**THE STATE OF SOUTH CAROLINA**
**In The Court of Appeals**

Nexstar Media Group, Inc., successor in interest to Media General, Inc., d/b/a WSPA and WYCW, Respondent,

v.

Davis Roofing Group, LLC and Mark Mahoney, Defendants,

Of which Davis Roofing Group, LLC is the Appellant,

And Mark Mahoney is a Respondent.

Appellate Case No. 2017-001546

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Appeal From Spartanburg County
Gordon G. Cooper, Master-in-Equity

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Opinion No. 5772
Submitted May 1, 2020 – Filed August 26, 2020

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**AFFIRMED**

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John Clifford Strickland, of Strickland Law Firm, of Spartanburg, for Appellant.

Craig Horger Allen, of Craig H. Allen, P.A., of Greenville, for Respondent Nexstar Media Group, Inc., successor in interest to Media General, Inc., d/b/a WSPA and WYCW.

James Stone Craven, of the Law Office of James Stone Craven, of Greenville, for Respondent Mark Mahoney.

**KONDUROS, J.:** Nexstar Media Group, d/b/a WSPA and WYCW, formerly Media General, Inc., (Nexstar) brought an action against Davis Roofing Group, LLC (Davis Roofing) and Mark Mahoney to recover the balance due for advertising services Nexstar provided to Davis Roofing pursuant to a contract Mahoney signed. Davis Roofing argued requests to admit it sent to Mahoney should be deemed admitted under Rule 36, SCRCP, because Mahoney did not respond. The Master-in-Equity declined to deem the unanswered requests admitted and ruled in favor of Nexstar against Davis Roofing in the amount of $39,705. Davis Roofing appeals, arguing the master erred in failing to deem the requests admitted. We affirm.

## FACTS/PROCEDURAL HISTORY

Nexstar, a media company, provided advertising services for Davis Roofing based upon a marketing campaign agreement Mahoney signed on behalf of Davis Roofing on May 9, 2012. Mahoney indicated he was the director of marketing for Davis Roofing on the agreement with Nexstar. The balance for the advertising services became past due, and Nexstar brought an action against Davis Roofing on July 24, 2014, seeking a judgment against Davis Roofing for $39,225 and the costs of the action.

Davis Roofing answered Nexstar's complaint, stating Mahoney was neither an employee nor an agent of the company and had no authority to bind it to an advertising agreement. Nexstar thereafter filed an amended complaint against both Davis Roofing and Mahoney.

Mahoney, pro se at the time, filed a two-page letter with the court in response to Nexstar's amended complaint, asserting he served as director of marketing for Davis Roofing and signed the advertising agreement with the knowledge and consent of the company. Davis Roofing answered, asserting Mahoney did not have authority to bind the company, and sought dismissal from the action, damages, and attorney's fees.

Approximately fourteen months after Mahoney responded to Nexstar's amended complaint as a pro se party, he obtained counsel, who filed a notice of appearance and a formal response, asserting Mahoney was acting in his capacity as marketing director of Davis Roofing when he signed the advertising contract.

The matter proceeded to trial and on March 13, 2017, in a pretrial proceeding, Davis Roofing moved for a default judgment against Mahoney, arguing Mahoney

did not respond to its amended complaint in a timely manner, which caused prejudice. The master denied Davis Roofing's motion, finding Davis Roofing had not made a cross-claim against Mahoney and Mahoney's pro se letter served as his answer.

Davis Roofing also moved for summary judgment against Mahoney based upon a motion it had filed on the eve of trial, asserting it served Mahoney with requests to admit early in the action, to which he never responded. Davis Roofing argued because thirty days passed with no response, Rule 36, SCRCP, dictated the requests should be deemed admitted, leaving no material fact in dispute. The master denied the summary judgment motion and the discovery request as untimely.

During the trial, after Mahoney testified, Davis Roofing again asked the court to rule whether the requests to admit it mailed to Mahoney in 2015 should be deemed admitted pursuant to Rule 36, and to strike Mahoney's testimony from the record because "the admissions of . . . Mahoney are contrary to his testimony"; he "was served these admissions"; and "[h]e never responded to these." Mahoney, however, argued he did not receive the requests to admit and was likely hospitalized during the time they were served. Counsel for Mahoney notified the master he communicated with Davis Roofing when he filed a notice of appearance in May of 2016, but Davis Roofing did not thereafter send the requests to admit to counsel. The master decided to withhold a ruling on this question until the end of the trial.

At the close of all testimony, Davis Roofing reiterated it mailed requests to admit to Mahoney's address of record, it did not receive a response, and under Rule 36, it would be prejudicial to Davis Roofing if not allowed to rely upon Mahoney's admissions. Davis Roofing also asserted Mahoney did not obtain counsel until approximately six months after it sent the requests and the thirty-day deadline in the rule had long passed by then. Davis Roofing also argued Rule 36 did not require it to resend the requests to Mahoney's counsel.

The master denied Davis Roofing's motion to deem the requests admitted, noting Mahoney was not represented by counsel when the requests were sent to him, he should not be held to the strictness of the rule, and Davis Roofing did not alert Mahoney's counsel about the requests once Mahoney's counsel filed a notice of appearance with the court.

On April 4, 2017, the master issued an order granting Nexstar a judgment against Davis Roofing for the balance due for advertising, plus costs, and stating:

> Davis Roofing sought a determination that Requests for Admission sent to Mahoney in December 2015[] should be deemed admitted due to [Mahoney's] failure to respond. Mahoney denied having ever received any Requests for Admission from Davis Roofing. At the time of the Requests for Admission, Mahoney was *pro se* in this action. In May 2016, Mahoney retained counsel[] who provided notice to counsel for Davis Roofing of his appearance and inquired whether any further responses were needed. Nothing further was requested. Based on the facts and circumstances existing, I find that Mahoney should not be held to the strict standard of Rule 36, SCRCP, and find that the Requests for Admission should not be deemed admitted.

On April 13, 2017, Davis Roofing filed a notice and motion to reconsider pursuant to Rules 59 and 60(b), SCRCP, to set aside the final order, indicating:

> This motion is based upon the applicable Rules of Court, South Carolina case law, and any affidavits and/or memorandum which may be filed prior to the hearing. [Davis Roofing] further allege[s] that [Davis Roofing] [is] prompt in filing for relief, the existence of meritorious defenses, and [Nexstar] and [Mahoney] will not be adversely prejudiced.

At the motion to reconsider hearing on June 29, 2017, Davis Roofing argued because Mahoney did not move to withdraw or amend the matters admitted under Rule 36, the master erred in allowing Mahoney to, in effect, amend the admitted requests, and this prejudiced Davis Roofing. Nexstar expressed surprise that Davis Roofing based its motion on the master's decision regarding Rule 36 and the requests to admit. Mahoney argued Davis Roofing's motion to reconsider was not pled with sufficient specificity, and his motion "made no statement whatsoever of what he was asking to be reconsidered. He especially never mentioned Rule 36." The master noted Davis Roofing had a right to file the motion for reconsideration, but denied it for two reasons: "I feel that my ruling was correct" and "the second is

that you have not put the attorney for [] Mahoney and [Nexstar] on notice that this is your argument."

The master issued an order denying Davis Roofing's motion for reconsideration, finding:

> Mahoney denied having ever received the Requests for Admission. Mahoney was acting *pro se* at the time the Requests for Admission were sent. Mahoney retained counsel shortly thereafter, but no follow up correspondence was ever sent to Mahoney or his counsel seeking responses to the Requests for Admission or otherwise prompting for a response. Further, no Motion to compel was ever made or filed. Davis Roofing filed a Motion for Summary Judgment immediately before trial and based its Motion on Mahoney's failure to respond to the Requests for Admission. It is important to note that copies of the Requests for Admission were not provided to Plaintiff's counsel, nor to Mahoney's counsel, until immediately before trial.

This appeal followed.

## STANDARD OF REVIEW

"An action for breach of contract seeking money damages is an action at law." *Johnson v. Little*, 426 S.C. 423, 428, 827 S.E.2d 207, 210 (Ct. App. 2019) (quoting *Branche Builders*, *Inc. v. Coggins*, 386 S.C. 43, 47, 686 S.E.2d 200, 202 (Ct. App. 2009)). "In an action at law tried without a jury, an appellate court's scope of review extends merely to the correction of errors of law." *Miller Constr. Co. v. PC Constr. of Greenwood*, *Inc*., 418 S.C. 186, 195, 791 S.E.2d 321, 326 (Ct. App. 2016) (quoting *Temple v. Tec-Fab*, *Inc.*, 381 S.C. 597, 599-600, 675 S.E.2d 414, 415 (2009) (per curiam)). "The [c]ourt will not disturb the trial court's findings unless they are found to be without evidence that reasonably supports those findings." *Id*. (quoting *Temple*, 381 S.C. at 600, 675 S.E.2d at 415).

## LAW/ANALYSIS

### I. Timeliness of Appeal

As an initial matter, Nexstar and Mahoney contend on appeal Davis Roofing's motion for reconsideration lacked sufficient specificity pursuant to Rule 7, SCRCP, and therefore did not toll Davis's time to file its appeal rendering the appeal untimely.[1] We disagree.

Davis Roofing filed its motion for reconsideration "for an Order setting aside the Final Order" pursuant to both Rules 59 and 60(b), SCRCP. Rule 59(a) provides:

> A new trial may be granted to all or any of the parties and on all or part of the issues . . . in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in the courts of the State. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

Rule 59 also establishes that a motion made pursuant to this rule will stay the time to file an appeal: "The time for appeal for all parties shall be stayed by a timely motion under this Rule and shall run from the receipt of written notice of entry of the order granting or denying such motions." Rule 59(f).

Rule 60(b) allows a trial court to relieve a party from a final order for "mistake, inadvertence, surprise, or excusable neglect" upon a motion when terms are just. Unlike Rule 59, however, Rule 60 states: "A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation."

Rule 7, SCRCP, establishes the form required of motions to a court.

> An application to the court for an order shall be by motion which, unless made during a hearing or trial in open court with a court reporter present, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The

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[1] Nexstar and Mahoney did not specifically reference Rule 7 during the reconsideration hearing, but they did argue their surprise and lack of notice that Davis Roofing's motion was based on Rule 36, SCRCP.

> requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

Rule 7(b)(1).

Our supreme court addressed the requirements of Rule 7 in *Camp v. Camp*:

> Rule 7(b)(1) [] requires that motions "shall state with particularity the grounds therefor, and shall set forth the relief or order sought." The particularity requirement "is to be read flexibly in 'recognition of the peculiar circumstances of the case.'" "By requiring notice to the court and the opposing party of the basis for the motion, [R]ule 7(b)(1) advances the policies of reducing prejudice to either party and assuring that 'the court can comprehend the basis of the motion and deal with it fairly.'" Therefore, when a motion is challenged for a lack of particularity, the court should ask "whether any party is prejudiced by a lack of particularity or 'whether the court can comprehend the basis for the motion and deal with it fairly.'" "The particularity requirement should not be applied in an overly technical fashion when the purpose behind the rule is not jeopardized."

386 S.C. 571, 575, 689 S.E.2d 634, 636 (2010) (footnotes and citations omitted) (first quoting *Cambridge Plating Co. v. Napco*, *Inc.*, 85 F.3d 752, 760 (1st Cir. 1996); then quoting *Calderon v. Kan. Dep't. of Soc. & Rehab. Servs.*, 181 F.3d 1180, 1186 (10th Cir. 1999); then quoting *Registration Control Sys., Inc. v. Compusystems, Inc.*, 922 F.2d 805, 807-08 (Fed. Cir. 1990); and then quoting *Andreas v. Volkswagen of America*, *Inc.*, 336 F.3d 789, 793 (8th Cir. 2003)).

Pursuant to the *Camp* decision, we find Nexstar and Mahoney were well equipped to understand and respond to Davis Roofing's motion to reconsider because the issue asserted was addressed repeatedly at trial and the parties were not prejudiced by the general nature of the motion. We also find the master was in a position to understand Davis Roofing's motion and to analyze its request fairly, and pursuant to precedent, "[t]he particularity requirement should not be applied in an overly technical fashion [and] the purpose behind the rule was not jeopardized." *Id.* (quoting *Andreas*, 336 F.3d at 793). Accordingly, we hold Davis Roofing's motion

for reconsideration met the requirements of Rule 7, effectively tolling the time for filing a notice of appeal, and thus, its appeal was timely.

## II. Requests to Admit

Davis Roofing argues the master erred in not deeming the requests it sent to Mahoney admitted under Rule 36, SCRCP. We disagree.

Davis Roofing sought recourse for not receiving a response to the requests to admit it sent to Mahoney in 2015. Davis Roofing filed a motion for summary judgment on the eve of the 2017 trial and sought a ruling during the trial, notifying the master it mailed the requests to Mahoney's address of record, and it had a certificate of service and an affidavit from the paralegal who mailed the requests.[2]

Mahoney asserted he did not receive the requests to admit and was hospitalized and in a comatose state around the time Davis Roofing indicated it sent the requests. Nexstar also notified the master it did not receive a copy of the requests to admit. The Record indicates the parties discussed at trial that the cover letter to the requests did not direct Mahoney, pro se at the time, to respond in thirty days. When Mahoney obtained representation, his counsel notified Davis Roofing of his involvement, yet the supposed outstanding requests were not sent to his counsel. Davis Roofing asserts, however, that under Rule 36, the requests should have been admitted and it was error for the master to fail to do so, noting the rule does not distinguish between a party who is pro se or one represented by counsel in terms of the requirement to respond.

Rule 36(a), SCRCP, states:

> A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b) [, SCRCP,] set forth in the request that relate to statements or opinions of fact or of the application of law to fact . . . .
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> . . . The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer

[2] The requests to admit, cover letter, certificate of service, and affidavit of the paralegal are not part of the Record.

> time as the court may allow or as stipulated in writing by the parties pursuant to Rules 29 and 6(b), [SCRCP,] the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon him.

This court has affirmed the seriousness of the ramifications for a failure to respond to requests in a timely matter. In *Scott v. Greenville Housing Authority*, this court stated: "South Carolina has long had the discovery rule that failure to respond to requests for admissions renders any matter listed in the request conclusively admitted for trial." 353 S.C. 639, 645, 579 S.E.2d 151, 154 (Ct. App. 2003). The *Scott* court further noted: "[O]ur courts have repeatedly found that failure to respond to requests for admissions deems matters contained therein admitted for trial, regardless of whether the admission concerns a matter responded to in a party's pleadings." *Id.* at 646, 579 S.E.2d at 154-55.

However, South Carolina jurisprudence also establishes a trial court may use its discretion in finding requests to admit are not deemed admitted when the circumstances indicate otherwise. For example, the supreme court affirmed the decision of a trial court to not deem requests admitted when counsel for one party represented to the trial court "he had never received the requests," another attorney indicated "he had no memory of the delivery and service of the requests," and another denied having received a letter following up on the status of the requests. *Crestwood Golf Club, Inc. v. Potter*, 328 S.C. 201, 219, 493 S.E.2d 826, 836 (1997). "The master in equity did not abuse his discretion by refusing to deem admitted the requests for admission, particularly in light of the lack of hard proof that [the party] actually received the requests." *Id.*

Similarly, in *Collins Entertainment, Inc. v. White*, this court reviewed whether the trial court erred in failing to deem requests admitted when the party to whom they were addressed did not respond. 363 S.C. 546, 611 S.E.2d 262 (Ct. App. 2005). The court found no prejudice when one set of requests was sent to the wrong address and the complaining party waited until the start of trial to notify the court and the other party of the outstanding second request. *Id.* at 553, 556, 611 S.E.2d at 265, 267.

> Instead of informing the court and Collins of the outstanding request, Appellants waited until the beginning of trial to mention the outstanding requests to Collins and the new judge. We find Appellants cannot now complain of being prejudiced by the refusal to deem the requests admitted because they could have raised the issue before [the new judge].

*Id.* at 557, 611 S.E.2d at 267. The court also noted the complaining party was not prejudiced by the trial court's decision because the subject matter of the requests could be revealed at trial.

> The [trial] court did not prevent Appellants from offering proof of their damages. It simply required Appellants to offer the actual proof and not rely upon [a] Second Request to Admit. Therefore, Appellants were not prejudiced by the refusal to deem the requests admitted. Under the circumstances, we find the trial court properly ruled on the issue.

*Id.* at 557, 611 S.E.2d at 267-68.

We find no error by the master in light of the facts of this case. Mahoney denied ever receiving the requests and was hospitalized for a serious medical condition at the time Davis Roofing mailed the requests. After his hospitalization, Mahoney obtained counsel, who contacted Davis Roofing. Davis Roofing did not tell the attorney, nor send the Requests to Admit to Mahoney's attorney. Additionally, Davis Roofing waited until the eve of trial to move for summary judgment based upon Mahoney's failure to respond. Likewise, a copy of the requests was not provided to Nexstar until the eve of trial. Davis Roofing had ample opportunity to compel a response. We also note Davis Roofing examined Mahoney at trial, defeating a claim of prejudice. We find no error in the master's consideration of all the special circumstances. We find these circumstances are similar to the facts set forth in *Collins Entertainment* and *Crestwood Golf Club* in which the trial court's denial to deem the requests admitted was upheld on appeal.[3]

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[3] We note this court recently reversed a decision of a master as error for allowing a trial to proceed without examining the potential for prejudice to a party who did not receive a response to a discovery request in *Richardson ex rel. 15th Circuit Drug Enforcement Unit v. Twenty-One Thousand & No/100 Dollars*, Op. No. 5732

We also find Davis Roofing's corollary arguments regarding whether the master erred by allowing Mahoney to withdraw the admissions under Rule 35(b), SCRCP, and by failing to rule consistently with the form and substance of Rule 36 are encompassed within the issue addressed above. Further, nothing in the Record indicates the master made a finding Mahoney could withdraw his admissions; rather, the master found the requests were not admitted at all.

Accordingly, the decision of the master is

**AFFIRMED.**[4]

**WILLIAMS and HILL, JJ., concur.**

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(S.C. Ct. App. filed June 17, 2020) (Shearouse Adv. Sh. No. 24 at 40). That case is distinguishable particularly because this court found

> [t]he trial court abused its discretion by not delaying the trial to scrutinize the nature of the undisclosed discovery, the prejudice to White, and the need to stay the trial until discovery could finish. A court that does not use discretion—or recognize it has discretion—when discretion exists commits an error of law.

*Id*. at 45. Unlike *Richardson*, we find here the master recognized and exercised that discretion.

[4] We decide this case without oral argument pursuant to Rule 215, SCACR.