

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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**Jun 11 2021**

**S.C. SUPREME COURT**

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, is the ..... Petitioner.

**PETITION FOR A WRIT OF CERTIORARI**

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## CERTIFICATE OF COUNSEL

Counsel for the Petitioner certifies the Petition for Rehearing was made and finally ruled on by the Court of Appeals on May 12, 2021.

### QUESTIONS PRESENTED

1. Did the Court of Appeals err in dismissing Petitioner's appeal of a discovery order for failing to comply with *Ex Parte Whetstone*, where Petitioner is aggrieved by the discovery order at issue but is unable to be held in contempt because the discovery order is directed to a co-Defendant for whom Petitioner is subject to vicarious liability?
2. Do the South Carolina Rules of Civil Procedure authorize the circuit court to review evidence and deposition testimony during the discovery phase of litigation, make its own decisions regarding the facts of the case, and require a party to amend responses to requests to admit to conform to the circuit court's view of the evidence?

### STATEMENT OF THE CASE

Pursuant to Rule 242 of the South Carolina Appellate Court Rules, Petitioner Cranston Print Works Company d/b/a Cranston Trucking Company ("Cranston") hereby petitions this Court for a writ of certiorari to review the Court of Appeals' order dismissing Cranston's Appeal from a Circuit Court order which: 1) improperly made determinations of facts and 2) ordered co-Defendant Jason Burdette to amend responses to requests for admission to conform to the trial court's and opposing party's view of the evidence despite being presented with conflicting testimony and evidence. These extraordinary directives, issued not in connection with a trial, but while discovery was actively taking place, are not supported by the South Carolina Rules of Civil Procedure. Moreover, in issuing the order, the Circuit Court usurped the jury's exclusive role as fact-finder. Cranston now seeks review so this Court can examine two novel issues: first, that a party aggrieved by a discovery order but unable to comply with the procedure set forth in *Ex Parte Whetstone* **must** be afforded some mechanism by which it can seek immediate appellate review of a discovery order that affects a substantial right of that party; and second, that Rules 36

and 37, SCRCF, do not invest the trial court with the power to order a party to substantively change responses to requests to admit to conform to the trial court's and opposing party's view of the facts.

On December 29, 2020, Jason E. Burdette ("Burdette") filed a timely Notice of Appeal of the Circuit Court's discovery orders compelling him to re-answer certain Requests for Admission in a particular manner. (Appx. pp. 237-261). Respondents moved to dismiss the appeal on January 11, 2021, arguing that the appeal was an impermissible interlocutory appeal. (Appx. pp. 199-233). Cranston and Optimum Staffing, Inc., d/b/a Optimum Logistic Solutions ("Optimum") filed a timely Notice of Appeal on January 12, 2021. (Appx. 190-198). Burdette, Cranston and Optimum filed returns in opposition to Respondents' Motion to dismiss (Optimum, Appx. pp. 111-120) (Cranston, Appx. pp. 121-160) (Burdette, Appx. pp. 161-189), to which Respondents filed a Reply. (Appx. pp. 104-110).

On February 11, 2021, the Court of Appeals dismissed the appeal on the basis that "the underlying orders on appeal are not immediately appealable." (Appx. pp. 3-4). Burdette, Cranston, and Optimum petitioned for rehearing. (Optimum, Appx. pp. 29-35) (Cranston, Appx. pp. 36-76) (Burdette, Appx. pp. 77-103). The Court of Appeals requested that Respondents file a return to the petitions for rehearing (Appx. pp. 27-28), which they did. (Appx. pp. 18-26). Petitioners filed replies. (Cranston, Appx. pp. 5-7) (Optimum, Appx. pp. 8-11) (Burdette, Appx. pp. 12-17). On May 12, 2021, the Court of Appeals denied the petitions for rehearing. (Appx. pp. 1-2). Cranston now seeks a writ of certiorari from this Court.

### **STATEMENT OF THE FACTS**

On February 1, 2019, a collision occurred on Interstate I-85 in Spartanburg, South Carolina between Respondents' vehicle and a tractor-trailer operated by Burdette, an employee

of Optimum, which was leasing him to Cranston, an authorized motor carrier. Respondents filed claims in the Spartanburg County Court of Common Pleas against various parties, including Burdette, Optimum and Cranston. (Appx. pp. 125-147).

Burdette was deposed on March 20, 2020. Thereafter, Respondents propounded Requests for Admission on Burdette, to which Burdette timely responded on May 19, 2020. Dissatisfied with Burdette's responses, Respondents sought to have certain matters deemed admitted, which Burdette opposed.

After a hearing on various motions, the Circuit Court ordered, *inter alia*, that a number of Burdette's responses to Requests for Admission be revised or "re-answer[ed]" based on his deposition testimony. However, most if not all, of the responses targeted by the Circuit Court are supported by Burdette's deposition testimony, other evidence submitted to the court, or both. For example, Request for Admission Number 3 asked Burdette to admit that he "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." Burdette responded, "**Denied.**" At his deposition, Burdette confirmed making several phone calls the morning of the accident sometime prior to the accident (Appx. p. 186), but he could not identify to whom the phone numbers belonged (Appx. p. 183-184). He did, however, testify the calls "were of a personal nature" (Appx. p. 187). Further, he was able to identify a call made to Cranston *after* the accident (Appx. pp. 182-186). In addition, a sworn affidavit from Brett Heidt, a Cranston employee, confirms the calls placed before the accident were to phone numbers not associated with Cranston. (Appx. pp. 188-189). While Burdette admitted he was using his cell phone "while driving from Greenville to at least the Spartanburg area before the wreck" (Appx. p.

186), he never testified any call was placed to, or received from, Cranston, and in fact testified to the exact opposite. Furthermore, there is no evidence or indication Burdette was using his cell phone immediately “prior to impact” as implied in Request for Admission Number 3. Therefore, it was proper for Burdette to deny this request, which was aimed at communications between Burdette and Cranston employees prior to the accident. Despite the ample evidence supporting Burdette’s denial of this Request for Admission, the Circuit Court ordered Burdette to “re-answer” this admission to conform to page 119 of his deposition testimony, where he testified to making phone calls—none of which were made to Cranston.

Request for Admission Number 8 sought an admission that 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,” to which Burdette responded, “**Denied.**” This response is fully consistent with the testimony and evidence. While Burdette testified Optimum itself did not provide any training, Request for Admission No. 8 is broadly stated and not limited merely to Optimum. In fact, Burdette testified he attended safety meetings while being leased by Optimum to another trucking company. (Appx. p. 174). He also testified another company to which he was leased gave him a road test. (Appx. p. 179; p. 181). Despite this unequivocal testimony supporting Burdette’s proper denial of this Request, the Circuit Court ordered Burdette to “re-answer” his admission to conform to page 71 of his deposition transcript, where he testified Optimum did not provide training. Notably, the very next page of Burdette’s deposition establishes he attended safety meetings while employed by Optimum (Appx. p.174).

Request for Admission Number 10 sought an admission from Burdette that he “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.” Burdette denied this request in conformity with his testimony of a discussion with Brian Conner, of Optimum, where cell phone usage was acceptable “as long as you had a headset ... [a] hands free, you were fine” (Appx. p. 187). Burdette testified Cranston had the same policy: “As long as you had a headset, you’re fine” (Appx. p. 187). Again, based upon the totality of the evidence presented and the more broadly-stated Request for Admission vis-à-vis questions posed during his deposition, Burdette properly denied the request. Yet again, however, the Circuit Court ordered Burdette to “re-answer” this admission to conform to testimony that is simply not responsive to the specific Request. This time, Burdette was ordered to update his response to reflect his testimony from pages 77-78 of his deposition. That testimony relates only to Optimum’s written policy regarding cell phone use while driving, a much narrower topic than the broad Request for Admission inquiring as to both verbal and written communications.

Despite Burdette’s opposition, and despite the imprecise wording of the various Requests for Admission, the Circuit Court took the remarkable step of ordering Burdette to rewrite or “re-answer” his May 19, 2020 responses to Respondents’ Request for Admission Numbers 3, 4, 5, 7, 8, 10 and 11, accepting Respondents’ argument that those responses were “directly contradicted” by his prior deposition testimony. The Circuit Court also denied the motions for reconsideration filed by Burdette, Cranston, and Optimum. Thereafter, each appealed to the Court of Appeals.

#### SUMMARY OF THE GROUNDS FOR CERTIORARI

Rule 242(b) of the South Carolina Appellate Court Rules outlines some of the considerations utilized in determining whether a writ of certiorari is appropriate. Two of those

considerations are present in this action and weigh in favor of this Court issuing a writ of certiorari to review and reverse the lower courts' Orders. Two novel questions of law exist. The first is whether a party aggrieved by a discovery order is foreclosed from challenging that order if it cannot be held in contempt of court as outlined in *Ex Parte Whetstone*. If an aggrieved party is permitted to pursue an appeal of a discovery order not specifically directed to it, there must be some procedure in place to do so that does not require the aggrieved party to comply with the impossible task of being held in contempt for ignoring an order which does not require the aggrieved party to perform or refrain from performing any act. The second novel question is whether Rules 36 and 37 of the South Carolina Rules of Civil Procedure endow trial courts with the authority to decide factual matters in dispute and require a party to alter responses to requests for admission which is contrary to that party's position and not supported by the evidence. As discussed in more detail below, both novel questions are of significant importance due to the potential of these same questions to arise in other matters and the need for the Supreme Court to provide clarity on the appropriate remedies available in discovery disputes and the procedure(s) for challenging discovery orders when being held in contempt is simply not an available option.

The second consideration involves the substantial constitutional issues directly involved. By making factual findings in light of evidence which directly contradicts those findings, the trial court has deprived Burdette, Cranston, and Optimum of their due process rights. In Mr. Burdette's case, he would be required to respond with admissions which are demonstrably incorrect. Cranston and Optimum's due process rights are also being deprived where each may be foreclosed from presenting evidence relevant to their defenses as a result of the trial court's decision relating to Burdette's responses to requests for admission. The deprivation of due process which will result are a direct result of an unconstitutional overreach by the trial court in

making factual determinations, improperly and impermissibly invading the jury's role as sole trier of fact and depriving Burdette, Cranston, and Optimum of their constitutional right to a trial by jury on all matters so triable.

### ARGUMENT

I. THE COURT OF APPEALS ERRED IN DISMISSING CRANSTON'S APPEAL WHERE, ALTHOUGH CRANSTON IS AGGRIEVED BY THE DISCOVERY ORDER AT ISSUE, IT HAS NO ABILITY TO BE HELD IN CONTEMPT IN RELATION TO THE APPEALED-FROM ORDER.

In its order dismissing Cranston's appeal, the Court of Appeals stated Cranston was required to comply with the discovery order and waive any right to challenge it on appeal or refuse to comply, be held in contempt, and appeal from the contempt order. By purporting to require Cranston to comply with the procedure outlined in *Whetstone*, the Court of Appeals erroneously assumed those options were available to Cranston. However, Cranston does not have the ability to be held in contempt, and therefore, if certiorari is not granted, Cranston is left without a way to challenge an Order which substantially impacts not only its defenses related to Plaintiffs' direct liability claims against it, but also those defenses available to Burdette for which Cranston is reliant upon to avoid vicarious liability.

a. Cranston Is Unquestionably An Aggrieved Party With A Right To Appeal

Any party aggrieved by an order may appeal. *See* Rule 201(b), SCACR; S.C. Code Ann. §18-1-30. A party is aggrieved by an order when the order "operates on his rights of property or bears directly upon his interest, the word aggrieved referring to a substantial grievance, a denial of some personal or property right or the imposition on a party of a burden or obligation." *Bivens v. Knight*, 254 S.C. 10, 13, 173 S.E.2d 150, 152 (1970). Unquestionably, the orders at issue bear directly upon Cranston's interest, burden it, and deny Cranston rights. First, under the Federal Motor Carrier Safety Regulations ("FMCSR"), Cranston is generally responsible for negligent

acts or omissions committed by Mr. Burdette while operating under Cranston's motor carrier authority. *See* 49 CFR §390.11. Therefore, because Cranston is subject to vicarious liability if Mr. Burdette is found liable to Plaintiffs, the decision by the trial court to act as a fact-finder in this case bears directly on Cranston's interests because Cranston would ultimately be responsible for any judgment against Mr. Burdette. Because the factual findings made by the trial court are in dispute and contrary to documentary evidence and a sworn affidavit from a Cranston employee, this abuse of discretion plainly aggrieves Cranston.

Second, the trial court's ruling does not merely decide disputed factual issues. It potentially also serves to preclude Cranston from introducing evidence to rebut these questions of fact. Rule 36(b), SCRCF, states an admitted matter is "conclusively established" unless the court permits withdrawal or amendment. Although not directed to Cranston, the requests to admit implicate Cranston's training, monitoring, and supervision of Mr. Burdette, as well as Cranston's compliance with FMCSR. These are the precise matters which form the basis for Plaintiffs' negligence claim against Cranston. Although Cranston has denied any negligence, it is not a stretch to foresee an attempt to utilize court-directed admissions by Mr. Burdette to preclude Cranston from offering its own evidence on these matters<sup>1</sup>. Therefore, by weighing evidence, deciding facts at issue, and ordering Mr. Burdette to admit matters previously denied, the trial court has effectively struck part of Cranston's answer. Specifically, Cranston is concerned the trial court's ruling would essentially strike its denial of the allegations relating to negligent training, monitoring, supervision, and compliance with the FMCSR. The end result

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<sup>1</sup> The trial court has taken the first step in preventing Cranston from introducing evidence on these issues by granting the Plaintiffs' motion despite there being significant discovery left to conduct, including depositions of Cranston personnel and its designated representative(s).

would be Cranston being prohibited from mounting a defense to those claims by introducing evidence contrary to the factual findings made by the trial court.

The inability to present evidence to challenge allegations made against it would clearly deprive Cranston of due process under the United States Constitution. “The Due Process Clause requires all parties be given an opportunity to be heard in a meaningful way. In cases where important decisions turn on questions of fact, due process at least requires an opportunity to present favorable witnesses.” *Halsey v. Simmons*, 432 S.C. 54, 849 S.E.2d 578 (2020) (internal cites and quotation marks omitted). Being deprived of its Constitutional right to due process clearly establishes Cranston as an aggrieved party entitled to seek appellate review.

b. As An Aggrieved Party With The Right To Appeal, South Carolina Law Must Provide A Method For Cranston To Seek Appellate Review

An irreconcilable tension exists in the Court of Appeals’ order dismissing Cranston’s appeal. According to the Court of Appeals, the only way Cranston can challenge these orders is by ignoring the trial court’s order and being held in contempt. Yet because the order does not obligate Cranston to do anything, it is impossible for Cranston to be held in contempt in connection with that order.

By dismissing Cranston’s appeal for failing to first be held in contempt, the Court of Appeals has determined that only aggrieved parties **who can also be held in contempt** are authorized to seek appellate review of discovery orders. This ruling creates a situation where, contrary to Rule 201(b) and S.C. Code Ann. §18-1-30, only parties to whom discovery orders are directed can appeal, irrespective of its potential impact on others. This new requirement for standing to appeal from a discovery order is directly contrary to the law in South Carolina guaranteeing *any* aggrieved party the right to an appeal. *See* Rule 201(b), SCACR; S.C. Code Ann. §18-1-30. Moreover, the Court of Appeals ignored appealability is determined on a case-

by-case basis. *Stone v. Thompson*, 426 S.C. 291, 295, 826 S.E.2d 868, 870 (2019).

Moreover, *Ex parte Whetstone*, upon which the Court of Appeals relied in dismissing Cranston's appeal, is not applicable to Cranston's situation. In *Whetstone*, a non-party appealed an order directing him to attend a deposition and produce documents. *Ex Parte Whetstone*, 289 S.C. 580, 347 S.E.2d 881 (1986). After the non-party appealed from that order, the Respondent moved to dismiss the appeal as interlocutory. The Supreme Court dismissed the appeal because a non-party "suffers no legal injury when he is ordered to participate in discovery." *Whetstone*, 289 S.C. at 581, 347 S.E.2d at 882. By contrast, Cranston *has* suffered legal injury, because as discussed above, the court-ordered admissions, if made by Burdette, is contrary to evidence in the case, increases Cranston's potential to be held vicariously liable, and allows Plaintiffs to challenge Cranston's ability to present evidence to rebut the direct negligence claim asserted by Plaintiffs, thereby striking Cranston's most basic defense: the general denial of Plaintiffs' allegations. Because Cranston has been aggrieved by the order and has sustained legal injury, South Carolina law authorizes its appeal to be heard at this time.

In addition, Cranston was compelled to seek appeal when it did and in the manner it did. First, Cranston was obligated under Rule 203(b), SCACR to file its notice of intent to appeal within thirty days of written receipt of notice of the order denying the motion to alter or amend. Had it not done so, Cranston would have waived any right to appeal. *See Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 743 S.E.2d 778 (2013) ("An unappealed ruling is the law of the case and requires affirmance"); *see also Walters v. Canal Ins. Co.*, 294 S.C. 150, 151, 363 S.E.2d 120 (Ct. App. 1987) ("Where no exception is taken to findings of facts or conclusions of law, they become the 'law of the case.'") (*quoting Ashy v. WeCare Distributors, Inc.*, 289 S.C. 526, 528, 347 S.E.2d 123, 125 (Ct. App. 1986)). Second, and as mentioned above, because

Cranston could not be held in contempt from an order directed to another, it lacked the ability to comply with the procedure outlined in *Whetstone*. Third, because the order impacts a substantial right of Cranston, an immediate appeal is permitted pursuant to S.C. Code Ann. §14-3-330(2). Therefore, Cranston was justified, both under the law of South Carolina and as a practical matter, in pursuing the appeal. Because Cranston is an aggrieved party entitled to seek appellate review, and considering the *Whetstone* preconditions for appealing a discovery order are impossible for Cranston to meet, the Court of Appeals erred in overlooking the particular circumstances present which cannot warrant a summary dismissal of Cranston’s appeal.

However, even if the Supreme Court disagrees with Cranston, certiorari should still be granted in order to allow the Supreme Court to provide guidance to both attorneys and litigants on the proper procedure under similar circumstances moving forward. As indicated above, this is a novel issue. Over a decade ago, this Court lamented the emergence of a “cottage industry” in discovery practice, resulting in “the merits of a claim being relegated to a secondary status.” *Oncology and Hematology Associates of S.C., LLC v. S.C. Dept. of Health and Environmental Control*, 387 S.C. 380, 692 S.E.2d 920 (2010). Unfortunately, discovery motions continue to pervade the litigation practice, making it increasingly likely parties will find themselves in the same or similar position. Under those circumstances, concrete guidance from the Supreme Court regarding the proper way to proceed will provide significant benefit to all.

## II. THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE DO NOT EMPOWER TRIAL COURTS TO MAKE FACTUAL DETERMINATIONS OF DISPUTED MATTERS

The second novel issue presented in this case, and one that has far-reaching and long-lasting implications, is whether a trial court has the authority to require a party to change his

responses to requests to admit when the party has provided an explanation for the way it responded.

The Circuit Court's error undermines the explicit sanction for a failure to admit provided in Rule 37(c), SCRPC. The relief available to a party contesting a failure to admit is the expense incurred by the opposing party in making that proof. Thus, expenses should be imposed under Rule 37(c) "only after the requesting party *actually* proves the...*truth* of the matter that was addressed in the request for admission." *Sessions v. Withers*, 327 S.C. 409, 488 S.E.2d 888 (Ct. App. 1997) (emphasis in original). Here, nothing was proven. Instead, the Circuit Court decided what facts it believed and ordered a party to issue discovery responses in accordance therewith despite there being no authority in the Rules of Civil Procedure to do so. In other words, the Circuit Court relied upon an inapplicable provision in the Rules to impose an impermissible sanction on a party.

The express purpose of requests for admission, which are considered "judicial admission[s]," is to limit and define the facts at issue. *Airco Indus. Gases, Inc. Div. of BOC Group, Inc. v Teamsters Health & Welfare Pens Fund*, 850 F.2d 1028, 1036 (3rd Cir. 1988); see also *Scott v. Greenville Housing Authority*, 353 S.C. 639, 650, 579 S.E.2d 151, 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. *Scott* at 647, 579 S.E.2d at 155. Indeed, where "the language of the request for admission specifically goes to an issue in the pleadings, the admission resulting from a party's failure to respond to the request may override the pleadings." *Id.* at 650, 579 S.E.2d at 157.

“The efficacy of these admissions is akin to the doctrine of judicial estoppel: an admission precludes the admitting party from arguing facts at trial contrary to its responses to a request to admit, absent an amendment to or revocation of the admission as allowed under the rules .... Admissions under Rule 36 are treated as admissions in pleadings.” *Scott*, 353 S.C. at 648, 579 S.E.2d at 156. In fact, *Pulte Home Corp. v. Woodland Nursery & Landscapes*, cited in *Scott*, explains that a response to a request to admit “is comparable to an admission in pleadings or stipulation of facts and as such is generally regarded as a judicial admission rather than evidentiary admission of a party. A judicial admission, unless allowed to be withdrawn by the court, is conclusive whereas an evidentiary admission is not conclusive but is always subject to be contradicted or explained.” 230 Ga. App. 455, 496 S.E.2d 546, 548 (Ga. Ct. App. 1998); *see also Airco Indus*, 850 F.2d at 1036 (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”). 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 unassailable 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). Thus, the Orders below are immediately appealable because they involve the merits and affect a substantial right.

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). As noted above, several of the Requests for Admission are worded such that Burdette’s responses are consistent with his

deposition testimony, given the imprecise wording employed in those Requests. In other words, several of the Requests for Admission that are at issue are imprecisely worded and, as a result, inarguably are “subject to more than one interpretation,” and Burdette’s responses are correct as served.

Here, 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 ...”). The Court of Appeals compounded the error by dismissing Cranston’s appeal.

In addition, a Circuit Court has no authority to require a party to revise their response to a request to admit in a specific manner. Pursuant to Rule 36(b), a “court *may permit withdrawal or amendment* when the presentation of the merits of the action will be subserved thereby and the party who obtained the admissions fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits.” Rule 36(b), SCRCF (emphasis added). Here, the Court did not “permit” Burdette to either withdraw or amend his responses to Requests for Admission but instead, *ordered* him to serve revised responses that conform to the Court’s and Respondents’ view of his prior deposition testimony. Nor did the Court, upon a motion to determine the *sufficiency* of the responses, “order either that the matter is admitted or that an amended answer be served,” pursuant to the third paragraph of Rule 36(a), SCRCF. The Court did not find that Burdette’s responses were *insufficient* but, instead, that they were *incorrect* based on the Court’s view of his deposition testimony. Nothing in Rule 36 authorizes a court to order a party to revise a response based on the court’s view of the evidence.

As noted above, weighing the evidence is reserved for the factfinder. *Watson*, 389 S.C. at 445, 699 S.E.2d at, 174. It would be unheard of, and wholly improper, for a trial judge to express to a jury his personal beliefs regarding the truthfulness or accuracy of a witness's testimony or comment on a witness's credibility, yet that is effectively what the court has done in this instance.

Moreover, contrary to the Circuit Court's Orders, Rule 37(a)(3), SCRCF does **not** permit the Court to evaluate an evasive or incomplete answer in a request to admit as a failure to respond. That subsection states: "**For purposes of this subdivision** an evasive or incomplete answer is to be treated as a failure to answer." (Emphasis added). Therefore, it is necessary to determine the scope of the subdivision, which, as outlined in the preceding provision, applies exclusively to depositions, interrogatories, and requests for production. There is absolutely no basis to apply Rule 37(a)(3) to requests for admission when 1) requests for admission are excluded from the applicable methods of discovery at issue in subsection (a), and 2) there is a separate subsection expressly devoted to discovery sanctions in connection with requests for admission. Rule 37(a)(3) is simply inapplicable to **any** analysis of responses to requests for admission and it was an abuse of discretion for the Circuit Court to rely upon that section in ordering Burdette to change his responses.

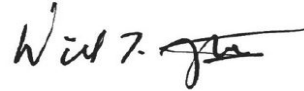
In addition to the arguments presented herein, Cranston incorporates by reference all arguments presented by Burdette and Optimum to the extent they are not inconsistent with the arguments made herein.

#### CONCLUSION

For the reasons stated herein, Petitioner Cranston Print Works Company d/b/a Cranston Trucking Company respectfully requests this Court grant the within Petition and reverse the

Court of Appeals' decision dismissing this appeal. Cranston further requests this Court confirm the right of an aggrieved party to appeal immediately from a discovery order affecting a substantial right, and that the ability to decide disputed facts is not within the Circuit Court's authority under Rules 36 and 37, SCRPC.

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Company*

June 11, 2021