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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Diane Schafer Goodstein, Circuit Court Judge

Lower Court Case No. 2017-CP-1006629
Appellate Case No. 2018-001332

Ex Parte Lisa Fisher..... Appellant

In Re Bessie Huckabee Respondent

v.

Candace Rickborn Defendant

RESPONDENT'S REPLY TO
APPELLANT'S OPPOSITION TO
MOTION FOR COSTS

COMES NOW Jessica Crowley, counsel for Respondent in the above-captioned appeal, and pursuant to Rule 240(f), timely files her Reply to *Appellant's Opposition to Motion to [sic] Costs* filed on October 29, 2018:

On July 20, 2018, Appellant Lisa Fisher filed her Notice of Appeal in this matter, although she was not a party to the lower court action. On the same date, the Honorable Daniel Shearouse, Clerk of Court, sent correspondence to Ms. Fisher asking her to explain what legal interest she had in the ejection action in light of this Court's Order in Case Number 2018-000556 placing control

of all real and personal property in the Personal Representative, Bessie Huckabee. [July 20, 2018 Letter from Hon. Daniel Shearouse]. In a letter dated August 3, 2018 and filed in this matter on August 6, 2018, Respondent replied that Ms. Fisher was not an aggrieved party in the lower court action and therefore had no right to appeal. Nevertheless, on September 7, 2018 Ms. Fisher filed her initial brief in this matter.

On September 21, 2018, prior to the time for filing her Reply Brief pursuant to Rule 208(a)(2), SCACR, the Respondent mailed her *Motion to Dismiss Respondent's Appeal, Memorandum in Support of Motion to Dismiss Appeal*¹, and *Request for Judicial Notice* for filing in this matter. On the same day, and at that time unknown to Respondent, this Court executed an Order dismissing the Appellant's notice of appeal on the grounds that Appellant is not an aggrieved person in this matter. Remittitur was entered on October 10, 2018.²

ARGUMENT

I. COSTS SHALL BE TAXED AGAINST THE APPELLANT WHEN AN APPEAL IS DISMISSED.

On October 19, 2018, the Respondent timely filed her *Motion for Costs*, pursuant to Rule 222, SCACR, which states that “unless otherwise ordered by the appellate court or agreed by the parties, costs shall be taxed against the appellant when the appeal is dismissed . . .” Rule 222(a), SCACR (emphasis added). While Appellant makes the assertion that costs cannot be awarded unless the dismissal is with prejudice, neither of the cases cited in Appellant's motion state this proposition. Rather, Johnson v. Paraplane, 321 S.C. 316, 468 S.E. 620 (1996) and Peterkin v.

¹ In her *Memorandum in Support of Motion to Dismiss*, Respondent requested sanctions pursuant to Rule 269, SCACR. Appellant's suggestion that this Court acted with impropriety by informing the Respondent that, because the appeal was dismissed, she would need to file a separate pleading in order to pursue sanctions further illustrates the frivolous actions of Appellant. Because she received said correspondence on the same day as the notice of remittitur, Respondent did not pursue sanctions, but instead timely made a Motion for Costs according to Rule 222, SCACR.

² On October 5, 2018, the Magistrate Court executed an order allocating Ms. Rickborn's appeal bond to Respondent, Bessie Huckabee. No costs, fees or damages were assessed against Appellant in the lower courts.

Brigman, 319 S.C. 367, 461 S.E.2d 809 (1995) are both cases in which the appeal was dismissed as not immediately appealable, and costs, pursuant to Rule 222, SCACR, were also denied. Johnson, 321 S.C. 316 (Court of Appeals' order was vacated, and both parties' appeals dismissed because the order was not directly appealable); Peterkin, 319 S.C. 367 (appeal dismissed without prejudice because the order was not immediately appealable). Neither case states that costs cannot be taxed against the appellant if the appeal was dismissed without prejudice. The language of Rule 222, SCACR itself does not distinguish between a dismissal with or without prejudice. Appellant fails to support her argument with any applicable case law or statutory authority and her request should therefore be denied.

Appellant fails to cite any authority to support her contention that Rule 222, SCACR is violative of South Carolina Law and the South Carolina Constitution, or that dismissal of a "notice of appeal" differs from a dismissal of an appeal as relates to Rule 222; the argument should therefore be disregarded and costs in this matter should be taxed to Lisa Fisher as directed by Rule 222(a), SCACR.

II. APPELLANT'S OPPOSITION TO COSTS RAISES ISSUES THAT ARE NOT PROPERLY BEFORE THIS COURT.

Section I of *Appellant's Opposition to Motion for Costs*, "Opposition to Costs: Statement of the Case", presents a lengthy discussion of the Magistrate's October 5, 2018 Order allocating the appeal bond posted by Candace Rickborn to Bessie Huckabee. It is essentially a continuation of Ms. Fisher's argument on appeal, but includes matters that occurred after the dismissal of Appellant's appeal in this matter.³ Rule 260(a), SCACR states that following involuntary dismissal of an appeal, "[t]he clerk shall remit the case to the lower court . . . unless a motion to

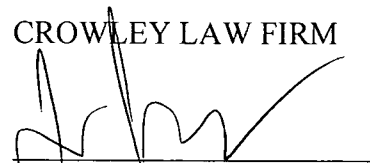
³ In her discussion of the October 5, 2018 Order, Ms. Fisher continues to fail to show how she is an aggrieved party in this matter.

reinstate the appeal has been actually received by the court within fifteen days of filing of the order of dismissal . . .” Rule 260(a), SCACR. Ms. Fisher has not filed a motion to reinstate the appeal and cannot therefore continue to present argument on the merits of her appeal. Appellant does not offer statutory authority or case law to support her opposition to costs under Rule 222, SCACR and her request should therefore be denied.

Respondent respectfully requests that this Court deny *Appellant’s Opposition to Motion to [sic] Costs* and requests that this Court tax costs in the amount of \$2,500.00 to Appellant, Lisa Fisher, in favor of Respondent pursuant to Rule 222(a) and (b), SCACR.

Respectfully submitted,

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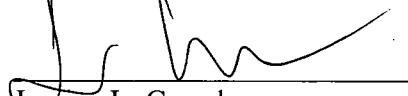
PROOF OF SERVICE

I, Jessica L. Crowley hereby certify that I have, on the day indicated, served counsel and parties below with *Respondent's Reply to Appellant Lisa Fisher's Opposition to Motion for Costs* by mailing a copy of same via U.S. Mail, postage pre-paid, to the parties at the following addresses:

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November 1, 2018



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