

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas
Letitia H. Verdin, Circuit Court Judge

Supreme Court Case No.: 2023-000417
Appellate Case No.: 2021-000269

Bobby E. Leopard, Luther Harris, and Donna Harris Petitioners,

v.

Perry W. Barbour, Respondent.

THE STATE OF SOUTH CAROLINA
In the Supreme Court
J. Derham Cole, Circuit Court Judge

Supreme Court Case No.: 2023-000417
Appellate Case No.: 2020-001110

Luther Harris, Donna Harris, and Bobby E. Leopard Petitioners,

v.

Perry Wendell Barbour and Southland Transportation Co. Respondent.

**REPLY TO MOTION TO PERMIT FILING OF CONSOLIDATED PETITIONS FOR
WRITS OF CERTIORARI**

Petitioners have moved that the Court permit the filing of one petition for writ of certiorari in conjunction with appeals arising out of actions arising out of Spartanburg County (Appellate

Case No.: 2020-001110) and Cherokee County (Appellate Case No.: 2021-000269), respectively. Admittedly, both appeals arise out of the same accident involving the same parties with similar but not exact issues.

Respondents would, however, oppose this motion since it is unnecessary in light of the fact that one or both of the petitions for writ of certiorari have not been timely made. As acknowledged by the Petitioners in their motion, the Spartanburg County appeal was affirmed in the unpublished opinion of the South Carolina Court of Appeals on November 2, 2022. Petitioners submitted a petition for rehearing on November 21, 2022, after moving to allow for a late filing on November 18, 2022. The Court of Appeals issued a letter on November 22, 2022 indicating the appropriate fee had not been received. The Court of Appeals subsequently notified the Petitioners on December 12, 2022 that the petition for rehearing had not been acted upon due to the failure to pay the appropriate fee and issued a remittitur to the trial court on the same day. Petitioners thereafter moved the Court of Appeals to recall the remittitur. The Court of Appeals denied this motion on March 17, 2023.

With regard to the Cherokee County appeal, the Court of Appeals affirmed the trial court in an unpublished opinion on December 7, 2022. On December 28, 2022, the Petitioner filed a petition for rehearing. On February 10, 2023, this petition was denied.


A petition for the issuance of a writ of certiorari is controlled by *Rule 242 of South Carolina Rules of Appellate Practice*. Pursuant to *subsection (c)*, a petition for writ of certiorari is to be served and filed within thirty (30) days after the petition for rehearing is finally decided by the Court of Appeals. With regard to the Spartanburg County appeal, the Court of Appeals notified the Petitioners, on December 12, 2022 that their petition for rehearing would not be acted on due to their failure to pay the appropriate fee. Using this date, the petition for writ of certiorari would

have to be filed by January 11, 2023. However, as noted, the Petitioners requested through another motion that the case be recalled. That motion was denied on March 17, 2023. Using this date, the petition for certiorari should have been filed by April 16, 2023. The Petitioners may argue that this motion, which was made on April 12, 2023 acts as a petition for the issuance of a writ of certiorari. However, this motion does not meet the standards for a petition for writ of certiorari, as set forth in *Rule 242*. Moreover, a motion does not serve to toll the time for filing. *Rule 240(b)*, *SCRAP*.

With regard to the Cherokee County appeal, the petition for rehearing was denied by the Court of Appeals on February 10, 2023. Pursuant to *Rule 242(c)*, the petition for writ of certiorari should have been filed by March 12, 2023.

Since neither petition for writ of certiorari has been timely filed, there are no petitions to consolidate and therefore the motion for consolidation should be denied.

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