

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

---

APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

Courtney Clyburn Pope, Circuit Court Judge

---

Appellate Case No. 2023-000890

---

Deborah T. Weeks.....Respondent,

v.

David W. Weeks.....Petitioner.

In Re: Estate of James Randall Weeks, Jr.

---

RETURN TO MOTION FOR COSTS

---

COMES NOW THE PETITIONER, pursuant to Rules 242(j) and 240, SCACR, and respectfully submits this Return in Opposition to the Respondent’s Motion for Costs.

The Appellate Court Rules dictate the recovery of costs in appellate matters. Specifically, Rule 242(j)(1), SCACR states that

[u]nless otherwise ordered by the Supreme Court or agreed to by the parties, 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. When the decision of the Supreme Court has the effect of reversing the judgment of the lower court or tribunal which was on appeal, costs shall be assessed against the respondent before the Court of Appeals. When the decision of the Supreme Court has the effect of affirming or reversing in part or vacating the judgment of the lower court or tribunal which was on appeal, costs shall be allowed only as ordered by the Supreme Court.

A party may file a Return to the moving party’s request for costs and fees. See Rule 242(j)(4) (“The return may oppose the request for costs...”).

At the outset, Petitioner respectfully asserts that the Respondent’s motion is not timely. See Rule 242(j)(4) (“*within fifteen (15) days of the issuance of the remittitur*, [the party seeking costs shall]

**RECEIVED**  
**Jan 13 2025**  
S.C. SUPREME COURT

serve and file a motion requesting that costs be assessed under this Rule”) (emphasis added). The Respondent’s motion was filed on January 3, 2025, but the remittitur was not issued until January 6, 2025. Furthermore, the Respondent seeks costs under Rule 222, SCACR, but that Rule does not apply when a petition for certiorari has been granted. See Rule 222(e) (“In all cases in which a writ of certiorari is granted, costs shall be awarded in the manner provided by Rule 242(j).”).

Should this Court determine that the Respondent’s motion is timely, the Petitioner respectfully submits that the Motion should still be denied. In this matter, the Petitioner had a good faith basis for defending this matter at the Court of Appeals, and further petitioning this Court for review. As indicated by the Record, the Petitioner prevailed at trial court, then again at Circuit Court. The Court of Appeals reversed the Circuit Court.

Despite the mandatory language Rule 242, the Rule does allow discretion when determining whether to award costs. See Rule 242(j)(1) (“[u]nless otherwise ordered by the Supreme Court...”). The Petitioner respectfully asserts that awarding costs and fees in this matter would further deplete the already exhausted assets of the Estate (See App. p. 37) and potentially discourage future appellants from pursuing otherwise meritorious appeals.

### **Conclusion**

For the foregoing reasons, the Petitioner respectfully requests that the Respondent’s Motion for Costs be denied.

Respectfully submitted,

NANCE & MCCANTS

s/ Clarke W. McCants, IV

Clarke W. McCants, IV

S.C. Bar No. 103228

Clarke W. McCants, III

S.C. Bar No. 3725

Amy P. Shumpert

S.C. Bar No. 65339

Post Office Box 2881

Aiken, South Carolina 29802

(803) 649-6200 Ext. 3

Attorneys for Petitioner

Dated: January 13, 2025