

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

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Oct 27 2020

The Honorable Alex Kinlaw, Circuit Court Judge

SC Court of Appeals

Appellate Case No. 2019-002040

David Rosen.....Petitioner,

v.

Josephine Middleton.....Respondent.

PETITIONER'S RETURN TO RESPONDENT'S MOTION FOR COSTS

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Lead Counsel for Respondent

Factual Background

The respondent has requested that the Court award a sanction of costs against the appellant. For the following reasons, the appellant respectfully requests that the Court deny the respondent's request to sanction the appellant.

The appellant provided a thorough factual background in his response to the respondent's motion to dismiss the appeal and, as a result, will not repeat the case's history here. Briefly, however, it is worth noting that the respondent initiated these proceedings by filing an Application for Ejectment in magistrate's court. The respondent then refused to participate in litigation when the appellant brought his own claims seeking the recovery of his property. Seventeen months after the respondent initiated these proceedings, the appellant was awarded \$61,233.00 at a damages hearing. It was an additional ten months before the respondent finally began to participate in this litigation by filing a Rule 60(b) motion. The Court of Appeals dismissed the appellant's appeal and the Supreme Court denied certiorari. The respondent now seeks more fundamental unfairness with a request for the Court to levy a \$2,500 sanction against the appellant.

A. The plain meaning of 242(j) does not provide for sanctions as sought by the respondent.

First, the request does not comport with 242(j) SCRAP. The Rule allows costs to be awarded "when a writ of certiorari has been granted." A rule of certiorari has not been granted in this case. "In interpreting the meaning of the South Carolina Rules of Civil Procedure, the Court applies the same rules of construction used to interpret statutes." *Maxwell v. Genez*, 356 S.C. 617, 591 S.E.2d 26 (2003) citing *Green v. Lewis Truck Lines, Inc.*, 314 S.C. 303, 443 S.E.2d 906 (1994). "In interpreting a statute, it is imperative that the statute be accorded its clear meaning." *Nucor Steel, a Div. of Nucor Corp. v. S.C. Pub. Serv. Comm'n*, 310 S.C. 539, 545, 426 S.E.2d 319, 322

(1992) citing *Helfrich v. Basington Sand & Gravel Co.*, 268 S.C. 236, 233 S.E.2d 291 (1977). “A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.” *State v. Sweat*, 386 S.C. 339, 351, 688 S.E.2d 569 citing *In re Decker*, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995).

Because a writ of certiorari has not been granted, a motion for costs is not appropriate under the plain language of Rule 242(j)¹, SCRAP. As a result, the appellant respectfully requests that the respondent’s motion be denied.

B. The respondent has not supported her motion with any affidavit or proof.

The respondent has not submitted any affidavit or itemization of work performed. When the respondent originally sued the appellant, her attorney was Michael Gambrell. The appellant fired Gambrell and went into default on the respondent’s counterclaim before the Circuit Court entered a judgment at a damages hearing². Ten months after that, Mr. Pureifoy appeared for the respondent at a hearing on the respondent’s Rule 60(b) motion. When the appellant appealed, yet another attorney (Howard Anderson³) filed a motion to dismiss the appeal. The respondent has not submitted an affidavit showing an itemization of time spent drafting the motion, which consists of

¹ However, Rule 222(e), SCRAP does allow for taxation of costs in cases where petition for cert is denied.

² The undersigned recently deposed the respondent, who confirmed she fired her attorney on March 12, 2018, and that she made no effort to hire another attorney prior to hiring her current lawyer. Summary judgment was entered against her on December 18, 2018. A damages hearing was held on March 4, 2019, and a monetary judgment was entered against the respondent on March 25, 2019. Because the respondent hired her current counsel after March 25, 2019 and because the petitioner filed a document with the Court stating that she fired her attorney March 12, 2018, the undersigned believes this Court or the Court of Appeals is likely to reverse the Circuit Court’s ruling, which was based upon attorney abandonment.

³ After the undersigned deposed the respondent, he emailed Howard Anderson, who filed the motion for costs, and attempted to resolve the motion. The undersigned has received no response yet, but remains hopeful the parties will be able to resolve the motion without Court involvement.

only 11 lines of argument on a single page. Given that Mr. Howard is a competent appellant attorney, it is not reasonable that he could have spent \$2,500 worth of time drafting the motion. Additionally, there has been no indication of whether the respondent has an attorney-client relationship with Mr. Anderson or if he is simply an attorney known by Mr. Pureifoy and is helping because the matter has been appealed.

Conclusion

For the foregoing reasons, the appellant respectfully requests that the respondent's motion be denied.

Respectfully submitted,

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/s/ Joshua T. Hawkins

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PROOF OF SERVICE

I certify that I have served the Petitioner's Return to Respondent's Motion for Costs on the Respondent's Counsel of record, and to the Clerk of the South Carolina Supreme Court, electronically, to supctfilings@sccourts.org, and via the addresses provided below, on this day, October 27, 2020.

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