

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

**RECEIVED**

AUG 08 2018

S.C. SUPREME COURT

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Appellate Case No. 2016-002337

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In the Matter of the Estate of Marion M. Kay

Edward D. Sullivan, as Personal Representative  
of the Estate of Marion M. Kay.....Petitioner/Respondent,

v.

Martha Brown and Mary Moses.....Respondents/Petitioners

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PETITIONER/RESPONDENT'S  
MOTION FOR COSTS

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Daryl G. Hawkins  
Law Office of Daryl G. Hawkins, LLC  
1331 Elmwood Avenue, Suite 305  
Columbia, SC 29201-2150  
(803) 733-3531

*Attorney for Petitioner/Respondent*

TO: THE HONORABLE JUSTICES OF THE SOUTH CAROLINA  
SUPREME COURT

Petitioner/Respondent Edward D. Sullivan as personal representative of the Estate of Marion M. Kay (the "PR") respectfully petitions this Court for assessment of costs in this case pursuant to Rule 242(j), SCACR. The remittitur was filed on August 2, 2018.

Rule 242(j), SCACR, provides that an appellate court may award costs on appeal. In this appeal, the PR prepared and filed briefs as well as the record on appeal and joint appendix over a six year period. During this time, he appeared in the Circuit Court, the Court of Appeals, and in this Court and ultimately prevailed in demonstrating that the probate court (a) erred in finding the PR complicated the estate by seeking to partition real estate (b) erred in finding that the PR determined his compensation by "pulling a figure out of the air" (c) erred in ruling that the PR was not entitled to reimbursement of costs, including legal fees, for preparing for and attending the hearing on the Petition for Settlement and (d) erred in finding that Brown and Moses were entitled to legal fees and costs under the common fund doctrine. In addition, the PR successfully argued before this Court that the Court of Appeals erroneously applied the "two judge" rule standard of review as opposed to "a preponderance of the evidence."

In the cross-appeal, the PR successfully defended against Respondent/Petitioner's Martha Brown and Mary Moses' ("Brown and Moses") contentions and demonstrated that he did not act in bad faith or breach his

fiduciary duty and that it was the failure of Brown and Moses to respond to the PR's efforts to partition the real estate that prolonged the estate administration. Although, the Court did not agree with the PR's interpretation of the Probate Code section applicable to compensation of personal representatives, the PR did prevail in the cross-appeal of Brown and Moses regarding their contention that the probate court erred by awarding compensation to the PR greater than five per cent of the Estate.

Accordingly, the PR requests the assessment of costs on appeal as provided by SCRCR, Rule 242(j) including legal fees of \$5,000 and costs of \$5,199.19, for a total amount of \$10,199.19, all as listed in the attached itemized Statement of Costs.

### **CONCLUSION**

For the foregoing reasons, the PR respectfully requests that the Court assess legal fees and costs in the amount of \$10,199.19 as listed in the Itemized Statement of Costs.

**RESPECTFULLY SUBMITTED,**

**LAW OFFICE OF DARYL G. HAWKINS, LLC**

By: 

Daryl G. Hawkins

1331 Elmwood Avenue, Suite 305 (29201)  
Post Office Box 11906  
Columbia, South Carolina 29211  
803.733.3531 Tel

803.744.1949 Fax

*Attorneys for Petitioner/Respondent  
Edward D. Sullivan, PR of the  
Estate of Marion M. Kay*

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PETITIONER/RESPONDENT'S  
ITEMIZED STATEMENT OF COSTS

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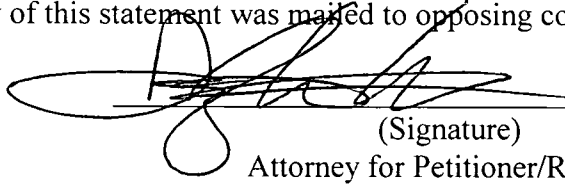
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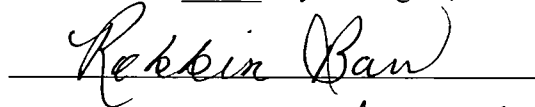
The Appellate Court is requested to tax the following costs against Respondents/Petitioners Martha Brown and Mary Moses:

COSTS TAXABLE UNDER RULE 222, SCACR	NO. OF PAGES	RATE	REQUESTED	ALLOWED (For Court Use Only)
Cost of Printing or Copying Final Brief			58.32	
Cost of Printing or Copying Final Reply Brief			58.32	
Cost of Printing or Copying Record on Appeal	13,379	.10/pg	1,337.90	
Filing Fee Paid Under Rule 203(d), SCACR			100.00	
Cost of Court Reporter's Transcript			2,538.40	
Attorney's Fee Provided By Rule 222(b), SCACR			2,500.00	
Other (specify and explain):				
COSTS TAXABLE UNDER RULE 242(j), SCACR				
Cost of Printing or Copying Brief			108.49	
Cost of Printing or Copying Reply Brief			88.23	
Cost of Printing or Copying Appendix			809.53	
Filing fee paid under Rule 242(c), SCACR			100.00	
Attorney's fee provided by Rule 242(j)(2), SCACR			2,500.00	
Other (specify and explain):				
		TOTAL	\$10,199.19	

I, Daryl G. Hawkins, do swear or affirm that the foregoing costs are correct and were necessarily incurred in this action. A copy of this statement was mailed to opposing counsel.

  
\_\_\_\_\_  
(Signature)  
Attorney for Petitioner/Respondent

Subscribed and sworn to before me this 8<sup>th</sup> day of August, 2018.

  
\_\_\_\_\_

Notary Public for South Carolina

My Commission Expires December 5, 2026

My Commission Expires: \_\_\_\_\_

(Seal)

My Commission Expires December 5, 2026

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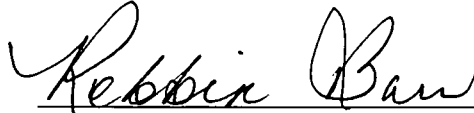
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\_\_\_\_\_  
PROOF OF SERVICE  
\_\_\_\_\_

I certify that I served Petitioner/Respondent's Motion for Costs and Itemization of Costs by e-mailing and mailing one (1) copy to counsel of record, John R. Ferguson, Post Office Box 286, Laurens, SC 29360.



Robbin Barr  
Law Office of Daryl G. Hawkins, LLC  
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Columbia, SC 29201-2150  
(803) 733-3531

August 8, 2018