

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from
South Carolina Administrative Law Court

John D. McLeod, Administrative Law Judge

RECEIVED

JUN 06 2014

Appellate Case No.: 2011-2022-3268

SC Court of Appeals

William E. Lippincott,

Appellant,

v.

South Carolina Department of Employment and Workforce
and Wal-Mart Associates,

Respondents.

RETURN TO MOTION FOR COSTS

The Appellant, William E. Lippincott, by and through his undersigned counsel, responds to the Motion for Costs filed by the Respondents, South Carolina Department of Employment and Workforce. The Appellant objects to the request for costs and sets out his reasons therefor in the attached Memorandum.

June 5, 2014

**SOUTH CAROLINA
LEGAL SERVICES**

Other Counsel of Record:

Debra S. Tedeschi

Legal Dept., Dept. of Employment & Workforce

P.O. Box 8597

Columbia, SC 29202

803-737-2666

Susan J. Firimonte
320 S. Coit Street
Florence, SC 29501
843-413-9500

sfirimonte@sclegal.org

ATTORNEYS FOR APPELLANT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from
South Carolina Administrative Law Court

John D. McLeod, Administrative Law Judge

Appellate Case No.: 2011-203268

William E. Lippincott,

Appellant,

v.

South Carolina Department of Employment and Workforce
and Wal-Mart Associates,

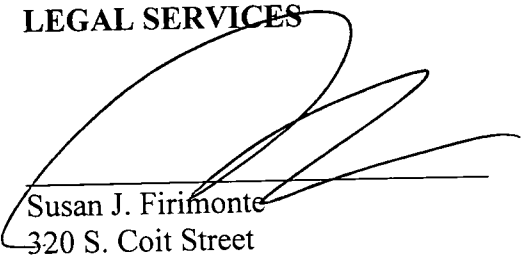
Respondents.

**MEMORANDUM IN SUPPORT OF
APPELLANT'S RETURN TO MOTION FOR COSTS**

June 5, 2013

**SOUTH CAROLINA
LEGAL SERVICES**

Other Counsel of Record:
Debra S. Tedeschi
Legal Dept., Dept. of Employment & Workforce
P.O. Box 8597
Columbia, SC 29202
803-737-2666


Susan J. Firimonte
320 S. Coit Street
Florence, SC 29501
843-413-9500

sfirimonte@sclegal.org

ATTORNEYS FOR APPELLANT

MEMORANDUM

I. INTRODUCTION

This is an appeal of a Decision of the Administrative Law Court affirming a denial of Appellant's unemployment compensation benefits. The issues on appeal included novel issues of law for South Carolina, such as whether the employer bears the burden of proving that the claimant is disqualified for unemployment compensation benefits. Further, subsequent to the initial hearing in this matter, in a subsequent case, the Appellate Panel of the South Carolina Department of Employment and Workforce issued its decision in *Hollis v. Wade's Restaurant*, Decision No. 2012-P-5, Appeal No. 16490-16491 which specifically found that the employer bears the burden of proving the employee committed misconduct which would disqualify an employee from unemployment compensation benefits. *Id.* The Appellant properly prosecuted his appeal seeking his unemployment compensation benefits. However, the Supreme Court declined to exercise *certiorari* in this matter.

II. ARGUMENTS

A. Respondent's Motion for Costs is improper and should be denied because it violates S.C. Code Ann. §41-39-30.

S.C. Code Ann. §41-39-30 governs fees in unemployment compensation appeals and provides as follows:

An individual claimant benefits may not be charged a fee in a proceeding under Chapters 27 through 41 of this title by the department or its representative or by a court or an officer, except an attorney, of it. An individual claimant a benefit in a proceeding before the department or a court may be represented by an attorney or other duly authorized agent, but an attorney or agent must not charge or receive for this service more than an amount approved by the department. A person who violates a provision of this section, for each offense, must be fined not less than fifty dollars nor more than five hundred dollars, imprisoned for not more than six months, or both.

The statute clearly states that a person claiming unemployment compensation benefits may not be charged a fee "by the department or its representatives or by a court or an officer." In fact, the statute imposes a criminal penalty if its provisions are violated. The Respondent is seeking fees in violation of this statute and not true attorney's fees because they did not retain private counsel but used in house staff, all state employees and no extraordinary expenses could be shown to have been incurred by the agency in this matter. The mere request for these fees also violates the clear intent of this statute which is to not penalize claimants for seeking their unemployment benefits. The Department of Employment and Workforce should not be allowed to tax fees to the Appellant in this matter.

B. The Respondent's Motion for Costs should be denied because Appellant had been granted indigent status.

Rule 222 provides that when an appeal is affirmed, "costs shall be allowed only as ordered by the appellate court." The Court has discretion whether to award fees and costs under this Rule. *Austin v. Stokes-Craven Holding Corp.*, 406 S.C.187, 199, 750 S.E.2d 78, 84 (2013). The Appellant in this matter is indigent and was granted *in forma pauperis* by the court. The Respondent-Department's Motion is seeking to further penalize the Appellant and could affect his credit, to his financial loss. Even though Appellant is wholly unable to pay the alleged costs of Respondent-Department, having such an outstanding obligation could conceivably impair his credit. Today, one's credit affects employability, ability to obtain housing and many other facets of daily life. Thus, the effect of such a penalty, would only serve to prevent Appellant from rising out of poverty. This would be contrary to the purpose of granting *in forma pauperis* which is to allow access to courts to enhance justice, including elevation out of poverty.

C. The Respondent's Motion for Costs should be denied because there are no actual costs.

The Respondent filed a Motion for Costs requesting \$1,000 in attorney's fees. No itemization of the alleged attorney's fees was submitted, nor was any retainer agreement. No actual attorney's fees were incurred, as Respondent is a state agency and the appeal was handled by salaried staff in the course and furtherance of their employment with the State. As set forth in *Williamson v. Middleton*, 383 S.C. 490, 681 S.E. 2d 867 (2009), attorney's fees have been denied where there is "no evidence of attorney's fees actually incurred."

Further, where a state agency is seeking attorney's fees, the Court has expressed reluctance to award same. In a case involving the Department of Social Services, the Court refused to award attorney's fees against the mother where the attorney for the Guardian *ad Litem* was seeking reimbursement. As held in *S.C. Dept. of Social Services v. Mary C.*, 396 S.C. 15, 720 S.E.2d 502 (Ct. App. 2011), "(w)hile Mr. Clark was required to represent the GAL by virtue of his contract with the GAL Program, neither the GAL nor Mother were contractually obligated to Mr. Clark. Because Mr. Clark presented no evidence that he incurred any fees, we find it inappropriate to award fees against Mother." (at 23)

Our case is similar to *Mary C.* in that, the state is required to provide a Guardian *ad Litem* at DSS removal hearings. Even though the attorney for Volunteer Guardian *ad Litem* retained a private attorney to handle the case (and thus, be out of pocket), the Court found that it was still improper to shift the fees to the mother. The Department in our case is a state agency with a mandate to disseminate unemployment compensation benefits in accordance with the law. Respondent was not required to retain or pay any outside counsel to handle this particular appeal, and even if it had, *Mary C.* indicates that

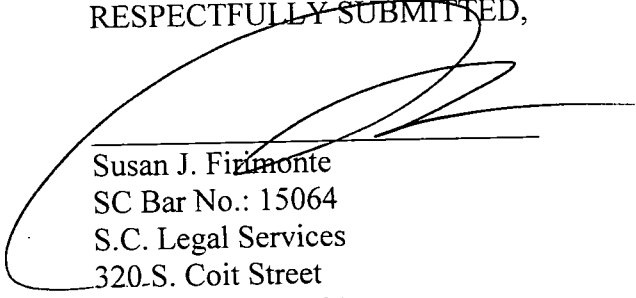
it would not be proper for a state agency to allocate those fees to an individual citizen who finds himself in litigation with said agency.

These cases illuminate the impropriety of allowing the Respondent to seek attorney's fees in the instant matter. The Appellant was seeking only his unemployment benefits and, as allowed by law, properly prosecuted his appeal for same. The Respondent is seeking to penalize the Appellant for exercising this right. Further, the actions of the Respondent in this matter may have a chilling effect in deterring other future appellants by seeking fees it did not even incur. The Respondent's motion should be denied.

CONCLUSION

The Respondent's Motion for Costs should be denied because the request violates S.C. Code Ann. §41-39-30, the Appellant's indigent status weighs against taxing such a fee to him, and the Respondent did not actually incur any attorney's fees.

RESPECTFULLY SUBMITTED,



Susan J. Firimonte
SC Bar No.: 15064
S.C. Legal Services
320.S. Coit Street
Florence, SC 29501
843-413-9500

June 8, 2014



**South Carolina
Legal Services**

Balancing the Scales of Justice

RECEIVED

JUN 06 2014

SC Court of Appeals

320 S. Coit Street, Florence, South Carolina 29501
Phone: (843) 413-9500 Fax: (843) 413-1013
www.scllegal.org | www.lawhelp.org/sc | www.probono.net/sc

June 5, 2014

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

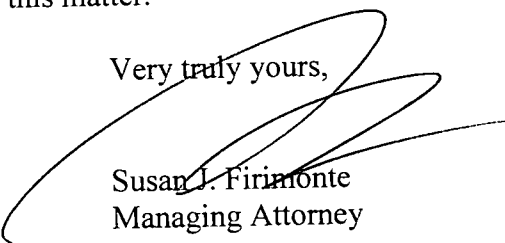
RE: William E. Lippincott v. S.C. Department of Employment and Workforce
Case Tracking No.: 2011203268

Dear Ms. Kitchings:

Enclosed please find an original and seven (7) copies of Appellant's Return to Motion for Costs. Also enclosed is an original and one (1) copy of the Proof of Service verifying service on opposing counsel.

Kindly return a stamped copy of the Motion and Proof of Service to me at your convenience. Thank you for your kind attention to this matter.

Very truly yours,


Susan J. Firimonte
Managing Attorney

SJF/

Enclosures

pc: Debra S. Tedeschi, Legal Dept. (SC DEW)



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

JUN 06 2014

Appeal from
South Carolina Administrative Law Court

SC Court of Appeals

John D. McLeod, Administrative Law Judge

Appellate Case No.: 2011-203268

William Lippincott,

Petitioner,

v.

South Carolina Department of Employment and Workforce
And Wal-Mart Associates, Inc.,

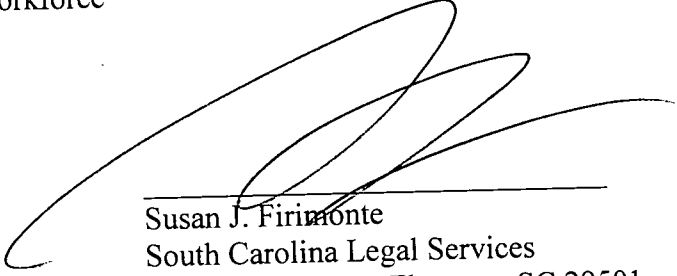
Respondents.

PROOF OF SERVICE

I certify that I have served the Return to Motion and Memorandum in Support of Return to Motion for Costs on the following party by depositing a copy of it in the United States mail, postage prepaid, on June 5, 2014 addressed to their counsel or designated representative as follows:

Debra Sherman Tedeschi
S.C. Dept. of Employment and Workforce
P.O. Box 8597
Columbia, SC 29202

June 5, 2014



Susan J. Firimonte
South Carolina Legal Services
320 S. Coit Street, Florence, SC 29501
843-413-9500
Attorneys for Petitioner