

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Gene McCaskill, Commissioner
Avery B. Wilkerson, Jr., Commissioner
R. Michael Campbell, II, Commissioner

W.C.C. FILE NO.: 1215681

APPELLATE CASE NO.: 2022-000003

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Sep 11 2023

S.C. SUPREME COURT

Vickie Rummage, Employee,.....Petitioner,

vs.

BGF Industries, Employer, and Great American Alliance Insurance Co.,
Carrier,..... Respondents.

PETITIONER'S RETURN TO RESPONDENTS'
MOTION FOR COSTS AND ATTORNEY FEES ON APPEAL

By Motion filed August 21, 2023, Respondents, BGF Industries, Employer and Great American Alliance Insurance Co., Carrier, have requested an award of costs amounting to Five Thousand Six Hundred Eighty-Eight and 59/100 (\$5,688.59) Dollars in view of the Court's July 26, 2023 determination it had improvidently granted a writ of certiorari in this instance. While the Court ultimately declined to afford her relief from the appellate panel's February 1, 2018 ruling, Petitioner, Vicky Rummage, respectfully submits: (a) she has advanced meritorious legal arguments in support of her request for relief throughout the course of this appeal; (b) these legitimate contentions not only led the appellate panel to reject Respondents' attempt to thwart consideration of an essential element of her assertions from the outset, but also led to the Court of

Appeals' recognition of legal error in the admission of certain character evidence; (c) her legitimate development of the focal issues similarly prompted the Court of Appeals to materially amend its original Opinion in response to valid concerns as to the application of the harmless error rule; (d) notwithstanding its ultimate dismissal, these justifiable arguments not only persuaded this Court to grant her petition, but also delve deeper into the substance of her respective contentions through the oral argument process; (e) pursuit of judicial review, especially in the context of an appellate panel ruling generated by three lay commissioners, can hardly be characterized as either frivolous or unwarranted; and (f) assessment of costs under the current circumstances effectively punishes her for reasonably attempting to advance legally tenable arguments.

After receiving a single commissioner Order which the Court of Appeals described as an "unforgiving assessment of [her] . . . credibility . . . [that] was unduly harsh and unwarranted", Ms. Rummage understandably sought review by an appellate panel that came to include no lawyers. Although she raised significant legal issues involving compliance with the standard of proof prescribed by S.C. Code Ann. Section 42-9-35 (2015), in light of this Court's decision in Michau v. Georgetown County, 396 S.C. 589, 723 S.E. 2d 805 (2012) and the single commissioner's erroneous receipt of inadmissible character evidence, the appellate panel's Order merely acknowledged these contentions, but failed to address their substance.

Given the absence of any true consideration of these legal issues, Ms. Rummage was obviously obliged to pursue judicial review through the Court of Appeals. During this stage of the litigation, the Court of Appeals: (a) countermanded the appellate panel's recognition Ms. Rummage had timely challenged whether the single commissioner's ruling complied with the standard of proof required by Section 42-9-35, notwithstanding factual nature of this determination; (b) inconsistently construed inclusion of a clearly inadmissible document

impugning the credibility of “a key medical provider in this case” to be harmless error; (c) necessarily demanded Ms. Rummage to contest these holdings via petition for rehearing; (d) addressed this acknowledged legal error through amendment of its original Opinion to delete any reference to the “key medical provider”; and (e) effectively compelled Ms. Rummage’s seeking relief from this Court.

While the Court had the opportunity to flatly reject the contentions raised in Ms. Rummage’s petition for certiorari, it instead recognized she had identified meritorious legal arguments that warranted further consideration. The Court similarly validated the legitimacy of these legal issues by entertaining oral argument. Although the Court ultimately concluded the issues would be best addressed in a different context, its ultimate determination to “dig” this matter does not negate its recognition of valid legal issues which Ms. Rummage had every right to pursue through the appellate process.

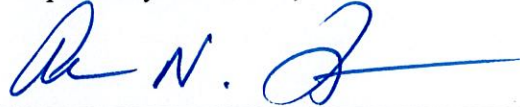
“. . . [I]t is within this Court’s discretion whether to award fees and costs under Rule 222”, SCACR. Austin v. Stokes – Craven Holding Corporation, 406 S.C. 187, 750 S.E. 2d 78, 84 (2013). Additionally, judicial review is not only constitutionally afforded, but especially appropriate where, as here, it involves: (a) an administrative ruling by a trio of lay *quasi*-judicial officers which did not address the merits of substantial legal questions; (b) the subsequent judicial recognition of legal error on a contested evidentiary issue; (c) the Court of Appeals’ mistaken assessment of the preservation issue; and (d) the request for quantification of the far reaching implications of this Court’s ruling in Michau.

Ms. Rummage respectfully submits assessing costs under the current circumstances: (a) creates a chilling effect on utilization of a judicial review process that has repeatedly recognized/corrected legally flawed applications of the South Carolina Workers’ Compensation

Act at the administrative level; (b) overlooks the fact her positions on certain points were actually validated during the course of this litigation; and (c) necessarily penalizes her for the appropriate use of the appellate process to pursue determination of meritorious issues.

Accordingly, Ms. Rummage respectfully requests Respondents' Motion for Costs on Appeal be denied.

Respectfully submitted,



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