

VERMONT SUPERIOR COURT  
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CIVIL DIVISION  
Case No. 21-CV-03028

**Denise Bartley, et al v. Rural Community Transportation, et al**

### **ENTRY REGARDING MOTION**

Title: Motion for Protective Order (Motion: 7)  
Filer: Richard J. Windish  
Filed Date: July 17, 2024

The motion is GRANTED.

Defendant Rural Community Transportation seeks a Protective Order to effectively allow for the late admission of its answers to Plaintiffs Bartley and Noll's Request to Admit, which were served Defendant on May 6, 2024 but were not returned until June 13, 2024, approximately seven days after the 30-day deadline set out in V.R.C.P. 36.

Defendant seeks this Order based on the following. First, Defendant had a two-week trial scheduled in the middle of the 30-day period. The Court takes note that this trial was a complicated case that had several last-minute issues that required a significant amount of work on counsel's part. Second, Defendant's counsel requested an extension from Plaintiff in a timely manner but received no response until after the deadline when Plaintiff's counsel refused to extend the deadline. Third, Defendant notes that while its answers were delayed, they were not unreasonably delayed, and Plaintiff's counsel were aware that the answers were being prepared and filed.

Rule 36(a) states that a request to admit is deemed admitted if the answer is not filed within 30 days that the requests are served. The Rule also allows in subsection (b) that the Court may permit a party to withdraw or amend their admissions "when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice that party in maintaining the action or defense on the merits." V.R.C.P. 36(b). The Vermont Supreme Court has interpreted this provision to give trial court's the discretion to allow such withdrawals if they go to material or "key issues" within a case

and so long as there is no showing prejudice. *Record v. Kempe*, 2007 VT 39, ¶ 10. This is consistent with the federal rules that have analogous provisions. See 8B WRIGHT & MILLER, FEDERAL PRACTICE & PROCEDURE § 2257 (3d ed. 2024 update) (“[T]he court can, in its discretion, permit what would otherwise be an untimely answer.”).

In this case, the facts show that the delay was minimal. Plaintiffs had notice that the responses were going to be delayed due to extenuating factors. Defendant acted in an appropriate manner under Rule 26(h). It sought accommodations with Plaintiffs and attempted to work through the issues. When those did not prevail, Defendant made as timely a response as possible to comply with the request.

The substance of several of Plaintiffs’ requests to admit go to merits of the present case and go beyond the statements that Defendant Steven Lawson made in his deposition. In particular, several requests go to the issues of breach and proximate cause. If admitted, they would short circuit the fact-finding and deliberation process that would otherwise be necessary to weigh and review the competing pieces of evidence and expert opinions. In other words, to allow the admissions to enter would complicate the parties’ ability to present their evidence and testimony as several pieces would have to be deemed admitted and by extension deemed credible whether or not the fact-finder found them to be so. The cumulative effect “would essentially preclude a determination of the substantive merits of the case.” *Record*, 2007 Vt 39, at ¶ 10.

To the issue of prejudice, the Court finds no prejudice attaches by allowing Defendants to withdraw their admissions and to assert their actual answers. Given the short window of time between initial service and Defendant’s filed answers, the Court finds no prejudice that would constitute a significant impact on Plaintiffs’ ability to present the substance and merits of their case to a fact-finder.

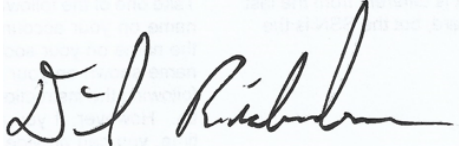
The sole piece of potential prejudice arises from the tight timeline in this case between the deadline for Defendant’s answers and the deadline for summary judgment. To remove this potential prejudice, the Court will grant Plaintiffs an additional 30 days from the date of this Order to re-file its motion for Summary Judgment to incorporate Defendant’s answers to the Request to Admit. If Plaintiffs believe that they can sustain their burden, they are welcome to re-file within that time frame.

**ORDER**

Based on the foregoing, Defendant Rural Community Transport's Motion for a Protective Order is **Granted**. The admissions that Plaintiffs Bartley and Nell claim from the May 6, 2024 Requests to Admit are withdrawn, and Defendant Rural Community Transport's answers, including its denials, are allowed under V.R.C.P. 36(b).

To remove any potential prejudice, the Court will give Plaintiffs 30 days from the date of this Order to re-file its motions for summary judgment and to incorporate Defendant's responses to the May 6, 2024 Requests to Admit.

Electronically signed on 8/30/2024 12:35 AM pursuant to V.R.E.F. 9(d)

A handwritten signature in black ink, appearing to read "Daniel Richardson", is written over a light blue rectangular background. The signature is cursive and somewhat stylized.

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Daniel Richardson  
Superior Court Judge