

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

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DEC 05 2018
S.C. SUPREME COURT

Appellate Case No.: 2016-001941

Memorandum Opinion No. 2018-MO-29
(Filed August 29, 2018; Rehearing denied November 8, 2018)

RESPONDENTS' RETURN TO PETITIONER'S MOTION FOR COSTS

On November 26, 2018, Appellant filed a motion for costs and attorney's fees pursuant to Rules 222 and 242, SCACR. In his motion, Petitioner seeks attorney's fees and costs in the amount of \$16,385.25, which Petitioner splits as \$5,792.14 for "Fragosa I" and \$10,593.21 for "Fragosa II." Respondents, by and through their undersigned counsel, hereby respond to Appellant's motion, seeking a reduction of costs requested by Appellant.

Appellant presumably differentiates "Fragosa I" and "Fragosa II," as a reference to the initial decision of the South Carolina Court of Appeals dated November 27, 2013, and the subsequent March 30, 2016 Court of Appeals and August 29, 2018 Supreme Court opinions. Respondent hereby addresses "Fragosa I" and "Fragosa II" individually below.

Objections to Costs Listed under "Fragosa I"

"Fragosa I" presumably references the November 27, 2013 opinion of the Court of Appeals, wherein the Court of Appeals affirmed in part the decision of the Workers'

Compensation Commission and remanded the case. Respondents argue that Petitioner is not allowed costs in “Fragosa I” pursuant to Rule 222(a), SCACR, since the appeal was affirmed in part and not dismissed, affirmed, or reversed as required by Rule 222(a).

Even if this Court determines Petitioner is entitled to costs for “Fragosa I” pursuant to Rule 222(a), SCACR, Respondents argue that the amount of attorney’s fees allowed are determined to apply to a decision filed on or after the date of the Supreme Court’s most recent order controlling costs. The Supreme Court did not issue an order increasing attorney’s fees from \$1,000.00 to \$2,500.00 until January 17, 2018, so any attorney’s fees for a decision prior to that time, including the November 27, 2013 decision in “Fragosa I,” would be paid at the previously set amount of \$1,000.00.

Finally, with regard to the itemization of “Fragosa I” found at page 2/4 of Petitioner’s motion attachment, Respondents submit the added total of the costs of requested comes to \$3,292.04, not the \$5,792.04 figure requested by Appellant in both his itemized statement of costs and related motion.

Based on the arguments set forth above, Respondents respectfully request this Court deny Petitioner’s motion for costs and attorney’s fees for “Fragosa I,” or in the alternative, reduce the requested fees accordingly.

Objections to Costs Listed under “Fragosa II”

Respondents again argue that pursuant to Rule 222(a), SCACR, Petitioner is not entitled to any costs related to the March 30, 2016 opinion of the South Carolina Court of Appeals, since Petitioner was the Appellant and the Court of Appeals affirmed the decision of the Commission. Therefore, Petitioner is not allowed to seek costs under Rule 222, and Petitioner’s appropriate costs are limited to costs obtained pursuant to Rule 242, SCACR.

Again, if this Court determines Petitioner is entitled to costs under Rule 222, SCACR, for

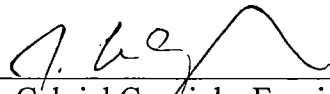
Fragosa II, despite the fact that Petitioner was Appellant in that case and the Court of Appeals affirmed the decision of the Commission, Petitioner's request for \$2,500.00 in attorney's fees is improper since the South Carolina Supreme Court did not issue an order increasing attorney's fees from \$1,000.00 to \$2,500.00 until January 17, 2018, and therefore any fees applied to a decision filed in 2016 would be \$1,000.00 not \$2,500.00.

Defendants make no objections to the Petitioner's motion for costs and fees for "Fragosa II" pursuant to Rule 242, SCACR, in the amount of \$5,799.89.

CONCLUSION

Based upon the foregoing arguments, Respondents respectfully request that this Court deny Petitioner's motions for any costs and fees under "Fragosa I" or "Fragosa" pursuant to Rule 222, SCACR, and allow Petitioner's motion for costs and fees under Rule 242, SCACR for "Fragosa II" only. In the alternative, Respondents request this Court reduce the requested costs and fees accordingly for the reasons set forth above.

RESPECTFULLY SUBMITTED,



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December 6, 2018

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Hector G. Fragosa, (Employee/Claimant),Petitioner,
v.
Kade Construction, LLC (Employer) and
Key Risk Management Services, Inc. (Carrier), Respondents.

PROOF OF SERVICE

The undersigned certifies that on the date indicated below, she served counsel for Appellant with a copy of **Respondents' Return to Motion for Costs and Attorney's Fees** by mailing copies of the same by United States Mail postage prepaid on December 6, 2018 to the following addresses:

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December 6, 2018
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