THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

The Honorable R. Ferrell Cothran, Circuit Court Judge

Appellate Case No. 2012-213564
Civil Action No. 2012-CP-43-00302

In the Matter of: Estate of Robert Ross Dinkins

Mae Lee Dinkins, ... Appellant,

v.

Synovus Trust Company, N.A.,..... Respondent,

William C. Cantey, Jr., ... Respondent.

INITIAL BRIEF OF RESPONDENT SYNOVUS TRUST COMPANY, N.A.

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STATEMENT OF THE CASE

This matter is an appeal by the Appellant, Mae Lee Dinkins, of an Order Granting Synovus Bank's Motion to Dismiss, Granting William C. Cantey, Jr.'s Motion to Intervene, Denying Petitioner's Appeal, and Affirming the Probate Court's January 3, 2012 Order, which was signed by The Honorable R. Ferrell Cothran, Jr. on September 28, 2012 and entered October 1, 2012 (the "Circuit Court Order"; R. ____), as well as an Order dated November 29, 2012 and entered November 30, 2012 (the "Rule 59(e) Order"; R. ____) denying reconsideration of the Circuit Court Order. The Circuit Court Order affirmed an Order Denying Petition for Removal of Personal Representative, Granting Request for Compensation, Accepting Resignation of Co-Personal Representative, and Appointing Successor Co-Personal Representative and Trustee, which was signed by The Honorable Dale Atkinson on January 3, 2012 and entered the same day (the "Probate Order"; R. ____).

On or about July 30, 1982, Robert Ross Dinkins (the "Decedent") executed the Last Will and Testament of Robert Ross Dinkins (the "Last Will"). (Cond. Stmt. of Res. Ex. 1). Item VII of the Last Will named the National Bank of South Carolina and the Appellant, the Decedent's widow, as Co-Personal Representatives of the Estate of Robert Ross Dinkins (the "Estate").[1] (Cond. Stmt. of Res. Ex. 1, p.8). The Decedent passed away on April 11, 2008, and on May 2, 2008, Synovus Trust, as the successor-in-interest to the National Bank of South Carolina's trust and estate business, and the Appellant were appointed Co-Personal Representatives of the Estate.

[1] Item VIII of the Last Will further nominated the National Bank of South Carolina as trustee of various trusts established by the Last Will. (Cond. Stmt. of Res. Ex. 1, p.8). However, Synovus Trust rejected all trusteeships pursuant to S.C. Code Ann. § 62-7-701(b) (2009).

On February 23, 2011, Synovus Trust filed a Conditional Statement of Resignation in which it conditionally resigned as Co-Personal Representative of the Estate pending an agreement among the interested parties or an order from the Probate Court concerning the payment of reasonable compensation to Synovus Trust for its services as Co-Personal Representative and security for the compensation. (Cond. Stmt. of Res.). On March 2, 2011, Mrs. Dinkins filed a Petition for Removal of Personal Representative, in which she sought the removal of Synovus Trust as Co-Personal Representative for cause. On June 1, 2011, Synovus Trust filed a Request for Compensation detailing the fees it was owed for its services as Co-Personal Representative and seeking the Probate Court's award of those fees. (Req. for Comp.).

A hearing was held before Judge Atkinson on July 7, 2011, on both the Appellant's Petition for Removal of Personal Representative and Synovus Trust's Request for Compensation. On January 3, 2012, Judge Atkinson entered the Probate Order. In the Probate Order, Judge Atkinson found no evidence or testimony had been presented supporting the removal of Synovus Trust as Co-Personal Representative for cause, awarded Synovus Trust the compensation it was seeking,[2] accepted Synovus Trust's resignation as Co-Personal Representative, and appointed William C. Cantey, Jr. as successor Co-Personal Representative of the Estate and sole Trustee of all trusts established by the Last Will.

The Appellant appealed the Probate Order to the Circuit Court insofar as it awarded fees to Synovus Trust, naming "Synovus Bank, formerly known as Columbus Bank and Trust, as Successor in interest through name Change and by merger with The

[2] To ensure the fees were paid, the Probate Order also directed the Estate to execute a promissory note in favor of Synovus Trust along with a mortgage securing the note. (Probate Order p.9).

National Bank of South Carolina" ("Synovus Bank") as the sole Respondent. She filed a Notice of Intent to Appeal on or about January 9, 2012 and Grounds for Appeal on or about February 16, 2012.[3] (R. ____). Synovus Bank filed a Motion to Dismiss the appeal on or about April 2, 2012, arguing it was not a party to the proceedings below and had been improperly named as the Respondent on appeal. (Mot. to Dismiss). Mr. Cantey subsequently filed a Motion to Intervene in the appeal on or about May 23, 2012 and a Brief in Support of Appeal on or about June 7, 2012.

A hearing was held on Synovus Bank's Motion to Dismiss and Mr. Cantey's Motion to Intervene on June 25, 2012 before The Honorable R. Ferrell Cothran, Jr. On June 26, 2012, a second hearing was held before Judge Cothran on the merits of the Appellant's appeal. After carefully reviewing the record, the briefs submitted by the parties, and the applicable law, and after considering the arguments of counsel, Judge Cothran entered the Circuit Court Order, which granted Synovus Bank's Motion to Dismiss and substituted Synovus Trust as the Respondent, granted Mr. Cantey's Motion to Intervene, denied Mrs. Dinkins' appeal, and affirmed the Probate Order. On or about October 10, 2012, the Appellant filed a Motion for Reconsideration and/or Motion to Amend Judgment, which Judge Cothran denied via the Rule 59(e) Order. (R. ____). The Appellant served a Notice of Appeal on December 10, 2012.

Synovus Trust objects to the Appellant's so-called "Statement of Facts," which is not called for by Rule 208(b)(1), SCACR, and contains numerous contested matters in contravention of Rule 208(b)(1)(C), SCACR.

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[3] As discussed in Section IV(D), infra, Synovus Trust contends these documents did not properly perfect an appeal against it.

ARGUMENTS

I. CERTAIN ISSUES ARGUED BY THE APPELLANT WERE NOT PROPERLY PRESERVED FOR APPELLATE REVIEW AND WERE NOT RAISED ON APPEAL.

A. The alleged impropriety of the Probate Order's command that the Estate execute a promissory note and mortgage was not raised to and ruled upon by the Probate Court.

"It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review." Nicholson v. Nicholson, 378 S.C. 523, 537, 663 S.E.2d 74, 81 (Ct. App. 2008) (citations and quotations omitted). "Without an initial ruling by the trial court, a reviewing court simply would not be able to evaluate whether the trial court committed error." Ellie, Inc. v. Miccichi, 358 S.C. 78, 103, 594 S.E.2d 485, 498 (Ct. App. 2004) (citations and quotations omitted). "If the losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellate review." I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000). "An issue is not preserved where the trial court does not explicitly rule on an argument and the appellant does not make a Rule 59(e) motion to alter or amend the judgment." Nicholson, 378 S.C. at 537, 663 S.E.2d at 82. This principle "is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments" and "prevents a party from keeping an ace card up his sleeve—intentionally or by chance—in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case." I'On, LLC, 338 S.C. at 422, 526 S.E.2d at 724.

In addition to awarding compensation to Synovus Trust, the Probate Order commanded the Estate to execute a promissory note and mortgage in favor of Synovus Trust. (Probate Order p.9). At the Circuit Court hearing on the merits of her appeal, the Appellant argued, for the first time, that it was improper for the Probate Court to issue such a command. Fatal to that argument, however, was the Appellant's and Mr. Cantey's acknowledgement that the issue had never been raised to and ruled upon by the Probate Court. The Appellant protested in her Circuit Court brief that "[t]he terms of these documents were never negotiated by any party" and that she "was unaware of their existence until the Probate Court commanded their execution." (Pet. Brief on App. p.4). Mr. Cantey agreed this issue had not been raised to the Probate Court, writing in support of his Motion to Intervene that his "argument regarding the Probate Court's abuse of discretion by ordering the execution of the Note and Mortgage in Synovus Trust's favor was never advanced by any of the parties involved" and that the issue "was first brought to light by Mr. Cantey's Brief in Support of the Appeal." (Brief in Supp. of Mot. to Int. p.4). Indeed, that the Appellant had not previously made this argument—and was not even capable or willing to do so—was virtually the entire basis for Mr. Cantey's intervention in the appeal. (Brief in Supp. of Mot. to Int. pp.3-6). Accordingly, the Circuit Court found the issue was not preserved for appellate review.

The Appellant now argues, despite her prior concessions to the contrary, that the propriety of the Probate Order's command that the Estate execute a promissory note and mortgage was, in fact, raised to and ruled upon by the Probate Court. However, she is judicially estopped to change her position on this issue. "Judicial estoppel precludes a party from adopting a position in conflict with one earlier taken in the same or related

litigation." Hayne Fed. Credit Union v. Bailey, 327 S.C. 242, 251, 489 S.E.2d 472, 477 (1997). She has "formally asserted a certain version of the facts in litigation" and cannot now "change those facts when the initial version no longer suits [her]." Id. at 252, 489 S.E.2d at 477.

Beyond being judicially estopped, however, the Appellant is simply wrong to assert that the note/mortgage issue has been properly preserved for appellate review. In support of her new position, the Appellant cites Synovus Trust's Request for Compensation, a brief comment made by her counsel at the conclusion of the July 7, 2011 hearing before Judge Atkinson, and a Rule 59(e) motion she filed with the Probate Court on January 11, 2012. However, she has already acknowledged that the Request for Compensation did not raise the issue of whether a Probate Court may command an Estate to execute a promissory note and mortgage to secure the fees due a Personal Representative, writing that even though Synovus Trust's Request for Compensation sought "security for the compensation," "[t]here was no indication Synovus [Trust] was seeking to force the Estate to execute a promissory note and mortgage in favor of Synovus [Trust]." (Pet. Brief on App. p.4). Moreover, she has acknowledged that the issue was not argued at the July 7, 2011 hearing, asserting: "During the hearing, Synovus [Trust] mentioned it was seeking 'security' but did not articulate its argument in favor of a promissory note and mortgage at the hearing." (Pet. Brief on App. p.4).

As for the Rule 59(e) motion the Appellant filed with the Probate Court on January 11, 2012, it cannot reasonably be read to have properly challenged the Probate Order's command regarding the promissory note and mortgage. A Rule 59(e) motion is required to *specifically* raise the issues the movant wants addressed. See, e.g., Bean v.

S.C. Cent. R.R. Co., 392 S.C. 532, 554, 709 S.E.2d 99, 111 (Ct. App. 2011) ("We note that this argument is not preserved for review because [the appellant] failed to make this *specific* fraud argument to the circuit court or raise it in a Rule 59(e), SCRCP, motion to alter or amend.") (emphasis added); Hatfield v. Hatfield, 327 S.C. 360, 369, 489 S.E.2d 212, 217 (Ct. App. 1997) (holding that an issue was not preserved for review because the Rule 59(e) motion did not specifically raise the issue and the judge did not address it in his ruling on the motion); Skinner v. Elrod, 308 S.C. 239, 243, 417 S.E.2d 599, 602 (Ct. App. 1992) ("[Appellant] made no motion under Rule 59(e), SCRCP for the master to alter or amend his order to consider this *specific* allegation. Therefore, the issue is not properly preserved for review.") (emphasis added). The motion's generic assertion that Synovus Trust sought "unreasonable compensation" simply was not specific enough to alert the Probate Court, Synovus Trust, or anyone else that the Appellant was challenging the authority of the Probate Court to order the execution of a promissory note and mortgage. Indeed, paragraph 7 of the motion contained six subparagraphs specifically addressing several particular issues, but the note/mortgage issue was not among them. (Mot. for Recon. pp.3-4, ¶ 7).

Moreover, an issue must not only be *raised* to the trial judge, it must also be *ruled upon* in order to be preserved for appellate review. Nicholson, 378 S.C. at 537, 663 S.E.2d at 81 (Ct. App. 2008). "*Without an initial ruling by the trial court*, a reviewing court simply would not be able to evaluate whether the trial court committed error." Ellie, 358 S.C. at 103, 594 S.E.2d at 498 (Ct. App. 2004) (emphasis added) (citations and quotations omitted). Judge Atkinson never decided the Appellant's Rule 59(e) motion because it was filed *after* the Appellant had already appealed the Probate Order to the

Circuit Court, and thus the Probate Court had no jurisdiction to address the motion pursuant to S.C. Code Ann. § 62-1-308(c) (2009). The motion was a veritable nullity from the moment it was filed. Accordingly, even if the note/mortgage issue was properly raised in the Appellant's Rule 59(e) motion—it was not—it is unquestionable that it was never ruled upon by the Probate Court because that court never had jurisdiction to consider the motion.

That the note/mortgage issue was not raised to and ruled upon by the Probate Court is highlighted by the argument the Appellant makes on the merits of the issue.[4] She argues that by ordering the Estate to execute a promissory note and mortgage in favor of Synovus Trust, the Probate Court violated S.C. Code Ann. § 62-3-805 (2009), which governs the priority of claims against certain estates. However, she cannot point to anything indicating this argument was ever made to or addressed by the Probate Court. The fact is that the Probate Court never considered whether it may have violated Section 62-3-805 because it was never asked to do so. Accordingly, this argument is not preserved for review, for "[w]ithout an initial ruling by the trial court, a reviewing court simply would not be able to evaluate whether the trial court committed error." Ellie, 358 S.C. at 103, 594 S.E.2d at 498 (citations and quotations omitted).

The Circuit Court correctly held that the alleged impropriety of the Probate Order's command that the Estate execute a promissory note and mortgage was not properly preserved for appellate review.

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[4] The merits are discussed in Section IV(A), infra, as an alternate sustaining ground.

B. The alleged impropriety of the Probate Order's command that the Estate execute a promissory note and mortgage was not listed in the Grounds for Appeal and, therefore, was not among the issues to be considered by the Circuit Court.

Even if the note/mortgage issue was properly preserved for appellate review, it was not listed in the Appellant's Grounds for Appeal and, therefore, was not among the issues to be considered by the Circuit Court (or any other reviewing court). The grounds of appeal is required by S.C. Code Ann. § 62-1-308(a) (2009). "[T]he filing and service of the grounds of appeal . . . are integral parts of the right of appeal from probate court to circuit court." Montgomery v. Keziah, 277 S.C. 84, 85, 282 S.E.2d 853, 854 (1981). Moreover, the grounds of appeal is a jurisdictional document. See, e.g., Gallagher v. Evert, 353 S.C. 59, 68, 577 S.E.2d 217, 221 (Ct. App. 2002) (finding that the circuit court lacked subject matter jurisdiction to address issues not timely raised in the appellant's grounds for appeal). It provides notice to the responding party of the issues which will be presented to the appellate court and is "necessary for the orderly function of the appellate process." Montgomery, 277 S.C. at 85, 282 S.E.2d at 854.

The Appellant's Grounds for Appeal lists four issues—the first of which contains nine subparts—to be considered on appeal. The alleged impropriety of the Probate Court's command that the Estate execute a promissory note and mortgage is not among them. There is no indication in the Grounds for Appeal that the Appellant intended to challenge the Probate Court's authority to command the execution of a promissory note and mortgage. The Appellant raised that issue for the first time at the appeal hearing on June 26, 2012, over four months after the time for filing and serving the grounds of appeal had passed. "A portion of a judgment that is not appealed presents no issue for determination by the reviewing court and constitutes, rightly or wrongly, the law of the

case." Austin v. Specialty Transp. Servs., Inc., 358 S.C. 298, 320, 594 S.E.2d 867, 878 (Ct. App. 2004). See also Ulmer v. Ulmer, 369 S.C. 486, 491, 632 S.E.2d 858, 861 (2006) (holding that, because no appeal was taken as to a probate court ruling, the ruling could not be modified on appeal even if the issue presented thereby had been preserved); Rumpf v. Massachusetts Mut. Life Ins. Co., 357 S.C. 386, 398, 593 S.E.2d 183, 189 (Ct. App. 2004) ("Any unappealed portion of the trial court's judgment is the law of the case, and must therefore be affirmed."); Matter of Morrison, 321 S.C. 370, 372, 468 S.E.2d 651, 652 n.2 (1996) ("This ruling is the law of the case since it is not contested on appeal."); Nat'l Grange Mut. Ins. Co. v. Firemen's Ins. Co. of Newark, N.J., 310 S.C. 116, 121, 425 S.E.2d 754, 758 n.5 (Ct. App. 1992) ("The unappealed portion of a lower court's judgment presents no issue for review by this court and becomes the law of the case."). Accordingly, this issue is not among those to be reviewed on appeal.

C. The arguments that Synovus Trust's fees accrued beyond the proper time and that Synovus Trust failed to comply with S.C. Code Ann. § 62-3-1001 (Supp. 2012) likewise were not raised to and ruled upon by the Probate Court and were not listed in the Grounds for Appeal.

As with the note/mortgage issue, the Appellant's arguments that the accrual of Synovus Trust's fees should have ceased on or about October 28, 2009 and that Synovus Trust failed to comply with S.C. Code Ann. § 62-3-1001 (Supp. 2012) are not preserved for appellate review. The Appellant has not cited any argument or testimony from the July 7, 2011 hearing before Judge Atkinson relating to these issues. And although the Appellant did file a Rule 59(e) motion with the Probate Court, it did not the raise the specific issues regarding the appropriate period of accrual of Synovus Trust's fees or of Synovus Trust's alleged failure to comply with Section 62-3-1001. Nothing in the motion, including the Appellant's protest that the Probate Order awarded "unreasonable

compensation" to Synovus Trust, was sufficiently specific to place a reasonable observer on notice that the Appellant was challenging the Probate Court's award of fees to Synovus Trust beyond a certain identified date or alleging Synovus Trust's noncompliance with Section 62-3-1001. Moreover, as discussed above, Judge Atkinson never ruled on the Rule 59(e) motion—as he must have done in order for any novel issues raised therein to be preserved—because the Appellant deprived him of jurisdiction to do so prior to filing the motion by filing a Notice of Intent to Appeal the Probate Order. Accordingly, these issues are not preserved for review for the reasons set forth in Section I(A), supra.

Also like the note/mortgage issue, these issues were not included among the Appellant's Grounds for Appeal. The Grounds for Appeal contained no indication that the Appellant intended to challenge the time period during which Synovus Trust's fees accrued or allege that Synovus Trust violated Section 62-3-1001. These issues were raised for the first time at the appeal hearing on June 26, 2012. Accordingly, they are not among the issues to be reviewed on appeal for the reasons set forth in Section I(B), supra.

II. THE APPELLANT HAS NOT CARRIED HER BURDEN OF ESTABLISHING THERE IS NO EVIDENCE IN THE RECORD SUPPORTING THE PROBATE ORDER'S FINDINGS AND CONCLUSIONS.

Appeals from the Probate Court are governed by S.C. Code Ann. § 62-1-308 (2009). Subsection (d) of that statute provides that the circuit court "shall hear and determine the appeal according to the rules of law." S.C. Code Ann. § 62-1-308(d) (2009). "As used in this statute, the phrase 'according to the rules of law' means according to the rules governing appeals." In re Howard, 315 S.C. 356, 360, 434 S.E.2d 254, 257 (1993). Thus, in the absence of a statute or rule prescribing a different standard

of review, "the circuit court must apply the same standard that the appellate court would apply were the appeal taken directly to either the supreme court or court of appeals." Univ. of S. Cal. v. Moran, 365 S.C. 270, 274, 617 S.E.2d 135, 137 (Ct. App. 2005) (citations and quotations omitted).

"The standard of review applicable to cases originating in the probate court depends upon whether the underlying cause of action is at law or in equity." Id. "If the proceeding in the probate court is in the nature of an action at law, the circuit court and the appellate court may not disturb the probate court's findings of fact unless a review of the record discloses there is *no evidence* to support them." In re Estate of Pallister, 363 S.C. 437, 447, 611 S.E.2d 250, 256 (2005) (emphasis added). See also In re Estate of Watford, 305 S.C. 535, 537, 409 S.E.2d 791, 792 (Ct. App. 1991) (applying the abuse of discretion standard in a review of the probate court's decision regarding a personal representative's commission). In this case, the Appellant has only appealed the Probate Order's award of fees to Synovus Trust. A dispute over the appropriate amount of money to be paid by one party to another is clearly a legal dispute, and thus the Appellant must demonstrate that the record contains *no evidence* supporting the Probate Order's findings and conclusions. She has failed to do so.

A. There is ample evidence in the record supporting the Probate Order's findings and conclusions.

In this appeal, the burden is not on Synovus Trust to establish its entitlement to compensation—it already did that in the Probate Court. Rather, the burden is on the Appellant to establish that there is *no evidence* supporting the Probate Order's findings and conclusions. Nevertheless, Synovus Trust can point to ample evidence in the record supporting Synovus Trust's entitlement to the compensation awarded in the Probate

Order. Indeed, the Appellant's own testimony—together with the terms of the Last Will itself—provides all the evidence this Court needs to uphold the Probate Order.

At the July 7, 2011 hearing before Judge Atkinson, the Appellant testified:

> A. The only thing I had against [Synovus Trust], I mean, they did their job as far as, like you say, the taxes and all that kind of stuff, but I felt like they at times could have been, I don't know, approached it differently. And that was my big complaint with them.
>
> Q. Well, it might have been -- it was a disagreement perhaps in style, and I can appreciate that. But work was done by Synovus [Trust], is my point. Is that a fair statement?
>
> A. Yes. At least the important stuff was done. There was a lot of little stuff that we fussed about.

(Trans. 51:13-25). She further testified that "Everybody needs to be paid for the work they do." (Trans. 53:25-54:1). Thus, the Appellant herself is on record stating that, though she may have had some disputes about "little stuff" with Synovus Trust, she believes Synovus Trust performed its duties as Co-Personal Representative and deserves to be paid for the work it performed.

Moreover, Item X of the Last Will directs that Synovus Trust shall receive compensation for its services as Co-Personal Representative according to "its Standard Fee Schedule in effect and applicable at the time of the performance of such services." (Cond. Stmt. of Res. Ex. 1, p.9). The Probate Order merely carried out the Last Will's directive by awarding compensation to Synovus Trust consistent with Synovus Trust's standard fee schedules. Therefore, there is evidence in the record supporting the Probate Order's findings and conclusions.

B. The record supports the Probate Order's rejection of the Appellant's accusation that Synovus Trust did not properly manage the Estate.

The Appellant argues that Synovus Trust systematically mismanaged the Estate. That is a factual issue which, as the Appellant acknowledges, the Probate Order decided in Synovus Trust's favor. (Probate Order ¶¶ 9 ("Synovus [Trust] did not . . . mismanage the Estate[.]"); 10 ("Synovus [Trust] has performed all the duties of its office in a capable and competent manner.")). Synovus Trust has already convinced the finder of fact—the Probate Court—that it properly managed the Estate. The burden now falls on the Appellant to establish that there is no evidence in the record supporting that finding. She has failed to do so.

The following are the Appellant's arguments regarding Synovus Trust's alleged mismanagement of the Estate, followed by citations to record evidence supporting the Probate Order's findings as to each issue.

- The Appellant argues Synovus Trust's work on the Estate's tax returns was minimal and that it does not support an award of compensation to Synovus Trust. However, the record reflects that, while an accountant was indeed retained to actually fill out and file the Estate's tax returns, Synovus Trust performed a great deal of work pertaining to the returns, including compiling all information needed to file an unprecedented seven years of back tax returns and reinstating a business entity which had been administratively dissolved (which was also unprecedented). (Trans. 49:4-8, 16-21; 155:21-158:6; 222:16-226:11; 259:8-263:22; 269:25-270:21).

- The Appellant points out that the value of the real property held by the Estate decreased while Synovus Trust was serving as Co-Personal Representative. However, the only record evidence is that the decline was the result of nationwide economic conditions and that Synovus Trust acted to minimize the Estate's losses. (Trans. 117:21-24; 118:7-12; 118:24-119:17). The Appellant can point to no evidence that the decline in value was due to any act or omission of Synovus Trust.

- The Appellant argues Synovus Trust failed to lease the Estate's rental properties. However, the unrebutted evidence shows that, from the time of the Decedent's death to the week of the July 7, 2011 hearing, Synovus Trust reduced the amount of past due rent from approximately $35,000 down to $898 and that many of the properties were unoccupied, in disrepair, and behind on their taxes when Synovus Trust took over the Estate's property management. (Trans. 40:6-12; 196:12-199:10; 217:9-218:23; 235:21-236:13).

- The Appellant argues Synovus Trust allowed leases to expire without seeking new tenancies and allowed many properties to remain unoccupied. However, this was primarily due to the aforementioned state of the properties and the Estate's lack of cash to repair them, as well as the fact that, when Synovus Trust took over the Estate's property management, there were several properties which were occupied but for which no rents were being paid. (Trans. 236:16-24).

- The Appellant argues Synovus Trust failed to close the Estate in a timely manner. However, the unrebutted evidence establishes that the sole reason the Estate was not closed is because it had insufficient cash to pay its debts as a result of the Appellant's refusal to sell sufficient assets. (Trans. 144:20-147:8; 246:17-25).

There is evidence in the record supporting the Probate Order's finding that Synovus Trust properly performed its duties as Co-Personal Representative, including managing the Estate.

C. The record supports the Probate Order's rejection of the Appellant's accusation that Synovus Trust improperly increased its fees.

The Appellant argues Synovus Trust improperly increased its fees because the fee schedule in effect on the date of the Decedent's death (referred to by the parties as the "April 2008 PR Fee Schedule") states that Synovus Trust's fees will be computed using the fee schedule in effect at the time it begins its duties. However, Item X of the Last Will provides that Synovus Trust shall receive compensation for its services as Co-Personal Representative according to "its Standard Fee Schedule in effect and applicable at the time of the performance of such services." (Cond. Stmt. of Res. Ex. 1, p.9). To the

extent there is any tension between the Last Will and the April 2008 PR Fee Schedule, the Last Will controls, and Synovus Trust was entitled to seek fees based on the schedules in effect at the time services were performed. (Trans. 143:14-144:12).

The Appellant also asserts Synovus Trust increased its fees without full disclosure to her or her consent. However, because Synovus Trust's fees were established by the terms of the Last Will, the Appellant was not required to give her approval to Synovus Trust's fee schedules; her signature was obtained on one of the fee schedules simply as an acknowledgement that she had been provided a copy of the document as a courtesy. (Trans. 127:17-128:24).

There is evidence in the record supporting Synovus Trust's entitlement to the compensation awarded.

D. The record supports the Probate Order's rejection of the Appellant's accusation that Synovus Trust improperly calculated its First Annual Fee.

The Appellant argues Synovus Trust improperly computed its "First Annual Fee" by using the gross value of the Estate in its computation rather than the net value of the Estate. However, the April 2008 PR Fee Schedule called for the First Annual Fee to be calculated "on asset values as reported on [IRS Form 706—United States Estate (and Generation-Skipping Transfer) Tax Return] at [the] applicable rate" of 1.6% per annum. (Req. for Comp. Ex. 1) The only evidence in the record regarding the definition of the term "asset value" as it is used in the trust and estate industry is that it is synonymous with "gross asset value" and refers to the market value of an asset. (Trans. 139:8-19; 140:19-141:8; 158:25-159:2; 161:22-162:5). Thus, there is evidence in the record supporting Synovus Trust's computation of the "First Annual Fee."

E. The record supports the Probate Order's rejection of the Appellant's accusation that Synovus Trust charged improper real estate management fees.

The Appellant argues Synovus Trust is not entitled to real estate management fees because the April 2008 PR Fee Schedule does not call for such fees. However, as previously mentioned, the Last Will called for Synovus Trust to receive compensation according to "its Standard Fee Schedule in effect and applicable at the time of the performance of such services." (Cond. Stmt. of Res. Ex. 1, p.9). The fee schedules in effect during the second and third years of Estate administration called for real estate management fees. (Req. for Comp. Exs. 2-3).

The Appellant also argues Synovus Trust is not entitled to fees for managing the Estate's beach house because it hired another company to manage that property. However, the record establishes that, while a management company was indeed retained to locate tenants and collect rent, Synovus Trust remained responsible for all other duties related to the property, including repairs, payment of taxes, maintenance of insurance, and so on. (Trans. 107:25-108:13; 149:24-150:24).

There is evidence in the record supporting Synovus Trust's entitlement to real estate management fees.

F. The record supports the Probate Order's rejection of the Appellant's accusation that Synovus Trust violated its fiduciary duty to the Estate.

The Appellant asserts the fact that Synovus Trust declined to resign as Co-Personal Representative until an agreement could be reached regarding its fees was a violation of its fiduciary duty to the Estate. However, she cites no authority whatsoever in support of the proposition that a failure to resign upon request constitutes a breach of fiduciary duty. To the contrary, as the successor in interest to the entity named as Co-

Personal Representative in the Last Will (NBSC), Synovus Trust was under no obligation to resign regardless of how passionately the Dinkins family may have desired that outcome. Cf. Blackmon v. Weaver, 366 S.C. 245, 251, 621 S.E.2d 42, 45 (Ct. App. 2005) ("The mere existence of conflict between a personal representative and a beneficiary is an inadequate reason for removal of the personal representative."). There was simply nothing improper about Synovus Trust continuing to serve in its appointed role until the fee dispute was resolved. The Probate Court agreed, finding that "Synovus [Trust] did not . . . fail to perform any duty pertaining to its office." (Probate Order ¶ 9). This is a factual finding that must be sustained unless there is *no evidence* in the record supporting it. However, the record clearly shows Synovus Trust was under no obligation to resign upon request because, in accordance with the Last Will, it could have continued to serve as Co-Personal Representative for the life of the Estate.[5] (Cond. Stmt. of Res. Ex. 1, p.8).

The Appellant next argues Synovus Trust violated its fiduciary duty and misrepresented material facts to the Probate Court by failing to disclose its alleged creditor relationship with the Estate on its Probate Court application. She asserts "[t]here has been a great deal of confusion surrounding the legal relationship between Synovus Financial, Synovus Trust, and NBSC." However, there has never been any legitimate confusion. Synovus Bank and Synovus Trust are entirely separate legal entities. (Trans. 89:8-13; 123:25-124:9). Synovus Bank, which operates in South Carolina through its NBSC division, has held a note and mortgage on Estate property since before the

[5] The Appellant argues the Circuit Court was obligated to identify the evidence supporting its finding that the Appellant did not meet her burden of establishing that there is no evidence in the record supporting the Probate Order's finding that Synovus Trust did not violate its fiduciary duty to the Estate. However, she cites no authority indicating the Circuit Court was so obligated. And in any event, the Circuit Court *did* cite supporting evidence: the Last Will, which appointed an entity (NBSC) as Co-Personal Representative to which Synovus Trust was the successor-in-interest. (Cond. Stmt. of Res. Ex. 1, p.8).

Decedent passed away and was a creditor of the Estate; Synovus Trust, a separate and distinct entity, has never been a creditor of the Estate. (Trans. 89:16-18). Accordingly, there was nothing for Synovus Trust to disclose on its Probate Court application. It was under no obligation to indicate that Synovus Bank was a creditor of the Estate and did not defraud the Probate Court by not doing so.[6] The Appellant has yet to cite any authority to the contrary even though she has made this argument at every stage of this dispute to date. Even in her vain attempt to distinguish the holding of Tyson v. N.C. National Bank, 280 S.E.2d 478, 481 (N.C. Ct. App. 1981), modified on other grounds, 286 S.E.2d 561 (N.C. 1982), cited in the Circuit Court Order for the proposition that "[n]o conflict of interest is created by the mere fact that the executor of the estate also occupied the status of creditor," the Appellant cites no authority for her assertion that a Co-Personal Representative which is owned by the same company as a creditor of the Estate owes a special duty of disclosure.

Finally, the Appellant argues Synovus Trust breached its fiduciary duty to the Estate merely by requesting the promissory note and mortgage as security for the payment of its compensation. But, once again, she cites no authority for this unsupportable proposition, which implies the absurd conclusion that the Probate Court and the Circuit Court were accomplices to Synovus Trust's "breach" since they awarded and affirmed Synovus Trust's request for the promissory note and mortgage. Such reasoning should be rejected.

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[6] Indeed, the Probate Court—the court that was allegedly defrauded—explicitly found that it was not misled, finding that "Synovus [Trust] did not intentionally misrepresent material facts in the proceedings leading to its appointment[.]" (Probate Order ¶ 9).

III. SYNOVUS TRUST WAS AUTHORIZED TO SERVE AS CO-PERSONAL REPRESENTATIVE OF THE ESTATE AND IS ENTITLED TO RECEIVE COMPENSATION FOR DOING SO.

A. Synovus Trust is entitled to receive compensation for its real estate management services.

The Appellant argues Synovus Trust was not permitted to charge fees for real estate management or sales because it is not licensed pursuant to Chapter 57 of Title 40 of the South Carolina Code of Laws. The Circuit Court rejected this argument and found that, as Co-Personal Representative of the Estate, Synovus Trust was not required to hold a license to manage or sell Estate properties pursuant to S.C. Code Ann. §§ 40-57-240(1) (2011) and 62-3-711(a) (2009). (Circuit Court Order pp.10-11). The former provides that the real estate licensure statutes do not apply to "the sale, lease, or rental of real estate by an unlicensed owner of real estate who owns any interest in the real estate if the interest being sold, leased, or rented is identical to the owner's legal interest," while the latter provides that "a personal representative has the same power over the title to property of the estate that an absolute owner would have[.]" The Appellant concedes these statutes gave Synovus Trust the authority to manage and sell the Estate's real property. She even asserts Synovus Trust had an affirmative duty to do so. Yet she argues—once again, without citation to any authority—that Synovus Trust is not entitled to be compensated for its management services[7] despite the previously mentioned facts that the Last Will called for Synovus Trust to receive compensation according to "its Standard Fee Schedule in effect and applicable at the time of the performance of such services" (Cond. Stmt. of Res. Ex. 1, p.9). and the fee schedules in effect during the second and third years

[7] Notably, the Appellant took the opposite position when her son, James "Nat" Dinkins, was managing the Estate's properties, which he did for ten years—without a license—and for which he was financially compensated. (Trans. 20:11-12, 23-25; 36:13-14; 37:25-38:1; 175:15-18; 214:20-22).

of Estate administration called for real estate management fees. (Req. for Comp. Exs. 2-3). Moreover, as noted in the Circuit Court Order, Item XIII of the Last Will also gave Synovus Trust the authority to buy, sell, and lease Estate property.[8] Thus, the Circuit Court correctly affirmed the Probate Order's award of compensation to Synovus Trust for its real estate management services.

B. Synovus Trust was properly qualified to serve as Co-Personal Representative under all applicable laws.

The Appellant's final argument is that Synovus Trust was not properly qualified to serve as Co-Personal Representative under South Carolina law. She first cites S.C. Code Ann. § 62-3-203(e)(3) (2009) in support of this contention. That section prohibits a person from serving as personal representative if it is: (1) a corporation created by another state of the United States or by any foreign state, kingdom, or government; or (2) a corporation created under the laws of the United States and not having a business in South Carolina. However, as the record reflects, Synovus Trust is chartered under the laws of the United States (Trans. Ex. 3) and has a business in South Carolina. (Trans. 119:20-23; 255:3-5). Accordingly, as the Circuit Court correctly held, Section 62-3-203(e)(3) is inapplicable to Synovus Trust.

The Appellant next cites S.C. Code Ann. § 33-15-101(a) (2006), which provides that a foreign corporation may not transact business in South Carolina until it obtains a

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[8] This provision provides, in pertinent part:

> My Co-Executors . . . are authorized in their absolute discretion with respect to any property, real or personal, at any time held under any provision of this my Will and without authorization by any court[:] . . . (3) To sell or dispose of or grant options to purchase any property, real or personal, constituting a part of my Estate[;] . . . (10) To enter for any purpose into a lease as lessor or lessee[;] . . . (14) To collect, receive, and receipt for rents, issues, profits, and income of my Estate[.]

(Cond. Stmt. of Res. Ex. 1, p.9).

certificate of authority from the Secretary of State. Synovus Trust obtained a certificate of authority on July 7, 2011 out of an abundance of caution to prevent a potential delay in the Probate Court proceedings, something neither party desired.[9] (Trans. 174:18-175:10). Synovus Trust maintains it was not required to obtain a certificate of authority prior to that date, but even if it was so required, Synovus Trust's failure to obtain a certificate would not disqualify it from serving as Co-Personal Representative. S.C. Code Ann. § 33-15-102 (2006) contains a comprehensive list of the consequences of transacting business in South Carolina without the requisite authority. They can be boiled down to two exclusive remedies: (1) an unauthorized corporation is prohibited from maintaining a proceeding in court until it obtains a certificate of authority; and (2) the Attorney General may seek civil penalties against an unauthorized corporation. Disqualification from serving as a personal representative and denial of payment for such services are harsh remedies not contemplated by this section. In fact, Section 33-15-102(e) specifically states that "the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts[.]" See also Official Comment to S.C. Code § 33-15-102 (stating that this code section does not impose "harsh or erratic sanctions" and "rejects the provisions adopted in a few states that make unenforceable intrastate transactions by unqualified corporations or that impose punitive sanctions or forfeitures on nonqualifying corporations").

Finally, the Appellant cites S.C. Code Ann. § 34-21-10 (1987), which requires the prior written approval of the State Board of Bank Control (now known as the State Board

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[9] It was possible the Probate Court might have delayed the proceedings pursuant to S.C. Code Ann. § 33-15-102(c) (2006), which provides: "A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate."

of Financial Institutions) before an entity may conduct trust business in South Carolina (unless the entity is a national banking association with its principal place of business in South Carolina). However, as the Circuit Court correctly held, this section does not apply to Synovus Trust, a national banking association (Trans. Ex. 3), pursuant to 12 C.F.R. § 9.7(e)(2) (2013), which provides that "state laws limiting or establishing preconditions on the exercise of fiduciary powers are not applicable to national banks." The Office of the Comptroller of the Currency (the "OCC"), the federal agency which regulates national banks, has specifically indicated that Section 34-21-10 does not apply to national banks in light of 12 C.F.R. § 9.7(e)(2) (2013). See Office of the Comptroller of the Currency, Interpretive Letter No. 1106, 2008 WL 7448059 at *3 (O.C.C. October 10, 2008) (stating that Section 34-21-10 is not applicable to national banks and that a national bank may exercise its federally authorized fiduciary powers in South Carolina notwithstanding any state laws conditioning the exercise of those powers).[10,11]

Synovus Trust was properly qualified to serve as Co-Personal Representative of the Estate and is entitled to compensation for its services pursuant to the terms of the Last Will.

IV. ADDITIONAL GROUNDS EXIST FOR SUSTAINING THE CIRCUIT COURT ORDER.

In addition to the grounds listed above, there are several other reasons why the Circuit Court Order should be affirmed. See Rule 208(b)(2), SCACR ("Respondent's

[10] The Appellant points out that the U.S. District Court for the District of South Carolina held that a predecessor statute to Section 34-21-10 was constitutional. However, the fact that its predecessor statute was found in 1974 not to violate the Due Process Clause or the Commerce Clause is wholly irrelevant to the issue of whether Section 34-21-10 is preempted pursuant to 12 C.F.R. § 9.7(e)(2) (2013), which was not promulgated until 2001.

[11] At the very least, Synovus Trust had the right to rely on the regulations and opinions issued by its own federal regulatory authority and should not be penalized for doing so in good faith.

brief may also contain argument asking the court to affirm for any ground appearing on the record as provided by Rule 220(c)."); Rule 220(c), SCACR ("The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal."); I'On, 338 S.C. at 419, 526 S.E.2d at 723 (holding that "a respondent—the 'winner' in the lower court—may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling").

A. The Probate Court had the authority to order the Estate to execute a promissory note and mortgage in favor of Synovus Trust.

Even if the argument that it was improper for the Probate Order to command that the Estate execute a promissory note and mortgage in favor of Synovus Trust had been properly preserved for appellate review and included in the Appellant's Grounds for Appeal, it would not be a basis for the reversal of the Probate Order. South Carolina courts have long recognized that they have "the inherent power to do all things reasonably necessary to insure that just results are reached to the fullest extent possible." Ex parte Dibble, 279 S.C. 592, 595, 310 S.E.2d 440, 442 (Ct. App. 1983). In this instance, the Probate Court properly exercised its inherent authority to ensure that its award of the fees due Synovus Trust would be carried out while also recognizing the liquidity concerns facing the Estate. As the record reflects, Synovus Trust was entitled to collect its fees as services were rendered to the Estate, but placed the Estate's interests above its own by declining to do so in order to preserve the Estate's limited cash resources. (Trans. 138:17-25; 231:16-232:7; 272:6-21). The Probate Order further extended the time for the Estate to pay by requiring it to sign a two-year note even though it could have awarded immediate payment to Synovus Trust.

Contrary to the Appellant's assertion, the Probate Order's command regarding the promissory note and mortgage does not affect the application of S.C. Code Ann. § 62-3-805 (2009), much less rewrite it. That code section is not universally applicable to all probate estates; it applies only when "the applicable assets of the estate are insufficient to pay all claims in full[.]" S.C. Code Ann. § 62-3-805(a) (2009). In this case, as Mr. Cantey has acknowledged, the Estate has "over $5 million worth of equity," which is "enough equity to ensure that creditors' claims and administration expenses are paid." (Brief in Supp. of App. p.9). Therefore, Section 62-3-805 does not apply to the Estate and it provides no basis for reversal of the Probate Order.

B. Synovus Trust is entitled to the compensation awarded.

Even if the argument that the accrual of Synovus Trust's fees should have ceased on or about October 28, 2009 had been properly preserved for appellate review and included in the Appellant's Grounds for Appeal, it likewise would not be a basis for the reversal of the Probate Order because there is evidence in the record establishing Synovus Trust's entitlement to the compensation awarded. As discussed herein, the Last Will called for Synovus Trust to receive compensation according to "its Standard Fee Schedule in effect and applicable at the time of the performance of such services." (Cond. Stmt. of Res. Ex. 1, p.9). Accordingly, the Last Will entitled Synovus Trust to payment for its services throughout its tenure as Co-Personal Representative based on the fee schedules in effect when services were performed.[12] (Trans. 143:14-144:12). The

[12] The Appellant asserts "Synovus Trust charged fees for nearly a year and one-half beyond what it was entitled under its own fee schedule." In fact, Synovus Trust sought and was awarded *less* than what was called for under its compensation schedules. (Probate Order ¶¶ 23 n.5; 25 n.6). Moreover, even though it served as Co-Personal Representative of the Estate until January 3, 2012, Synovus Trust has neither requested nor been awarded any fees for services provided after April 2011 (the month through which the Probate Order awarded compensation). Thus, it served just over eight months at no charge whatsoever.

Appellant cannot carry her burden of showing there is no evidence supporting the compensation awarded.

C. S.C. Code Ann. § 62-3-1001 (Supp. 2012) does not bar Synovus Trust from receiving compensation.

Even if the argument that Synovus Trust failed to comply with S.C. Code Ann. § 62-3-1001 (Supp. 2012) had been properly preserved for appellate review and included in the Appellant's Grounds for Appeal, it too would provide no basis for the reversal of the Probate Order. The Appellant asserts Synovus Trust violated Section 62-3-1001 by failing to close the Estate within the later of one year after the first notice to creditors or ninety days after receipt of the estate tax closing letter.[13] However, the Appellant misreads Section 62-3-1001, which does not require the closing of estates within the specified time frame. Indeed, the word "close" does not even appear in the statute. What the statute requires is that the personal representative file certain paperwork with the Probate Court. S.C. Code Ann. § 62-3-1001(a) (Supp. 2012). Moreover, the relief for a personal representative's alleged failure to comply with this requirement is not denial of the personal representative's earned fees, but simply an order compelling the personal representative to perform its duties. S.C. Code Ann. § 62-3-1001(b) (Supp. 2012). Neither the Appellant nor anyone else has ever petitioned the Probate Court for such relief.

D. This appeal should have been dismissed by the Circuit Court.

Pursuant to S.C. Code Ann. § 62-1-308(a) (2009), a person who desires to appeal a Probate Court order must file and serve a "notice of intention to appeal" within ten days

[13] As previously noted, the unrebutted evidence establishes that the sole reason the Estate was not closed during Synovus Trust's tenure was because it had insufficient cash to pay its debts as a result of the Appellant's refusal to sell sufficient assets. (Trans. 144:20-147:8; 246:17-25).

after receiving written notice of the order's entry and "grounds of appeal" within 45 days. The Probate Order was entered on January 3, 2012 and served on counsel for the Appellant the same day. (Proof of Del.). The Appellant filed and served a Notice of Intent to Appeal on January 9, 2012 which did not identify a Respondent. (R. ____). On or about February 16, 2012, the Appellant filed and served her Grounds for Appeal, identifying Synovus Bank as the sole Respondent. (R. ____). She never filed or served a "notice of intention to appeal" or "grounds of appeal" identifying Synovus Trust, a separate and distinct entity from Synovus Bank, as a Respondent.

In Conner v. City of Forest Acres, 348 S.C. 454, 560 S.E.2d 606 (2002), the South Carolina Supreme Court dismissed two parties from an appeal because they were not timely served "with a Notice of Appeal naming them as respondents," reversing the Court of Appeals' decision finding that the defective Notice of Appeal contained a mere clerical error. Id. at 461, 560 S.E.2d at 609. Like the dismissed parties in Conner, Synovus Trust was never served with a Notice of Appeal (to the Circuit Court) naming it as a Respondent, nor was it served with grounds of appeal naming it as a Respondent. Accordingly, when the Circuit Court granted Synovus Bank's Motion to Dismiss, it should have dismissed the appeal entirely rather than substituting Synovus Trust as the Respondent.[14] See, e.g. id. ("Service of the notice of intent to appeal is a jurisdictional requirement, and the Court has no authority to extend or expand the time in which the notice of intent to appeal must be served."); Gallagher, 353 S.C. at 68, 577 S.E.2d at 221 (noting that the grounds of appeal is a jurisdictional document).

[14] No party had even requested such relief as of June 25, 2012, the date of the hearing on Synovus Bank's Motion to Dismiss.

CONCLUSION

For the reasons explained herein, the Circuit Court committed no error in affirming the Probate Order. Accordingly, the Respondent, Synovus Trust Company, N.A., respectfully request that this Court affirm the Circuit Court Order and the Rule 59(e) Order.

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May 24, 2013

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

The Honorable R. Ferrell Cothran, Circuit Court Judge

Appellate Case No. 2012-213564
Civil Action No. 2012-CP-43-00302

In the Matter of: Estate of Robert Ross Dinkins

Mae Lee Dinkins, ... Appellant,

v.

Synovus Trust Company, N.A.,..... Respondent,

William C. Cantey, Jr., ... Respondent.

RESPONDENT SYNOVUS TRUST COMPANY, N.A.'S DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

Respondent Synovus Trust Company, N.A. proposes the following additions to the Designation of Matter already filed by the Appellant:

1. Conditional Statement of Resignation filed February 23, 2011 (including exhibit).

2. Request for Compensation filed June 1, 2011 (including exhibits).

3. Transcript of hearing held July 7, 2011, pages 1-3, 36-38, 40, 49, 51, 53-54, 56, 74, 80-81, 84-85, 89, 108, 122-124, 127-128, 131-

132, 138-147, 149-150, 152-159, 161-162, 171-175, 186, 192, 196-199, 214-218, 221-236, 239, 244-246, 255, 261-63, and 269-272.

4. Synovus Trust Exhibit Numbers 3, 4, 5, and 7 admitted at hearing held July 7, 2011.

5. Proof of Delivery of Order Denying Petition for Removal of Personal Representative, Granting Request for Compensation, Accepting Resignation of Co-Personal Representative, and Appointing Successor Co-Personal Representative and Trustee dated January 6, 2012 (excluding attachments).

6. Motion to Dismiss filed by Synovus Bank dated March 7, 2012 (excluding exhibits).

7. Brief in Support of Appeal filed by William C. Cantey, Jr. dated June 7, 2012, pages 1 and 9.

8. Brief in Support of William C. Cantey's Motion to Intervene dated June 21, 2012 (excluding exhibits).

9. Petitioner Mae Lee Dinkins' Brief on Appeal dated June 25, 2012, pages 1 and 4 (excluding exhibits).

10. Order entered November 30, 2012 denying Motion for Reconsideration and/or Motion to Amend Judgment.

The undersigned certifies that this designation contains no matter which is irrelevant to this appeal.

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PROOF OF SERVICE

I, the undersigned attorney with Barnes, Alford, Stork & Johnson, LLP, do hereby state that I have on May 24, 2013, served a copy of the enclosed **INITIAL BRIEF OF RESPONDENT SYNOVUS TRUST COMPANY, N.A.** and **RESPONDENT SYNOVUS TRUST COMPANY, N.A.'S DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL** upon all other parties, through their attorney(s) of record, by depositing copies of the documents in the United States Mail, first class, sufficient postage prepaid, with the return address(es) clearly noted, addressed as follows:

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