

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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May 11 2021

SC Court of Appeals

APPEAL FROM DORCHESTER COUNTY  
George M. McFaddin, Jr., Circuit Court Judge

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Appellate Case No. 2019-002081  
Case No. 2018-CP-18-1960

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Carl Michael Funny, ..... Respondent,

v.

Waffle House, Inc. and Christopher Heithaus, ..... Appellants.

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**REPLY TO APPELLANTS' RETURN TO RESPONDENT'S  
MOTION FOR ATTORNEY FEES PURSUANT TO SCACR 222**

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As Appellants quote from Rule 222(d), SCACR, “*If* costs are being sought” then a sworn, itemized statement must be submitted. Respondent is not seeking costs because none were incurred in the course of this appeal thanks to the Supreme Court’s Order Re: Operation of the Appellate Courts During the Coronavirus Emergency waving printing requirements for filings. Appellants’ argument on this point is, at best, unnecessary.

Appellants then confuse the requirement for a sworn statement of *costs* under subsection (d) with recovery of an attorney’s *fee* described in subsection (b). In fact, Rule 222(b) is explicit in stating that “the party [who won on appeal] *shall be entitled to recover an attorney’s fee.*” There is no requirement in Rule 222 for a sworn claim for attorney’s fees; the amount of the fee is set by the Supreme Court at \$2,500.

Here, Respondent has requested recovery of the attorney's fees to which he is entitled under Rule 222, which states that "costs shall be taxed against the appellant *when the appeal is dismissed.*" Respondent submits that the appeal was dismissed three times, twice by this Court and once by the Supreme Court in response to Appellants' petition for a writ of certiorari. At each stage, Respondent's attorney expended time and effort to respond to Appellants' repeated attempts to appeal an interlocutory order.

Appellants' attempt to rehash its argument, which was rejected twice by the trial court, twice by this Court, and once by the Supreme Court, and imbue it with merit based on how long it took to be dismissed during the pandemic, does not require response.

Respondent therefore respectfully requests that attorney's fees be awarded for each time Appellants' appeal was dismissed.

Respectfully,  
**THE LAW OFFICES OF JOSHUA E. SLAVIN, LLC**

*s/ Joshua E. Slavin*

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Attorney for the Respondent Carl Michael Funny

May 10, 2021  
Mount Pleasant, SC

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**CERTIFICATE OF SERVICE**

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The undersigned, Joshua E. Slavin, counsel for the Respondent, hereby certifies that service of Respondent's Reply to Appellants' Return to Respondent's Motion for Costs was made upon all counsel of record by email to Andrew@ldlawsc.com on May 10, 2021.

*s/ Joshua E. Slavin*