THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge, Second Judicial Circuit
Case No. 2018CP0200675

Appellate Case No. 2019-000288

Ex parte: Daniel Geitner,

Appellant,

In re: Kelly Sims,

Respondent,

v.

Sharon Enteen-Prusso a/k/a
Sharon Enteen, and
Falcon Ridge, Inc.,

Defendants.

REPLY BRIEF OF APPELLANT

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COMES NOW Daniel Geitner, non-party witness below and Appellant herein ("Mr. Geitner"), and files this his *Reply Brief of Appellant* for the appeal of that certain order entered January 16, 2019 ("Trial Court Order"), in the Court of Common Pleas of Aiken County, Civil Action File Number 2018CP0200675 ("Trial Court"), showing the Court as follows:

ARGUMENT

Respondent's Brief highlights the reasons the Trial Court Order should be reversed. As an initial matter, Respondent relies on paragraph 6 of the Trial Court Order as setting forth, in part, specific findings as to the factors to be considered in determining the reasonableness of her requested attorneys' fees. The Trial Court at paragraph 6 of the Trial Court Order finds that the "chief" factor in the case supporting the award is that "the expenses were actually agreed and incurred." Nowhere in the factors to be considered by a finder of fact in determining the reasonableness of an attorney's fee award does this "factor" appear. *See Blumberg v. Nealco, Inc.*, 310 S.C. 492, 493, 427 S.E.2d 659, 660 (S.C. 1993) (the factors are: (1) nature, extent, and difficulty of the legal services rendered; (2) time and labor devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) fee customarily charged in the locality for similar services; and (6) beneficial results obtained.) In fact, "[w]hen determining the reasonableness of attorney's fees under a statute mandating the award of attorney['s] fees, the contract between the client and his counsel does not control the determination of [reasonableness]." *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 759 (1997).

Additionally, the cases of *Baron Data Systems, Inc. v. Loter*, 297 S.C. 382, 377 S.E.2d 296 (1989) and *Seabrook Island Property Owners' Assoc. v. Berger*, 365 S.C. 234, 616 S.E.2d 431 (2005), cited by Respondent, highlight the Trial Court's failure to make specific findings of fact as to each factor under *Blumberg*. In *Baron Data Systems* the trial court "meticulously"

reviewed the fee request in accordance with the *Blumberg* factors. In *Seabrook Island*, the trial court made "detailed" findings of fact in connection with its consideration of the *Blumberg* factors. Here, the Trial Court only made a cursory reference to the *Blumberg* factors in a summarized fashion at paragraph 7 of the Trial Court Order. Such is inconsistent with the required analysis for an award of attorney's fees.

Respondent further asserts that the Trial Court Order should not be reversed if it is supported by "any" evidence. *Respondent's Brief* at page 5. Such is not the law; rather, the award must be supported by "competent evidence." *Baron Data Systems*, 297 S.C. at 384. As an initial matter there is no competent evidence as to whether the amounts charged by Respondent's counsel is reasonable. While each lawyer states in their respective affidavits that the amounts are reasonable, Mr. Geitner submits that such is not competent evidence. Like in *Taylor v. Medenica*, 331 S.C. 575, 503 S.E.2d 458 (1998), a case cited by Respondent, competent evidence of reasonableness as to hourly rates and time spent should have been introduced through an independent attorney not involved in the case who is familiar with the type of matter involved and the rates ordinarily charged for such work in the area. Respondent failed to produce any competent evidence on this issue. This lack of evidence especially highlights the amounts charged for involving out of state counsel on a matter of South Carolina law where Respondent seeks to recover for a great number of hours for travel and the preparation of a *pro hac vice* application. Moreover, the inclusion of billings for travel and the preparation of a *pro hac vice* application does not increase the difficulty of a matter as seemingly suggested by Respondent in her Brief.

Additionally, Respondent failed to provide the Trial Court with any competent evidence of the professional standing of counsel. Respondent's local counsel is not in a position to opine as to the professional standing of Respondent's Georgia counsel as he does not practice law in Georgia.

CONCLUSION

In reviewing an award of attorneys' fees, this Court may apply its own view of the preponderance of the evidence on the matter. *Hardaway Concrete Co., Inc. v. Hall Contracting Corp.*, 374 S.C. 216, ____, 647 S.E.2d 488, 495 (2007). Accordingly, for all the foregoing reasons and those set forth in *Appellant's Brief*, this Court should reverse the circuit court's decision and remand this case for proceedings consistent with the Court's decision.

Respectfully submitted, this the 5th day of July, 2019.

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PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below he served counsel for the Respondent with a copy of the *Reply Brief of Appellant* by mailing a copy of the same by United States Mail with first class postage prepaid to the following addresses:

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