

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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OCT 09 2020
SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
H.W. Funderburk, Jr., Administrative Law Judge

Case No.: 20-ALJ-22-0070-AP

Appellate Case No. 2020-000981

Robert M. Ardis,

Appellant,

v.

South Carolina Department of Employment and
Workforce and Sykes Enterprises, Inc.,

Respondents.

RETURN TO APPELLANT'S MOTION TO STRIKE AND TO IMPOSE SANCTIONS

Respondent South Carolina Department of Employment and Workforce (the Department) submits this return to Appellant Robert M. Ardis's Motion to Strike and for Sanctions. The Department submits Appellant's motion is based primarily on Appellant's confusion and a fundamental misunderstanding of Rule 408, SCRE, which contemplates the admissibility of offers to compromise for the purpose of proving liability during a trial. Because the Department has not violated Rule 408, the Department respectfully requests this Court deny Appellant's motion. Also, the Court should deny Appellant's request for sanctions because the request is based on Rule 11, SCRCF, which is inapplicable to this appeal.

I. Background

On or about August 3, 2020, Appellant filed a Motion to Expedite with this Court. The Department filed a Return to Appellant's Motion to Expedite and included as an exhibit an email Appellant sent to the Department. The Department's return contained multiple arguments and included the argument that the Court should deny Appellant's Motion to Expedite because Appellant failed to serve the Department with the motion. The Department included Appellant's email in its return because it was relevant to the service issue.

Now, Appellant has filed this motion asking the Court to strike the Department's return because he believes his email was "confidential" as an offer of compromise or settlement negotiation. (Appellant's Motion pp.2, 4-8). Appellant also requests this Court impose sanctions on the Department under Rule 11, SCRPC. (Appellant's Motion pp.8-10). It appears Appellant's request for sanctions is based simply on the Department's act of opposing his Motion to Expedite. (Appellant's Motion p.9, paragraph 18).

II. This Court should deny Appellant's motion because the Department did not violate Rule 408 by attaching Appellant's email as an exhibit to the Department's return when the Department offered the email to prove something other than liability and the email was not part of an offer to compromise.

This Court should deny Appellant's Motion to Strike and Impose Sanctions because the Department did not violate Rule 408 by attaching Appellant's email as an exhibit to the Department's return when the Department offered the email to prove something other than liability and the email was not part of an offer to compromise.¹ In its entirety, Rule 408 states,

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim

¹ The Department also questions whether the Rules of Evidence even apply to exhibits filed with this Court in support of motions when the South Carolina Appellate Court Rules govern motions practice and procedure for appeals.

which was disputed as to either validity or amount, *is not admissible to prove liability* for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. *This rule also does not require exclusion when the evidence is offered for another purpose*, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

(emphasis added). The notes to Rule 408 also state evidence relating to settlements is not admissible to prove liability, but "may be admissible for some other purpose."

Rule 408 and its notes are explicit that evidence relating to settlement negotiations is inadmissible only when offered to prove liability, and when offered for another purpose, the evidence is admissible. The case law is consistent with the rule. *See OHG of Lake City, Inc. v. McCutcheon*, 360 S.C. 196, 209, 600 S.E.2d 105, 111 (Ct. App. 2004) ("Because the law favors compromises, our appellate courts have long held that testimony as to negotiations and offers to compromise are inadmissible *for proving liability*." (emphasis added)); *Commerce Ctr. of Greenville, Inc. v. W. Powers McElveen & Assocs., Inc.*, 347 S.C. 545, 558, 556 S.E.2d 718, 725 (Ct. App. 2001) ("The courts favor compromise; accordingly, evidence relating to settlements is generally not admissible *to prove liability*." (emphasis added)).

Here, the Department did not violate Rule 408 because it submitted Appellant's email for a purpose other than to prove liability. In his Motion to Expedite, Appellant claimed he was pro se and requested the Court excuse his informality and unfamiliarity with legal proceedings. In its return, the Department argued the Court should deny Appellant's motion because he failed to serve the Department with the motion. To counter Appellant's claim that he was unfamiliar with legal proceedings and may have been unaware of the service requirement, the Department attached Appellant's email wherein Appellant described his extensive legal background and knowledge.

Thus, the Department offered Appellant's email to show Appellant had an extensive legal background and knowledge of legal proceedings and, thus, should have been aware of the service requirement. Offering the email for that purpose is proper under Rule 408 and does not require exclusion. *See* Rule 408 (stating, "[t]his rule does not require exclusion when the evidence is offered" for a purpose other than to prove liability). Indeed, "liability" as that term is used in Rule 408 is not even an issue in this appeal.² For this appeal and the issues involved, this Court will not determine liability of Appellant at any point. Thus, the Department did not violate Rule 408 because it offered Appellant's email to prove something other than liability.

Further, Appellant's email was not part of an offer to compromise. The email was merely a demand that the Department pay Appellant unemployment benefits and an attempt to intimidate the Department. The email also threatened further legal action against the Department. Throughout these administrative proceedings, the Department and Appellant have never engaged in settlement negotiations. Appellant cannot rely on Rule 408 to shield his harassing and threatening communications simply by adding a sentence stating "consider this email a 'settlement negotiation.'" Appellant's email was not part of settlement negotiations or an offer to compromise. Thus, Rule 408 does not prohibit the Department from submitting Appellant's email to show he has extensive legal knowledge and experience, contrary to representations he made to this Court. Accordingly, the Court should deny Appellant's Motion to Strike and for Sanctions.

² When deciding appeals, this Court would rarely, if ever, determine liability of a party. Liability is determined at the circuit court level, and this Court engages in a review of the proceedings below for legal error.

III. This Court should deny Appellant's Motion for Sanctions because it is based on Rule 11, SCRCP, which applies to civil proceedings and not appeals pending before this Court, and even if Rule 11 applied to this appeal, the Department has not committed any sanctionable conduct.

This Court should deny Appellant's Motion for Sanctions because it is based on Rule 11, which applies to civil proceedings and not appeals pending before this Court. Also, even if Rule 11 applied to this appeal, the Department has not committed any sanctionable conduct. The South Carolina Rules of Civil Procedure govern procedure "in all suits of a civil nature." Rule 1, SCRCP. Rule 1 also notes that Rule 81, SCRCP governs applicability of the rules. Rule 81 states, "These rules, or any of them, shall apply to every trial court of civil jurisdiction within this state, within the limits of the jurisdiction and powers of the court provided by law, and the procedure therein shall conform to these rules insofar as practicable." In contrast, Rule 101, SCACR states that Part II of the South Carolina Appellate Court Rules "governs practice and procedure in appeals, petitions, and motions in the Supreme Court and the Court of Appeals."

Based on these rules and their applicability to different types of legal proceedings, the Rules of Civil Procedure do not apply to appeals pending before this Court. The South Carolina Appellate Court Rules apply to this appeal. Because Rule 11 is found in the Rules of Civil Procedure, it is inapplicable to this appeal, and the parties are not bound by its provisions. Thus, because Appellant's Motion for Sanctions is based on Rule 11, this Court should deny the motion.

Further, even if Rule 11 applied to this appeal, the Court should deny Appellant's motion. Appellant's Motion for Sanctions appears based on the Department opposing his Motion to Expedite and the Department's submission of his email in an alleged violation of Rule 408, SCRE. However, as discussed above, the Department did not violate Rule 408, and the Court should deny any motion for sanctions that is based on a violation of Rule 408. Accordingly, this Court should deny Appellant's Motion for Sanctions because it is based on Rule 11, which applies to civil

proceedings and not appeals pending before this Court, and even if Rule 11 applied to this appeal, the Department has not committed any sanctionable conduct.

IV. Conclusion

This Court should deny Appellant's Motion to Strike and Impose Sanctions because the Department did not violate Rule 408 by attaching Appellant's email as an exhibit to the Department's return when the Department offered the email to prove something other than liability and the email was not part of an offer to compromise. Also, this Court should deny Appellant's Motion for Sanctions because it is based on Rule 11, which applies to civil proceedings and not appeals pending before this Court, and even if Rule 11 applied to this appeal, the Department has not committed any sanctionable conduct. Therefore, the Department respectfully requests the Court deny Appellant's Motion to Strike and for Sanctions.

Respectfully Submitted,

s/ Steven A. Jordan, Jr.

Steven A. Jordan, Jr. (SC Bar # 100314)
SC Department of Employment and Workforce
Post Office Box 8597
Columbia, SC 29202
803.737.0395 (phone)
803.737.0124 (fax)
Legal@dew.sc.gov

**Attorney for Respondent SC Department of
Employment and Workforce**

October 5, 2020

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Robert M. Ardis,

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Respondents.

PROOF OF SERVICE

I certify that I have served the Respondent DEW's Return to Appellant's Motion to Strike and To
-Impose Sanctions on the parties in this case by depositing a copy of it in the United States Mail,
postage prepaid, and by email on October 5, 2020, addressed to the parties at their addresses of
record:

Robert M. Ardis
105 North Guignard Dr
Sumter SC 29150
Michael.ardis2001@gmail.com

Sykes Enterprises Inc.
PO Box 16560
Clearwater, FL 33766

October 5, 2020



Kristi Chesley

South Carolina Department of Employment and
Workforce
Post Office Box 8597
Columbia, South Carolina 29202
(803) 737-0395

P.O. Box 8597
1550 Gadsden Street
Columbia, SC 29202
dew.sc.gov



Henry McMaster
Governor

G. Daniel Ellzey
Executive Director

Post Office Box 8597
Columbia, SC 29202
Telephone: (803) 737-0395
Fax: (803) 737-0124

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SC Court of Appeals

VIA EMAIL AND US MAIL

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Robert M. Ardis v. South Carolina Department of Employment and
Workforce and Sykes Enterprises, Inc.
Appellate Case No: 2020-000981

Dear Ms. Kitchings:

Enclosed is the original of the Respondent DEW's Return to Appellant's Motion to Strike and To Impose Sanctions in the above referenced case. A Proof of Service is also included in this packet.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Kristi Chesley".

Kristi Chesley
Administrative Legal Assistant for
Steven Jordan
Attorney for Respondent South Carolina
Department of Employment and Workforce



**P.O. Box 995
Columbia, S.C. 29202**

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