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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM Horry COUNTY
Court of Common Pleas

Thomas A. Russo, Circuit Court Judge

Appellate Case No. 2018-002270
Case No. 2014-CP-26-07790

Richard Ciampanella,Respondent,

v.

City of Myrtle Beach,Appellant.

Appellant City of Myrtle Beach’s Return to Respondent’s Motion to Tax Costs

Pursuant to Rule 240(e) of the South Carolina Appellate Court Rules, Appellant City of Myrtle Beach (“the City”) submits this Return opposing Respondent’s Motion to Tax Costs.

As a threshold matter, Respondent’s Motion to Tax Costs is premature because it was filed *prior* to the expiration of the time for the City to file a Petition for Rehearing. Until the Court of Appeals acts on the City’s Petition for Rehearing, it cannot assess who is the successful litigant in this appeal. See Rule 222(d), SCACR (“A party desiring costs to be taxed shall, within fifteen (15) days of the issuance of the remittitur, serve and file a motion requesting that costs be assessed under this Rule.” (emphasis added)).

In the event the Court of Appeals decides to act on this motion, the Court should decline to award costs. Rule 222(a) of the South Carolina Appellate Court Rules provides, “*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). This emphasized clause specifically grants the Court of Appeals the discretion to choose *not* to award costs.

The Court of Appeals, acting in its discretion, should decline to award costs in this appeal because the City presented a compelling issue on appeal. Specifically, the issue on appeal arose after the circuit court judge granted a directed verdict on all issues and then reversed himself in part after Respondent filed a motion for a new trial. The fact the circuit court judge reversed his initial ruling shows a question on the appealed issues exists on which reasonable minds could differ and the City had a good-faith basis for pursuing this appeal. The Court of Appeals heard oral argument on this issue, further showing this was a compelling issue, and the City had a good-faith basis for pursuing an appeal.

Additionally, the City is a governmental entity against which liability is limited under the South Carolina Tort Claims Act. See S.C. Code Ann. § 15-78-200 (“The provisions of this chapter establish limitations on and exemptions to the liability of the governmental entity and *must be liberally construed in favor of limiting the liability* of the governmental entity.” (emphasis added)); c.f. Rule 54(d), SCRCP (“[C]osts against the State, its officers and agencies [in the trial court] shall be imposed only to the extent permitted by law.”). The Court should consider the City’s status as a governmental entity when determining whether costs are appropriate.

Finally, should the Court determine costs are appropriate, the City respectfully requests the Court decline to award Respondent costs for obtaining the trial transcript because Respondent obtained the trial transcript in preparation for his Motion for a New Trial, which occurred *prior to* the City’s filing of the Notice of Appeal. In fact, Respondent referenced the trial transcript at his Motion for a New Trial and offered the trial court a copy of it. (**R. 835-36, 842-43**). Thus,

Respondent already had the trial transcript when this Notice of Appeal was filed and did not need to expend additional funds to obtain another one.

Based on the foregoing, the City requests this Court deny Respondent's Motion to Tax Costs. Alternately, should the Court award costs, the City requests this Court decline to award Respondent the \$1,241.24 he claims for obtaining the trial transcript, as he obtained it for use at his own new trial motion and not for the appeal.

Respectfully submitted,
COLLINS & LACY, P.C.

By: s/Amy L. Neuschafer
Amy L. Neuschafer, Esquire
SC Bar No.: 73922
aneuschafer@collinsandlacy.com
Christian Stegmaier, Esquire
SC Bar No.: 68648
cstegmaier@collinsandlacy.com
Danielle E. Dixon, Esquire
SC Bar No.: 73999
ddixon@collinsandlacy.com
11945 Grandhaven Drive, Suite D
Murrells Inlet, SC 29576
843.353.2350 (p)
843.353.2351 (f)

ATTORNEYS FOR APPELLANT
CITY OF MYRTLE BEACH

Murrells Inlet, South Carolina
March 18, 2022

Other Counsel of Record:

Gene M. Connell, Jr., Esquire
Kelaher, Connell & Connor, P.C.
Post Office Drawer 14547
Surfside Beach, SC 29587
843.238.5648

Julian Z. Hanna, Esquire
Julian Z. Hanna and Associates, P.A.
14323 Ocean Highway, Suite 4105
Pawleys Island, SC 29585
843.237.3431