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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.

PETITION FOR REHEARING

Pursuant to Rules 221 and 240, SCACR, Appellant Jason E. Burdette petitions this
Court to rehear its Order granting Respondents' motion to dismiss this appeal. Because

this Court's Order has the effect of dismissing the appeal, this Petition is proper pursuant to Rule 221(c), SCACR. Burdette received this Court's Order on February 11, 2021.

This Court overlooked and/or misconstrued the fact that the appealed Orders do not simply "direct[] a party to participate in discovery," as was the case in *Ex parte Whetstone*, 289 S.C. 580, 3467 S.E.2d 881 (1986). Instead, they involve the merits and affect a substantial right by binding Burdette to certain admissions that are incorrect, inconsistent with his testimony and would, if allowed to stand, preclude him from presenting contrary evidence at trial. This Court has recognized previously that it "should look to the *effect* of an interlocutory order to determine its appealability under section 14-3-330(2)(c)" and that "[a]n order affects a substantial right by striking a pleading if the order removes a material issue from the case, thereby preventing the issue from being litigated on the merits, and preventing the party from seeking to correct any errors in the order during or after trial." *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 304, 705 S.E.2d 475, 479 (Ct. App. 2011) (emphasis added); *see also Wetzel v. Woodside Dev., Ltd. P'ship*, 374 S.C. 589, 592, 615 S.E.2d 437, 438 (2005) (finding order setting aside entry of default immediately appealable because its effect was to end the action completely as to one party). Specifically, this Court overlooked or misconstrued the fact that, by ordering Burdette to revise his responses to various Requests for Admission to "conform" to the Circuit Court's and Plaintiffs' view of testimony on certain pages of his deposition transcript, the Orders affect Burdette's defenses and his ability to present certain evidence at trial. In short, the Orders involve the merits and affect a substantial right.

In addition, this Court failed to recognize the untenable position in which the application of *Whetstone* and its progeny places a party such as Burdette. Burdette either

must comply with the order and lose any right to later appeal it, or refuse to comply and allow himself to be placed in contempt in order to appeal it now. Furthermore, pursuant to *Davis v. Parkview Apts.*, 409 S.C. 266, 762 S.E.2d 535 (2014) and *Whetstone*, if Burdette did not appeal these severe Rule 37 sanction Orders now, Respondents undoubtedly would argue in any later appeal that the opportunity to do so had been waived.

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*, 409 S.C. at 281, 762 S.E.2d at 543; *Whetstone*, 289 S.C. 480, 346 S.E.2d at 882, all involve a refusal or failure to respond to interrogatories or to produce documents or witnesses for depositions. None of these cases involve an order requiring a specific revision to a response to a request to admit that serves as a binding admission and limits the issues to be tried. To be clear, Burdette has not refused “to participate in discovery,” as was the case in *Whetstone* and its progeny that adopt the dichotomous choice of either complying with an order and losing the right to later appeal, or refusing to comply and be held in contempt in order to appeal immediately. Burdette attended his deposition and participated fully. When served with Requests for Admission, he answered them correctly as they were stated.

This Court also overlooked and/or misconstrued the fact that the questions eliciting responses at his March 20, 2020 deposition were worded differently from the Requests for Admission at issue here. It should come as no surprise, then, that Burdette’s responses to the Requests for Admission do not match up or “conform,” to certain pages of his deposition responses for the simple reason that the questions posed are worded differently in the two contexts. Request for Admission No. 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.**” (emphasis added). Burdette responded, **“Denied.”** The Circuit Court ordered Burdette to “re-answer” this admission to conform to page 119 of his deposition testimony. However, at page 119 of his deposition testimony, Burdette was asked, “what time, as close to the minute as you can, did you leave the Greenville Cranston Terminal,” and then, “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,” to which Burdette responded, “Correct.” He did not testify that he was using his cell phone immediately “prior to impact,” as the Request for Admission suggests. Nor did he testify that he was communicating “with among other people, agents/employees of Defendant Cranston Print Works Company d/b/a/ Cranston Trucking Company.” (Exh. 1, Burdette Dep pp. 115-119). Other evidence confirms that he was not talking with any Cranston personnel prior to the accident. (Exh. 2, Heidt Affid.). Thus, the appealed Orders require Burdette to answer a Request for Admission in a manner contrary to his deposition testimony and other evidence.

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,” (emphasis added), to which Burdette responded, **“Denied.”** The Circuit Court ordered Burdette to “re-answer” his admission to conform to page 71 of his

deposition transcript. While Burdette was asked, and what he testified to on page 71 of his deposition transcript was whether Optimum itself had provided any training, Request for Admission No. 8 is not limited to training provided directly by Optimum. In fact, Burdette testified correctly 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. By focusing on page 71 of his deposition and ignoring pages 72 and 85, the appealed Orders would have Burdette respond to a Request for Admission in a way that, in fact, contradicts his deposition testimony.

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," (emphasis added), 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, on pages 77-78 of his deposition, Burdette was read a section of an Optimum policy concerning cell phone use and asked whether he was "aware of that **written policy** of Optimum Logistics," (emphasis added), which Burdette answered, "No, sir, I was not." In contrast, the Request for Admission covers both "orally or in writing." Burdette testified that he had had a discussion with Brian Connors 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).

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). Here, the Requests for Admission do not track the questions asked at Burdette’s deposition such that his responses are consistent and entirely correct. In other words, several of the Requests for Admission that are at issue are imprecisely worded, inarguably are “subject to more than one interpretation,” and Burdette’s responses to those Requests for Admission are correct as served. This Court overlooked the fact that the Circuit Court is compelling Burdette to answer these Requests for Admission contrary to his testimony and contrary to the facts, which is fundamentally different from a party simply refusing to participate in discovery and, consequently, the Orders are immediately appealable.

It is well-established that this Court has jurisdiction over “[a]ny intermediate judgment, order or decree in a law case involving the merits,” as well as 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. An order affects a substantial right when it, among other things, strikes out a defense such that the defense is lost. *Mid-State Distrib., Inc. v. Century Importers, Inc.*, 310 S.C. 330, 334 n.4, 426 S.E.2d 777, 780 n.4 (1993); *see also Thornton*, 391 S.C. at 304, 705 S.E.2d at 479 (“[a]n order affects a substantial right by striking a pleading if the order removes a material

issue from the case, thereby preventing the issue from being litigated on the merits, and preventing the party from seeking to correct any errors in the order during or after trial”). Complying with the Orders on appeal would result in Burdette answering these and other Requests for Admission in a manner that not only is inconsistent with his prior testimony, but also incorrect.¹

By binding Burdette to responses to Requests for Admission that are incorrect, inconsistent with his prior deposition testimony and the result of the Circuit Court’s engagement in fact finding, the Orders strike out various defenses that otherwise would be available to Burdett. To the extent he is required to “admit” he was using his cell phone “prior to impact” with Respondents’ vehicle, Burdette will be unable to present evidence to the contrary at trial, which will hamper his ability to dispute that he was not paying attention and/or keeping a proper lookout. Specific to Burdette, Plaintiffs allege that he was willful, wanton, reckless, grossly negligent and careless in, among other things, “failing to keep a proper lookout.” (Hill Complaint ¶ 16; Jones Complaint ¶ 15). Indeed, it would be difficult to prove he failed to keep a proper lookout if he could not present evidence that he was not communicating with Cranston personnel on “his cellular phone on February 1, 2019, **prior to impact** with” the Respondents’ vehicle. South Carolina and federal case law addressing the binding effect of a response to a request to admit makes

¹ Respondents nonsensically suggest that the Orders do “not preclude [Burdette] from maintaining a denial to the request, denying the request as written, or offering a qualified denial.” (Resp. Reply pp 2-3). If Burdette could comply with the Orders by simply denying the various Requests for Admission, as he already has done, there would be no point to the Orders themselves. Given how vigorously they fought to have the Requests for Admission revised in a manner that suits them, Respondents undoubtedly would object if Burdette provided the same denials in response to the Circuit Court Orders.

clear that such admissions are far more significant than are either interrogatory responses or deposition testimony, both of which can be contested before the factfinder.

The binding nature of a lower court ordering a party to respond to requests for admission with a particular answer demonstrates why this case is not controlled by *Whetsone* and its progeny, and why this Court should reverse the February 11 Order and allow this appeal to go forward. “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).² This Court overlooked the fact that the express 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.

The practical effect of such an admission is that it “precludes the admitting party from arguing facts at trial contrary to its responses to a request to admit, absent an

² Our Rule 36 “is the language of current Federal Rule 36, as well as substantially the language of Circuit Court Rule 89.” Rule 36, SCRPC, Notes; *see also Scott v. Greenville 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”).

amendment to or revocation of the admission as allowed under the rules.” *Scott*, 353 S.C. at 648, 579 S.E.2d at 156. 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 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). By binding Burdette to certain admissions that the Circuit Court deems consistent with his prior testimony, the Orders are immediately appealable because they involve the merits and affect a substantial right.

Frankly, given the discussion on page 2 of Respondents’ Reply that, “[s]imply 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**”) (emphasis added), Respondents’ entire effort to have Burdette revise his responses to various Requests for Admission appears to be an attempt to drive a wedge between Burdette and his legal counsel, hardly a laudable litigation tactic. As Burdette previously explained, a response to a request to admit is comparable to “[a] judicial admission, **deliberately drafted by counsel** for the express purpose of limiting and defining the facts in issue, [and] is traditionally regarded as conclusive.” *Airco* 850 F.2d at 1036 (emphasis added). In other words, it is not surprising or unusual for counsel to be deeply involved in responding to requests for admission, just as counsel drafts an answer, given the binding effect of both responses.

In addition, 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 ...”). Finally, the Circuit Court also exceeded its authority under Rules 36 and 37, SCRPC.

Burdette also joins in and adopts by reference the arguments raised in Appellant Cranston's and Optimum's Petitions for Rehearing, to the extent not inconsistent herewith.

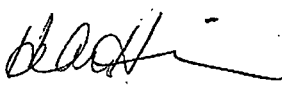
CONCLUSION

For all the reasons stated herein, this Court should grant rehearing and reverse the February 11, 2021 Order granting Respondents' motion to dismiss the appeal.

Respectfully submitted,

MCANGUS GOUDELICK & COURIE, LLC

February 19, 2021

By: 

Helen F. Hiser
S.C. Bar No.: 76124
735 Johnnie Dodds Blvd., Suite 200
P.O. Box 650007
Mount Pleasant, South Carolina 29465
(843) 576-2900
helen.hiser@mgclaw.com

Attorneys for Appellant Jason E. Burdette

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.

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

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

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

9 Q. Okay.

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

13 A. Correct, sir.

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

23 Did I read that correctly?

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

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

1 Logistics?

2 A. No, sir, I was not.

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

5 A. Yes, sir, I got it yesterday.

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

7 A. No, sir, I never did.

8 Q. Okay.

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

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

15 A. Yes, sir, I did.

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

19 A. Yes, sir.

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

21 DIRECT EXAMINATION CONTINUED BY MR. KNIE:

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

24 A. Yes, sir, please.

25 Q. Okay.

1 (OFF THE RECORD)

2 DIRECT EXAMINATION CONTINUED BY MR. KNIE:

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

4 A. Hang on one second, sir.

5 Q. Okay.

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

8 Q. That's fine.

9 A. Yes, sir.

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

12 A. Yes, sir.

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

15 A. Yes, sir.

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

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

20 Q. Right here, Employee Handbook.

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

22 Q. Okay. That is your signature up above?

23 A. Correct, sir.

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

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

1 Q. I know. I'm just ---

2 A. So ---

3 Q. --- asking you do you know if that was ever done?

4 BY MR. YOUNG:

5 Same objection.

6 BY THE DEPONENT:

7 I don't know what they did, sir, before I got there.

8 DIRECT EXAMINATION CONTINUED BY MR. KNIE:

9 Q. And do you know what was done after you got there?

10 A. No, sir.

11 Q. Okay. Let's talk a little bit about your training process
12 with Optimum Logistics. Once you were hired, other than
13 providing you with a safety manual and an employee
14 handbook, did you have any classroom work?

15 A. Negative, sir.

16 Q. Did you have any road testing or road training?

17 A. I did have to go for a road test.

18 Q. Okay..

19 A. With one of the companies they had me with.

20 Q. But did Optimum Logistics give you any road testing?

21 A. No, sir, I did not. Okay. No, sir.

22 Q. But you indicated they did provide you with those
23 handbooks?

24 A. No, sir, I did not.

25 Q. That's not what your testimony just was?

1 A. I told you that I got that them --- I never got them
2 books.

3 Q. Okay.

4 A. I told you the signatures, the initials on that page was
5 not mine.

6 Q. Okay.

7 A. So I never received them books until yesterday.

8 Q. All right. Well, even if those initials weren't yours,
9 that doesn't establish that you didn't get those books; is
10 that right?

11 A. I'm telling you, sir, I did not get the books.

12 Q. Okay. So, what was your first assignment with Optimum?
13 Who did they assign you with?

14 A. BI-LO Warehouse.

15 Q. And how long did that assignment last?

16 A. Until September.

17 Q. All right. So that would be approximately a month?

18 A. Correct.

19 Q. And then in September where were you assigned?

20 A. Diamond Hill Plywood.

21 Q. And how long did that last?

22 A. Until January.

23 Q. Okay.

24 A. February, somewhere around --- yeah, January. End of ---
25 first of January, mid-January, somewhere around there.

- 1 Q. And then where were you next assigned?
- 2 A. There was a delay. I don't know how long. I can't ---
- 3 Q. Okay.
- 4 A. I know it was less than a month delay, but there was a
5 delay to keep me with some --- some heating and air
6 company for a short period, for like a short period of
7 time.
- 8 Q. Okay, and then where were you next assigned?
- 9 A. I was at Cranston.
- 10 Q. Now you said one of those assignments they put you through
11 a road test?
- 12 A. Correct.
- 13 Q. Which one?
- 14 A. BI-LO.
- 15 Q. When you went with Cranston, did they put you through a
16 road test?
- 17 A. No, sir.
- 18 Q. Did they give you any training?
- 19 A. No, sir.
- 20 Q. Did you have any safety meeting with them?
- 21 A. No, sir, I was only there a week. So I don't know if they
22 even had safety meetings or anything.
- 23 Q. Did Cranston supply you with any employee manual or safety
24 manual?
- 25 A. No, sir.

1 Q. Okay. Now we talked about communicating with a
2 dispatcher. What type of things would you routinely have
3 to communicate about with a dispatcher?

4 A. Where to go next. Where am I at? What am I doing? How
5 am I doing it? Who, what, when, where and why stuff.

6 Q. And is it a fair statement that on the days that you
7 worked you communicated frequently with the dispatcher?

8 A. Correct.

9 Q. Would you also talk to the dispatcher before the trip
10 started?

11 A. Yes.

12 Q. Would part of your discussion involve, you know, how many
13 legal hours I've got left this week, that type of thing?

14 A. No.

15 Q. So that, was that your job totally to keep up with that?

16 A. Correct.

17 (PLAINTIFF'S EXHIBIT NO. 22 MARKED PRIOR TO DEPOSITION)

18 DIRECT EXAMINATION CONTINUED BY MR. KNIE:

19 Q. Let me show you Plaintiff's Exhibit 22. You recognize
20 this exhibit?

21 A. It's a phone record.

22 Q. And have you seen it before today? I mean were you shown
23 this record?

24 A. Yes, sir.

25 Q. When were you shown it?

1 A. Yesterday.

2 Q. And it says that it's the Verizon record for Betty Wrenn.

3 Were you in possession of a phone that was listed in that

4 name on February 1st, ---

5 A. Yes, sir, I was.

6 Q. --- 2019?

7 Explain the circumstances by which it was her
8 account that you happened to have it with you?

9 A. Okay. She had an account with Verizon. She got me a
10 phone on her account.

11 Q. Okay. Let's go to February 1st. There appears to be a
12 call at 5:38 in the morning. Do you recognize that phone
13 number?

14 A. No, sir, I do not.

15 Q. And then I gather you wouldn't recognize the one at 6:14?
16 That's the same number, correct?

17 A. It appears to be, yes, sir.

18 Q. And then at 6:16, that's the same number, correct?

19 A. Yes, sir.

20 Q. And you talked 71 minutes and you don't know who it was?

21 A. I don't really keep track of numbers. I have them in my
22 phone, so I don't know who.

23 Q. Do you have an idea who it might have been?

24 A. It could have been her.

25 Q. Who?

1 A. Betty.

2 Q. Okay.

3 A. It could have been. I don't know.

4 Q. And then on February 1st at 7:38 you talked to a 979 area
5 code. That was an incoming call. Do you know that was
6 for five minutes?

7 A. Not that I can recall at this time, sir.

8 Q. All right. Then at 8:04 you talked to a 864-245-5866. Do
9 you know ---

10 A. Yes, sir, I know who that is. I looked at that yesterday.

11 Q. Who is that?

12 A. That is a former fire instructor, former firefighter, a
13 friend of mine that's like a dad to me.

14 Q. Okay, and you talked ten minutes?

15 A. Yes, sir.

16 Q. And then at 8:32 you talked to 864-440-0626, do you know
17 ---

18 A. I reckon that might be Cranston. I'm not for sure.

19 Q. Okay. That was a call from Spartanburg to Greenville?

20 A. I reckon. I mean ---

21 Q. Okay.

22 A. --- I don't know.

23 Q. All right, and then the same number that you said you
24 talked to for 71 minutes you talked to at 8:34. Do you
25 see that or actually you left a voicemail? Do you see

1 that?

2 A. Yes, sir.

3 Q. And then you left four more, five more voicemails to the
4 same number?

5 A. It might not be a voicemail. It just might be where I
6 called and they didn't answer and I hung up.

7 Q. Okay. Well, it's showing VM.

8 A. Where do you see that at?

9 Q. Just --- well, the first one is 8:34 in the morning.

10 A. Okay.

11 Q. Spartanburg, and then keep coming across.

12 A. I see it now.

13 Q. Voicemail, and then you see there's four more underneath
14 it?

15 A. Right.

16 Q. And then it appears at 8:36 you had a successful call with
17 that number. Do you see that?

18 A. Yes, sir.

19 Q. And you think that was Betty Wrenn, I think you said
20 earlier, based on the 71-minute call that you had earlier
21 with that person?

22 A. Correct.

23 Q. Okay.

24 A. I mean I'm --- I'm assuming.

25 Q. All right, and so you hadn't denied it earlier. Have you

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

4 A. Correct.

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

7 A. Correct.

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

12 A. Can I look back at the paperwork?

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

14 A. The logs for February 1st.

15 Q. Sure. Go ahead.

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

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

19 A. Roughly around 8:30, sir.

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

24 A. Correct.

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

1 appears to be calls to or from the dispatcher?

2 A. No, sir.

3 Q. Those would have all appeared to be personal calls of some
4 nature?

5 A. Correct.

6 Q. And were those calls necessary to your employment?

7 A. No, sir.

8 Q. And, again, you read the policy with me today of your
9 employer Optimum Logistics that prohibits cell phone use?

10 A. I've seen it for the first time today, sir.

11 Q. And you're saying that you were never told nor you never
12 read that you couldn't use your cell phone?

13 A. I was always told, even from Optimum Logistics their self,
14 as long as you had a headset.

15 Q. Okay.

16 A. A hands free, you were fine.

17 Q. Who told you that?

18 A. Brian Connors from Optimum Logistics.

19 Q. Okay.

20 A. He's --- he called me many a times while I was on the
21 road.

22 Q. Okay. What did Cranston tell you about their policy about
23 cell phone use?

24 A. The same thing. As long as you had a headset, you're
25 fine.

Exhibit A

ELECTRONICALLY FILED - 2020 Aug 07 3:30 PM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202212

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,)	
)	<u>AFFIDAVIT OF BRETT HEIDT</u>
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.)	
)	
<hr/>)	
Gregory Jones, Sr., as the father and duly)	C.A. No.: 2019-CP-42-02215
appointed Personal Representative of the)	
Estate of Jessica Dawn Jones, Deceased,)	
)	
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

RECEIVED

FEB 22 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

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 **Petition for Rehearing** on
counsel for 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:

Alexander P. Lewis, Esq.
W. Blake Cummings, Esq.
CUMMINGS & LEWIS, LLC
P.O. Box 5766
Spartanburg, South Carolina 29304
(864) 573-9688
Alex.lewis@cummingslewis.com
Blake.cummings@cummingslewis.com

Patrick E. Knie, Esq.
PATRICK E. KNIE LAW OFFICES
250 Magnolia Street
Spartanburg, South Carolina 29306
(864) 582-5118
pknie@knielaw.com

Counsel for Respondents

T. David Rheney, Esq.
William T. Young, III, Esq.
GALLIVAN, WHITE & BOYD, P.A.
P.O. Box 10589, F.S.
Greenville, South Carolina 29603
(864) 271-9580
drheney@gwblawfirm.com
byoung@gwblawfirm.com

Counsel for Appellant Cranston Print Works Company d/b/a Cranston Trucking Company

Robert M. Peele, III, Esq.
COLLINS & LACY, P.A.
Post Office Box 12487
Columbia, South Carolina 29211
(803) 256-2660
rpeele@collinsandlacy.com

Counsel for Appellant Optimum Staffing, Inc. d/b/a Optimum Logistic Solutions

Brandt Horton, Esq.
YOUNG CLEMENT RIVERS
P.O. Box 993
Charleston, South Carolina 29402
(843) 577-4000
bhorton@ycrlaw.com

Counsel for Defendant Ryder Truck Rental

February 19, 2021

s/Lisa Carducci

Lisa Carducci

Legal Assistant to Helen F. Hiser

McANGUS GOUDELOCK & COURIE LLC

735 Johnnie Dodds Blvd., Suite 200

PO Box 650007

Mount Pleasant, South Carolina 29465

(843) 576-2900

Attorneys for Appellant Jason E. Burdette

mgc

Reply To
HELEN F. HISER
Direct Dial: (843) 576-2930
helen.hiser@mgclaw.com

February 19, 2021

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FEB 22 2021

SC Court of Appeals

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 Appellant Jason E. Burdette's Petition for Rehearing, 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.

McANGUS GOUDELICK & COURIE LLC

735 JOHNNIE DODDS BLVD, STE 200
POST OFFICE BOX 650007
MT. PLEASANT, SC 29465

843.576.2900 PHONE
843.534.0605 FAX
WWW.MGCLAW.COM

The Honorable Jenny Abbott Kitchings
February 18, 2021
Page 2

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



mgc

POST OFFICE BOX 450027
MT PLEASANT, SC 29465

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FEB 22 2021

2094.20153/HFH/lkc
The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

SC Court of Appeals

