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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable R. Keith Kelly, Circuit Court Judge

Appellate Case No.: 2020-001695
Trial Court Case Nos. 2019-CP-42-02212 & 2019-CP-42-02215

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

v.

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,

and

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

v.

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,

Of Whom Jason E. Burdette, Cranston Print Works
Company d/b/a Cranston Trucking Company, and
Optimum Staffing, Inc., d/b/a Optimum Logistic
Solutions are the.....Appellants.

**RESPONDENTS' MOTION TO DISMISS
AND MEMORANDUM IN SUPPORT OF MOTION**

ISSUES PRESENTED

The issues presented by way of this Motion and Memorandum in Support of Respondents' Motion to Dismiss are three-fold: (1) that all Appellants have knowingly filed an appeal that is interlocutory in nature; (2) that Appellants Cranston and Optimum lack standing to challenge the Orders of Judge Kelly as it pertains to Appellant Burdette; and (3) that all Appellants have knowingly filed the instant improper appeals in an attempt to prolong and delay the underlying litigation making the filing of the appeals subject to sanctions pursuant to Appellate Court Rule 269.

FACTUAL BACKGROUND

The instant litigation stems from a violent collision that occurred on February 1, 2019, between a tractor trailer that was driven by Appellant Burdette and a Kia Minivan that the decedent, Jessica Dawn Jones, and minor Mark Douglas Hill, III, were traveling in as rear seat passengers. Appellant Burdette was employed by Appellant Optimum at the time of the collision, and was leased from Optimum to Appellant Cranston.

Appellant Burdette was deposed on March 20, 2020. Following the deposition of Appellant Burdette, Counsel for the Respondents served Requests to Admit upon the Appellants' counsel of record based upon the aforementioned deposition testimony. Appellants, by and through their attorneys, provided Answers on May 19, 2020, signed by William T. Young, III, Esquire, a copy of the answers are attached hereto as Exhibit 1. Interestingly, in these Answers, Appellant Burdette offered objections to things he had already testified to, or outright denied things he had previously admitted to at his deposition. Critically, each of the denials were directly in apposite to the very testimony Appellant Burdette espoused at his deposition. At the time, Defense Counsel, William T. Young, III, Esquire, never made any efforts to qualify these denials or explain why they were different from the prior sworn testimony of Appellant Burdette.

Following the conflicting and evasive responses, the undersigned espoused additional Requests for Admission upon Appellants' then attorneys. Thereafter, Appellant Burdette, by and through his then counsel of record, answered these new requests for admission on June 26, 2020, a copy of which is produced herewith as Exhibit 2. Instead of answering the very simple questions regarding the very evidence provided by Appellant Burdette's then Counsel on behalf of his other client Appellant Optimum, William T. Young, III, Esquire, answered that the discovery sought was vague, and therefore refused to answer. Further, Appellants claimed an objection on the grounds of privilege.

Based upon the contradictory and obstructive positions of the Appellants, Respondents filed a Motion to Deem Certain Matters Admitted on July 16, 2020. The motion at issue was heard along with various other motions regarding discovery issues by the Honorable R. Keith Kelly via WEBEX on July 27, 2020. On October 8, 2020, the Circuit Court issued an Order wherein among other things they granted in part the Respondents' Motion to Deem Certain Matters Admitted, and critically stated that:

“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.”

See Order Granting Mot. Deem Cert. Matters Admitted, Oct. 8, 2020, a copy of which is attached hereto as Exhibit 3. Also included in the Court's Order was a denial of Appellants' Motion to Compel Production of “raw video footage” of interviews that were obtained for the sole purpose of a mediation video which Respondents' made for use at the mediation. *Id.* Unsatisfied with the Circuit Court's Order, Appellant filed a Motion to Alter and/or Amend, along with a supporting Memoranda pursuant to Rule 59(e), SCRCP, on October 19, 2020. Critically, then counsel for all

Appellants only asked for reconsideration regarding the Court's Ruling on the Respondents' Motion to Deem Certain Matters Admitted, and the Appellant's Motion to Compel Production. Respondents' Counsel filed a responsive Memoranda on October 26, 2020. After considering the positions of each side, and upon review of the record before it, the Circuit Court issued an Order denying the Appellants' Motion to Alter and/or Amend on December 18, 2020. *See* Order Denying Mot. to Alt. or Amend, Dec. 18, 2020, a copy of which is attached hereto as Exhibit 4.

While awaiting the Circuit Court's ruling on Appellant's Motion to Alter and/or Amend, the underlying cases were placed on the status roster for November 23, 2020. On that date, all Counsel, including Appellants' Counsel at the time, agreed to place the Jones matter on the date certain roster for the term of court beginning April 5, 2021. Also, on December 8, 2020, Respondents' Counsel was informed that Geoffrey Gibbon, Esquire, would be assuming the defense of Appellant Burdette, and Robert Peele, Esquire would be assuming the defense of Appellant Optimum moving forward. Following the issuance of the Circuit Court's December 18, 2020 Order, Appellant Burdette's new attorney informed Respondents' Counsel that his client intended to appeal the Order rather than to comply with it, or in the alternative, face contempt for failure to comply. Ultimately, on December 30, 2020 by letter, Respondents' Counsel informed Appellant Burdette's Counsel of the impropriety of the instant Appeal and asked that it be withdrawn. All other counsel of record, including counsel for Appellants Optimum and Cranston, were copied on that correspondence. No response has been received to that correspondence, which included citations to the controlling legal precedent on the issue. On January 8, 2021, Respondents' Counsel received notice that Appellants Optimum and Cranston would be joining in Appellant Burdette's Appeal, the grounds for such were not specified, but since the same Orders from Judge Kelly were attached, it is assumed that any grounds raised therein would be based on

those clearly interlocutory Orders. As such, Respondents have been forced to bring the instant Motion to Dismiss.

LEGAL ARGUMENT

I. Appellant's have improperly brought an appeal that is interlocutory in nature, and at present they are not an aggrieved party entitling them to bring the appeal.

As a general rule, a discovery order is not immediately appealable. *Ferguson v. Charleston Lincoln/Mercury Inc.*, 344 S.C. 502, 510, 544 S.E.2d 285, 290 (Ct. App. 2001). Once a final order on the merits is issued, the prior discovery orders become appealable. *Hamm v. South Carolina Pub. Serv. Comm'n*, 312 S.C. 238, 439 S.E.2d 852 (1994). Further, an order refusing to compel discovery is interlocutory and not immediately appealable. *Lowndes Prods., Inc. v. Brower*, 262 S.C. 431, 205 S.E.2d 184 (1974).

As has often been noted by this Honorable Court, "The imposition of sanctions is generally entrusted to the sound discretion of the Circuit Court." *Downey v. Dixon*, 294 S.C. 42,45, 362 S.E.2d 317, 318 (Ct. App. 1987). Further, "an appellate court will not interfere with a trial court's exercise of its discretionary powers with respect to sanctions imposed in discovery matters unless the court abuses its discretion." *Davis v. Parkview Apartments*, 409 S.C. 266, 281, 762 S.E.2d 535, 543 (2014) (citing *Karppi v. Greenville Terrazzo Co., Inc.*, 327 S.C. 538, 542, 489 S.E. 2d 679, 681 (Ct. App. 1997)) (citation omitted). An abuse of discretion may be found by an appellate court with respect to discovery sanctions where the appellant shows "that the conclusion reached by the lower court was without reasonable factual support, resulted in prejudice to the right of appellant, and therefore, amounted to an error of law." *Davis*, 409 S.C. at 282, 762 S.E. 2d at 543 (quoting *Dunn v. Dunn*, 298 S.C. 499, 502, 381 S.E.2d 734, 735 (1989)).

In seeking relief from an Order regarding discovery, former Chief Justice Pleicones aptly noted in his Concurrence that "[I]t is well-settled that a party can obtain review of the merits of a

discovery order only after refusing to comply and being held in contempt. *See Davis*, 409 S.C. at 290-1, 762 S.E.2d at 548 (citing *Grosshuesch v. Cramer*, 377 S.C. 12, 659 S.E.2d 112 (2008)). Justice Pleicones' statements were echoed in the majority decision where it was stated that "to challenge the specific rulings of the discovery orders, the normal course is to refuse to comply, suffer contempt, and appeal from the contempt finding." *See Davis*, 409 S.C. at 280-1, 762 S.E.2d at 543 (citing *Ex Parte Whetstone*, 289 S.C. 580, 347 S.E.2d 881-2 (1986)). The Supreme Court clearly stated in *Ex Parte Whetstone* that "[A]n order directing a party to participate in discovery is interlocutory and not directly appealable." *Ex Parte Whetstone*, 289 S.C. 580, 347 S.E.2d 881-2 (1986).

A review of the Orders upon which the instant appeal rests finds that the sanction that was imposed by the Circuit Judge was one wherein Appellant Burdette, by and through his then Counsel of record, was instructed to amend his prior Answers to Requests for Admission to conform to the prior sworn deposition testimony of Appellant Burdette. *See Exs. 3 and 4*. The Appellant Burdette did not comply with either Order, or suffer contempt from the Circuit Court by failing to comply with Orders. Rather, the Appellant, by and through their Counsel, filed this appeal. Such an appeal should clearly be barred as interlocutory based upon the aforementioned legal precedents. Further, to the extent that Appellants Optimum and Cranston have appealed these Orders on this issue, it is respectfully submitted that they lack standing given that they are unaffected by the Circuit Court's Orders on this issue, and their appeal should be dismissed.

To the extent that Appellants Optimum and Cranston are appealing the Trial Court's Order related to the denial of Appellants' Motion to Compel Production of the raw video footage, such an appeal should also be denied as untimely. The aforementioned legal precedents make clear that the Circuit Court's Order denying the compelling of production was a decision that rested solely in his discretion, and is not immediately appealable. The Appellants cannot make a showing that the denial

of their Motion to Compel is anything other than interlocutory, and as such any appeal on such a basis should be dismissed as improvident. *See Lowndes Prods., Inc., supra.*

The Appellants have each clearly taken such steps to delay the underlying case, which is currently pending on the date certain roster for the week of April 5, 2021. Appellant Burdette has been given every opportunity to unilaterally withdraw his appeal when confronted with the aforementioned case law, but to date has taken no such steps. Further, despite being copied on Counsel for Respondents' letter to Counsel for Appellant Burdette outlining the interlocutory nature of Judge Kelly's Orders, Appellants Optimum and Cranston still chose to ignore the law and file their instant appeal. As such, the undersigned would respectfully request that this Honorable Court Dismiss the instant appeal as improvident based upon its interlocutory status. Further, as the appeal appears to have been "taken solely for the purposes of delay" the undersigned would request that under Appellate Court Rule 269 that this Honorable Court consider the imposition upon the Appellants of "such sanctions as the circumstances of the case and discouragement of like conduct in the future may require." SC R A CT 269.

CONCLUSION

Based on the foregoing, the Respondents would respectfully request that this Honorable Court grant the instant Motion, dismiss the current appeal, and find that Respondents are entitled to sanctions given the frivolous nature of the Appeal. Simply put, there presently are no issues that are properly ripe before this Honorable Court for adjudication.

-Signature Block on Following Page-

RESPECTFULLY SUBMITTED,



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January 11, 2021
Spartanburg, South Carolina

Counsel for Plaintiffs/Respondents

EXHIBIT 1

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

C.A. No.: 2019-CP-42-002215

Gregory Jones, Sr., as the father and duly)
appointed Personal Representative of the)
Estate of Jessica Dawn Jones, Deceased,)

Plaintiff,)

v.)

Cranston Print Works Company d/b/a)
Cranston Trucking Company, Ryder)
Systems, Inc., Optimum Staffing, Inc. d/b/a)
Optimum Logistic Solutions, and Jason E.)
Burdette,)

Defendants.)

**DEFENDANT, JASON E. BURDETTE'S
RESPONSES TO REQUEST FOR
ADMISSION**

TO: PLAINTIFFS AND THEIR ATTORNEYS:

Defendant, Jason E. Burdette, (hereinafter "Defendant") by and through its undersigned counsel, hereby responds, pursuant to Rule 35 of the South Carolina Rules of Civil Procedure, to Plaintiff's Request for Admission.

1. Defendant Jason E. Burdette performed a pre-trip inspection of the tractor trailer that he drove the morning of February 1, 2019, and that said inspection to the best of his knowledge is in the possession, custody and/or control of Defendant Cranston Print Works Company d/b/a Cranston Trucking Company.

RESPONSE: Defendant Burdette admits he performed a pre-trip inspection of the subject tractor and trailer. Defendant further admits he is not in possession of a copy of that inspection report. After conducting a reasonable search, defendant is without knowledge or

information sufficient to allow him to know the current whereabouts of the pre-trip inspection report or any copies of the same.

2. On the morning of February 1, 2019, prior to impact with the vehicle Jessica A. Jones was traveling in, Defendant Jason E. Burdette was using his cellular phone while driving the tractor trailer for Defendant Cranston while employed by Defendant Optimum.

RESPONSE: Defendant Burdette objects to plaintiffs' request to admit number 2 upon the grounds it is vague and ambiguous, as it does not specify a particular time in which he was using his cellular phone. Further responding, Defendant Burdette denies using his cellular phone at the time of the accident or in the moments immediately preceding the accident.

3. Defendant Jason E. Burdette used his cellular phone on February 1, 2019, prior to impact with the vehicle Jessica A. Jones was traveling in, to communicate with among other people, agents/employees of Defendant Cranston Print Works Company d/b/a Cranston Trucking Company.

RESPONSE: Denied.

4. Defendant Cranston Print Works Company d/b/a Cranston Trucking Company never advised Defendant Jason E. Burdette to not use his cellular phone while driving a tractor trailer for Defendant Cranston Print Works Company d/b/a Cranston Trucking Company.

RESPONSE: Denied.

5. Defendant Cranston Print Works Company d/b/a Cranston Trucking Company communicated via cellular phone on multiple occasions, other than February 1, 2019, with Defendant Jason E. Burdette, while Defendant Burdette was driving a tractor trailer for Defendant Cranston Print Works Company d/b/a Cranston Trucking Company.

RESPONSE: Denied.

6. Defendant Jason E. Burdette was never provided any safety and/or driver training by Defendant Cranston Print Works Company d/b/a Cranston Trucking Company prior to February 1, 2019.

RESPONSE: Admitted.

7. Defendant Jason E. Burdette was neither provided an employee handbook nor a safety handbook by Defendant Optimum Staffing, Inc. d/b/a Optimum Logistic Solutions prior to February 1, 2019.

RESPONSE: Denied.

8. Defendant Jason E. Burdette was never given any safety instruction or underwent any safety training while employed by Defendant Optimum Staffing, Inc. d/b/a Optimum Logistic Solutions, prior to February 1, 2019.

RESPONSE: Denied.

9. Defendant Jason E. Burdette was never advised, verbally or in writing, of any corporate policies or procedures for employees to follow while driving trucks as an employee of Defendant Optimum Staffing, Inc. d/b/a Optimum Logistic Solutions prior to February 1, 2019.

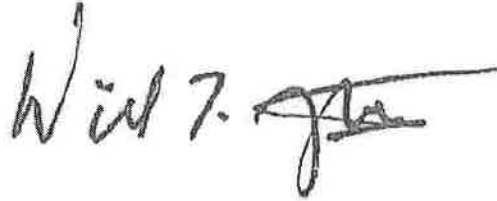
RESPONSE: Denied.

10. Defendant Jason E. Burdette was never advised, either orally or in writing, by any individual employed by Defendant Optimum Staffing Inc. d/b/a Optimum Logistic Solutions of any corporate policies or procedures prohibiting the use of cellular phones while driving trucks as an employee of Defendant Optimum Staffing, Inc. d/b/a Optimum Logistic Solutions prior to February 1, 2019.

RESPONSE: Denied.

11. Defendant Optimum Staffing Inc. d/b/a Optimum Logistic Solutions knowingly communicated with Defendant Jason E. Burdette via cellular phone while he was driving a truck while employed by Defendant Optimum prior to February 1, 2019.

RESPONSE: Denied.

A handwritten signature in black ink, appearing to read "Will T. Young III". The signature is written in a cursive style with a long horizontal stroke extending to the right.

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May 19, 2020

EXHIBIT 2

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

C.A. No.: 2019-CP-42-002215

Gregory Jones, Sr., as the father and duly)
appointed Personal Representative of the)
Estate of Jessica Dawn Jones, Deceased,)
)
Plaintiff,)

**DEFENDANT, JASON E. BURDETTE'S
RESPONSES TO REQUESTS TO ADMIT**

v.

Cranston Print Works Company d/b/a)
Cranston Trucking Company, Ryder)
Systems, Inc., Optimum Staffing, Inc. d/b/a)
Optimum Logistic Solutions, and Jason E.)
Burdette,)
)
Defendants,)

TO: PLAINTIFFS AND THEIR ATTORNEYS:

Defendant, Jason E. Burdette, (hereinafter "Defendant") by and through its undersigned counsel, hereby responds, pursuant to Rule 35 of the South Carolina Rules of Civil Procedure, to Plaintiff's Requests to Admit.

1. Defendant Jason E. Burdette on paperwork provided to the physician performing the DOT required physical on July 31, 2018 did state that he did not at that time, and had never had anxiety, depression, nervousness, or other mental health problems.

RESPONSE: Defendant Burdette objects to Paragraph 1 of Plaintiffs' second set of Requests to Admit upon the grounds the request seeks information specifically designated as privileged pursuant to S.C. Code Ann. §44-22-90. Defendant further objects upon the grounds the request seeks information and/or documentation that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Defendant further responds by showing it is unclear what documents are referenced and therefore can neither

admit nor deny the same, as “paperwork” is a generic term and the documents referenced were not included as exhibits to Plaintiffs’ Requests to Admit.

2. Defendant Jason E. Burdette on paperwork provided to the physician performing the DOT required physical on July 31, 2018 did state that he did not at that time have, and had never had a stroke, mini-stroke (TIA), paralysis, or weakness.

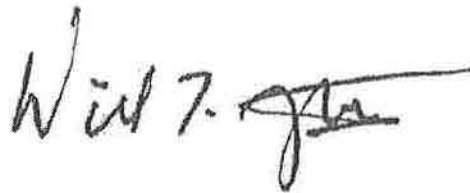
RESPONSE: Defendant Burdette objects to Paragraph 2 of Plaintiffs’ second set of Requests to Admit upon the grounds the request seeks information and/or documentation that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Defendant further responds by showing it is unclear what documents are referenced and therefore can neither admit nor deny the same, as “paperwork” is a generic term and the documents referenced were not included as exhibits to Plaintiffs’ Requests to Admit.

3. Defendant Jason E. Burdette on paperwork provided to the physician performing the DOT required physical on July 31, 2018 did state that he did not at that time have, and had never had dizziness, headaches, numbness, tingling or memory loss.

RESPONSE: Defendant Burdette objects to Paragraph 3 of Plaintiffs’ second set of Requests to Admit upon the grounds the request seeks information and/or documentation that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Defendant further responds by showing it is unclear what documents are referenced and therefore can neither admit nor deny the same, as “paperwork” is a generic term and the documents referenced were not included as exhibits to Plaintiffs’ Requests to Admit.

4. That Defendant Jason E. Burdette did attest that the information contained on the July 31, 2018, paperwork that was provided to the physician performing the DOT required physical was accurate and complete, and that he understood that inaccurate, false or missing information may invalidate the examination and the Medical Examiner's Certificate.

RESPONSE: Defendant Burdette objects to Paragraph 4 of Plaintiffs' second set of Requests to Admit upon the grounds the request seeks information and/or documentation that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Defendant further responds by showing it is unclear what documents are referenced and therefore can neither admit nor deny the same, as "paperwork" is a generic term and the documents referenced were not included as exhibits to Plaintiffs' Requests to Admit.



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EXHIBIT 3

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.)

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, SCRPC (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 Db a 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

EXHIBIT 4

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.)

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.)

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

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

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

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), SCRCF. 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

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), SCRPC. 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), SCRPC (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), SCRPC. 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.E.2d 830 (Ct. App. 2008).

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), SCRPC. 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), SCRPC. 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), SCRPC.

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**.

AND IT IS SO ORDERED.

ELECTRONIC SIGNATURE TO FOLLOW



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

RECEIVED

Jan 11 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable R. Keith Kelly, Circuit Court Judge

Appellate Case No.: 2020-001695
Trial Court Case Nos. 2019-CP-42-02212 & 2019-CP-42-02215

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

v.

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,

and

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

v.

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,

Of Whom Jason E. Burdette, Cranston Print Works
Company d/b/a Cranston Trucking Company, and
Optimum Staffing, Inc., d/b/a Optimum Logistic
Solutions are the.....Appellants.

PROOF OF SERVICE

I certify that I have served the Respondents' Motion to Dismiss and Memorandum in Support of Motion on Cranston Print Works Company d/b/a Cranston Trucking Company, Ryder Truck Rental, Inc., Optimum Staffing, Inc., d/t/a Optimum Logistic Solutions, and Jason E. Burdette, and other counsel of record by emailing and depositing a copy of it in the United States Mail, postage prepaid, addressed as follows:

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January 11, 2021
Spartanburg, South Carolina

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January 11, 2021

RECEIVED

Jan 11 2021

SC Court of Appeals

VIA ELECTRONIC AND U.S. MAIL

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

Re: Mark Douglas Hill, III by and through his Duly appointed Guardian ad Litem Helen Kaci Hill v. 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
and
Gregory Jones, Sr., as the father and duly appointed Personal Representative of the Estate of Jessica Dawn Jones v. Cranston Print Works Company d/b/a Cranston Trucking Company, Ryder Systems, Inc., Optimum Staffing, Inc. d/b/a Optimum Logistic Solutions, and Jason E. Burdette
Appellate Case No. 2020-001695

Dear Ms. Kitchings:

Enclosed for filing are the original and six (6) copies of the Respondents' Motion to Dismiss and Memorandum in Support of Motion, along with supporting Exhibits in the above-referenced matter. I am also enclosing an original and one copy of the Proof of Service of Respondents' Motion to Dismiss and Memorandum in Support of Motion to all Appellants, and a check in the amount of fifty dollars (\$50.00) representing the appropriate filing fee.

Please file the original documents and return the clocked-in copies in the enclosed, self-addressed stamped envelope.

With warmest regards,

Alexander P. Lewis

Encls.

Cc: Patrick E. Knie, Esq.
Brandt Horton, Esq.
Geoffrey Gibbon, Esq.
Zachary S. Brown, Esq.
Helen F. Hiser, Esq.
Robert M. Peele, Esq.
J. Lucas Richardson, Esq.
William T. Young, III, Esq.
T. David Rheney, Esq.