

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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AUG 06 2014

APPEAL FROM FAIRFIELD COUNTY

**SC Court of Appeals**

Court of Common Pleas

Judge Brooks P. Goldsmith, Circuit Court Judge

Case No. 2012-213070

James R. Glover, as Presiding Elder of the Lancaster District of the African Methodist Episcopal (A.M.E.) Church,.....Appellant,

v.

Corthan Manning, Jr., Theodore Manning, and Earlene W. Manning.....Respondents

**APPELLANT’S RETURN TO MOTION IN OPPOSITION TO RESPONDENTS’ MOTION FOR COSTS AND FEES PURSUANT TO RULE 222**

Comes Now, Randall Rosel Williams, Returning To The Motion For Costs and Fees Pursuant to Rule 222, objects to and opposes Respondents’ Motion for the following reasons:

1. Appellant was served with a Motion For Costs and Fees Pursuant to Rule 222 on July 23, 2014 as per their Proof of Service.
2. Respondents’ Motion For Costs and Fees did not include an itemization of their attorney fees on their statement of costs as required by Rule 222.

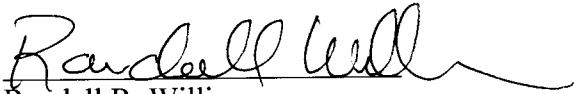
3. Respondents request for attorney fees should be denied because they failed to itemize their attorney fees on their statement of costs as per Rule 222.

4. Respondents' Motion For Costs and Fees Pursuant to Rule 222 did not include a memorandum with citations to authority in support of their motion as required by Rule 240 (c)(2).

5. Respondents request for both costs and fees should be deemed as abandoned as they failed to perform an act required by Rule 240.

The Appellant having Returned to Respondents' Motion For Costs and Fees Pursuant To Rule 222 asks this court to deny Respondents' Motion. Respondents have not satisfied the requirements of Rule 222 of the South Carolina Appellate Rule by not itemizing their attorney fees on their statement of costs and Rule 240(c)(2) of the South Carolina Appellate Rule by not providing a memorandum in support of their motion.

Greenwood, South Carolina  
August 4, 2014

  
Randall R. Williams  
P.O. Box 3461  
Greenwood, SC 29648  
(864) 227-9156  
**Attorney for Appellant**

**TABLE OF AUTHORITIES**

**Cases**

*Muller v. Myrtle Beach Golf And Yacht Club* 438 S.E.2d 248, 313 S.C. 412 (S.C. 1993)....5  
*Barnett v. Buchan Baking Company* 108 Wash.2d 40, 738 P.2d 1056 (1987) .....5,6  
*Meisner v. Potlach Corporation*, 131 Idaho 258,283, 954 P.2d 676,681 (1998) .....6

**South Carolina Appellate Rule**

Rule 222(d) South Carolina Appellate Rule .....4,5,6  
Rule 240(c)(2) South Carolina Appellate Rule.....5,5,6  
Rule 240 6 South Carolina Appellate Court Rule.....6

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v.

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**APPELLANT’S MEMORANDUM IN SUPPORT OF HIS RETURN TO MOTION IN OPPOSITION TO RESPONDENTS’ MOTION FOR COSTS AND FEES PURSUANT TO RULE 222**

The Appellant objects to the Respondents Motion For Costs And Fees Pursuant to Rule 222 of the South Carolina Appellate Court Rules and asks that the Motion be denied. Respondent’s motion is defective in two respects. The Respondents failed to itemize their attorney fees pursuant to Rule 222(d) of the South Carolina Appellate Court

Rules and their motion lacks a memorandum in support of their motion as required by Rule 240(c)(2) of the South Carolina Appellate Court Rules.

The request for attorney fees is incomplete and is evidence of Respondents failure to itemize their attorney fees as required by the rules. The South Carolina Appellate Court Rules requires an itemization of all costs including attorney fees. Rule 222 (d) states, “If costs are being sought ... the motion shall be accompanied by a sworn itemized statement of costs incurred in the form prescribed in the Appendix to these rules.” The Appendix to Rule 222(d) provides a mandatory form used in conjunction with a request for costs and fees. Form 17 requires the party seeking relief to state with particularity the number of pages in which the attorney was involved. Respondent’s form as it relates to attorney fees is incomplete due to a failure to state the number of pages the attorney was involved. As such, they failed to provide an itemization of their statement of cost.

The courts in this state have recognized that a failure to provide an itemization of statement of cost is a waiver of the right to attorney fees in this court. In Muller v. Myrtle Beach Golf And Yacht Club 438 S.E.2d 248, 313 S.C. 412 (S.C. 1993), the moving party’s claim for attorney fees under Rule 222 was opposed on the grounds that the motion was not timely filed. Although the court addressed the issue in terms of the procedural timeliness of the filing of the motion, the court was clear as to the importance of itemizing attorney fees and the consequences that will occur if fees are not itemized as it stated “Winters waived his right to this award since he failed to file an itemized statement of costs ....” at 250, 416

Courts in other jurisdictions have found that attorney fee requests will be denied in situations where the moving party fails to itemize. Barnett v. Buchan Baking Company 108 Wash.2d 40, 738 P.2d 1056 (1987) involved the exercise of an option contained in a lease. The moving party's request for attorney fees pursuant to the appellate rules for the state of Washington was a cursory statement of fees requested without detail. The court held the failure to adhere to appellate court rule 18.1 by not providing an affidavit detailing attorney fees performed precludes a right to recovery. Barnett v. Buchan Baking Co. at 408, 1056-1058. So to should Respondents claim be denied as their statement of cost is not sufficiently detailed or itemized.

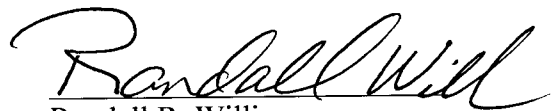
Further, Respondents failure to file a memorandum pursuant to Rule 240 (c)(2) in conjunction with their motion for costs and attorney fees under Rule 222 operates as a bar to their request for both costs and attorney fees. According to Rule 240 (c)(2) of the South Carolina Appellate Court Rules "Each motion or petition shall include the following... a memorandum with citation of authorities in support of the motion." Rule 240(g) is clear as it states that the consequence of "failing to perform any act required by this Rule may be deemed as an abandonment of the motion." Courts have followed suit as the court in Meisner v. Potlach Corporation, 131 Idaho 258,283, 954 P.2d 676,681 (1998) did when it denied counsel's request for attorney fees because it was submitted without legal authority , argument or proposition of law in support of the motion.

#### Conclusion

The Respondents have not adhered to the South Carolina Appellant Rules by flagrantly disregarding Rule 222 (d) and 240 (c)(2). Their failure to adhere to the

requirements of Rule 222(d) by not itemizing their statement of costs should bar their request for attorney fees and their lack of compliance with Rule 240(c)(2) by failing to include a memorandum in support of their motion should be deemed as an abandonment of their request for both cost and attorney fees. Accordingly, their Motion For Costs and Fees Pursuant to Rule 222 should be denied.

Greenwood, South Carolina  
August 4, 2014



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**Attorney for Appellant**

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APPEAL FROM FAIRFIELD COUNTY  
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Brooks P. Goldsmith, Circuit Court Judge

Case No. 2012-213070

James R. Glover, as Presiding Elder of the Lancaster District of the African Methodist Episcopal (A.M.E.) Church,.....Appellant,

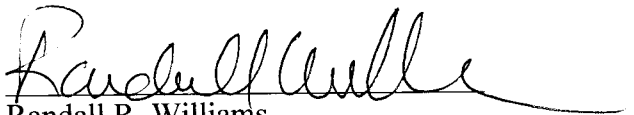
v.

Corthan Manning, Jr., Theodore Manning, and Earlene W. Manning,.....Respondents.

CERTIFICATE OF SERVICE

I certify that I have served the **Return to Motion Pursuant and Memorandum with Citation of Authorities Pursuant to Rule 222** in the above matter to Corthan Manning Jr., Theodore Manning, and Earlene Manning, by depositing a copy of it in the United States Mail, postage prepaid, on August 4, 2014, to their attorneys of record, Jerry Finney, The Finney Law Firm, Inc. at 2117 Park Street, Columbia, South Carolina, 29201, Stephanie R. Fajardo, The Finney Law Firm, 2117 Park St., Columbia, SC 29201.

August 4, 2014

  
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August 4, 2014

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

RE: James R. Glover v. Cothran Manning, et. al.  
Court of Appeals Tracking No.: 2012-213070

Dear Madam Clerk:

Please find enclosed an original and six (6) copies of **Appellant's Return to Motion, Memorandum with Citation of Authorities** and an original Certificate of Service Pursuant to Rule 222 regarding the above referenced matter.

Please return copy in the enclosed envelope.

I remain,

Sincerely,

A handwritten signature in cursive script that reads "Randall R. Williams".

Randall R. Williams, Esquire  
RRW/mre

Enclosure(s)

cc: Jerry Finney, Esquire  
Stephanie R. Fajarso, Esquire

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