

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

Case No. 2013-CP-21-1334 and Case No. 2013-ES-21-190
Appellate Case No. 2013-002810

RECEIVED
FEB 21 2018
SC Court of Appeals

In the Matter of the Estate of Eris Singletary Smith

In re:

Eris Gail Smith..... Appellant,

v.

Judy Smith Jones, Jacqueline Brown, James Ervin Smith,
Timothy David Smith, Jamie Smith and Mikie Smith,
Defendants

Of whom Judy Smith Jones is the Respondent.

RETURN TO RESPONDENT'S MOTION FOR COSTS

Pursuant to Rule 240(e) of the South Carolina Appellate Court Rules, Appellant Eris Gail Smith, by and through the undersigned counsel, hereby submits the following return to Respondent's motion for costs in the above-captioned appeal. Rule 222 of the South Carolina Appellate Court Rules explicitly lays out the costs recoverable by a prevailing party.¹

¹ Rule 222 provides in pertinent part:

The party entitled to recover costs under this rule may, to the extent the party actually incurred these costs, recover the following: (1) the filing fee paid under Rule 203(d); (2) the cost of the court reporter's transcript; (3) premiums paid for costs of supersedeas

Respondent seeks to recover \$2,633.80, which includes expenses beyond those permitted in Rule 222, SCACR. Therefore, Appellant asks this Court to reduce the costs recoverable by the Respondent to \$1,108.80, according to Rule 222 and Respondent's itemized statement of costs.

First, Respondent requests \$25.00 in reimbursement of the filing fee for Respondent's motion for costs. *See* Form 17 p. 2. Rule 222, SCACR, however, only permits recovery of the filing fee required under Rule 203(d), SCACR, for a Notice of Appeal. As Respondent was not the appealing party in this case, she has not filed a notice of appeal and is unable to recover any filing fees under Rule 222.

Second, Respondent is only entitled to recover \$1,000 in attorney's fees, as opposed to the \$2,500 she requests. On January 17, 2018 the South Carolina Supreme Court entered an order increasing the maximum amount of attorneys' fees a party can recover under Rule 222 from \$1,000 to \$2,500. *See* Jan. 17, 2018 Order, attached as Exhibit A; Sept. 30, 2017 Screenshot of Rule 222, attached as Exhibit B. Respondent contends that she is entitled to \$2,500 in attorney's fees because the Supreme Court denied certiorari to review the above-captioned appeal and triggered remittitur on February 1, 2018, after the Supreme Court had entered its order increasing the amount recoverable. However, the text of the January 17, 2018 order provides that the "increased fee shall apply to any appeal where a decision is filed on or after

bonds or other bonds obtained to preserve rights pending appeal; (4) the cost of printing the Record on Appeal under Rule 209; and (5) the cost of printing the party's final brief(s) under Rule 210. In addition, the party shall be entitled to recover an attorney's fee in an amount set by order of the Supreme Court. The allowance of additional costs will generally not be allowed except in the most extraordinary of circumstances.

Rule 222(b), SCACR.

the date of this order *which gives rise to the right to seek costs* under Rule 222.” Jan. 17, 2018 Order (emphasis added). Although the Supreme Court’s order denying certiorari is what triggered the remittitur and started the clock for Respondent to file a motion for costs, the decision actually giving rise to her right to recover under Rule 222 is the decision of this Court affirming the circuit court’s grant of summary judgment for Respondent. *In re Estate of Eris Singletary Smith*, Op. No. 5462 (S.C. Ct. App. filed Dec. 21, 2016) (Shearouse Adv. Sh. No. 48 at 74); *see* Rule 222(a) (“[C]osts shall be taxed against the appellant when the appeal is dismissed or judgment on appeal is *affirmed*.” (emphasis added)). This Court’s opinion was filed on December 21, 2016, well before the Supreme Court’s order increasing the amount of available attorneys’ fees from \$1,000 to \$2,500. Therefore, Respondent is only permitted to recover the fees allowed under Rule 222 at the time this Court’s opinion was filed, \$1,000. *See* Sept. 30, 2017 Screenshot of Rule 222.

Based on the foregoing and pursuant to Rule 222, Respondent’s recovery of costs is limited to \$108.80 for printing the final briefs, *see* Form 17 p. 1, and \$1,000 in attorneys’ fees. Accordingly, Appellant respectfully requests this Court enter an order awarding Respondent \$1,108.80 in costs and attorney’s fees under Rule 222(b), SCACR.

[Signature on following page]

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: Caroline D Gimenez, with express permission

C. Mitchell Brown

SC Bar No. 012872

E-Mail: mitch.brown@nelsonmullins.com

William C. Wood, Jr.

SC Bar No. 015111

E-Mail: bill.wood@nelsonmullins.com

1320 Main Street / 17th Floor

Post Office Box 11070 (29211-1070)

Columbia, SC 29201

(803) 799-2000

Attorneys for Appellant

Columbia, South Carolina

February 21, 2018

EXHIBIT A

(Order)

The Supreme Court of South Carolina

Re: Attorney's Fees Under Rules 222 and 242 of the
South Carolina Appellate Court Rules

ORDER

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).

s/ Donald W. Beatty C.J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

s/ John Cannon Few J.

s/ George C. James, Jr. J.

Columbia, South Carolina
January 17, 2018

EXHIBIT B

(Screenshot of Rule 222)

**RULE 222
COSTS ON APPEAL**

(a) To Whom Allowed. Unless otherwise ordered by the appellate court or agreed by the parties, costs shall be taxed against the appellant when the appeal is dismissed or judgment on appeal is affirmed. When a judgment is reversed, costs shall be taxed against the respondent unless the court orders otherwise. When an appeal is affirmed or reversed in part or is vacated, costs shall be allowed only as ordered by the appellate court.

(b) Costs Allowed. The party entitled to recover costs under this rule may, to the extent the party actually incurred these costs, recover the following: (1) the filing fee paid under Rule 203(d); (2) the cost of the court reporter's transcript; (3) premiums paid for costs of supersedeas bonds or other bonds obtained to preserve rights pending appeal; (4) the cost of printing the Record on Appeal under Rule 209; and (5) the cost of printing the party's final brief(s) under Rule 210. 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.^[1] The allowance of additional costs will generally not be allowed except in the most extraordinary of circumstances.

(c) Costs for Printing Irrelevant Matter. A party who has unjustifiably designated irrelevant matter to be included in the Record on Appeal shall not be entitled to tax the cost of printing this matter in the Record on Appeal. Further, a party not otherwise entitled to costs under this Rule shall be entitled to collect the cost the party incurred for printing irrelevant matter which another party unjustifiably designated to be included in the Record on Appeal.

(d) Motion for Costs. A party desiring costs to be taxed shall, within fifteen (15) days of the issuance of the remittitur, serve and file a motion requesting that costs be assessed under this Rule. The motion shall comply with Rule 240. If costs are being sought under (b) above, the motion shall be accompanied by a sworn, itemized statement of costs incurred in the form prescribed in the Appendix to these rules. Any return or reply to the motion shall be served and filed in the manner provided by Rule 240. The return may oppose the request for costs or seek a reduction of the amount of costs to be awarded. The remittitur shall not be stayed by the filing of a motion for costs.

(e) Taxation. Costs on appeal shall be taxed only in the appellate court. If costs are taxed, they shall become part of the judgment of the appellate court and shall be added to the remittitur. If a petition for a writ of certiorari is sought under Rule 242, the Court of Appeals shall tax costs only in those cases in which the petition for a writ of certiorari is denied. In all cases in which a writ of certiorari is granted, costs shall be awarded in the manner provided by Rule 242(j).

(f) Applicability. This Rule does not apply to criminal cases or post-conviction relief cases.

^[1] By order dated July 24, 1997, the amount of attorney's fee was set at \$1,000.

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In The Supreme Court

APPEAL FROM FLORENCE COUNTY
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Honorable R. Knox McMahon

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In re:

Eris Gail Smith, Appellant,

v.

Judy Smith Jones, Jacquelyn Brown, James Ervin
Smith, Timothy David Smith, Jamie Smith, and Mikie
Smith, Defendants

Of whom Judy Smith Jones is the, Respondent.

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins
Riley & Scarborough LLP, attorneys for Appellant, do hereby certify that I have served
all counsel in this action with a copy of the pleading(s) hereinbelow specified by
mailing a copy of the same by United States Mail, postage prepaid, to the following
address(es):

Pleadings: Return to Respondent's Motion for Costs

Counsel Served:

J. René Josey, Esquire
Jeffrey L. Payne, Esquire
Turner Padgett Graham & Laney
P.O. Box 5478
Florence SC 29502



Eileen Hindman
Administrative Assistant

2/21

, 2018



NELSON MULLINS RILEY & SCARBOROUGH LLP
ATTORNEYS AND COUNSELORS AT LAW

C. Mitchell Brown
T 803.255.9595 F 803.255.9025
mitch.brown@nelsonmullins.com

1320 Main Street | 17th Floor
Columbia, SC 29201
T 803.799.2000 F 803.256.7500
nelsonmullins.com

February 21, 2018

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

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SC Court of Appeals

RE: In the Matter of the Estate of Eris Singletary Smith
Probate Roll No.: 2013-ES-21-190
Appellate Case No. 2013-002810
Our File No. 42246/01500

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of Return to Respondent's Motion for Costs and Proof of Service in the above-referenced matter. We would ask that you file the original and return the filed copies to this office via our courier.

By copy of this letter to counsel of record, we are serving them with a copy of this pleading.

Additionally, enclosed is our check in the amount of \$25.00 for the required filing fee.

With kind regards, I remain

Sincerely yours,

C. Mitchell Brown

CMB:eh
Enclosure