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Oct 04 2024

SC Court of Appeals

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from the Administrative Law Court
Honorable Milton G. Kimpson, Administrative Law Judge

Appellate Case No.: 2023-000441

Stephen Mueller, Appellant,

v.

South Carolina Department of Health and Environmental Control, and
Carla Varn DuPre and Jasper B. Varn, III, Respondents.

MOTION FOR COSTS UNDER RULE 222(b)

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*Attorneys for the Respondents,
Carla Varn DuPre and Jasper B. Varn, III*

Respondents Carla Varn DuPre and Jasper B. Varn, III (“Respondents DuPre and Varn”), pursuant to Rule 222, SCACR, hereby move for an Order taxing costs against the Appellant as set forth on the attached Itemized Statement of Costs.

The grounds for this Motion are as follows:

1. The Court of Appeals dismissed this appeal by Order dated September 3, 2024. The remittitur issued on September 19, 2024.

2. As set forth in SCACR 222(a), “[u]nless 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.” Accordingly, Respondents DuPre and Varn request that this Court tax costs against Appellant, Stephen Mueller, as set forth on the attached Itemized Statement of Costs.

Procedural History and History of Appellant’s Non-Compliance

The ALC issued its Final Order in the case underlying this appeal on June 7, 2022, finding the action of Respondent S.C. Department of Health and Environmental Control (the “Department”), in issuing the Permit that Appellant Stephen Mueller (“Mr. Mueller”) challenged, OCRM02808, to be supported by the evidence and consistent with the applicable regulatory requirements. Appellant did not file a Notice of Appeal of this Final Order nor move for reconsideration under SCRCP 59(e).

On March 9, 2023, by electronic mail directed to the Court (and, perhaps, by U. S. Mail although not delivered to Respondents), Mr. Mueller attempted to file a Notice of Appeal with this Court *pro se*. On March 17, 2023, this Court sent Mr. Mueller the first of six deficiency letters issued to address problems with his attempted filings. In the first letter, Mr. Mueller was given notice of his failure to send the required filing fee and Proof

of Service with the Notice of Appeal he attempted to file, and was further instructed that the Notice was incorrectly formatted. The letter required correction of the deficiency “within ten (10) days of the date of this letter, or this appeal will be dismissed.”

On March 29, 2023, this Court issued a second deficiency letter to Mr. Mueller regarding Mr. Mueller’s failure to include Proof of Service on the Administrative Law Court. The letter required correction of the deficiency “within ten (10) days of the date of this letter, or this appeal will be dismissed.”

On April 3, 2023, this Court issued a third deficiency letter to Mr. Mueller regarding Mr. Mueller’s failure to include Proof of Service for a Motion to Disregard filed by Mr. Mueller. The letter required correction of the deficiency “within ten (10) days of the date of this letter, or your motion will not be considered.”

On April 6, 2023, this Court issued a fourth deficiency letter to Mr. Mueller regarding Mr. Mueller’s failure to include the required filing fee and Proof of Service for a motion to continue to consider an appeal in civil court. The letter required correction of the deficiency “within ten (10) days of the date of this letter, or this motion will not be considered.”

On June 16, 2023, this Court issued a letter to Terry Richardson, Esquire, purportedly Mr. Mueller’s attorney, stating that no transcript had been received by the Court, that no extension had been granted to the court reporter for providing the transcript, and that no initial brief had been received from Mr. Mueller. Mr. Richardson was given ten (10) days to advise the Court of the status of the transcript.

On June 27, 2023, this Court issued a second letter to Terry Richardson, Esquire, confirming receipt of an email sent by Mr. Richardson, in which Mr. Richardson

represented to the Court that he was not counsel of record for Mr. Mueller. As this Court pointed out to Mr. Richardson, however, on April 24, 2023, he had filed a notice of appearance requesting oral argument in this appeal.

On July 7, 2023, an initial brief was filed by Mr. Mueller, again as a *pro se* appellant.

On July 10, 2023, this Court issued a fifth deficiency letter to Mr. Mueller regarding Mr. Mueller's initial brief, which did not have a caption/title in compliance with Rule 267(a), SCACR, was not accompanied by a designation of matter and did not include a Proof of Service. The letter required correction of the deficiency "within ten (10) days of the date of this letter, or this matter will be dismissed."

On July 18, 2023, Mr. Richardson filed a motion attempting to withdraw as Mr. Mueller's counsel. On July 19, 2023, this Court issued a sixth deficiency letter in this case regarding Mr. Richardson's motion to withdraw, which lacked the required filing fee and Proof of Service. The letter required correction of the deficiency "within ten (10) days of the date of this letter, or [the] filing will not be considered." Appellant attempted a filing to correct the deficiencies eleven days past the deadline of July 20, 2023.

On November 1, 2023, Appellant took the extraordinary measure of filing a Motion for Summary Judgment, which is not an appellate remedy. On December 8, 2023, Respondents moved to dismiss this appeal after Appellant failed to file the record on appeal. While the Respondents in this case were not required by Rule 210, SCACR to file any Record on Appeal with the Clerk of the Appellate Court, all Respondents filed and served a Record out of an abundance of caution in response to wording of a letter sent to all parties to the appeal stating "... each party must file an original record on appeal and/or final brief, in either electronic or unbound paper form, as well as on bound paper

copy, at the time the record on appeal and final briefs are due to be served and filed in accordance with the SCACR.”

Respondents filed other Motions in attempts to move the case along in the form of Motions to Dismiss based on Appellant’s refusal to implement the guidance of this Court. These Motions were filed on March 16, 2023, August, 2023, and February 7, 2023. The filing fees resulting from these Motions are included in the Itemized Statement of Costs below.

Facts Supporting Additional (Discretionary) Award

Respondents Dupre and Varn are seeking additional costs. Respondents’ position that additional costs, as allowed under SCACR 222(b), are authorized here is based on Appellant’s extraordinary neglect of his obligations to perfect and pursue this Appeal. Initially, he failed to include Proofs of Service and Filing Fees in six different filings, set forth above, despite clear instructions from the Court. He then toyed with the Record on Appeal, delaying the ability to file Briefs. Respondents believed that as soon as the Record on Appeal was filed, the Court would review the filings and likely see the insufficiency in Appellant’s efforts to Appeal. Appellant appears to believe the same, which would explain the efforts taken to delay the progress of this Appeal. Because of Appellant’s extraordinary actions, Respondents seek to double the amount allowed under the rule (\$2500). Respondents have worked diligently over the past several years to obtain all necessary permits for development of the beachfront lot that is the subject of this Appeal including authorization from the Bureau of Coastal Management (“BCM”) and the Department of Environmental Services for a septic tank permit and a permit allowing construction of a beachfront residence. Respondents listed their beachfront property for

sale but Appellant's unpredictable behavior and delay tactics resulted in Respondents losing every contract offered to Respondents. It is clear to us that this entire exercise was Appellant's method of preventing Respondents from selling the beachfront lot. Appellant has a personal interest, as he owned the property across Palmetto Blvd. from Respondents' undeveloped lot and utilized Respondents' undeveloped lot for access to the beach, despite the location of numerous public access areas.

For the reasons set forth above, Respondents seek an award of costs as set forth on the attached calculation and itemization of costs.

s/Mary D. Shahid, Esq. _____
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Angelica M. Colwell, Esquire
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Attorneys for Respondents
Carla V. DuPre and Jasper B. Varn, III

October 4, 2024
Charleston, South Carolina

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Appeal from the Administrative Law Court
Honorable Milton G. Kimpson, Administrative Law Judge
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Appellate Case No.: 2023-000441

Stephen Mueller, Appellant,

v.

South Carolina Department of Health and Environmental Control, and
Carla Varn DuPre and Jasper B. Varn, III, Respondents.

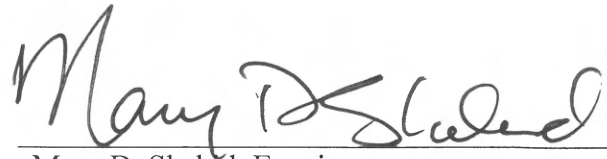
CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that I have this date, October 4, 2024, served this Motion for Costs under Rule 222(b), filed by Respondents as the Original Record of Appeal upon all parties to this appeal, and/or their attorneys, by depositing a copy hereof in the United States by electronic mail and U.S. mail to the following:

Bradley D. Churdar, Esquire
SCDHEC
1362 McMillan Avenue, Suite 400
Columbia, SC 29201
Office: 843.953.0213
Mobile: 843.718.5685
Fax: 843.953.0201
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Stephen Mueller
21 Hillsboro Rd.
Rochester, NY 14610
Email: stevem44442002@yahoo.com

*Attorneys for the Respondent,
SCDHEC*

A handwritten signature in black ink, reading "Mary D. Shahid". The signature is written in a cursive style with a horizontal line underneath it.

Mary D. Shahid, Esquire

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Maynard Nexsen, PC

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VIA EMAIL AND U.S. MAIL

Jenny Adams Kitchings
South Carolina Court of Appeals
Clerk of Court
1220 Senate Street
Columbia, SC 29201
ctappfilings@sccourts.org

Re: Appellate Case No.: 2023-000441
Stephen Mueller v. SCDHEC and DuPre/Varn

Dear Madam Clerk:

Please find enclosed Respondents' Dupre/Varn's Motion for Costs under Rule 222(b) in the above-referenced appeal. I am also attaching a Certificate of Service to all parties.

Very truly yours,

A handwritten signature in black ink that reads "Mary D. Shahid".

Mary D. Shahid
Shareholder
Admitted in SC

MDS:eh

cc: Stephen Mueller (via email and U. S. mail)
Bradley Churdar (via email)