

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

RECEIVED  
MAY 19 2015  
SC Court of Appeals

---

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION  
Appellate Panel

---

W.C.C. File No.: 1209379  
Appellate Case No.: 2014-002069

---

Chris Chapman..... Claimant, Respondent,

v.

Georgia-Pacific, Self-Insured Employer..... Defendant, Respondent.

and

Dr. Rakesh Chokshi ..... Non-Party, Appellant.

---

**REPLY TO RETURN TO MOTION FOR COSTS  
PURSUANT TO RULE 222, SCACR**

---

The Respondent Georgia-Pacific hereby replies to the Appellant's Return to the Respondent's Motion for Costs that was filed when the South Carolina Court of Appeals dismissed Appellant Dr. Chokshi's appeal. For the reasons set forth herein, the Respondent believes that Dr. Chokshi is erroneous in his interpretation of the Court of Appeals' Order and the appellate court rules, and that costs should be awarded to the Respondent in the full amount, in accordance with Rule 222, SCACR.

The Respondent Georgia-Pacific filed a Motion to Dismiss Dr. Chokshi's appeal on the basis that he had complied with the Order and therefore could not take an appeal from it, under *Ex Parte Whetsone*, 289 S.C. 580, 347, S.E.2d 881 (1986). *Ex Parte Whetsone* holds that an order

compelling discovery cannot be appealed if the order is complied with, as a non-party waives his right to challenge the order once he complies with it. The Court of Appeals, citing *Whetsone*, held that Dr. Chokshi, by complying with the South Carolina Workers' Compensation Commission's Order compelling his deposition, waived his right to appeal. Thus, the Court of Appeals granted the relief requested by the Respondent and on the ground asserted by the Respondent.

Dr. Chokshi now contends that the Respondent, who was successful on its Motion to Dismiss, is not entitled to fees and costs under Rule 222, SCACR, because the Court did not explicitly state that the Appellant's appeal was "dismissed." Accordingly, the Appellant asserted that the appeal was somehow "vacated" and attempts to apply that portion of Rule 222 that deals with a vacated opinion or order to this case to argue that the Respondent is not entitled to a fee. This argument is unavailing.

While the Court of Appeals' Order does not explicitly state that it is a dismissal of the appeal, the only logical reading of the Court of Appeals' Order is that this Court dismissed the appeal on the ground that the Appellant waived his right to appeal the SCWCC Order when he complied with it. The underlying SCWCC Order has not been vacated and remains in place for purposes of this case. There is nothing to indicate that the Court of Appeals "vacated the appeal," as the Respondent is not even aware of such a phrase, such a process, or such action, as it is prior opinions or orders that are vacated, affirmed, reversed, etc.

In support of his argument seeking to avoid the imposition of costs, the Appellant appears to be arguing that under Rule 222, SCACR, an actual appeal can be "affirmed or reversed in part or ... vacated"; it is clear, however, that Rule 222 discusses the taxation of costs when the underlying, appealed-from order or opinion is "affirmed or reversed in part or is vacated." An appeal is never "affirmed or reversed in part," and an appeal is never vacated. The Court of

Appeals' Order in this case dismissed the Appellant's appeal on the ground that the Appellant waived his right to appeal. Under Rule 222, when an appeal is dismissed, costs *shall* be taxed against the appellant. Accordingly, the Respondent respectfully submits it is entitled to the costs allowed by Rule 222, SCACR.

Appellant next argues that even if costs are taxed against him, the attorney's fee portion should be limited to \$500.00 for this case and \$500.00 for the case of *William W. Huggins, Jr. v. City of Mullins and S.C. Municipal Insurance Trust, W.C.C. File No. 1122484, Appellate Case No. 2014-002070*. This request should be denied and Respondent awarded \$1,000.00 in attorney's fees for each matter.

Rule 222(b), SCACR, states as follows: "In addition, the party shall be entitled to recover an attorney's fee in an amount which shall be set by order of the Supreme Court." The fee is \$1,000.00 per the Order of the Supreme Court dated July 24, 1997. Interestingly, Rule 222(b) does not actually require that an attorney specify the actual amount of his or her attorneys' fees when filing the Motion, but rather only requires a recitation of attorneys' fees totaling \$1,000.00 per the limitations set by the Supreme Court. In the present case, the attorneys' fees involved far exceeded \$1,000.00, none of which the Respondent would have incurred but for the improper appeal.

In the present case, the Respondent drafted its Initial Brief of Respondent. During that process, it became apparent that a valid argument existed as to why the appeal should be dismissed. The Respondent then moved to dismiss the appeal.<sup>1</sup> This Motion to Dismiss differed from the *Huggins* Motion in both its factual and procedural background, both of which had to be specifically

---

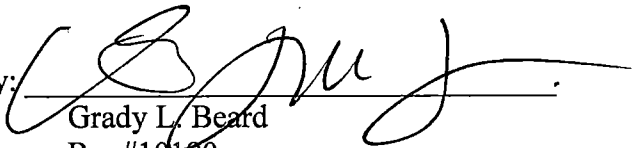
<sup>1</sup> The Motion to Dismiss in this case also involved issues not raised in *Huggins*, as the underlying case was settled prior to the SCWCC hearing Dr. Chokshi's appeal, thus raising additional questions regarding the propriety of the appeal and the SCWCC's jurisdiction to hear Dr. Chokshi's appeal.

briefed as part of the Motion to Dismiss. The Appellant filed a Return to this Motion, arguing why the appeal should not be dismissed. The Appellant raised several novel issues regarding appealability under the Administrative Procedures Act. The Respondent filed a Reply to address those novel arguments raised by the Appellant. Additionally, given the novel issues raised by the Appellant, and the fact that the Court of Appeals could have taken up all of the issues at oral argument, Respondent filed its Initial Brief addressing the merits of the appeal, as it had been largely drafted prior to the issue of appealability arising. This brief totaled 26 pages and involved novel issues relating to the fee schedule of physicians in a denied claim and whether a treating physician, rather than a retained physician, is entitled to an expert witness fee under the South Carolina Rules of Civil Procedure. The Respondent likewise had to review the Appellant's Designation of the Record on Appeal and designate its submissions as well. Though not previously submitted, because the attorneys' fees exceeded the amount set by the Supreme Court and such a recitation of fees does not appear required by Rule 222, the attorneys' fees incurred on this appeal alone totaled \$4,793.00.<sup>2</sup> Due to the attorneys' fees incurred by the Respondent in defending this appeal, the Respondent respectfully submits that it is entitled to an attorneys' fee in the amount of \$1,000.00 for this case based upon Rule 222 and the underlying facts that have led us to this point.

For the reasons set forth herein, the Respondent submits that attorneys' fees are warranted by Rule 222, as the Court of Appeals did not vacate the appeal but dismissed it, and that the \$1,000.00 fee is appropriate in this case given the fees actually incurred as well as the complexity and time spent in defending the appeal.

---

<sup>2</sup> To some extent, the attorneys' fees were prorated between the two cases and two clients, but despite that, they still totaled \$4,793.00 in this case for the appeal in this case.

By: 

Grady L. Beard

Bar #10190

B. Gibbs Leaphart, Jr.

Bar #72609

Robert E. Horner

Bar #16326

Post Office Box 11449

Columbia, South Carolina 29211

(803) 929-1400

Attorneys for Respondent Georgia-Pacific

May 19, 2015

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

RECEIVED  
MAY 19 2015  
SC Court of Appeals

---

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION  
Appellate Panel

---

W.C.C. File No.: 1209379  
Appellate Case No.: 2014-002069

---

Chris Chapman..... Claimant, Respondent,

v.

Georgia-Pacific, Self-Insured Employer..... Defendant, Respondent.

and

Dr. Rakesh Chokshi ..... Non-Party, Appellant.

---

**PROOF OF SERVICE**

---

I certify that I have served a copy of the Reply to Return to Motion for Costs on the following: Ms. Amy Bracy, Judicial Director, South Carolina Workers' Compensation Commission, 1333 Main Street, Suite 500, Columbia SC 29201 (via hand-delivery); E. Hood Temple, Esquire, Hatfield Temple, LLP, Post Office Box 1770, Florence, SC 29503-1770 (via U.S. Mail); Carl E. Pierce, II, Esquire, Pierce, Hems, Sloan & Wilson, LLC, Post Office Box 22437, Charleston, SC 29413 (via U.S. Mail); and Benjamin C. Smoot, II, Esquire, Pierce, Hems, Sloan & Wilson, LLC, Post Office Box 22437, Charleston, SC 29413 (via U.S. Mail), on May 19, 2015.

Racheal M. Dykes  
Racheal M. Dykes, Legal Assistant  
Sowell Gray Stepp & Laffitte, LLC  
1310 Gadsden Street  
Post Office Box 11449  
Columbia, South Carolina 29211  
(803) 929-1400  
Attorney for Respondent

Columbia, South Carolina  
May 19, 2015



GRADY L. BEARD  
Direct Dial 803 231.7824  
Direct Fax 803 231.7874  
Email gbeard@sowellgray.com

May 19, 2015

**VIA HAND-DELIVERY**

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

**RECEIVED**  
MAY 19 2015  
SC Court of Appeals

RE: Chris W. Chapman v. Georgia-Pacific, LLC  
**Appellate Case No.: 2014-002069**  
WCC File No.: 1209379  
Date of Accident: 07/23/12  
Claim No.: 77004941767645  
Our File No.: 1231/8240

Dear Ms. Kitchings:

Enclosed herewith are an original and one (1) copy of the Reply to Return to Motion for Costs in the above-referenced matter. We would appreciate your filing the original and returning a clocked-in copy of same to us via our courier.

By copy of this letter and aforementioned documents to all other counsel and the South Carolina Workers' Compensation Commission, we are serving them with a copy of the Reply to Return to Motion for Costs.

With kindest personal regards, I remain

Very truly yours,

Grady L. Beard  
SC Bar #10190

GLB:rmd

Enclosures

cc: Ms. Amy Bracy, Judicial Director, SCWCC (w/enclosures) (via hand-delivery)  
E. Hood Temple, Esquire (w/enclosures)  
Carl E. Pierce, II, Esquire (w/enclosures)  
Benjamin C. Smoot, II, Esquire (w/enclosures)  
Mr. Harris Lazarus (w/enclosures) (via e-mail only)