

LISA FISHER
P.O. Box 91112
Long Beach, CA 90809-1112
(866) 206-9066 Ext. 9861 [Toll-free]
cell: (562) 965-3267
fax: (866) 6 10-4371
lfisher6736@yahoo.com

RECEIVED

NOV 01 2018

S.C. SUPREME COURT

October 29, 2018

Via US Mail and Fax:
1-803-734-1499

Honorable Daniel E. Shearouse, Clerk of Court
South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

Re: Ex Parte Lisa Fisher
Appellate Case No. 2018-001332

To the Honorable Daniel E. Shearouse:

Enclosed please find the following documents with the proper copies for filing:

- 1) **APPELLANT LISA FISHER'S OPPOSITION TO MOTION TO COSTS**
- 2) **PROOF OF SERVICE**

Please conform the face pages of the documents and return in the Self Addressed Stamped Envelope.

Thank you for your assistance. As set forth below, we are serving this letter on all parties. My cell phone number is (562) 965-3267 if you have any questions.

Sincerely,

Lisa Fisher, Esq.

Enclosures

cc: Jessica Crowley (via mail and email)
Neil D. Thompson (via mail and email)

THE STATE OF SOUTH CAROLINA

In the Supreme Court

RECEIVED

NOV 01 2018

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Diane Schafer Goodstein, Circuit Court Judge

Circuit Court Case No. 2017CP1006629
Appellate Court Case No. 2018-001332

Ex Parte Lisa Fisher,Appellant

In re Bessie Huckabee.....Respondent

v.

Candace Rickborn.....Defendant

APPELLANT LISA FISHER'S OPPOSITION TO MOTION TO COSTS

LISA FISHER, ESQUIRE (*Pro Se*)
P.O. Box 91112
Long Beach, CA 90809-1112
562-965-3267
lfisher6736@yahoo.com

(Appellant)

COMES NOW Lisa Fisher, Appellant in the above appeal, and pursuant to Rule 240(e), SCACR, timely files their Return in opposition to the Motion for Costs prematurely filed by Counsel Jessica Crowley on or about October 19, 2018.

I.
OPPOSITION TO COSTS:
STATEMENT OF THE CASE

This Court dismissed Appellant's notice of appeal on September 21, 2018.

In the order, This Court also ruled that:

“Because the magistrate has not yet issued an award of attorney’s fees against Rickborn or Fisher, we make no determination on whether Fisher might be aggrieved by a future decision to award attorney’s fees in this action. (Exhibit A., Request for Judicial notice of September 21, 2018 order, fn. 1)

On or about October 5, 2018, the magistrate allocated \$5,000.00 of the cash appeal bond to Respondents. Appellant Lisa Fisher contends that this award to Respondents is improper, and further supports the rationale that Lisa Fisher set forth in this Appeal. The award of these “damages” to Respondent are nothing more than a windfall to Bessie Huckabee and her counsel for an improper ejection proceeding.

In the October 5, 2018 order (attached hereto as Exhibit B), the magistrate noted that:

“It is not proper for this Court to award a money judgment in favor of the Respondent which would exceed the fixed \$5,000.00 appeal bond.”

The court went on to find that:

“...there was no holding in this Court, or any finding by the circuit court, which specifically established a landlord-tenant relationship between these two parties (much less a holdover tenancy finding), S.C.

Code § 27-40-770 is not an applicable trigger for this appeal bond amount or allocation estopped from relying on this statutory provision to recover these alleged damages, since Respondent specifically renounced a landlord-tenant relationship in her Application for Ejectment.”

Further, the magistrate noted that “...just as it would not be proper for this Court to reduce the undertaking below the \$5,000.00 amount, it is equally improper for this Court to order any finding or allocation in favor of the respondents which would exceed the \$5,000.00 appeal.”

The court then allocated \$5,000.00 to Respondent.

While Appellant agrees with the rationale of the magistrate , its decision of *any* allocation of monies is against the law.

First, if as Appellant has argued, there are no grounds for damages and ejectment was the only remedy, Why was Respondent allocated *any* monies for damages under the bond. It can't be for rent, because there is no landlord tenant relationship. Attorneys fees are improper. An award for damage to the landlord's proper is improper as set forth in South Carolina Bench Book for Summary Court Judges, Civil Section § N, Elements of Common Landlord Tenant Problems, § 2, Jurisdiction of Magistrates. (See Ex. A, p. 2)

Next, based on the real issue that Candace Rickborn was an agent for Lisa Fisher, the ejectment should not have allowed *any* damages to be allocated to Respondent.

Additionally, this case presents serious problems related to control of estate property. Appellant has taken the stand, which she believes is correct, that she was duty bound to deliver the property to the right representative, and the status of the legal proceedings precluded her from delivery to any party.

Respondent's counsel's claims that it is "speculative" that Appellant will sustain damages as to Candace Rickborn, however this argument is without merit. Even had the magistrate not granted damages for some unknown wrong, Appellant would be liable as Candace Rickborn sustained damages in that she now has an ejectment on her record. This truth is not based on the unauthorized practice of law, instead it is based on the knowledge of harm that Lisa Fisher suffers.

This court restored Alice Shaw Baker's real property to Lisa Fisher pursuant to the temporary stay in the related matter, Case no. 2018-000566 ("Related case"), therefore it demonstrates that Lisa Fisher, not Candace Rickborn, was required ultimately to protect the property. When this Court later ordered Lisa Fisher (not Candace Rickborn) to turn over the real property to Respondent, it was based on an order directed to *Lisa Fisher*.

It is important to remember that Respondent failed to seek any relief in the probate court or in this Court. Respondents¹ are being rewarded for manipulating the law to obtain an unnecessary judgement against an innocent person who had no personal involvement in this case. The \$5,000.00 in unknown damages are being treated as their "spoils". They want these damages while continuing to benefit from damages directly from Lisa Fisher in the judgment in the related case.. Appellant Lisa Fisher is the person who is now responsible for the actions of her agent, while she is silenced and not permitted to speak on her own behalf, due to the dismissal. Now Lisa Fisher has to make a choice to file a new notice, go back to the circuit court, court of appeal, and this court—if she wants to have a voice to object to this obvious injustice.

¹ This court has directed correspondence to W. Westbrook Wills in the case, and has allowed him to argue at the hearings. No court has stopped him from proceeding. He does not represent the purported personal representative.

Appellant respects this Court and realizes that the case has many facets to it, but an award of costs in this case is not warranted and should not be permitted. This Court advised Respondent that she could seek sanctions against Lisa Fisher under Rule 269, and even advised that they would have to file before the issuance of the remittitur in correspondence on October 5, 2018.

Appellant notes that the accommodations to Respondents create an appearance of favoritism. They get fees or damages for seeking relief from the wrong party, under the wrong authority, without even having to file their own motion.²

Finally, what began as necessary efforts to protect Alice Shaw Baker have evolved into a new view of the scope of the law- either these statutes apply to everyone and damages can not be granted when the underlying case is merely ejectment or the law only applies to those favored by the Court. As set forth herein, this Court has authority to deny the fees and costs.

**II.
COSTS MAY NOT BE ASSESSED WHEN AN APPEAL IS
DISMISSED WITHOUT PREJUDICE**

For costs to be proper on dismissal, Case law makes it clear that dismissal must be with prejudice. The order in this matter does not state with prejudice.

Thus, case law which provides that costs are not allowed when a matter has been dismissed without prejudice include *Johnson v. Paraplane*, 321 S.C. 316, 468 S.E. 2d 620 (1996), *Peterkin v. Brigman*, 319 S.C. 367, 461 S.E. 2d 809 (1995).

The Court's ruling that: " Because the magistrate has not yet issued an award of attorney's fees against Rickborn or Fisher, we make no determination on whether Fisher might

² Appellant knows that Respondent filed a motion to dismiss, however this was after this Court dismissed the action.

be aggrieved by a future decision to award attorney's fees in this action" supports a finding that it was not dismissed without prejudice.

Also, the court dismissed the "notice of appeal". Appellant argues that this dismissal is different than dismissal of the appeal, and this court is not bound to any legal grant of attorney fees under Rule 222, SCACR.

As a final ground, Appellant contends that the award of attorney fees on appeal is inconsistent with the American Rule which provides that attorney's fees are not recoverable unless authorized by contract or statute. As such Rule 222, SCACR creates a right not authorized under South Carolina law or the South Carolina Constitution.

Appellant prays that the Court does not permit this windfall to Respondent.

October 29, 2018

RESPECTFULLY SUBMITTED,

By: 

LISA FISHER, PRO SE

PO Box 91112

Long Beach, CA 90809-1112

(562) 965-3267

email: lfisher6736@yahoo.com

The Supreme Court of South Carolina

Ex Parte Lisa Fisher, Appellant.

In Re Bessie Huckabee, Respondent,

v.

Candace Rickborn, Defendant.

Appellate Case No. 2018-001332

Lower Court Case No. 2017-CP-10-06629

ORDER

Lisa Fisher, as former conservator of the estate of Alice Shaw-Baker, filed a notice of appeal from the circuit court's decision affirming the issuance of a writ of ejectment against Candace Rickborn, Fisher's chosen caretaker of Shaw-Baker's house after Shaw-Baker's death. Because we find Fisher is not aggrieved by the circuit court's decision to eject Rickborn, we dismiss Fisher's notice of appeal.¹

Fisher also filed a motion to take judicial notice of the related appeals dealing with Shaw-Baker's estate that are currently pending before this Court. Because we dismiss Fisher's notice of appeal, we deny the motion as moot.



C.J.

FOR THE COURT

Columbia, South Carolina

September 21, 2018

¹ Because the magistrate has not yet issued an award of attorney's fees against Rickborn or Fisher, we make no determination on whether Fisher might be aggrieved by a future decision to award attorney's fees in this action.

1
EY A

cc:

Lisa Fisher

Jessica Lynn Crowley, Esquire

Neil Davis Thomson, Esquire

Warren W. Wills, III, Esquire

The Honorable Julie J. Armstrong

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Candace Rickborn,

Appellant/Defendant,

vs.

Bessie Huckabee,

Respondent/Plaintiff

IN THE MAGISTRATE'S COURT
CASE #2017CV1010903280
COMMON PLEAS: 2017CP1006629

**ORDER OF ALLOCATION OF
APPEAL BOND**

THIS ORDER arises from Appellant Candace Rickborn's ("Appellant's") appeal of a Writ of Ejectment previously granted and ordered by this Court on December 27, 2017.

On December 28, 2017, Appellant filed a Notice of Civil Appeal with the Charleston County Court of Common Pleas.

On January 10, 2018, this Court fixed and set the Appellant's Appeal Bond in the amount of Five-Thousand and 00/100 (\$5,000.00) Dollars. *See, Magistrate's Return.*

On January 17, 2018, Appellant timely filed the Notice of the Appeal Bond. Appellant paid the \$5,000.00 undertaking into this Court on the same day, as referenced by Court Receipt #1385516. *See, Magistrate's Return.*

In conjunction with her Appeal, on March 18, 2018, Appellant filed a Motion before the Charleston County Court of Common Pleas seeking a reduction in the undertaking pursuant to S.C. Code §27-40-800(d).

EX B

Judge Diane S. Goodstein heard the Appeal in Charleston County Court of Common Pleas on May 22, 2018. At the hearing, Appellant also argued its Motion for a reduced undertaking. Specifically, Appellant contended that \$5,000.00 was excessive, in part, because this arose from an ejectment proceeding pursuant to S.C. Code §27-37-20. The remedy and relief is limited to ejectment and does not include other claims or causes of action for damages, such as monetary damages, back rent, damage to the landlord's property, etc. *See*, South Carolina Bench Book for Summary Court Judges, Civil Section, §N, Elements of Common Landlord-Tenant Problems, §2, Jurisdiction of Magistrates.

On June 18, 2018, Judge Goodstein affirmed this Court's Writ of Ejectment in a filed Order. As to Appellant's Motion to reduce the undertaking, Judge Goodstein provided:

I find that S.C. Code §27-37-130 grants authority to the Magistrate to set an appeal bond for the payment of all costs and damages which may be sustained by the landlord, and I will not disturb the amount of the appeal bond. The amount of the bond to be distributed to the Respondent/Plaintiff is hereby remanded solely for the purpose that the Magistrate shall determine its proper distribution amount and allocation.

On July 30, 2018, Appellant and Respondent attended a hearing before this Court, pursuant to Judge Goodstein's remand on the appeal bond allocation.

Respondent's Proposed Allocation:

Respondent has demanded to receive funds in excess of the \$5,000.00 fixed appeal bond. Respondent based her argument on the theory that Appellant was a "holdover tenant", and, as such, Respondent is entitled to treble damages

and reimbursement of attorneys' fees pursuant to S.C. Code §27-40-770 ("Periodic tenancy; holdover remedies"). Moreover, Respondent contended these treble damages and attorneys' fees exceed the \$5,000.00 appeal bond, and, therefore, Appellant should pay additional money damages out-of-pocket over and above the fixed bond amount.

Appellant's Proposed Allocation:

Appellant acknowledged that she previously moved before the circuit court for a reduction of the undertaking pursuant to S.C. Code §27-40-800(d). In light of Judge Goodstein's decision not to disturb the bond amount, Appellant simply deferred to this Court's discretion to provide a fair allocation of the \$5,000.00 fixed appeal bond. Appellant affirmed at the hearing she had permanently vacated the property. Appellant further affirmed that, since her current counsel, Neil Thomson, Esq., took over her representation on April 11, 2018, Appellant never impeded Respondent's access, or requests for access, to the property.

This Court's Holding As to the Appeal Bond Amount:

For the following reasons, it is not proper for this Court to award a money judgment in favor of the Respondent which would exceed the fixed \$5,000.00 appeal bond.

1. In Respondent's Application for Ejectment on December 7, 2017, counsel for Respondent provided the following notarized testimony in evidence: "Candace Rickborn is an unauthorized occupant. No landlord-tenant

relationship exists between Bessie Huckabee, as Personal Representative of the Estate of Alice Shaw-Baker and Candace Rickborn . . ." See, *Magistrate's Return*.

However, in her arguments and submissions to this Court at this July 30, 2018 remand hearing, Respondent sought to rely on the "holdover tenancy" provision (S.C. Code §27-40-770) in the South Carolina Residential Landlord-Tenant Act to serve as her legal basis to trigger damages in excess of the \$5,000.00 appeal bond.

Since there was no holding in this Court, or any finding by the circuit court, which specifically established a landlord-tenant relationship between these two parties (much less a holdover tenancy finding), S.C. Code §27-40-770 is not an applicable trigger for this appeal bond amount or allocation determination. Additionally, Respondent is estopped from relying on this statutory provision to recover these alleged damages, since Respondent specifically renounced a landlord-tenant relationship in her Application for Ejectment.

2. Respondent never moved before the circuit court for a modification of the undertaking as an aggrieved party, pursuant to S.C. Code 27-40-800(d). While it is within the authority and discretion of this Court to set the appeal bond pursuant to S.C. Code §27-37-130, it is within the circuit court's jurisdiction to consider any modifications (presumably additurs or remittiturs) to the terms of the fixed undertaking. If Respondent contends that she presented evidence before the circuit court during Appellant's Motion / Appeal which would amount to a request for an increased bond amount, this Court takes judicial

notice of Judge Goodstein's finding that "she will not disturb the amount of the appeal bond."

Therefore, just as it would not be proper for this Court to reduce the undertaking below the \$5,000.00 bond amount, it is equally improper for this Court to order any finding or allocation in favor of the Respondents which would exceed the \$5,000.00 appeal bond amount.

This Court's Holding as to the Appeal Bond Allocation:

IT IS SO ORDERED that what has been remanded to this Court to consider is the proper distribution amount and allocation of the appeal bond. Any prayer for additional monetary damages and relief by the Respondents is not before this Court.

IT IS SO ORDERED the \$5,000.00 appeal bond was previously set and fixed by this Court, and it shall not be modified in its amount.

IT IS SO ORDERED as to allocation of the \$5,000.00 amount, this Court hereby awards:

Appellant: _____

Respondent: \$5,000.00

TOTAL: \$5,000.00

IT IS SO ORDERED.

So ordered this 5 day of ~~September~~ ^{October}, 2018.

Ellen S. Steinberg
Judge Ellen S. Steinberg
Charleston County Magistrate

THE STATE OF SOUTH CAROLINA

In the Supreme Court

RECEIVED

NOV 01 2018

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Diane Schafer Goodstein., Circuit Court Judge

Circuit Court Case No. 2017CP1006629
Appellate Court Case No. 2018-001332

Ex Parte Lisa Fisher,Appellant

In re Bessie Huckabee.....Respondent

v.

Candace Rickborn.....Defendant

PROOF OF SERVICE

I certify that I have served **APPELLANT LISA FISHER'S OPPOSITION TO MOTION TO COSTS** upon the following parties by depositing a copy of it in the United States

Mail, postage prepaid, on October 29, 2018 addressed as follows:

Neil D. Thomson, Esquire
Ford Wallace Thomson LLC
715 King Street
Charleston, SC 29403

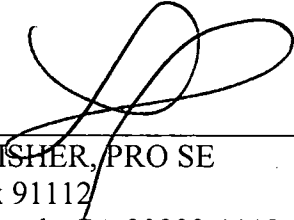
//

//

Jessica L. Crowley, Esquire
PO Box 30189
Charleston, SC 29417

October 29, 2018

By: _____



LISA FISHER, PRO SE
PO Box 91112
Long Beach, CA 90809-1112
(562) 965-3267
email: lfisher6736@yahoo.com