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SEP 22 2014

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

The Honorable R. Lawton McIntosh, Circuit Court Trial Judge

Appellant Case No. 2014-000247

Sandra Gillett.....Appellant,

v.

John Chandler.....Respondent.

RETURN TO RESPONDENT’S MOTION FOR COSTS AND ATTORNEY’S FEES

Counsel for Appellant submits this Return in opposition to Respondent’s Motion for Costs and Attorney’s Fees. Initially, Respondent’s motion under Rule 222 of the SCACR is fatally defective in that the mandatory sworn affidavit supporting the claim for costs and fees is unsigned by counsel seeking the award for costs and fees. As such, no sworn affidavit as required by Rule 222(d) appears in the record. As a result, Respondent’s claim for costs and fees cannot be validated by the Court or counsel for Appellant. Consequently, Respondent’s Motion must be denied.

Should the Court look past the defective affidavit, Appellant also takes issue with the lack of itemization of the attorney’s fees alleged to have be earned as stated in the defective affidavit. Appellant nor the Court have any way to determine how much time was allegedly spent or at what rate counsel is seeking to charge for same. It should be noted that no Initial Brief of Appellant was ever drafted prior to the decision to withdrawal of the appeal. Consequently, it is unclear to Appellant how Respondent incurred the amount of fee noted on the defective affidavit. Certainly, some time may have been incurred in obtaining the transcript, but without the previously referenced itemization, there is no way to determine if the claim for fees is valid or reasonable.

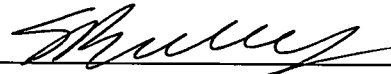
As the Court is aware, the award for attorney’s fees is within the Court’s discretion. Without a sworn affidavit or even an itemization of the hours alleged to have been spent and the rate charged, there is no way for the Court to objectively evaluate Respondent’s claim. As such, it must be denied.

Should the Court look past the defective Affidavit, Appellant does not take issue with the

request for reimbursement of the cost of the transcript.

For the reasons set above, Appellant respectfully suggests that Respondent's Motion for Costs and Attorney's Fees must be denied. In the alternative, Appellant respectfully suggests that the Court enter an award for reimbursement of the cost of the transcript in the amount of \$195.35.

September 19, 2014



Scott J. Bradley, Esquire SCB# 74951
THE JOEL BIEBER FIRM
201 E. North Street
Greenville, SC 29601
Attorney for Appellant

Other Counsel of Record:

Marcus K. McGarr, Esq.
108 Whitsett Street
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Attorney for Respondent

THE
JOEL BIEBER
FIRM

ATTORNEYS AND COUNSELORS AT LAW

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Thomas M. Konvicka *
Dean C. Marcus *

Jenny E. Mattingley *
Gregory T. O'Halloran *●
Joseph J. Perez *◇
Kimberly J. Raab *●●
Paul C. Rathke ■◆◆
Richard W. Zahn, Jr. *
Kaitlin M. Zebrak *

LICENSED TO PRACTICE IN:
*VA ◆NC ◆SC ■GA ●NY ▲PA ☆LA ◇DC

September 19, 2014

The Honorable Jenny Abbott Kitchings
Clerk, SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Sandra Gillett v. John Chandler
Appellant Case #: 2014-000247

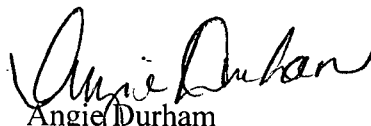
Dear Ms. Kitchings:

Enclosed please find the original and six copies of the Return to Respondent's Motion for Costs and Attorney's Fees regarding the above referenced matter.

By way of this letter, I am also serving the opposing counsel of record. Should you have any questions regarding this matter, please feel free to contact this office.

With kind regards, I remain

Very truly yours,


Angie Durham
Paralegal

/ahd
Enclosure(s)

cc: Marcus K. McGarr, Esquire
108 Whitsett Street
Greenville, SC 29601

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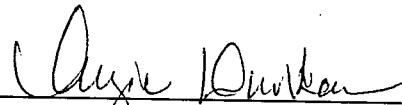
v.

John Chandler.....Respondent.

PROOF OF SERVICE

I certify that I have served the original and six copies of the Return to Respondent's Motion for Costs and Attorney's Fees on the Clerk of Court, South Carolina Court of Appeals, P.O. Box 11629, Columbia, SC 29211 by depositing a copy of it in the United States Mail, postage prepaid, on September 19, 2014.

I certify that I have served one copy of the Return to Respondent's Motion for Costs and Attorney's Fees on Marcus K. McGarr, 108 Whitsett Street, Greenville, SC 29601, by depositing a copy of it in the United States Mail, postage prepaid on September 19, 2014.



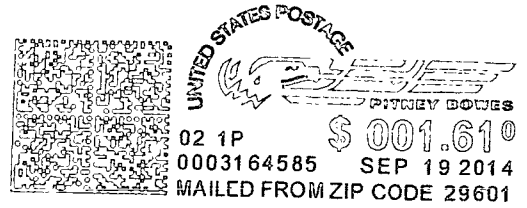
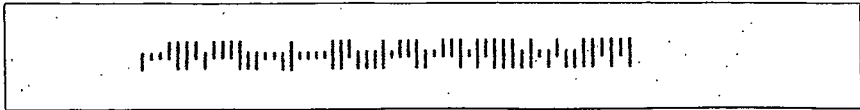
Angie Dufham, Paralegal
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