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Aug 02 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Courtney Clyburn Pope, Circuit Court Judge

C/A No. 2021CP0202344
Appellate Case No. 2023-001222

Da’Nita White.....Respondent,

v.

Roshana Robins.....Appellant.

MOTION FOR COSTS AND MEMORANDUM IN SUPPORT

Respondent, by and through her undersigned counsel, hereby moves this Court for an award of appellate costs. This motion is based upon the papers and pleadings on file and Rule 222, SCACR.

Background

This case arose over a dispute regarding real property boundaries. The Respondent filed a summons and complaint against the appellant, alleging, *inter alia*, causes of action for trespass and nuisance. The Appellant, for close to two years, defended the case *pro se*. On or about April 12, 2023, the Respondent was awarded summary judgment by the Circuit Court on all causes of action alleged.

On or about July 21, 2023, which was 100 days after the Court entered summary judgment for the Respondent, the Appellant served her Notice of Appeal upon Counsel for the

Respondent. The same was filed on July 31, 2023.

Thereafter, the Parties submitted to the Court their respective initial briefs and designations of matter to be included in the record on appeal. Subsequently, on or about January 12, 2024, the Appellant filed and served the original Record on Appeal (hereinafter, "ROA"). Notably missing from the ROA, however, were various documents designated by both parties. Moreover, the Appellant included various documents which were designated by neither of the Parties. Thereafter, and on January 24, 2024, the Respondent filed a Motion to Strike the record assembled by the Appellant. The fee for this initial Motion to Strike was \$50.00.

On February 14, 2024, and while the Respondent's Motion to Strike was pending, this Court sent correspondence to the Parties indicating that this matter would be held in abeyance until the Court made a decision on Respondent's Motion. However, on February 16, 2024, and while the case was held in abeyance, the Appellant filed a Motion to Amend the Record on Appeal, along with Appellant's purported amended Record (hereinafter, "amended ROA").

By order dated March 28, 2024, this Court granted the Respondent's Motion to Strike, and accepted the amended ROA as filed by the Appellant on February 16, 2024. The Court ordered that the Parties shall file their Final Briefs within 20 days of the date of that Order, which would be on or about April 17, 2024.

On or about April 1, 2024, the Respondent filed and served a second Motion to Strike, this time seeking an order striking the amended ROA filed by the Appellant. The filing fee for this second Motion to Strike was also \$50.00. On or about April 29, 2024, this Court granted the Respondent's second motion to strike and ordered that the Appellant file and serve a second amended record on appeal in compliance with Rule 210, SCACR within 30 days of the date of that Order. The Court further ordered that failure to do so would result in the dismissal of the appeal.

The deadline passed and no second amended Record was served.

On or about June 4, 2024, the Respondent filed and served a Motion to Dismiss, alleging that because the Appellant had failed to comply with the S.C. Appellate Court Rules, the matter should be dismissed. As further grounds for dismissal, the Respondent alleged that the Notice of Appeal was not timely filed. The filing fee for the Motion to dismiss was \$50.00.

On or about July 9, 2024, the Court granted the Respondent's Motion to Dismiss. The remittitur was filed and sent down to the circuit court on or about July 29, 2024. The Respondent now submits this Motion for Costs.

Argument

Rule 222(a), SCACR, states that “costs *shall* be taxed against the appellant when the appeal is dismissed.” (emphasis added). A party entitled to recover costs under Rule 222 may recover attorney's fees in the amount of \$2,500. Rule 222(d), SCACR. “The allowance of additional costs will generally not be allowed except in the most extraordinary of circumstances.” Rule 222(b).

In this case, the Respondent was forced to file two Motions to Strike the Record on Appeal served by the Appellant. Both Motions were granted by the Court. Additionally, when no second amended record of appeal was served by the Appellant, the Respondent filed a Motion to Dismiss, which was also granted. These additional costs should be taxed against the Appellant. Counsel for the Respondent was forced to review two records on appeal; both were deficient. More than one year had elapsed since the circuit court granted summary judgment to the Respondent; yet, due to the appeal, the Respondent's property was under-utilized, and its value drastically decreased. The Parties, unfortunately, never reached the stage of the proceedings to submit Final Briefs.

The undersigned has attached a sworn itemized statement of costs incurred in this matter along with this Motion.

Conclusion

Based on the foregoing, the undersigned respectfully submits that because the appeal was dismissed, the Respondent is entitled to an order of this Court taxing the costs of the appeal to the Respondent in the amount of \$150.00. The Respondent further requests that this Court award attorney's fees in the maximum amount allowed by the S.C. Appellate Court Rules. ("By order dated January 17, 2018, the amount of attorney's fee was set at \$2,500." Rule 222, SCACR, n. 1).

Respectfully submitted,

McCANTS & McCANTS

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Dated: August 2, 2024

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PROOF OF SERVICE

I certify I have served the Respondent’s Motion for Costs on counsel for the Appellant, Shalonda Wilburn, Esquire on August 2, 2024, by electronic mail via the email address on record with AIS, at swilburn@wilburnlawfirm.com.

McCANTS & McCANTS

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Attorney for Respondent

Dated: August 2, 2024