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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Alex Kinlaw, Jr. Circuit Court Judge
Common Pleas Case No. 2022-CP-23-01064

(Court of Appeals Appellate Case No. 2022-000731)

Supreme Court Appellate Case No. 2025-000386

IN THE MATTER OF:
Estate of Florence Petrak Mensch,

STERLING RAYMOND MENSCH, III, individually as former Personal Representative of the Estate of Florence Petrak Mensch and in his former capacity as Agent under a Power of Attorney for Florence Petrak Mensch,

Appellant,

v.

SHAUNA M. WADDELL, individually and as Personal Representative of the Estate of Florence Petrak Mensch and JOHN R. MENSCH,

Respondents.

REPLY TO RETURN TO MOTION FOR FEES AND COSTS

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Appellant Sterling Raymond Mensch, III, respectfully replies to the Return to the Motion for Fees and Costs as follows:

I. Appellant Was the Prevailing Party.

The Order from the Circuit Court under review held it lacked jurisdiction over the Probate Court appeal. [ROA 28-34]. This Court ultimately held otherwise; the Circuit Court must reach the merits of the appeal because the notice of appeal was timely. Respondents' claim that this Court partially entered judgment in their favor conflicts with the relief that this Court awarded: "**REVERSED AND REMANDED**." [Sup. Ct. Opinion p. 3 (original emphasis)].

The entirety of the instant appeal would have been unnecessary had the Circuit Court correctly calculated the due date for the notice of appeal from Probate Court in the first instance. But it did not—at the insistence of Respondents, who incorrectly convinced it to blue pencil another exception into R. 59(e), SCRCP, beyond the only two recognized by this Court's prior caselaw in effect since at least 2004. *See Swing v. Swing*, 445 S.C. 340, 349 (2025) ("[U]nder the fairly emphatic explanation given by the *Elam* Court, timely post-trial motions always stay the time for appeal unless the motion fits into one of the two 'exceptions' initially set forth in *Coward Hund* and *Quality Trailer*.") (citing *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9 (2004)).

Costs of right should, therefore, be awarded to Appellant as the prevailing party.

II. Whether or Not Appellant Fully or Only Partially Prevailed, Costs Should Be Taxed.

Even if Appellant were somehow not entitled to costs as of right, the Court still has discretion to award them, as Respondents concede. [Return p. 5]. The Court should.

A. Respondents Choose to Include Thousands of Pages of Irrelevant Material in the Record.

Respondents' explanation for their decision to make the record here resemble the size of a one in a death-penalty PCR makes no sense. Pursuant to S.C. Code § 62-1-308(d) and the original designations of record matter to the Circuit Court, Appellant prepared and filed a 918-page record to the Circuit Court. *See* Attached Exhibit 1. Given that the Circuit Court granted Respondents' motion to dismiss the appeal, all that should have been required in the record to the Court of Appeals was the 918-page record for the Circuit Court, the transcript of the hearing on the motion to dismiss, the order on the motion to dismiss, and the notice of appeal.[1] But Respondents chose to designate material that they had not previously designated to the Circuit Court, swelling the final record to 9,300 pages. Respondents do not dispute that they never once cited *any* of thousands of extra pages that they required Appellant to include in the record on appeal to the Court of Appeals and to this Court.

[1] Although Appellant obtained the transcript of the trial in the Probate Court, Appellant did not include the cost of that transcript in the motion for fees and costs here, nor of the cost of the filing fee for notice of appeal from the Probate Court to the Circuit Court.

B. The Respondents' Massive Record Designations Required Redactions.

Respondents also do not dispute that their designations were filled with financial and other records that had to be redacted to comply with the privacy rules—as confirmed in the invoice for the third-party paralegal service that had to be hired to complete it:

DATE	QTY	DESCRIPTION	RATE	AMOUNT
12/27/2022	48	PARALEGAL SERVICES - Hourly (48 HRS.) ORGANIZING DOCUMENTS; DRAFTING INDEX, COVERS, AND CERTIFICAT OF COUNSEL; HEAVY REDACTING OR ACCOUNT NUMBERS, SS#, ETC; DIVIDING INTO VOLUMES, ETC.	135.00	6,480.00

[Itemized Statement of Costs at 5].

While normally only the cost of the actual copying of the record would be recoverable, Respondents acknowledge that paralegal services can be awarded in exceptional circumstances. [Return at 6]. Exceptional circumstances exist here given the size of the record, the heavy redactions required, and the irrelevance of 8/9^{ths} of the pages in the record. Indeed, if this record does not count as exceptional circumstances, it would be difficult to imagine what would.

C. No Double Dipping Has Occurred.

Respondents' invective in the Return is disappointing given the civility owed to fellow members of the bar, particularly in an appeal. More than that, it is also completely wrong.

Where, as here, a petition for writ of certiorari is granted, a party can "recover all those costs specified in Rule 222(b) [such as the filing fee in R. 222(b)(1)], *to include the attorney's fee provided by that rule*. *Additionally*, the party may, to the extent the party actually incurred these costs, recover…the filing fee paid under Rule 242(c)…. The party may also recover an *additional attorney's fee* in an amount which shall be set by order of the Supreme Court." R. 242(j)(2), SCACR (emphasis added).

Contrary to Respondents' strange and uncivil claim, [Return p. 6], Appellant was required to pay a filing fee to appeal to the Court of Appeals and then again to file his petition for writ of certiorari. Further, Appellant had to incur legal representation both before the Court of Appeals (including at oral argument) and before this Court because the Court of Appeals erred. In requesting reimbursement for those items, no "double dipping" has thus ever occurred—nor, emphatically, did the supposed perjury that Respondent claims. *See* [Return p. 6 ("Although Counsel for Appellant swore so under oath, Appellant did not pay a filing fee twice….")].

D. Because the Merits Have Not Been Reached on Appeal, They Are Irrelevant Here.

Because of the Circuit Court's misunderstanding of its jurisdiction, it never reached the merits of Appellant's appeal. Consequently, neither the Court of Appeals nor this Court

has yet considered them either. Considering the merits now would put the proverbial cart before the horse.[2]

While Respondents complain about delay in resolving this case, they forget that more than three years have been wasted on appeal due to their having incorrectly convinced the Circuit Judge that the appeal to him was untimely.

This appeal was a waste of time—and money. Respondents, as the cause, should bear those costs.

CONCLUSION

This Court should tax fees and costs against Respondents as per the fee-and-cost affidavit.

Dated this 18th day of August, 2025

Respectfully submitted,

STERLING RAYMOND MENSCH, III

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One of Appellant's Attorneys

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[2] Respondents also seem to forget that, once appealed, an order from the Probate Court will automatically "rest in abeyance pending the judgment of the appellate tribunals." *Ex parte Bank of Anderson*, 128 S.C. 174, 177 (1924). Respondents are incorrectly attempting to give the order appealed from effect.

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