

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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Jan 21 2021

SC Court of Appeals

APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

The Honorable R. Keith Kelly, Circuit Court Judge

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Appeal No.: 2020-001695

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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.

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**APPELLANT OPTIMUM STAFFING, INC'S OPPOSITION TO  
RESPONDENTS MOTION TO DISMISS APPEAL**

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Pursuant to Rule 240, SCACR, Appellant Optimum Staffing, Inc. d/b/a Optimum Logistic Solutions (“Optimum”) opposes Respondents’ Motion to Dismiss (“Motion”) this appeal. Optimum adopts all arguments put forward by other Appellants, Cranston Print Works Company (“Cranston”) and Jason E. Burdette (“Burdette”) and incorporates their recitation of facts and their arguments by reference. Respondents incorrectly assert that Optimum knowingly filed an improper interlocutory appeal for the purpose of “prolong[ing] and delay[ing] the underlying litigation,” which Respondents assert justify sanctions. Furthermore, Respondents state that Appellant Optimum lacks standing to challenge the Orders of Judge Kelly as it pertains to Appellant Burdette. While this appeal could be interlocutory in nature, it falls within the category of permissible interlocutory appeals as it raises an issue that directly affects Optimum’s defenses in the underlying case. More specifically, and as is explained below, Judge Kelly’s October 19, 2020 Order improperly invades the role of the jury as the fact-finder.

Respondents assert Optimum lacks standing to appeal the Court’s Orders. SCACP 201(b) states: “Any party aggrieved by an order may appeal.” *See also* S.C. Code Ann. § 18-1-30. A party is aggrieved by an order when the order when the order “operates on his rights of property or bears upon his interest...” *Bivens v. Knight*, 254 S.C. 10, 13, 173 S.E.2d 150, 152 (1970). In the Complaints in the instant case, the Plaintiff in both cases have alleged Optimum: 1) failed to properly train its driver; 2) failed to properly supervise and monitor its driver; and 3) violating federal regulations including, but not limited to, 49 CFP Sections 350-359. In other words, Plaintiff in both cases are looking to hold Optimum vicariously liable for Burdette’s actions. To concede that Optimum is not giving up a substantial right or interest by requiring Burdette to change his responses to Request to Admit conforming to the evidence as the Circuit Court believes the way it should is fundamentally unfair and invades the interest of Optimum. *See Karppi v.*

*Greenville Terrazzo Co.*, 327 S.C. 538, 489 S.E.2d 679 (Ct. App. 1997), where the Court of Appeals determined the sanctions against one defendant affected (both positively and negatively) another defendant.

As stated above, Optimum is an aggrieved party. However, Optimum was not a party to whom the discovery orders were directed, and its current counsel just recently entered their Notice of Appearance in this case December 9, 2020. Counsel for Optimum had no choice but to appeal because if it failed to do so would result Judge Kelley's orders as being deemed as law of the case. *See Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 743 S.E.2d 778 (2013) ("An unappealed ruling is the law of the case and requires affirmance"). Optimum submits to this Court that Judge Kelly's seemingly unilateral decision to determine the creditability of Burdette by ordering him to change his responses to Plaintiff's Request to Admit was premature because discovery has not been completed, no depositions of Optimum personnel have been taken, and his Orders have essentially undermined what a trial by jury is supposed to do, which is to weigh the creditability of the witnesses presented by each party.

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.

As the Request for Admission relate to Optimum and the specific requests that Judge Kelly ordered Burdette to re-answer, 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 on behalf of Optimum, Diamond Hill Plywood. (Exh. 1, Burdette Dep. p. 72, lines 3-21). As a result, Burdette’s response to Request for Admission No. 8, as written, is correct. Request for Admission No. 7 sought an admission that, “Defendant Jason R. 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,” to which Burdette responded, “**Denied.**” The Circuit Court ordered Burdette to “re-answer” his admission to conform to pages 77 and 78 of his deposition transcript. However, there is documentation in his employee file kept by Optimum that showed Burdette signing for the handbook. (Exh. 1 to Burdette Memorandum in Opposition). It is reasonable to assume that Burdette could have forgotten that he received the employee handbook, or at a minimum the issue of whether Optimum gave Burdette a copy of the handbook should be an issue that goes to the jury. Burdette should not be ordered to change his answer to the Request for Admission as this decision is premature as no depositions of Optimum have taken place. If there is a question of fact as to whether Optimum provided the employee handbook to Burdette, it should be question for the jury and Burdette should not have to be required to admit that Optimum did not provide him an employee handbook where there is documentation to the contrary. 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 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 pages 77 and 78 of his deposition transcript. To request Burdette to change his answer to this Request to Admit is premature at this point as no deposition testimony has been elicited from Optimum. The same is true for Request to Admit No. 11, as no deposition testimony has been elicited.

By affirming Judge Kelly’s original October 8, 2020 Order, that is essentially precluding Optimum from introducing evidence to rebut these matters. Rule 36(b), SCRPC, states an admitted matter is “conclusively established” unless the court permits withdrawal or amendment. Essentially by requesting Burdette to amend his answers to the Request to Admit, Judge Kelly is requiring Optimum to admit factual issues that are not correct or to concede issues that are to the detriment to the defense of Optimum, which are not clearly established by law or fact.

For the foregoing reasons, Optimum requests that you deny Respondents Motion to Dismiss.

Respectfully Submitted,

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January 21, 2021

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# EXHIBIT

“1”



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

3 Do you remember any safety meetings while you were  
4 there?

5 BY MR. YOUNG:

6 Object to the form.

7 BY THE DEPONENT:

8 Yes, sir.

9 DIRECT EXAMINATION CONTINUED BY MR. KNIE:

10 Q. Okay. How many?

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

13 Q. Okay.

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

15 Q. Which was?

16 A. Diamond Hill Plywood.

17 Q. Okay.

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

19 Q. Okay.

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

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

25 A. Yes, sir.

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Optimum Logistic Solutions, and Jason E.  
Burdette, Defendants,

And

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

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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 Optimum Staffing, Inc.’s Opposition to Respondents’ 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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