THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

RECEIVED
JAN 27 2021
SC Court of Appeals

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' REPLY TO APPELLANTS' RETURNS TO RESPONDENTS' MOTION TO DISMISS

ARGUMENT

I. Appellants have improperly brought an appeal that is interlocutory in nature, and no permissible basis exists for the continuation of the instant appeal.

Based upon the Appellants' Returns, it is clear that this admittedly Interlocutory Appeal should be dismissed, as the Appellants have failed to point to a harm suffered from Appellant/Defendant Burdette re-answering requests for admission in such a way that it would conform to his prior sworn testimony. While each of the Appellants has offered various erroneous arguments for why the instant Appeal should not be dismissed, they have uniformly misapplied the Circuit Court's Orders to say something that they simply do not say. Namely, each of the Appellants has asserted that the Orders requiring Appellant/Defendant Burdette to re-answer Requests for Admission to conform with his prior sworn testimony somehow means that he must admit the Requests. That simply is not the case, and is not what the unambiguous explicit wording of the Court's Orders state. Further, enhancing the Respondents' position is the fact that Appellant Burdette's Counsel of Record admits that this matter is Interlocutory in nature.

Despite acknowledging its Interlocutory status, Counsel for Appellant Burdette suggests that the instant Motion should be rejected for several unavailing reasons. First and foremost, Counsel for Burdette seems to base her whole argument, like that of Counsel for the other Appellants, around the premise that re-answering Requests for Admission to comply with prior sworn testimony will in effect foreclose on a defense at the trial on the merits. Such an assertion is false. The Circuit Court has not stated that any defense of Appellant Burdette, or any other Appellant/Defendant, would be stricken or in any way effected, and in fact Counsel for Appellant Burdette has failed to state what particular defense would be impacted by his re-answering Requests for Admission in line with his prior sworn deposition testimony. Further, Appellant Burdette, like Appellants Cranston and Optimum, fails to appreciate that re-answering Requests for Admission in conformance with his deposition testimony

does not preclude him from maintaining a denial to the request, denying the request as written, or offering a qualified denial. It certainly does not mean that Appellant Burdette is being forced to admit the Request as written. Simply put, Appellant Burdette is being offered a chance to re-answer the Requests for Admission that were before him in good faith and in conformance to his earlier sworn testimony, and to do so with a certification that the answers are actually his answers, rather than that of his attorney. Requiring Burdette to do so does not presuppose upon him an answer, nor does it require a certain answer. This is the very thing that each Appellant has missed, and is the critical reason why Appellant Burdette should have either attempted to comply with the Orders, sought clarification from the Circuit Court, or raised the issues at any hearing on a Motion to hold him in contempt for failure to comply with the Orders. Instead, Appellant Burdette apparently determined that he would be precluded from offering an undefined defense at the trial of the case, and thus appealed. Appellants Optimum and Cranston have joined in the appeal with the same faulty logic, stating that the answers of one Defendant would somehow preclude these separate Defendants from offering their own evidence and defenses at the trial of this case.

This logic and course of action are clearly erroneous and contrary to the well-established common law in South Carolina. While Counsel for Burdette would have this Court believe that the appeal is on a novel issue, that simply is not true. As was noted by Respondents' Counsel in the instant Motion, former Chief Justice Pleicones aptly noted in a resent 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, v. Parkview Apartments*, 409 S.C. 266, 290-1, 762 S.E.2d 535, 548 (2014) (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). Thus, this appeal does not present a novel issue, as it is clear from the wording of the Orders and the language in Appellants returns that the instant appeal is Interlocutory and improper. To the extent that Appellants argue that simply because this matter deals with Requests for Admission that it changes the overarching requirements espoused above is simply not true. The aforementioned standards still hold true.

Appellant/Defendant Burdette, by and through his Counsel of Record, has not and cannot show that through re-answering the Requests for Admission with denials, qualified denials and/or admissions that any defense at the trial of this matter would be precluded, foreclosed or waived. In examining the arguments presented, it is telling that Counsel for Appellant Burdette has failed to even remotely articulate which supposedly critical defense would be precluded from being raised at the trial on the merits if they had to actually conform their answers to prior sworn testimony. Such an omission is critical as it shows the true frivolous nature of this appeal. It is respectfully submitted that this Court should look through Appellants' hollow arguments, and see this Appeal for what it is, yet another attempt to circumvent justice, abuse the rules of the Court, and to prolong this case from ever reaching a jury.

It is respectfully submitted that the spirit of the law, and the Rules of Civil Procedure is to require litigants to give truthful and accurate answers to deposition questions under oath, and in Requests for Admission. A litigant should not be allowed to state one thing under oath and then later determine that they wish to change their response when their counsel, who is representing all co-

Defendants, realizes that the earlier testimony if confirmed through Requests for Admission might harm his other clients. This is precisely what occurred here. Appellant Burdette, by and through his then Attorney William T. Young, III, when confronted with Requests for Admission that were in response to Burdette's earlier deposition testimony determined that he would offer unqualified denials even where it was contradictory to Burdette's earlier sworn testimony to benefit his other clients, who had divergent interests from each other and Burdette. It is respectfully submitted that this fact is born out when one reads between the lines in both Appellant Optimum and Appellant Cranston's Memoranda in Opposition to the instant Motion. Such a motivation also illustrates why the overall defense of each Appellant has finally been divested from one individual after the Circuit Court's Orders. However, this appeal is not the proper vehicle to attempt to clean up the Appellants' mess that was created from one attorney representing three parties with different interests.

While each Appellant has suggested that the Circuit Judge doled out some bitterly harsh medicine in asking litigants to play by the rules and truthfully answer both discovery requests and deposition questions, the undersigned would point out that the Circuit Judge's Orders simply allow Burdette the opportunity to offer new responses. The Circuit Judge never states that the old Answers must be changed to admissions, rather he states that they must be re-answered to conform to deposition testimony. How Appellant Burdette accomplishes that is left to his own discretion. The Circuit Judge simply states it must be consistent with the prior deposition testimony, and certified as his own answers. Nowhere in the Orders at issue did the Circuit Judge state that denials could not be given as revised answers, and certainly nowhere did he state that any defense was precluded. He simply stated that Burdette's answers must conform to the sworn deposition testimony. A simple concept that is in line with the idea that one who is under oath should tell the truth.

Again, Burdette's Counsel has not even stated which defense is somehow now eliminated by the Circuit Judge's Orders. The overarching premise of Appellants' appeals are thus reaching at best. In fact, Appellant/Defendant Burdette, and his current Counsel of record, had the opportunity to revise their answers, maintain their denials, issue qualified denials, or admit the requests. However, they chose not to do any of these. Rather, Appellant Burdette, or whomever is the person responsible for his defense, determined that he would hire a new attorney, file an appeal, and not even attempt to comply with the Circuit Court's Orders. He has suffered no harm, and cannot show how re-answering the Requests for Admission as he sees fit, in conformance with his deposition testimony, will deprive him or any other Appellant/Defendant of anything, including defenses at the trial on the merits. Certainly, if Optimum or Cranston disagree with Burdette's answers, they will have the opportunity at the trial on the merits to offer evidence to refute his sworn deposition testimony, or his new answers to Requests for Admission that are consistent with his earlier sworn testimony. Simply put, no party is being precluded from offering a robust defense to any of the allegations against them based upon the Orders at issue.

The Respondents would again respectfully request that this Honorable Court find that the Circuit Judge did not in anyway strike or preclude any defense in the underlying litigation, rather he simply Ordered that the answers to Requests for Admission be espoused in such a way as to conform to the earlier sworn deposition testimony of Burdette. There is no harm. Simply put, this is an admittedly Interlocutory Appeal on an issue where the Appellants have suffered no harm, and as such this appeal should be dismissed as Interlocutory, improvident and improper. The precedent on this matter is clear, and the result should be too.

CONCLUSION

Based on the foregoing, the Respondents would respectfully request that this Honorable Court grant the instant Motion, and dismiss the current Interlocutory appeal. Simply put, there presently are no issues that are properly ripe before this Honorable Court for adjudication.

RESPECTFULLY SUBMITTED,

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January 25, 2021
Spartanburg, South Carolina

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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' Reply to the Appellants' Returns to the Respondents' Motion to Dismiss on 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 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 25, 2021
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VIA S.C. COURTS E-FILING 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 please find the original of the Respondents' Reply to the Appellants' Returns to Respondents' Motion to Dismiss, along with the original Proof of Service in the above referenced matter. We are serving all counsel of record via email and U.S. Mail.

Should you have any inquiries, or if I may be of some further assistance, I await the Court's instructions.

With warmest regards,

Alexander P. Lewis

Encls.

Cc: Patrick E. Knie, Esq.
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Geoffrey Gibbon, Esq.
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