

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Case No. 2007-CP-07-3057
Opinion No. 4842 (S.C. Ct. App. filed June 15, 2011)

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S.C. Supreme Court

In the Matter of the Estate of Charles Galen Rider, a/k/a C.G. Rider

Carolyn S. Rider.....Petitioner,

v.

Estate of Charles Galen Rider, Thomas M. Grady, Personal
Representative.....Respondent,

and

Deborah Rider McClure, Ginger C. Rider, Christian James McClure and Austin Patrick
McClure.....Respondents.

PETITIONER'S REPLY IN SUPPORT OF MOTION FOR COSTS

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PRELIMINARY STATEMENT

On March 19, 2014 the South Carolina Supreme Court entered its order reversing the decisions of the Probate Court, the Circuit Court and the Court of Appeals. As expressly allowed by SCRAP 223(b) and 242(j), Petitioner timely filed its motion for costs. Respondents have not challenged the amount of costs being sought, but have objected to any award of costs. Petitioner is entitled to the award of costs under the applicable rules and submits this brief in support of its motion for costs.

I. AS THE SUCCESSFUL LITIGANT ON APPEAL, PETITIONER IS ENTITLED TO THE AWARD OF COSTS

Petitioner has moved for an order taxing the costs allowable under SCRAP 223(b) and 242(j). Respondents oppose the motion on the grounds that “Respondents McClure neither appealed nor cross-appealed the decision” of the Probate Court, the Circuit Court or the Court of Appeals and “the Personal Representative did not defend” the judgments entered by the Probate Court, the Circuit Court and the Court of Appeals. Neither of these provide valid grounds on which to object to the award of costs in this case.

The fact that Respondents did not appeal the rulings of the lower courts that were favorable to them is true of any respondent who seeks to uphold a favorable decision of a lower court. Nevertheless, South Carolina Rules of Appellate Procedure 223 and 242 provide for the recovery of costs if by a successful appellant in cases where the non-appealing party loses on appeal.

Respondents complain that the Personal Representative did not take sides in this dispute among estate beneficiaries. Respondents cite no authority for the proposition that a personal representative’s neutrality protects a contesting beneficiary from having to pay costs if that beneficiary does not prevail in litigation with the other beneficiaries.

Respondents were the real parties in interest seeking to prevent Petitioner from receiving the funds to which the Supreme Court ultimately held she was entitled. Having failed in that effort, it is entirely fair that Respondents pay the costs to which Petitioner is entitled under the applicable rules.

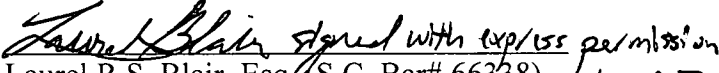
II. ALL OF THE COSTS BEING SOUGHT WERE ACTUALLY INCURRED.

Respondents have not challenged the accuracy of the affidavits filed by Petitioner's two counsel. While it is true that Wells Fargo paid the costs of the filing fee and printing the record, appendix and briefs submitted to the Supreme Court, there is no dispute that those costs were actually incurred in the pursuit of the appeal in this case.¹ Moreover, the trustee paid those costs in its role as agent for the Petitioner.

CONCLUSION

South Carolina Rules of Appellate Procedure 223(b) and 242(j) provide that the successful litigant on appeal may recover those costs that are specified in the rules. The South Carolina Supreme Court's decision affirmed Petitioner's position in all respects thereby entitling Petitioner to recover its costs.

Respectfully submitted,


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Date: May 1, 2014

¹ The Petitioner personally incurred substantially more than \$2000 in attorneys' fees in this litigation plus \$768.75 of line item costs set forth in Mr. Finger's affidavit filed in support of Petitioner's Motion for Costs.

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CERTIFICATE OF SERVICE

I certify that I have served a copy of the Petitioner's Reply to Return of the
McClure Respondents, by U.S. Mail, postage prepaid, on May 1, 2014, addressed to all
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