RECEIVED
Apr 13 2021
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable R. Keith Kelly, Circuit Court Judge

Appellate Case No.: 2020-001695

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' PETITION FOR REHEARING

ARGUMENT

I. Appellants/Defendants have again failed to offer a proper basis for the continuation of this appeal.

While each of the Appellants has offered various erroneous arguments for why the instant Appeal should not be dismissed, they have again uniformly overlooked the fact that the instant appeal is improper as it is Interlocutory in nature Further, each of the Appellants has misapplied and misunderstood the actual text, thrust and result of the Circuit Court's Orders. Namely, each of the Appellants has again 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 as they were written. That simply is not accurate, and is not what the unambiguous explicit wording of the Court's Orders state. Further, enhancing the Respondents' position is the fact that Appellant/Defendant Burdette's current Counsel of Record has admitted that this matter is Interlocutory in nature. Nonetheless, Respondents will now turn to each of the Appellants unavailing arguments.

A. Appellant/Defendant Burdette has again failed to show that this interlocutory appeal affects a substantial right, and that he would somehow suffer irreparable harm.

Despite previously acknowledging its Interlocutory status, Appellant/Defendant Burdette has again attempted to continue this appeal for reasons that ring hollow. First and foremost, current Counsel for Appellant/Defendant Burdette seems to base her whole argument, like that of Counsel for the other Appellants/Defendants, around the premise that re-answering Requests for Admission will in effect foreclose on a defense at the trial on the merits of the underlying case. Such an assertion is baseless. The Circuit Court has not stated that any defense of Appellant/Defendant Burdette, or any other Appellant/Defendant, would be stricken or in any way effected by way of its Orders. The

Circuit Court has merely ordered an amendment of Appellant/Defendant Burdette's answers, and has not ordered that Appellant/Defendant Burdette admit anything.

If as Appellant's Counsel suggests Burdette has denied requests for admission because of the way that they are written, then amending their answers to state the same would cause them no harm, and certainly would not preclude any defense at the trial of this matter. Further, Appellant/Defendant Burdette's Counsel has again failed to state what particularly important defense would be affected at the trial of this case by amending and/or re-answering the requests for admission. While Appellant/Defendant Burdette's Counsel attempts to belittle Respondents' view of the explicit language of the Circuit Court's Orders, it does not change that the Orders at issue do not preclude Appellant/Defendant Burdette from maintaining a denial to the request, denying the request as written, or offering a qualified denial. Further, the Circuit Court's Orders generally hold that whereas here prior testimony of a party is later contradicted by a blanket denial without explanation, an amendment is warranted. Simply put, Appellant/Defendant Burdette's Counsel cannot and has not pointed to any portion of the Circuit Court's Orders where they are being forced to admit anything, or where they are being foreclosed from offering a robust defense to the allegations against them. Appellant/Defendant Burdette is merely being offered a chance to amend 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 of the same.

While Appellant/Defendant Burdette's current Counsel has cited several examples that she thinks represent an error by the Circuit Court, even her interpretation of these examples is flawed. For instance, Request for Admission Number 3 did ask 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, agent/employees of Defendant Cranston

Print Works Company d/b/a Cranston Trucking Company." To which, Appellant/Defendant Burdette answered with "Denied." In the current Petition for Rehearing, Appellant Burdette's Counsel stated that the blanket denial was warranted as "[H]e did not testify that he was using his cell phone immediately prior to impact, as the Request for Admission suggests." Such a statement is imposing a supposition into a request that was not there. The request did not use the words immediately prior to impact, but rather merely stated prior to impact which is at any point prior to impact, to which Burdette undeniably admitted he was doing the same on the morning of the collision. Thus, requiring him to re-answer or amend a blanket denial that is in fact false on its' face is not some sort of harsh medicine imposed upon Defendant/Appellant Burdette. Further, while Appellant/Defendant Burdette's current Counsel raises merely three (3) examples which they contend proves their points, they are notably silent about the many others that do not, which were addressed by the Circuit Court in its Orders.

The above illustrates that Appellant/Defendant Burdette, by and through his prior Counsel of record while representing all Appellants/Defendants despite possible divergent interests, clearly provided answers to Requests for Admission that did not square with earlier sworn testimony. When presented with the opportunity to correct this error by way of an Amendment, Appellant/Defendant Burdette, by and through his then Counsel of Record, clearly chose to not participate in discovery by way of the explicit language of the Circuit Court's Orders. Further, despite the fact that Appellant/Defendant Burdette's current Counsel dislikes the state of the law concerning the Interlocutory nature of discovery Orders, the law of this state is clear. As was previously stated in the underlying Motion to Dismiss, former Chief Justice Pleicones aptly noted in a recent Concurring Opinion 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'/Defendants earlier filings, that the instant appeal is Interlocutory and improper. To the extent that Appellants/Defendants argue that simply because this matter deals with Requests for Admission that it changes the overarching requirements espoused above is simply not true, and they have cited to no controlling South Carolina case that stands for the same. Thus, the aforementioned standards regarding discovery Orders as being Interlocutory still hold true.

As was previously raised, requiring Appellant/Defendant Burdette to amend his answers does not presuppose upon him an answer, nor does it require a certain answer. This is the very thing that each Appellant/Defendant, especially Appellant/Defendant Burdette, has missed, and is the critical reason why Appellant/Defendant 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/Defendant Burdette apparently determined that he would be precluded from offering an undefined defense at the trial of the case, changed his Counsel of record, and appealed. Appellants Optimum and Cranston have joined in this frivolous 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.

As has been stated before in the underlying Motion, 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***. No attempt was made by Appellant/Defendant Burdette, his prior Counsel of Record, or his current Counsel to in any way cooperate with the Court's Orders or to be held in contempt as is required prior to the initiation of an appeal. 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. Simply put, no party is being precluded from offering a robust defense to any of the allegations against them based upon the clearly Interlocutory Orders at issue.

B. Appellants/Defendants Optimum and Cranston have again failed to offer any basis for the continuation of this Appeal of the Interlocutory Circuit Court Orders.

Neither Appellant/Defendant Optimum nor Appellant/Defendant Cranston have standing to in any way challenge the Circuit Court's clearly Interlocutory Orders as to Appellant/Defendant Burdette, and can show no reason why this Appeal should be continued when it involves an Interlocutory issue. Appellants/Defendants Cranston and Optimum have put forth identical and unavailing arguments for why they somehow should be allowed to avoid the Interlocutory nature of the Circuit Court's Orders, and should be allowed to protest the Orders before this Honorable Court.

It is respectfully submitted that neither Appellant/Defendant Cranston nor Appellant/Defendant Optimum have or can show that they will suffer any harm based upon the Interlocutory Orders being affirmed by this Court. As has been addressed above, the explicit language of the Circuit Court's Orders does not preclude Appellant/Defendant Burdette from maintaining a denial to the request, denying the request as written, or offering a qualified denial. Further, the Court's

Interlocutory Orders generally hold that whereas here, prior testimony of a party is later contradicted by a blanket denial without explanation, an amendment is warranted. Simply put, Appellants/Defendants Cranston and Optimum have not and cannot point to any portion of the Circuit Court's Orders where Burdette is being forced to admit anything, or where he will somehow harm them. Appellant/Defendant Burdette is merely 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. As such, Appellants/Defendants Cranston and Optimum will be unaffected, and certainly despite their claims to the contrary, no issues regarding the merits of the case are involved in the instant dispute.

Appellant/Defendant Cranston's Counsel has argued firstly that their Appeal is proper because they were unable to either comply with the Order or face contempt, but would be affected by the Orders in their results. Such statements are somewhat disingenuous. While Counsel for Appellants/Defendants Cranston and Optimum state that they did not have a chance to properly comply with the Order or be held in contempt, and thus are outside of the scope in *Ex Parte Whetstone*, such a position should be examined given the unique position of Appellant/Defendant Cranston's Counsel in this case. It was in fact Appellant/Defendant Cranston's Counsel, who at the time of the Orders at issue, represented not just Appellant/Defendant Cranston, but also represented Appellants/Defendants Burdette and Optimum. As such, Counsel for Cranston was in fact in a position to comply with the Orders at issue, or to face contempt. Rather than do either of those things, the Appellants/Defendants divested the defense of the matter to different Counsel, and all appealed.

Thereafter, Appellants/Defendants Cranston and Optimum contend that the Circuit Court has somehow made factual determinations in the Orders at issue. It is respectfully submitted that a review of the Orders on their face show that the Circuit Judge in no way made any factual findings. Rather,

the Circuit Court's clear and unambiguous language merely ordered that Appellant/Defendant Burdette be given the opportunity to amend his prior answers to requests to admit, without ever stating what the amended answer had to be. In doing so, the Circuit Judge did exactly what is allowed under Rule 36(b) and allowed Appellant/Defendant Burdette to amend his answers. Neither Appellant/Defendant Cranston nor any other Appellant/Defendant is prejudiced or harmed by way of the Circuit Judge's Interlocutory Orders allowing for the amendment of an answer, where such an amendment is deemed necessary. The Circuit Judge's role in this matter like so many others is to help resolve discovery disputes, and to make sure that litigants are not abusing the discovery process to suit their own ends. That is what occurred here.

Finally, Appellants/Defendants Cranston and Optimum attempt to suggest that the Circuit Judge's Interlocutory Orders somehow place them in a Catch 22. While Appellants may be aligned on some issues, they clearly have divergent interests in others, and have since the beginning of this litigation. Despite such a posture, all Appellants/Defendants were represented by the same Counsel for a period of time. This multiparty representation of individuals with divergent interests by Counsel for Appellant/Defendant Cranston created the Catch 22 that each Appellant/Defendant now bemoans. This issue was not created by the Circuit Judge or the Interlocutory Orders at issue. As has previously been mentioned, this Honorable Court should not allow a litigant 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. Clearly, this is precisely what occurred here. Appellant/Defendant Burdette, by and through his then Counsel of record, offered unqualified denials to Requests for Admission even where it was contradictory to Appellant/Defendant Burdette's earlier sworn testimony to benefit the other Appellants/Defendants, who had divergent interests from each other

and Burdette. However, this appeal is not the proper vehicle to attempt to clean up the Appellants'/Defendants' or their Counsels' mess, and certainly is inappropriate given the Interlocutory nature of the appealed Orders.

CONCLUSION

It is respectfully submitted that this instant Petition for Rehearing should be denied, as it has failed to raise any meaningful new issue or to have in any way pointed to something that this Honorable Court misunderstood. Further, Respondents believe that this Honorable Court correctly determined that this case was Interlocutory in nature, and the Orders at issue were unappealable. It is respectfully requested that this appeal should be dismissed as Interlocutory, improvident and improper.

RESPECTFULLY SUBMITTED,

Alexander P. Lewis
S.C. Bar Number: 78991
W. Blake Cummings
S.C. Bar Number: 80067
CUMMINGS & LEWIS, LLC
Post Office Box 5766
Spartanburg, SC 29304
Telephone No.: (864) 573-9688
alex.lewis@cummingslewis.com
blake.cummings@cummingslewis.com

AND

Patrick E. Knie, Esq.
S.C. Bar Number: 3564
PATRICK E, KNIE LAW OFFICES
250 Magnolia Street
Spartanburg, South Carolina 29306
(864) 582-5118
pknie@knielaw.com
Counsel for Plaintiffs/Respondents

April 13, 2021
Spartanburg, South Carolina

RECEIVED
Apr 13 2021
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable R. Keith Kelly, Circuit Court Judge

Appellate Case No.: 2020-001695

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

v.

Cranston Print Works Company D/B/A
Cranston Trucking Company, Ryder Truck
Rental, Inc., Optimum Staffing, Inc., D/B/A
Optimum Logistic Solutions, and Jason E.
Burdette, Defendants,

and

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

v.

Cranston Print Works Company D/B/A
Cranston Trucking Company, Ryder Truck
Rental, Inc., Optimum Staffing, Inc., D/B/A
Optimum Logistic Solutions, and Jason E.
Burdette, Defendants,

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

PROOF OF SERVICE

I certify that I have served the Respondents' Reply to the Appellants' Petition for Rehearing 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:

R. Duke Highfield, Esq.
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, Inc.

Helen F. Hiser, Esq.
MCANGUS GOUDELOCK & COURIE, LLC
735 Johnnie Dodds Blvd., Suite 200
P.O. Box 650007
Mount Pleasant, South Carolina 29465
(843) 576-2900
Helen.hiser@mgclaw.com

Geoffrey W. Gibbon, Esq.
Zachary Brown, Esq.
MCANGUS GOUDELOCK & COURIE, LLC
P.O. Box 2980
Greenville, South Carolina 29602
(864) 239-4000

Counsel for Defendant/Appellant Jason E. Burdette

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 Defendants/Appellants Cranston Print Works Company d/b/a Cranston Trucking Company

Robert M. Peele, III, Esq.
J. Lucas Richardson, Esq.
COLLINS & LACY, P.C.
P.O. Box 12487
Columbia, South Carolina 29211
(803) 256-2660
rpeele@collinsandlacy.com
lrichardson@collinsandlacy.com

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

CUMMINGS & LEWIS, LLC

Alexander P. Lewis
S.C. Bar Number: 78991
W. Blake Cummings
S.C. Bar Number: 80067
Post Office Box 5766
Spartanburg, SC 29304
Telephone No.: (864) 573-9688
alex.lewis@cummingslewis.com
blake.cummings@cummingslewis.com

AND

Patrick E. Knie, Esq.
PATRICK E, KNIE LAW OFFICES
S.C. Bar Number: 3564
250 Magnolia Street
Spartanburg, South Carolina 29306
(864) 582-5118
pknie@knielaw.com

Counsel for Plaintiffs/Respondents

April 13, 2021
Spartanburg, South Carolina

W. Blake Cummings
Alexander P. Lewis
William V. Cummings, *Of Counsel*

679 East Main Street • Post Office Box 5766
Spartanburg, South Carolina 29304
Phone (864) 573-9688 • Fax: (864) 573-6974

RECEIVED
Apr 13 2021
SC Court of Appeals

April 13, 2021

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' Petition for Rehearing, 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.
Brandt Horton, Esq.
Geoffrey Gibbon, Esq.
Zachary S. Brown, Esq.
Helen F. Hiser, Esq.
Robert M. Peele, Esq.
J. Lucas Richardson, Esq.
William T. Young, III, Esq.
T. David Rheney, Esq.