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Mar 08 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable Gordon G. Cooper, Master-in-Equity

Opinion No. 2023-UP-053
Appellate Case No. 2021-000516
Case No. 2020-CP-42-02447

Joni B. Wortkoetter, as Personal Representative of the
Estate of Larry Bright

Appellant,

v.

Heather D. Davis and Midfirst Bank,

Respondents.

**RESPONDENT HEATHER D. DAVIS'S REPLY TO APPELLANT'S MOTION TO TAX
COSTS**

Respondent, Heather D. Davis, by and through her undersigned counsel, respectfully objects to the Appellant's Motion to Tax Costs against Respondents, and requests that Appellant's Motion be denied, or in the alternative, the costs reduced. Mrs. Davis's objection is based upon the following:

This Court has the discretion to award or deny costs on appeal. *See Austin v. Stokes-Craven Holding Corp.*, 406 S.C. 187, 199, 750 S.E.2d 78, 84 (2013) ("Notably, it is within this Court's discretion whether to award fees and costs under Rule 222[, SCACR]."). Under Rule 222(b), some of the costs that may be awarded are the filing fee, the costs of printing the Record on Appeal and the party's final briefs, and an attorney's fee.

Ms. Davis purchased her property on December 11, 2001, over twenty (20) years ago and it was not until November 2020 that Appellant sued Ms. Davis seeking to reform the legal description to her deed due to a clerical error on the part of Appellant or Appellant's closing attorney—not Ms. Davis. At trial, Ms. Davis raised relevant defenses and moved for judgment on the pleadings in good faith. The Master-in-Equity found these grounds were meritorious and granted Ms. Davis's Motion for Judgment on the Pleadings. On appeal Ms. Davis defended in good faith a ruling she believed was correct, and she also incurred attorney fees in doing so. Respondent Midfirst Bank, a participant at the trial level, did not respond or participate in the appeal. This shouldered Ms. Davis with the sole responsibility of defending the trial court's ruling. Ms. Davis should not be penalized for seeking to defend her position and the trial court's ruling, especially given the length of time that has passed since Appellant conveyed the subject property to Ms. Davis. Ms. Davis respectfully requests this Court deny Appellant's motion as to her.

If this Court decides to award Appellant's costs and fees against her, Ms. Davis requests that the court reduce the amount.

In March 2020, the Supreme Court issued an order providing that any document filed with the Court of Appeals did not have to include any additional copies. *RE: Operation of the Appellate Courts During the Coronavirus Emergency*, 2020-03-20-01 (S.C. Sup. Ct. Order dated March 20, 2020) (at (d)). A letter from the clerk dated August 31, 2021, instructed parties to file one bound paper copy of the final briefs and record on appeal. In Appellant's itemized statement, the costs Appellant requests for printing is more than what the Court required. In Appellant's itemized statement, the number of pages for the final brief, final reply brief, and final record on appeal are 48, 20, and 212, respectively. However, the actual number of pages for these documents are 18, 10, and 56, respectively. Appellant does not explain why she requests the costs of printing an additional 30 pages for the final brief, an additional 10 pages for the final reply brief, or an

additional 156 pages for the record on appeal. The actual costs of printing these materials should be \$22.68 (the sum of 84 pages at 27 cents a page). Because Appellant requests costs for more than what was required by this Court, Ms. Davis requests that any award be reduced.

Additionally, should this Court find that Appellant is entitled for some costs to be taxed, Ms. Davis requests that the court deny Appellant's request for an attorney's fee. As stated above, Ms. Davis also incurred an attorney's fee in responding and defending the lower court's order in good faith due to an alleged error at a closing that occurred on December 11, 2001.

Finally, if this Court decided to award Appellant's motion, Ms. Davis requests that the Court order each respondent to pay half of the award. Ms. Davis is not the only respondent named in the appeal, and she has incurred an attorney's fee in responding to the appeal whereas Midfirst Bank has not participated in the appeal.

Based upon the foregoing, the Ms. Davis respectfully asks that the Court use its discretion to deny the Appellant's Motion to Tax Costs, or in the alternative, reduce any amount awarded against her.

DUGGAN & HUGHES, LLC

s/Daniel R. Hughes

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Attorneys for the Respondent Heather D. Davis

March 7, 2023
Greenville, South Carolina

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS

THE HONORABLE GORDON G. COOPER
CASE NO. 2020-CP-42-02447
APPELLATE CASE NO.: 2021-000516

Larry BrightAppellant

v.

Heather D. Davis and Midfirst BankRespondents

PROOF OF SERVICE

I certify that I have served Respondent Heather D. Davis Reply to Appellant’s Motion to Tax Costs on Appellant, Larry Bright, and Respondent, Midfirst Bank, electronically and by depositing a copy of it in the United States Mail, postage prepaid to the following:

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Dated: March 8, 2023
Greer, South Carolina

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SC Court of Appeals

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March 8, 2023

Via Email to ctappfilings@sccourts.org

Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
P.O. Box 11629
Columbia, SC 29211

Re: Larry Bright v. Heather D. Davis and Midfirst Bank
C.A. No.: 2020-CP-42-02447
Appellate Case No.: 2021-000516
File No.: DH20.0140

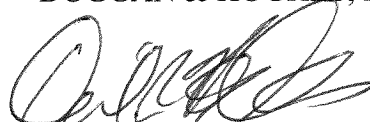
Dear Sir or Madam:

Enclosed herewith please find Respondent Heather D. Davis's Reply to Appellant's Motion to Tax Costs and Proof of Service.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

DUGGAN & HUGHES, LLC



Daniel R. Hughes

DRH/tab
Enclosure

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