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STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

C.A. Number: 2019-CP-42-02212

Mark Douglas Hill, III, by and through his Duly appointed Guardian ad Litem, Helen Kaci Hill,

Plaintiff,

vs.

Cranston Print Works Company D/B/A Cranston Trucking Company, Ryder Truck Rental, Inc., Optimum Staffing, Inc. D/B/A Optimum Logistic Solutions, and Jason E. Burdette,

Defendants.

ORDER

RECEIVED
Dec 29 2020
SC Court of Appeals

Gregory Jones, Sr., as the Father and Duly Appointed Personal Representative of the Estate of Jessica Dawn Jones, Deceased,

Plaintiff,

vs.

Cranston Print Works Company D/B/A Cranston Trucking Company, Ryder Truck Rental, Inc., Optimum Staffing, Inc. D/B/A Optimum Logistic Solutions, and Jason E. Burdette,

Defendants.

C.A. Number: 2019-CP-42-02215

The instant matter came before the Court on the Defendants' Motion to Alter or Amend this Court's Order of October 8, 2020. The Court has reviewed the instant Motion as well as considered the Memoranda of Counsel that was submitted and has determined that no additional hearing is necessary for adjudication of the instant Motion. After much contemplation and reflection with special attention paid to the Memoranda of both parties, the Court determines that

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the Defendants' instant Motion to Alter or Amend is hereby DENIED, and the Court's earlier Order of October 8, 2020 remains in full effect.

LEGAL STANDARDS

It is clear that the proper procedure for correcting factual errors in an Order is to file a motion to alter or amend pursuant to the Rules of Civil Procedure. *See Doe v. Doe*, 324 S.C. 48, 552 S.E.2d 329 (Ct. App. 1996). The South Carolina Court of Appeals has made clear that a party cannot use a motion to alter or amend a judgment to present an issue that the party could have raised prior to the judgment but did not. *See Gartside v. Gartside*, 383 S.C. 35, 677 S.E.2d 621 (Ct. App. 2009); *See also Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990); *Poch v. Bayshore Concrete Products/South Carolina, Inc.*, 386 S.C. 13, 686 S.E.2d 689 (Ct. App. 2009). Further, as it pertains to discovery disputes in general, a trial court's rulings on discovery matters will not be disturbed absent a clear abuse of discretion. *See Arthur v. Sexton Dental Clinic*, 368 S.C. 326, 628 S.E.2d 894 (Ct. App. 2006). Abuse of discretion occurs when there is no evidence to support trial judge's factual conclusion or when the ruling is based upon error of law. *See Hedgepath v. American Tel. & Tel. Co.*, 348 S.C. 340, 559 S.E.2d 327 (Ct. App. 2001).

CONCLUSIONS OF LAW

With respect to the instant Motion, the Court first takes note that the Defendants did not contend any error with several portions of the Court's Order of October 8, 2020. Specifically, the Defendants took no issue with respect to the Court's determination that Defendant Burdette's VA records were to be submitted to the Court for *en camera* review within ten (10) days of the Order of October 8, 2020. Additionally, the Defendants did not challenge the Order as it pertained to the taking of depositions of fact witnesses under Rule 30(a). The Defendants however did assert that

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the Court's ruling as to the "raw video footage" of interviews for the purpose of a mediation video was improper, and that the Court erred in determining that Defendant Burdette should be required to correct his answers to Requests for Admission. The Court will address each of these contentions of error separately.

Production of "Raw Video Footage"

Turning to the Defendants' first contention of error, the Court notes that the Defendant has asserted that the Court should have allowed the discovery of the "raw video footage" of interviews conducted for the sole purpose of the Plaintiff's mediation video. For the foregoing reasons, the Court declines to adopt the Defendants' position. While the Defendants first contend that all recorded statements are discoverable under Rule 26 of the South Carolina Rules of Civil Procedure, they fail to appreciate that the purpose for which these particular interviews were taken is the very reason why they fall outside of the purview of Rule 26. Rule 8(a)(5)of the South Carolina Rules of Alternative Dispute Resolution is clear and unambiguous when it states that "[A]ll records, reports, or other documents **created solely for use in the mediation** or received by a mediator while serving as a mediator" are to be deemed as confidential. *See* Rule 8(a)(5), SCADR (emphasis added). Here there is no dispute by any party that these interviews were conducted solely for the purpose of creating a video for the use at mediation.

Additionally, Defendants, by and through their Motion and Supporting Memoranda of Counsel, seek to gut the express language of Rule 8(a)(5) in favor of the later added Rule 8(h). Such a position is unfounded and unsupported. Rule 8(h) which is entitled "Admissible Information" states that "[I]nformation that would be admissible or subject to discovery does not become inadmissible or protected from discovery by reason of its disclosure or use in a mediation." *See* Rule 8(h), SCADR. Defendants have argued that because Rule 8(h) was adopted after Rule

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8(a)(5) that this somehow operates to preclude the express language of Rule 8(a)(5). However, nowhere in Rule 8(h) does it expressly state that it invalidates the protections afforded under Rule 8(a)(5). If the Court were to accept the position that Defendants are advancing, then it would render the clause or provision totally meaningless and violate the rules of statutory construction. *See Lightener v. Hampton Hall Club, Inc.*, 419 S.C. 357, 798 S.E.2d 555 (2017). Rule 8(h) prevents parties from simply using documents that have been produced in discovery at a mediation to shield them from admission at a trial. However, such a scenario is very different when the materials were created by a party solely for the purpose of mediation and otherwise would have never been created and thus subject to discovery.

Finally, the Defendants have argued that under Rule 26(b)(3), the footage should be discoverable. Again, such a position is unavailing. It is undisputed that Rule 26(b)(3) authorizes the production of protected information upon a showing of "substantial need of the material in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means." *See* Rule 26(b)(3), SCRCP. Here, the Defendants have made no showing that in any way comes close to satisfying the Rule. In fact, the Defendants possess the ability to depose each witness that was interviewed for the purpose of the mediation video; and, as such, no undue hardship exists. For each of the aforementioned reasons the Defendants' Motion to Alter or Amend the Court's Order of October 8, 2020, as it pertains to the "raw video footage" of the witness interviews in the Plaintiffs' mediation video is **DENIED**.

Burdette's Answers to Requests to Admit

Next, the Court addresses the Defendants' Motion to Alter and/or Amend the Court's Order regarding the required amendments of Defendant Burdette's Answers to Requests to Admit. As

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was previously noted, Rule 26(b)(1) of the South Carolina Rules of Civil Procedure makes clear that:

> [P]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party. . . . It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to discovery of admissible evidence."

See Rule 26(b)(1), SCRCP. Further, when discovery is expounded or answered, the Rules provide that:

> "[E]very request for discovery or response or objection thereto made by a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. . . The signature of the attorney or party constitutes ***a certification in accordance with Rule 11***."

Rule 26(g), SCRCP (emphasis added). Rule 11(a) of the South Carolina Rules of Civil Procedure is clear that "[T]he written or electronic signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay. . . If a pleading, motion, or other paper is signed in violation of this Rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction. . ." *See* Rule 11(a), SCRCP. Finally, the imposition of discovery sanctions is generally entrusted to the sound discretion of the trial judge. *See Halverson v. Yawn*, 328 S.C. 618, 493 S.E.2d 883 (Ct. App. 1995). In determining the appropriateness of a discovery sanction, a court should consider such factors as the precise nature of the discovery and the discovery posture of the case, willfulness, and degree of prejudice. *See McNair v. Fairfield County*, 379 S.C. 462, 665 S.E2d 830 (Ct. App. 2008).

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Under Rule 36 of the South Carolina Rules of Civil Procedure, a party may serve upon any other party a written request for the admission of the truth of any matters within the scope of Rule 26(b) set forth in the request that relates to statements or opinions of fact or of the application of law to fact. *See* Rule 36(a), SCRCP. Additionally, the party who has requested the admissions may move to determine the sufficiency of the answers or objections. *Id.* A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. *Id.* Where a party provides an evasive or incomplete answer it is to be treated as a failure to answer. *See* Rule 37(a)(3), SCRCP. Further, where a party fails to admit the genuineness of the truth of any matter under Rule 36, and if the party requesting admissions thereafter proves the genuineness of the truth, he may apply to the Court for an Order seeking sanctions. *See* Rule 37(c), SCRCP.

As noted above, this Court has the power to impose any sanction that it determines to be fair and equitable under the Rules. Here, the Court has determined that Burdette's Answers to Requests for Admission that were expounded upon him were directly in opposite to his earlier sworn deposition testimony. The Court thus takes the position that Defendant Burdette should not be allowed to use his Answers to Requests for Admission to materially alter his deposition testimony. As such, the Court has determined that Defendant Burdette's Answers to Request for Admission should be amended to conform to his prior deposition testimony. Such a sanction is appropriate under the law as outlined above; and, as such, the Defendants' Motion to Alter and/or Amend on this point is hereby **DENIED**.

IT IS THEREFORE ORDERED THAT: Defendants' Motion to Alter and/or Amend under Rule 59(e) is **DENIED.**

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AND IT IS SO ORDERED.

ELECTRONIC SIGNATURE TO FOLLOW

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Spartanburg Common Pleas

Case Caption: Helen Kaci Hill, As Gal For Mark Douglas Hill Iii VS Cranston Print Works Company Dba Cranston Trucking Co., Etal , defendant, et al

Case Number: 2019CP4202212

Type: Master/Order/Other

It is so Ordered.

s/ R. Keith Kelly - 2165