

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas
Carmen T. Mullen, Circuit Court Judge
Perry M. Buckner, Circuit Court Judge

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JUL 22 2014

SC Court of Appeals

Case No. 2009-CP-25-285

Gary Smart,Respondent,

v.

James Allen Grady, Louis Daniel Moffett, Lynwood
Brantley, d/b/a Brantley Hauling and Randolph Murdaugh, III, Defendants,

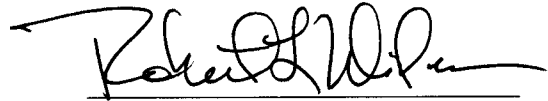
of whom James Allen Grady isAppellant.

RETURN TO MOTION FOR COSTS

This Court dismissed the above-captioned appeal upon the Respondent’s motion, finding that the appealed orders are not immediately appealable. The dismissal occurred before the filing of any briefs. It is the general practice of the appellate courts to not award costs under these circumstances. See, e.g., *Peterkin v. Brigman*, 461 S.E.2d 809 (S.C. 1995) (appeal dismissed upon respondent’s motion that order not immediately appealable – no costs awarded); *Duncan v. GEICO*, 449 S.E.2d 580 (S.C. 1994) (court sua sponte dismisses appeal because order not immediately appealable – no costs awarded); *McClendon v. South Carolina Dept. of Hwys. and Pub. Transp.*, 443 S.E.2d 539 (S.C. 1994) (appeal dismissed upon respondent’s motion that order not immediately appealable – no costs awarded); *Ballenger v. Bowen*, 443 S.E.2d 379 (S.C. 1994) (appeal dismissed upon respondent’s motion that order not immediately appealable – no

costs awarded); see also *Chambers v. Smith's Drywall*, 478 S.E.2d 253 (S.C. 1996) (upon motion to strike amended record on appeal: court reviewed initial briefs, found appeal to be without merit, and affirmed the appealed order – no costs awarded); *Johnson v. Paraplane Corp.*, 468 S.E.2d 620 (S.C. 1996) (court granted certiorari, vacated court of appeals opinion, and sua sponte dismissed appeals because appealed order not immediately appealable – no costs awarded). The present case does not present any basis for departing from this standard practice. Accordingly, it is respectfully submitted that the motion for costs should be denied.

Respectfully Submitted,



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July 21 2014
Columbia, SC

THE STATE OF SOUTH CAROLINA
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APPEAL FROM HAMPTON COUNTY
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Carmen T. Mullen, Circuit Court Judge
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Gary Smart, Respondent,

v.

James Allen Grady, Louis Daniel Moffett,
Lynwood Brantley d/b/a Brantley Hauling,
Randolph Murdaugh, III, Defendants,

Of whom James Allen Grady is Petitioner.

CERTIFICATE OF SERVICE

I, Ann Shuler, an employee of the McNair Law Firm, certify that I have served the Return to Motion for Costs by depositing a copy in the United States Mail, postage prepaid, on July 21, 2014 addressed to the attorneys of record, as follows:


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July 21, 2014

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S.C. Court of Appeals
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Re: Smart, Gary v. Grady, James
Case No. 2009-CP-25-285

Dear Madam Clerk:

Enclosed for filing with regard to the above referenced case, please find the original and seven copies of the *Return to Motion for Costs*. Please file the Return and return one file stamped copy to me in the envelope provided.

By copy of this letter, we are serving all counsel of record with a copy of same.

Respectfully yours,

McNAIR LAW FIRM, P.A.



Robert L. Widener

RLW/as
Enclosure

cc: John S. Nichols, Esq.
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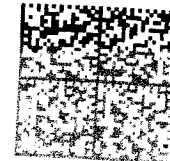
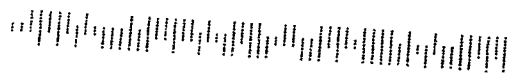
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