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Jun 03 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2022-000963

Helen Brown, Claimant,

Appellant,

v.

Wal-Mart Stores, Inc., Employer, and
New Hampshire Insurance Company, Carrier,

Respondents.

RETURN TO RESPONDENTS' MOTION FOR COSTS

Appellant, Helen Brown, by and through her undersigned counsel, hereby submits this Return to Respondents' Motion for Costs on Appeal. Appellant asserts that an award of fees and costs against her per Rule 222, SCACR, is improper and inequitable in this particular case.

S.C. Code Ann. § 42-17-80 restricts awards of fees and costs

1. The legislature intended to exempt Workers' Compensation cases from the imposition of costs and fees, including those provided under SCACR 222. SC Code Ann. § 42-17-80 provides that the costs for any proceedings, brought in any court, brought under the Workers' Compensation Statute may be placed upon a party that has brought, prosecuted, or defended such proceeding *without reasonable grounds*.
2. While Rule 222, SCACR, remains silent as to whether it is intended to apply to Workers' Compensation Appellate cases, the Workers' Compensation Act conflicts with this court rule. The statute supersedes the appellate court rule as any conflict between a statute and

court rule must be resolved to favor the statute. *Grazia v. S.C. Plastering, LLC*, 390 S.C. 562, 571, 703 S.E.2d 197, 201 (2010) (citing lower court's decision reversed on other grounds). Under the statute the mere affirmation of a Panel decision does not entitle the Respondent to fees; the appeal must have been brought without reasonable grounds.

3. Appellant did not bring this appeal without reasonable grounds. Appellant asserted that the Workers' Compensation Panel erred in finding that Claimant's shoulder injury was not related to her work accident because it omitted, ignored, or misrepresented Claimant's medical records evidencing complaints of upper arm pain starting on the day of accident and Dr. Rush's, Dr. Geier's, and Dr. Palutsis' testimony that a shoulder injury can manifest as upper arm pain. This position is reasonable as it is rooted in SC Workers' Compensation Law and is supported by medical evidence, doctor's testimony, and Claimant's testimony. It cannot be said that there is no basis in fact or law for this appeal.
4. Because Appellant brought the appeal on reasonable grounds, the Court of Appeals does not have authority under § 42-17-80 to place costs of the appeal on Appellant.

Respondents request reimbursement of costs prohibited by Rule 222

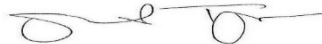
5. If application of rule SCACR Rule 222 is proper, the \$2,574 requested by respondents should be refused or lowered.
6. Respondents request payment for costs not allowed under this rule. SCACR Rule 222(b) only allows for a party to recover for the filing fee paid under Rule 203(d), the appeal filing fee, not the fee for filing the motion for costs. Therefore, Respondents are not entitled to the \$50 requested for the motion filing fee.

Respondents request is inequitable and should be denied

7. Assessing costs and fees against Appellant would be inequitable and it is within the Court of Appeals authority to refuse or lower the award of costs as it sees fit. Rule 222 provides, “when a judgment is reversed in part or vacated, costs shall be taxed against the responded *unless the court orders otherwise.*” Rule 222, SCACR (emphasis added). This rule grants the appellate court discretionary authority as to whether costs shall be taxed against a losing party. The taxation of costs and attorney’s fees should be denied in consideration of the financial situation of the Appellant versus the Respondents. Mrs. Helen Brown is an 84-year-old disabled woman, in part as the result of her employment with Respondent Wal-Mart stores, one of the largest global retailers, generating nearly 606 billion US dollars of global net sales in 2023. Mrs. brown is the sole caretaker of her blind husband. She is currently out of work and dependent on Social Security Disability as her only source of income.

WHEREFORE Appellants ask that the Court deny the Respondents’ motion for costs in the amount of two thousand five hundred seventy-four dollars and ninety-six cents (\$2,574.96).

Respectfully submitted,



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June 3, 2024

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CERTIFICATE OF SERVICE

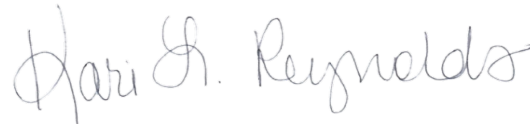
I, Kari L. Reynolds, do hereby certify that I am a paralegal for George A. Taylor, Esquire, Attorney for the Appellant with Smith Born Leventis Taylor & Vega, in Columbia, South Carolina, and that on June 3, 2024, I served the foregoing APPELLANT RETURN TO RESPONDENTS' MOTION FOR COSTS to the following via email and by placing a copy thereof in the United States mail, proper postage affixed thereto:

jwbaxley@wjcblaw.com

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The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
PO Box 11629
Columbia, South Carolina, 29211



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Licensed to practice
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and Georgia

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VIA EMAIL (ctappfilings@sccourts.org)
The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

Re: Helen Brown v WalMart Inc.
WCC File No.: 1906764
Appellate Case No. 2022-000963

Dear Ms. Kitchings:

Enclosed please find Appellant's Return to Respondents' Motion for Costs regarding the above referenced matter. By copy of this correspondence, a copy of the Return to Respondents' Motion is being served upon Johnnie W. Baxley, III, Esquire, Counsel for the Respondents.

Thank you and please let me know if you need anything further.

Sincerely yours,



George A. Taylor, Esquire
Phone: 803-509-5836
Email: gtaylor@sbltv.law

GAT/klr