

**THE STATE OF SOUTH CAROLINA
In the Supreme Court**

ON WRIT OF CERTIORI FROM THE COURT OF APPEALS

The Honorable Thomas A. Russo, Judge of the Circuit Court
The Honorable Tamara C. Curry, Judge of the Probate Court

Suprema Court Case No. 2020-00901
Court of Appeals Appellate Case No. 2017-001196
Circuit Court Case No. 2015-CP-10-05056
Probate Court Case No. 2007-ES-10-1437

Jacquelin S. Bennett and Kathleen S. Turner
as Personal Representatives of the Estate of
Jacquelin K. Stevenson Appellants

v.

Estate of James Kelly King and Genevieve S. Felder Respondents

PETITION FOR REHEARING

Andrew J. McCumber, Esq.
Daniel S. Slotchiver
Stephen M. Slotchiver
Slotchiver & Slotchiver, LLP
44 State Street
Charleston, South Carolina 29401
843 577-6531
ATTORNEYS FOR APPELLANTS

George R. McElveen, III
McElveen & McElveen
2229 Bull Street
Columbia, South Carolina 29201
803 799-9581
ATTORNEY FOR RESPONDENT

RECEIVED

JUL 11 2022

S.C. SUPREME COURT

CASES

*

Ark Land Co. v. Harper, 215 W.Va. 331, 599 S.E.2d 754 (W.Va 2004)

Bailey v. Turbize Rayon Corporation, 50 F. Supp. 418, p. 425 (1944)

Donald Reese Campbell v. Wendy Jean Lynch Jordan, et. al.,
675 S.E.2d 801, 382 S.C. 445 (Ct. App. 2009)

Lloyd Strong v. Steve A. Jordan, et. al., 777 N.E.2d 1141, p. 1151 (Ill. App. 2002)

Weinberger v. United Financial Corp. of California, 405 A.2d 134, 136
(Del Ct. Chanc. 1979)

Zimmerman v. Marsh, 618 S.E.2d 898, (S. Ct. 2005)

Other case cited:

Brian Pulliam, et. al. v. Travelers Indemnity Company, M.U.I., et. al. 403 S.C. 332, 743
S.E.2d 117 (Ct. App. 2013).

GROUNDS

As the Court recognizes in its opinion, this case is not simply about whether the broad powers granted the personal representatives extends to the fiduciary clause. Indeed, Appellant has never contended otherwise. This case examines the more seminal questions of whether, in light of those broad powers, in making distributions under the residuary clause, to what extent the personal representatives were subject to generally accepted fiduciary principals, and whether the proposed distribution violates those principals. (Opinion, p. 8, paragraph 2).

In its opinion, the Court rightly observes that the probate court, the circuit court, and the Court of appeals all found that the fiduciary principals apply to the residuary clause. Each of the lower courts found that the proposed distribution of the real estate assets was inconsistent with those principals.

Yet after declaring that it will examine the matter in light of the fiduciary duties, the Court declares that the duties of the personal representatives are no more than to assure a “monetarily equal distribution of the residuary estate.” (Opinion, p. 10.)* Whether or not it is the Court’s intent, this ruling signifies the adoption of a new black letter rule, one that states that in making distributions, a fiduciary, (who is also a beneficiary) has no further obligation than to be sure that the raw accounting data is equalized. This is a departure from previous decisions of the courts of this and other states, which have consistently stated that intangible factors are relevant in connection with fiduciaries carrying out their duties. * (see attached table of cases). It

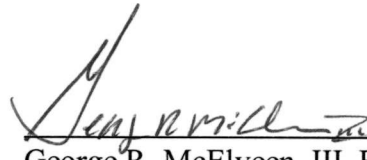
* The Court’s assertion that “The burden was on the Respondent to show that the proposed distribution was unfair or inequitable, which she did not do and likely could not do in light of her stipulation that the proposed distribution was of equal monetary value” on page is dispositive only in light of the standard articulated in this opinion.

is a principal that no case cited during the course of this litigation by either party has suggested. Is the fiduciary duty different, less demanding in light of the “broad authority” language? In the opinion of the majority, the obligation of a fiduciary is reduced to that of a creative accountant. It is a clear license that would allow personal representatives to choose for themselves whatever estate assets they prefer. Breach of fiduciary duty is not limited to fraudulent, criminal, or malicious acts. *Brian Pulliam, et. al. v. Travelers Indemnity Company, M.U.I., et. al.* 403 S.C. 332, 743 S.E.2d 17 (Ct. App. 2013). Yet the Court’s opinion would seem to create just such a limitation. (Opinion, p. 9, “we also note”)

Before the probate court, After Respondent’s presentation, Appellants argued neither Testatrix’s intent, nor any other purpose in justifying their proposal for distribution. They did not address their fiduciary responsibility. Their sole argument was that of unbridled authority. This case is solely about whether fiduciaries enjoy raw power. Respondent believes that such a principal is inconsistent with broadly accepted fiduciary principals. While the duty to at least consider intangibles may cause some modest degree of uncertainty in the work of fiduciaries, it is certainly not unreasonable that their decisions not be arbitrary or self-serving, and beyond the review of the courts in the event of a challenge. Any such uncertainty is greatly outweighed by the clear potential for abuse if a personal representative’s (who is also a beneficiary) sole responsibility is to produce a balanced accounting.

Accordingly, Respondent requests that the Court grant a rehearing in this matter.

Respectfully submitted this 11th day of July, 2022.


George R. McElveen, III, Bar # 3802
2229 Bull Street
Columbia, South Carolina 29201
803 799-9581
ATTORNEY FOR
THE RESPONDENT

RECEIVED
JUL 11 2022
S.C. SUPREME COURT