

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Appellate Case No. 2017-002407

TODD BULLMAN, as Personal
Representative of THE ESTATE OF
CAITLIN BULLMAN, Respondent,

v.

CHARLOTTE-
MECKLENBURG AUTHORITY
d/b/a CAROLINA PHYSICIAN
NETWORK, LLC d/b/a
PIEDMONT GYN OB, LLC,
DR. PRIYA B. PILLAI, MN, DR.
WILLIAM S. REVELL,
CHARLOTTE-
MECKLENBURG AUTHORITY
d/b/a CAROLINA MEDICAL
CENTER-PINEVILLE,

Appellants.

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JAN 26 2018
SC Court of Appeals

RETURN TO RESPONDENT'S MOTION FOR COSTS

Pursuant to Rule 240(e) of the South Carolina Appellate Court Rules, Appellants oppose Respondent's Motion for Costs. For the following reasons, Appellants respectfully request the Court deny Respondent's Motion or, alternatively, enter an Order reducing the amount of costs to be awarded consistent with the costs recoverable under Rule 222(b), SCACR, at the time this

appeal was decided.

BACKGROUND

On November 21, 2017, Appellants filed their Notice of Appeal. The appeal pertained to whether the circuit court had jurisdiction to adjudicate this action based on Appellants' due process and "public officer" arguments. On December 4, 2017, counsel for Respondent moved to dismiss the appeal on the grounds that the issues raised were not immediately appealable. The Motion raised arguments and was virtually identical to Respondent's Memorandum of Appealability filed on November 22, 2017, by the same counsel in the appellate case Scott v. Palmetto Medical, et al., 2017-002123. On December 28, 2017, this Court granted Respondent's Motion to Dismiss, thereby dismissing the appeal. The Remittitur was filed on January 16, 2018. On January 19, 2018, counsel for Respondent moved, pursuant to Rule 222 of the South Carolina Appellate Court Rules, for entry of an Order awarding her \$2,500.00 in attorney's fees because the Judgment on appeal was affirmed. In accordance with Rule 222(d), counsel for Respondent submitted an itemized statement of costs incurred, indicating that she incurred \$2,500.00 in attorney's fees pursuing a dismissal of this Appeal. No other itemized costs were requested for reimbursement.

Counsel for Respondent argues that she is entitled to an award of \$2,500.00 in attorney's fees because: (1) the Court dismissed Appellant's appeal on December 28, 2017; (2) the Court has not ordered otherwise; and (3) the parties have not agreed otherwise.¹

LAW

The right to attorney's fees as awardable costs in the dismissal of appeal is governed by

¹ Counsel for Respondent has never communicated with counsel for Appellant regarding any potential agreement.

Rule 222(b) of the South Carolina Appellate Court Rules. By Order dated January 17, 2018, the Supreme Court changed the amount of attorney's fees recoverable under Rule 222(b) from \$1,000.00 to \$2,500.00. The text of the Order is included below:

The attorney's fee under Rule 222(b) of the South Carolina Appellate Court Rules is hereby increased to \$2,500. This increased fee shall apply to any appeal where a decision is filed on or after the date of this order which gives rise to the right to seek costs under Rule 222.

The attorney's fee under Rule 242(j)(2) of the South Carolina Appellate Court Rules is increased to \$2,500. This fee shall apply to any case where a decision is filed on or after the date of this order which gives rise to the right to seek costs under Rule 242(j).

Thus, the Order expressly states that the increased amount of attorney's fees recoverable under Rule 222(b) applies only to decisions "filed on or after the date of this order." Prior to January 17, 2018, a prevailing party on appeal was entitled to recover attorney's fees of only \$1,000.00. See, e.g., Taylor v. Medenica, 332 S.C. 324, 325, 504 S.E.2d 590, 591 (1998). The Supreme Court set this amount by order dated July 24, 1997.

ARGUMENT

A. Respondent is entitled to a maximum attorney's fees award of only \$1,000.00. Because this Court dismissed Appellants' appeal on December 28, 2017, Rule 222(b) allows counsel for Respondent to recover only attorney's fees of \$1,000.00. Counsel for Respondent asks this Court to award her \$2,500.00 in attorney's fees, relying on the January 17, 2018, Supreme Court Order, which does not apply. Because there can be no dispute this Court "decided" this appeal before the Supreme Court's issuance of the January 17, 2018, Order, Appellants respectfully request the Court allow counsel for Respondent to recover a maximum of \$1,000.00 in attorney's fees.

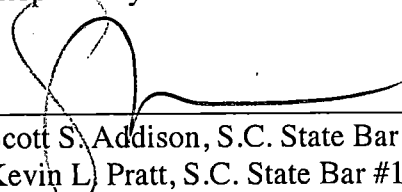
CONCLUSION

Therefore, Appellants respectfully request the Court deny Respondent's Motion for Costs

or, alternatively, enter an Order taxing up to a maximum of \$1,000.00, as that award is consistent with the costs recoverable under Rule 222(b), SCACR, at the time this appeal was decided.

January 25, 2018.

Respectfully submitted:



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THE STATE OF SOUTH CAROLINA
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CENTER-PINEVILLE,

Appellants.

PROOF OF SERVICE

I CERTIFY that I have served the Return to Respondent's Motion for Costs by depositing a copy of it in the United States Mail, postage prepaid, on January 25, 2018, addressed to Respondent's attorneys of record at the following addresses:

Whitney B. Harrison, Esq.
McGowan, Hood & Felder, LLC
1517 Hampton Street
Columbia, SC 29201

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SC Court of Appeals

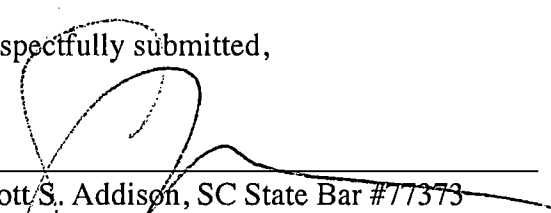
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January 25, 2018.

Respectfully submitted,



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January 25, 2018

VIA FEDERAL EXPRESS

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

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JAN 26 2018

SC Court of Appeals

Re: *Bullman v. CMHA, et al.*
York County File No. 2017-CP-46-01096
South Carolina COA File No. 2017-002407

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of Return to Respondent's Motion for Costs and Proof of Service in the above-referenced matter.

Kindly file the originals and return a file-stamped copy of each to me in the enclosed self-addressed stamped envelope. Please contact me should you have any questions. Thank you.

Sincerely,

Karen Tahan
Legal Assistant

Enclosures

cc: Whitney B. Harrison, Esq.
Robert V. Phillips, Esq.
Daniel W. Luginbill, Esq.
(w/enclosures)

1/25/18, 3:54 PM

ORIGIN ID:PNVA (704) 496-4500
TRICIA DERR
LINCOLN DERR PLLC
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UNITED STATES US

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SOUTH CAROLINA COURT OF APPEALS
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COLUMBIA SC 29201

(704) 496-4500

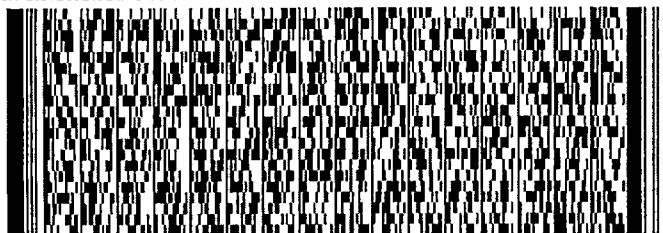
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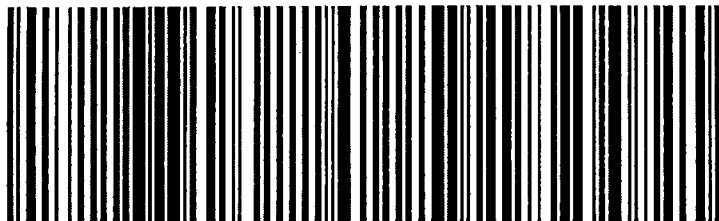
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