

RECEIVED

Jan 16 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Maite Murphy, Circuit Court Judge
Case No. 2021-CP-18-01486

Appellate Case No. 2023-000757

John Trenton Pendarvis, Respondent,

v.

L.C. Knight, in his official capacity as Dorchester County Sheriff; Mark Keel, in his official capacity as Chief of the South Carolina State Law Enforcement Division; Hugh E. Weathers, in his official capacity as the South Carolina Commissioner of Agriculture; and John Doe(s), Defendants,

Of whom Mark Keel, in his official capacity as Chief of the South Carolina State Law Enforcement Division, is Appellant.

RETURN IN OPPOSITION TO MOTION FOR COSTS

Pursuant to Rule 222(d) of the South Carolina Appellate Court Rules, Appellant Mark Keel, in his official capacity as Chief of the South Carolina State Law Enforcement Division (“SLED”), hereby submits this Return in Opposition to Respondent John Trenton Pendarvis’s Motion for Costs (“Motion”). For the following reasons, Respondent’s Motion should be denied in full or, in the alternative, reduced in light of a proper characterization of the South Carolina Supreme Court’s decision and the applicable Appellate Court Rules.

ARGUMENT/ANALYSIS

I. Respondent’s Motion is untimely.

SLED does not dispute that a prevailing party is permitted to request the Court to award costs on appeal. *See* Rule 222, SCACR. However, to make such a request, “[a] party desiring costs to be taxed shall, within fifteen (15) days of the issuance of the remittitur, serve and file a motion requesting that costs be assessed under this Rule.” Rule 222(d), SCACR (emphasis added). The use of the word “shall” in this rule makes it clear that compliance with this provision is mandatory.

Despite Respondent’s claim in his Memorandum of Support that his Motion is “timely,” it is not. This Court issued the remittitur to the lower court on December 14, 2023—*not* December 27, 2023, as claimed by Respondent. (Exhibit A – Remittitur). Respondent’s Motion was due to be served and filed fifteen (15) days from December 14, 2023. Because Respondent did not serve and file his Motion until January 8, 2024, it is untimely and should be denied in full. Respectfully, the Court’s analysis should begin and end here.

II. Respondent’s characterization of the Supreme Court’s Order is misleading.

If the Court finds Respondent’s Motion timely, which based on the failure on the part of Respondent to follow the mandatory requirements of the rule it should not, the Court should still exercise its discretion in denying any award of costs to Respondent. Respondent’s characterization of the Supreme Court’s Order is quite misleading. Although Respondent is correct that the Supreme Court denied SLED’s petition for writ of certiorari, the Supreme Court’s Order went much further. Indeed, Respondent’s characterization is only a portion of the Supreme Court’s Order.

The Supreme Court continued by acknowledging its concerns with the circuit court's underlying Order and issued a common law writ of certiorari, ordering a portion of the relief requested by SLED in its original appeal and petition. The Supreme Court explained in pertinent part:

We are concerned, however, about the order to produce the requested personnel files, which contain highly personal information, *without protection*. Therefore, we issue a common law writ of certiorari, dispense with further briefing, and direct the Honorable Maite Murphy to amend the discovery order to include language adequately protecting the requested personnel files from disclosure to anyone other than the parties, the attorneys, and their staffs.

As this Court is aware, the issuance of a common law writ of certiorari is rare but may occur pursuant to “exceptional circumstances.” *See Oncology & Hematology Assocs. Of S.C., LLC v. S.C. Dep’t of Health & Env’t Control*, 387 S.C. 380, 387, 692 S.E.2d 495, 498 (2009) (“A writ of certiorari may be issued to review a discovery order where exceptional circumstances exist.”). Because the Supreme Court found “exceptional circumstances” present and granted relief in part to SLED, any mandatory language of Rule 222(a) was not triggered.

Therefore, the Court should, respectfully, exercise its discretion and decline to award costs based on the fact that both parties prevailed in part and based upon the existence of “exceptional circumstances.” *See* Rule 222(a), SCACR (“When an appeal is affirmed or reversed in part or is vacated, costs shall be allowed only as ordered by the appellate court.”); *Austin v. Stokes-Craven Holding Corp.*, 406 S.C. 187, 199, 750 S.E.2d 78, 84 (2013) (explaining that “it is within [the appellate] Court’s discretion whether to award fees and costs under Rule 222”).

III. If a reward of costs is mandatory based upon Rule 222(a), SCACR, any reward of costs to Respondent should be de minimis.

Should the Court characterize Respondent as the prevailing party and should the Court find that any mandatory language of Rule 222(a) is triggered, such an award in Respondent's favor should be de minimis. A de minimis reward, if any, would be appropriate in light of the Supreme Court's Order and its finding of "exceptional circumstances." This Court has discretion to determine the amount of the reward, even if any mandatory language of the Rule is triggered. *See Austin*, 406 S.C. at 199, 750 S.E.2d at 84.

IV. If an award is not de minimis, Respondent's requested reward should be reduced in light of the matter being decided at an early stage of the appellate process.

Respondent requests, *inter alia*, that the full amount of attorneys' fees allowed under Rule 222(b), SCACR, be awarded. However, this Court has in the past—upon its discretionary power—reduced the \$2,500 attorneys' fee award in situations in which appellate matters have been resolved pursuant to a motion to dismiss and a denial of certiorari. *See, e.g., Jones v. Jones*, Appellate Case No. 2021-001150 (S.C. Ct. App. Order dated July 19, 2023) (granting a prevailing party's motion in part and reducing the amount of attorneys' fees requested). Accordingly, based upon the infancy of this appeal, an award (if any) should be reduced.

V. Respondent requests costs that are not permitted under Rule 222, SCACR.

At bottom, Respondent has requested costs that the Appellate Court Rules simply do not allow. A party entitled to costs may recover the following:

(1) the filing fee paid under Rule 203(d); (2) the cost of the court reporter's transcript; (3) premiums paid for costs of supersedeas bonds or other bonds obtained to preserve rights pending appeal; (4) the cost of printing the Record on Appeal under Rule 209; and (5) the cost of printing the party's final brief(s) under Rule 210. . . . The allowance of additional costs will generally not be allowed except in the most extraordinary of circumstances.

Rule 222(b), SCACR. A Motion to Dismiss falls under Rule 240, SCACR; therefore, Respondent is not permitted to collect the filing fee for the same. The “most extraordinary of circumstances” do not exist. Therefore, at a minimum, Respondent’s request for costs should be reduced by \$50.00. *See e.g., Beach v. Parker*, Appellate Case No. 2022-001533 (S.C. Ct. App. Order dated March 14, 2023) (declining to award the filing fee for a motion to dismiss an appeal and noting Rule 222(b) provides only for the recovery of the filing fee associated with filing the notice of appeal).

CONCLUSION

Accordingly, based on the foregoing, Respondent’s Motion should be denied in full. The Motion is not timely before the Court for consideration and is otherwise not supported by the relevant facts of the appeal, the Supreme Court’s Order, and the Appellate Court Rules. At a minimum, Respondent’s requested award should be reduced pursuant to the various arguments set forth above.

Respectfully submitted,

SMITH | ROBINSON

s/ Daniel C. Plyler

Daniel C. Plyler, SC Bar No. 72671
Austin T. Reed, SC Bar No. 102808
Frederick N. Hanna, Jr., SC Bar No. 104659
2530 Devine Street, Third Floor
Columbia, SC 29205
T: 803-254-5445
F: 803-254-5007
Daniel.Plyler@SmithRobinsonLaw.com
Austin.Reed@SmithRobinsonLaw.com
Fred.Hanna@SmithRobinsonLaw.com

Counsel for Appellant Keel

Columbia, South Carolina
January 16, 2024

Exhibit A



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

December 14, 2023

The Honorable Robert J. Harte
PO Box 583
Aiken SC 29802

REMITTITUR

Re: John Trenton Pendarvis v. L.C. Knight
Lower Court Case No. 2021CP1801486
Appellate Case No. 2023-000757

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

A handwritten signature in blue ink that reads "Catherine Harrison, deputy".

CLERK

Enclosure

cc: Patrick James McLaughlin, Esquire
C. Bradley Hutto, Esquire
Daniel Clifton Plyler, Esquire

Austin Tyler Reed, Esquire
Frederick Newman Hanna, Jr., Esquire

RECEIVED

Jan 16 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Maite Murphy, Circuit Court Judge
Case No. 2021-CP-18-01486

Appellate Case No. 2023-000757

John Trenton Pendarvis, Respondent,

v.

L.C. Knight, in his official capacity as Dorchester County Sheriff; Mark Keel, in his official capacity as Chief of the South Carolina State Law Enforcement Division; Hugh E. Weathers, in his official capacity as the South Carolina Commissioner of Agriculture; and John Doe(s), Defendants,

Of whom Mark Keel, in his official capacity as Chief of the South Carolina State Law Enforcement Division, is Appellant.

CERTIFICATE OF SERVICE

Pursuant to Section (d)(1) of the Supreme Court’s Order 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 Smith Robinson Holler DuBose and Morgan, LLC, counsel for the Appellant, does

From: [Melissa S. Segear](#)
To: [Brad Hutto](#); patrick@wukelalaw.com; rwalker@wukelalaw.com; vmware@williamsattys.com; mwatson@wukelalaw.com
Cc: [Daniel C. Plyler](#); [Fred Hanna](#); [Austin Reed](#)
Subject: Pendarvis v. Keel (Appellate Case No. 2023-000757)
Date: Tuesday, January 16, 2024 3:16:00 PM
Attachments: [image001.png](#)
[FINAL - Return to Motion for Costs, 2.pdf](#)
[Exhibit A to Return to Motion for Costs, 1.pdf](#)
[COS-Return to Motion for Costs, 2.pdf](#)

Attached herewith and served upon you please find the Appellant's Return in Opposition to Motion for Costs in regard to the above matter.

Thank you!

Daniel C. Plyler

SMITH ROBINSON
Forward thinking. Results driven.

Smith Robinson Holler DuBose and Morgan, LLC

www.SmithRobinsonLaw.com

Melissa Segear

Paralegal

E: melissa.segear@smithrobinsonlaw.com **Columbia Office**
P: 803.254.5445 2530 Devine Street
D: 803.704.1097 Columbia, SC 29205
F: 803.254.5007

CONFIDENTIALITY NOTICE The information transmitted, including any attachments, is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from any computer. Intentional interception or dissemination of electronic mail not belonging to you may violate federal or state law.