

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Deborah Brooks Durden, Administrative Law Judge  
Richland County

RECEIVED

JUN 12 2013

Case No. 11-ALJ-21-0265-AP

SC COURT OF APPEALS

John McGeary,

Appellant,

v.

South Carolina Department of  
Motor Vehicles and South  
Carolina Department of Public  
Safety,

Petitioners,

Of Whom South Carolina Department of  
Motor Vehicles is the,

Respondent.

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**RETURN IN OPPOSITION TO RESPONDENT'S MOTION FOR  
TAXABLE COSTS**

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The Appellant, John McGeary, requests based on public policy grounds that this Court disallow the Respondent's motion for attorney fees and costs in the above-captioned matter. Pursuant to Rule 222(a), it appears the appellate court can disallow such an award. *Id.* ("Unless otherwise ordered by the appellate court. . ."); *see generally* McLendon v. SC Dept. of Highways and Public Transportation, 313 S.C. 525, 443 S.E.2d 539 (S.C. 1994)(appellate court

chose to deny costs where appeal dismissed after finding that issue was not immediately appealable).

Here, Mr. McGeary should not be penalized by an award of attorney fees and costs as this case is not a traditional one where the parties, having litigated in the original hearing, find themselves in the appellate courts. To the contrary, this case involved an appeal from a hearing where neither party – including the *Respondent* – appeared for the hearing although Respondent had the burden of proof. This matter involved an important protected right – one’s driver’s license – and this case involved legitimate justiciable issues *with traditional legal notions favoring the Appellant*. The first appearance by the Respondent in this case was during the appellate process. As such, Mr. McGeary should not be sanctioned by the award of an attorney fee and costs under Rule 222, SCACR and Mr. McGeary asks this Court to disallow such an award or, at the very least, reduce such an award.

THE LAW OFFICES OF JOSEPH M. MCCULLOCH, JR.

By: 

Joseph M. McCulloch, Jr.

Kathy R. Schillaci

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(803) 779-0005

Attorney for Appellant

June 10, 2013

Columbia, South Carolina

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**PROOF OF SERVICE**

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.....I certify that I have served the **RETURN IN OPPOSITION TO RESPONDENT'S MOTION FOR TAXABLE COSTS** on all attorneys of record as set forth below by depositing a copy of said document in the United States Mail, first-class postage prepaid, on **June 10, 2013** addressed to:

Linda A. Grice  
Philip S. Porter  
Frank L. Valenta, Jr.  
South Carolina Department of Motor Vehicles  
10311 Wilson Boulevard  
Post Office Box 1498  
Blythewood, South Carolina 29016  
Attorney for Respondent

THE LAW OFFICES OF JOSEPH M. MCCULLOCH, JR.

By: 

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KATHY SCHILLACI

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E-MAIL: kathy@mccullochlaw.com

June 10, 2013

The Honorable Tanya Gee  
Clerk of Court  
South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, South Carolina 29201

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SC Court of Appeals

**Re: John McGeary v. South Carolina Department of Motor  
Vehicles and South Carolina Department of Public Safety,  
Case No. 2011-ALJ-21-0265-AP**

Dear Ms. Gee:

Please find enclosed an original and six (6) copies of Petitioner's Return in Opposition to Respondent's Motion for Taxable Costs. Please also find enclosed the Certificate of Service. If you would, please return a file-stamped copy in the enclosed self-addressed stamped envelope. Should you have any questions, please do not hesitate to contact me.

Sincerely,

  
Kathy R. Schillaci,  
Attorney at Law

cc: Philip S. Porter, Frank Valenta, Linda A. Grice, SCDMV  
John McGeary