereto as Exhibit B."[2] (R. p. 124). Pursuant to Rules 6(e) and 36 of the SCRCP, Errick's responses to the RFAs were due on or before October 5, 2023. (R. p. 6, ¶ 2).

Errick failed to respond to the Interrogatories, RFPs, and/or RFAs during the time prescribed by the SCRCP. (R. p. 6, ¶ 6). Importantly, Errick failed to seek an extension of time during the time prescribed by the SCRCP. (R. p. 6, ¶ 8). Errick also failed to file a motion for protective order within his time to respond to the Interrogatories, RFPs, and RFAs. (*Id.*). Accordingly, each of the RFAs was deemed to be admitted pursuant to Rule 36 of the SCRCP, including, without limitation, RFA

[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, ¶ 9).

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

No. 9, whereby Errick admitted that "John Dale Williamson did not sign the [Will]." (R. p. 8, ¶ 12).

On October 10, 2023, five days after Errick's responses to the RFAs were due, Errick's counsel requested ten (10) additional days to respond to the RFAs, as well as the outstanding Interrogatories and RFPs. (R. p. 165, ¶ 17). On October 11, 2023, Errick attempted to serve untimely responses to the RFAs. (R. p. 165, ¶ 18). On October 12, 2023, Doug's counsel notified Errick's counsel that Errick's untimely October 10, 2023, extension request was denied, that a Motion to Compel would be filed, and that Errick's counsel would not seek a hearing on the Motion to Compel before October 20, 2023 (the date by which Errick's counsel would provide response to the Interrogatories and RFPs). (R. p. 166, ¶ 19). The Probate Court filed the Motion to Compel on October 19, 2023, which is the day before Errick served responses to Doug's Interrogatories and RFPs. (R. p. 14, ¶ 8).

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. 14, ¶ 8, pp. 182–88). The Deficiency Letter noted a myriad of deficiencies in Errick's discovery responses, including his responses to Interrogatories 3, 5, 8, 10, 12, 13, 15, and 18. (R. p. 14, ¶ 8, p. 182–88). Errick also had not signed and served a verification for the Interrogatories, as required by Rule 33, SCRCP. (R. p. 14, ¶ 7). The Deficiency Letter further identified deficiencies in Errick's responses to RFPs 2, 6, 8, 12, and 13. (R. p. 14, ¶ 8, pp. 182–88). The Deficiency Letter demanded supplemental responses by November 3, 2023. (R. pp. 182–88).

On November 6, 2023, Doug filed a Motion for Partial Summary Judgment pursuant to Rule 56 of the SCRCP, regarding his fifth cause of action related to the execution of the Will. (R. pp. 189–222). On November 27, 2023, well over a month after Errick's responses to the RFAs were due, 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. 231–34). 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 substantively to Doug's Motion for Partial Summary Judgment. (R. pp. 235–43).

Further, Errick did not respond to the Deficiency Letter until November 22, 2023, at which point he supplemented certain responses, without supplementing all of them. (R. p. 15). Errick flatly 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. 15, 223–24). Errick filed a Motion to Strike Petitioner's Motion to Compel (the "Motion to Strike") on November 27, 2023. (R. pp. 231–34). Again, Errick did not file anything directly in opposition to Doug's Motion for Partial Summary Judgment. (R. pp. 231–43).

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 Motions to Withdraw and to Strike. (R. pp.

81–109). Pursuant to her written Order filed on January 5, 2024 (the "Probate Court Order"), Judge Woodruff granted Doug's Motion for Partial Summary Judgment and denied Errick's Motion to Withdraw. (R. pp. 5–17).

On January 11, 2024, Errick appealed the Probate Court Order to the Circuit Court for York County, South Carolina. On August 2, 2024, the Honorable Daniel Hall heard oral arguments from counsel for Doug and Errick. (R. p. 110). Via an Order filed on August 6, 2024 (the "Circuit Court Order"), Judge Hall affirmed the Probate Court Order. (R. pp. 18–20).

On September 4, 2024, Errick appealed the Circuit Court's Order, which affirmed the Probate Court Order, by filing and serving a Notice of Appeal with the Court of Appeals. (R. pp. 301–312). In an Opinion filed February 18, 2026, the Court of Appeals affirmed the Circuit Court Order. (R. pp. 385–88). Errick then filed a Petition for Rehearing on March 5, 2026, which was properly denied in an Order filed April 13, 2026. (R. pp. 389–98). On May 13, 2026, Errick filed and served his Petition for a Writ of Certiorari, to which Doug responded and objected on June 12, 2026. (R. pp. 401–25). Certiorari was granted by Order of this Court on August 12, 2026.

STANDARD OF REVIEW

I. Motion to Withdraw

"A trial court's rulings 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) (internal citations omitted).

"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, 551, 328 S.E.2d 91, 97 (Ct. App. 1985) (emphasis added); *see also First Sav. Bank v. McLean*, 314 S.C. 361, 363, 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)).

II. Motion for Summary Judgment

The standard of review for summary judgment motions is the same as the standard in Rule 56 of the SCRCP. *Matter of Est. of Smith*, 419 S.C. 111, 116, 796 S.E.2d 158, 160 (Ct. App. 2016). Summary judgment is appropriate when it is clear there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Baird v. Charleston County*, 333 S.C. 519, 520, 511

S.E.2d 69, 74 (1999); Rule 56(c), SCRCP. The proper standard for a party opposing a motion for summary judgment is the "genuine issue of material fact" standard. *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 460–61, 892 S.E.2d 297, 300 (Aug. 23, 2023). The nonmoving party must "do more than simply show there is some metaphysical doubt as to the material facts", and they "must come forward with specific facts showing there is a genuine issue of material fact for trial." *See Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (internal citations and quotation marks omitted) (emphasis in original). Rule 56(e) specifically prohibits the nonmoving party from resting upon the mere allegations or denials of its pleadings. *Id*; Rule 56(e), SCRCP. In ruling on a motion for summary judgment, the Court may consider the pleadings, depositions, interrogatory answers, admissions, and affidavits in determining whether there is a genuine issue of fact for trial. *See Thomas v. Waters*, 315 S.C. 524, 526, 445 S.E.2d 659, 661 (Ct. App. 1994) (citing *Dickert v. Metropolitan Life Ins. Co.*, 306 S.C. 311, 313, 411 S.E.2d 672, 673 (Ct. App. 1993)).

ARGUMENTS

I. The Court of Appeals did not err in affirming the Circuit Court's affirmation of the Probate Court's denial of Errick's Motion to Withdraw.

A. The Probate Court, the Circuit Court, and the Court of Appeals each applied the plain and unambiguous language of Rule 36 of the SCRCP in determining Doug's RFAs were deemed admitted by Errick.

It is undisputed that Errick did not timely respond to the RFAs. It is also undisputed that Errick failed to timely seek an order of protection or an extension of time to answer the RFAs.

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

> 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 his attorney....

Rule 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 Hous. Auth.*, 353 S.C. 639, 647, 579 S.E.2d 151, 155 (Ct. App. 2003).

Rule 36(b), SCRCP, states, in relevant part:

> 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.

Rule 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.

According to the plain language of Rule 36, if a party fails to timely respond to requests for admission, those requests are conclusively admitted for purposes of that litigation. Rule 36, SCRCP; *see also Scott*, 353 S.C. at 645–46, 579 S.E.2d at 154 ("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."). 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.

Doug's RFAs were deemed admitted when Errick failed to timely respond or otherwise seek relief via an extension or a protective order. Errick's argument that an admission must "ordered" to be deemed admitted therefore contradicts the plain and unambiguous language of Rule 36 and the Court of Appeals' ruling in *Scott*. Rule 36 of the SCRCP expressly provides two ways for a party responding to RFAs to obtain additional time in which to respond: (1) by permission of the Court; or (2) by stipulation, in writing, of the parties. *See* (R. p. 386) ("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 . . . the party to whom the request is directed serves upon the party requesting the admission a written

answer or objection addressed to the matter.") (quoting Rule 36(a)). South Carolina caselaw clarifies that, where appropriate, the filing of a motion for protective order may enable a responding party to ask the court for additional time to answer pending RFAs. *See Baughman*, 306 S.C. at 109–10, 410 S.E.2d at 542.

Errick never petitioned the Court for additional time to respond to the RFAs during his thirty (30) day response window. Additionally, Errick waited until after his RFA responses were due before asking Doug's counsel for an additional ten (10) days to respond. Such request was not timely per the plain language of Rule 36(a) of the SCRCP. Errick then waited another six weeks (until *after* Doug's Motion for Summary Judgment was filed) before attempting to withdraw the admissions.

Upon review of these facts, the Probate Court, the Circuit Court, and the Court of Appeals each properly determined that Doug's RFAs were deemed admitted due to Errick's failure to timely respond.

B. The trial court may, but is not required to, allow the withdrawal of admissions.

While South Carolina trial courts "may permit" the withdrawal or amendment of admissions of requests for admission, they are not required to do so. Rule 36, SCRCP. Rule 36(b) of the SCRCP states, "Any matter admitted under this rule is conclusively established **unless** the court on motion permits withdrawal or amendment of the admission", and "the court **may** permit withdrawal or amendment" . . . ." Rule 36(b), SCRCP (emphasis added). This rule enables South Carolina judges to evaluate whether they believe withdrawal may or may not be appropriate given the specific circumstances presented to them. *See generally Nexstar Media Grp., Inc.*

v. Davis Roofing Grp., 431 S.C. 593, 603, 848 S.E.2d 597, 602 (Ct. App. 2020) ("However, 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."). This discretion to allow the withdrawal of admissions lies solely with the trial court. The Probate Court noted its discretion in the Probate Court Order. (R. p. 10, ¶ 20) ("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).

C. The Probate Court, the Circuit Court, and the Court of Appeals each properly determined that Errick was not entitled to withdraw his admissions.

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: (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." Rule 36(b), SCRCP (emphasis added); *see also Scott*, 353 S.C. at 651, 579 S.E.2d at 157 (quoting *Com. Ctr. of Greenville, Inc. v. W. Powers McElveen & Assocs., Inc.*, 347 S.C. 545, 557, 556 S.E.2d 718, 724 (Ct. App. 2001)).

The Court of Appeals properly found that Errick was unable to satisfy this two-prong test, holding "we find Doug demonstrated he would be prejudiced by the amendment or withdrawal of Errick's admission." (R. p. 386).[3] The Court of Appeals quoted *Scott*, on-point South Carolina precedent, emphasizing, "discovery is the quintessence of preparation for trial and, when discovery rights are trampled, prejudice **must be presumed**." *Scott*, 353 S.C. at 651, 579 S.E.2d at 157 (*quoting Downey v. Dixon*, 294 S.C. 42, 362 S.E.2d 317 (Ct. App. 1987)) (emphasis added). In contrast, Errick seeks to rely on the definition of "prejudice" from *Hadley*, a Ninth Circuit case, to suggest a heightened standard of prejudice stemming from "the difficulty a party may face in proving its case". (Brief of Petitioner, p. 9 n.4) (citing *Hadley v. United States*, 45 F.3d 1345, 1348 (9th Cir. 1995)). However, reliance on *Hadley* is improper where South Carolina cases—like *Scott*—directly address the prejudice element and where South Carolina is part of the Fourth, not Ninth, Circuit.

During the Probate Court Hearing, Doug's counsel argued extensively that Doug would be prejudiced if withdrawal of the admissions was allowed. Without limitation, Doug argued that Errick had failed to participate in discovery in good faith. (R. p. 86, line 10–p. 87, line 1; p. 88, line 5–p. 91, line 9). Further, Doug argued that key documents and information were solely in Errick's possession, particularly because Errick, both before and after Dale's death, lived in Dale's house; controlled Dale's finances and medical care; received Dale's mail; controlled who could visit

[3] In prior briefs and arguments, Doug has disputed the Court of Appeals' contention that the first element relating to the merits of the proceeding was met. However, these arguments are not at issue in the instant appeal, so, to the extent necessary, Doug relies on his prior arguments in his appellate brief regarding the same.

Dale; dealt with Dale's in-home medical provider; acted as the personal representative of Dale's Estate; and possessed the communications between himself and the purported witnesses to the Will. (R. p. 89 line 19–p. 91, line 9). The Probate Court also 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 refusal to supplement his responses to many of Doug's requests. (R. p. 11). Having considered all of this evidence and the arguments of counsel, the Probate Court ruled:

> 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 Probate Court's ruling is grounded in both South Carolina law and supported by evidence. The Circuit Court and the Court of Appeals, after their own reviews, affirmed the Probate Court's denial of Errick's Motion to Withdraw.

i. Neither the Probate Court, the Circuit Court, nor the Court of Appeals misapplied *Scott.*

Errick attempts to argue that the Probate Court and the Court of Appeals misapplied *Scott*. Errick primarily takes exception with the factual distinctions that he believes the Probate Court should have drawn between *Scott* and the case at bar. However, whether *Scott* and the instant matter are factually analogous is not at issue

on an abuse of discretion review. Rather, the question is whether the Probate Court's and/or the Court of Appeals' Orders are controlled by an error of law and/or if they have any factual support. *See generally Stokes-Craven Holding Corp.*, 416 S.C. at 536, 787 S.E.2d at 495. Errick concedes that, in *Scott*, the Court of Appeals determined that prejudice existed where the Greenville Housing Authority failed to participate in discovery in good faith. (Brief of Petitioner, p. 8). Errick does not, and cannot, allege that he participated in discovery in good faith in the case at bar. Rather, Errick argues that the discovery abuses in *Scott* were more egregious than Errick's, and the Probate Court and Court of Appeals' reliance on *Scott*, therefore, constitutes an error of law and an abuse of discretion. (*Id.*).

As set forth above, the record before the Probate Court contained evidence of Errick's failure to participate in discovery in good faith, and the Probate Court Order directly cited to such failure. (R. p. 9, ¶ 17; R. p. 11, ¶ 23). Therefore, the Probate Court and the Court of Appeals each applied a general principle of *Scott* (that failure to participate in discovery in good faith may establish prejudice) against the evidence before the Probate Court and determined that, in this case, Errick was unable to satisfy the two-prong test under Rule 36(b). (R. p. 11, ¶ 23, R. pp. 386–87).

The Probate Court was in the best position to analyze and apply the evidence before it. 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).

Additionally, and importantly, neither the Probate Court nor the Court of Appeals relied exclusively on *Scott*. The Probate Court cited no less than seven (7) cases in addition to *Scott*, including *Baughman, et al. v. American Telephone & Telegraph Co.*, 410 S.E.2d 537 (1991); *Commerce Center of Greenville v. McElveen*, 556 S.E.2d 718 (Ct. App. 2001); *Nexstar Media Group v. Davis*, 848 S.E.2d 597 (Ct. App. 2020); *Barber v. Hobbs*, 437 S.E.2d 409 (Ct. App. 1993); *Collins Entertainment v. White*, 611 S.E.2d 262 (Ct. App. 2005); *Adams v. Orr*, 194 S.E.2d 232 (1973); and the unpublished opinion in *Phillips v. Bayless* (No. 2006-UP0379)) (R. p. 8, ¶ 13). Similarly, when affirming the lower courts' rulings, the Court of Appeals cited, *Nexstar* and *Commerce Center of Greenville*, in addition to *Scott*. (R. pp. 386–87).

ii. The Court of Appeals is not required to rely on *Baughman*.

Errick argues that the Court of Appeals should have relied primarily on *Baughman*. However, the facts in *Baughman* are not analogous to the facts in this case. In *Baughman* there were "900 pages" of requests for admission at issue. *Baughman*, 306 S.C. at 104, 106, 410 S.E.2d at 539–40. Given the sheer volume of

requests, the plaintiffs in *Baughman* timely filed a motion for protective order, arguing the requests were unduly burdensome and improper in form, and the Plaintiffs required additional time to prepare responses and collect necessary information. *See id.*, 306 S.C. at 106, 410 S.E.2d at 540. Importantly, the plaintiffs timely filed their motion for protective order within the time to respond to the requests for admission. *Id.* Thereafter, but before the trial court ruled on the motion for protective order, the plaintiffs responded to the requests for admission. *Id.* Subsequently, the trial court entered an order deeming that the requests for admission admitted and denying plaintiffs' motion for protective order. *Id.*

Although the defendant argued the plaintiffs had admitted the 900 pages of requests by failing to timely respond, this Court determined that a timely motion for protective order "made in good faith . . . operates to prevent the matters from being deemed admitted." *Id.*, 306 S.C. at 109, 410 S.E.2d at 542. Because the plaintiffs took appropriate steps to protect their interests by timely filing a motion for protective order, this Court determined that the defense in that case was not prejudiced by the withdrawal of the admissions. *Id.*, 306 S.C. at 110, 410 S.E.2d at 542.

Additionally, the plaintiffs in *Baughman* filed a substantive motion to set aside all partial summary judgments that had been granted. *Id.*, 306 S.C. at 105–06, 410 S.E.2d at 539–40. The Plaintiffs also submitted a notarized letter as evidence that the defendant's motions for partial summary judgment should be denied. *Id.*

The legal and factual distinctions between *Baughman* and the case at bar are stark and clearly establish why *Baughman* is not applicable. First, Doug's RFAs to

Errick, unlike the 900 pages of requests at issue in *Baughman*, were narrowly tailored; limited in number; and for the proper purpose of asking for admissions, or conversely, denials. (R. pp. 123–24). Second, Errick failed to move for a protective order within the time to respond, and he failed to timely seek an extension of his time to respond. As noted in the Probate Court Order, which was subsequently affirmed by the Circuit Court and the Court of Appeals, "Errick failed to timely answer, object, or otherwise respond to the Interrogatories, RFPs, or RFAs"; "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 answer". (R. p. 6, ¶¶ 6–8). Third, as discussed in more detail below, Errick failed to properly respond to Doug's Motion for Partial Summary Judgment. Without limitation, Errick, unlike the plaintiffs in *Baughman*, failed to submit an affidavit or other evidence refuting the arguments raised in Doug's Motion for Partial Summary Judgment. The Court of Appeals therefore did not err by relying on cases other than *Baughman* to inform its affirmation of the Probate and Circuit Court Orders.

II. The Court of Appeals did not err in affirming the Circuit Court's affirmation of the Probate Court's grant of Doug's Motion for Partial Summary Judgment.

The Court of Appeals properly affirmed the grant of Doug's Motion for Partial Summary Judgment. In support of his Motion for Partial Summary Judgment, Doug explained that Errick had admitted RFA No. 9 and was "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. 193–94). Errick failed to offer any evidence in opposition to Doug's Motion for Partial Summary Judgment. Errick's sole response to Doug's Motion for Partial Summary Judgment was the Motion to Withdraw. As such, Errick failed to "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 citations omitted) (emphasis in original). As the proponent of the Will, Errick failed to meet, or raise a genuine issue of material fact as to, his burden of proof of due execution. (R. p. 7) ("Proponents of a will have the burden of establishing prima facie proof of due execution in all cases. S.C. Code. Ann. § 62-3-407 (2013, as amended)).

The Court of Appeals "view[ed] the evidence in the light most favorable to Errick" and still properly determined that "the circuit court did not err in affirming the probate court's grant of partial summary judgment in favor of Doug because Errick did not raise a genuine issue of material fact as to whether the will was properly executed." (R. p. 387). Contrary to Errick's assertion that "the Court of Appeals overlooked Errick's other arguments", upon review of the record and the Probate Court's Order, the Court of Appeals properly determined that Errick offered no evidence rebutting Doug's Motion for Partial Summary Judgment. *See generally* (*id.*; *see also* Brief of Petitioner, p. 10). Errick cannot now argue that the Court of Appeals' opinion was error, when Errick cannot, and does not even attempt, to show that he substantively responded to Doug's Motion for Partial Summary Judgment as required by Rule 56 of the SCRCP.

CONCLUSION

The Court of Appeals properly affirmed the Circuit Court's affirmation of the Probate Court's denial of Errick's Motion to Withdraw based on the clear wording of Rule 36 of the SCRCP and supporting South Carolina caselaw. Additionally, the Court of Appeals properly affirmed the Circuit Court's affirmation of the Probate Court's grant of Doug's Motion for Partial Summary Judgment, as Errick failed to substantively respond to the Motion and failed to provide any specific facts in opposition thereto. Doug therefore respectfully requests that this Court affirm the Court of Appeals' affirmation of the Circuit Court's affirmation of the Probate Court's denial of Errick's Motion to Withdraw and grant of Doug's Motion for Partial Summary Judgment.

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

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Charlotte, North Carolina