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Nov 27 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM JASPER COUNTY
Family Court

H. Steven DeBerry, IV, Circuit Court Judge

Common Pleas Case Number 2022-CP-27-00109
Appellate Case Number 2023-000791

A.M.L., and J.J.L., by and through
their Next of Friend, John Doe,
R.D.M., by and through his Next of
Friend, Jane Snow, J.J.G., and S.T.S.,

Appellants,

v.

Wright Directions Family Services,
LLC.,

Respondents.

INITIAL REPLY BRIEF OF APPELLANTS

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Statutes

45 C.F.R. § 164.524(c)(4)	<i>passim</i>
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Arguments

I. WDFS attempts to limit their bad conduct in the first paragraph.

In its first paragraph, Respondent Wright Directions Family Services, LLC, (WDFS) attempts to immediately implore the Court to disregard its bad conduct in refusing to turn over the Children's records from May 2019 through February 2022. Brief of Respondent, *2; Appellants' Brief, *1, 3-4. In Footnote 1, WDFS asserts that its own conduct should have "no bearing on the Court's review of the issue on appeal". Brief of Respondent, fn. 1. The Children believe that WDFS's conduct in responding to the Children's requests both before and during litigations should be considered when the Court is only provided with the costs asserted by WDFS, with absolutely no evidence to support the number of hours or the rates WDFS charged for the records.

WDFS also calls the Children's referral to WDFS's history of Medicaid Fraud a red herring. Brief of Respondent, fn. 4. Again, when the Court is only provided with the costs asserted by WDFS and no verifiable facts to justify such costs, WDFS's history as a fraudster becomes relevant when it asks the Court to "trust me".

II. WDFS's assertion that costs cannot be appealed is without merit.

WDFS's first string cite misstates the holdings in a series of cases related to costs.

In the first case cited by WDFS, the Respondent wrote: "*Fraser v. Davie*, 11 S.C. 56, 63 (1878) ("An appeal relating to costs alone will not be sustained.')." The actual quote, "An appeal relating to costs alone will not be sustained", is not a ruling or holding of the Court, rather, it was the position taken by an attorney for F. E. Fraser, Mr. W.G. De Saussure, in the disposition/case summary/counsel portion of the case. *See, Fraser v. Davie*, 11 S.C. 56, *13 (1878). In the body of the opinion, the South Carolina Supreme Court mentions "costs" two times, and neither

mention supports WDFS's position.

In the second case supplied by WDFS, the Respondent wrote: "*Stegall v. Bolt*, 11 S.C. 522, 523 (1879) ("No appeal will lie on mere question of costs.")". Again, WDFS's reliance upon the quoted material is from the attorneys of the case, Messrs. Earle & Wells. *Stegall v. Bolt*, 11 S.C. 522, *3 (1879). In fact, the South Carolina Supreme Court explains why WDFS's position is wrong:

The respondent raises the preliminary objection, which must first be disposed of, that an appeal will not lie from an order confirming the taxation of costs by the clerk. There can be no doubt but that appeals from the decision of the Circuit Court of Law upon questions relating to the taxation of costs were constantly heard prior to the adoption of the code, as will appear from the numerous cases to be found in our digests deciding such questions. It is very true that in the court of equity it was always held that appeals upon a mere question of costs would not be heard by that court; but it was for the reason that, in that court, the question as to which party should pay the costs was a question for the discretion of the court, and did not follow the result, necessarily, as in cases at law; and, under the rule that questions of discretion were not appealable, it followed that decisions upon such questions were not appealable. *Lewis v. Wilson*, 1 McCord Eq. 210; *Lyles v. Lyles*, 1 Hill Ch. 76; *Singleton v. Allen*, 2 Strob. Eq. 166; *Hext v. Walker*, 5 Rich. Eq. 5. We do not understand that the code has abridged the rights of parties in this respect. By the constitution this court has jurisdiction "for the correction of errors at law," and if an error of law has been committed by the Circuit Court in allowing or disallowing costs, we see no reason why it may not be corrected. Costs form a part of the judgment, as much so as the interest which may accrue "from the time of the verdict or report until judgment be finally entered," and, like such interest, must be inserted in the judgment. Code, §§ 336-7.

Stegall v. Bolt, 11 S.C. 522, 524-525 (1879). The Court explained the notion that awards of costs were not appealable flowed from courts of equity, and that the constitution provided jurisdiction for "an error of law has been committed by the Circuit Court in allowing or disallowing costs".

Id.

In *Jenkins v. Bennett*, 40 S.C. 393, 18 S.E. 929 (1894), the South Carolina Supreme Court addresses a costs awarded as part of a contempt action under the South Carolina Code for Civil Procedure.

WDFS's position that South Carolina's appellate courts do not consider costs is refuted by our caselaw. *Peterson v. Nat'l R.R. Passenger Corp.*, 365 S.C. 391, 618 S.E.2d 903 (2005); *Stevenson v. Stevenson*, 295 S.C. 412, 368 S.E.2d 901 (1988); *Black v. Roche Biomedical Labs.*, 315 S.C. 223, 433 S.E.2d 21 (Ct. App. 1993).

III. WDFS asserts the Children raised the reasonable attorney's fees and costs test for the first time on appeal.

While there is no test for determining reasonable costs for the production of medical records under 45 C.F.R. § 164.524(C)(4), the Children have referenced the six factors our Courts utilize for determining reasonable attorney's fees and costs. This test, and the supporting decisional law, was cited in Plaintiffs' Amended Response to Motion for Costs, *11 (March 2, 2023).

In addition, the Children state the basics of the tests through their Response, which requires some form of admissible justification for a charge or cost. This is exactly what our Courts require in determining reasonableness of fees and costs. *Wood v. Wood*, 269 S.C. 600, 239 S.E.2d 315 (1977); *Bentrim v. Bentrim*, 282 S.C. 333, 318 S.E.2d 131 (Ct. App. 1984). Consideration should be given to all six criteria in establishing reasonable attorney's fees; none of these six factors is controlling. *Darden v. Witham*, 263 S.C. 183, 209 S.E.2d 42 (1974).

Here, WDFS has failed to provide any basis upon which the lower court or this Court may endeavor to determine what reasonable costs would be under 45 C.F.R. § 164.524(C)(4).

Conclusion and Relief Requested

The burden of proving the reasonableness of WDFS's charges for the Children's records fell squarely upon the Respondent's shoulders. It has failed to provide any basis to the trial court below or to this Court that the charges were in any manner reasonable.

The Appellant Children ask the Court for the following relief:

1. Reverse and remand this matter.
2. Award attorneys' fees and costs.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned counsel for the Appellants certifies that the Initial Reply Brief of Appellant complies with Rule 208, SCACR.

Respectfully submitted,

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Appellants,

v.

Wright Directions Family Services,
LLC.,

Respondent,

CERTIFICATE OF SERVICE

I certify that I have served the following documents:

1. Initial Reply Brief of Appellants.

upon Elizabeth F. Morrison, counsel for Wright Directions Family Services, LLC, via email at:

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Respectfully submitted,

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