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Jul 11 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
L. Casey Manning, Circuit Court Judge

Appellate Case No. 2020-000550
Case No. 2018-CP-10-1224

Kevin L. Paul, Appellant,

v.

Walmart Stores East, L.P.; Wal-Mart Supercenter, d/b/a Wal-Mart
Store #1339; and Richland County Sheriff’s Office..... Defendants,

Of Which, Richland County Sheriff’s Office, is..... Respondent.

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

The Respondent Richland County Sheriff’s Office, 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 \$2,561.44. The Appellant Kevin L. Paul opposes the award of costs on appeal because he contends an award of costs to the prevailing party is “unfair and unjust.” As support, he argues the merits of the case. He claims that the trial court relied, in part, on a novel issue and that the trial court failed to rule on a legal argument that his counsel had made.

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 exception based upon how the trial court's ruled or the procedure followed by the trial court. Importantly, the Appellant chose *not* to seek a rehearing from this Court affirmance of the trial court, and the time for doing so has elapsed. In fact the Remittitur has been issued. Yet, the Appellant is trying to re-litigate the issues on which he lost on appeal by opposing the Respondent's motion for costs on appeal. As case in point, the Appellant re-prints word-for-word multiple pages from his opening brief to this Court. *Compare*, Appellant's Return, pp. 1-2, 6-8 to Appellant's Opening Brief, pp. 1-2, 12-14.

In addition to not being a proper basis for opposing an award of costs on appeal, the Appellant's position is without merit. He claims that an award of costs to the prevailing party is "unfair and unjust" because the trial court decided a novel issue, that being whether the Appellant's malicious prosecution claim is barred by Section 15-78-60(23) of the Tort Claims Act. The Appellant's assertion is frivolous. First of all, the Appellant did not even appeal that ruling by the trial court, and as a result, the Sheriff asked this Court to apply the two-issue rule. This Court did not even affirm the trial court on that basis – either on the merits of the Section 15-78-60(23) immunity defense or on the basis of the two-issue rule. Second, the Section 15-78-60(23) immunity defense is far from "novel." As the Sheriff demonstrated, there are many Federal cases, applying South Carolina substantive law and decided by highly respected jurists who found that Section 15-78-60(23) bars a malicious prosecution case.¹

¹ See, *McCoy v. City of Columbia*, 929 F.Supp.2d 541 (D.S.C. 2013) (ruling that a malicious prosecution claim against a municipality is barred by Section 15-78-60(23)); *Thompson v. City of Columbia*, 2005 WL 8164911, *4 (D.S.C. 2005) ("[i]t is fairly clear from the plain language of the statute, particularly § 15-78-60(23), that the legislature intended to exclude claims for malicious prosecution from the waiver of immunity for governmental entities in the Tort Claims Act"); *Smith v. Koon*, 2021 WL 1172692 (D.S.C. 2021) (finding malicious prosecution claim against Lexington County Sheriff is barred by Section 15-78-60(23)); *Bellamy v. Horry County Police Department*, 2020 WL 2556953 (D.S.C. 2020), *adopting* 2020 WL 2559544 (D.S.C. 2020) (dismissing malicious prosecution claim against Horry County Police Department based on Section 15-78-60(23) immunity); *Palmer v. Santanna*, 2018 WL 1477600, *5 (D.S.C. 2018) ("the Town of Summerville is immune from liability on this claim because the

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Richland County Sheriff's Office*

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Of Which, Richland County Sheriff's Office, 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 the Lindemann Law Firm, P.A., counsel for the Respondent Richland County Sheriff's Office, does hereby certify that service of the **Reply to Appellant's Return to Respondent's Motion for Costs on Appeal** in the above-captioned matter was made all counsel of record by email only this the 11th day of July 2023 as follows:

Patrick J. McLaughlin, Esquire
Wukela Law Firm
Email: patrick@wukelalaw.com

Robert D. Garfield, Esquire
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s/ Andrew F. Lindemann



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Via Email Only

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

RE: Kevin L. Paul v. Richland County Sheriff's Office
Appellate Case Number: 2020-000550
Civil Action Number: 2018-CP-40-1224
Claim Number: 012018G00000072
Our File Number: 314.20300

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 (As Amended May 6, 2022), 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 all 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 LAW FIRM, P.A.

Andrew F. Lindemann

AFL/jmb
Enclosure

cc: Patrick J. McLaughlin, Esquire (w/ Enclosure, Via Email Only)
Robert D. Garfield, Esquire (w/ Enclosure, Via Email Only)