

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

RECEIVED

MAY 27 2016

SC Court of Appeals

Appellate Case No.: 2014-000454

Paula Russell,

Appellant,

v.

Wal-Mart Stores, Inc., and
American Home Assurance,

Respondents.

RETURN TO APPELLANT'S MOTION FOR COSTS ON APPEAL

Respondents, by and through their undersigned counsel, hereby file this Return to Appellant's Motion for Costs on Appeal. As grounds for denying the motion, Respondents would show that the Court of Appeals has not yet reached the merits of the case but instead ruled only upon a procedural issue and remanded this matter to the South Carolina Workers' Compensation Commission for further findings.

ARGUMENT

1. The Court should deny the Appellant's Motion for Costs on Appeal.

Rule 222 provides, "when a judgment is reversed in part or is vacated, costs shall be taxed against the responded *unless the court orders otherwise.*" Rule 222, SCRAP (emphasis added). Under this rule, the appellate court has discretionary authority as to whether costs shall be taxed against a losing party. The issue presented in this case is whether costs should be taxed

when the appeal was adjudicated based solely upon procedural grounds as opposed to the actual merits of the case.

In the case at hand, the Court of Appeals specifically did not reach the specific legal issue concerning the merits of the claim (see page 5 of Order, "II. Remaining Issues"). The ultimate legal issue in this case is whether the claimant suffered a change of condition for the worse pursuant to 42-17-90. The Court of Appeals specifically did not reach that issue because of the reversal and remand on a procedural issue. Specifically, the Court of Appeals found that the Commission erred procedurally in requiring claimant to establish a change of condition by objective evidence exclusively, and the Court of Appeals remanded this matter to the Commission for further findings based upon a consideration of all evidence. The Court of Appeals has required the Commission to address the procedural issues before the other legal issues concerning the merits can be properly addressed.

It would be inequitable for Appellant to be paid costs and attorneys' fees when the Court of Appeals has not yet reached the actual merits of the appeal. Realistically, after this case is considered on remand by the Commission and the procedural defects are cured, one of the parties will appeal and the Court of Appeals will then have to consider the legal issues and merits of the claim that were specifically not addressed in the original decision issued on January 20, 2016.

It would further be inequitable for Respondents to be responsible for paying costs and fees in this matter. The reversal from the Court of Appeals was based upon a procedural issue of the Commission not considering all evidence submitted. Respondents do not control how the Commission reviews evidence or decides the claim, nor are Respondents responsible for the Order issued by the Commission. It is inherently unfair for Respondents to be taxed with costs

when the reversal in this matter was based upon a procedural error from the adjudicating tribunal as opposed to a decision against a legal position taken by Respondents.

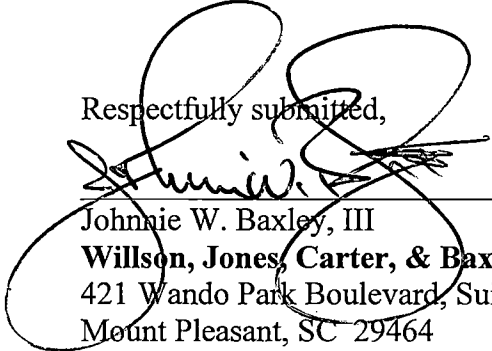
Further, case law favors denying the motion for costs when an appeal is disposed of on procedural grounds. In *Johnson v. Paraplane Corp.*, 321 S.C. 316, 468 S.E.2d 620 (1996), the Supreme Court dismissed an appeal based on procedural grounds and further indicated that “no costs or attorneys’ fees pursuant to Rule 222, SCACR, shall be assessed.” The Court made a similar ruling in *Chambers v. Smith’s Drywall*, 324 S.C. 122, 478 S.E.2d 253 (S.C. 1996) (refusing to assess Rule 222 costs and fees when the appeal was brought on procedural grounds).

It is clear from *Johnson* and *Chambers* that our courts disfavor taxing costs and fees when a decision is based on a procedural argument as opposed to the underlying legal merits of the case. Stated otherwise, when our higher courts reverse and remand to correct some procedural action taken by a lower tribunal, our courts disfavor assessing costs and fees on any one party. Although these facts are unique and do not directly fall under *Johnson* and *Chambers*, the logical reasoning behind the Court’s refusal to assess attorney’s fees and costs in those cases still apply.

CONCLUSION

For the foregoing reasons, the Court of Appeals should deny the Appellant’s Motion for Costs on Appeal.

Respectfully submitted,



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Charleston, South Carolina
May 25, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2014-000454
Opinion No. 5376 (Filed January 20, 2016)

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MAY 27 2016
SC Court of Appeals

Paula Russell, Claimant,

Appellant,

v.

Wal-Mart Stores, Inc., Employer, and
American Home Assurance, Carrier, Defendants,

Respondents.

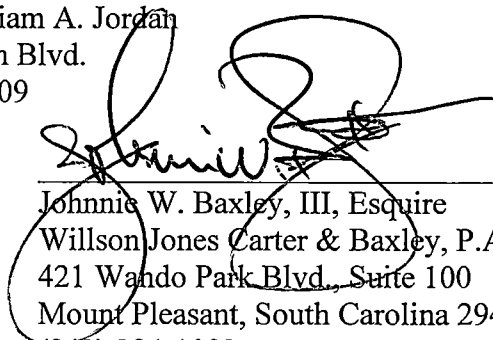
CERTIFICATE OF SERVICE

I certify that the Return to Appellant's Motion for Costs on Appeal was served on Appellant, Paula Russell, on May 25, 2016, mailing a copy of the same by United States Mail, postage prepaid, addressed to her attorneys of record:

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May 25, 2016

The Honorable Jenny Abbott Kitchings
Clerk of Court
Court of Appeals of South Carolina
1220 Senate Street
Columbia, SC 29201

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SC Court of Appeals

Re: Paula Russell vs. Wal-Mart Stores, Inc.
Appellate Case No.: 2014-000454
WCC File No.: 0917785 DOI: 11/3/09
Carrier: American Home Assurance - Claim No.: 5943261
WJC&B File No.: 0170.01754

Dear Ms. Kitchings:

Enclosed herein, please find the following items for filing in the above-referenced matter:

1. Return to Appellant's Motion for Costs on Appeal (original and six copies);
2. Certificate of Service.

By copy of this letter, we are serving a copy of the same on C. Daniel Vega, Attorney for Appellant.

With kindest regards,

WILLSON JONES CARTER & BAXLEY, P.A.


Johnnie W. Baxley, III

Enclosures

cc: C. Daniel Vega, Esq.
William Jordan, Esq.
Ms. Anita Adams (*via e-mail*)

05/25/2016

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THE HONORABLE JENNY ABBOTT KITCHINGS
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