

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
Workers' Compensation Commission

Appellate Case No. 2016-002266

RECEIVED
JUL 11 2019
SC Court of Appeals

Renee Robles, Employee, Claimant,Appellant,

v.

Party Reflections, Inc., Employer, and
Employers Assurance Company, Carrier, Respondents,

**RESPONDENTS' RETURN IN OPPOSITION OF APPELLANT'S
MOTION FOR COSTS AND ATTORNEYS' FEES**

TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF
APPEALS:

Following the Court's Order affirming in part and reversing in part the South Carolina Workers' Compensation Commission's order, Appellant Renee Robles ("Appellant") moved for costs and fees pursuant to Rule 222, SCACR. Respondents Party Reflections, Inc. and Employers Assurance

Company (“Respondents”) submit this Return in Opposition of Appellant’s Motion.

LAW/ANALYSIS

Rule 222(b), SCACR provides for costs while the appeal is before the Court of Appeals. Specifically, Rule 222(b) outlines:

Unless otherwise ordered by the appellate court or agreed by the parties, costs shall be taxed against the appellant when the appeal is dismissed or judgment on appeal is affirmed. When a judgment is reversed, costs shall be taxed against the respondent unless the court orders otherwise. **When an appeal is affirmed or reversed in part or is vacated, costs shall be allowed only as ordered by the appellate court.**

[Emphasis added].

The party entitled to recover costs can only recover: (1) the filing fee; (2) the costs of the court report’s transcript; (3) premiums paid for costs of supersedeas bonds or other bonds; (4) the costs of printing the record on appeal; (5) the costs of printing the final brief; and (6) the \$1,000 attorney’s fees. Rule 222(b), SCACR.

This appeal arises out of order from the Workers’ Compensation Commission, finding the Single Commission erred in calculation of the average weekly wage and compensation; calculated Appellant’s average week

wage at \$786.03 with a compensation rate of \$524.05; and finding Appellant was not entitled to Temporary Total Disability (“TTD”) compensation. Appellant appealed.

The Court of Appeals **affirmed** the Commission’s ruling regarding average weekly wage and compensation rate. The Court of Appeals held Appellant’s argument that he missed twenty-nine days of work between March 17 and April 14 was unpreserved for appellate review, thus finding Appellant did not raise this issue to the Appellate Panel. Accordingly, the Court of Appeals found Appellant was not entitled to TTD benefits on April 7 until he reached MMI.

The Court of Appeals reversed the Commission’s ruling that Appellant was not entitled to TTD compensation for the period of June 2014 until Appellant reached maximum medical improvement. Therefore, the Commission’s Order was **affirmed in part**, and reversed in part by the Court of Appeals.

Because of the split opinion by the Court, Appellant should not be entitled to attorney’s fees. The reversed issue was fact specific to the subject case. The Court noted that the determination of entitlement to TTD is “a quintessential factual question for the fact-finder, the Commission.” See

Pollack v. S. Wine & Spirits of Am., 405 S.C. 9, 15, 747 S.E.2d 430, 433 (2013). Appellant has provided no reasoning as to his entitled to costs and attorney's fees, with the exception of citing Rule 222, SCACR. The Rules nor case law mandate that Appellant is entitled to costs and attorney's fees where the decision is only reversed in part. In short, Appellant is not the sole prevailing party in this appeal.


Alternatively, to the extent the Court in its discretion grants Appellant's motion, the costs and fees articulated therein shall be reduced. Appellant should not be entitled to recover the full sums of the costs and fees associated with this appeal in light of the Court's ruling affirming a substantial portion of the Commission's order, a portion on which Respondents spent substantial fees and costs in defending on appeal.

Accordingly, Respondents respectfully request the Court deny Appellant's Motion for Costs or in the alternative, reduce the request of fees and costs.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

COLLINS & LACY, P.C.

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ATTORNEYS FOR RESPONDENTS

**RESPONDENTS' RETURN IN
OPPOSITION OF APPELLANT'S
MOTION FOR COSTS AND
ATTORNEYS' FEES**

Columbia, South Carolina
July 11, 2019

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PROOF OF SERVICE

I hereby certify that I served **RESPONDENTS' RETURN IN OPPOSITION OF APPELLANT'S MOTION FOR COSTS AND ATTORNEYS' FEES** upon all parties, by placing a copy in the United States mail, postage prepaid, to all counsel of record on July 11, 2019, addressed to the following:

COUNSEL SERVED:

Stephen B. Samuels, Esquire
Samuels Law Firm, LLC
1320 Richland Street
Columbia, SC 29201
COUNSEL FOR APPELLANT

Mark R. Calhoun, Esquire
Calhoun Law Firm
714 East Main Street
Lexington, SC 29072
COUNSEL FOR APPELLANT

Respectfully submitted,

COLLINS & LACY, P.C.

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ATTORNEYS FOR RESPONDENTS

**PROOF OF SERVICE -
RESPONDENTS' RETURN IN
OPPOSITION OF APPELLANT'S
MOTION FOR COSTS AND
ATTORNEYS' FEES**

Columbia, South Carolina
July 11, 2019



Kelsey J. Brudvig | D: 803.255.0418 | E: kbrudvig@collinsandlacy.com

July 11, 2019

VIA HAND DELIVERY

The Honorable Jenny A. Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

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SC Court of Appeals

Re: *Robles v. Party Reflections, Inc.*
Appellate Case No. 2016-002266
C&L File No. 001655-00857

Dear Ms. Kitchings:

Please find enclosed the original and seven (7) copies of Respondent's Return in Opposition of Appellant's Motion for Costs and Attorneys' Fees in connection with the above referenced matter. Please file the original and return one copy to our office via our courier.

By copy of this letter to counsel of record, we are serving same on them.

Respectfully,

A handwritten signature in black ink, appearing to read "Kelsey Brudvig".

Kelsey J. Brudvig

KJB/mmm

Enclosures

cc (via U.S. Mail and email):

Stephen B. Samuels, Esquire

Mark R. Calhoun, Esquire

Collins & Lacy
ATTORNEYS AT LAW

1330 Lady Street, Sixth Floor (29201) Post Office Box 12487 | Columbia, SC 29211

VIA HAND DELIVERY
The Honorable Jenny A. Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201
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