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Apr 20 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.

**REPLY TO RESPONDENTS' OPPOSITION TO
PETITION FOR REHEARING**

Pursuant to Rules 221 and 240, SCACR, Appellant Jason E. Burdette hereby replies to Respondents' opposition¹ to his Petition for Rehearing. Respondents' arguments are circular, internally contradictory and approach, if not cross the line of professional civility. Indeed, Respondents walk a very thin line between vigorously representing their clients with legal argument, and accusing prior counsel of nefarious intent—all in Respondents' counsel's attempt to gain litigation leverage. Their attempt to impute unseemly motives to prior counsel's handling of this case should not go unaddressed. *See In re White*, 391 S.C. 581, 588, 707 S.E.2d 411, 415 (2011) (“an attorney may not, as a means of gaining a strategic advantage, engage in degrading and insulting conduct that departs from the standards of civility and professionalism required”).

Respondents imply that Burdette has “conceded” some point by acknowledging that this is an interlocutory appeal, which it clearly is as the Order below did not finally resolve the dispute between the parties. However, what Respondents either ignore or misunderstand is that not all interlocutory appeals are impermissible and, in fact, because the Order affects Burdette's substantial rights by ordering him to re-write his responses to conform to Respondents' and the Circuit Court's view of his deposition testimony, this is a permissible interlocutory appeal. *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 304, 705 S.E.2d 475, 479 (Ct. App. 2011); *see also Wetzel v. Woodside Dev., Ltd. P'ship*, 374 S.C. 589, 592, 615 S.E.2d 437, 438 (2005).

In addition, the absurdity of Respondents' position is underscored by their internally contradictory assertion that, on one hand, Burdette “has suffered no harm, and

¹ While Respondents captioned their opposition as a “Reply,” their filing technically should have been titled a “Return,” to which this is Appellant's Burdette's Reply. *See* Rules 221(a) and 240(e) & (f), SCACR.

cannot show how re-answering the Requests for Admission *as he sees fit*,” will cause him harm, but on the other hand, acknowledging he must re-write his answers “*in conformance with his deposition testimony ...*” (Opposition p. 6) (emphasis added). Burdette answered the Requests for Admission “as he saw fit” and in conformance with his prior deposition testimony—what Respondents are seeking and what the Circuit Court requires is that Burdette re-answer the Requests for Admission in conformance with *their* view of his deposition testimony. As noted in his Petition, the questions posed to Burdette at his deposition were substantively different than the questions in the Requests for Admission at issue and, therefore, elicited different responses. By requiring Burdette to “conform” his responses to the Requests for Admission to parallel his deposition testimony—which was in response to different questions, as Respondents implicitly concede—the Circuit Court is requiring Burdette to produce sworn statements of fact that he did not make and which would not be accurate. These Court-ordered substantive revisions can and undoubtedly would be used against him in the litigation below. It is nonsensical to assert that this does not affect a substantial right.

Equally nonsensical is Respondents’ insistence that “Burdette is merely being offered a chance” to re-write his answers in order to conform to Respondents’ and the Circuit Court’s view of his “earlier sworn testimony, and to do so with a certification of the same.” The absurdity is self-evident because, as Respondents must admit, if Burdette simply refused to accept the “offer” of a chance to revise his responses, he could and likely would be held in contempt of court. If one can be held in contempt for refusing an “offer” to respond differently to Requests for Admission, then the “offer” is, in reality, an order with severe consequences for non-compliance, and not a mere offer or invitation.

Unquestionably, being placed in “contempt is a serious matter.” *Nash v. Byrd*, 298 S.C. 530, 534, 381 S.E.2d 913, 915 (Ct. App. 1989).

Respondents incongruously state that the Circuit Court’s Orders were “unambiguous” and “explicit” and, at the same time, argue that Appellant Burdette should have “sought clarification from the Circuit Court” as to what they meant. First, either the Orders unambiguously and explicitly required Burdette to “re-answer” the Requests for Admission so that his responses “conform to his prior deposition testimony,” (Oct. 8 Order p. 6) (Dec. 18 Order, p. 6), or else they were ambiguous and unclear and in need of clarification. Respondents’ attempt to straddle both sides of that argument is internally inconsistent. Second, Appellants did move to alter or amend the October 8 Order, which motion produced the December 18 Order and its requirement that Burdette conform his answers to the Court’s view of his deposition testimony.

Respondents chide Appellant Burdette for addressing only three of the problematic Requests for Admission, but they themselves only address one portion of one of the three Requests for Admission that demonstrate the effect of the Circuit Court’s Orders have on Burdette’s substantial rights. Consequently, Respondents’ silence as to Burdette’s objections to Requests for Admission Nos. 8 and 10 should be construed as their acknowledgement that these require him to re-write his responses in a manner that is incorrect and, in fact, contradicts his deposition testimony and other evidence in the case. In addition, Respondents only take issue with Burdette’s argument that Request for Admission No. 3 implies that he was using his cell phone immediately prior to the accident, and completely ignore the part of their request that asks him to admit he was communicating “with among other people, agents/employees of Defendant Cranston Print

Works Company d/b/a Cranston Trucking Company,” that morning prior to the accident which simply is not true.

Critically, this Court is urged to recognize the untenable position in which cases such as *Ex parte Whetstone*, 289 S.C. 580, 3467 S.E.2d 881 (1986) and *Davis v. Parkview Apts.*, 409 S.C. 266, 762 S.E.2d 535 (2014), place a party such as Burdette. Burdette either must comply with the Orders and lose any right to later appeal them, or refuse to comply and allow himself to be placed in contempt in order to appeal it now. This harsh dichotomous choice is especially unfair in this case where Burdette has not refused to participate in discovery, but has both testified at his deposition and responded fully and forthrightly to Respondents’ Requests for Admission. Forcing him to “re-write” his answers so that they conform to Respondents’ and the Circuit Court’s view of his deposition testimony affects a substantial right and must be heard at this point or else Burdette will be unable to effectively challenge those responses at trial.


CONCLUSION

For the above-stated reasons, 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

April 20, 2021

By: 

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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 Appellant Jason E. Burdette's **Reply to Respondents' Opposition to 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:

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April 20, 2021

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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 Reply to Respondents' Opposition to 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.

The Honorable Jenny Abbott Kitchings
April 20, 2021
Page 2

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