

**THE STATE OF SOUTH CAROLINA**  
In the Court of Appeals  
**APPEAL FROM ANDERSON COUNTY**  
Court of Common Pleas  
The Honorable R. Scott Sprouse, Circuit Court Judge

**RECEIVED**  
JAN 29 2020  
SC Court of Appeals

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Appellate Case No.: 2016-002302

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NHC HealthCare/Mauldin, LLC,.....Respondent,

v.

Wade Thompson and Sheila Thompson,

Of whom Wade Thompson is the .....Appellant.

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**REPLY OF APPELLANT TO RETURN OF RESPONDENT TO  
MOTION FOR COSTS**

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Counsel for Appellant submits this Reply to the Return of Respondent in Opposition to Appellant’s Motion for Costs pursuant to Rule 222 and Rule 240, SCACR. In its Return Respondent asserts that Appellant made no showing that he actually incurred any of the costs or attorney’s fees sought in his motion and an award of such would amount to a windfall. The position of the Respondent that a non-profit legal aid organization cannot recover attorney’s fees and costs because it is presumed that no costs or fees were actually incurred is meritless for the reasons stated below. Respondent asserts as an additional ground that it did not appeal adverse rulings against it and merely responded to Appellant’s appeal of the trial court ruling against him. This assertion is equally meritless because this Court reversed the appealed ruling of the trial court.

## ARGUMENT

### I. IT IS WELL ESTABLISHED UNDER BOTH STATUTORY LAW AND COURT PRECEDENT THAT ATTORNEY'S FEES AND COSTS ARE RECOVERABLE BY NON-PROFIT LEGAL AID LAW FIRMS REGARDLESS OF WHETHER THE REPRESENTED PARTY IS DIRECTLY RESPONSIBLE FOR PAYING SUCH FEES.

Rule 222(a), SCACR, provides that “when a judgment is reversed, costs shall be taxed against the respondent unless the court orders otherwise.” This Court reversed the order of the trial court. Appellant made a Motion for Costs pursuant to the provisions of Rule 222 SCACR seeking costs including filing fees, cost of the court reporter’s transcript, the cost of printing the Record on Appeal, the cost of printing the final brief(s) and attorney’s fees of \$2,500 under Rule 222 SCACR (the amount set by the South Carolina Supreme Court’s January 17, 2018 Order).

South Carolina Legal Services (SCLS) is this state’s only statewide legal aid law firm. Its mission is to provide civil legal services to protect the rights and represent the interests of low-income South Carolinians. Federal law empowers SCLS to seek attorney’s fees in the cases it undertakes. On December 16, 2009, President Obama signed the Consolidated Appropriations Act of 2010. Public Law 111-117. Section 533 of the law eliminated a statutory restriction adopted in 1996 that had prevented federally funded legal service attorneys from requesting and receiving attorney’s fees. On February 11, 2010 the Legal Services Corporation, which administers federal legal services grants and promulgates regulations for legal service grantees, issued an Interim Final Rule (75 FR 6816) and Comments repealing its regulatory prohibitions on grantees recovering attorney’s fees. The Interim Rule was made a Final Rule effective April 26, 2010. Accordingly, SCLS is fully authorized by federal law and regulation to seek attorney’s fees when such fees are available.

Courts, including the United States Supreme Court, have long recognized the ability of non-profit legal aid organizations to recover attorney’s fees. *See Blum v. Stenson*, 465 U.S. 886,

890 (U.S. 1984) (ruling on calculation of attorney's fees to Legal Aid Society representing persons unable to afford a lawyer); *Cornella v. Schweiker*, 728 F.2d 978 (8th Cir. 1984) (holding attorney's fees properly awarded under EAJA notwithstanding that party was represented by pro bono counsel); *Swann v. Charlotte-Mecklenburg Board of Ed.*, 66 F.R.D. 483, 486 (1975) ("in other civil rights cases where counsel fees have been awarded, the courts have held that reasonable fees should be granted regardless of whether the individual plaintiffs were obligated to pay any fees and regardless of whether the attorneys were salaried employees of a legal aid agency.") (internal citation omitted); *McManama v. Lukhard*, 464 F. Supp. 38 (W.D. Va. 1978) (finding that in deciding whether to award attorney's fees to a successful Plaintiff, the court should not be influenced by the fact that counsel was employed by a federally-funded legal services project); *Torres v. Sachs*, 69 F.R.D. 343 (S.D.N.Y. 1975) (in which attorneys' fees were awarded under 42 U.S.C. 1973 I(e) to the Puerto Rican Legal Defense Fund); *Maplewood Management, Inc. v. Best*, 143 A.D.2d 978, 533 N.Y.S.2d 612 (N.Y. App. Div. 1988) (reinstating award of attorney's fees for *pro bono* representation by legal services attorney in successful eviction defense).

As the Fifth Circuit squarely held in *Fairley v. Patterson*, a reapportionment case, whether an attorney charges a fee or has an agreement that the organization that employs him will receive any awarded attorney's fees are not bases on which to deny or limit attorneys' fees or expenses. 493 F.2d 598, 607 (5th Cir. 1974). Moreover, the rate to be used in calculating such awards is to be the same as would be used if defendants were represented by private counsel. "Congress did not intend the calculation of the fee awards to vary depending on whether plaintiff was represented by private counsel or by a nonprofit legal services organization." *Blum*, 465 U.S. at 894. "It is in the interest of the public that such law firms be awarded reasonable attorney's fees to be computed in the traditional manner when its counsel performs legal services otherwise

entitling them to the award of attorney's fees." *Blum*, 465 U.S. at 895.

The South Carolina Court of Appeals has also recognized that a nonprofit legal aid law firm can recover attorney's fees. In *Prevatte v. Asbury Arms*, this Court found that a tenant represented by SCLS's predecessor entity, Palmetto Legal Services, was entitled to an award of attorney's fees as a matter of right as a prevailing party in a suit over the landlord's withholding of a security deposit. 302 S.C. 413, 415, 396 S.E.2d 642, 643 (Ct. App. 1990).<sup>1</sup> South Carolina courts routinely award attorney's fees to SCLS attorneys in domestic matters, as well as under various statutory causes of action such as the Residential Landlord and Tenant Act, the Payment of Wages Act, and the Unfair Trade Practices Act. The attorney fee and costs available pursuant to Rule 222 SCACR are no different.

SCLS is a non-profit legal aid law firm that handles cases in the public interest. SCLS receives limited grant funding from various sources, including the federal Legal Services Corporation, the South Carolina Bar Foundation, United Way, and others. SCLS is the only available source of legal representation for most of the 856,938 South Carolinians in poverty.<sup>2</sup> According to the 2016 Justice Index, there are only 0.24 legal aid attorneys serving every 10,000 poor people in South Carolina. The limited resources of SCLS are dwarfed by the substantial need of low-income South Carolinians for access to representation to protect their legal rights and alleviate the deleterious effects of poverty. In representing the Appellant, an elderly disabled veteran, SCLS incurred substantial costs in the form of lost opportunities to assist other low-income persons. It also incurred substantial fees paid under the SCLS Private Attorney

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<sup>1</sup> Palmetto Legal Services merged with several other regional legal services organizations in 2001 to become the South Carolina Centers for Equal Justice; in 2006 the organization's name was changed to South Carolina Legal Services. Phillip M. Creel, counsel for *Prevatte*, has worked as an attorney for SCLS and its predecessor entity since 1986.

<sup>2</sup> Bishaw, Alemayehu. "Poverty: 2010 and 2011" *American Community Survey Briefs*, <http://www.census.gov/prod/2012pubs/acsbr11-01.pdf> (accessed June 5, 2014).

Involvement (PAI) program to co-counsel which are not included in the Motion for Costs. Should this Court award attorney's fees in the present case, such funds would benefit the public interest by supporting representation of low-income South Carolinians.

The Respondent's argument, carried to its logical conclusion, is that no public interest law firm can recover attorney's fees. And yet, courts all over the United States recognize the strong public interest supporting the award of attorney's fees to non-profit legal aid programs and routinely award attorney's fees in such cases. *See Blum, Cornella, Swann, McManama, Torres, Maplewood, Fairley, and Prevatte, supra* at 3 and 4.

**II. THE POSTURE IN WHICH THE CASE PRESENTED ITSELF DOES NOT CALL FOR THIS COURT TO EXERCISE DISCRETION TO DENY THE APPELLANT'S MOTION FOR COSTS.**

Respondent urges this Court to exercise discretion and deny the Appellant's Motion for Costs based on the posture in which the case presented itself. It argues an award of costs would essentially punish Respondent for simply responding to an appeal. The reason it provides is two-fold: 1) The relief awarded Respondent in the lower court was a finding in its favor in an equitable action and it did not appeal any adverse rulings in which the trial court found against it; 2) Respondent simply responded to the issues raised by Appellant.

The fact that Respondent did not appeal any rulings of the trial court that were adverse to it, was a result of its own choice. It does not affect the decision on costs. Respondent was in a position to assess adverse rulings, had the opportunity to appeal any such rulings, and chose not to do so. Thus, it waived any argument on this point when it chose not to challenge these rulings.

The reversal of the lower court's ruling in favor of Appellant reflects the merit of the appeal and supports the automatic taxation of costs against the Respondent pursuant to Rule 222, SCACR. The Rule accounts for the possibility of an adverse ruling on appeal for either party as

it addresses affirmation and reversal, whether in full or in part. Therefore, the act of simply responding to an appeal is accounted for. The act of responding to a meritorious appeal does not call for denial of Appellant's Motion for Costs.

The posture of this case supports the award of costs requested in Appellant's Motion. The substantive holding was reversed thus leaving the case standing as if no judgment had been rendered. The Respondent made no further motions or petitions in the case. Rule 222 SCACR essentially provides an automatic award of costs for the prevailing party on appeal. The application of the rule here is appropriate as this Court reversed the decision of the trial court.

### CONCLUSION

This and other courts have long recognized that non-profit legal aid law firms may recover attorney's fees. Counsel for Appellant request that this Court find that this is an appropriate case for SCLS, a non-profit legal aid law firm to recover attorney's fees and costs. Appellant's counsel respectfully requests that his Motion for Costs be granted pursuant to Rule 222, SCACR, and for such other and further relief as this Court deems just and appropriate.

### SOUTH CAROLINA LEGAL SERVICES

  
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ATTORNEY FOR APPELLANT

January 27, 2020  
Greenville, SC

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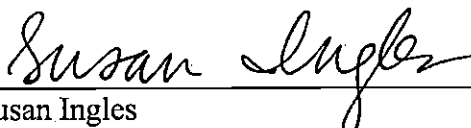
**PROOF OF SERVICE**

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I certify that I have served the Reply to Respondent's Return to Motion for Costs and Itemized Statement of Costs on all parties in this action by depositing a copy of same in the United States Mail, first class, postage prepaid, on January 27, 2020, to the following:

Mr. Craig Horger Allen, Esquire  
P.O. Box 10854  
Greenville, SC 29603

Mr. Erick Matthew Barbare, Esquire  
120 Renaissance Circle, #6  
Mauldin, SC 29662



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Columbia, South Carolina  
January 27, 2020

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January 27, 2020

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, SC 29201-3726

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SC Court of Appeals

In Re: NHC Healthcare/Mauldin, LLC vs. Wade Thompson and Sheila Thompson of whom  
Wade Thompson is the Appellant

Appellate Case No.2016-002302

Dear Ms. Kitchings:

Enclosed for the Court's consideration pursuant to Rule 222 are the following:

- 1) Reply Of Appellant To Return Of Respondent To Motion For Costs
- 2) Proof of Service on Respondent's Counsel

Thank you for your consideration in this submission.

Sincerely,

Susan Ingles  
Attorney for the Appellant



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