

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable Deborah Brooks Durden, Administrative Law Judge
18-ALJ-22-0409-AP

Appellate Case No. 2019-001033

Cortez M. Jiles,

Respondent,

v.

South Carolina Department
Of Employment and Workforce and
House of Raeford Farms, Inc.,

Appellants,

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Feb 11 2022

SC Court of Appeals

Of Which South Carolina Department of Employment and Workforce is the Appellant.

APPELLANT'S RESPONSE TO RESPONDENT'S MOTION FOR COSTS

Benjamin T. Cook, Esquire
Paul Famolari, Esquire
P.O. Box 8597
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(803) 737-0395
Attorneys for Appellant

Appellant hereby respectfully requests this Court deny the Motion for Costs filed by counsel for Respondent in this case pursuant to Rule 222 of the South Carolina Appellate Court Rules. This request is made on the following grounds:

- 1. This Court has discretion over whether to award fees and costs under Rule 222 and counsel for Respondent has made no argument as to why fees and costs should be awarded in this case.**

An award of attorneys' fees and costs is not an automatic process under Rule 222 because this Court has the discretion to deny such a request. *See* Rule 222(a), SCACR (“**Unless otherwise ordered by the appellate court** or agreed by the parties, costs shall be taxed against the appellant when the appeal is dismissed or judgment on appeal is affirmed.”) (emphasis added); *see also Austin v. Stokes-Craven Holding Corp.*, 406 S.C. 187, 199, 750 S.E.2d 78, 84 (2013) (“Notably, it is within this Court’s discretion whether to award fees and costs under Rule 222.”). However, counsel for Respondent, in their Motion for Costs makes no argument in support of their request for fees and costs under Rule 222. They only include a brief list of what costs and fees are sought by counsel. Thus, counsel for Respondent have failed to meet their burden of showing they are entitled to attorneys' fees. Based on the lack of supporting argumentation alone, this Court should deny counsel’s Motion for Costs as they have not met any possible burden of persuasion to show why such a motion should be granted.

- 2. Counsel for Respondent has not shown that any fees or costs were actually incurred by Respondent.**

This Court has previously stated that “recovery under [Rule 222] is clearly limited to costs incurred in pursuing the appeal, such as ... limited attorney fees.” *Martin v.*

Paradise Cove Marina, Inc., 348 S.C. 379, 384, 559 S.E.2d 348, 351 (Ct. App. 2001) (emphasis added). The South Carolina Supreme Court addressed the issue of awarding attorney's fees in *Williamson v. Middleton*, 383 S.C. 490, 681 S.E.2d 867 (2009). In that case, the S.C. Supreme Court, in reversing the S.C. Court of Appeals, found "no competent evidence that attorney's fees were actually incurred." *Id.* at 496, 681 S.E.2d at 870. The Court relied on the fact that Middleton's attorneys had "no expectation of being paid" and that Middleton had "no obligation other than a moral obligation to pay a fee.... It therefore follows that no attorney's fees were incurred." *Id.*

South Carolina Legal Services ("SCLS") has represented Mr. Jiles in this case from the time he acquired representation while this case was pending before the Administrative Law Court. Although Mr. Cohoon changed law firms after initial briefing and submission of the Record on Appeal had been completed and filed, Mr. Faulks joined Mr. Cohoon at the same time to continue representation of Respondent by SCLS. Further, counsel for Respondent has made no showing that any fee arrangement was ever established with Mr. Jiles that resulted in any costs or fees actually being incurred by Mr. Jiles.

South Carolina Legal Services (SCLS) provides free legal assistance in a wide variety of civil (non-criminal) legal matters to eligible low income residents of South Carolina. SCLS is a non-profit corporation, funded by grants from the federally funded Legal Services Corporation, the South Carolina Bar Foundation, local United Ways, state court filing fees, and other federal, state and local funding.

South Carolina Legal Services | About SCLS. <https://sclegal.org/about/> (Accessed February 2, 2022). Upon information and belief, Mr. Jiles has no obligation to pay any attorney's fees or other costs to his attorneys and it would, therefore, be unjust and against public

policy to require the Department (a state agency) to expend taxpayer monies by ordering payment of costs and attorneys' fees. Further, SCLS attorneys are already compensated for providing their free services to low income residents of South Carolina through grant-based, charitable, and public funding. Taxing fees and costs to the Department would result in an unjust taxpayer-funded windfall to an organization that has already been funded for the specific purpose of providing legal services at no cost or detriment to Mr. Jiles. As a result, this Court should deny counsel for Respondent's Motion for Costs.

3. The Department had substantial justification for filing an appeal with this Court and the Department had strong legal justification for believing the appeal was not interlocutory.

As the Department has previously argued more fully in its Briefs and the subsequent Motion for Rehearing, the Department was substantially justified in filing its appeal with this Court. The ALC's decision in this case has the effect of granting a new hearing to a claimant for unemployment benefits who slept through his prior hearing and therefore failed to appear at the call of his case. That decision by the ALC is based on both a legally improper exercise of jurisdiction over the Department as well as findings and conclusions which are unsupported by either the facts in the Record or the relevant legal authority. Although the Department has chosen not to pursue certiorari in this matter, the Department still believes the decision of the ALC was a final decision as it pertains to the Department in this case. The Department will no longer be a party to the case on remand to the Department's Appeal Tribunal. The new hearing held before the Tribunal will be between Respondent and Respondent's former employer. The Department will not have any rights to appeal or otherwise seek judicial review of any decisions issued pursuant to those

proceedings. *See Torrence v. S.C. Dep't. of Corr.*, 433 S.C. 224, 227, 857 S.E.2d 549, 550 (2021) (finding that “when the ALC’s decision was, in fact, final” it acts as an exception to the “general proposition that where an ALC order includes a remand to an administrative agency there is no final judgment in the vast majority of cases”); *see also* 4 Am. Jur. 2d *Appellate Review* § 82 (2021) (“To constitute a final, appealable judgment, the trial court’s determination must either decide and conclude the rights of the parties involved or deny a party the means to prosecute or defend rights and interests in the subject matter of the proceeding. An order that has the effect of putting a party out of court is a final appealable judgment....”).

Because the Department was substantially justified in filing its appeal, it would be unjust to tax the Department for costs and attorneys’ fees in this matter and Respondent’s Motion for Costs should be denied.

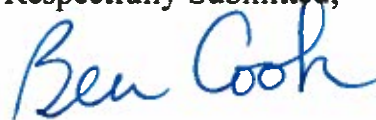
4. The issue upon which this Court based its decision to dismiss the Department’s appeal in this case was neither raised nor argued by Counsel for Respondent.

This Court *sua sponte* dismissed the Department’s appeal based on a ruling that the appeal was interlocutory. Respondent neither raised nor argued that issue before this Court and the outcome of this appeal was not affected by any of counsel for Respondent’s efforts on his client’s behalf. This Court should not tax the Department to reward Respondent for a winning argument that Respondent never actually made.

For the foregoing reasons, the Department respectfully requests this Court deny Respondent’s Motion for Costs.

[Signature on Following Page]

Respectfully Submitted,



Benjamin T. Cook (SC Bar # 102216)

Paul Famolari (SC Bar # 076723)

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**Attorney for Appellant SC Department of
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Of which South Carolina Department of Employment
And Workforce is the ,

Appellant

PROOF OF SERVICE

I certify that I have served the Appellant's Response to Respondent's Motion for Costs on the parties in this case email on February 11, 2022, addressed to the parties at their addresses of record:

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February 11, 2022



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SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: SCDEW v. Cortez Jiles
Appellate Case No: 2019-001033

Dear Ms. Kitchings:

Enclosed is the Appellant's Response to Respondent's Motion for Costs in the above referenced case. A proof of service is also included in this mailing.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Kristi Chesley".

Kristi Chesley
Administrative Legal Assistant for
Benjamin Cook
Attorney for Respondent South Carolina
Department of Employment and Workforce