

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Jan 15 2025

SC Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable Daniel D. Hall, Circuit Court Judge

Appellate Case No. 2024-000271

STEPHANIE KOZAK,
(Personal Representative of the Estate of John Witkowski),

Appellant,

vs.

CHRIS CUTWAY,

Respondent.

MOTION TO RECALL REMITTITUR
and TO ALLOW LATE FILING

Pursuant to Rules 263(b) and 240, S.C.A.C.R., the Appellant, by her counsel undersigned, moves this Court for an order recalling the Remittitur and allowing the filing of the Record on Appeal.

1. Counsel for Appellant is currently in rehab, recovering from an operation in November.
2. The Record on Appeal was completed in November, with the exception of the Transcript of the Motion argument. As best as could be determined, our copy had been lost in a computer upgrade.
3. Efforts were made to locate or replace the said Transcript, which finally occurred on January 2, 2024. While the Record on Appeal was being assembled, counsel received the notice of Remittitur below. Through inadvertence, counsel for the Appellant failed to timely file the Record on Appeal. By Order issued and served November 19, 2024, a Remittitur of the Appeal issued.
4. Since November 11, 2024, counsel has been in the hospital due to infection and

5. treatment of a wound. Counsel has made attempts to prepare and file the Record on Appeal. He has been prevented by his absence for his office and the need to communicate instructions by phone. He is confined to the hospital through December 4th, 2024.

6. As of the date of this Motion, all elements of the Record on Appeal had been assembled except one: the Transcript of the argument on the last Motion below. As of the date of this Motion, that Transcript could not be located by counsel's secretary nor a copy obtained through the court reporter.

7. Without proper access to his office and research materials, counsel for Appellants is not capable of providing the required filings within the time presently set.

8. It is the expectation of Counsel for the Appellant that he will be physically able to supply the said filings if allowed an additional period.

The basis of this Motion is the within-cited Rules, and the records of this appeal, which items are hereby incorporated in this Motion.

WHEREFORE, the Appellant herein moves this Court move this Court for an order granting an extension of time, on the grounds stated herein.

January 15, 2025

/s/ John Martin Foster
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Attorney for Appellant

Other Counsel of Record:

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CERTIFICATE OF SERVICE

The undersigned, counsel for Appellant in the civil appeal above, hereby certifies that, on the date written below, he served copies of the following pleadings or documents in the above-captioned and numbered civil action:

Motion for Extension; Record on Appeal; and this Certificate of Service,

by service to the opposing lawyer's primary e-mail address listed in the Attorney Information System (AIS), as authorized by Section (b)(2) of the Order of the Supreme Court dealing with Electronic Filing and Service issued May 6, 2022.

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January 15, 2025

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