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OCT 24 2013

THE STATE OF SOUTH CAROLINA
In the Supreme Court

S.C. Supreme Court

APPEAL FROM LEE COUNTY
Court of Common Pleas

Haigh Porter, Special Referee

Case No. 2010-CP-31-195

Cecil L. Josey, Jr., Respondent,

v.

Stanley D. Josey, Courtney Gamble,
Spencer Josey, Elizabeth Ann Geddings,
and Cecil L. Josey, Jr., as Trustee of
the Josey Family Trust Defendants,

of whom Stanley D. Josey is the Appellant,

and Courtney Gamble, Spencer
Josey, Elizabeth Ann Geddings, and
Cecil L. Josey, Jr., as Trustee of
the Josey Family Trust, are Respondents.

RETURN TO MOTION FOR COSTS

This return is filed pursuant to Rule 240(e) of the South Carolina Appellate Court Rules.

An award of costs under Rule 222 is subject to this Court's discretion. See, e.g., *Austin v. Stokes-Craven Holding Corp.*, Op. No. 27324 (S.C. Sup. Ct. filed Oct. 23, 2013) (Shearouse Adv. Sh. No. 45 at 25, 35). Although this Court has affirmed the decision in this

case, the Court nevertheless has the ability to issue an order that denies costs to the respondents. See Rule 222(a), SCACR (noting that costs are subject to this Court's discretion to order otherwise). For the reasons that follow, the appellant respectfully requests that the Court exercise its discretion and issue such a denial.

If the underlying order in this case had been the least bit reasonable, there would not have been any legitimate grounds for an appeal. For example, consider the situation if the referee had ordered partition by allotment and granted the respondents all of the property in question. This would have been completely proper under the statute, and the appellant would not have possessed any plausible argument that such a distribution was unfair.

The point is that the present circumstances exist only because the respondents drew them this way. They authored the distribution that led to this appeal. Why they purposefully designed this scenario is anybody's guess.

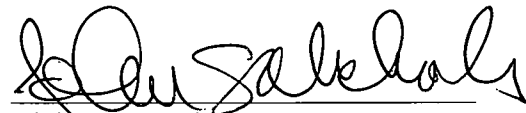
It is astonishing that rather than trying this case by focusing on the property interests that needed to be divided, the respondents chose to focus on attacking the character of their uncle, who is the appellant. By what measure could that approach ever be constructive or create an environment where the parties could negotiate a resolution instead of forcing an appellate court to decide their disagreement?

In similar fashion, it is a mystery why the respondents did not seek a property distribution that would have been easier to carry out. Instead, they proposed a distribution that is so difficult that the referee gave the appellant six months to get it accomplished. This distribution would not be easy even if the parties *could* get along. If this scheme was not bizarre enough—regardless of the circumstances—it is particularly bizarre in the context of

a case where one side says that there is so much animus in this family that they want as little contact with the other side as possible. The respondents claim that they would like to be rid of their uncle, but they seem intent on drawing contact and conflict with him.

The referee that heard this dispute ordered each side to bear its own costs. The appellant respectfully submits that this is the most appropriate result here. The appellant has accepted the Court's decision, elected to forego rehearing, and appreciates that he must now endeavor to either carry out the referee's distribution or negotiate a resolution with the other side. The respondents seem emboldened by the affirmance of a decision that they had to admit during argument was at least partially wrong,¹ and their request for costs provides yet another indication that they are more interested in gaining leverage than creating healthy climate for a resolution. This case badly needs a farewell to arms, and the appellant accordingly respectfully requests that this Court exercise its discretion and order that the parties bear their own costs on appeal.

Respectfully submitted,



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October 24, 2013

¹During oral argument, counsel for the respondents admitted that the special referee's construction of the right of refusal statute was incorrect.

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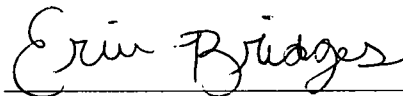
The undersigned hereby certifies that on the date indicated below she served counsel for the Respondents with a copy of the *Return to Motion for Costs* by mailing a copy of the same by United States Mail with first class postage prepaid to the following addresses:

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October 24, 2013



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