

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM THE
ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Judge

Lower Court Case No.: 11-ALJ-22-0343-AP

Appellate Case No.: 2011-203268

RECEIVED
JUN 13 2014
SC Court of Appeals

William Lippincott,

Appellant,

v.

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

Respondents,

REPLY TO APPELLANT'S RETURN TO MOTION FOR COSTS

Pursuant to Rule 222, SCACR, Respondent, the South Carolina Department of Employment and Workforce (DEW), has moved this Court for an order granting costs, including attorney's fees, to DEW. On June 5, 2014, Appellant William Lippincott, by and through his attorney at South Carolina Legal Services ("SCLS"), filed a Return objecting to DEW's motion. DEW now files this Reply to Appellant's Return.

This Court issued an unpublished opinion on January 30, 2013 **affirming** the Administrative Law Court's decision which upheld DEW's final administrative decision denying

unemployment benefits to Appellant. Thereafter, Appellant sought rehearing from this Court, which was denied, and then a Writ of Certiorari from the South Carolina Supreme Court, which was also denied. Once this Court's unpublished affirmance became final, DEW filed its Motion for Costs ("Motion") pursuant to the Appellate Court Rules. *See* Rule 222(a) & (e), SCACR (generally, "costs shall be taxed against the appellant when ... judgment on appeal is affirmed," and the Court of Appeals shall tax costs when writ of certiorari is denied).

Appellant argues DEW's motion for costs is "improper" and that S.C. Code Ann. § 41-39-30 in some way prevents this Court from assessing appellate costs. DEW disagrees.

First, DEW's Motion is proper under the Appellate Court Rules. Rule 222, SCACR, clearly states that "[u]nless otherwise ordered by the appellate court or agreed by the parties, costs shall be taxed against the appellant when the appeal is dismissed or judgment on appeal is affirmed." Rule 222(a), SCACR. There are very limited exceptions to this general rule. *See* Rule 222(f), SCACR. (this Rule "does not apply to criminal cases or post-conviction relief cases."). Therefore, it is not "improper" for DEW to file a motion for costs.

Appellant incorrectly cites S.C. Code Ann. § 41-39-30 as authority for why DEW may not be awarded costs on appeal. This statute states in relevant part:

An individual claiming benefits may not be charged a fee in a proceeding under Chapters 27 through 41 of this title by the department or its representatives or by a court or an officer, **except an attorney, of it**. An individual claiming 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.

S.C. Code Ann. § 41-39-30 (emphasis added). This statute does not apply to costs under Rule 222, SCACR, but rather to filing *fees* and other attendant costs of administrative litigation. As a result, no filing fees are charged to claimants seeking unemployment benefits either by the Department or the courts. Notably, however, the statute provides an exception for attorney fees,

as stated above in emphasis. *Id.* (a claimant “may not be charged a fee ... by [DEW] or its representatives or by a court or an officer, **except an attorney, of it.**”). The plain language of this statute exempts an attorney’s fee ordered by a court.

Appellant also argues that Rule 222, SCACR, should not apply because of his indigent status. Again, however, the only specifically named exceptions are outlined in the Rule. *See* Rule 222(f), SCACR (“exempting “criminal cases or post-conviction relief cases”)

Finally, Appellant argues that DEW’s motion should be denied because there were no “actual attorney’s fees ... incurred.” Prior to DEW filing the instant Motion, SCLS, the same legal organization representing Appellant in this case, filed its own Motion for Costs in a separate appeal, *Wider v. DEW*, Appellate Case No. 2013-000677, Unpublished Opinion No. 2014-UP-166. Clearly, because SCLS is a non-profit organization dedicated to providing legal services to our State’s indigent population, this same argument applies to its own motion in the *Wider* case.¹ No legal fees were in-fact incurred by Mr. Wider in that case, and he is not responsible for any attorney’s fee on appeal. Therefore, if the Court chooses to accept Appellant’s assertions in this case, and denies costs to DEW, the Court must similarly deny the SCLS’s Motion for Costs in *Wider*.

¹ DEW has filed opposition to the Motion for Costs in the *Wider* case. DEW takes issue with Appellant’s suggestion in the instant case that DEW is “seeking to penalize the Appellant for exercising” his right to appeal. DEW is merely moving for costs as permitted under the Appellate Court Rules. DEW could similarly argue that SCLS is seeking to penalize the State for pursuing its right to appeal in the *Wider* case with SCLS’s Motion for Costs in that matter. DEW recognizes that under Rule 222, SCACR, this Court has the discretion to award costs in the instant case and/or the *Wider* case.

CONCLUSION

Accordingly, DEW prays that costs, in the form of the attorney's fee, be taxed as requested. Should the Court decide to deny DEW's Motion, DEW respectfully requests that the Court also deny the attorney's fee requested by SCLS in *Wider, supra*, as no actual attorney's fees were incurred in that case.

Respectfully Submitted,



Debra S. Tedeschi, SC Bar # 15307
Deputy General Counsel
S.C. Dept. of Employment & Workforce
Post Office Box 8597
Columbia, SC 29202
(803) 737-0395
legal@dew.sc.gov
Attorney for Respondent DEW

June 12, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
John D. McLeod, Administrative Law Judge

Appellate Case No.: 2011-203268

William Lippincott,

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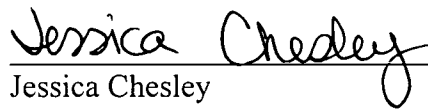
Respondent.

PROOF OF SERVICE

I certify that I have served the Respondent South Carolina Department of Employment and Workforce's Reply to Appellant's Return to Motion for Costs on the parties in this case by depositing a copy of it in the United States Mail, postage prepaid, on June 12, 2014, addressed to the Attorney for the Appellant at their address of record:

Susan Firimonte
SC Legal Services
320 S. Coit Street
Florence, SC 29501

June 12, 2014



Jessica Chesley
Administrative Legal Assistant
SC Dept of Employment and Workforce
Post Office Box 8597
Columbia, South Carolina 29202
(803) 737-0395

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P.O. Box 995
1550 Gadsden Street
Columbia, SC 29202
dew.sc.gov



Nikki R. Haley
Governor

Cheryl M. Stanton
Executive Director

Post Office Box 8597
Columbia, SC 29202
Telephone: (803) 737-2666
Fax: (803) 737-0124

June 12, 2014

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

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SC Court of Appeals

RE: William Lippincott v. SCDEW and Wal-Mart Associates
Appellate Case No.: 2011-203268

Dear Ms. Kitchings:

Enclosed for filing are the original and six copies of the Reply to Appellant's Return to Motion for Costs of the Respondent, SC DEW in the above referenced case. Also enclosed is a Proof of Service to the other parties.

Please let me know if you have any questions.

Sincerely,

Jessica Chesley

Jessica Chesley
Administrative Legal Assistant for
Debra S. Tedeschi
Deputy General Counsel