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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston
County Court of Common Pleas
Jennifer B. McCoy, Circuit Court Judge
Probate Court
Irvin G. Condon, Probate Judge
Tamara C. Curry, Associate Probate Judge

Appellate Case No. 2021-001152
Common Pleas Case No. 2020-CP-10-04036
Probate Case No. 2017-ES-10-01946

In the Matter of: The Estate of Roy E. Mevers, Jr.

South Carolina Attorney General, Respondent,

v.

Minnie Lee Newman Mevers, Appellant

v.

J. James Duggan, Respondent.

FINAL BRIEF OF RESPONDENT SOUTH CAROLINA ATTORNEY GENERAL

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Cases

Statutes

Other Authorities

STATEMENT OF ISSUES ON APPEAL

I. Did the Circuit Court properly find that the Probate Court did not abuse its discretion in issuing the Temporary Restraining Order?
(Appellant's Issues I, II, and XI)

II. Did the Circuit Court properly find that the Probate Court did not err in appointing J. James Duggan, Esq., as Special Administrator?
(Appellant's Issue II and XI)

III. Did the Circuit Court properly find that the Probate Court did not abuse its discretion in issuing the Temporary Injunction?
(Appellant's Issues III, IV, V, VI, VII, VIII, IX, X, and XI)

STATEMENT OF THE CASE

This matter was commenced in the Charleston County Probate Court by the filing of a verified Petition by the Attorney General, pursuant to Rule 65, SCRCP, seeking various relief including an Application to Re-Open Estate, Appoint Special Administrator, Impose Constructive Trust to Protect Improperly Distributed Estate Assets, and Obtain Other Relief as Necessary ("Petition"). (R. 69-125). The Attorney General also sought a temporary restraining order relating to all assets which were claimed and taken under the residuary clause of the Last Will and Testament and two (2) codicils of Roy E. Mevers, Jr. (the "Will") by his spouse, Appellant Minnie Lee Newman-Mevers.[1] (R. 126-130).

An Ex Parte Temporary Restraining Order was issued by the Honorable Tamara C. Curry, Associate Probate Judge of Charleston County, on March 13, 2020. (R. 2-10). The Temporary Restraining Order restrained Appellant related to assets distributed to her under the residuary clause of the Will, appointed J. James Duggan, Esq., as Special Administrator, and set a date for a hearing on the relief granted. On March 23, 2020, the Honorable Irvin G. Condon, Probate Judge of Charleston County, held a hearing to determine what action(s) were necessary to preserve the status quo, including whether to convert the Temporary Restraining Order into a temporary injunction. (R. 258-354). After hearing arguments from the parties, Judge Condon orally indicated he was granting a Temporary Injunction at that time and a written order would follow. (R. 350-353).

[1] In the pleadings for the companion action pending in the circuit court, also referred to as the removed case, Mrs. Newman-Mevers was designated as Respondent. In that she is the Appellant in this appeal, for ease of reference and to avoid confusion, she is referred to as Mrs. Newman-Mevers or Appellant throughout this brief.

On May 12, 2020, after the hearing and the Court's rulings, but before the issuance of the written Order Granting Temporary Injunction ("Temporary Injunction"), Appellant filed a Notice and Motion to Remove Action to Circuit Court. (R. 214-219). By Order filed June 29, 2020, Judge Condon granted the Temporary Injunction, ordered that the Estate be reopened for subsequent administration, and appointed the Duggan Law Firm, LLC, as Special Administrator of the Estate. In addition, the Court ordered that Appellant was restrained related to the assets distributed to her under the residuary clause of the Will, ordered her to provide an accounting to the Special Administrator, and ordered her to provide to the Special Administrator information regarding asset transfers. (R. 26-28).

On July 10, 2020, Appellant filed a Motion to Alter, Amend, and/or Vacate the June 29, 2020 Order granting the Temporary Injunction. (R. 220-228). On August 28, 2020, Appellant filed another Motion to Vacate the June 29, 2020 Order. (R. 243-250). By Order filed September 10, 2020, the Probate Court denied these Motions. (R. 29-33). In this Order, the Probate Court also ordered the matter removed to Circuit Court pursuant to S.C. Code Ann. § 62-1-302(d). (R. 33). The circuit court case was assigned case number 2020-CP-10-04089. This Circuit Court matter remains pending at this time. At times, this case is referred to as the "removed case" in this brief.

On September 11, 2020, Appellant filed a Notice of Intent to Appeal to the Circuit Court, appealing the three probate court orders. (R. 252-253, 440-441). The appeal was assigned circuit court case number 2020-CP-10-04036. On October 26, 2020, Appellant filed a Statement of Issues on Appeal. The issues generally relate to the issuance of the Temporary Restraining Order and the Temporary Injunction. After considering the matter on briefs, the Honorable Jennifer B.

McCoy affirmed the Probate Court rulings by a Form Order filed September 10, 2021. (R. 572-574). This appeal follows.

The removed case, a separate circuit court action, continued and remains pending. On September 16, 2020, in the removed action, the Attorney General filed a Verified Motion for the Continuance of the Temporary Injunction. (R. 595-662). The Honorable Bentley D. Price heard the Motion on September 21, 2020. On September 22, 2020, Judge Price issued a Form 4 order indicating the Motion for the Continuance of or the Issuance of a Temporary Injunction was denied. No reasons were stated. (R. 589-590).[2]

[2] The merits of Judge Price's ruling are not at issue in this appeal, and his order was not appealed. This appeal arises out of case number 2020-CP-10-04036, the probate court appeal action. Judge Price's ruling was in case number 2020-CP-10-4089, the removed action that remains pending. The removed action is referenced to provide background on the status of this matter.

STATEMENT OF FACTS

This action relates to a bequest made by Roy E. "Sonny" Mevers Jr. ("Mr. Mevers") in his Will. The Will was executed on November 16, 2015. Codicils were executed on April 12, 2017, ("First Codicil") and on August 4, 2017 ("Second Codicil"). The Will and Codicils are collectively referred to as the "Will." As detailed in the Verified Petition filed by the Attorney General, the Sonny Mevers Foundation (the "Foundation"), a South Carolina nonprofit corporation Mr. Mevers established during his life for charitable purposes, was to receive Estate assets valued in excess of Nineteen Million and 00/100 ($19,000,000.00) Dollars under the residuary clause of the Will. The Verified Petition alleges Appellant, Mrs. Newman-Mevers — Mr. Mevers' wife of 14 months before his death — wrongfully caused those assets to be diverted from the Foundation and distributed to herself. (R. 72-78). She has admittedly sold certain disputed assets and transferred others to various limited liability companies. (R. 299).

On July 23, 2004, Mr. Mevers executed and filed with the South Carolina Secretary of State Articles of Incorporation for the Foundation in accordance with S.C. Code Ann. § 33-31-202. The stated purpose of the Foundation is to "receive and maintain a fund or funds of real or personal property, or both, and, subject to the restrictions and limitations hereinafter set forth, to use and apply the whole or any part of the income therefrom and the principal thereof exclusively for charitable, religious, scientific, testing for public safety, literary, or educational purposes either directly or by contributions to organizations that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code and its Regulations as they now exist or as they may hereafter be amended." (R. 104-105).

On July 21, 2005, the Internal Revenue Service ("IRS") issued a letter approving the tax-exempt status of the Foundation under section 501(c)(3) of the Internal Revenue Code with an

effective date of June 23, 2004. The Foundation was also "qualified to receive tax deductible bequests, devises, transfers or gifts under section 2055 . . . of the Code." (R. 106). Over the years, the Foundation has made donations to many charities in the Charleston area. Donations of $25,000 or more were made in multiple years, along with numerous other donations to a variety of charities. Mr. Mevers made periodic contributions to the Foundation over the years to support the Foundation. (R. 4).

Mr. Mevers' Will dated November 16, 2015, contained a residuary clause found in Article XII. This clause provided the following:

> I give devise and bequeath my entire residuary estate, being all real and personal property, wherever situated, in which I may have any interest at the time of my death, not otherwise effectively disposed of, to THE 'SONNY MEVERS' FOUNDATION, if it is in existence at the time of my death and on the condition that it is an organization that is charitable within the meaning of Section 2055 of the Internal Revenue Code, as amended, and on the further condition that this gift is permitted as a charitable deduction from my Estate for Federal Estate Tax purposes, absolutely and in fee simple, forever.

(R. 91-92). By way of the First Codicil dated April 12, 2017, Article XII of the Will was amended to add the following sentence at its conclusion: "Otherwise, I give, devise and bequeath my said entire residuary estate to my Spouse, MINNIE LEE NEWMAN MEVERS, absolutely and in fee simple, forever, on the condition that she shall survive me." (R. 97). Mr. Mevers continued to leave the residuary of his Estate to the Foundation even after he married Mrs. Newman-Mevers and after making various changes to his Will. He specifically added a paragraph leaving items to Appellant, and he republished the Will in its entirety. The Second Codicil stated as follows:

> 3. I give all my personal and household effects, such as jewelry, clothing, automobiles, equipment, furniture, furnishings, silver, books and pictures, and any other articles of personal use or diversion, including policies of insurance thereon, to MINNIE LEE NEWMAN MEVERS, "my wife," absolutely.

> In all other respects I confirm and republish my Will, as modified by my Codicil dated April 12, 2017, and I confirm and republish my Codicil except as modified by this Second Codicil.

(R. 98).

The Articles of Incorporation for the Foundation vested Mr. Mevers or his nominee with the authority to appoint the members of the Foundation's Board of Directors. (R. 103). Article XI of Mr. Mevers' Will nominates his "friend" Minnie Lee Newman as his successor with the right to appoint further successors to the Board of the Foundation. (R. 91).

Mr. Mevers passed away on November 3, 2017. Mr. Mevers' obituary stated, "In Lieu (*sic*) of flowers, donations may be made to the Sonny Mevers Foundation, CresCom Bank, Attn. Holly Edwards, 288 Meeting Street, Charleston SC 29401". (R. 107). At the time of his death, the Foundation had $3.1 million in its checking account. (R. 617). These funds are not included in the $19 million in dispute in this litigation, as they were already in the Foundation when he died and were not part of Mr. Mevers' Estate. On November 12, 2017, Appellant approved a wire transfer from the Foundation to the Berkeley Charter Education Association in the amount of $3.0 million. By this time, she was President of the Board of the Foundation. This transfer was for the Mevers School of Excellence and was honoring a commitment Mr. Mevers made during his lifetime. Also, several donations were made to the Foundation after Mr. Mevers' death, and they appear to be in response to the obituary. (R. 617-628). After the donation of the $3.0 million dollars to the Mevers School of Excellence, the Foundation's checking account had a balance in excess of one hundred thousand dollars ($100,000.00). (R. 617).

On November 13, 2017, Mrs. Newman-Mevers filed an Application for Informal Probate of Mr. Mevers' estate (the "Estate") in the Charleston County Probate Court. (R. 108-115). She petitioned the Court for Appointment as Personal Representative of the Estate and was so

appointed. (R. 112). In the Application for Informal Probate, Mrs. Newman-Mevers specifically listed that she was Mr. Mevers' wife and that she was left a bequest of "$350,000 and all personal and household effects." She went on to list other bequests made under the Will, specifically noting the "SONNY MEVERS FOUNDATION…CHARITY-All of the Rest and Residue of the Estate." Mrs. Newman-Mevers verified these statements under oath. (R. 115).

On the date of Mr. Mevers' death, the Foundation was in existence, was recognized as a charitable organization within the meaning of Section 2055 of the Internal Revenue Code, as amended, and permitted as a charitable deduction from Mr. Mevers' estate for federal estate tax purposes. The Foundation was, therefore, entitled to the residuary of the Estate. (R. 290-291). Rather than transfer the assets to the Foundation as required by the Will and the Application for Informal Probate, Appellant fired her deceased husband's and the Foundation's long-time counsel, Irvin Slotchiver. She then sought the advice of Christopher Moss, a CPA and attorney licensed in Virginia and the District of Columbia. At the hearing on March 23, 2020, Mr. Moss' professional relationship with Appellant and the Foundation caused concern with the Probate Court. (R. 335, 352-354). At the hearing, the Probate Court ordered the Attorney General to report Mr. Moss' actions for determination if they constituted the unlawful practice of law. (R. 352).

On January 12, 2018, Appellant withdrew the entire remaining balance of $102,940.11 from the Foundation checking account. (R. 618). The CresCom transaction forms show that these funds were transferred to the Estate of Roy Mevers. (R. 629). Since Appellant purportedly dissolved the Foundation and declared herself the residuary beneficiary as opposed to the Foundation, it appears she ended up taking these funds for her own use. The transaction may have raised a question at the bank as it was noted on the back of the transaction form "cust[omer] died advised to close [and] put in Estate Acct by CPA." (R. 630).

Appellant, based upon Mr. Moss opining the Foundation was a "sham," dismissed the Foundation board except for one other member. Based upon a telephone call from Chris Moss to Scott Myers, the one remaining board member (other than Appellant), the Foundation was purportedly "dissolved."[3] Despite the fact that $19 million had been left to the Foundation pursuant to Mr. Mevers' will, at the date of the attempted dissolution on January 24, 2018, the Foundation asserted it had no assets in its Articles of Dissolution filed with the Secretary of State. (R. 122). The Foundation did not provide notice of this dissolution to the Attorney General, although it was required to do so by statute. Significantly, the Articles filed with the Secretary of State indicated Appellant had provided the notice to the Attorney General. (R. 7, 119). This was a false statement.

In the Proposal for Distribution of Mr. Mevers' Estate dated November 15, 2018, and filed with the Probate Court on November 18, 2018, the Foundation was no longer listed as receiving the residuary distribution as it was in the Application for Informal Probate. Rather, Mrs. Newman-Mevers was now listed as receiving the residuary distribution. The Proposal for Distribution contained no reference to the Foundation or its entitlement to assets under the residuary clause. (R. 63). The funds in the residuary were subsequently distributed to Mrs. Newman-Mevers, not the Foundation. (R. 6, 20). None of these unilateral changes were brought to the attention of the Probate Court or the Attorney General.

Upon learning of the situation, the Attorney General researched what happened. Public records established that Appellant began selling and transferring assets which belonged to the

[3] The Articles of Incorporation and Bylaws of the Foundation require a majority of board members to constitute a quorum and require that there be at least three Board members. At the time of the attempted dissolution, there were only two Board members, in violation of the ByLaws. (ByLaws, Article II).

Foundation. The Attorney General made a request for various records to Appellant on November 14, 2019, and to the Foundation's Board on February 3, 2020. (R. 398-403). A complete response was not provided. (R. 78, 404-422). Most of the assets of the Estate were real property, and these were transferred to various entities or sold outright. For example, a house on Sullivan's Island was transferred from the Estate to Appellant, who then sold it for $1.8 million. A house on East Battery in downtown Charleston, which Appellant is currently living in and valued in excess of $5 million dollars, was transferred to Ms. Grace Family, LLC. Other properties, including commercial properties, were transferred to Newman Rentals, LLC. The properties included a property in Murrells Inlet with a Walgreens on it, also valued at over $5 million; property in North Carolina valued at $1.3 million; and property in Dorchester with a Dollar General, valued at $1.4 million. Newman Rentals, LLC, the entity that these properties were transferred to, was created on January 11, 2018, with Mr. Moss serving as registered agent. It is not clear who owns these LLCs, and the concern was that the properties were being distributed and the money was not going to the Foundation as it should have been pursuant to the terms of Mr. Mevers' Will. (R. 286-289). Requests for information on these properties and the Estate by the Special Administrator have been ignored.

When it was unable to get satisfactory information and the Appellant would not agree to maintain the status quo and hold the properties, the Attorney General filed a Summons and Petition to Re-Open the Estate, Appoint Special Administrator, Impose Constructive Trust to Property Improperly Distributed Estate Assets, and Obtain Other Relief as Necessary. (R. 69-82). The Attorney General also filed a Motion for Temporary Restraining Order. (R. 126-129). As personal representative of the Estate and president of the Foundation, Appellant had an obligation to protect the interests of the non-profit foundation. In granting the Temporary Restraining Order, the Court

found that Appellant "may have taken actions inconsistent with the law, her fiduciary duties, and contrary to the vested interest of the non-profit Foundation so as to circumvent the contents of the residuary clause for her own personal use and benefit." (R. 8).

The Probate Court subsequently issued an Order Granting Temporary Injunction following a hearing at which both parties were present and heard. The Court again found that Appellant began selling and transferring assets which she received by virtue of the residuary clause of the will. She conceded through her counsel that some or all of the assets had been transferred to various LLCs including Newman Rentals, LLC and Ms. Grace Family, LLC. (R. 23). The Court found there were sufficient questions which indicated that Appellant may have taken actions inconsistent with the law, her fiduciary duties, and contrary to the interests of the Foundation, so as to circumvent the contents of the residuary clause for her own personal use and benefit. (R. 24).

Appellant appealed the matter to the Circuit Court. The appeal included three orders: the Temporary Restraining Order, the Temporary Injunction, and the Order denying Motions to Alter and Vacate those orders. Following a review of the briefs and the record, the Circuit Court affirmed the Probate Court. (R. 572-574).

ARGUMENT

I. The appeal of the Temporary Restraining Order should be dismissed, or in the alternative, the Order should be affirmed.

A. The Circuit Court did not have subject matter jurisdiction to consider the appeal of the Temporary Restraining Order.

S.C. Code Ann. § 62-1-308(a) addresses the circumstances upon which an appeal may be taken. This section provides "[a] person interested in a final order, sentence, or decree of a probate court may appeal to the circuit court . . . ." The Temporary Restraining Order is not a "final" order for which an appeal may be sought under S.C. Code Ann. § 62-1-308 or the general rules of appellate practice. An order from the probate court that is not a final order is not reviewable under § 62-1-308. *Fulmer v. Cain*, 380 S.C. 466, 469, 670 S.E.2d 652, 654 (2008). Courts of Common Pleas lack subject matter jurisdiction over appeals of a temporary order issued by a probate court. *Estate of Boyce v. Work*, 305 S.C. 43, 44, 406 S.E.2d 184, 185 (Ct. App. 1991).

Piecemeal appeals and dispositions of cases are not favored under South Carolina law. "The basic policy behind denying immediate review of pretrial motions is avoidance of piecemeal litigation where the rights of the parties have not been substantially impacted." *Watson v. Underwood*, 407 S.C. 443, 458, 756 S.E.2d 155, 163 (Ct. App. 2014) (citing *Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 94, 529 S.E.2d 11, 13 (2000)).

A temporary restraining order is by its nature temporary because it applies only from the period of the order itself to the follow-up hearing, which in this case was 10 days later. In the present case, based upon the language of the statute and the policy considerations set forth by our appellate courts, the appeal of the Temporary Restraining Order should be dismissed because the Circuit Court did not have subject matter jurisdiction.

B. Standard of Review

The decision to grant or deny temporary injunctive relief is within the sound discretion of the trial judge and will not be overturned absent an abuse of discretion. *City of Columbia v. Pic–A–Flick Video, Inc.*, 340 S.C. 278, 282, 531 S.E.2d 518, 520 (2000). An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law. *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 601, 553 S.E.2d 110, 121 (2001).

C. The Probate Court did not abuse its discretion in issuing the Temporary Restraining Order.

If this Court addresses the merits of the issuance of the Temporary Restraining Order, the record shows the Probate Court had more than adequate factual and legal support to issue the Temporary Restraining Order in order to preserve the status quo and until a hearing, scheduled for 10 days after the issuance of the Order, could be held. The Probate Court did not abuse its discretion in issuing the order, and it should be affirmed.

When the Probate Court was presented with a motion for the issuance of a temporary restraining order, it had before it evidence by way of a verified petition and a motion establishing the following:

- Appellant purportedly dissolved the Foundation, which was created by her husband and by the express terms of his will, and the Foundation was arguably entitled to the $19 million residuary of his Estate;
- Appellant changed the plan of distribution filed with the Probate Court showing that she, rather than the Foundation, would be receiving these funds without bringing the matter to the attention of the Probate Court or any other agency or entity;

- Appellant had already sold properties (which the Attorney General asserted should have passed to the Foundation) for many millions of dollars;
- All other properties that had not been sold had been transferred to LLCs, the ownership of which was and remains unknown to this Court or the Probate Court;
- Appellant failed to give the required notice to the Attorney General when she and only one other member of the Foundation's board (after the others were terminated or asked to resign by Appellant) "voted" to dissolve the Foundation so Appellant could personally claim an entitlement to and ultimately take the $19 million residuary of the Estate;
- Appellant or others acting at her request were being less than truthful or forthcoming with the Attorney General as his office attempted to comply with applicable laws relating to the attempts at the dissolution of the Foundation once the matter came to his attention; and
- Appellant was unwilling to agree via consent that she would refrain from dissipating Foundation assets pending the resolution of this matter.

(R. 5-9, 17-26, 74-78).

Rule 65(b), SCRCP, explains that "No temporary restraining order shall be granted without notice of motion for the order to the adverse party unless it clearly appears from specific facts shown by affidavit or by a verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before notice can be served and a hearing had thereon." "[T]he sole purpose of a temporary injunction is to preserve the status quo . . . ." *Powell v. Immanuel Baptist Church*, 261 S.C. 219, 221, 199 S.E.2d 60, 61 (1973). "[A] temporary injunction is [used] to

preserve the subject of controversy in the condition which it is at the time of the Order until opportunity is offered for full and deliberate investigation and to preserve the existing status during litigation....” *County Council of Charleston v. Felkel*, 244 S.C. 480, 483–84, 137 S.E.2d 577, 578 (1964).

As explained in the Verified Petition, the Foundation was to receive approximately $19 million in assets from the Estate of Mr. Mevers. Rather than transfer these assets, Appellant “dissolved” the Foundation. She then began selling and transferring assets which belonged to the Foundation, and she used those assets for her own personal use and benefit. (R. 73-77). Appellant would not agree to a stand-still agreement after continuous efforts at an amicable agreement to maintain the status quo by the Attorney General. (R. 268-269). This led to the emergency situation and the filing of the Petition. (R. 126-129).

Appellant’s counsel (the only one of record at the time) was aware the Attorney General would move for a temporary restraining order to preserve the status quo based upon the failure of Appellant, after her return from international travel, to agree to hold on to the disputed assets until the matter could be resolved. All Appellant had to do to avoid the issue of the Temporary Restraining Order was agree not to sell or transfer assets which the Attorney General contends belong to the Foundation, while the Office completed its review. She blatantly declined twice. (R. 268-269). Because she would not agree to the preserve the status quo, the Attorney General sought the Temporary Restraining Order out of a concern for immediate and irreparable injury, loss, and damage to the Foundation’s assets. The situation required immediate action, prior to notice and a hearing, because of this potential for irreparable harm. The Probate Court had evidence of potential irreparable injury, loss, and damage to the assets, and the Court did not abuse its discretion in issuing the Temporary Restraining Order.

The Probate Court likewise acted within its discretion in reopening the Estate pursuant to the filing of the Attorney General's petition. S.C. Code Ann. § 62-3-1008 explains that ". . . for other good cause, the court upon application of any interested person and upon notice as it directs may appoint the same or a successor personal representative to administer the subsequently opened estate." This language explicitly authorizes the court to reopen an estate pursuant to its inherent authority to prevent dissipation of assets, as the Attorney General demonstrated was a concern in the present case. "Courts have the inherent power to do all things reasonably necessary to ensure that just results are reached to the fullest extent possible." *Robinson v. Est. of Harris*, 388 S.C. 630, 642, 698 S.E.2d 222, 228 (2010) (quoting *Jones v. Leagan*, 384 S.C. 1, 19, 681 S.E.2d 6, 16 (Ct. App. 2009)). The Court acted appropriately to avoid irreparable loss, injury, or damage given the emergency situation, and by setting a follow-up hearing in the order itself, the Court followed the statutory requirements of directing a hearing. The Court needed to issue the Temporary Restraining Order to ensure a just result, and it did not abuse its discretion in doing so.

II. The Probate Court did not err in appointing J. James Duggan, Esq., as Special Administrator.

Appellant argues the Probate Court erred in appointing a Special Administrator. J. James Duggan, Esq., was appointed Special Administrator by Order of March 13, 2020. (R. 11). This appointment was amended by the Court's order of June 29, 2020, and the Duggan Law Firm was appointed Special Administrator. (R. 27). Appellant argues that the *ex parte* appointment of J. James Duggan was in error, but she does not separately challenge the later appointment of the Duggan Law Firm. An unappealed ruling is not subject to review and is the law of the case. *McCall v. State Farm Mut. Auto. Ins. Co.,* 359 S.C. 372, 377-78, 597 S.E.2d 181, 184 (Ct. App. 2004).

A. The circuit court did not have subject matter jurisdiction to consider the appointment of J. James Duggan as Special Administrator.

The Order of March 13, 2020, explains as follows: "pursuant to S.C. Code Ann. § 62-3-614, J. James Duggan, Esq. is hereby appointed as Special Administrator of the Estate of Roy E. Mevers, Jr. in order to take appropriate actions involving assets of the Estate of Roy E. Mevers, Jr; it is further ORDERED, ADJUGED, AND DECREED that a hearing on the matter shall be held on March 23, 2020 . . . it is further ORDERED, ADJUDGED, AND DECREED that this Order shall be subject to further Orders of this Court may become necessary." (R. 9-10). By its very language, this Order was temporary and would be considered again in 10 days. Thus, Mr. Duggan's appointment as Special Administrator was only valid for 10 days. In fact, the subsequent order appointed the Duggan Law Firm. While this may appear to be a small distinction from the individual to the law firm, it shows a change in the appointment and indicates that Mr. Duggan's individual appointment ended after 10 days.

In *Estate of Boyce v. Work*, 305 S.C. 43, 406 S.E.2d 184 (Ct. App. 1991), the Probate Court appointed two special administrators of an estate until a personal representative could be formally appointed. This order was appealed to the circuit court, which affirmed. The appellate court found that this was only a temporary order. The Court explained as follows: "Appeals from the probate court are governed by S.C. Code Ann. § 62–1–308 (1987). Subsection (a) thereof provides that only final orders may be appealed. Under these circumstances the Court of Common Pleas lacked subject matter jurisdiction of the temporary order involved in this case. The appealed order is, therefore, vacated and the case is remanded to the probate court for further proceedings." *Id.* at 44, 406 S.E.2d at 185; *see also Dorn v. Cohen*, 421 S.C. 517, 520, 809 S.E.2d 53, 54 (2017) (holding the Probate Court's order adding a party to an action to remove co-trustees was not a final order and was thus not immediately appealable).

Just as the appointment of the special administrators in *Estate of Boyce* was temporary, the appointment of James Duggan as Special Administrator was temporary and was only in effect until the second hearing 10 days later. (R. 9). Accordingly, just as the circuit court lacked subject matter jurisdiction to hear the appeal of the Temporary Restraining Order, it also lacked subject matter jurisdiction to hear the appeal of the appointment of a temporary Special Administrator.

B. Standard of Review

If the Court considers the appointment of Mr. Duggan as Special Administrator, the standard of review applicable to cases originating in the Probate Court is controlled by whether the underlying cause of action is at law or in equity. *Matter of Est. of Paradeses*, 426 S.C. 388, 391, 826 S.E.2d 871, 873 (Ct. App. 2019). The appointment of a special administrator is equitable in nature. *See Blackmon v. Weaver*, 366 S.C. 245, 248, 621 S.E.2d 42, 43 (Ct. App. 2005) (holding that an action to remove a personal representative is equitable in nature). "In an equitable action tried without a jury, the appellate court can correct errors of law and may find facts in accordance with its own view of the preponderance of the evidence." *Church v. McGee*, 391 S.C. 334, 342, 705 S.E.2d 481, 485 (Ct. App. 2011) (quoting *Blackmon*, 366 S.C. at 249, 621 S.E.2d at 44).

C. The Probate Court did not err in appointing Mr. Duggan as Special Administrator.

If this Court finds that it can consider the appointment of Mr. Duggan as Special Administrator, it should find that he was properly appointed. S.C. Code Ann. § 62-3-614(1)(c) explains that a special administrator may be appointed "informally by the court on the application of an interested person when necessary . . . to take appropriate actions involving estate assets[.]" In the present case, the court had a verified petition showing that there was a need for a special administrator when the Estate was re-opened. The previous Personal Representative, Appellant, had diverted $19 million in Foundation funds to her personal use and was not willing to preserve

the assets. (R. 8). Accordingly, the court acted appropriately in appointing Mr. Duggan as special administrator.

Appellant focuses on S.C. Code Ann. § 62-3-614(2) which requires notice in a formal proceeding to appoint a special administrator. However, the order cites only S.C. Code Ann. § 62-3-614 generally and does not specify which sub-section it is using as authority. The order tracks the language of section (1)(c) in stating that Mr. Duggan was appointed "to take any appropriate actions involving assets of the Estate[.]" (R. 9). Because it appears he was appointed under section (1)(c), no notice was required, especially given the emergency situation.

III. The Probate Court did not abuse its discretion in issuing the Temporary Injunction.

A. Standard of Review

"The granting of temporary injunctive relief is within the sound discretion of the trial court and will not be overturned absent an abuse of that discretion." *City of Columbia v. Pic–A–Flick Video, Inc.,* 340 S.C. 278, 282, 531 S.E.2d 518, 520–21 (2000). "An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law." *County of Richland v. Simpkins,* 348 S.C. 664, 668, 560 S.E.2d 902, 904 (Ct. App. 2002).

To warrant a temporary injunction, the complaint must allege facts sufficient to constitute a cause of action for injunction and the information offered by both sides must demonstrate the injunction to be reasonably necessary to protect the legal rights of the plaintiff pending in the litigation. *Transcon. Gas Pipe Line Corp. v. Porter,* 252 S.C. 478, 480–81, 167 S.E.2d 313, 315 (1969). Generally, to obtain an injunction, a party must demonstrate irreparable harm, a likelihood of success on the merits, and an inadequate remedy at law. *Roach v. Combined Util. Comm'n,* 290 S.C. 437, 442, 351 S.E.2d 168, 170 (Ct. App. 1986).

"It is well settled that, in determining whether a temporary injunction should issue, the merits of the case are not to be considered, except in so far as they may enable the court to determine whether a *prima facie* showing has been made. When a *prima facie* showing has been made entitling plaintiff to injunctive relief, a temporary injunction will be granted without regard to the ultimate termination of the case on the merits." *Transcon.,* 252 S.C. at 481, 167 S.E.2d at 315. "[T]he sole purpose of a temporary injunction is to preserve the status quo . . . ." *Powell v. Immanuel Baptist Church,* 261 S.C. 219, 221, 199 S.E.2d 60, 61 (1973). "[A] temporary injunction is [used] to preserve the subject of controversy in the condition which it is at the time of the Order until opportunity is offered for full and deliberate investigation and to preserve the existing status during litigation . . . . ." *County Council of Charleston v. Felkel,* 244 S.C. 480, 483–84, 137 S.E.2d 577, 578 (1964) (citations omitted). Before granting an injunction, the trial court should balance the equities. The court should look at the particular facts of each case and determine which side is more entitled to equitable relief. *MailSource, LLC v. M.A. Bailey & Assocs.*, 356 S.C. 363, 588 S.E.2d 635 (Ct. App. 2003) (citing *Foreman v. Foreman*, 280 S.C. 461, 464–65, 313 S.E.2d 312, 314 (Ct. App. 1984)). "A temporary injunction is made without prejudice to the rights of either party pending a hearing on the merits, and the court should be guided by general principles of equity." *Id.* at 368, 588 S.E.2d at 638 (quoting *Helsel v. City of N. Myrtle Beach*, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1992)).

B. The Probate Court had authority to issue the Temporary Injunction.

Appellant argues the Probate Court lacked authority to issue the Temporary Injunction because the Attorney General did not make a motion for entry of the temporary injunction. This argument is without merit. Notice of the hearing on this matter, held on March 23, 2020, was scheduled pursuant to the first order of March 13, 2020, i.e. the Temporary Restraining Order. The

order explained that the "hearing on this matter shall be held" and provided the date, time, and location. (R. 10). Appellant argues the Attorney General did not request that the Temporary Restraining Order be extended or that a Temporary Injunction be issued. As such, Appellant surmises the Temporary Restraining Order should have expired on the day of the hearing and the Probate Court had no authority to maintain the status quo. However, notice was clearly provided pursuant to the March 13, 2020 Order. (R. 10).

Rule 65(b), SCRCP, explains the procedure the court should follow after issuing a temporary restraining order: "In case a temporary restraining order is granted without notice, the motion for a temporary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a temporary injunction and, if he does not do so, the court shall dissolve the temporary restraining order." The Rule provides that since the Attorney General obtained the Temporary Restraining Order, he was to proceed with the application for a temporary injunction at the hearing. Otherwise, the court would dissolve the Temporary Restraining Order. The Order setting the hearing explained that the hearing was "on this matter[,]" and the matter before the court was the Temporary Restraining Order. (R. 10). The Attorney General did exactly what was required by Rule 65, SCRCP, in that he proceeded with the application for temporary injunction.

At the beginning of the hearing itself, the Attorney General's Office stated, "what we're looking for today is . . . is for the TRO to go to a temporary injunction[.]" (R. 265). In addition, Judge Condon saw and asked very clearly if Appellant was trying to take the position that the Temporary Restraining Order would expire on the day of the hearing and that the assets in issue were not subject to any restrictions necessary to maintain the status quo as they had already been

sold or transferred to various LLCs. As noted in the transcript, Appellant's counsel made clear that was what was being argued. (R. 349-350). There was no procedural error because the Court followed the procedure outlined in Rule 65(b), SCRCP, and the parties were aware of what was considered and had the opportunity to be heard.

Even if the Court acted *sua sponte* upon its own motion, it was within its authority to do so to protect its own authority and dignity. See *Ex parte Cannon*, 385 S.C. 643, 661, 685 S.E.2d 814, 824 (Ct. App. 2009) ("[C]ourts have the inherent power to punish for offenses that are calculated to obstruct, degrade, and undermine the administration of justice. . . . . [J]udges have the authority to act *sua sponte* to preserve the authority and dignity of their courts."); *Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 252, 715 S.E.2d 348, 354 (Ct. App. 2011) ("Courts have the inherent power to do all things reasonable and necessary to ensure that just results are reached to the fullest extent possible.").

C. The Probate Court did not abuse its discretion in finding that the elements required for a temporary injunction were met.

Upon a proper showing of all required elements, a court may issue a temporary injunction to preserve the status quo. *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 586, 694 S.E.2d 15, 17 (2010). To obtain an injunction, the plaintiff must allege facts sufficient to constitute a cause of action for injunction and demonstrate the injunction is reasonably necessary to protect the legal rights pending in the litigation. *County of Richland v. Simpkins*, 348 S.C. 664, 669, 560 S.E.2d 902, 904 (Ct. App. 2002). To establish a cause of action for injunction, the plaintiff must show "(1) it would suffer irreparable harm if the injunction is not granted; (2) it will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law." *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004).

Counsel for the Attorney General explained in great detail to the Probate Court why a temporary restraining order was originally sought:

> I'm just giving you a reason why we had to do a TRO - - Mr. Oberly [counsel for Appellant] got back with me. He had talked to his client, and then he wanted to talk to the probate attorney, and she was out. So I said, okay. Now, I said, we've got to get - - we've got to get the status quo on this because we've got to make sure everybody's staying where they are.
>
> We'll work with you and try to get it resolved if we can, but we've got to keep a level playing field here, because I'm getting calls from my Chief Deputy and Solicitor General, and they were about to try it as the AG. This is a serious matter if on its face it is what it is, and we think it is.
>
> So I sent an e-mail to Mr. Oberly after that conversation on Wednesday before - - week and a half before the Friday we did a TRO. And I mentioned to him on a call that we're going to have to do what we've got to do. And I sent an e-mail to him saying, per our conversation, we'll maintain the status quo until you get back. So I was good with that. I sort of advised the front office. . .
>
> And I said, okay, if we're going to try to resolve something here and see what our differences are, I need to make sure there's a status quo. And he apprises me that, wait a minute. I don't think she's going to do something. I said - - and I picked up on the "think."
>
> I said, wait a minute. If you can't guarantee while we're talking and trying to resolve it that nothing is going to be transferred, we've got to do what we've got to do here. He said, okay.

(R. 268-269). Following the hearing, the Probate Court immediately issued an injunction from the bench to maintain the status quo until he could issue a written order granting the Temporary Injunction.[4]

[4] The Probate Court offered Appellant the opportunity to agree to the status quo regarding the property in issue. Her counsel made clear they would take the position that the Temporary Restraining Order issued in the matter was no longer in force and Appellant could do as she pleased with the disputed assets. (R. 347-352). As such, the Probate Court had no choice but to enter the Temporary Injunction.

i. The Probate Court did not abuse its discretion in finding irreparable harm would result if the status quo was not maintained.

At the time of the hearing, Appellant had already sold millions of dollars' worth of property which the Attorney General contends should have passed to the Foundation. (R. 286-289). No one could state what had already been sold and which assets were already transferred to various LLCs which she may or may not own.[5] Appellant's counsel boldly stated and inferred that since the properties had already been transferred, he could not state who owned the various LLCs. Further, it was unclear where the money was. (R. 286-289, 303-305). If these assets were sold, and the funds for assets already sold remained unaccounted for, they could have been lost to the Foundation. The injunction was reasonably necessary to protect the rights of the parties and the public interest pending the litigation, since irreparable harm would result if the injunction was not in place.[6]

Appellant contends there was no evidence of irreparable harm presented. Specifically, Appellant extrapolates that since she was left $350,000 as a specific bequest by her husband, she has assets and thus a money judgment could remedy any harm which may take place. If this were litigation over a $100,000 bequest to the Foundation, then perhaps this argument would be more compelling. However, Appellant has taken possession of $19 million dollars which the Attorney General asserts she is not entitled to receive. Moreover, as the Probate Court found:

> Specifically, the verified Petition, Application, and Motion filed with this Court sets forth valid issues as to whether the [Appellant] did not preserve or protect the Estate so she could improperly assert her entitlement to the residuary clause of the Will, enriching herself at the expense of the Foundation.

[5] This remains true today.

[6] The temporary injunction relates only to assets distributed to her under the residuary clause of Mr. Mevers' Will. It does not impact the $350,000.00 she received as a specific bequest in the Will. (R. 27)

> It is alleged in her capacity as a secondary beneficiary of the residuary of the Estate, the [Appellant] placed her interest above those of the Foundation. The [Appellant] never sought the appointment of an independent personal representative or special administrator by this Court to remove herself from any potential conflict. Instead, the Attorney General alleges that the [Appellant] unilaterally decided without permission or guidance from this Court, or notice to this Court or the Attorney General that she was entitled to approximately Nineteen Million Dollars ($19,000,000.00) as the secondary beneficiary of the residuary clause.

(R. 20).

> Public records establish that . . . [Appellant] began selling and transferring assets which she received by virtue of the residuary clause of the Will and which the Attorney General alleges legally belong to the Foundation. The [Appellant] conceded through her counsel that some or all of the assets set forth the Second Amended Inventory and Appraisement of Probate Property dated May 25, 2018 ("Second Amended Inventory") had been transferred to various LLCs including Newman Rentals, LLC and Ms. Grace Family, LLC. Counsel also indicated the [Appellant] "may" no longer have an interest or sole interest in these LLCs or proceeds from the sale of the Sullivan's Island Property which sold for in excess of $1.8 Million Dollars. The [Appellant's] counsel noted he had been retained only a few days before the hearing, which was conducted on an expedited basis, and he had not yet had an opportunity to obtain or review records relating to any transfers of properties and was unable to verify what transfers had occurred. The Second Amended Inventory and Appraisement shows the gross value of the Estate as $19,962,700.00 with a total probate estate value of $18,862,700.00. The Second Amended Inventory and Appraisement was completed under oath by [Appellant].

(R. 23).

Whether a wrong is irreparable is a question that should not be decided by "narrow and artificial rules." *Kirk v. Clark*, 191 S.C. 205, 4 S.E.2d 13, 16 (1939). *See MailSource, LLC v. M.A. Bailey & Assocs.*, 356 S.C. 363, 370, 588 S.E.2d 635, 639 (Ct. App. 2003) ("Whether a wrong is irreparable in the sense that equity may intervene, and whether there is an adequate remedy at law for a wrong, are questions that are not decided by narrow and artificial rules.").

Appellant essentially argues that there is no irreparable harm because the only harm is economic loss. This argument is without merit given the situation. In this case, Appellant has taken the $19 million, and if the money is dissipated and unable to be recovered, this will result in irreparable harm to the public interest and the potential charitable beneficiaries, in that Appellant does not have sufficient funds to cover any monetary judgment that may be imposed against her. This is the key distinction with *McDevitt v. Wellin*, 2016 WL 199626 (D.S.C. Jan. 15, 2016), the uncited decision of Judge Norton relied upon by Appellant. The Wellin children and their father (and ultimately their step-mother after the death of their father) each possessed such substantial means that one need not worry about the other dissipating the funds in issue. As noted by Judge Condon, Appellant had sold substantial assets of the estate and has transferred all properties into LLCs which may or may not be controlled by her. (R. 303-305). Likewise, one cannot trace ownership of interests in LLCs. Appellant has made no accounting to the Special Administrator. In fact, not a single document relating to the assets in issue has been provided to the Special Administrator. There is simply no indication that Appellant would be able to pay any judgment against her.

Appellant's reliance on *Professional Wiring Installers*, 2008 WL 9840409 (S.C. Ct. App. 2008) is also misplaced. In that case, the court explained that pure economic loss may not satisfy the showing of irreparable harm where an adequate remedy is available at law. In the present case, there is no adequate remedy because a money judgment would not provide a sufficient recovery from the irreparable harm. Moreover, in *Professional Wiring,* the Court recognized an irreparable harm could result from a pure economic loss, such as when where economic loss threatens the plaintiff's business as a whole. The Court cited *Peek v. Spartanburg Regional Healthcare System*, 367 S.C. 450, 455–56, 626 S.E.2d 34, 37 (Ct. App. 2005) which held that "the complete loss of a

professional practice can be an irreparable harm[.]" In evaluating an irreparable harm, the Supreme Court stated as follows: "As required to support such relief, these respondents alleged (and petitioner did not deny) that absent preliminary relief they would suffer a substantial loss of business and perhaps even bankruptcy. Certainly the latter type of injury sufficiently meets the standards for granting interim relief, *for otherwise a favorable final judgment might well be useless*." *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 932 (1975) (emphasis added).

Following the same reasoning, the Probate Court aptly noted in the present case that an unsatisfied money judgment is not the equivalent of preserving the primary assets in issue this dispute:

> There is no adequate remedy at law available if the [Appellant] is allowed to continue to use Foundation assets to fund her lifestyle, travel, expenses, and gifts to others. Failing to issue a temporary restraining order against the [Appellant's] use of the assets, to include any proceeds thereof, will irreparably harm the Foundation and the public interest it is meant to serve. Furthermore, each use of the assets by the [Appellant] unduly diminishes the Foundation's chances of ever fully recovering that which she has purportedly taken from it. The irreparable harm is clearly established by the distribution by the [Appellant] of the properties in dispute and the inability of her counsel, due to time constraints, to inform the Court as to the current ownership status of such property. As such, the status quo should be preserved.

(R. 24-25)

The charitable interest would suffer irreparable harm if the injunction were not granted in that the assets may have been lost, converted, or transferred. Accordingly, the Probate Court did not abuse its discretion.

ii. The Probate Court did not abuse its discretion because there is no adequate remedy at law.

There is no adequate remedy at law because if the temporary injunction was not issued, the assets would be dissipated and there would be little or no likelihood of recovering the $19 million

taken by Appellant. Counsel could not inform the Court of the current ownership of the properties, and there was no evidence that Appellant had the assets to pay if the $19 million was dissipated. (R. 13-28). As explained above, a lack of monetary damages or economic loss can be a sufficient to show that there is no adequate remedy at law. Because there is no adequate remedy at law, the Probate Court did not abuse its discretion.

iii. The Probate Court did not abuse its discretion in finding the Attorney General established a likelihood of success on the merits.

Appellant raises numerous reasons which allegedly show the Attorney General has failed to establish a likelihood of success on the merits. However, the Probate Court correctly found there was a likelihood of success on the merits.

A likelihood of success on the merits does not require the Attorney General in this case to prove an absolute legal right; "the Plaintiff need only present 'a fair question to raise as to the existence of such a right.'" *Peek v. Spartanburg Regional Healthcare System,* 367 S.C. 450, 456, 626 S.E.2d 34, 37 (Ct. App. 2006) (quoting *Williams v. Jones*, 92 S.C. 342, 345, 75 S.E.705, 710 (1912)). The determination of whether to grant an injunction should not be based on the merits of the underlying case except insofar as the merits may assist the court in determining whether a *prima facie* case for injunctive relief has been established.[7] *Id.*

The Probate Court ruled "this Court finds a significant question is raised as to the actions taken by the [Appellant] in regards to the Estate and the Foundation. *Levine v. Spartanburg Regional Services District Inc.* 367 S.C. 458[, 626 S.E.2d 38] (Ct. App. 2005)." (Order of 6/29/2020, p.7). This finding was fully supported by the facts; as the court explained, there were

[7] Appellant attempts to argue the merits of her defense in this brief. Such is improper. She has requested a jury trial. A jury will decide the merits of her actions and the Attorney General's contentions in the removed action.

valid issues as to whether Appellant did not preserve or protect the Estate so she could enrich herself at the expense of the Foundation. (R. 20). As such, the requirements for a reasonable likelihood of success on the merits were satisfied.

a. The Attorney General brought this action, and the Foundation is not the Petitioner.

Appellant's first argument is that the Attorney General did not show a likelihood of success on the merits because the Foundation has been dissolved. She concludes that because of this, the Attorney General cannot assert claims against her. This argument is riddled with errors. The claims brought here are not claims of the Foundation, which Appellant controlled, and which had no independent counsel. Rather, the Attorney General brings his action in the public interest to protect the charitable beneficiaries and the public. Without the Attorney General's involvement, the converted funds would be lost to the charitable stream and the public.

Appellant essentially attempts to cast this as a derivative action where only the Foundation could ever assert claims against her. Appellant and her one remaining board member would never vote to sue themselves. It is for this reason the Attorney General has a common law and statutory role in overseeing the dissolution of foundations such as that established by her husband. Simply put, this is not a corporate derivative matter as Appellant claims. Appellant misses this point purposefully. The Attorney General is acting on behalf of the potential beneficiaries of the Foundation, not on behalf of the Foundation itself. The Attorney General has the right and the obligation to do so, and he is not a defunct corporation seeking to bring suit on behalf of the corporation after it has been dissolved for one reason or another.

Appellant's reliance on G*as Pump, Inc. v. Gen. Cinema Beverages of N. Fla., Inc.*, 436 S.E.2d 207 (Ga. 1993) is misplaced. That case involved a Georgia corporation which operated a convenience store and gas station. The present case involves a nonprofit corporation which purportedly dissolved

when one Foundation member, and a "financial advisor" whose review of the Foundation was very questionable at best, took action in concert to do away with the Foundation, making Appellant $19 million richer at the expense of the public interest. The Attorney General is the appropriate party to act on behalf of the public interest, as there are no specific charitable beneficiaries who would be able to bring an action. In short, without the Attorney General's involvement, the charitable funds would be lost to the public interest forever. This is very different from a business entity that may have shareholders or other specific individuals who could bring an action or otherwise seek to enforce their rights. Given the posture of the Foundation's situation, the only known person or entity who can protect the charitable assets is the Attorney General.

b. The Attorney General has standing and capacity to pursue rights of the charitable beneficiaries of the Foundation and to protect the public interest.

Appellant contends the Attorney General does not have standing and thus does not have a likelihood of success on the merits. Appellant is misguided as to the law and the role applicable to the Attorney General in litigation such as this. The Attorney General, in his *parens patriae* capacity, has the duty to protect the public interest and the authority to do so as granted to him by the state constitution, statutory law, and common law. Concerning charitable trusts, the Attorney General has the statutory and common law duty to represent the interests of the unspecified charitable beneficiaries and the interests of the public at large. *Wilson v. Dallas*, 403 S.C. 411, 431, 743 S.E.2d 746, 757 (2013) ("[W]here the trust involves charitable entities, the trustee has a duty to defend the trust, and the Attorney General has the duty to represent the unspecified charitable beneficiaries."); *see also* S.C. Code Ann. § 1-7-130 ("The Attorney General shall enforce the due application of funds given or appropriated to public charities within the State."); S.C. Code Ann. § 62-7-405(c) ("The settlor of a charitable trust, the trustee, and the Attorney

General, among others may maintain a proceeding to enforce the trust."); *Epworth Children 's Home v. Beasley*, 365 S.C. 157, 164 n.3, 616 S.E.2d 710, 714 n.3 (2005) ("The Attorney General is the proper party to protect the interests of the public at large in the matter of administering or enforcing charitable trusts." (*citing Furman Univ. v. McLeod*, 238 S.C. 475, 482, 120 S.E.2d 865, 868 (1961))); *see generally* 15 *Am. Jur*. 2d Charities § 132 (2015) ("Because of the public interest necessarily involved in a charitable trust or gift to charity and essential to its legal classification as a charity, it generally is recognized that the Attorney General, in his or her capacity as a representative of the state and of the public, is the, or at least, a proper party to institute and maintain proceedings for the enforcement of such gift or trust.").

While the Attorney General represents the public at large and must protect the potential charitable beneficiaries, he does not represent the individual charities. In the present case, he does not represent the Foundation. It is also significant that the Attorney General is the only person representing the charitable beneficiaries. As noted above, the Attorney General's right and duty is well-recognized under South Carolina law. The Attorney General protects the charitable beneficiaries – i.e., the unspecified citizens who would benefit from the Foundation. He does not represent the Foundation itself, and he has never purported to represent the Foundation. The Attorney General is charged with protection of the public interest. Contrary to the Appellant's argument, the Attorney General did not file this action "on behalf of" the Foundation. Rather, the Attorney General filed it as part of his duty to protect the charitable beneficiaries who would benefit from the gift to the Foundation. The fact that the Foundation attempted to dissolve and the actions taken by Appellant show just why the Attorney General needs to be involved: to protect the public interest and charitable beneficiaries in this matter.

Watson v. Wall, 229 S.C. 500, 507–08, 93 S.E.2d 918, 921 (1956) supports the Attorney General's filing of this action. In *Watson*, the Supreme Court recognized the power of the Attorney General to advocate for the public interest when a will contest threatened to divert funds devised to a charitable trust. In that case, the decedent's heirs sought a judicial finding that an item in the will did not create a charitable trust. *Id.* at 507, 93 S.E.2d at 921. Because the heirs had already convinced the lower court that two "renounced devises . . . passed as intestate property to the testator's heirs," a ruling that the charitable trust was invalid would have caused the renounced devises to flow to them. *Id.* In that the charitable trust was valid, the heirs appealed.

The Attorney General petitioned to intervene at the appellate level for "the purpose of protecting the interest of the public in the charitable trust." *Id.* at 508, 93 S.E.2d at 921. The Supreme Court granted the petition and "granted [the Attorney General] permission to file exceptions to so much of the circuit decree as held that the renounced devises . . . passed to the heirs at law." *Id.* The Supreme Court affirmed the lower court's ruling that the will created a valid charitable trust, reversed its finding that the renounced devises passed to the heirs, and found they flowed via the "residuary provisions . . . into the charitable trust." *Id.* at 518, 93 S.E.2d at 927.

This case demonstrates that the Attorney General's mandate to protect charitable beneficiaries is so strong that his intervention was allowed at the appellate stage of litigation. Similarly, if the public interest requires it, the Attorney General may bring an action to protect the charitable beneficiaries, as this is in the public interest. If the Attorney General were not allowed to bring, intervene, or otherwise be a part of actions that impact the interests of charitable beneficiaries, there would be nobody to look out for this interest. Indeed, these unknown and unascertained beneficiaries would not otherwise be represented, and "[i]t is the duty of the

Attorney General with regard to charitable trusts to proceed in the prosecution or to decline so to proceed as the public interests may require." 14 *C.J.S.* Charities § 61.

c. Notice to the Attorney General

Appellant also asserts even though the General Assembly mandates that notice "shall" be given to the Attorney General, such does not impact her ability to dissolve the Foundation because the statute contains no such specific language. Counsel for Appellant stated:

> There certainly is a notice requirement to the AG when a charitable foundation dissolves. When they submit their articles of dissolution to the Secretary of State, there is a notice requirement, and we can see that that notice was not sent. The statute does not say that the dissolution is dependent on that notice being sent. So the organization still dissolves. The AG has authority over the plan of distribution, in essence, for the charitable organization's assets.

(R. 322-323).[8]

Appellant's argument is inconsistent with the notice requirement of S.C. Code Ann. § 33-31-1403(a) which states as follows: "A nonprofit organization shall give the Attorney General written notice that it intends to dissolve at or before the time it delivers Articles of Dissolution to the Secretary of State." What Appellant ignores is the very next portion of the statutory provisions, S.C. Code Ann. § 33-31-1403(b). This prohibits <u>any</u> transfer or conveyance of assets of a public benefit corporation <u>until</u> twenty days after notice has been given as required by subsection (a) to the Attorney General. Appellant's position is contradicted by the clear and unambiguous language of the remainder of the statute, which must be read as a whole. *South Carolina State Ports Authority v. Jasper County*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006) ("In construing

[8] Counsel believes the words "can see" were actually "concede." Either way, the concession of no notice is not disputed by Appellant.

statutory language, the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect.").

Further, if Appellant's argument were true, then there would be no purpose to the statute in that it would require a nonprofit to provide paperwork to the Attorney General, but this would have no purpose since the Attorney General would not be able to act on it. "The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature." *Chem–Nuclear Sys., LLC v. S.C. Bd. of Health and Envtl. Control*, 374 S.C. 201, 205, 648 S.E.2d 601, 603 (2007). "Courts will reject statutory interpretations that lead to results so plainly absurd they could not have been intended by the legislature or that defeat the plain legislative intention." *Peake v. S.C. Dep't of Motor Vehicles*, 375 S.C. 589, 599, 654 S.E.2d 284, 289 (Ct. App. 2007). Furthermore, "[t]he Court must presume the Legislature intended its statutes to accomplish something and did not intend a futile act." *Duvall v. S.C. Budget and Control Bd.*, 377 S.C. 36, 42, 659 S.E.2d 125, 128 (2008); *see State ex rel. McLeod v. Montgomery*, 244 S.C. 308, 314, 136 S.E.2d 778, 782 (1964) ("In seeking the intention of the legislature, we must presume that it intended by its action to accomplish something and not to do a futile thing."). The legislature intended S.C. Code Ann. § 33-31-1403(a) to have a purpose, and the logical conclusion is that this purpose was to notify the Attorney General and provide him an opportunity to take action. An interpretation that does not allow the Attorney General to act would render the statute meaningless, and would be contrary to rules of statutory interpretation.

Appellant does not address the clear legislative mandate that the assets of the Foundation cannot be sold or conveyed unless notice was given to the Attorney General. This protects the public interest, as the Attorney General is concerned with whether the charitable assets are maintained in the "charity stream" which is a benefit to the public. Without oversight by the

Attorney General, the assets may go out of the charitable stream, providing a private benefit to an individual – exactly what happened in the present case. Appellant concedes notice was not given. (R. 322-323). As such, the Attorney General contends such transfers to Appellant and third-parties must come back to and ultimately benefit the Foundation's beneficiaries. If the Attorney General prevails, not only will Mrs. Newman-Mevers ultimately have to return the substantial funds and properties over to the Foundation, as they were transferred in violation of the statute, but she will also be called upon to refund the millions of dollars she has reaped off of improper sales of Foundation property.

d. Requirements of Mr. Mevers' Will

Appellant argues that there is no likelihood of success on the merits because the requirements of Mr. Mevers' Will were not met. This argument is without merit. The Will has three requirements that must be met for the residuary of his Estate to be distributed to the Foundation: (1) the Foundation must be "in existence at the time of [Mevers'] death[,]" (2) the Foundation must be "an organization that is charitable within the meaning of Section 2055 of the Internal Revenue Code, as amended," and (3) this gift must be "permitted as a charitable deduction from my Estate for Federal Estate Tax purposes[.]" (R. 91-92).

As to the first requirement, there is no dispute that the Foundation was in existence on November 3, 2017, the date of Mr. Mevers' death. (R. 290). It was registered with the South Carolina Secretary of State, had a bank account from which funds were later distributed, and its purported dissolution occurred later. (R. 99-105, 119-124, 617-630).

As to the second requirement, the Foundation was charitable within the meaning of Section 2055. Subsection (a)(2) of 2055 provides that bequests, legacies, devises or transfers to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific,

literary, or educational purposes are deductible from the value of the gross estate. The term "charitable," in its generally accepted legal sense is a broad term, "not to be construed as limited by the separate enumeration in section 501(c)(3) of other tax-exempt purposes which may fall within the broad outlines of charity as developed by judicial decisions." 26 CFR § 1.501(c)(3)-1(d)(iv)(2). Thus, qualification for tax exempt status under 501(c)(3) is sufficient, but not necessary, to establish an organization as charitable within the meaning of Section 2055. Exhibit C to the Articles of Incorporation shows that the Foundation was charitable. The Articles, filed with the South Carolina Secretary of State on July 23, 2004, indicate that the Foundation is a nonprofit public benefit corporation "[t]o receive and maintain a fund or funds of real or personal property, or both, and subject to the restrictions and limitations hereinafter set forth, to use and apply the whole or any part of the income therefrom and the principal thereof exclusively for charitable, religious, scientific, testing for public safety, literary, or educational purposes, either directly or by contributions to organizations that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code." (R. 104-105). All of the Foundation's activities were charitable in nature. During Mr. Mevers' lifetime, the Foundation made numerous charitable disbursements, and shortly after his death, the Foundation made a $3.1 million charitable gift. (R. 4, 607-609). The Appellant has failed to identify any activity that the Foundation engaged in that would disqualify it from meeting the charitable requirement.

As to the third requirement, the gift to the Foundation is permitted as a charitable deduction from the estate for federal estate tax purposes. On the date of Sonny Mevers' death, the Foundation was a 501(c)(3) tax exempt charitable corporation and was qualified to receive tax deductible devises. The testamentary devise vested in the Foundation upon Sonny Mevers' death on November 3, 2017. Immediately upon the testator's death, beneficiaries acquire a right to their

distributive share of the testator's personal property. *Brewster v. Gage*, 280 U.S. 327, 334 (citing *U.S. v. Jones*, 236 U.S. 106 (1915)). When the personal representative accepts and is qualified to take over administrating the estate, title to the personal property vests in the representative (retroactive to the date of death), for the specific purposes of satisfying claims against the estate and distributing the remaining property to the beneficiaries as specified in the testator's will. *Brewster*, 280 U.S. at 334. Upon distribution, title in the property vests in the devisee, dating again to the date of death. *Id.*

The IRS issued an Auto-Revocation for the Foundation's 501(c)(3) status included a stated revocation date of November 15, 2017, and a revocation posting date of March 12, 2018. (R. 6, 117). Even assuming that the date of distribution is the relevant date to determine whether the devise to the Foundation would be permitted as an estate tax deduction, the Foundation's loss of its 501(c)(3) tax exempt status did not prevent the gift to the foundation from being a deduction from the value of the taxable estate under 26 USC § 2055. Even after auto-revocation, the Foundation continued to be charitable within the definition of § 2055 governing estate tax deductions for charitable transfers. There is simply no requirement in § 2055, or anywhere else in the Internal Revenue Code or corresponding regulations that estate distributions be made to a 501(c)(3) tax exempt organization in order to qualify for an estate tax charitable deduction.

D. The Motion to Remove did not deprive the Probate Court of subject matter jurisdiction to issue its written ruling.

Appellant argues the Probate Court lacked jurisdiction to enter a formal written ruling on the motion for a temporary injunction and for other relief because Appellant made a motion to remove the case to Circuit Court on May 12, 2020, before the Temporary Injunction was issued by way of a written order on June 29, 2020. (R. 13-28). Significantly, the Motion for Removal was made after the Appellant received an unfavorable oral ruling in the Probate Court, as she was

waiting on the oral ruling to be reduced to a written order. (R. 350-351). Following this Motion for Removal, on July 10, 2020, Appellant filed a Motion to Alter, Amend or Vacate the Temporary Injunction and all relief set forth therein; on August 28, 2020, Appellant filed a Motion to Vacate the Probate Court Order. (R. 220-227, 243-250). By its order of September 10, 2020, the Probate Court denied these motions and granted the motion to remove to circuit court. (R. 29-33).

Appellant filed her Motion for Removal pursuant to S.C. Code Ann. § 62-1-302(d) which states that "any action or proceeding filed in the probate court and relating to the following subject matters, on motion of a party, or by the court on its own motion, made not later than ten days following the date on which all responsive pleadings must be filed, must be removed to the circuit court and in these cases the circuit court shall proceed upon the matter de novo[.]" This language does not indicate that a motion for removal will reverse an oral decision that a probate judge has already made, nor does it indicate that the removal must be immediate. In the present case, then, the Probate Judge acted appropriately in reducing his prior oral ruling to a written order, and in finding that the statute does not divest the probate court of jurisdiction.

As to Appellant's Motion to Vacate based upon the motion for removal allegedly depriving the Probate Court of subject matter jurisdiction, the Probate Court properly determined its jurisdiction was not impacted by the Motion for Removal as no order allowing removal had been entered. Specifically, the Probate Court held "this Court still had proper subject matter jurisdiction since the Court had not ruled upon the Motion." (R. 32). The Probate Court further noted it ruled from the bench that the Attorney General's request for a temporary injunction was granted on March 23, 2020. As such, the Probate Court determined it had clear jurisdiction to issue such rulings from the bench and was under no obligation to vacate its prior rulings. (R. 32).

Appellant's reliance on *Ex Parte Cannon*, 385 S.C. 643, 685 S.E.2d 814 (Ct. App. 2009) provides no support to Appellant, as it does not hold that a Probate Court loses jurisdiction at the time a motion to remove is filed. The same holds true for *Thomas v. Gathings*, 304 S.C. 308, 403 S.E.2d 682 (Ct. App. 1991). The Probate Court, like all courts, has an inherent authority to see its ruling are complete and complied with by the parties. *Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 715 S.E.2d 348 (Ct. App. 2011). Once the order of removal was issued, Appellant may seek *de novo* review at the Circuit Court. At any time prior to removal, the rulings and holdings of the Probate Court remain within its jurisdiction to address.

Appellant argues that that removal of an action from probate court to circuit court is analogous to removal of an action from state court to federal court. This argument is without merit. When an action is removed to federal court, it is going from a state court to the federal court. In a probate court removal, however, the action remains in state court, it is just moving from one state court to another state court. "Section 1446(d) of the United States Code provides that after an action has been removed to federal court, 'the State court shall proceed no further unless and until the case is remanded.'" *Limehouse v. Hulsey*, 404 S.C. 93, 100, 744 S.E.2d 566, 570 (2013) (citing 28 U.S.C.A. § 1446(d)). The procedure for removal from state to federal court requires filing a Notice of Removal. The Notice of Removal is filed in federal court, and the state court must be notified that the case is being removed. Unlike this procedure, the probate court removal procedure requires filing a motion, which itself indicates that there is some action required by the Probate Court. While a Notice informs the Court, a Motion requires action by the Court. Also, unlike in federal court, when a Motion to Remove is filed in Probate Court, the action remains there until the Probate Court takes action by granting the motion and sending the materials to the Clerk of Court for filing. Until this step has occurred, the removal is not complete.

E. There was no error in issuing the Temporary Injunction without receiving additional affidavits from the Appellant.

Appellant's counsel claims the Probate Court erred in refusing his "request for leave to file additional affidavits . . . ." The transcript reveals counsel was offered the opportunity to file whatever he wished to file but purposefully decided not to do so when the Probate Court indicated the Temporary Restraining Order would be converted to a Temporary Injunction. (R. 345-350). The Probate Court noted in its order on this issue:

> At the hearing, counsel for . . . Minnie Lee Newman Mevers requested leave until March 30, 2020 to file additional affidavits with this Court addressing tax issues raised at the hearing before the Court made its decision on the motion. The Court initially was inclined to accommodate this request. However, the Court decided to immediately announce its decision at the conclusion of the hearing when the [Appellant's]… counsel was unable to consent to extend the Temporary Restraining Order during the additional time interval that would have been granted after the hearing for the submission of additional affidavits. This necessarily would have meant the Temporary Restraining Order would have expired by its terms on March 23, 2020 if the Court had not immediately issued its ruling on the motion. Accordingly, because the Motion is being granted, the submission of additional affidavits at this point would serve no purpose.

(R. 26). There was no error in failing to provide additional time for affidavits, as doing so would have allowed the temporary restraining order to lapse and potentially caused the assets to be sold or otherwise disposed of and dissipated by the Appellant. Further, the written order was issued on June 29, 2020, which was after the time requested for the additional affidavits, and there was nothing to prevent Appellant from filing supplemental affidavits, even if the Court had not specifically granted additional time to do so.

IV. Conclusion

For the reasons set forth herein, this appeal should be dismissed as to the temporary restraining order and the special administrator, or in the alternative the Order of the Circuit Court, affirming the Probate Court, should be affirmed in its entirety.

Respectfully submitted,

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