

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

Roger L. Couch, Circuit Court Judge

Appellate Case No. 2017-001898
Lower Court Case No. 2009-CP-04-04482

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SEP 23 2019

S.C. SUPREME COURT

Anderson County.....Petitioner-Respondent,

v.

Joey Preston and the South Carolina Retirement System, Defendants,
Of whom Joey Preston is theRespondent-Petitioner,

And the South Carolina Retirement System is the Respondent.

**PETITIONER-RESPONDENT'S REPLY IN SUPPORT
OF MOTION FOR COSTS**

The arguments in the Return of Respondent-Petitioner Joey Preston ("Preston") are baseless. Petitioner-Respondent Anderson County ("Anderson County") was plainly the prevailing party on appeal; the trial court's ruling in favor of Preston was reversed, and this Court has instructed that a substantial monetary judgment be entered against Preston. Moreover, Anderson County has supported its claim for costs, all of which are reimbursable by rule; Preston has made no showing to the contrary. This Court should grant Anderson County's Motion and award the costs set out in the affidavit attached to the Motion, as provided in Rules 222 and 242 of the South Carolina Appellate Court Rules.

ARGUMENT

I. Anderson County Prevailed in This Court and Is Entitled to an Award of Costs.

Anderson County prevailed before this Court, which issued a decision that had the effect of reversing the Circuit Court in full. The South Carolina Appellate Court Rules entitle Anderson County to an award of costs, and Preston's arguments to the contrary ignore the plain language of the applicable rules.

Anderson County brought this lawsuit for a clear purpose: to obtain judicial invalidation of a severance agreement (the "Severance Agreement") between the County and Preston, and to compel Preston to repay what he was paid under the Severance Agreement. The Circuit Court ruled against the County, upholding the validity of the Severance Agreement and further ruling for Preston on his counterclaim, holding that Anderson County had breached the Severance Agreement by bringing this lawsuit. The Circuit Court also denied the County's motion for reconsideration, which argued the Severance Agreement should be invalidated for lack of a quorum.

All of these victories for Preston were undone on Appeal. Both the Court of Appeals and this Court agreed with Anderson County the Severance Agreement was invalid due to the lack of a quorum in Anderson County Council when the Agreement was passed. Specifically, this Court determined that "because the Council acted without the quorum necessary for taking valid action, the Severance Agreement is null and void," and this Court remanded this matter to the Circuit Court "to determine the exact amount that Preston must refund the County." The ruling that the Severance Agreement was invalid also had the effect of reversing the Circuit Court's determination that the County had breached that (now nonexistent) agreement.

For purposes of the instant Motion, the key point is that this Court's decision had "the effect of reversing the judgment of the lower court or tribunal which was on appeal." When that

is the case, “costs *shall be assessed* against the respondent before the Court of Appeals.” Rule 242(j)(1) (emphasis added). Preston was the respondent before the Court of Appeals. An award of costs against him is neither discretionary nor debatable.

Preston’s apparent contention (*see* Return at 3) that this Court reversed the Circuit Court only in part is incorrect. The Circuit Court determined that the Severance Agreement was valid, that Preston was entitled to retain the benefits he received under that Agreement, and that the County had breached the Severance Agreement. This Court, to the contrary, determined the Severance Agreement was invalid and provided instruction to the Circuit Court on how to fashion an appropriate remedy for the County on remand. That is a reversal in full.¹

The fact that this Court vacated the opinion of the Court of Appeals because the Court of Appeals lacked a quorum when it rendered its decision is wholly immaterial to this Motion. Rule 242(j)(1) does not consider the effect of this Court’s decision on the decision of the Court of Appeals, but rather the effect of this Court’s decision on “the judgment of the lower court or tribunal *which was reviewed by the Court of Appeals.*” Rule 242(j)(1). What matters is whether the original judgment was reversed. The fact that this Court agreed with Preston that the decision of the Court of Appeals was invalid does not matter, for two reasons. First, this Court adopted the reasoning of that decision, so there was no “reversal” of the Court of Appeals (even if that were relevant). Second, as already noted, what matters is that this Court reversed the

¹ Even if this Court determines for purposes of this Motion that its reversal was only in part, this Court has held – in one of the cases cited in Preston’s own Return – that “a party need not be successful as to all issues in order to be found to be a prevailing party.” *Heath v. County of Aiken*, 302 S.C. 178, 182, 394 S.E.2d 709, 711 (1990). As this Court explained in *Heath* (in language Preston himself quotes) the “prevailing party” is “[the] one who successfully prosecutes the action . . . prevailing on the main issue . . . [and] is the one in whose favor the decision or verdict is rendered and judgment entered.” *Id.* at 182-83, 394 S.E.2d at 711; *see* Return at 6 (quoting *Heath*). Under the standard of *Heath*, the “prevailing party” here is unquestionably the County.

original judgment of the Circuit Court and remanded “to determine the exact amount that Preston must refund the County.” In other words, the County prevailed, and that entitles the County to costs.

This Court’s determination that a payment the County made to the South Carolina Retirement System is not recoverable does not affect the County’s right to costs from Preston either. *See* Return at 6-7. This money was paid to the Retirement System, not to Preston; the County is not seeking costs from the Retirement System. Preston has been ordered to pay back to Anderson County “the total amount the County paid in cash to Preston pursuant to the Severance Agreement,” in addition to the value of a County vehicle given to Preston. The Court’s decision not to include in its calculation of damages funds paid to the State Retirement System does not implicate the award of costs against Preston. The applicable rule of appellate procedure is not so granular; instead, “when the decision of the Supreme Court has the effect of reversing the judgment of the lower court . . . costs shall be assessed against the respondent before the Court of Appeals.” Rule 242(j)(1). That is what we have here.

II. The County is Entitled to All the Costs Set Out in its Affidavit.

Preston argues, without bothering to provide this Court with any specificity or detail, that the County is not entitled to certain of the costs set out in the affidavit attached to the County’s Motion. Return at 7-8. Preston offers no affidavit himself, and otherwise fails to offer any evidence that any of the costs listed in the County’s affidavit were not actually incurred by the County. Therefore the only evidence before this Court is the sworn affidavit of the County’s attorney, to the effect that the costs set out in the affidavit are “correct and were necessarily incurred in this action.” Preston’s baseless insinuations to the contrary should be rejected.²

² Preston notes that the costs of the Appendix in this Court were shared. This is correct. What Preston fails to tell this Court, however, is that the amount of costs claimed by Anderson County

Preston also appears to assert that the County may have “unjustifiably designated irrelevant matter” to be included in the Record on Appeal, although the only example to which Preston points of such allegedly “irrelevant matter” is the County’s inclusion of the entire transcript of the trial before the Circuit Court. *See* Return at 7-8. This argument fails for at least two reasons. First, Preston himself designated for the record all materials designated by Anderson County. *See* Exhibit A. Thus, Preston has certified that all such matters were relevant, and is estopped from arguing to the contrary now.³ Second, given that this case sounded in equity, both this Court and the Court of Appeals reviewed this matter *de novo* and made determinations based on their own view of the preponderance of the evidence. Indeed, Preston in his briefing cited extensively to many pages of the trial transcript. In this posture, it was entirely appropriate for the entire transcript of the bench trial to be included in the Record on Appeal. Preston agreed at the time, and made extensive reference to that trial transcript. His argument to the contrary now, again without any specificity, is meritless.

CONCLUSION


Preston’s Return offers no ground for denying the County’s Motion. The County is the prevailing party on appeal. This Court should direct Preston to pay all costs sought by the County in its Motion.

were for its share only. The affidavit is accurate.

³ Preston also could have filed a motion disputing Anderson County’s designation of matter as including irrelevant materials. *See* Jean H. Toal et al., APPELLATE PRACTICE IN SOUTH CAROLINA 405 (3d ed. 2016) (“The proper method to dispute a designation is to file a motion.”) Preston filed no such motion, however, but instead adopted the County’s designation.

Respectfully submitted,

WYCHE, P.A.

By: 

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**ATTORNEYS FOR PETITIONER-RESPONDENT
ANDERSON COUNTY**

September 23, 2019

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CERTIFICATE OF SERVICE

I do hereby certify that I have this 23rd day of September, 2019, caused to be served upon counsel for the Defendants the foregoing **PETITIONER-RESPONDENT'S REPLY IN SUPPORT OF MOTION FOR COSTS** by causing a copy of the same to be deposited in the United States mail, first-class postage prepaid, addressed as follows:

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Attorney for Petitioner-Respondent

Anderson County

September 23, 2019

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Attorneys at Law

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S.C. SUPREME COURT

September 23, 2019

The Honorable Daniel E. Shearouse
Clerk of the South Carolina Supreme Court
P. O. Box 11330
Columbia, SC 29211

RE: *Anderson County v. Joey Preston and The South Carolina Retirement System*, Appellate Case No. 2017-001898

Dear Mr. Shearouse:

Enclosed for filing is one original and six copies of Petitioner-Respondent Anderson County's Reply in Support of Motion for Costs and the Proof of Service.

I am also enclosing two additional copies of the Reply and Proof of Service. We respectfully request that you clock and return these additional copies to Petitioner-Respondent Anderson County enclosed herewith.

By copy of this letter we are serving a copy of the above-referenced Reply in Support of Motion of Costs of Petitioner-Respondent Anderson County on all counsel of record.

If you have any questions or need anything further, please do not hesitate to contact me.

Sincerely,



Alice Parham Casey
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Enclosures

cc: Lane W. Davis, Esquire
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