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Oct 22 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
Charles B. Simmons, Jr., Master In Equity

Appellant Case No. 2018-001209

Raymond A. Wedlake, individually and derivatively, on behalf
of all Members of Woodington Homeowners' Association, Inc., Appellant,

v.

Benjamin Acord, William Craigo, Denis Esteve, and Brian James in their capacity as the
current Board of Directors of the Woodington Homeowners' Association, Inc., Respondents.

**RETURN TO
RESPONDENTS' MOTION FOR COSTS PURSUANT TO RULE 222, SCACR**

This return (Return) by Raymond A. Wedlake, Appellant (*Pro Se*), pursuant to Rule 222(d), SCACR, opposes the request for costs and seeks a reduction of the amount of costs to be awarded.

FACTS

1. Appellant is a single, *pro-se* party; he has no counsel and has been unable to find available counsel to represent him; Appellant has no other resources to assist him in meeting deadlines required by Court rules.

2. The Clerk of the Supreme Court on June 24, 2021, issued an Order dismissing Appellant’s appeal **on the same day** that a “Notice of Appeal” was received by the Supreme Court.

3. On July 22, 2021, Appellant submitted a “petition for writ of certiorari” (Petition) to the Supreme Court.

4. It was not until October 6, 2021, that a final Order (Exhibit RMC.1) disposed Appellant’s appeal to the Supreme Court. Appellant documented his objections to this Order to this Court, as submitted on October 11, 2021 (Exhibit RMC.2).

5. Appellant underwent major surgeries on October 7, 2021, consisting of hernioplasty (bilateral inguinal), spermatocelectomy (bilateral), and excision of a lipoma (Exhibit RMC.3).

6. A period of physical and mental debility resulted after surgery.

7. At the date of this Return, Appellant is still recovering after surgery, and debility remains to a lesser extent.

8. On September 21, 2021, this Court stated “... remitted to the lower court ...” (Exhibit RMC.4).

9. The Woodington Homeowners’ Association, Inc. (WHOA) Board of Directors (Board) never acquired approval from WHOA members prior to incurring legal fees of nearly \$54,000, which was a non-budgeted expenditure exceeding a \$1,500 limit imposed by the By-Laws, which state (excerpted, emphasis added):

ARTICLE X - EXPENDITURE OF FUNDS

Section 4: The **non-budgeted expenditure of corporate funds in excess of One Thousand Five Hundred Dollars (\$1,500.00)** for any individual project **must be approved by a majority vote of the membership** at a duly held meeting at which a quorum is present. [By-Laws, R. p. 40]

ARGUMENT

10. Appellant as a single, *pro-se* party often suffers from inability to do “too many things”.

11. The Clerk of the Supreme Court **directly violated** Rule 242(c) when the **Clerk** issued an Order dismissing Appellant’s appeal **on the same day** that a “Notice of Appeal” was received by the Supreme Court. Appellant’s “Petition for Writ of Certiorari” complied with all requirements found in Rule 242, SCACR, and therefore the **Clerk’s Order** that dismissed Appellant’s-Supreme-Court appeal was based upon **FALSE GROUNDS !**

12. The Order (Exhibit RMC.1) contained **Errors of Fact** that were pointed out by Appellant (Exhibit RMC.2). This Order ignored violations of Rule 242(c), SCACR, and additional violations pursuant to Rule 221(b), SCACR (Exhibit RMC.2).

13. On September 30, 2021, after jurisdiction at the appellate level had ended, Respondents filed their “Motion for Costs ...”. Well known authority (Exhibit RMC.5) states unequivocally (excerpted, emphasis added): “... **Remittitur divests the appellate court of the jurisdiction** after it has resolved the appeal, and permits **full jurisdiction** over the judgment to be **returned to the trial court.**” The Court of Common Pleas holds full jurisdiction over the judgment after remittitur.

14. No amount for “costs” exceeding the \$1,500 limit imposed by the By-Laws can be awarded. The Court will be condoning law-breaking actions by the Board in the event that an amount greater than \$1,500 is awarded.

15. Respondents' did not meet requirements to be awarded "... an attorney's fee ...", because they did not provide an "... itemized statement ..." that documented any fees. Respondents must prove they are entitled to the maximum amount of attorney's fees (\$2500), which was not done in their itemized statement. This Court cannot award the full \$2500 based upon a presumption of entitlement to the maximum amount. Rule 222(b), SCACR, makes plain that "Costs Allowed" includes an attorney's fee under the umbrella term: "Costs". Rule 222 shows (excerpted, emphasis added):

RULE 222 COSTS ON APPEAL

(b) Costs Allowed. ... shall be **entitled to recover** an attorney's fee in an amount which shall be set by order of the Supreme Court. ...

(d) Motion for Costs. ... the motion shall be accompanied by a sworn, itemized statement ...

16. Rule 222(e), SCACR, precludes taxation of "Costs on Appeal" because Appellant's "... petition for a writ of certiorari ..." (Petition) was **not** denied. Inspection of the Supreme Court Record shows Petition was sought, being timely filed. Supreme Court Justices did **not** deny Petition. Rather, as also proven by the Record, they simply ignored the existence of Petition. In absence of denial of Petition, no grounds exist to justify taxation pursuant to Rule 222(e), which shows (excerpted, emphasis added):

RULE 222 COSTS ON APPEAL

(e) Taxation. ... If a petition for a writ of certiorari is sought under Rule 242, the **Court of Appeals shall tax costs only in those cases in which the petition for a writ of certiorari is denied.** ...

CONCLUSION

Based on the forgoing and the totality of the circumstances, including personal debility of Appellant after surgery, Appellant prays for due consideration of this Return.



Raymond A. Wedlake
703 Creekview Dr., Greenville, SC 29607
864-254-9262 wedlakera@mail.com
Appellant *Pro Se*

Dated this 22nd day of October, 2021

EXHIBIT RMC.1 - Final Dispositional Order of 10/06/21

The Supreme Court of South Carolina

Raymond A. Wedlake, individually and derivatively, on behalf of all Members of the Woodington Homeowners' Association, Inc., Petitioner,

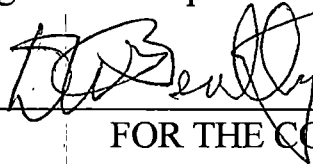
v.

Benjamin Acord, William Craigo, Denis Esteve, and Brian James in their capacity as the current Board of Directors of the Woodington Homeowners' Association, Inc., Respondents.

Appellate Case No. 2021-000665

ORDER

This matter was dismissed on June 24, 2021, under Rule 260 of the South Carolina Appellate Court Rules. Rule 260 provides that after the clerk issues an order of dismissal, "[t]he clerk shall remit the case to the lower court . . . unless a motion to reinstate the appeal has been received by the court within fifteen (15) days of filing the order of dismissal." Petitioner filed a timely motion to reinstate, and this Court denied the motion on September 21, 2021. In response to this Court's order, the South Carolina Court of Appeals properly sent the remittitur. Because the remittitur was properly sent pursuant to the South Carolina Appellate Court Rules, no further motion or petition can be considered by this Court. *See Stogsdill v. S.C. Dep't of Health & Human Servs.*, 415 S.C. 568, 784 S.E.2d 669 (2016); *Wise v. S.C. Dept. of Corr.*, 372 S.C. 173, 642 S.E.2d 551 (2007). Accordingly, this Court strikes Petitioner's petition for rehearing filed on September 27, 2021.



C.J.

FOR THE COURT

Columbia, South Carolina
October 6, 2021

cc:

Ely Owen Grote, Esquire

Raymond A. Wedlake

Paul B. Wickensimer

EXHIBIT RMC.2 - Objections to Confusion/Errors in Order

RECEIVED

of 10/06/21

Oct 11 2021

S.C. SUPREME COURT

From: Ray Wedlake
To: Supreme Court Filings
Cc: ely.grote@mccabetrotter.com
Subject: Confusion/Errors in Order of 10/06/21 2021-000665
Date: Monday, October 11, 2021 4:16:24 PM

*** EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

703 Creekview Drive
Greenville, SC 29607
October 11, 2021

The Honorable Chief Justice Donald W. Beatty
The Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211
supctfilings@sccourts.org (sent via e-mail)

cc: The Honorable Paul B. Wickensimer, Clerk
Greenville County Courthouse
305 E. North Street
Greenville, SC 29601

Subject: Confusion/Errors in Order of 10/06/21 2021-000665

Dear Honorable Chief Justice Beatty:

Thank you for an Order you signed, dated October 6, 2021. However, confusion is noted. Once again I, as Appellant, must object to ERRORS OF FACT stated in this Order in two instances.

THE ORDER OF 06/24/2021 DID NOT
DISMISS BASED UPON RULE 260, SCACR

The Order of 06/24/21 dismissed upon Rule 242(d), SCACR. It did so based upon FALSE GROUNDS via PRESUMPTION that

"... this notice of appeal has been construed as a petition for a writ of certiorari.

This petition for a writ of certiorari does not have the content required by Rule 242(d). Accordingly, this matter is dismissed."

Factually pursuant to Rule 242(c), SCACR, an actual "Petition for Writ of Certiorari" (Writ) was timely filed, but to date has been ignored by the Court. The filed Writ contained all content required by Rule 242(d). I believe the Clerk intentionally VIOLATED RULE 242(c), SCACR, to mislead Justices to simply ignore the actually filed Writ.

THE REMITTITUR WAS NOT PROPERLY SENT
PURSUANT TO SOUTH CAROLINA APPELLATE COURT RULES

Correspondence dated September 28, 2021 from the Clerk (Honorable Patricia A. Howard) admits:

"... this Court's order denying your motion to reinstate was issued on September 21, 2021, and the Court of Appeals issued the remittitur the same day, thereby ending appellate jurisdiction over this case. ..."

Factually, pursuant to Rule 221(b), SCACR (appendix), a remittitur cannot be sent until 15 days after the Order. Similarly, in this case where an actual Writ was filed, Rule 221(b) requires that NO REMITTITUR be sent until after notification that the Writ has been denied. I believe the Clerk intentionally VIOLATED RULE 222(b), SCACR, "... ending appellate jurisdiction ..." such that my motions pointing out ERRORS OF FACT could, and would, simply be ignored by Supreme Court Justices.

Thank you again. However, I am appalled that the Clerk dismissed my case on FALSE GROUNDS. I am also appalled by Supreme Court Justices who ignore the facts, and then base Orders upon ERRORS OF FACT. The conduct of the Supreme Court to condone VIOLATION OF RULE 242(c) by the Clerk cannot be justified! Similarly, VIOLATION OF RULE 221(b) by Clerks cannot be justified!

Sincerely,

Raymond A. Wedlake
864-254-9262 wedlakera@mail.com

----- Appendix -----

RULE 221 REHEARING AND REMITTITUR

(b) Remittitur. The remittitur ... shall not be sent to the lower court or administrative tribunal until fifteen (15) days have elapsed (the day of filing being excluded) since the filing of the opinion, order, judgment, or decree of the court finally disposing of the appeal. ... Where a petition for rehearing has been denied, the Court of Appeals shall not send the remittitur to the lower court or administrative tribunal until the time to petition for a writ of certiorari under Rule 242(c) has expired. If a petition for writ of certiorari is filed, the Court of Appeals shall not send the remittitur until notified that the petition has been denied. ...

EXHIBIT RMC.3 - Surgery: Hospital Encounter at SFD PACU 10/07/21

Name: Ray A Wedlake | DOB: 3/5/1951 | MRN: E5515713 | PCP: Cheryl A Sarmiento, MD

Billing for Raymond A Wedlake

Hospital Services for Guarantor #101215559

[View Physician Services](#)**BON SECOURS**[View Physician Services](#)**Visit Accounts**[Show all details](#)**Visit Accounts with Outstanding Balance**

Oct 5 2021	LAB Visit at SFE LABORATORY	Billed	\$559.00
	Hospital Services	Insurance	-\$541.07
	Provider: James R Monroe, MD	Covered	
	Patient: Ray A Wedlake	You Paid	\$0.00
	Primary Payer: Humana Medicare	Pending	\$0.00
	Account #31212781003	Insurance	
		Your Balance	\$17.93

Visit Accounts in ProgressYour total balance for outstanding visit accounts: **\$17.93**

These accounts do not have an outstanding patient balance and are only displayed for your information. You may be responsible for these accounts in the future.

Oct 7 2021	Hospital Encounter at SFD PACU	Billed	\$41,372.36
	Hospital Services	Insurance	-\$36,649.25
	Provider: James R Monroe, MD	Covered	
	Patient: Ray A Wedlake	You Paid	\$0.00
	Primary Payer: Humana Medicare	Pending	\$4,723.11
	Account #30212580860	Insurance	
		Your Balance	--

Detailed Account Information

ANESTHESIA - GENERAL CLASSIFICATION	\$3,681.00
LABORATORY PATHOLOGICAL - GENERAL CLASSIFICATION	\$1,575.00
MEDICAL/SURGICAL SUPPLIES AND DEVICES - GENERAL CLASSIFICATION	\$14,795.00
OPERATING ROOM SERVICES - GENERAL CLASSIFICATION	\$13,446.00

PHARMACY - DRUGS REQUIRING DETAILED CODING	\$2,203.89
PHARMACY - GENERAL CLASSIFICATION	\$1,097.47
PHARMACY - SELF-ADMINISTRABLE DRUGS	\$1.00
RECOVERY ROOM - GENERAL CLASSIFICATION	\$4,573.00
Payments and Adjustments	
Humana Medicare	-\$36,649.25

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EXHIBIT RMC.5 - Remittitur Definition ; Jurisdiction resides with the Trial Court

(excerpted, emphasis added)

In the context of appellate procedure, it refers to an appellate court sending a case back to the trial court so that the case can be retried, or so that trial court can enter an order that conforms to the findings of the appellate court. Remittitur is a process by which jurisdiction is transferred back from the appellate court to the trial court. **Remittitur divests the appellate court of the jurisdiction** after it has resolved the appeal, and permits **full jurisdiction** over the judgment to be **returned to the trial court**.

(definitions.uslegal.com/r/remittitur)

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current Board of Directors of the Woodington Homeowners' Association, Inc., Respondents.

CERTIFICATE OF SERVICE

It is hereby certified that a copy of "Return to Respondents' Motion for Costs Pursuant to Rule 222, SCACR", along with Exhibits RMC.1 – RMC.5, were served upon the following:

Ely O. Grote, Esq.
McCabe Trotter & Beverly, PC
P.O. Box 212069
Columbia, SC 29221
Tel: (803) 724-5000
ely.grote@mccabetrotter.com
Attorney for Respondents

via electronic mail (e-mail)

on October 22, 2021.



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