

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE
ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

Case No.: 12-ALJ-22-0439-AP

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JUN 02 2014

SC Court of Appeals

Marcus Wider,

Respondent,

v.

South Carolina Department of
Employment and Workforce,
and KB Enterprises, Inc.,

Defendants,

Of whom South Carolina
Department of Employment
and Workforce is

Appellant

**REPLY IN OPPOSITION TO RESPONDENT'S MOTION FOR COSTS AND
MEMORANDUM IN SUPPORT THEREOF**

Counsel for Appellant, the South Carolina Department of Employment and Workforce (the "Department"), pursuant to Rule 222(d) and Rule 240, SCACR, submits its Reply in Opposition to Respondent's Motion For Costs and in support thereof submits the following memorandum and points of authority:

Procedural History

KB Enterprises, Inc., ("Employer") discharged Marcus Wider ("Respondent" or "Mr. Wider") from his position as a loader on May 24, 2012. On May 27, 2012, Respondent filed for

benefits with the Department. A Department claims adjudicator determination held Respondent disqualified from receiving benefits, mailed June 25, 2012, upon finding Employer discharged Respondent for cause pursuant to S.C. Code Ann. § 41-35-120(2). Respondent appealed the determination to the Appeal Tribunal (“Tribunal”) on July 2, 2012. The Tribunal conducted an evidentiary hearing on August 6, 2012 where both Employer and Respondent participated. The resulting decision issued on August 9, 2012, affirmed the initial determination finding Respondent was discharged for cause. (R. 69.) Respondent appealed the Tribunal decision to the Appellate Panel (“Panel”) on August 14, 2012. The Panel issued the Department’s final decision on September 11, 2012, which found Respondent discharged for cause and imposed a corresponding disqualification.

On October 11, 2012, Respondent commenced an action seeking judicial review of the Panel’s decision with the Administrative Law Court (“ALC”). On February 27, 2013, the Honorable Deborah Brooks Durden issued an Order reversing the Panel’s final decision thereby holding Respondent eligible for unemployment insurance benefits. On March 8, 2013, the Department filed with the ALC its Motion for Rehearing. On March 25, 2013, Judge Durden issued her Order denying the Department’s Motion.

On April 1, 2013, the Department commenced this action seeking judicial review of the ALC’s Final Order. On March 11, 2014, this Court heard oral arguments on this matter. Thereafter, on April 9, 2014, this Court issued its unpublished Opinion affirming the ALC’s Final Order. Subsequently, the Court issued a Remittitur on May 15, 2014.

On May 9, 2014, Respondent filed its Motion for Costs seeking an attorney’s fee in the amount of \$1,000.00.¹

Arguments

RESPONDENT'S MOTION FOR COSTS SHOULD BE DENIED AS NO SUCH COSTS WERE ACTUALLY INCURRED BY RESPONDENT IN DEFENDING THE ACTION.

Pursuant to Rule 222, SCACR, “Unless 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. This Court has “discretion whether to award fees and costs under Rule 222.” Austin v. Stokes-Craven Holding Corp., 406 S.C. 187, 199, 750 S.E.2d 78, 84 (2013); see also Rule 222(a), (e), SCACR (identifying circumstances for which an appellate court may tax costs on appeal). This Court has stated that, “recovery under [Rule 222] is clearly limited *to costs incurred in pursuing the appeal*, such as...limited attorney fees.” Martin v. Paradise Cove Marina, Inc., 348 S.C. 379, 384, 559 S.E.2d 348, 351 (Ct. App. 2001)(emphasis added.)

The South Carolina Supreme Court addressed the issue of awarding attorney's fees in Williamson v. Middleton, 383 S.C. 490, 681 S.E.2d 867 (2009). In that case the S.C. Supreme Court, in reversing the S.C. Court of Appeals, found “no competent evidence that attorney's fees were actually incurred.” Id., 383 S.C. at 496. The Court relied on the facts that Middleton's attorneys had “no expectation of being paid” and that Middleton had “no obligation other than a moral obligation to pay a fee... It therefore follow[ed] that no attorney's fees were incurred.” Id. The facts in the present case are the same. South Carolina Legal Services (“SCLS”) represents Mr. Wider. However, SCLS “does not charge a fee for attorney's services to eligible clients whose cases are accepted.”²

¹ By order dated July 24, 1997, the amount of attorney's fee was set at \$1,000.00

² South Carolina Legal Services | Apply For Services, www.scllegal.org/Home/ApplyForService/tabid/213/Default.aspx (Accessed May 30, 2014)

Mr. Wider has no obligation to pay any attorney's fee to SCLS (a nonprofit organization). Therefore, it would be unjust and against public policy to require the Department (a state agency) to expend taxpayer monies by ordering payment of attorney's fees. Additionally, the Department's presentation of this case to this Court for review was supported by well-reasoned arguments supported by established case law. The Department's pursuit of judicial review by this Court comports with the mandate imposed on the Department to administer the Employment and Workforce Law. See S.C. Code Ann. § 41-29-10("Chapters 27 through 41 of this title shall be administered by the South Carolina Department of Employment and Workforce."). In doing so, the General Assembly has mandated that the Department "increase eligibility reviews and investigations as to violations of Sections 41-35-110 and 41-35-120 and enforce appropriate disqualifications and penalties...to the fullest extent possible under state and federal law." The Department exercised due diligence in presenting this case for review by this Court.

Conclusion

WHEREFORE, because Mr. Wider in fact incurred no attorney's fees and such an award would violate public policy, the Department prays that this Court deny Respondent's Motion for Costs.



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May 30, 2014

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PROOF OF SERVICE

I certify that I have served the *Reply In Opposition To Respondent's Motion for Costs and Memorandum in Support Thereof* on all parties in this action by depositing a copy of it in the United States Mail, first class postage prepaid, on May 30, 2014, to the following address:

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P.O. Box 1445
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