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Nov 10 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable R. Keith Kelly, Circuit Court Judge

Appellate Case No.: 2020-001695
Trial Court Case Nos. 2019-CP-42-02212 & 2019-CP-42-02215

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
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.....Appellants,

and

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

v.

Cranston Print Works Company D/B/A Cranston Trucking Company, Ryder
Truck Rental, Inc., Optimum Staffing, Inc., D/B/A Optimum Logistic Solutions
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.....Appellants

**RESPONDENTS' REPLY TO APPELLANT BURDETTE'S RETURN
TO RESPONDENTS' MOTION FOR ATTORNEYS' FEES AND SANCTIONS**

ARGUMENTS

I. Respondents are entitled to an award of sanctions against each Appellant as each knowingly filed a separate frivolous appeal without any basis in fact or legal merit.

Appellants' appeals are each frivolous on their face, as each lacks any merit or legal basis in fact. A review of the Appellants' prior Briefing, as well as the decisions of this Honorable Court and the South Carolina Supreme Court, evidence the same. As was previously noted, Rule 269 of the South Carolina Appellate Court Rules clearly states that:

“[W]here an appeal, petition, motion or return is frivolous or taken solely for the purposes of delay, or is not in compliance with these Rules, the appellate court may upon its own motion or that of a party, after ten (10) days notice, impose upon offending attorneys or parties such sanctions as the circumstances of the case and discouragement of like conduct in the future may require. This Rule does not apply to any matters where counsel is required by law to pursue an appeal or petition for writ of certiorari even though the matter may be frivolous.”

Rule 269 SCACR. In their Return, Counsel for Appellant Burdette focuses on the definition of the phrase “solely for the purposes of delay”. *See Return to Motion for Sanctions and Fees at *4-5.* The issue is that the standard under the Rule is that sanctions are appropriate when an appeal is “frivolous *or* taken solely for the purposes of delay. . .”. *See Rule 269 SCACR (emphasis added).* Frivolousness of an appeal in and of itself is enough to find that sanctions should apply under the clear and unambiguous language of the rule. A party is required to show one or the other, not both. Black’s Law Dictionary defines the term “frivolous” as “1. Lacking in high purpose; trifling, trivial, and silly. 2. Lacking a legal basis or legal merit; manifestly insufficient as a matter of law.” *Black’s Law Dictionary* (11th ed. 2019).

In their Response to the instant Motion, Counsel for Appellant Burdette stated that “[A]ppellants had a good faith basis for seeking an extension of the law. . .” *See Return to Motion to Dismiss at *2.* Their Brief supports the opposite however. In addition, Appellants have conceded that their appeals were interlocutory and that they knew the law was that such orders were not appealable.

Yet, each filed separate appeals while knowing the Orders were not immediately appealable. Thus, each Appellant filed an appeal that had no basis or legal merit and by definition were frivolous.

While Counsel for Appellant Burdette rather disingenuously implies that because a Return was requested by this Honorable Court that it meant their appeal had some merit, such an assertion like their appeal is baseless. The fact that a Return was requested does not signify any merit in the position of any of the Appellants in any of the three (3) separate appeals. If there were merit to the appeals, Respondents' Motion to Dismiss would not have been granted, and/or Oral Arguments would have been set on either the Motion itself or the resulting Petitions for Rehearing. Additionally, the continued assertions of Counsel for Appellant Burdette regarding their thoughts on a "permissible interlocutory appeal" lacks merit and is improper at this juncture. In fact, the very cases cited by Counsel for Appellant Burdette deal with the striking of a pleading not discovery issues, which as was pointed out on multiple occasions before and during the appeals, are interlocutory and thus improper to immediately appeal. While Respondents cannot definitively offer proof that the appeals were solely for delay, they have certainly offered enough to show that the appeals were each frivolous as defined by Black's Law Dictionary, and thus under Rule 269 subject to sanctions. Each Appellant, through their Counsel, were clearly advised of the law on multiple occasions, which they should have already known, and decided to waste Respondents' and this Honorable Court's time and resources on frivolous appeals. It is respectfully submitted that the only way to discourage the filing of knowingly frivolous and meritless appeals is to sanction those that do, and this case offers that opportunity. Thus, the Respondents would respectfully request that sanctions be issued against each Appellant to these appeals as allowed under Rule 269 SCACR.

II. Respondents are entitled to attorney fees against each Appellant as all filed separate appeals.

The South Carolina Appellate Court Rules clearly state that “costs shall be taxed against the appellant”. Rule 222(a) SCACR. Among other things, one of the costs that are allowed to be taxed against an appellant whose appeal is dismissed, is that of “an attorney’s fee in an amount which shall be set by order of the Supreme Court.” Rule 222(b) SCACR. It is indisputable that each Appellant filed a separate Appeal with separate briefing containing different arguments. Thus, each is considered an Appellant in their own right, as each had erroneous and frivolous appeals for different reasons. Counsel for Appellant Burdette lacks standing to argue against Respondents’ position on behalf of other Appellants. Further, her arguments clearly bely the express language of Rule 222(a). As such, the Respondents would respectfully suggest that in addition to the imposition of sanctions, as outlined above, that they are entitled to attorney fees in the amount of two thousand five hundred dollars (\$2,500.00) against each Appellant who filed an appeal. Such a position is justified under the express language of the rules, as well as the posture of this case and actions of each Appellant.

CONCLUSION

Based on the foregoing, the Respondents would again respectfully request that this Honorable Court grant the instant Motion, and find that Respondents are entitled to a sum of two thousand five hundred dollars (\$2,500.00) against each Appellant in both of the underlying cases. Further, Respondents would again request that this Honorable Court impose sanctions against each Appellant given that they each knowingly filed a frivolous appeal, which lacked any legal merit in violation of Rule 269 SCACR.

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RESPECTFULLY SUBMITTED,



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November 10, 2022
Spartanburg, South Carolina

Counsel for Plaintiffs/Respondents

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Solutions, and Jason E. Burdette are.....Appellants

PROOF OF SERVICE

I certify that I have served the Respondents' Reply to Appellant Burdette's Return to Respondents' Motion for Attorneys' Fees and Sanctions on 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, and other counsel of record by emailing a copy of it to the addresses that are on file with the Attorney Information System as set forth as follows:

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November 10, 2022
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VIA ELECTRONIC MAIL AND S.C. COURTS E-FILING

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

Re: Mark Douglas Hill, III by and through his Duly appointed Guardian ad Litem
Helen Kaci Hill 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
and
Gregory Jones, Sr., as the father and duly appointed Personal Representative of
the Estate of Jessica Dawn Jones v. Cranston Print Works Company d/b/a
Cranston Trucking Company, Ryder Systems, Inc., Optimum Staffing, Inc.
d/b/a Optimum Logistic Solutions, and Jason E. Burdette
Appellate Case No. 2020-001695

Dear Ms. Kitchings:

Enclosed for filing is the original of the Respondents' Reply to Appellant Burdette's Return to Respondents' Motion for Attorneys' Fees and Sanctions, and the Proof of Service for the same. We are serving all Counsel of record via electronic mail only.

Please advise if I may be of some further assistance, or if anything else needs to be submitted.

With warmest regards,

Alexander P. Lewis

Encls.

Cc: Patrick E. Knie, Esq. (Via Electronic Mail Only)
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