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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jean H. Toal, Chief Justice (Retired)

Appellate Case No. 2023-000415
Case No. 2022-CP-40-00583

Ex Parte: Uber Technologies, Inc. and Raiser, LLC,

Appellants,

In re:

Tracy Harvey,

Respondent,

v.

Jennifer Evely and Lyft, Inc. d/b/a Lyft Drives South Carolina, Inc.,

Defendants.

**APPELLANTS' RESPONSE TO
RESPONDENT'S MOTION FOR COSTS**

Pursuant to Rules 222 and 240(e), SCACR, Appellants Uber Technologies, Inc. and Raiser, LLC (“Appellants”) hereby submit their Response to Respondent’s Motion for Costs, which was filed on April 21, 2023.

I. BACKGROUND AND PROCEDURAL POSTURE

Appellants filed their Notice of Appeal in this matter on March 10, 2023. On March 14, 2023, Tracy Harvey (“Respondent”) filed a Motion to Dismiss, arguing that the appeal should be

dismissed as interlocutory. Respondent’s Motion to Dismiss contained less than three pages of substantive argument. The Court of Appeals issued an Order dated March 15, 2023, dismissing the appeal as interlocutory. Remittitur was issued on April 10, 2023.

After the appeal was dismissed, Respondent filed a renewed Notice of Motion and Motion to Compel Appellants to fully respond to Respondent’s third-party subpoena in the state court action on March 23, 2023. On April 14, 2023, the Honorable Jean H. Toal issued an Order denying Respondent’s Motion to Compel as moot, and finding that (1) Appellants had provided the court with a declaration certifying compliance with Respondent’s subpoena; and (2) Appellants had confirmed delivery of a check for payment of attorneys’ fees in the amount ordered by the court. Thus, the state court found that Appellants complied with the court’s previous Order, and this matter is now fully resolved at the state court level.

Respondent then filed the instant Motion for Costs on April 21, 2023.

II. ARGUMENT

Rule 222, SCACR, states that “[u]nless otherwise ordered by the appellate court or agreed by the parties, costs shall be taxed against the appellant when the appeal is dismissed or judgment on appeal is affirmed.” (emphasis added). Whether attorneys’ fees should be awarded is “within this Court’s discretion” and in similar circumstances, numerous appellate courts in this state have declined to award attorneys’ fees and costs where the underlying appeal was dismissed because the order appealed was interlocutory. *Austin v. Stokes-Craven Holding Corp.*, 406 S.C. 187, 199, 750 S.E.2d 78, 84 (2013) (citing Rule 222(a), (e), SCACR); see *Peterkin v. Brigman*, 319 S.C. 367, 461 S.E.2d 809 (1995) (declining to award attorneys’ fees and costs where appeal was dismissed because the order appealed was an interlocutory order); *Duncan v. Gov’t Employees Ins. Co.*, 331 S.C. 484, 486, 449 S.E.2d 580, 580 (1994) (dismissing appeal as interlocutory without

awarding attorneys' fees and costs pursuant to Rule 222); *McLendon v. S.C. Dep't of Highways & Pub. Transp.*, 313 S.C. 525, 526, 443 S.E.2d 539, 540 (1994) (holding that costs under Rule 222, SCACR, shall not be awarded where appeal was dismissed as interlocutory).

Pursuant to the above-cited precedent, Respondent's request for attorneys' fees should be denied because this appeal was dismissed solely on the grounds that it was interlocutory, not based on the underlying merits of the appeal. Moreover, awarding Respondent \$2,500 in attorneys' fees is unwarranted because Appellants presented a narrow issue on appeal that required Respondent to devote very limited time and resources towards. Respondent filed a single brief in this appellate matter. Respondent's Motion to Dismiss did not present complex legal issues that required extensive research and analysis. Instead, Respondent's Motion to Dismiss totaled three pages, including the case caption. The Court expeditiously ruled on Respondent's Motion to Dismiss, and no further briefing was required by the parties on a matter that was also deemed moot shortly thereafter by the trial court. As a result, an award of attorneys' fees to Respondent is unwarranted under these circumstances.

III. CONCLUSION

For the reasons set forth above, Appellants respectfully request that the Court deny Respondent's Motion for Costs.

(Signature Page Follows)

Respectfully submitted,

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May 1, 2023

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PROOF OF SERVICE

I certify that I have served APPELLANTS' RESPONSE TO RESPONDENT'S MOTION FOR COSTS upon counsel for Respondent and all counsel of record in this matter by electronic mail to the following addresses:

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