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Dec 20 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2020-001144
Opinion No. 2022-UP-398
(filed November 2, 2022)

Kierra Johnson, Appellant,

v.

Greenville County, Greater Greenville Sanitation District, the
South Carolina Department of Transportation, American
Southern Insurance Company, and the State Fiscal
Accountability Authority Defendants,

Of which American Southern Insurance Company is, Respondent.

**REPLY TO APPELLANT’S RETURN
TO RESPONDENT’S MOTION
FOR COSTS ON APPEAL**

The Respondent American Southern Insurance Company, as the prevailing party, has filed a motion pursuant to Rule 222(d), SCACR, for an award of costs on appeal in the amount of \$2,524.00. The Appellant Kierra Johnson opposes the

award of costs on appeal for two reasons: first, she argues that she is indigent, and second, she claims that the arguments raised in her appeal were made in good faith.

Rule 222 does not expressly set forth any exceptions to the general rule that the prevailing party is entitled to an award of costs on appeal. Rule 222 certainly does not include an indigency exception or a good faith exception as argued. However, both of the Appellant's excuses lack any merit.

As for her indigency claim, the Appellant has presented no evidence to support that position. She submits only the argument of counsel. However, her civil lawsuit has proceeded against the other Defendants in the trial court during the pendency of her appeal. She represents to this Court that she has a strong case of gross negligence against the Greater Greenville Sanitation District. If that is actually the case, then the Appellant will be making a sufficient recovery in this litigation, by judgment or settlement, that she will have the ability to pay the award of costs on appeal.

As for the Appellant's claim that her position on appeal was asserted in good faith, this is simply not true. To the contrary, the law in South Carolina is very well established that a claimant cannot bring a direct action against a tortfeasor's liability insurer, but that is precisely what the Appellant has done. Likewise, the South Carolina appellate courts have consistently ruled in numerous cases that the Claims Practices Act, S.C. Code Ann. § 38-59-10 to -50, "does not create a private

cause of action.” *Gaskins v. Southern Farm Bureau Cas. Ins. Co.*, 343 S.C. 666, 541 S.E.2d 269, 272 (Ct. App. 2000). *See also, Swinton v. Chubb & Son, Inc.*, 283 S.C. 11, 320 S.E.2d 495 (Ct. App. 1984). Despite the clear authority and the subsequent dismissal by the Circuit Court, the Appellant filed this appeal nonetheless. The Appellant’s actions in suing the Respondent and then appealing the dismissal are legally frivolous, and she should not be allowed to avoid her liability, at a minimum, to the costs on appeal awardable under Rule 222.

Respectfully submitted,

LINDEMANN & DAVIS, P.A.

BY: s/ Andrew F. Lindemann
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Counsel for Respondent
American Southern Insurance Company

December 20, 2022

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Of which American Southern Insurance Company is, Respondent.

CERTIFICATE OF SERVICE

Pursuant to Section (d)(1) of the Supreme Court’s Order RE: Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended May 6, 2022), the undersigned employee of Lindemann & Davis, P.A., counsel for the Respondent American Southern Insurance Company, does hereby certify that service of the **Reply to Appellant’s Return to**

Respondent's Motion for Costs on Appeal was made upon Appellant's counsel of record by email only this the 20th day of December 2022 as follows:

Joshua T. Hawkins, Esquire
Helena L. Jedziniak, Esquire
Hawkins & Jedziniak, LLC
Email: josh@hjllcsc.com
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s/ Andrew F. Lindemann



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December 20, 2022

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*Also Admitted in North Carolina
†Certified Mediator

Via Email Only

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Email: ctappfilings@sccourts.org

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SC Court of Appeals

RE: Kierra Johnson v. Greenville County, the Greater Greenville Sanitation District and the South Carolina Department of Transportation
Appellate Case Number: 2020-001144
Civil Action Number: 2020-CP-23-2023
Claim Number: 7045583-CJ
Date of Incident: January 7, 2020
Our File Number: 23.20315

Dear Ms. Kitchings:

Pursuant to Section (b)(2) of the Supreme Court's Amended Order Re: Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules, please find enclosed for filing the **Reply to Appellant's Return to Respondent's Motion for Costs on Appeal** in the above referenced matter. By copy of this letter, I am serving copies on Appellant's counsel by email only pursuant to Section (d)(1) of the same Order.

Thank you for your assistance in this matter. If you have any questions, please advise.

Sincerely,

LINDEMANN & DAVIS, P.A.

Andrew F. Lindemann

AFL/jmb
Enclosure

cc: Joshua T. Hawkins, Esquire (w/ Enclosure, Via Email Only)
Helena L. Jedziniak, Esquire (w/ Enclosure, Via Email Only)