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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Ralph K. Anderson, III, Administrative Law Judge  
Dock. No. 07-ALJ-04-00517-AP

Fred Gatewood..... Appellant,

v.

South Carolina Department of Corrections..... Respondent.

Court of Appeals Appellate Case No. 2014-001199  
Supreme Court Appellate Case No. 2016-001221

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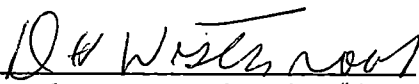
REPLY TO SCDC'S RETURN TO GATEWOOD'S MOTION FOR COSTS

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Pursuant to SCACR 222 and 240(f), Fred Gatewood replies to the Department of Corrections' (SCDC) return to Gatewood's Motion for Costs.

As more particularly described in the attached memorandum, Gatewood requests that costs be taxed against SCDC in the amount of \$1,386.61.

Respectfully submitted,

  
Douglas H. Westbrook, #6039  
23 Broad St.  
Charleston, SC 29401  
(843) 853-9600  
Attorney for Fred Gatewood

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MEMORANDUM IN SUPPORT OF GATEWOOD'S REPLY TO  
SCDC'S RETURN TO GATEWOOD'S MOTION FOR COSTS

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Pursuant to SCACR 222 and 240(c)(f), Fred Gatewood submits the following memorandum in support of his reply to SCDC's return to his motion for costs.

SCDC contends Gatewood is not the prevailing party on appeal of five of eight issues. A prevailing party is one who successfully prosecutes an action by prevailing on the **main issue**, and in whose favor a decision is rendered, the key factor being the degree of success obtained by the party seeking attorney fees (Douan v. Charleston County Council 645 S.E. 2d 241, 243 (S.C., 2007); Jasper County Bd. of Ed. v. Jasper County Grand Jury 303 S.C. 49, 398 S.E. 2d 498-500 (S.C., 1990)).

Here, six of ten issues in Gatewood's Court of Appeals' brief (2-6, 8) concerned application of §24-1-295 to Gatewood, three of which (3-5) specifically concerned the ALC's retroactive application of §24-1-295 to Gatewood's pre-August 1, 2007 work. The Court of Appeals reversed the ALC and held that §24-1-295 did not apply retroactively and remanded to the ALC for reconsider-

ation of Gatewood's entitlement to costs, attorney fees, and pre and post-judgment interest (Gatewood v. SCDC App. Case No. 2014-001199, Op. No. 5389, at pages 12-17, 19).

The ALC had held Gatewood was entitled to the \$4 wage, but §24-1-295 applied retroactively which, according to the ALC, nullified any back wage recovery. Thus, the retroactive application of §24-1-295 was the main issue on appeal, as that application was the basis for Gatewood not receiving a recovery of back wages. On that issue, Gatewood prevailed in the Court of Appeals and contends he is the prevailing party.

In the Supreme Court, SCDC apparently agreed that Gatewood was the prevailing party. In its petition for certiorari of July 25, 2016, SCDC stated at page 15:

If the rulings by the Court of Appeals on the second, third, and fourth issues from its decision stand, SCDC would owe back wages to Gatewood for the labor he provided from October 18, 2004 to July 31, 2007 to the service work project SCDC operated at Lieber. If the ruling by the Court of Appeals on the sixth issue from its decision stands, SCDC faces the prospect that it would also owe Gatewood, as the prevailing party on the second, third, and fourth issues, monies attributable to interest, costs, and attorney's fees.

Finally, SCDC contends the prerequisites of §15-77-300, substantial justification and special circumstances, apply to deny costs. However, these factors are not requirements in SCACR 222, and thus not relevant here.

For the above reasons, Gatewood requests that costs be taxed against SCDC in the amount of \$1,386.61.

Respectfully submitted,

D H Westbrook  
Douglas H. Westbrook, #6039  
23 Broad St.  
Charleston, SC 29401  
(843) 853-9600  
Attorney for Fred Gatewood

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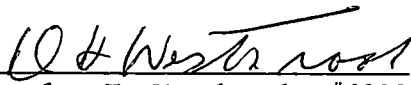
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PROOF OF SERVICE

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I certify that I have served Appellant's Reply to SCDC's Return to Gate-  
wood's Motion for Costs, and Memorandum in Support of Gatewood's Reply to  
SCDC's Return to Gatewood's Motion for Costs on the S.C. Department of Correc-  
tions by depositing a copy of these documents in the U.S. Mail, postage pre-  
paid, on June 29, 2017, addressed to its attorney of record, Lake Summers,  
Esquire, Malone, Thompson, Summers, & Ott, LLC, 339 Heyward St., Suite 200,  
Columbia, SC 29201.

June 29, 2017.

  
Douglas H. Westbrook, #6039  
23 Broad St.  
Charleston, SC 29401  
(843) 853-9600  
Attorney for Fred Gatewood

DOUGLAS H. WESTBROOK  
ATTORNEY AT LAW  
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June 29, 2017

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SC Court of Appeals

The Honorable Jenny Abbott Kitchings  
Clerk  
S.C. Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

Re: Gatewood v. SCDC  
Court of Appeals Appellate Case No. 2014-001199  
Supreme Court Appellate Case No. 2016-001221

Dear Ms. Kitchings:

Please find enclosed for filing with the Court the original and six copies of Appellant Fred Gatewood's Reply to SCDC's Return to Gatewood's Motion for Costs, Memorandum in Support of Gatewood's Reply to SCDC's Return to Gatewood's Motion for Costs, and Proof of Service, for the above case.

By copy of this letter, I have this date served a copy of these documents on counsel for the Respondent Department of Corrections, Lake E. Summers.

Thank you for your assistance in this matter.

Sincerely,



Douglas H. Westbrook

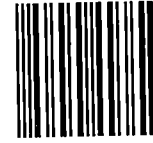
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Encl.

cc: Lake E. Summers, Esq.



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DOUGLAS H. WESTBROOK  
ATTORNEY AT LAW  
23 BROAD STREET  
CHARLESTON, SOUTH CAROLINA 29401

The Honorable Jenny Abbott Kitchings  
Clerk  
S.C. Court of Appeals  
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