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Apr 13 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas  
Benjamin H. Culbertson, Circuit Judge

Appellate Case No. 2019-000413

Karl & Terri Hager; Robert Singleton & Teresa Singleton; Jay & Susan Welborn; Erik Arnold; and Bowers Caravelle LLC; derivatively on behalf of Caravelle Resort Association, Inc and on behalf of themselves and those similarly situated,..... Appellants,

v.

McCabe, Trotter & Beverly, P.C. and Gold Crown Management Company, ..... Defendants,

Of whom McCabe, Trotter & Beverly, P.C. is the .....Respondent.

APPELLANTS’ REPLY TO RESPONDENT’S RETURN

Appellants hereby submit, pursuant to Rules 222 and 240(f), SCACR, and all other applicable law, this Reply to Respondent’s Return to Appellants’ Motion for Costs.

Respondent is correct to point out that costs in this case “shall be allowed only as ordered by the appellate court,” and that an award of costs is in the Court’s discretion. Rule 222(a), SCACR; *Austin v. Stokes-Craven Holding Corp.*, 406 S.C. 187, 750 S.E.2d 78 (2013). In light of this standard and other applicable law, Appellants ask that the Court grant their motion for costs and deny Respondent’s request for costs on the following grounds:

**I. Appellants did, in fact, succeed in significant part.**

While it is true that the Court affirmed the dismissal of Appellants’ individual claims against Respondent, Respondent downplays Appellants’ success on the reversed dismissal of their

derivative claims. The Court’s reversal established that South Carolina now recognizes derivative suits for attorney malpractice (before the Court’s opinion, there was no state law on the issue). *See Karl & Teri Hager v. McCabe, Trotter & Beverly, P.C.*, Op. No. 5894 (S.C. Ct. App. filed Feb. 23, 2022). Respondent said itself that “Appellants’ claims sound in legal malpractice”—given the remittitur of Appellants’ derivative claims, one of which is newly recognized for legal malpractice, it is curious how Respondent can contend that Appellants have lost their gravamen. Ret. p. 2. Accordingly, Appellants moved for costs—how Respondent feels about seeking costs for itself has no bearing on whether Appellants are entitled to costs.

Respondent further attempts to place doubt on Appellants’ likelihood of succeeding on the claims that the Court reversed and remitted to the trial court, citing that the court noted the “general” nature of the allegations and damages. Again, how the Respondent feels about Appellants’ likelihood of success in the trial court has no effect on whether their motion for costs should be granted. The Court explicitly stated that there were no defects in how the Appellants alleged their derivative claims. *See Karl & Teri Hager v. McCabe, Trotter & Beverly, P.C.*, Op. No. 5894 (S.C. Ct. App. filed Feb. 23, 2022). Prematurely doubting the Appellants’ likelihood of success in the lower court is what brought this case to this Court in the first place.

Given the Court’s reversal and remitter of Appellants’ derivative claims, Appellants ask for an order awarding costs.

**II. Respondent did not make a proper motion for costs and cannot ask for them in a Return.**

Respondent further asks the Court for costs in its Return. *See* Ret. pp. 1, 4. Rule 222(d), SCACR, sets forth that “[a] party desiring costs . . . shall, within fifteen (15) days of issuance of the remittitur, serve and file a motion requesting that costs be assessed under this rule.” The

remittitur was issued by the Court on March 18, 2022. Respondents did not ask for costs until April 8, 2022. Accordingly, this request is untimely.

Moreover, Respondent cannot ask the Court for costs via a Return. Rule 222(d) sets forth that “[a] return may *oppose* the request for costs or *seek a reduction* of the amount of costs to be awarded”— Respondent cannot use it as a mechanism to move for costs. Rule 222(d), SCACR (emphasis added). Accordingly, we ask that this Court deny Respondent’s request for costs.

### **III. Conclusion**

Appellants respectfully ask that the court grant Appellants’ motion for costs and deny Respondent’s request for costs.

Respectfully submitted,

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Of whom McCabe, Trotter & Beverly, P.C. is the .....Respondent.

PROOF OF SERVICE

I certify that I have served Appellants' Reply to Respondent's Return on the date given  
below by emailing it to opposing counsel at the addresses noted below.

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