

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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MAY 19 2015
SC Court of Appeals

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION
Appellate Panel

W.C.C. File No.: 1122484
Appellate Case No.: 2014-002070

William W. Huggins, Jr. Claimant, Respondent,

v.

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

and

Dr. Rakesh Chokshi Non-Party Appellant.

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

The Respondents City of Mullins and South Carolina Municipal Trust, hereby reply to the Appellant's Return to the Respondents' 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 Respondents believe 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 Respondents in the full amount, in accordance with Rule 222, SCACR.

The Respondents City of Mullins and South Carolina Municipal Trust 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 Respondents and on the ground asserted by the Respondents.

Dr. Chokshi now contends that the Respondents, who were successful on their Motion to Dismiss, are 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 Respondents are 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 Respondents are 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 Respondents respectfully submit they are 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 *Chris Chapman v. Georgia-Pacific*, W.C.C. File No.: 1209379, Appellate Case No.: 2014-002069. This request should be denied and Respondents awarded \$1,000.00 in attorney’s fees for each matter.

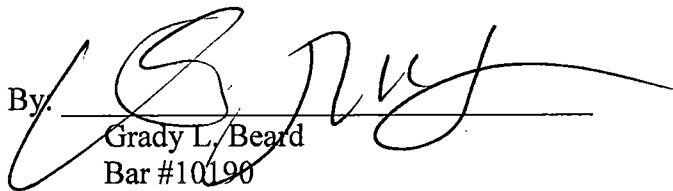
Rule 222(b), SCACR, states as follows: “In addition, the party shall be entitled to recover an attorney’s fee in an amount which shall be set by order of the Supreme Court.” The fee is \$1,000.00 per the Order of the Supreme Court dated July 24, 1997. Interestingly, Rule 222(b) does not actually require 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 Respondents would have incurred but for the improper appeal.

In the present case, the Respondents drafted their Initial Brief of Respondent. During that process, it became apparent that a valid argument existed as to why the appeal should be dismissed. The Respondents then moved to dismiss the appeal. This Motion to Dismiss differed from the *Chapman* Motion in both its factual and procedural background, both of which had to be specifically 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 Respondents 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, Respondents filed their Initial Brief addressing the merits of the appeal, as it had been largely drafted prior to the issue of appealability arising. This brief had to address 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 Respondents likewise had to review the Appellant's Designation of the Record on Appeal and designate their 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 \$4,323.00.¹ Due the attorneys' fees incurred by the Respondents in defending this appeal, the Respondents respectfully submit that they are 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 Respondents submit 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.

¹ To some extent, the attorneys' fees were prorated between the two cases and two clients, but despite that, they still totaled \$4,323.00 in this case for this appeal.

By. 

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Attorneys for Respondents City of Mullins
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May 19, 2015

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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); Natalie S. Stevens-Graziani, Esquire, Stevens Law Firm, P.C., Post Office Drawer 127, Loris, SC 29569-0127, (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.

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May 19, 2015



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VIA HAND-DELIVERY

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

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SC Court of Appeals

RE: William (Billy) W. Huggins, Jr. v. City of Mullins
Appellate Case No.: 2014-002070
WCC File No.: 1122484
Date of Accident: 09/19/11
Claim No.: 63-79462
Our File No.: 5682/8175

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:rdm
Enclosures

- cc: Ms. Amy Bracy, Judicial Director, SCWCC (w/enclosures)(via hand-delivery)
- Natalie S. Stevens-Graziani, Esquire (w/enclosures)
- Carl E. Pierce, II, Esquire (w/enclosures)
- Benjamin C. Smoot, II, Esquire (w/enclosures)
- Mr. Tony Deschamps (w/enclosures)
- Ms. Felicia Sawyer (w/enclosures)