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After years of increasing controversy surrounding the strict and oftentimes inequitable application of the rules governing requests for admission, the Supreme Court of Illinois recently overruled a series of appellate decisions that created what had become a procedural trap for the unwary.[1] In *Vision Point of Sale, Inc. v. Haas*, the Supreme Court not only clarified the purpose and scope of requests for admission in Illinois, but it attempted to ameliorate the harsh results arising out of the improper application of Illinois Supreme Court Rules 183 and 216.[2]

I. THE DEVELOPMENT OF PROCEDURAL LAW REGULATING RESPONSES TO REQUESTS FOR ADMISSION

In Illinois, as with most other jurisdictions, an untimely or procedurally defective response to a formal request to admit will result in factual admissions that can have dire consequences to the offending party's case. Illinois Supreme Court Rule 216 ("Rule 216") provides, in pertinent part: "A party may serve on any other party a written request for the admission by the latter of the truth of any specified relevant fact set forth in the request."[3] If the served party fails to properly respond under oath within twenty-eight days, the request is deemed a factual admission that cannot be contradicted at a later date.[4] Under the rule, "[s]uch an admission may properly form the basis of a grant of summary judgment."[5] However, pursuant to Illinois Supreme Court Rule 183 ("Rule 183"), a trial court may allow a party to respond to a

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1. *See* Robbins v. Allstate Ins. Co., 841 N.E.2d 22, 27 (Ill. App. Ct. 2006), *overruled by* Vision Point of Sale, Inc. v. Haas, 875 N.E.2d 1065 (Ill. 2007).

2. *Vision Point of Sale, Inc.*, 875 N.E.2d at 1081–82.

3. ILL. SUP. CT. R. 216(a).

4. ILL. SUP. CT. R. 216(c).

5. *Robbins*, 841 N.E.2d at 25.

request for admission after the twenty-eight day deadline has expired if the delinquent party can establish good cause for its noncompliance.[6]

In 1995, the Illinois Supreme Court's decision in *Bright v. Dicke* set the stage for the ensuing controversy surrounding the application of Rule 183. In *Bright*, the Supreme Court considered whether a party was entitled to an extension under Rule 183 simply because its untimely response to a request for admission had no prejudicial effect on the opposing party.[7] The court rejected this argument, finding that a party moving for a Rule 183 extension must produce clear, objective reasons why a time extension is warranted.[8] The court specifically held that the "mere absence of inconvenience or prejudice to the opposing party is not sufficient to establish good cause under Rule 183 . . . . The moving party must assert some independent ground for why his untimely response should be allowed."[9]

In the years following *Bright*, the Illinois Appellate Court, through a series of decisions, replaced the standard established in *Bright* with the rule that

> "mistake, inadvertence, or attorney neglect" on the part of the moving party can never serve as the sole basis for establishing good cause to support an extension [of time] pursuant to Rule 183. This, in turn, means that . . . unless the party can present evidence separate and apart from mistake, inadvertence, or attorney neglect to support an argument that there was good cause for the initial delay in compliance, the extension will not be granted.[10]

Thus, the court of appeals transformed the narrow decision in *Bright* into a broad and inflexible blanket rule which resulted in numerous unfair and draconian results.

II. THE INEQUITABLE INTERPRETATION OF THE GOOD-CAUSE REQUIREMENT UNDER RULE 183

The application of the Illinois appellate courts' post-*Bright* blanket rule made it exceedingly difficult for parties to obtain extensions under Rule 183. In fact, during the eleven-year period between *Bright* and

6. *See* ILL. SUP. CT. R. 183 ("The court, for good cause shown on motion after notice to the opposite party, may extend the time for filing any pleading or the doing of any act which is required by the rules to be done within a limited period, either before or after the expiration of the time."); Bright v. Dicke, 652 N.E.2d 275, 276 (Ill. 1995) (determining whether the court can allow a party to make late service of a response to a request to admit under Rule 183).

7. *See Bright*, 652 N.E.2d at 276 (discussing issues presented to lower courts).

8. *Id.* at 277 (holding that good cause is a prerequisite for relief).

9. *Id.*

10. Vision Point of Sale, Inc. v. Haas, 875 N.E.2d 1065, 1076 (Ill. 2007).

Vision Point of Sale, there were no reported appellate decisions finding "good-cause for allowing an untimely response to a request to admit."[11]

However, the Illinois appellate courts' interpretation of Rule 183 had a significant impact on litigation in Illinois. For example, in *Robbins v. Allstate*, the Second District Appellate Court upheld summary judgment against a *pro se* plaintiff because his timely but technically deficient denials to requests for admission were treated as legal admissions.[12] The defendant insurance carrier in *Robbins* served the plaintiff with multiple requests to admit shortly after the plaintiff's counsel had withdrawn from the case.[13] The unrepresented plaintiff, who had limited education, provided the defendant with typed and signed responses denying each request.[14] The plaintiff's responses, however, contained confusing handwritten notations next to each request and the responses were not notarized.[15] The court ruled that handwritten notations created ambiguity and thus, the plaintiff's responses were not true denials.[16] Moreover, the court found that because the plaintiff failed to properly verify his responses, they were inadequate under Rule 216 and must therefore be treated as admissions.[17] While the court was sympathetic to the plaintiff's position, recognizing that Rule 216 could be viewed as a "trap for the unwary," it refused to allow him to amend his deficient responses, citing that mistake and ignorance of proper legal procedure did not constitute good cause under Rule 183.[18]

Similarly, in *Montalbano v. Rauschenberger,* the court upheld summary judgment against the plaintiff where he failed to respond to the defendant's requests to admit.[19] The *Montalbano* court refused to allow the plaintiff to file responses more than twenty-eight days after service despite his claim that he never received the requests.[20] The

11. *Id.* at 1076 n.4 (quoting John J. Hynes, *Admissions of Fact in Discovery: Avoiding the Rule 216 Trap*, 93 ILL. B.J. 402, 406 (2005)).

12. Robbins v. Allstate Ins. Co., 841 N.E.2d 22, 27 (Ill. App. Ct. 2006) (holding that the rule involved here is somewhat technical, that the plaintiff was unrepresented at the time, and that he may not have fully understood that the rules are irrelevant).

13. *Id.* at 24.

14. *Id.* Plaintiff's counsel was granted leave to withdraw from the case two months prior to the requests for admission being served. *Id.*

15. *Id.* at 24–25. The typewritten response denied the allegation but the handwritten response admitted it. *Id.*

16. *Id.* at 25 (stating that ambiguous responses cannot truly be deemed denials).

17. *Id.* (finding that a failure to respond to a request for admission results in an admission of the facts contained in the request).

18. *Id.* at 26 (holding that mistake, inadvertence, and neglect are not valid bases for a finding of good cause).

19. *Montalbano v. Rauschenberger*, 794 N.E.2d 401, 407–08 (Ill. App. Ct. 2003).

20. *Id.* at 403.

plaintiff argued that he first learned of the outstanding requests upon receiving the defendant's motion for summary judgment.[21] The trial court, on the other hand, ruled that the requests were presumed to have been properly served because the defendant was in possession of a signed certificate of service.[22] The appellate court concluded that the plaintiff's claim that he never received the defendant's requests for admission was insufficient to satisfy the good-cause standard under Rule 183.[23] Accordingly, the plaintiff was not permitted to respond to the defendant's requests and, as a result, his suit was ultimately dismissed.[24]

III. THE GOOD-CAUSE STANDARD REVISITED

On September 20, 2007, the Supreme Court of Illinois revisited the issue of good-cause under Rule 183 for the first time since issuing its decision in *Bright*. In *Vision Point of Sale*, the Supreme Court clarified which factors may be considered when determining whether good-cause exists to remedy an unintentional noncompliance with a Rule 216.[25] The Supreme Court further examined the legal basis for the good-cause standard established by the appellate courts through its post-*Bright* decisions.[26]

In *Vision Point of Sale*, the trial court struck the plaintiff's timely responses to sixty-five separate requests for admission as a result of two perceived procedural deficiencies.[27] Here, the plaintiff provided the defendant with timely written responses signed by his attorney, as well as a separate properly executed verification which he himself signed.[28] However, citing *Moy v. Ng*, the trial court found that the plaintiff's failure to personally sign the final page of his discovery responses violated Rule 216(c), thereby rendering them insufficient.[29] The trial court further concluded that the plaintiff's failure to file his discovery responses in accordance with Circuit Court of Cook County Rule

21. *Id.* at 404 (arguing that nonreceipt constituted good cause for an extension of the deadline).

22. *Id.*

23. *Id.*

24. *Id.* at 407.

25. Vision Point of Sale, Inc. v. Haas, 875 N.E.2d 1065, 1076 (Ill. 2007).

26. Vision Point of Sale, Inc. v. Haas, 852 N.E.2d 331, 335 (Ill. App. Ct. 2006).

27. *Id.* at 333.

28. *Id.*

29. *Id.* at 334 (citing Moy v. Ng, 793 N.E.2d 919 (Ill. App. Ct. 2003)).

("Cook County Rule") 3.1(c), constituted a procedural deficiency that precluded the recognition of his denials.[30]

The trial court initially denied the plaintiff's motion for leave to amend his responses on the grounds that mistake and error did not constitute good cause under Rule 183.[31] However, after growing frustrated with the defendant's repeated defiance of an unrelated injunctive order, the trial court vacated its prior discovery order, *sua sponte*, and permitted the plaintiff to amend his responses.[32] The trial court justified its ruling by concluding that "under the totality of circumstances in the case, good cause existed under Rule 183 for the time extension."[33] The appellate court upheld the ruling, providing that the circuit court may consider "any facts that bear on the balance the trial court must strike between the need for efficient litigation and the interest of achieving substantial justice between the parties."[34]

The first issue addressed by the supreme court in *Vision Point of Sale* was whether a trial court may consider facts and circumstances that go beyond the reason for noncompliance when determining whether good-cause exists under Rule 183.[35] The supreme court answered this question in the negative, reversing the appellate court.[36] The supreme court instead ruled that Illinois' trial courts may consider only those facts and circumstances that explain why the delinquent party was unable to meet the Rule 216 deadline.

Having firmly established the scope of information that can be considered in making a good-cause determination, the supreme court next evaluated the basis for the blanket rule employed by the appellate court.[37] The supreme court, in a sharply worded opinion, clarified that it has never held that "mistake, inadvertence, or attorney neglect" should be excluded from consideration when determining good-cause under Rule 183.[38] In fact, it found that the blanket rule espoused by the Illinois appellate courts runs directly counter to the well recognized principle that cases should be resolved on their merits, rather than on

30. *Vision Point of Sale, Inc.*, 852 N.E.2d at 333 (citing Ill. Cir. Ct. Cook County, Rule 3.1(c)). Circuit Court Rule 3.1(c) mandates that requests to admit, and the corresponding responses, be timely filed with the circuit courts.

31. *Vision Point of Sale, Inc.*, 852 N.E.2d at 334.

32. Vision Point of Sale, Inc. v. Haas, 875 N.E.2d 1065, 1071 (Ill. 2007).

33. *Id.*

34. Vision Point of Sale, Inc. v. Haas, 852 N.E.2d 331, 337 (Ill. App. Ct. 2006).

35. *Vision Point of Sale, Inc.*, 875 N.E.2d at 1075.

36. *Id.* at 1077.

37. *Id.* The blanket approach has proved to be an unworkable framework that is unduly severe. *Id.*

38. *Id.*

technicalities.[39] Accordingly, the supreme court overruled the entire line of post-*Bright* cases following the unduly harsh blanket rule, and held that trial courts should "consider all objective, relevant evidence . . why an extension of time should now be granted."[40]

IV. EXAMINATION OF SIGNATURE AND FILING REQUIREMENTS

In addition to re-establishing the good-cause standard, the Illinois Supreme Court examined the procedural requirements established in *Moy* and the filing requirements set forth in Cook County Rule 3.1(c). In *Moy*, the court of appeals held that "Rule 216(c) requires that the party responding to the Rule 216 requests must sign the answer *and* provide the sworn-to statement."[41] Thus, under *Moy*, a response to a request for admission that lacks the litigant's actual signature (even if properly verified) is deficient as a matter of law and does not constitute a valid denial.[42] Upon review, however, the Supreme Court found that:

> There is nothing in Rule 216(c) which requires a party to both verify and "sign" the final page of its denials to the requests to admit of an opposing party. . . . Adding an unsworn signature to a document that is already sworn to under oath . . . does nothing to make that document more binding or effective.[43]

The supreme court concluded that *Moy* has no support in the law and proceeded to overrule it. Accordingly, a properly verified discovery response, with or without the litigant's signature, is now sufficient under Rule 216.

Lastly, the supreme court considered the effect of a party's failure to comply with the filing requirement contained in Cook County Rule 3.1 on the sufficiency of its response. As noted above, Cook County Rule 3.1(c) mandates that requests to admit and the corresponding responses be timely filed with the circuit courts.[44] It has long been recognized that a failure to comply with Cook County Rule 3.1(c) constitutes grounds to invalidate and/or strike the party's responses.

While circuit courts in Illinois have authority to enact their own procedural rules, such rules are subject to review by the supreme court

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39. *Id.* at 1077–78 (citing Shimanovsky v. General Motors Corp., 692 N.E.2d 286 (Ill. 1998)).

40. *Id.* at 1078.

41. Moy v. Ng, 793 N.E.2d 919, 925 (Ill. App. Ct. 2004) (emphasis added).

42. *Id.* Rule 216(c) requires that the party responding to the Rule 216 request must sign the answer and provide the sworn-to statement and that the signed and sworn-to copy of the answer served on the requesting party must be signed and sworn-to by the party.

43. *Vision Point of Sale, Inc.*, 875 N.E.2d at 1079-80.

44. ILL. CIR. CT. COOK COUNTY R. 3.1(c).

and may not conflict with any of its established rules.[45] Moreover, circuit courts are "without power to change substantive law or impose additional substantive burdens upon litigants."[46] In *Bright*, the supreme court found that service of a discovery response under Rule 216, rather than filing, was the critical event.[47] Noting that Rule 216 contains no filing requirements, the supreme court held that when, and if, a response is filed is largely irrelevant and has minimal legal significance.[48] The court reaffirmed this principle in *Vision Point of Sale* and plainly stated that a violation of Cook County Rule 3.1(c) "cannot form the basis for striking a party's response to a Rule 216 request to admit."[49] Therefore, this decision marks a significant departure from the general consensus concerning the Cook County filing requirement.

CONCLUSION

Strict compliance with the rules governing discovery is a critical aspect of successful litigation in Illinois, and this remains particularly true with regard to requests for admission. While the failure to properly comply with the procedural requirement set forth in Rule 216 can still be fatal to a party's claim, the Supreme Court of Illinois' recent decision in *Vision Point of Sale* has effectively scaled back the unduly harsh requirements enforced by the trial courts in recent years. *Vision Point of Sale* not only encourages a trial on the merits, but it should help ensure that requests for admission no longer act as a procedural trap for the unwary.

45. ILL. SUP. CT. R. 21(a).
46. People *ex rel.* Brazen v. Finley, 519 N.E.2d 898, 901 (Ill. 1988).
47. Bright v. Dicke, 652 N.E.2d 275, 276 (Ill. 1995).
48. *Id.* (recognizing that Rule 216 contains no filing requirement).
49. Vision Point of Sale, Inc. v. Haas, 875 N.E.2d 1065, 1081 (Ill. 2007).