

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM MARLBORO COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Hon. Paul M. Burch, Circuit Court Judge

Appellate Case No. 2022-001480

Daisy Frederick.....Respondent,

vs.

Daniel Lee McDowell.....Petitioner.

RESPONDENT’S MOTION FOR COSTS

Respondent Daisy Frederick moves for the taxation of costs on appeal under Rule 242(j) and Rule 222(b) of the South Carolina Appellate Court Rules against Petitioner Daniel McDowell. The Itemized Statement of Costs is attached.

This was an appeal from the trial court’s denial of McDowell’s motion for a new trial absolute, or in the alternative, for a new trial nisi remittitur following a jury verdict of five-million-dollars for Frederick. On appeal before the Court of Appeals, McDowell contended the trial court erred in four particulars: (1) in failing to grant a new trial absolute or new trial nisi remittitur due to the excessiveness of the verdict; (2) in denying his motions for directed verdict and judgment notwithstanding the verdict (JNOV) because Frederick was contributorily negligent; (3) in admitting evidence of the full amount of medical bills in violation of North Carolina law; and, (4)

in allowing Frederick's expert to rely on the accident report prepared by the investigating law enforcement officer. The Court of Appeals affirmed, and McDowell filed a Petition for Rehearing, which was denied.

McDowell filed a Petition for Writ of Certiorari as to all four issues, which this Court granted in part as to the issue of whether the trial court erred in denying McDowell's post-trial motions for a new trial absolute or a new trial nisi remittitur. The parties then filed briefing, and the Court held oral argument at Coker University on May 2, 2024. Ultimately, the Court dismissed the writ as improvidently granted on May 22, 2024. Frederick now seeks costs and an attorney's fee award for successfully upholding the verdict before the court of appeals and this Court.

Rule 242(j), SCACR provides in relevant part, "costs shall be assessed against the appellant if the decision of the Supreme Court has the effect of affirming the judgment of the lower court or tribunal which was reviewed by the Court of Appeals." This Court's decision has the effect of affirming the trial court's decision because the court of appeals' opinion, which upheld the judgment on each of the four grounds challenged by McDowell on appeal, remains in effect. Because the trial court's decision was affirmed on appeal by both appellate courts, Frederick is entitled to costs and an attorney fee under Rules 242(j) and 222(b).¹

Accordingly, Frederick respectfully requests an Order directing that the total amount set forth on the Itemized Statement of Costs attached, \$5,065.50 be added to the Remittitur.

(Signature block on following page)

¹ This Court has previously awarded costs when dismissing the writ as improvidently granted. *See, e.g., Rosemary Connelly v. Winsor Custom Homes, LLC*, Appellate Case No. 2019-002046. Awarding costs following a dismissal as improvidently granted is consistent with the text of the rule, and it accounts for the time and expenses for drafting the response to McDowell's petition for a writ of certiorari, drafting Frederick's merits brief, and arguing the case.

June 5, 2024
Columbia, SC

Respectfully submitted,

/s/R. Brian Critzer
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