

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS
Robin R. Stilwell, Judge

Case No. 2011-CP-23-02204
Appellate Case No. 2011-204086

Deena L. Bettencourt and Scott Bettencourt,..... Appellants,
v.
Mary R. Wald,..... Respondent.

PETITION FOR REHEARING

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SC Court of Appeals

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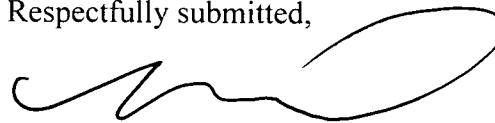
Deena L. Bettencourt and Scott Bettencourt, Appellants,
v.
Mary Wald, Respondent.

CERTIFICATE OF SERVICE

I certify that on the 30th day of April, 2014, I served the Appellants' Petition for Rehearing and Certificate of Counsel on the Respondent by placing a copy of same in the United States Mail, first class postage prepaid, addressed to counsel of record and others as indicated below:

Marcus K. McGarr
108 Whitsett Street
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Counsel for Respondent

Respectfully submitted,



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PETITION FOR REHEARING

Pursuant to Rule 221, SCACR, the Appellant petitions this Court to grant a rehearing in the present case. The Appellant submits this Court may have overlooked or misapprehended important facts and points of law as follows:

I. THE COURT ERRED IN DENYING THE APPELLANTS' MOTION FOR ALL ATTORNEYS FEES AND EXPENSES PURSUANT TO RULE 37(c).

This Court's opinion overlooks the intent of Rule 37, SCRCR, which is evidenced by its mandatory language. Rule 37 provides for the recovery of attorney fees and expenses directly related to proving facts denied by the other party. Here the Respondent denied the Appellants' requests to admit physical injury; pain and suffering; medical expenses; and permanent injury.

Rule 37 provides for the recovery of fees and costs unless the court finds (1) the request was held objectionable pursuant to Rule 36(a), or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe that he might prevail on the matter, or (4) there was other good reason for the failure to admit. Here, the trial court made no such findings, and as a result, the Appellants were entitled to reasonable attorney fees and costs pursuant to the mandatory language of Rule 37.

As a result of having to prove essential facts denied by the Respondent, the Appellant incurred substantial attorney fees and expenses to prove her case. Expenses included deposition costs and fees relating to expert witnesses without whom the Appellants could not have established an injury. In addition to the costs and fees relating to the expert witnesses, the Appellants incurred additional costs and expenses, totaling \$15,893.87. All of the expenses were directly related to proof of injury or other facts which were denied by the Respondent in her responses to the

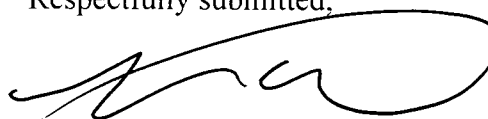
Appellants' Requests for Admissions.

There are no facts in record to support a finding that any of the requested fees, costs, or expenses were unreasonable. The only evidence as to costs and fees is the affidavit of Appellants' counsel. The Respondent did not cross-examine the Appellants' counsel or argue at trial that the fees were unreasonable or unrelated. As a result, there is no evidence to support the trial court's limitation of costs and fees under the mandatory language of Rule 37(c) SCRPC. Absent a factual basis to support its ruling, the trial court's limitation of fees in this case constitutes an abuse of discretion. Sessions v. Withers, 327 S.C. 409 (Ct. App. 1997).

CONCLUSION

Based on the foregoing, the Appellant moves this Court to grant a Rehearing in this case and reverse and/or modify the trial court's award of attorney fees and expenses.

Respectfully submitted,



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April 30, 2014


The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Deena L. Bettencourt and Scott Bettencourt v. Mary R. Wald
C. A. No.: 2011-CP-23-02204
Appellate Case No.: 2011-204086

Dear Ms. Kitchings:

Enclosed please find one copy of the Petition for Rehearing along with the Certificate of Service.

Respectfully Submitted,



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RCC/kmh
Enclosures
cc: Marcus K. McGarr

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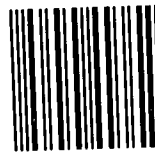
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