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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

Appeal No.: 2020-001695

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

APPELLANT JASON E. BURDETTE'S OPPOSITION TO MOTION TO DISMISS APPEAL

Pursuant to Rule 240, SCACR, Appellant Jason E. Burdette ("Burdette") hereby opposes Respondents' Motion to Dismiss ("Motion") this appeal. Respondents

incorrectly assert that Burdette knowingly filed an improper interlocutory appeal for the purpose of "prolong[ing] and delay[ing] the underlying litigation," which Respondents assert justify sanctions. While this appeal admittedly is interlocutory in nature, it falls within the category of permissible interlocutory appeals as it raises an issue that directly affects Burdette's defenses in the underlying case. More specifically, and as is explained below, by limiting and binding Burdette to admissions other than admissions he timely served, the appealed Orders impose severe Rule 37 penalties, involve the merits and affect a substantial right. Furthermore, because the precise issue raised in this appeal is novel, not having been addressed previously by South Carolina courts, and because Appellant Burdette has compelling arguments as to why this issue is immediately appealable as well as to the substance of the appeal, sanctions clearly are unwarranted and should not be awarded.

BACKGROUND

On February 1, 2019, a collision occurred on Interstate I-85 in Spartanburg, South Carolina between Respondents' vehicle and a truck being driven by Burdette. At the time of the accident, Burdette was employed by Optimum Staffing, Inc., d/b/a Optimum Logistic Solutions ("Optimum") and was driving a truck for Cranston Print Works Company d/b/a Cranston Trucking Company ("Cranston"). Respondents filed claims against various parties including Burdette.

Burdette was deposed on March 20, 2020. Thereafter, Respondents propounded Requests for Admission on Burdette, to which Burdette timely responded on May 19,

2020. Dissatisfied with Burdette's responses, Respondents moved to have certain matters deemed admitted, which Burdette opposed.[1]

After a hearing on various motions, the Circuit Court ordered, *inter alia*, that a number of Burdette's responses to Requests for Admission be revised or "re-answer[ed]" based on his deposition testimony. However most if not all of the responses targeted by the Circuit Court are supported either by Burdette's deposition testimony, other evidence submitted to the court, or both. For example, Request for Admission #3 asked Burdette to admit that, "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." Burdette responded, "**Denied.**" The Circuit Court ordered Burdette to "re-answer" this admission to conform to page 119 of his deposition testimony. However, at his deposition, Burdette confirmed that he had made a number of phone calls the morning of the accident sometime prior to the accident, but could not remember who those calls were to. The only call he confirmed as being to Cranston occurred *after* the accident, at 8:32 a.m. (Exh. 1, Burdette Dep. pp. 115-119). In addition, a sworn affidavit from Brett Heidt, a Cranston employee, confirms that none of the numbers on the phone record for February 1, 2019 for calls prior to the accident are associated with Cranston. (Exh. 2). While Burdette admitted he was using his cell phone "while driving from Greenville to at least the Spartanburg area before the wreck," (*id.* p. 119, lines 8-24), he did not testify that any of those calls were to Cranston and,

[1] At that time, all Appellants were represented by the same counsel. Separate counsel was engaged for Burdette in December 2020.

furthermore, there is no admission that he was using his cell phone immediately "prior to impact" as is implied in Request for Admission No. 3.

Request for Admission No. 8 sought an admission that, "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," to which Burdette responded, "**Denied.**" The Circuit Court ordered Burdette to "re-answer" his admission to conform to page 71 of his deposition transcript. However, while Burdette testified that Optimum itself did not provide any training, Request for Admission No. 8 is not limited to Optimum and, in fact, Burdette testified that he attended safety meetings with another employer he was leased to, Diamond Hill Plywood. (Exh. 1, Burdette Dep. p. 72, lines 3-21). He also testified that he underwent a road test with a different company, BI-LO, that he was assigned to work with. (*Id.* p. 85, lines 11-19; p. 87, lines 10-14). As a result, Burdette's response to Request for Admission No. 8, as written, is correct.

Request for Admission No. 10 sought an admission that, "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," to which Burdette responded "**Denied.**" The Circuit Court ordered Burdette to "re-answer" this admission to conform to pages 77-78 of his deposition transcript. However, those pages simply discuss Optimum's written policy regarding cell phone use while driving, whereas the Request for Admission covers both "orally or

in writing." Burdette testified that he had had a discussion with Brian Conners with Optimum Logistics, who advised that it was ok to use a cell phone "as long as you had a headset … [a] hands free, you were fine." (Exh. 1, Burdette Dep. p. 120, lines 8-22). Cranston had the same policy. "As long as you had a headset, you're fine." (*Id.* p. 120, lines 22-25).[2]

Despite Burdette's opposition, and despite the imprecise wording of the various Requests for Admission, the Circuit Court took the remarkable step of ordering Burdette to rewrite or "re-answer" his May 19, 2020 responses to Respondents' Request for Admission Nos. 3, 4, 5, 7, 8, 10 and 11, accepting Respondents' argument that those responses were "directly contradicted" by his prior deposition testimony. The Circuit Court also denied Burdette's and the other Appellants' motions for reconsideration, and this appeal ensured.

ARGUMENT

Respondents cite to cases that correctly provide that, "[a]s a *general rule*, a discovery order is not immediately appealable because it is an interlocutory order." *Ferguson v. Charleston Lincoln/Mercury*, 344 S.C. 502, 510, 544 S.E.2d 285, 290 (2001) (emphasis added).[3] However, the very statement of that general rule presumes

[2] Requests for Admission Nos. 4, 5 and 11 all concern cell phone use. It is established from the phone records submitted in this case that Burdette was not using his cell phone at the time of the accident, a fact which Respondents have never disputed.

[3] The cases relied on by Respondents involve orders compelling or refusing to compel a party to respond to discovery requests or produce a witness for a deposition, or sanctions based on a refusal to participate in discovery. None of the cases cited in the Motion involve a severe Rule 37, SCRCP, sanction that orders a party to rewrite or "re-answer" a Request for Admission based on the court's or opposing party's view of deposition testimony, as is the case here.

exceptions. Appellant Burdette submits that requiring a party to provide a particular answer a Request for Admission is precisely one of those exceptions.

This is because, pursuant to statute, appellate courts have jurisdiction over "[a]ny intermediate judgment, order or decree in a law case involving the merits" and, as well, over "[a]n order affecting a substantial right made in an action when such order … strikes out an answer or any part thereof or any pleading in any action." S.C. Code Ann. § 14-3-330. The Supreme Court has instructed that "[t]he phrase 'involving the merits' means the order 'must finally determine some substantial matter forming the whole or a part of some cause of action or defense.'" *Tucker v. Honda of S.C. Mfg.*, 354 S.C. 574, 576, 582 S.E.2d 405, 406 (2003), *citing Mid-State Distrib., Inc. v. Century Importers, Inc.*, 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993). In addition, an order affects a substantial right when it, among other things, strikes out a defense such that the defense is lost. *Mid-state Distrib.*, 310 S.C. at 334 n.4, 426 S.E.2d at 780 n.4.[4] South Carolina and federal case law addressing the binding effect of a response to a request to admit make clear that compelling a specific response to a request to admit is far more significant than are either interrogatory responses or deposition testimony, both of which can be contested before the factfinder. The Orders below, compelling a specific response from Burdette to certain Requests for Admission – which responses will constitute binding judicial admissions – involve the merits and affect a substantial right.

[4] And, while Respondents are correct that the imposition of sanctions generally is left to the lower court's discretion, *e.g.*, *Halverson v. Yawn*, 328 S.C. 168, 620, 493 S.E.2d 883, 884 (Ct. App. 1997), a sanction that deprives a party of a substantial right, such as precluding a defense or judicially finding certain facts that are key to a defense, is immediately appealable.

This Court has recognized that an order that effectively forecloses a party from contesting the case on the merits affects a substantial right and is immediately appealable. *McLaughlin v. Strickland*, 279 SC 513 at 516, 309 SE2d 787, 790 (Ct. App. 1983) (allowing appellant to contest a consent to adoption that did not comport with his intentions, which simply required the respondent to prove her case below). *Lowndes Prods, Inc. v. Brower,* 262 S.C. 431, 205 S.E.2d 184 (1975), relied on by Respondents, states that "ordinarily, an order denying or compelling discovery is not directly appealable," 262 S.C. at 434, 205 S.E.2d at 185, but recognizes an exception for orders that "have the effect of determining the scope of the issues at the trial." *Id.* That is precisely what a response to a request for admission does – it effectively determines and limits the scope of issues that need to be tried.

Pursuant to Rule 36(b), SCRCP, "[a]ny matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission." The very purpose of requests for admission is to determine certain matters and thereby limit the issues needed to be addressed at trial. "An answer to a request under Rule 36 is unlike a statement of fact by a witness made in the course of oral evidence at a trial, or in oral pre-trial depositions, or even in written answers to interrogatories. *It is on the contrary a studied response, made under sanctions against easy denials, to a request to assert the truth or falsity of a relevant fact point out by the request for admission …*" *Airco Indus. Gases, Inc. Div. of BOC Group, Inc. v Teamsters Health & Welfare Pens Fund*, 850 F.2d 1028, 1036 (3rd Cir. 1988).[5] The express

[5] Our Rule 36 "is the language of current Federal Rule 36, as well as substantially the language of Circuit Court Rule 89." Rule 36, SCRCP, Notes; *see also Scott v. Greenville*

purpose of requests for admission, which are considered "judicial admission[s]," is to limit and define the facts at issue. *Id.*; *see also Scott*, 353 S.C. at 650, 579 S.E.2d at 157 ("[t]he purpose of Rule 36 is to allow parties to narrow the issues and determine which facts do not need to be proven because they are admitted"). Consequently, facts admitted in response to a request to admit "are conclusively admitted for the purposes of" the litigation in which they are made. *Id.* at 647, 579 S.E.2d at 155. Indeed, where "the language of the request for admission specifically goes to an issue in the pleadings, the admission resulting from a party's failure to respond to the request may override the pleadings." *Id.* at 650, 579 S.E.2d at 157.

"The efficacy of these admissions is akin to the doctrine of judicial estoppel: an admission 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 …. Admissions under Rule 36 are treated as admissions in pleadings." *Scott*, 353 S.C. at 648, 579 S.E.2d at 156. In fact, *Pulte Home Corp. v. Woodland Nursery & Landscapes*, cited in *Scott*, explains that a response to a request to admit "is comparable to an admission in pleadings or stipulation of facts and as such is generally regarded as a judicial admission rather than evidentiary admission of a party. A judicial admission, unless allowed to be withdrawn by the court, is conclusive whereas an evidentiary admission is not conclusive but is always subject to be contradicted or explained." 230 Ga. App. 455, 496 S.E.2d 546, 548 (Ga. Ct. App. 1998); *see also Airco Indus*, 850 F.2d at 1036 (a response to a request to admit is comparable to "[a] judicial admission, deliberately drafted by counsel for the express purpose of limiting and

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Hous. Auth., 353 S.C. 639, 649, 579 S.E.2d 151, 156 (Ct. App. 2003) (the federal rule on requests "for admissions is substantively similar to our rule").

defining the facts in issue, [and] is traditionally regarded as conclusive"). Critically, in *Airco*, the Third Circuit pointed out that an "admission is not merely another layer of evidence, *upon which the district court can superimpose its own assessment of weight and validity*. It is, to the contrary, an unassailable statement of fact that narrows the triable issues in the case," even where a party "could point to conflicting testimonial evidence." 850 F.2d at 1036-1037 (emphasis added). Thus, the Orders below are immediately appealable because they involve the merits and affect a substantial right.

In *Adams v. Orr*, the Supreme Court held the defendant was not deemed to have admitted certain facts where "the request for admissions as worded was subject to more than one reasonable interpretation." 260 S.C. 92, 97, 194 S.E.2d 232, 234 (1973). As noted above, several of the Requests for Admission are worded such that Burdette's responses are consistent with his deposition testimony, given the imprecise wording employed in those Requests. In other words, several of the Requests for Admission that are at issue are imprecisely worded and, as a result, inarguably are "subject to more than one interpretation," and Burdette's responses are correct as served.

Here, the Circuit Court exceeded its authority by weighing the evidence and requiring Burdette to change his answers to the Respondents' Requests for Admission to conform to its view of the evidence. Weighing the evidence is a function reserved to the factfinder. *See, generally, Watson v. Ford Motor Co.*, 389 S.C. 434, 445, 699 S.E.2d 169, 174 (2010) ("[t]he jury serves as the fact finder and is charged with the duty of weighing the evidence admitted at trial …").

In addition, the Circuit Court had no authority to require a party to revise their response to a request to admit. Pursuant to Rule 36(b), a "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), SCACR (emphasis added). Here, the Court did not "permit" Burdette to either withdraw or amend his response to the subject Requests for Admission but, instead, *ordered* him to serve revised responses that better conform to the Court's and Respondents' view of his prior deposition testimony. Nor did the Court, upon a motion to determine the *sufficiency* of the responses, "order either that the matter is admitted or that an amended answer be served," pursuant to the third paragraph of Rule 36(a), SCACR. The Court did not find that Burdette's responses were *insufficient* but, instead, that they were *incorrect* based on the Court's view of his deposition testimony. Nothing in Rule 36 authorizes a court to order a party to revise a response based on the court's view of the evidence. As noted above, weighing the evidence is reserved for the factfinder. *Watson*, 389 S.C. at 445, 699 S.E.2d at, 174.

Consequently, if the Orders appealed herein are *not* immediately appealable, not only is Burdette deprived of a substantial right to assert certain defenses but, in addition, the goals of Rule 36 – "economy and efficiency in resolving disputes," *Scott*, 353 S.C. at 649, 579 S.E.2d at 156[6] – will be frustrated. In other words, if Burdette is forced to wait until after a trial (wherein the judicially-revised Requests to Admission preclude him from raising certain defenses) and a jury verdict is returned against him to appeal these Orders, and those Orders are overturned in that later appeal, this case will have to be

[6] As is explained in *Scott*, "[i]f a point is conceded, litigants need not expend effort in investigations concerning it nor incur expense in presenting evidence to prove it." *Id.*

remanded for a new trial based on Burdette's initial (and correct) responses to the Requests for Admission. There is nothing economical or efficient about such a process.

Respondents criticize Burdette for not waiting until he had been placed in contempt to file his appeal. However, where a party's defense is stricken in part or in whole by a court, there is no need for that party to wait until a contempt order has been issued in order to appeal. *See, e.g.*, *Karppi v. Greenville Terrazzo Co.*, 327 S.C. 538, 489 S.E.2d 679 (Ct. App. 1997) (considering immediate appeal by defendant whose answer, counterclaim and cross-claim were stricken, putting that defendant in default). Cases instructing that a party must "either comply with the discovery order and waive any right to challenge it on appeal, or refuse to comply with the order and appeal after he is held in contempt for his failure to comply," *Davis v. Parkview Apts.*, 409 S.C. 266, 281, 762 S.E.2d 535, 543 (2014), *citing Ex parte Whetstone*, 289 S.C. 480, 346 S.E.2d 881, 882 (1986), all involve a refusal or failure to respond to interrogatories or to produce documents or witnesses for depositions. None of these cases involve requiring a specific response to a request to admit that serves as a binding admission and limits the issues to be tried. Furthermore, pursuant to *Davis*, a party "can either comply with the discovery order and waive any right to challenge it on appeal, or refuse to comply with the order and appeal after he is held in contempt for his failure to comply." 409 S.C. at 281, 762 S.E.2d at 543. In other words, if Burdette did not appeal these severe Rule 37 sanction Orders now, Plaintiffs likely would argue in any later appeal that the opportunity to do so had been waived.

This Court should recognize that this appeal raises a novel issue in South Carolina, and hold that an order directing a party to rewrite or "re-answer" a request for

admission to conform to the lower court's view of other evidence is immediately appealable, invades the province of the jury, and exceeds the court's authority.[7]

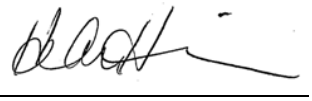
CONCLUSION

For all the reasons stated herein, this appeal is a permissible interlocutory appeal. As a result, this Court should not dismiss the appeal and, in any event, should not impose sanctions as requested by Respondents.

Respectfully submitted,

McAngus Goudelock & Courie, LLC

January 21, 2021

By: 

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[7] In addition, where an order involves an issue that is immediately appealable, all the matters decided in that order may be reviewed at the same time, *see Rice Hope Plantation v. S.C. Pub. Serv. Auth.*, 216 S.C. 500, 510-511, 59 S.E.2d 132, 135-136 (1950), *overruled on other gds, McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985), making the other issues decided in the Orders reviewable at this point as well.

STATE OF SOUTH CAROLINA)

) IN COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG)

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

Plaintiff,

vs. CA No. 2019-CP-42-002215

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.

_____/

DEPOSITION OF JASON EDWARD BURDETTE

PURSUANT TO NOTICE and/or agreement of the parties, the within deposition was taken on the 20th day of March, 2020, commencing at the hour of 10:25 a.m. at the Gallivan White & Boyd, One Liberty Square, 55 Beattie Place, #1200, Greenville, South Carolina; attended by Counsel, as follows:

Meetings, the first sentence, "Quarterly safety meetings will be held at each operation or terminal."

Do you remember any safety meetings while you were there?

BY MR. YOUNG:

Object to the form.

BY THE DEPONENT:

Yes, sir.

DIRECT EXAMINATION CONTINUED BY MR. KNIE:

Q. Okay. How many?

A. Well, now when I --- it was not done at their office or anything to do with them.

Q. Okay.

A. It was done with the company that I was leased to.

Q. Which was?

A. Diamond Hill Plywood.

Q. Okay.

A. And which I was the only temp driver there.

Q. Okay.

A. During that time, and it was for their drivers, and I just had to attend.

Q. Okay, and then under Guidelines for Determining Preventability and Severity of Vehicle Collisions, do you see that paragraph and that heading?

A. Yes, sir.

Then I got to --- as I work my way around to the front of the truck, it gets it again, the same thing. I go through and check everything again. Then I get in the truck, and that's the pre-trip.

Q. And how much on time do you show for your pre-trip inspection?

A. Fifteen minutes, sir. I can do all that in 15, do all that and paperwork in 15 minutes proficiently.

Q. Okay.

Let's turn to page 18, which is OLS-243. Under Company Policy you see the second paragraph from the bottom, the Cell Phone Use?

A. Correct, sir.

Q. And let me read that paragraph: "Distracted driving is a major contributor in vehicle accidents as such, cell phones are not to be used while driving in any capacity (voice, text, data or otherwise). Employees are instructed to find a safe place to pull off the roadway before using a cell phone. Hands free devices do not alleviate or eliminate the driving distraction and are not considered as a suitable alternative to pulling off the highway to make or receive a call."

Did I read that correctly?

A. Yes, sir, that's what it says.

Q. And were you aware of that written policy of Optimum

Logistics?

A. No, sir, I was not.

Q. Well, but you said earlier, I believe you testified, you had a copy of this safety manual?

A. Yes, sir, I got it yesterday.

Q. All right. Well, you got it before, didn't you?

A. No, sir, I never did.

Q. Okay.

A. I know there's a paper in there that I signed for it, but I never got it. They said they was going to send it to me later that I just needed to go ahead and sign for it now. I'm like, "All right. Whatever."

Q. Well, then you signed something that was untruthful then, didn't you?

A. Yes, sir, I did.

Q. Well, let's confirm that. Here's --- before we confirm that, why don't you reconnect that last exhibit so we don't get the papers within papers there.

A. Yes, sir.

(PLAINTIFF'S EXHIBIT NO. 13 MARKED PRIOR TO DEPOSITION)

DIRECT EXAMINATION CONTINUED BY MR. KNIE:

Q. Okay. All right. So looking at Exhibit 13 I believe your name is printed at the top? Do you need some time?

A. Yes, sir, please.

Q. Okay.

(OFF THE RECORD)

DIRECT EXAMINATION CONTINUED BY MR. KNIE:

Q. We're looking at Exhibit No. 13.

A. Hang on one second, sir.

Q. Okay.

A. I want to get every --- I want to keep everything together.

Q. That's fine.

A. Yes, sir.

Q. Which is OLS-44, and it is entitled Driver's Statement; is that correct?

A. Yes, sir.

Q. And I believe it is your signed statement; is that correct?

A. Yes, sir.

Q. And down in the lower half of the page you signed that your initials that you received an employee handbook on this date, which is 8/6/18; is that right?

A. Talking about right here, sir, or right, right here?

Q. Right here, Employee Handbook.

A. That is not my handwriting, sir. That is not my initials.

Q. Okay. That is your signature up above?

A. Correct, sir.

Q. Okay, and are you telling us that you didn't initial any of those ---

A. Correct, sir.
Q. --- initials down below?
A. Correct, sir.
Q. But you did tell me earlier in the deposition that you received the employee handbook and the safety manual and you just weren't sure if you would be able to find them but you probably had them somewhere?
A. Might have, sir.
Q. Okay, and then a minute ago you were saying that you saw it yesterday?
A. Correct, sir. That's what I was talking about, yesterday.
Q. So are you telling me that what you said earlier is incorrect that you did not receive those manuals?
A. Correct, sir.
Q. And you're changing your testimony?
A. I was understanding that you were saying --- asking if I got the things. Yes, I did get them yesterday.
Q. Okay. I believe I asked you at the time of your employment?
A. Oh, no, sir. I didn't hear you say time of employment, because the only thing I remember you asking is if I had just seen it.
Q. All right, and that's just like you didn't read that whole sentence about prior accidents that you had in the last five years?

Q. I know. I'm just ---
A. So ---
Q. --- asking you do you know if that was ever done?
BY MR. YOUNG:
Same objection.
BY THE DEPONENT:
I don't know what they did, sir, before I got there.
DIRECT EXAMINATION CONTINUED BY MR. KNIE:
Q. And do you know what was done after you got there?
A. No, sir.
Q. Okay. Let's talk a little bit about your training process with Optimum Logistics. Once you were hired, other than providing you with a safety manual and an employee handbook, did you have any classroom work?
A. Negative, sir.
Q. Did you have any road testing or road training?
A. I did have to go for a road test.
Q. Okay.
A. With one of the companies they had me with.
Q. But did Optimum Logistics give you any road testing?
A. No, sir, I did not. Okay. No, sir.
Q. But you indicated they did provide you with those handbooks?
A. No, sir, I did not.
Q. That's not what your testimony just was?

A. I told you that I got that them --- I never got them books.
Q. Okay.
A. I told you the signatures, the initials on that page was not mine.
Q. Okay.
A. So I never received them books until yesterday.
Q. All right. Well, even if those initials weren't yours, that doesn't establish that you didn't get those books; is that right?
A. I'm telling you, sir, I did not get the books.
Q. Okay. So, what was your first assignment with Optimum? Who did they assign you with?
A. BI-LO Warehouse.
Q. And how long did that assignment last?
A. Until September.
Q. All right. So that would be approximately a month?
A. Correct.
Q. And then in September where were you assigned?
A. Diamond Hill Plywood.
Q. And how long did that last?
A. Until January.
Q. Okay.
A. February, somewhere around --- yeah, January. End of --- first of January, mid-January, somewhere around there.

Q. And then where were you next assigned?
A. There was a delay. I don't know how long. I can't ---
Q. Okay.
A. I know it was less than a month delay, but there was a delay to keep me with some --- some heating and air company for a short period, for like a short period of time.
Q. Okay, and then where were you next assigned?
A. I was at Cranston.
Q. Now you said one of those assignments they put you through a road test?
A. Correct.
Q. Which one?
A. BI-LO.
Q. When you went with Cranston, did they put you through a road test?
A. No, sir.
Q. Did they give you any training?
A. No, sir.
Q. Did you have any safety meeting with them?
A. No, sir, I was only there a week. So I don't know if they even had safety meetings or anything.
Q. Did Cranston supply you with any employee manual or safety manual?
A. No, sir.

Q. Okay. Now we talked about communicating with a dispatcher. What type of things would you routinely have to communicate about with a dispatcher?
A. Where to go next. Where am I at? What am I doing? How am I doing it? Who, what, when, where and why stuff.
Q. And is it a fair statement that on the days that you worked you communicated frequently with the dispatcher?
A. Correct.
Q. Would you also talk to the dispatcher before the trip started?
A. Yes.
Q. Would part of your discussion involve, you know, how many legal hours I've got left this week, that type of thing?
A. No.
Q. So that, was that your job totally to keep up with that?
A. Correct.
(PLAINTIFF'S EXHIBIT NO. 22 MARKED PRIOR TO DEPOSITION)
DIRECT EXAMINATION CONTINUED BY MR. KNIE:
Q. Let me show you Plaintiff's Exhibit 22. You recognize this exhibit?
A. It's a phone record.
Q. And have you seen it before today? I mean were you shown this record?
A. Yes, sir.
Q. When were you shown it?

A. Yesterday.
Q. And it says that it's the Verizon record for Betty Wrenn. Were you in possession of a phone that was listed in that name on February 1st, ---
A. Yes, sir, I was.
Q. --- 2019?
Explain the circumstances by which it was her account that you happened to have it with you?
A. Okay. She had an account with Verizon. She got me a phone on her account.
Q. Okay. Let's go to February 1st. There appears to be a call at 5:38 in the morning. Do you recognize that phone number?
A. No, sir, I do not.
Q. And then I gather you wouldn't recognize the one at 6:14? That's the same number, correct?
A. It appears to be, yes, sir.
Q. And then at 6:16, that's the same number, correct?
A. Yes, sir.
Q. And you talked 71 minutes and you don't know who it was?
A. I don't really keep track of numbers. I have them in my phone, so I don't know who.
Q. Do you have an idea who it might have been?
A. It could have been her.
Q. Who?

A. Betty.
Q. Okay.
A. It could have been. I don't know.
Q. And then on February 1st at 7:38 you talked to a 979 area code. That was an incoming call. Do you know that was for five minutes?
A. Not that I can recall at this time, sir.
Q. All right. Then at 8:04 you talked to a 864-245-5866. Do you know ---
A. Yes, sir, I know who that is. I looked at that yesterday.
Q. Who is that?
A. That is a former fire instructor, former firefighter, a friend of mine that's like a dad to me.
Q. Okay, and you talked ten minutes?
A. Yes, sir.
Q. And then at 8:32 you talked to 864-440-0626, do you know ---
A. I reckon that might be Cranston. I'm not for sure.
Q. Okay. That was a call from Spartanburg to Greenville?
A. I reckon. I mean ---
Q. Okay.
A. --- I don't know.
Q. All right, and then the same number that you said you talked to for 71 minutes you talked to at 8:34. Do you see that or actually you left a voicemail? Do you see

that?
A. Yes, sir.
Q. And then you left four more, five more voicemails to the same number?
A. It might not be a voicemail. It just might be where I called and they didn't answer and I hung up.
Q. Okay. Well, it's showing VM.
A. Where do you see that at?
Q. Just --- well, the first one is 8:34 in the morning.
A. Okay.
Q. Spartanburg, and then keep coming across.
A. I see it now.
Q. Voicemail, and then you see there's four more underneath it?
A. Right.
Q. And then it appears at 8:36 you had a successful call with that number. Do you see that?
A. Yes, sir.
Q. And you think that was Betty Wrenn, I think you said earlier, based on the 71-minute call that you had earlier with that person?
A. Correct.
Q. Okay.
A. I mean I'm --- I'm assuming.
Q. All right, and so you hadn't denied it earlier. Have you

reviewed what you did that day and you know about what time in the morning that you were driving from Greenville to Spartanburg?

A. Correct.

Q. And that would be from statements that you made and other documents that you reviewed; is that right?

A. Correct.

Q. And, as accurately as possible, based on that review and refreshing your memory, what time, as close to the minute as you can, did you leave the Greenville Cranston Terminal?

A. Can I look back at the paperwork?

Q. Which paperwork do you want to look ---

A. The logs for February 1st.

Q. Sure. Go ahead.

A. (Reviewing documents.) Before 8:00, sir.

Q. All right, and as close in time as you can, when do you believe was the time of the motor vehicle accident?

A. Roughly around 8:30, sir.

Q. And based on the phone records I've shown you and your earlier testimony, can we agree that you were certainly using your cell phone while driving from Greenville to at least the Spartanburg area before the wreck?

A. Correct.

Q. Okay, and did any of those, during that 8:00 to 8:30,

appears to be calls to or from the dispatcher?
A. No, sir.
Q. Those would have all appeared to be personal calls of some nature?
A. Correct.
Q. And were those calls necessary to your employment?
A. No, sir.
Q. And, again, you read the policy with me today of your employer Optimum Logistics that prohibits cell phone use?
A. I've seen it for the first time today, sir.
Q. And you're saying that you were never told nor you never read that you couldn't use your cell phone?
A. I was always told, even from Optimum Logistics their self, as long as you had a headset.
Q. Okay.
A. A hands free, you were fine.
Q. Who told you that?
A. Brian Conners from Optimum Logistics.
Q. Okay.
A. He's --- he called me many a times while I was on the road.
Q. Okay. What did Cranston tell you about their policy about cell phone use?
A. The same thing. As long as you had a headset, you're fine.

Exhibit A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	C.A. No.: 2019-CP-42-02212
	)	
Mark Douglas Hill, III by and through his duly appointed Guardian ad Litem, Helen Kaci Hill,	)	
	)	AFFIDAVIT OF BRETT HEIDT
Plaintiff,	)	
	)	
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.	)	
	)	
Gregory Jones, Sr., as the father and duly appointed Personal Representative of the Estate of Jessica Dawn Jones, Deceased,	)	C.A. No.: 2019-CP-42-02215
	)	
Plaintiff,	)	
	)	
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.	)	

Brett Heidt, who hereby certifies the below statements are true and accurate to the best of his knowledge, and in accordance with the Supreme Court of South Carolina's Operation of the Trial Courts During the Coronavirus Emergency Order, App. Case No. 2020-000447 (S.Ct. Order filed April 22, 2020), deposes and states as follows:

1. My name is Brett Heidt. I am over the age of 18 years old and competent to testify to the matters set forth herein.
2. I am a resident of Greenville County, South Carolina and am employed by Cranston Print Works.
3. I have reviewed what I understand to be Jason Burdette's cell phone records of February 1, 2019.
4. Upon information and belief, the accident involving Mr. Burdette occurred at 8:30 am.
5. None of the telephone numbers listed on the cell phone record prior to 8:32 am on February 1, 2019, are associated with Cranston Print Works Company.
6. Everything contained herein is based upon my own personal knowledge, except that which is based upon information and belief, and to those matters it is so stated.

Further Affiant sayeth not.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.

Brett Heidt

August 6, 2020

Greenville, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
Jan 21 2021
SC Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable R. Keith Kelly, Circuit Court Judge

Appeal No.: 2020-001695

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

PROOF OF SERVICE

I certify that I have served **Appellant Jason E. Burdette's Opposition to Motion to Dismiss Appeal** on Mark Douglas Hill, III, by and through his Duly Appointed Guardian ad Litem, Helen Kaci Hill, and Gregory Jones, Sr., as the Father and Duly Appointed Personal

Representative of the Estate of Jessica Dawn Jones, 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 21, 2021

s/Lisa Carducci

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January 21, 2021

VIA S.C. COURTS E-FILING & 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 / 2019-CP-42-02212

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 Truck Rental, Inc., Optimum Staffing, Inc. d/b/a Optimum Logistic Solutions, and Jason E. Burdette / 2019-CP-42-02215

Date of Incident:	February 1, 2019
Carrier Claim No.:	501-831720
MGC File No.:	2094.20153
Appeal No.:	2020-001695

Dear Ms. Kitchings:

Enclosed please find the original of Appellants Jason E. Burdette's Opposition to Motion to Dismiss Appeal, and the Proof of Service in the above-referenced matter. We are serving counsel of record via email and U.S. Mail.

If you have any questions, please do not hesitate to contact me.

Yours truly,

Helen F. Hiser

Attachments
cc: Alexander P. Lewis, Esq.
W. Blake Cummings, Esq.
Patrick E. Knie, Esq.

Brandt Horton, Esq.
T. David Rheney, Esq.
William T. Young, III, Esq.
Robert M. Peele, III, Esq.