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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.

**APPELLANT OPTIMUM STAFFING, INC. D/B/A OPTIMUM LOGISTIC
SOLUTIONS' REPLY TO RESPONDENTS' RETURN TO THE PETITION FOR
REHEARING**

On February 19, 2021, Appellant Optimum Staffing, Inc., d/b/a Optimum Logistic Solutions (“Optimum”) timely filed its petition for hearing from this Court’s Order granting Respondents’ motion to dismiss this appeal. The Court instructed Respondents to respond with a Return to the Petition, which was filed on April 13, 2021. This Reply to the Return follows.

The majority of Respondents’ argument in the Return to the Petition for Rehearing is that the Circuit Court’s discovery Order does not require Respondent Jason E. Burdette’s answers to the Requests to Admit to be amended in any particular manner. However, the Order denying the motion to alter or amend specifically states that Burdette’s answers “should be amended to conform to his prior deposition testimony.” The differences between the questions posed at the deposition and the requests for admission were discussed at length in the motions hearing held in the Circuit Court and in the filings of the various parties on appeal. Burdette has consistently taken the position that his answers to the Requests to Admit were not inconsistent with his deposition testimony, or that where there was an inconsistency, it was the deposition testimony that was inaccurate. Nonetheless, the Circuit Court ordered the answers be amended.

On appeal, Respondents aver that Burdette is not precluded “from maintaining a denial to the request, denying the request as written, or offering a qualified denial.” If this is truly the outcome that Respondents sought and that the discovery Order intends, then amending the responses appears an exercise in futility, particularly in so much as Respondents argue that Burdette can simply maintain his denial in the amended answers. While Respondents state that the discovery Order is providing Burdette “the opportunity to amend his prior answers to the requests to admit,” the reality is that the Order is mandating amendment of Burdette’s answers.

Respondents further contend that Appellant Optimum is disingenuous in its argument that its position is unique in that it is unable to either comply or face contempt in order to appeal, since

the discovery Order is directed to Burdette, but the Order will nonetheless affect Optimum's defenses at trial. Respondents point to the prior representation of the various defendants by a single attorney as evidence that counsel for all of the parties could have refused to comply and faced contempt, as if then Optimum would be in any different position than it is presently. However, it is not counsel that would be held in contempt; it would be the offending party. See Rule 36, SCRCP; Rule 37(b)(2) and 37(c), SCRCP. Thus, no matter what action Burdette took in response to the discovery Order, Optimum would remain aggrieved by the discovery Order that, contrary to Respondents' repeated assertion otherwise, prematurely and erroneously requires that Burdette amend his answers to the Requests to Admit in a particular manner. Optimum will either be prevented from contradicting the admissions or placed in a forced position to appear contradictory to Burdette when, in fact, its defense with Burdette is unified in many respects.

For these reasons, as well as those arguments set forth in Optimum's original petition for rehearing, and the petitions for rehearing and any replies filed by the other Appellants that are not inconsistent herewith, Optimum respectfully requests this Court grant rehearing of its Order dismissing the appeal and allow this appeal to proceed.

[SIGNATURE PAGE TO FOLLOW]

Respectfully Submitted,

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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 Optimum Staffing, Inc. d/b/a Optimum Logistic Solutions’
Reply to Respondent’s Return to the 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

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