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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Shirley C. Robinson, Administrative Law Judge

Appellate Case No. 2020-000448

Pickens County,

vs.

South Carolina Department of Health and Environmental Control and
MRR Pickens, LLC,

Respondent,

Petitioners.

**RESPONDENT’S REPLY TO PETITIONERS’ JOINT RETURN
IN OPPOSITION TO MOTION FOR COSTS**

The Petitioners’ basis for asking this Court to deny costs rests on a strained assertion that Pickens County is not a prevailing party before this Court and an outright misreading of the appellate court rules.

First, the Petitioners misstate and misconstrue SCACR Rule 242(j)(1) in asserting that there is “No provision that specifically provides for costs to the appellant at the Court of Appeals or the Respondent before this Honorable Court where the judgment of the lower court or tribunal is reversed.” Instead, Rule 242(j)(1) states that “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.” In this case, the rule’s unambiguous language establishes that “costs shall be assessed” against MRR Pickens, which

was “the respondent before the Court of Appeals,” because this Court’s decision has the effect of reversing the ALC’s decision, which is the judgment of the lower tribunal on appeal. The ALC dismissed this case as untimely, and this Court reversed that determination, remanding the case for a determination of whether DHEC properly characterized the permit modification as minor versus major and thus whether DHEC followed the proper notification procedures. As this Court noted – and as Pickens County has argued since filing the contested case at the ALC – such determination is absolutely necessary to answer whether the County’s appeal is timely. In this regard, the Respondent Pickens County prevailed in its ultimate outcome – having the ALC’s Order of Dismissal reversed – and recovery of attorney’s fees is not only appropriate, but clearly authorized by the rules without restriction.

Second, South Carolina Appellate Court Rules 222 and 242(j) both provide that Respondent Pickens County is entitled to attorney’s fees under the circumstances described above, and the Respondent need not show “extraordinary circumstances” in order to recover attorney’s fees under SCACR Rule 242(j). Rule 242(j)(2) states that

The party entitled to recover costs may recover all those costs specified in Rule 222(b), to include the attorney's fee provided by that rule. Additionally, the party may, to the extent the party actually incurred these costs, recover: (1) the filing fee paid under Rule 242(c); (2) the cost of printing the Appendix under Rule 242(e) and (i); and (3) the cost of printing the party's brief(s) under Rule 242(I). The ***party may also recover an additional attorney's fee*** in an amount which shall be set by order of the Supreme Court. The allowance of ***additional costs*** will generally not be allowed except in the most extraordinary circumstances.

SCACR Rule 242(j)(2) (emphasis added).

SCACR Rule 222(b) contains similar language first identifying the costs which are recoverable and then similarly stating that the “allowance of ***additional costs*** will generally not

be allowed except in the most extraordinary of circumstances.” SCACR Rule 222(b) (emphasis added). At the sake of stating the obvious, both Rule 222 and 242 allow recovery for attorney’s fees as well as the specifically listed costs of the filing fee, as well as costs of printing briefs, records on appeal and/or appendices. The reference to “additional costs” used in both Rule 222 and 242 can only mean other costs above and beyond those allowed under the rules. As both attorney’s fees and certain specified costs are allowed, a party need only show extraordinary circumstances if they are seeking some other additional costs not explicitly provided for by the rules. Indeed, Petitioners’ argument that attorney’s fees qualify as “additional costs” makes no sense considering that SCACR Rule 222, similar to Rule 242, states that a party can recovery attorney’s fees, but that “additional costs” are only recoverable under extraordinary circumstances.

Finally, the Respondent disputes that the Petitioners’ goal was remand to the ALC. This appeal arose because the ALC granted the Petitioners’ motion to dismiss and it has been clear at every step, in particular before the ALC and the Court of Appeals, that the Petitioners do not believe that the ALC has jurisdiction to even consider this contested case hearing. Only since the Court of Appeals held that the ALC erred in dismissing the contested have the Petitioners adopted their alternate argument that, should this Court deem that the minor versus major distinction is necessary to determine timeliness, the case should be remanded to the ALC. But the Respondent’s case has always been about whether this modification was minor or in fact major, and thus deficient, and that the ALC should have made such determination before ruling on timeliness.

Instead, the Respondent has been required to appeal and seek reversal of the ALC's erroneous ruling and then defend the favorable Court of Appeals ruling. It has done both and is entitled to attorney's fees under Rules 222 and 242.

s/Amy E. Armstrong
Amy E. Armstrong
SOUTH CAROLINA ENVIRONMENTAL LAW
PROJECT
Mailing address: Post Office Box 1380
Pawleys Island, SC 29585
Office address: 407 Church Street, Unit E
Georgetown, SC 29440
Telephone (843) 527-0078

Georgetown, South Carolina

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