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MAY 13 2015

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION**

Honorable Melody L. James, Commissioner
W.C.C. File No. 1122484

Appellate Case No. 2014-002070

William W. Huggins, Jr.....Respondent,

v.

City of Mullins and South Carolina Municipal Trust.....Respondent,

Rakesh Chokshi, M.D.Appellant.

**RETURN TO MOTION FOR COSTS ON APPEAL
PURSUANT TO RULE 222, SCACR**

Dr. Rakesh Chokshi (“Appellant”) respectfully submits this Return in Opposition to City of Mullins and South Carolina Municipal Trust (“Respondent”) Motion for Costs on Appeal under Rule 222, SCACR. This Court should deny Respondent’s motion for costs because the Court of Appeals vacated the appeal in finding Appellant waived his right to ever appeal the underlying Workers’ Compensation Commission order compelling his deposition. Under Rule 222(a), SCACR, when an appeal is vacated, costs shall be allowed only as ordered by the appellate Court. Since this Court did not award costs in its Order, Respondent’s Motion for Costs on Appeal should be denied.

Still, if the Court finds an award of costs appropriate, Appellant respectfully requests that the Court reduce the amount of attorney's fees requested by Respondent in this matter and its sister case, *Chapman v. Georgia-Pacific, Self-Insured Employer*, Appellate Case No.: 2014-002069 to \$500.00 for each case. The basis for this request rests on 1) the similarity of issues and fact presented in each case; 2) the nature, extent, and difficulty of the cases; and 3) the time necessarily devoted to each of the cases. A reduction in this amount allowing Respondent attorney's fees in the amount of \$1,000.00 for both cases is reasonable.

I. Respondent is not entitled to recover attorney's fees because the appeal was vacated and this Court did not order recovery of costs on appeal.

The Order of the Court of Appeals holding Appellant waived his right to ever appeal the underlying order of the Workers' Compensation Commission because he complied with the underlying order compelling his deposition vacated the appeal and returned the matter to the Workers' Compensation Commission. Where appeals are vacated on the issue of appealability, Rule 222, SCACR holds in relevant part:

- (a) To Whom Allowed.** 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. When a judgment is reversed, costs shall be taxed against the respondent unless the court orders otherwise. ***When an appeal is affirmed or reversed in part or is vacated, costs shall be allowed only as ordered by the appellate court.***

In Levi v. Northern Anderson Co. EMS, 409 S.C. 374, 385, 762 S.E.2d 44, 50-51 (2014) a claimant's appeal to the Court of Appeals from the Workers' Compensation Commission Appellate Panel was vacated and returned to the Appellate Panel for disposition of the matter on appeal. Because the Court of Appeals found that the underlying order from the single commissioner in favor of the employer was not "immediately appealable," this Court

declined to decide the merits of the employer's motion to dismiss the claimant's claim and returned the matter to the lower tribunal for disposition.

In the instant case, this Court has similarly declined to decide the merits of Appellant's appeal and has returned the matter to the lower tribunal because the Court reasoned Appellant waived his right to ever appeal. Like Levi, the effect of this Court's decision remitting a matter to the lower tribunal on the issue of appealability operates to vacate the appeal, and is not a dismissal of the appeal on the merits. The Order does not state Appellant's appeal is dismissed, but rather reasons that the matter is not "immediately appealable" before the Court. By the Court's remitter dated April 21, 2015, the matter was returned to the lower tribunal.

Because the appeal was not dismissed, but rather vacated to the lower tribunal, Respondent is not entitled to an award of attorney's fees unless it is so ordered by the appellate court. The April 3, 2015 Order of the Court declines to award costs. Therefore, Respondent is not entitled to costs under Rule 222, SCACR.

II. A reduction of an award of attorney's fees is reasonable and necessary in light of the similarity of law and fact present in this matter's companion appeal *Chapman v. Georgia-Pacific, Self-Insured Employer*.

Should the Court find an award of costs proper, Appellant respectfully requests that the Court reduce the amount of costs awarded to \$500.00 in light of the similarity of law and fact present in this matter and its companion appeal, *Chapman v. Georgia-Pacific, Self-Insured Employer*. Where an award of attorney's fees is appropriate, the reasonableness of the fees should be determined according to: "(1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; (6) and customary legal fees

for similar services.” Ward v. Washington, 406 S.C. 249, 256, 750 S.E.2d 105, 109 (Ct. App. 2013)(quoting Glasscock v. Glasscock, 304 S.C. 158, 161, 403 S.E.2d 313, 315 (1991)).

Throughout the appellate process, this matter was accompanied by a sister appeal challenging the exact same issue present *sub judice*- Appellant’s compensation for his deposition under the Workers’ Compensation Commission’s Fee Schedule. The issues of law and fact present in *Chapman v. Georgia-Pacific, Self-Insured Employer* are analogous to those present in this appeal. The work-up and briefings in both matters are substantially similar. The appeals were controlled by the same time deadlines and procedural requirements. Taken together, the similarity of these appeals supports a reasonable reduction in Respondent’s award of attorney’s fees where, as here, the nature, extent, and difficulty of the case and the time necessarily devoted to the case are significantly curtailed by the existence of an analogous appeal before the Court.

CONCLUSION

Based on the foregoing, Appellant respectfully requests that this Court deny Respondent’s Motion for Costs on Appeal where, as here, the Appeal was vacated and the Court did not order costs in its final decision. In the alternative, Appellant prays for a \$500.00 reduction in attorney’s fees, entitling Respondent to an award of \$1000.00 in attorney’s fees *in toto* for costs on appeal in this case and its companion appeal, *Chapman v. Georgia-Pacific, Self-Insured Employer*.

[Signature on following Page]

Respectfully Submitted,

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William W. Huggins, Jr.....Respondent,

v.

City of Mullins and South Carolina Municipal Trust.....Respondents,

Rakesh Chokshi, M.D.Appellant.

PROOF OF SERVICE

The undersigned hereby certifies that on May 12, 2015 he served one copy of the Return to Motion for Costs on Appeal by emailing and placing same in an envelope with proper first class postage affixed thereto, and addressed as follows to their attorneys of record:

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May 12, 2015

VIA FEDERAL EXPRESS OVERNIGHT

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

RECEIVED
MAY 13 2015
SC Court of Appeals

Re: *Huggins v. City of Mullins and South Carolina Municipal Trust*
Appellate No.: 2014-002070
WCC File No.: 1122484
Our File No.: D2391.02


Dear Ms. Kitchings:

Enclosed, please find the original and six (6) copies of the Appellant's Proof of Service and Return to Motion for Costs on Appeal regarding the above-referenced matter. Please file the documents and return the clocked copy within the self-addressed stamped envelope.

Please do not hesitate to contact me with any questions, concerns, or should you need anything else at this time. Please note that all counsel of record has been copied on this correspondence.

With kind regards,

Sincerely,



Brenda Casey
Paralegal to Carl E. Pierce, II and
Benjamin C. Smoot, II

/bdc

cc: Natalie Stevens-Graziani, Esquire (via email & USPS Mail - with enclosures)
Grady L. Beard, Esquire (via email & USPS Mail - with enclosures)

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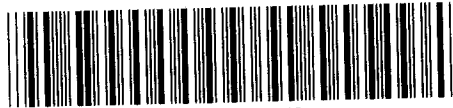
1 From

Date 9/17/15
 Sender's Name [Redacted] Phone [Redacted]
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 Address [Redacted] Dept./Floor/Suite/Room
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Package may be left without obtaining a signature for delivery.
- Direct Signature**
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- Indirect Signature**
If no one is available at recipient's address, someone at a neighboring address may sign for delivery. For residential deliveries only. **Fee applies.**

Does this shipment contain dangerous goods?

- No** One box must be checked.
 - Yes** As per attached Shipper's Declaration.
 - Yes** Shipper's Declaration not required.
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 - Cargo Aircraft Only**
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