THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
L. Casey Manning, Circuit Court Judge
Joseph M. Strickland, Master-in-Equity

Appellate Case No. 2021-000539
Case No. 2020-CP-40-3674

Ammon L. "Treigh" Sullivan, ... Respondent,

v.

Richland County School District One and
South Carolina Department of Education, ... Defendants,

Of which, South Carolina Department of Education, is ..... Appellant.

REPLY MEMORANDUM IN SUPPORT OF MOTION FOR COSTS ON APPEAL

The Appellant South Carolina Department of Education ("SCDE"), as the prevailing party, has filed a motion pursuant to Rule 222(d), SCACR, for an award of costs on appeal in the amount of $3,231.96. The Appellant Ammon L. "Treigh" Sullivan opposes the award of costs on appeal because he contends an award of costs to the prevailing party is "inequitable" and "premature." As support, he also argues the merits of the underlying case and claims "significant financial and emotion hardship as a result of this litigation."

Rule 222 does not expressly set forth any exceptions to the general rule that the prevailing party is entitled to an award of costs on appeal. Rule 222 certainly does not include

an exception based upon the merits of the appeal that were lost by the Respondent nor on the granting of a remand in conjunction with the reversal.

As to the Respondent's claim that an award of costs on appeal would be "inequitable," he primarily claims to have "contested this appeal in good faith." For starters, "good faith" has never been recognized as a basis for denying costs on appeal to the prevailing party. Secondly, it is highly debatable whether the Respondent contested the Rule 55(e) defense to a default judgment in "good faith." First, he argued that the issue was not properly preserved, which is clearly not the case. Additionally, he argued that SCDE's reliance on Rule 55(e) is a "misstatement of law," which was also clearly not the case. *See*, Respondent's Brief, p. 13. In an entirely conclusory manner, the following is the extent of the Respondent's argument on Rule 55(e):

> Appellant points out, and Respondent does not disagree, that it is a state agency otherwise subject to Rule 55(e), SCRCP. However, that is not a 'free pass' on being subject to default. Rather, it just qualifies, if at all, the manner in which a default is obtained. Stated differently, the requirement of Rule 55(e) does not overzealously change the requirements of Rule 55(b), which permits the court may conduct a hearing or order as it deems necessary in order to enter judgment. Rule 55(b), SCRCP. Appellant's suggestion that "Rule 55(e) provides that a default judgment cannot be entered against the State or its agencies without a showing that a plaintiff will prevail as a matter of law on the merits" is simply a misstatement of law and is not codified anywhere in South Carolina law.

See, Respondent's Brief, pp. 12-13. Then, he argued that Rule 55(e) "could not be any clearer: default shall be entered if the claimant establishes relief by evidence satisfactory to the Court; that was done three (3) times over." *See*, Respondent's Brief, p. 13. Notably, as SCDE points out in its brief:

> [I]n an attempt to circumvent the bar of Rule 55(e) on his default judgment, the Respondent resorts to "watering down" the standard itself. Rule 55(e) requires that a claimant must establish his "claim

> to relief by evidence satisfactory to the Court." However, in arguing that he met that standard, the Respondent insists that the claimant need only establish "relief by evidence satisfactory to the Court." *See*, Respondent's Brief, p. 13. He literally removes the words "claim to" from the rule. It is not the "relief" that a plaintiff must prove – that is the burden of proof in any default not involving a state agency and would render Rule 55(e) meaningless or superfluous.

See, Appellant's Reply Brief, p. 7. In effect, the Respondent changed "claim to relief" to "relief," and then insisted that he provided the relief claimed "three times over." That is not the presentation of a "good faith" argument that would justify being excused from paying costs as a losing party. In other words, there is no question that SCDE prevailed on the appeal. This Court agreed with SCDE's construction of Rule 55(e) and rejected the Respondent's position.

Additionally, the Respondent argues that an award of costs on appeal is "premature" and should be denied "at this time" because of this Court's remand for fact-finding, in essence, to allow "the claimant [to] establish[] his claim to relief by evidence satisfactory to the Court." Rule 55(e), SCRCP. The Appellant Court Rules, however, do not include a procedure or mechanism whereby costs on appeal may be sought and awarded after there is a decision made on remand. Instead, the motion for costs must be filed within fifteen days of the issuance of remittitur. Thus, a determination "at this time" is not premature. It is also not inequitable. The Respondent is actually fortunate that this Court is giving him the opportunity to try to meet the standard of Rule 55(e) because he did not establish his "claim of relief" in the trial court, just as this Court observed. *See*, Slip Op. at 3 ("We respectfully disagree with Respondent's argument that he established his claim below"). While this Court states that the trial court "took no evidence at to the merits of Respondent's claim," *see*, Slip Op. at 3, that is actually generous to the Respondent. The trial court did not exclude any evidence offered by the Respondent, and it was the Respondent's burden to establish his "claim of relief," which he did not do. Thus, the

Respondent is actually getting a second chance to offer the required proof to establish his entitlement to a default judgment. This Court could have easily set aside the default because the Respondent failed to establish her "claim to relief" in the court below.

Finally, as to his claims of "significant financial and emotional hardship," Rule 222 does not include any indigency or financial exception, nor has existing case law recognized such an exception. Moreover, as for his "financial hardship" claim, the Respondent has presented no evidence to support that position. He submits only the argument of counsel, which is not evidence nor is it a substitute for evidence. *Bowers v. Bowers*, 304 S.C. 65, 403 S.E.2d 127, 129 (Ct. App. 1991) ("Arguments of counsel are ... not evidence"). He also relies on the merits of the underlying claim on which he has not prevailed, and which both Defendants, SCDE included, strongly contest.

Based on the foregoing, the Appellant SCDE renews its request that this Court award costs on appeal in the amount of $3,231.96.

Respectfully submitted,

LINDEMANN LAW FIRM, P.A.

BY: *s/ Andrew F. Lindemann*

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Counsel for Appellant South Carolina Department of Education

January 14, 2025

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SC Court of Appeals

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APPEAL FROM RICHLAND COUNTY
L. Casey Manning, Circuit Court Judge
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Of which, South Carolina Department of Education, 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 April 24, 2024), the undersigned employee of Lindemann Law Firm, P.A., counsel for the Appellant South Carolina Department of Education, does hereby certify that service of the **Reply Memorandum in Support of Motion for Costs on Appeal** was made upon all counsel of record by email only this the 14th day of January 2025, as follows:

Julius W. Babb, IV, Esquire
Cromer Babb & Porter, LLC
Email: jay@cromerbabb.com

s/ Andrew F. Lindemann

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**Also Admitted in North Carolina*

January 14, 2025

RECEIVED
Jan 14 2025
SC Court of Appeals

Via Email Only
The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Email: ctappfilings@sccourts.org

RE: Ammon L. "Treigh" Sullivan v. Richland County School District One and South Carolina Department of Education
Appellate Case Number: 2021-000539
Civil Action Number: 2020-CP-40-3674
Our File Number: 79.20406

Dear Ms. Kitchings:

Pursuant to Section (b)(2)the Supreme Court's Order Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (as amended April 26, 2024), please find enclosed for filing the **Reply Memorandum in Support of Motion for Costs on Appeal** with regard to the above referenced appeal. By copy of this letter, I am serving copies on all counsel of record by email only pursuant to Section (d)(1) of the same Supreme Court Order.

Thank you for your assistance.

Sincerely,

LINDEMANN LAW FIRM, P.A.

Andrew F. Lindemann

AFL/jmb
Enclosure

cc: Julius W. Babb, IV, Esquire *(w/ Enclosure, Via Email Only)*