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Nov 02 2020

SC Court of Appeals

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

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable H.W. Funderburk, Jr.

Appellate Case No. 2016-002136

GENE B. SCHWIERS.....Respondent,

vs.

SOUTH CAROLINA DEPARTMENT OF HEALTH
AND ENVIRONMENTAL CONTROL & STEWART W. HEATH OF WHOM

STEWART W. HEATHAppellant.

RETURN IN OPPOSITION TO MOTION FOR COSTS

The Respondent Gene B. Schwiers (“Respondent”) opposes Appellant Stewart W. Heath’s (“Appellant”) Rule 222, SCACR, Motion for Costs (the “Motion”). The Respondent, whose real property is adjacent to Appellant’s, opposed the enlargement of the dock located at Appellant’s coastal home. Acting *pro se*, the Respondent defended her position before the Administrative Law Court (“ALC”). Following the trial, the ALC ruled for Respondent and denied Appellant’s request to enlarge his existing dock. The Appellant sought review of the ALC’s decision before this Court, and this Court subsequently handed down an opinion reversing the ruling. The Respondent subsequently petitioned the Supreme Court to issue a writ of certiorari, which it declined to issue on October 16, 2020. This Motion followed.

The Respondent opposes the Appellant’s Motion because, in the context of this case, it would operate to penalize her for merely defending her property rights. “[I]t is within this Court’s discretion to award fees and costs under Rule 222.” *Austin v. Stokes-Craven Holding Corp.*, 406 S.C. 187, 750 S.E.2d 78 (2013). The Respondent contested the Appellant’s enlarged dock request because she believed it would negatively impact the use of her dock, especially as it related to the use by her elderly mother. (Respondent’s Brief, at 8). The Respondent has merely sought to defend her property rights. These efforts were not successful. The Respondent submits that awarding attorney’s fee and costs to Appellant for Respondent’s unsuccessful effort to defend her property rights should be denied. The Respondent respectfully requests that the Court exercise its discretion and deny Appellant’s Motion.

November 2, 2020

Respectfully submitted,

BURL F. WILLIAMS, P.A.

s/ Burl F. Williams
Burl F. Williams (S.C. Bar No. 77901)
201 Riverplace, Suite 500
Greenville, South Carolina 29601
864-546-5035
burl@burlfwilliams.com

Attorney for Respondent

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STEWART W. HEATHAppellant.

PROOF OF SERVICE

I certify that on November 2, 2020, I served the Return in Opposition to Appellant’s Rule 222, SCACR, Motion for Costs by sending a copy of the same to the email address of Appellant Stewart W. Heath’s counsel of record and counsel of record for the Department of Health and Environmental Control as identified in the Attorney Information System pursuant to Supreme Court Order *Re: Operation of the Appellate Courts During the Coronavirus Emergency* (g)(3). Specifically, I certify that a copy was sent to: lee@ntrlaw.com and churdabd@dhec.sc.gov. A copy of the sent email is attached as *Exhibit 1* to this certificate of service.

BURL F. WILLIAMS, P.A.

s/ Burl F. Williams
Burl F. Williams (S.C. Bar No. 77901)
201 Riverplace, Suite 500
Greenville, South Carolina 29601
864-546-5035
burl@burlfwilliams.com

Attorney for Respondent

EXHIBIT 1

(Service of Return in Opposition to Motion for Costs by
Email

to Counsel for Respondent at: lee@ntrlaw.com
and Counsel for DHEC at churdabd@dhec.sc.gov)

From: [Burl Williams](#)
To: ["Lee Nettles"; "churdabd@dhec.sc.gov"](#)
Subject: Schwiars v. Heath, Appellate Case No. 2016-002136
Date: Monday, November 2, 2020 3:57:00 PM
Attachments: [image001.png](#)
[Response IO to Costs.pdf](#)

Gentlemen:

Attached is Respondent's Response in Opposition to Appellant's Motion for Costs.

Burl F. Williams
201 Riverplace, Suite 500
Greenville, South Carolina 29601
burl@burlfwilliams.com
www.burlfwilliams.com
(O) 864.546.5035 (M) 803.422.1773
BURL F. WILLIAMS, P.A.

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