

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,)

ORDER

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.)

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SC Court of Appeals

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

Plaintiff,)

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

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.)

These actions came before the Court on multiple motions for both the Plaintiffs and the Defendants. Specifically, the Plaintiffs filed Motions to: Compel the full and un-redacted medical records of Defendant Jason E. Burdette from the Veterans Administration; Deem Certain Matters Admitted; and Compel the Deposition of Certain Fact Witnesses. The Defendants filed a Motion to Compel raw video footage of certain individuals, and a Motion for a Protective Order of the

mental health portions of Defendant Burdette's medical records from the Veterans Administration. Patrick E. Knie, Esquire, W. Blake Cummings, Esquire and Alexander P. Lewis, Esquire appeared on behalf of the Plaintiffs. William T. Young, III, Esquire appeared on behalf of Defendants Cranston Print Works Company d/b/a Cranston Trucking Company, Optimum Staffing, Inc., d/b/a Optimum Logistic Solutions, and Jason E. Burdette. All of these matters were heard at a hearing via WEBEX on July 27, 2020.

The Court has reviewed the submissions of the parties and the arguments of counsel, and for the reasons hereinafter set forth, makes the following rulings. As to the Plaintiff's Motion and the Defendant's Motion regarding the un-redacted mental health records of Defendant Jason E. Burdette from the Veterans Administration, the Court will hold the issue in abeyance until after it has time to review the records *in camera*, which shall be provided within ten (10) days. As to the Plaintiff's Motion to Compel the Depositions of Fact Witnesses the Motion is **GRANTED**. As to the Plaintiff's Motion to Deem Certain Matters Admitted it is **GRANTED IN PART**. As to the Defendants Motion to Compel the raw video footage of certain witnesses the motion is **DENIED**. Finally, the Court declines to address the various arguments that have been raised about sanctions under Rule 11 of the South Carolina Rules of Civil Procedure.

LEGAL STANDARDS

Rule 1 of the South Carolina Rules of Civil Procedure provides that the rules of civil procedure "govern the **procedure in all South Carolina courts in all suits of a civil nature. They shall be construed to secure the just, speedy, and inexpensive determination of every action.**" Rule 1, SCRCF (emphasis added). Further, the entire thrust of all discovery rules involves full and fair disclosure, to prevent a trial from becoming a guessing game or one of surprise for either party. *See Samples v. Mitchell*, 329 S.C. 105, 113-4, 495 S.E.2d 213, 217 (Ct. App. 1997).

The Court of Appeals further stated that essentially the rights of discovery provided by the rules provide the trial lawyer the means to prepare for trial, and when these rights are not accorded, prejudice must be presumed. *See id.*

The South Carolina Rules of Civil Procedure provide that:

"Parties 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."

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

"Every 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), SCRPC.

A. The taking of Depositions

The South Carolina Rules of Civil Procedure provide that "After commencement of an action any party **may take the testimony of any person**, including a party, by deposition upon oral examination." *See* Rule 30(a)(1), SCRPC (emphasis added). Further, a party "**may** in his notice and in a subpoena name as the deponent a public or private corporation or a partnership or association . . . and describe with reasonable particularity the matters on which examination is requested." *See* Rule 30(b)(6), SCRPC (emphasis added).

B. Requests to Admit

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), SCRCF. Additionally, the party who has requested the admissions may move to determine the sufficiency of the answers or objections. *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), SCRCF. 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), SCRCF.

C. Protection of Materials Created Solely for the Purpose of Mediation

Courts in South Carolina have adopted Court-Annexed Rules of Alternative Dispute Resolution. Under this set of rules, strict confidentiality guidelines are imposed on communications disclosed during a mediation “including, but not limited to oral, documentary, or electronic information. . . .” *See* Rule 8(a), SCADR. The Rule expressly notes that the parties and any other person present or participating shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial or other proceeding, any mediation communication disclosed in the course of a mediation. *See id.* Included in the items that were to be expressly held as confidential are “[A]ll records, reports, or other documents **created solely for use in the mediation** or received by a mediator while serving as a mediator.” *See* Rule 8(a)(5), SCADR (emphasis added).

CONCLUSIONS OF LAW

Turning to the merits of each Motion before the Court, Plaintiff seeks the disclosure of the mental health portions of Defendant Burdette’s medical records from the Veterans Administration. The Court will hold the matter in abeyance until such time as the un-redacted medical records from the Veterans Administration are provided to the Court. The Court hereby Orders Defense Counsel

to provide the un-redacted records from the Veterans Administration for *in camera* review within ten (10) days. Following said review, the Court will issue a ruling regarding the Motion.

As to the Defendants' Motion to Compel the production of certain raw footage of witnesses which were interviewed in connection with a video produced to the Defense by Plaintiffs' counsel in connection with the mediation of the instant litigation, the Court **DENIES** the Defendants' Motion. Based upon the arguments of Counsel, it is clear that the video was made solely for the purpose of use at the mediation of this matter between the parties. As noted above, Rule 8(a)(5) provides for the explicit protection of the disclosure of any materials that are created "solely for the use in mediation." *See* Rule 8(a)(5), SCARD. Plaintiffs' Counsel has certified that the only reason the video was produced was to aide in their presentation of damages at mediation, and that but for the mediation, the video would never have been created. As such, the materials clearly fall within the parameters of those items contemplated in Rule 8(a)(5) and as such the Defendants Motion to Compel the production of the raw footage is **DENIED**.

As to the Plaintiff's Motion to Deem Certain Matters Admitted, the Court **GRANTS** the Motion in part. Defendant Burdette was deposed on March 20, 2020, and the Court was provided with many pages of the transcript as Exhibits to the Motion. In reviewing the sworn deposition testimony of Defendant Burdette and comparing it to Answers that were provided on Defendant Burdette's behalf to the Plaintiffs' First Set of Requests for Admission the Court notes significant discrepancies between the sworn testimony and the Answers to the Requests for Admission. The fact that the testimony under oath was directly contradicted by the unqualified denials of Defendant Burdette requires that this Court consider such Answers as a failure to Answer under Rules 36 and 37 of the South Carolina Rules of Civil Procedure.

Specifically, the Court notes that in light of Defendant Burdette's deposition testimony at page 119 his Answer to Request to Admit Number 3 requires that he re-answer the question. Further, the discrepancies between his sworn testimony at pages 96 and 97 necessitate that he re-answer Requests to Admit Numbers 4 and 5. Burdette's deposition testimony at pages 77 and 78 necessitate that he re-answer Requests to Admit Numbers 7 and 10. With respect to Request to Admit Number 8, Burdette's testimony at page 71 of his deposition necessitate that it be re-answered. Finally, as to Request to Admit Number 11, Defendant Burdette will refer to his testimony at pages 119 and 120 of his deposition and re-answer the request. The Court hereby Orders that each of the aforementioned Requests for Admission be re-answered in light of the sworn deposition testimony of Defendant Burdette, and that Defendant Burdette sign and attach a verification pursuant to Rule 11(c) of the South Carolina Rules of Civil Procedure when providing the new answers within ten (10) days. Further, the Plaintiffs are instructed to rephrase and re-ask Request for Admission Number 9.

Finally, turning to the Plaintiffs' Motion to Compel the Depositions of Certain Fact Witnesses, the Court **GRANTS** the Motion. Specifically, the Plaintiffs sought a Motion allowing them to undertake the depositions of Joe Hemphill and Brian Conner, both employees of Defendant Optimum, under Rule 30(a). The Defendants asserted that Rule 30(b)(6) was the only vehicle for undertaking the deposition of these employees. Rule 30(a)(1) provides that "[A]fter commencement of an action any party **may take the testimony of any person**, including a party, by deposition upon oral examination." *See* Rule 30(a)(1), SCRCF (emphasis added). It makes no difference whether these individuals are employed by Defendant Optimum, where the evidence produced by Defendant Optimum indicates that these individuals are witnesses to the underlying facts surrounding the collision at issue. Therefore, the Court hereby Orders that the depositions of

these individuals and any other fact witness proceed as outlined by Rule 30(a)(1) of the South Carolina Rules of Civil Procedure.

IT IS THEREFORE ORDERED THAT: Defendants' Motion to Compel the raw video footage of witnesses is **DENIED**.

IT IS FURTHER ORDERED THAT Plaintiffs' Motion to Compel the depositions of Joe Hemphill and Brian Conner pursuant to Rule 30(a)(1) of the South Carolina Rules of Civil Procedure is **GRANTED**.

IT IS FURTHER ORDERED THAT Plaintiffs' Motion to Deem Certain Matters Admitted is **GRANTED IN PART** as described more fully above.

IT IS FURTHER ORDERED THAT the Plaintiffs' Motion to Compel the full un-redacted medical records of Defendant Burdette and the Defendants' Motion for a Protective Order for the same is **HELD IN ABEYANCE** until the Court is able to review the records *in camera*. Defense counsel is directed to provide the records for review within ten (10) days of this Order.

AND IT IS SO ORDERED.

GIVEN under my hand and the Seal of this Court this 8th day of October 2020 at Gaffney, South Carolina.

The Honorable R. Keith Kelly
Circuit Judge, Seventh Judicial Circuit



Spartanburg Common Pleas

Case Caption: Gregory Jones, Sr., As Father & Pr Of Est. Jessica Dawn Jones, Dec'D
VS Cranston Print Works Company Dba Cranston Trucking Co., Etal
, defendant, et al

Case Number: 2019CP4202215

Type: Order/Discovery and Disclosure of Evidence

It is so Ordered.

s/ R. Keith Kelly - 2165