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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Bentley D. Price
Circuit Court Judge

Appellate Case No. 2023-000245

Jeane Whitfield,

Petitioner,

v.

Dennis K. Schimpf, M.D. and
Sweetgrass Plastic Surgery,
LLC,

Respondents.

PETITIONER'S REPLY TO RESPONDENTS' RETURN
TO MOTION FOR TAXATION OF COSTS

Petitioner Jeane Whitfield, by and through her undersigned counsel, respectfully submits this Reply to Respondents' Return to Petitioner's Motion for Taxation of Costs. For the reasons set forth herein, Petitioner's Motion for Taxation of Costs should be granted.

Respondents attempt to avoid their responsibility for costs by mischaracterizing the Court's Opinion and the applicable rules. The Court's Opinion unequivocally reversed the judgment of the Court of Appeals and remanded the case for a new trial. Under Rule 222(a), SCACR, "When a judgment is reversed, costs shall be taxed against the respondent unless the court orders otherwise." This clear directive applies directly to the present case.

I. THE COURT’S JUDGMENT WAS REVERSED, NOT “REVERSED IN PART”

Respondents mischaracterize the Court’s decision as merely “reversing in part” when in fact the Court’s Opinion completely reversed the judgment below. The Opinion explicitly states: “We reverse the court of appeals and remand for a new trial.” This is an unqualified reversal of the judgment below, not a partial reversal as Respondents incorrectly assert.

The Court’s Opinion is unambiguous in its conclusion. As Justice Few wrote in the final paragraph: “The trial court erred by refusing to admit evidence regarding Tolbert’s sexual relationship with Schimpf, her salary, and the free cosmetic procedures she received from Schimpf. We reverse the court of appeals and remand to the court of common pleas for a new trial.” This language makes clear that the complete judgment was reversed.

The fact that the Court agreed with some legal arguments while rejecting others does not transform the judgment into a partial reversal. The judgment itself—affirming the trial court’s verdict—was completely reversed and the case remanded for a new trial. Rule 222(a) clearly states that “[w]hen a judgment is reversed, costs shall be taxed against the respondent unless the court orders otherwise.”

Respondents’ attempt to characterize this as falling under the “reversed in part” provision of Rule 222(a) is incorrect. The Court did not affirm the judgment in part and reverse it in part—it reversed the judgment completely and ordered a new trial. The fact that not every legal issue raised by Petitioner succeeded does not change the nature of the Court’s judgment reversing the decision below.

II. RESPONDENTS MISCHARACTERIZE RULE 242(j)

Respondents rely on Rule 242(j), SCACR to argue that costs are discretionary in this case. However, they selectively quote from Rule 242(j)(1) while omitting the critical first sentence that states: “If the Supreme Court affirms the judgment of the lower court or tribunal, costs shall be

taxed against the petitioner.” This provision goes on to state that “When the decision of the Supreme Court has the effect of affirming or reversing in part or vacating the judgment of the lower court or tribunal which was on appeal, costs shall be allowed only as ordered by the Supreme Court.”

Here, the Court did not affirm in part or reverse in part—it reversed the judgment completely. The second sentence of Rule 242(j)(1) does not apply to this case. Instead, the case is governed by Rule 222(a), which mandates taxation of costs against Respondents when a judgment is reversed.

III. THE IDENTITY OF THE TRIAL COURT ERROR IS IRRELEVANT TO THE ISSUE OF COSTS

Respondents incorrectly suggest that costs should not be assessed because the error identified by this Court was that of the trial judge rather than Respondents. This argument finds no support in Rule 222 or 242. The rules allocate costs based on which party prevails on appeal, not on the identity of the person committing the error below. If Respondents’ position were correct, costs would never be assessed in cases where a trial court committed legal error.

The Court’s Opinion makes clear that the purpose of its review was to determine whether the trial court erred in making its evidentiary ruling, not to assign blame to a party. The Court explained that “the trial court misunderstood its role in evaluating the admissibility of evidence” and that “a trial court may not exclude evidence of bias because the court believes the witness is not biased, nor evidence of credibility because it thinks the witness has not been untruthful; that is for the jury to determine.”

Respondents’ position would render Rule 222(a) meaningless, as most reversals occur because a trial court, not a party, made a legal error. The purpose of costs is not to punish the party that caused the error, but to compensate the prevailing party for expenses incurred in securing the

correct legal outcome. Notably, Respondents were the party that benefited from the erroneous ruling below, and they actively defended that ruling on appeal.

IV. RESPONDENTS MISCHARACTERIZE THE COURT'S OPINION

Respondents grossly misrepresent the Court's Opinion by suggesting it was "largely favorable to Respondents." This characterization ignores the fact that Petitioner obtained precisely the relief she sought: reversal of the judgment and a new trial.

Respondents' statement that the reversal "does not affect the merits of the case" is patently incorrect and directly contradicted by the Court's Opinion. The Court found that the trial court committed reversible error by excluding evidence that would have allowed Petitioner to impeach a key witness for bias. The Court specifically found that "whether Schimpf was angry as Whitfield testified is a significant issue" and that "Whitfield was prejudiced by not being allowed to introduce evidence that Tolbert may have been biased towards Schimpf."

The Court conducted a detailed prejudice analysis, explaining how the excluded evidence related directly to a key factual dispute concerning Dr. Schimpf's conduct during the July 11 post-operative procedure. As the Court noted, "If Whitfield could prove Schimpf was not in a sound state of mind when treating her, particularly if the jury found reason not to believe Tolbert's testimony that Schimpf would 'never be angry,' it would increase the likelihood the jury would find Schimpf deviated from the standard of care in the way Rosenberg claims."

Furthermore, the Court expressly stated that the trial court's exclusion of this evidence was based on "a fundamental misunderstanding of the law set forth in Rule 403" and that "the trial court's failure to apply the correct legal standard in these two respects was itself an abuse of discretion." These findings directly contradict Respondents' assertion that the error was merely a technical one that does not affect the merits.

V. PETITIONER IS ENTITLED TO COSTS AS THE PREVAILING PARTY

The Supreme Court has reversed the judgment of the Court of Appeals and granted Petitioner a new trial—exactly the relief she sought. Rule 222(a) is clear that when a judgment is reversed, costs shall be taxed against the respondent. The fact that Petitioner did not prevail on every legal argument does not alter the outcome; she prevailed on the appeal and obtained a reversal.

This Court need not issue a separate order concerning costs; by operation of Rule 222(a), costs are to be assessed against Respondents unless the Court orders otherwise. Respondents have failed to demonstrate any extraordinary circumstances that would justify a departure from the rule’s default provision.

CONCLUSION

The Supreme Court’s Opinion in this case unequivocally reversed the judgment of the Court of Appeals and remanded the case for a new trial. The Court found that the trial court abused its discretion in excluding critical evidence of witness bias, which prejudiced Petitioner in a way that affected the outcome of the trial. Under Rule 222(a), SCACR, when a judgment is reversed, costs shall be taxed against the respondent unless the court orders otherwise.

Respondents’ arguments against taxation of costs are based on mischaracterizations of both the Court’s Opinion and the applicable rules. The Court did not “reverse in part” - it fully reversed the judgment below. The Court found reversible error that directly affected the merits of the case, not merely a technical error. And the rules governing taxation of costs focus on which party prevails on appeal, not on which actor (the trial court or a party) committed the error necessitating reversal.

Based on the foregoing, Petitioner respectfully requests that this Honorable Court grant her Petition for Taxation of Costs and that Respondents be required to make payment of the costs specified in Petitioner's Itemized Statement of Costs.

Respectfully submitted,

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