

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable Edgar W. Dickson

Appellate Case No. 2017-000095
Lower Case No. 2016-CP-18-1849

RECEIVED
MAR 27 2019
SC Court of Appeals

IN RE: TRUST EIP CREATED UNDER THE LAST WILL AND TESTAMENT OF EUNICE
I. PAGE DATED OCTOBER 14, 1992,

Richard S. Henson and Vann Kenneth Henson Respondents,

v.

Albert T. Henson, Jr., and Julian Reid Henson, Respondents in the Court below,

Of Whom Albert T. Henson is the Appellant.

**RESPONDENTS' REPLY TO APPELLANT'S RETURN TO MOTION FOR COSTS
AND FEES AND RETURN TO MOTION FOR SANCTIONS UNDER SCACR 269**

Despite causing significant delays to the resolution of the underlying case and causing Respondents to incur tens of thousands of dollars in legal fees responding to an unsuccessful appeal, an unsuccessful petition for rehearing *en banc*, and an unsuccessful petition for writ of certiorari, Appellant advances a hypertechnical application of the South Carolina Appellate Court Rules in an attempt to bar Respondents from recovering a modest amount in appeal fees and costs and to impose sanctions on Respondents. Appellant's arguments elevate form over substance, and they should be rejected accordingly.

Respondents originally filed a motion for costs and fees in the Supreme Court after the remittitur was issued because the Supreme Court had denied Appellant's petition for writ of certiorari. After receiving Appellant's return to the motion in which he argued that the motion should have been filed in the Court of Appeals instead of the Supreme Court, Respondents immediately filed the present motion in an abundance of caution because neither Rule 222(d) nor Rule 242(j)(4), SCACR, expressly identify the proper court for filing such motion. Although the present motion was filed seventeen days after the remittitur was issued, there is no dispute that the original motion filed in the Supreme Court was timely filed within fifteen days of the issuance of the remittitur.

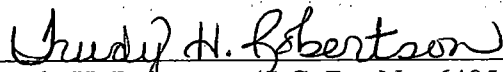
Appellant now argues that Respondents' motion for costs and fees should be denied because it is untimely under Rule 222(d), SCACR. This argument should be rejected because it elevates form over substance by claiming that a party's failure to file a motion in the right court should deprive that party of a substantive right to partial reimbursement for the considerable costs associated with prevailing in an appeal. Appellant relies solely on hypertechnical arguments without asserting any equitable reason why he should not be taxed for costs and fees after pursuing an unsuccessful appeal, which warranted neither a published opinion nor writ of certiorari.

To the extent that the motion should have been filed originally in this Court and is untimely (by a mere two days) as a result, the Court has discretion under Rule 263(b) to extend the time for performing any act. In this case, the Court should exercise that discretion by extending the deadline to allow for the motion to be considered timely filed based on the lack of any prejudice to Appellant and the appellate court rules' ambiguity regarding the proper venue for filing a motion for costs and fees.

Regardless of the merits of Appellant's arguments against the motion, he has presented no persuasive grounds for the imposition of sanctions under Rule 269, especially considering the considerable costs and fees incurred by Respondents in defending against Appellant's unsuccessful appeal. The motion for costs and fees is not frivolous given Respondents' timely filing of the original motion in the Supreme Court and the lack of clarity in the appellate court rules about the proper venue for such motion. Furthermore, Appellant's counsel should not be rewarded for the time and costs incurred to write an eight-page brief and thirteen-paragraph affidavit in response to a routine motion, when Appellant's position could have been made concisely.

Therefore, Respondents request that the Court grant their motion for costs and fees and deny Appellant's motion for sanctions.

Respectfully submitted,



Trudy H. Robertson (S.C. Bar No. 64856)

Paul M. Lynch (S.C. Bar No. 12833)

E. Brandon Gaskins (S.C. Bar No. 73274)

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Attorney for Respondents

March 25, 2019

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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The Honorable Edgar W. Dickson

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Of Whom Albert T. Henson is the Appellant.

PROOF OF SERVICE

I certify that I have served the Respondents' Reply to Appellant's Return to Motion for Costs and Fees and Return to Motion for Sanctions Under SCACR 269 by depositing a copy of it in the United States Mail, postage prepaid, on March 25th, 2019, addressed to attorneys for the Appellant, Daniel F. Blanchard, III, Rosen, Rosen & Hagood, LLC, 151 Meeting Street, Suite 400, Post Office Box 893, Charleston, SC 29402.

Respectfully submitted,

Trudy H. Robertson

Trudy H. Robertson (S.C. Bar No. 64856)

Paul M. Lynch (S.C. Bar No. 12833)

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Attorney for Respondents

March 25th, 2019

Charleston, South Carolina

March 25, 2019

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
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Re: Richard S. Henson and Vann Kenneth Henson v. Albert T. Henson, Jr., and Julian Reid Henson
Appellate Case No.: 2017-000095
MVA File No.: 036899.000004

Dear Mr. Kitchings:


With regard to the above-referenced action, enclosed for filing please find the original and seven (7) copies of **Respondents' Reply to Appellant's Return to Motion for Costs and Fees and Return to Motion for Sanctions**, together with the original and one copy of the **Proof of Service**.

Please file the originals and return a file stamped copy of each to me in the enclosed self-addressed, stamped envelope.

By copy of this letter, we are serving Appellant's attorneys with a copy of aforementioned documents.

Very truly yours,

Moore & Van Allen PLLC



Trudy H. Robertson

THR/ws

Enclosures

cc (w/encl.): Daniel F. Blanchard, III

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SC Court of Appeals

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