

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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SEP 09 2013  
SC Court of Appeals

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APPEAL FROM THE WORKERS' COMPENSATION COMMISSION  
Judicial Conference Decision and Order

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W.C.C. File No.: 1009259  
Appellate Case No.: 2012-212278

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Jeffrey L. McFadden..... Claimant, Appellant,

v.

City of Lake City and South Carolina Municipal Insurance Trust,..... Respondents.

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**REPLY TO RETURN TO DEFENDANTS'  
MOTION FOR COSTS ON APPEAL PURSUANT TO RULE 222, SCACR**

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The Respondents hereby submit this Reply to Claimant/Appellants' Return to the Respondents' Motion for Costs.

In support of his position that this Court should deny the Respondent's Motion for Costs, the Appellant cites several cases from nearly 20 years ago. Appellant contends that these cases show that courts have consistently declined to award attorneys' fees and costs where an appeal is dismissed. However, the issue of costs on appeal is not the actual subject of any of the opinions cited by the Appellant, and it appears from a reading of the cases, the courts *sua sponte* determined that costs should not be awarded to either party. There is no discussion in these opinions as to the merits behind awarding or not awarding costs to

respondents in those cases. Thus, these opinions are of no value to the issue before this Court.

More importantly, however, is the fact that Rule 222 in no way prohibits this Court from awarding costs and fees associated with an appeal when the appeal is dismissed. To the contrary, Rule 222, by its very language, specifically allows for an award of attorney fees when an appeal is dismissed. Rule 222 states, in relevant part:

**(a) To Whom Allowed.** Unless otherwise ordered by the appellate court or agreed by the parties, *costs shall be taxed against the appellant when the appeal is dismissed or judgment on appeal is affirmed.*

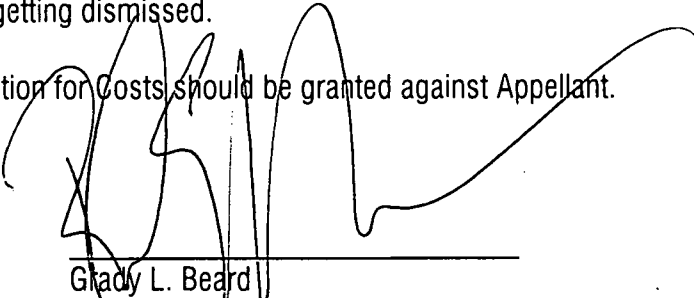
Rule 222, SCACR (emphasis added). Thus, any argument that costs cannot be assessed against the Appellant in this matter based upon prior case law is untenable given the language of the rule. See also Stone v. Leatherman, 343 S.C. 484, 541 S.E.2d 241 (2001) (awarding attorney fees on appeal after dismissal). Given that Rule 222 explicitly requires attorney's fees and costs be awarded when an appeal is dismissed, there is no reason they cannot, and should not, be awarded in this case.

While the Respondents' recognized in their Motion for Costs that it was in this Court's discretion as to whether to award costs and fees, that was due to the fact the Court's Opinion reversed the sanctions against the Appellant, thus technically making it a decision that was dismissed in part and reversed in part. However, as this Court is fully aware based upon oral arguments, the Respondents took no position on Appellant's appeal of sanctions and great discussion was had at oral argument about the South Carolina Workers' Compensation

Committee being the real party in interest as to the Appellant counsel's appeal of sanctions against him.<sup>1</sup>

Had Appellant not appealed an interlocutory order, the Respondents would not have had to incur the attorneys fees and costs of briefing the appeal on the merits, filing a Motion to Dismiss the appeal (which Appellant's argued against both in a Return and at oral argument), and the costs of appearing before the Court to argue. Contrary to Appellant's assertion that he could have sought costs against Respondents because they were the only other party to the action, had Appellant not appealed the Commission's denial of sanctions against the Respondents, Respondents would not have filed a brief or taken any position whatsoever in this case. Respondents were concerned only with the appeal taken against them, which Respondents were successful in getting dismissed.

For these reasons, the Motion for Costs should be granted against Appellant.



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Gady L. Beard  
B. Gibbs Leaphart, Jr.  
Robert E. Horner  
Sowell Gray Stepp & Laffitte, LLC  
1310 Gadsden Street  
Post Office Box 11449  
Columbia, South Carolina 29211  
(803) 929-1400

Attorneys for Respondents

September 9, 2013

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<sup>1</sup> The Court jokingly asked undersigned counsel if he was appearing on behalf of the Workers' Compensation Commission pro bono, which undersigned counsel politely declined to do.

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WORKERS' COMPENSATION COMMISSION

Full Commission Appellate Panel Review  
Case No.: 2012-212278

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W.C.C. File No. 1009259

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Jeffery L. McFadden, Employee, .....Appellant,

v.


City of Lake City and South Carolina Municipal Insurance Trust,.....Respondents.

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**PROOF OF SERVICE**

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I certify that I have served the Reply to Return to Defendants' Motion for Costs on Appeal Pursuant to Rule 222, SCACR, by depositing a copy in the United States Mail, postage prepaid, on September 9, 2013, addressed to Appellant's attorney of record, Stephen J. Wukela, Esquire, Wukela Law Firm, Post Office Box 13057, Florence SC 29504.



Diane Flanagan, Legal Assistant  
Sowell Gray Stepp & Laffitte, LLC  
1310 Gadsden Street  
Post Office Box 11449  
Columbia, South Carolina 29211  
(803) 929-1400  
Attorneys for Respondents

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