

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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FEB 19 2015

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

S.C. Supreme Court

Carmen Tevis Mullen, Circuit Court Judge

Opinion No. 4750
S.C. Court of Appeals, filed July 1, 2011

Robert L. Cullen, Andrew A. Corriveau,
and Andrea Hucks, Petitioners,

-vs-

J. Bennett McNeal, B. McNeal Partnership, L.P.,
Anthony R. Porter, and Wright's Point Home
Owners Association, Inc. Respondents.

**RESPONDENTS' REPLY TO PETITIONERS' RETURN
TO RESPONDENTS' MOTION FOR COSTS**

The Record in this case reveals the following relevant facts: This case was initially tried over the course of three (3) days in the Beaufort County Court of Common Pleas before the Honorable Carmen T. Mullen. Judge Mullen issued a written Order detailing her decision and the Petitioners filed a Motion for Reconsideration under Rule 59, SCRPC. The motion was subsequently denied by Judge Mullen. Petitioners then appealed Judge Mullen's rulings to the South Carolina Court of Appeals. A Record on Appeal was printed, briefs

were submitted and oral arguments were presented. In a written Opinion issued in 2010, the Court of Appeals affirmed the decisions of Judge Mullen. Petitioners then filed a motion for rehearing; briefs were then submitted concerning the motion, which was denied by the Court of Appeals.

Petitioners then petitioned this Court for a writ of certiorari. Again, briefs were submitted on the request for certiorari, and certiorari was subsequently granted by this Court. Thereafter, additional briefs were submitted to this Court and oral arguments were presented on January 15, 2015. By Order filed January, 28, 2015, the writ of certiorari was dismissed by this Court “as improvidently granted.” Respondents then filed a motion for costs, in accordance with Rules 222 and 242(j), SCACR. Petitioners have now filed a Return to Respondents’ request for costs. The Return contests Respondents’ request for costs on two (2) grounds.

First, Petitioners assert in their Return that, by dismissing the writ of certiorari, “the Supreme Court did not render a decision ... Accordingly, \$1,245.12 of the requested costs should not be granted.” This position, similar to those asserted by Petitioners throughout this process, is devoid of logic and contrary to the applicable law. It is evident at the outset that, by dismissing the writ, this Court effectively dismissed the appeal, thereby affirming the decisions of the lower courts. A dismissal of the writ, accordingly, *is* a decision - the decision to let the lower court rulings stand, contrary to the positions asserted throughout this process by the Petitioners. In such a circumstance, the recoverable costs associated with the grant of certiorari are clearly recoverable by the Respondents. Rule 242(j), SCACR, deals with situations involving “Costs When a Writ of Certiorari Has Been Granted.” Although

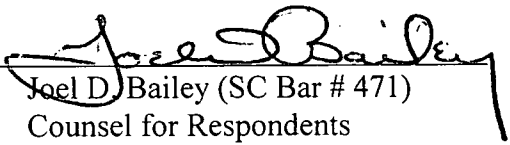
this Court subsequently determined that the writ of certiorari was “improvidently granted,” it was granted nonetheless. Therefore, under Rule 242(j), “... costs shall be assessed against the appellant if the decision of the Supreme Court has the effect of affirming the judgment of the lower court or tribunal which was reviewed by the Court of Appeals.” That is precisely the situation which exists in this case.

Furthermore, as to the cost of the transcript associated with the appeal in the Court of Appeals, Rule 222(a), SCACR, provides, in relevant part, that “... costs shall be taxed against the appellant when the ... judgment on appeal is affirmed.” In this case, the Court of Appeals affirmed the decision of the trial court. Petitioners assert that Respondents are not entitled to the \$608.50 they requested for costs associated with the trial transcript; they maintain that “Petitioners obtained and paid for the transcript of the trial, [and] this Court should not make an award without further explanation.” Therefore, Respondents hereby explain their request.

It appears that a transcript of the proceedings in the Circuit Court was ordered by both Petitioners and Respondents. The cost paid by Respondents for their copy of the transcript is the amount now sought to be recovered under the pending motion, i.e., \$608.50. As previously noted, Rule 222(a) provides for the assessment of costs “against the appellant when the ... judgment on appeal is affirmed.” Rule 222(b) provides that such costs include “the cost of the court reporter’s transcript.” Respondents’ request for such costs is in keeping with the language of Rule 222(b), and is therefore included in the costs sought under Respondents’ Motion for Costs.

Respectfully submitted,

Joel D. Bailey
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By: 
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Counsel for Respondents

February 14, 2015

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen Tevis Mullen, Circuit Court Judge
C/A # 2004-CP-07-633

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S.C. Supreme Court

S.C. Court of Appeals
390 SC 470, 702 SE2d 378 (Ct. App. 2010)

Robert L. Cullen, Andrew A. Corriveau,
Andrea Hucks, Petitioners,

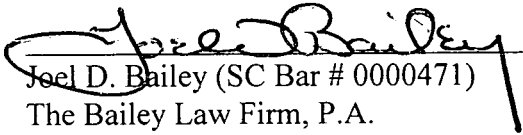
-vs-

J. Bennett McNeal, B. McNeal Partnership, L.P.,
Anthony R. Porter, and Wright's Point Home
Owners Association, Inc. Respondents,

PROOF OF SERVICE

I certify that I have served the **RESPONDENTS' REPLY TO PETITIONERS' RETURN TO RESPONDENTS' MOTION FOR COSTS**, by depositing three (3) copies in the United States Mail, postage prepaid, on February 14, 2015, addressed to the attorneys of record for the Appellants, John E. North, Jr., 916 Bay Street, Suite 100, Beaufort, South Carolina 29902.

February 14, 2015


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February 14, 2015

Honorable Daniel E. Shearouse
South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

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S.C. Supreme Court

RE: Cullen, et al. vs. McNeal, et al.
Case # 2011-196126

Dear Mr. Shearouse:

With regard to the above-referenced matter, enclosed for filing please find an original and six (6) copies of Respondents' Reply to Petitioners' Return to Respondents' Motion for Costs, together with Proof of Service.

I would appreciate you filing this Reply at your earliest convenience. Thank you for your assistance with this matter.

With kindest regards, I am

Very truly yours,

THE BAILEY LAW FIRM, P.A.

Joel D. Bailey

JDB/shb
enclosures

cc: John North, Esquire (with enclosures)