THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable R. Keith Kelly, Circuit Court Judge

Appeal No.: 2021-000613

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

And

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

PETITIONER CRANSTON'S REPLY TO RETURN FOR PETITION FOR A WRIT OF CERTIORARI

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Petitioner Cranston Print Works Company d/b/a Cranston Trucking Company ("Cranston") submits its Reply to Respondents' Return to the Petitions for Writs of Certiorari. Respondents have failed to demonstrate why this Court should not grant certiorari on the grounds set forth in Cranston's Petition. Instead, Respondents attempt to rewrite the Orders at issue to minimize the significant impact of the circuit court's decision to overstep its authority by requiring a party to submit amended responses to requests to admit that conform to the court's view of evidence. They oversimplify nearly every legal issue implicated in this matter, offer conclusory statements and raise irrelevant matters, all while assigning improper[1] motives to opposing counsel[2] in what appears to be an attempt to distract this Court from the novel issues presented in Cranston's Petition. In addition, Respondents' repetitive arguments fail to address the substantive considerations supporting Cranston's Petition and invite this Court to ignore the practical effect of the Orders at issue.

As a reflection of the manifest deprivation of rights suffered by Cranston in the instant appeal, Respondents do not even attempt to address directly the primary argument supporting the issuance of a writ of certiorari. Although aggrieved by the circuit court Orders and therefore statutorily-authorized to appeal, the Court of Appeals has thwarted Cranston's efforts to seek appellate review. The Court of Appeals dismissed Cranston's appeal because Cranston has not been held in contempt, an impossible task for Cranston as it is not the party to whom the circuit court orders or the requests to admit were directed. As a result, if the Orders are allowed to stand,

[1] Respondents strangely suggest the lack of a verification of the responses to requests to admit at issue is improper, even though Rule 36, SCRCP, contains no such requirement. Respondents also oddly—and without any authority in support—claim that an affidavit submitted in connection with the underlying motions was improper. In fact, Rule 43(e), SCRCP specifically permits affidavits to be utilized in connection with motions.

[2] Respondents are well aware the retention of separate counsel for the Petitioners is entirely unrelated to the matters at issue in the within petition, because the undersigned specifically advised them of that fact during a telephone call on April 26, 2021.

Cranston will be handicapped by being prevented from ever seeking appellate review. This Court should grant Cranston's petition to secure the right of *all* aggrieved parties to seek appellate review and to address the obvious overreach of the circuit court in deciding questions of fact.

I. Respondents' efforts to show the Orders are not immediately appealable are based upon misinterpretations of law.

Because Respondents cannot directly refute that the Court of Appeals placed impossible conditions on Cranston's ability to appeal, they take aim at collateral issues. First, Respondents assert the contents of the Orders do not permit an appeal, claiming "the Circuit Court has not stated that any defense of Petitioner Burdette, or any other Petitioner, would be stricken or in any way effected [sic] by way of its Orders." *See* Return of Respondents, p. 7. Similar pronouncements are replete throughout the Return. *See* Return of Respondents, pp. 8, 9, 11, 16, 18. This narrow view of S.C. Code Ann. §14-3-330—that an order must expressly strike a defense in order to be immediately appealable—is not supported by prior interpretations of the statute. Courts have consistently stated the *effect* of an order determines whether it is immediately appealable. *See Ballenger v. Bowen*, 313 S.C. 476, 443 S.E.2d 379 (1994) (holding the denial of a summary judgment is not immediately appealable because it "does not have **the effect of striking any defense**…")(emphasis added). Accordingly, Respondents miss the mark by repeatedly proclaiming the Orders are not appealable because they do not expressly strike a defense, as South Carolina law clearly reflects the effect of an order determines whether an appeal may be taken.

Here, the Orders have the effect of precluding Mr. Burdette from introducing evidence at trial to rebut Respondents' (and the trial court's) view of the facts, a view which Mr. Burdette, Cranston, and Optimum dispute. Cranston, who as motor carrier is vicariously liable for any negligence of Mr. Burdette, also suffers from Mr. Burdette's inability to challenge the court-

mandated factual determinations. Therefore, because the effect of these Orders is to make a final determination on certain facts and preclude the introduction of evidence to the contrary, the Orders are properly appealable pursuant to S.C. Code Ann. §14-3-330.

Respondents also incorrectly equate "interlocutory" to "not appealable." As discussed above, the effect of these Orders brings them within the jurisdiction of the appellate courts. Respondents' simplistic assertion that an order cannot be appealed merely because it is interlocutory is entirely without merit and fails to address the actual issue raised in Cranston's Petition.

Next, Respondents attack the substance of Cranston's Petition, incorrectly claiming Cranston failed to identify any substantial rights or defenses affected by the Orders. In fact, Cranston's Petition enumerates multiple consequences of the Orders, including affecting:

- Cranston's right to have a jury decide disputed factual matters;
- Cranston's right to present evidence on disputed factual matters;
- Cranston's right as an aggrieved party to seek appellate review of an Order.

See Cranston Petition, pp. 7-9. In addition, the Orders have the effect of striking all or part of Cranston's denials of these allegations in Plaintiffs' Complaints:

- Failure of Burdette to keep a proper lookout;
- Failure of Burdette to follow CMV operator training;
- Failure of Burdette to safely operate a CMV;
- Failure of Burdette to use due care of a reasonably prudent person;
- Failure of Burdette to comply with the Federal Motor Carrier Safety Regulations ("FMCSR")
- Failure of Cranston to use due care of a reasonably prudent person;
- Failure of Cranston to comply with the FMCSR;
- Failure of Cranston to provide training;
- Failure of Cranston to supervise and monitor Burdette.

Id.

When the Court of Appeals determined Cranston and the co-Petitioners were required to be held in contempt before an appeal could be taken, it failed to recognize the Orders affected

Petitioners' substantial rights and had the effect of striking Petitioners' defenses. *See* Appx. p. 3. As a result, the Court of Appeals wrongly concluded these were typical discovery orders that could not be appealed directly and required Cranston do the impossible: suffer a contempt finding for refusing to comply with an order directed to a co-defendant and that did not order Cranston to do anything.

Third, Respondents claim the circuit court Orders can be appealed following trial. They are wrong. Factual determinations must be appealed immediately or the appeal is waived. *See 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)). The Orders clearly reflect factual findings by the circuit court. After evaluating Mr. Burdette's deposition testimony and his responses to requests for admission, the circuit court determined "significant discrepancies" exist between the two[3]. Appx. p. 5. In addition, the circuit court did not merely order Mr. Burdette to amend his responses. Instead, it required him to provide new responses based upon specific deposition testimony[4]— testimony the court believed to be factually accurate. The only way a court can reach the conclusion reflected in the Orders is by weighing evidence and deciding factual matters, which is not the role of the court. By improperly imposing its own view of the evidence onto the parties and the jury, the circuit court has engaged in a significant overreach of its authority.

[3] As Cranston and the co-Petitioners have noted, the circuit court's conclusion is premised upon a failure to recognize the questions posed in the deposition differ from the requests to admit, which resulted in different responses.

[4] Respondents frequently claim Mr. Burdette may amend his responses in any manner he desires. A plain reading of the Orders reveals this contention to be nonsense. The Orders expressly require Mr. Burdette to provide responses which conform to particular passages of deposition testimony.

Cranston does not dispute Rule 36 authorizes a trial court to evaluate the sufficiency of an answer or objection to a request to admit. What Rule 36 does **not** allow the trial court to do, however, is direct a party to provide a new answer that corresponds to the court's opinion of the facts. An order instructing a party to provide supplemental responses is permissible under Rule 36. An order dictating what those responses must state is not.

Because the Orders involve factual findings, they are distinguishable from those cases in which a party was required to appeal from a contempt order after refusing to participate in discovery. Whether a party should be compelled to disclose certain information or produce particular documents is not at issue here, as Mr. Burdette has not *refused* to participate in discovery at all. Instead, one of the issues presented is whether a circuit court has the authority to decide facts in a dispute and require a party to change his judicial admissions to match the court's view of the evidence, thereby precluding contrary evidence at trial. As detailed in Petitioners' submissions to this Court, circuit courts simply do not have this power.

"It is well settled that all questions of fact are for the jury…the weight of the evidence is entirely for the jury; and it is the jury's duty to weigh such evidence and determine what the facts are from the testimony as it is heard from the witnesses on the stand." *State v. Smith*, 227 S.C. 400, 410, 88 S.E.2d 345 (1955). "Generally, the assessment of witness credibility is within the exclusive province of the jury." *Tappeiner v. State*, 416 S.C. 239, 250, 785 S.E.2d 471, 476 (2016) (citations omitted). *Smith* and *Tappeiner* are just two cases demonstrating the Orders invade the well-established role of the jury. In *Tappeiner*, this Court determined a defendant's due process rights were violated when the solicitor improperly vouched for the credibility of a victim. The same rationale this Court applied in reaching that conclusion—that placing "the government's prestige behind the witness" invades the jury's role as fact-finder—applies at least

equally here, where the circuit court has imposed its view of the facts on a party in such a way that prevents the party from presenting evidence to the contrary at trial.

Moreover, even if unappealed factual findings are not deemed "the law of the case" and, therefore, reviewable post-trial, such an appeal would be an exercise in futility. As this Court has recognized, "an appeal after final judgment and a new trial, if granted, would not adequately protect a party's interests because it would be difficult or impossible for the affected party or the appellate court to ascertain by any objective standard whether prejudice resulted from the" re-written answers to Respondents' Requests for Admission at issue here. *See Hagood v. Sommerville*, 362 S.C. 191, 195, 607 S.E.2d 707, 709 (2005).

Cranston was justified in seeking review of the Orders both as to timing and manner. If not immediately appealed, the findings in the Orders would have been deemed the law of the case and the right to seek appellate review would have been lost. Cranston cannot comply with *Ex parte Whetstone* because it cannot refuse to comply with an order directed to a different party. As such, Cranston is pursuing the only appellate avenue available to it. If this Court rejects its Petition, Cranston will be left with no ability to seek correction of these Orders.

II. Cranston is a real party in interest and has standing to seek appellate review of the Circuit Court Orders

Respondents repeatedly suggest the "real party in interest" is a person or entity other than Petitioners. "A real party in interest for purposes of standing is a party with a real, material, or substantial interest in the outcome of the litigation." *Bank of America, N.A. v. Draper*, 405 S.C. 214, 746 S.E.2 478 (Ct. App. 2013). Petitioners are the only parties against whom Respondents are currently[5] seeking to recover damages relating to this accident. In addition, in their submissions to this Court, each Petitioner has described the impact of the appealed-from Orders

[5] Ryder Truck Rental, Inc. has been dismissed from these matters.

on their respective defenses of this matter. Therefore, Respondents' suggestion that Cranston is not a real party in interest should be ignored by this Court.

III. Cranston adopts co-Petitioners' arguments

In addition to the arguments presented in its Petition and this Reply, Cranston adopts and incorporates herein by reference all arguments presented by co-Petitioners Burdette and Optimum.

CONCLUSION

Cranston has not petitioned this Court for a writ of certiorari to delay trial. It has not petitioned this Court for a writ of certiorari to frustrate the discovery process. It certainly has not petitioned this Court for a writ of certiorari for any of the other reasons Respondents have speculated. Cranston's purpose in petitioning this Court for a writ of certiorari is straightforward. The circuit court exceeded its authority when it ordered Mr. Burdette to respond in a specific way to requests to admit. The Court of Appeals not only refused to correct this overreach, it purported to require Cranston to satisfy a prerequisite for an appeal that is impossible for Cranston to meet. It is imperative this Court secures the authority of the jury as the finder of fact and confirms any party aggrieved by an order has not only the right, but the ability, to seek appellate review of that order.

Respectfully Submitted,

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