

THE STATE OF SOUTH CAROLINA
In The Supreme Court of South Carolina

APPEAL FROM RICHLAND COUNTY
Probate Court

Amy W. McCulloch, Richland County Probate Judge

Case No. 2020-GC-40-00072

Jane E. Baskin,.....Respondent

v.

William B. Walkup,.....Appellant

EXHIBIT A

NOTICE OF APPEAL

*Order Removing Trustee filed August 23, 2022
("Removal Order")*

RECEIVED

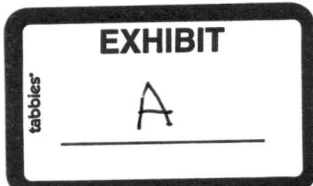
SEP 01 2022

S.C. SUPREME COURT

THE ARABIAN CONFESSION

BY

W. H. WATSON



STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 JANE E. BASKIN,)
)
 Petitioner,)
)
 vs.)
)
 WILLIAM B. WALKUP,)
)
 Walkup.)

IN THE PROBATE COURT
 Case Number: 2020-GC-40-00072

ORDER REMOVING TRUSTEE

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S.C. SUPREME COURT

W. W. MCCURRIE, JR.
 PROBATE JUDGE
 RICHLAND COUNTY, S.C.

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FILED

THIS MATTER COMES BEFORE THE COURT as a continuation of the trial for the Removal of William B. Walkup as Trustee of the Eldridge Baskin Trust (hereinafter known as the "Trust"). The complaint, filed by the Petitioner, Jane E. Baskin, (hereinafter known as "Baskin") on July 20, 2020, requests that Defendant, William B. Walkup, (hereinafter also known as "Walkup" or "Trustee") be removed as Trustee in accordance with S.C. Code Ann§ 62-7-706(b)(1)(3)(4). The Petition also demands an accounting of all Trust property, income, debts, and expenses.

Eldridge Baskin, who died on September 21, 1990, is the father of Baskin, a single woman aged 76 with cerebral palsy, a serious and permanent physical disability. While there have been assertions that Baskin has a mental disability or mental incapacity, her capacity is established and these assertions were dispensed with before the trial. The Trust was established by the Will of Eldridge Baskin and named Walkup, a second cousin of Baskin and professional financial advisor and investor, as her Trustee. Walkup has served as her Trustee since 1990. Walkup is now 82 years old.

The initial trial on the Complaint was held on January 4 - 6, 2021. After Baskin rested her case and after Walkup's direct and cross examination testimony, the parties entered into a Temporary Settlement Agreement ("Agreement") on January 6, 2021. The parties agreed, amongst other things, on a set budget for Petitioner, to appoint attorney Alex Weatherly as Special Trustee, and to allow Walkup to "remain as Trustee solely to continue to manage the money for investment purposes" and to permit Walkup to "continue to retain tax reporting responsibility for the caregivers." The Agreement stated that, "[t]he litigation in this matter is stayed and all issues not decided are held in abeyance with full reservation of rights in regards to litigation, including the issue of attorneys' fees." The Agreement appeared to function appropriately for Baskin, Trustee Beneficiary, and Walkup but Walkup, at an Emergency Hearing on October 12, 2021, held because he threatened to break the agreement and stop paying per the Agreement, demanded his "day in court" asserting his dissatisfaction with the settlement agreement.

Walkup's counsel was clear on the record that they wished to reserve the right to present further evidence in the matter, at a later date, in a continuation of the trial through the testimony of the following witnesses: Julian W. Walker, Jr., Sinclair Lewis, Albert L. Moses, Clarence E. Kanipe, Jr., Captain Louis Edward Spradlin, Anne Webster, and Katherine Parr. Walkup's counsel further wished to offer the deposition of Dr. Frampton Henderson and potentially introduce the report from the Guardian ad Litem.

On August 5, 2022, the contemplated continuation of the trial was held. All interested parties were given proper Notice of Hearing. Present at this hearing were Baskin, and her attorneys Richard C. Detwiler

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(hereinafter "Detwiler") and Alex Weatherly (hereinafter "Weatherly"), also serving as Special Trustee; and, Walkup and his attorneys, Bess Durant (hereinafter "Durant") and Thornwell P. Sowell (hereinafter Sowell"). Testimony was taken from Albert L. Moses, Clarence E. Kanipe, Jr., Anne Webster; and Michelle Nunn, court appointed Guardian *ad Litem*. Affidavit testimony was received by agreement of the parties from Benjamin Bruner, Julian W. Walker, Jr., Sinclair Lewis, Captain Louis Edward Spradlin, and, Katherine Parr.

At the conclusion of the trial, Walkup moved for a Directed Verdict in his favor and submitted a written Motion to the court. The court held its ruling in this matter in abeyance to give Baskin a chance to respond. Baskin filed her written reply to Walkup's Motion for Directed Verdict on August 9, 2022.

After reviewing the record, considering all trial testimony, affidavits, exhibits, motions, and documents within the court's file, the court finds for Baskin in this matter, and further denies Walkup's Motion for Directed Verdict, and sets out its reasoning below.

Jurisdiction and Venue

Pursuant to S.C. Code Ann. § 62-1-302 (a) "To the full extent permitted by the Constitution, and except as otherwise specifically provided, the probate court has exclusive original jurisdiction over all subject matter related to: (3) trusts, inter vivos or testamentary, including the appointment of successor trustees;"

Pursuant to S.C. Code Ann. § 62-7-204 (a) Except as otherwise provided in subsection (b), venue for a judicial proceeding involving a trust is in the county of this State in which the trust's principal place of administration is or will be located and, if the trust is created by will and the estate is not yet closed, in the county in which the decedent's estate is being administered.

Baskin, Petitioner and Beneficiary of Trust, and Walkup, Trustee and financial investor or money manager, are both resident of Richland County, South Carolina. Walkup is the 98% owner of Walkup and Associates, an investment company that manages the Trust assets. Walkup and Associates is located in Columbia, South Carolina. The principal place of administration of the Trust is Columbia, South Carolina.

Therefore, jurisdiction and venue are properly before the Richland County Probate Court.

Creation of Trust for the Benefit of Jane E. Baskin

Article III of the Will of Eldridge Baskin creates the Trust for the Benefit of Jane E. Baskin and reads as follows:

"All the rest, residue, and remainder of my property, both real and personal, of which I may die seised and possessed, I give, devise, and bequeath unto my trustee, hereinafter named, in trust, to be held, administered and distributed as hereinafter provided for the sole benefit of my daughter, Jane E. Baskin, the sole purpose of the trust created hereunder being to provide for the well being of Jane E. Baskin so long as she shall live. This will and the provisions thereof are to be construed in the light of this purpose and while this shall not have the effect of limiting in any way the power, authority or discretion of the trustee hereunder, it shall at all times be borne in mind by the trustee when considering the matter of any encroachment upon the principal of the trust created hereunder.

The trustee shall receive, take and hold the properties and assets of the trust created hereunder and shall invest and reinvest the same, and collect and receive the income therefrom, and, after payment therefrom of all proper costs, charges and expenses, shall dispose of the net income and principal for the benefit of Jane E. Baskin as follows:

(1) So long as my daughter, Jane E. Baskin, shall live, the trustee shall pay to or apply for the benefit of my said daughter all of the net income of the trust in such manner as my trustee shall deem suitable.

(2) My trustee may, and shall be authorized and empowered, in its complete and absolute discretion, to encroach upon and make disbursements from principal to or for the benefit of Jane E. Baskin, at any time and from time to time, in such amount as my trustee may deem proper, for the medical care, comfortable maintenance, and welfare of my said daughter, taking into consideration to the extent my Trustee deems advisable, any other income or resources of my said daughter known to my trustee.

(3) Upon the death of Jane E. Baskin, the remaining property of this trust together with any undistributed or accumulated income shall be divided and paid over and distributed to those person then living who would then be my heirs, their identities and respective shares to be determined in accordance with the law then in effect in the State of South Carolina, as if I had then died intestate."

This Trust was created in the Will of Eldridge Baskin dated September 10, 1990, and therefore is a Testamentary Trust. At the death of Eldridge Baskin on September 21, 1990, the Trust took effect. The Estate of Eldridge Baskin was administered in the Richland County Probate Court under estate number 1990-ES-40-30893. Walkup also served as the Personal Representative of the Estate. Walkup as Personal Representative transferred to Walkup as Trustee \$132,476.68 in stocks and bonds and rental property located at 1307 Ashley Street, Columbia, South Carolina, valued at \$43,000.00. This information is found in the Estate of Eldridge Baskin.

Pursuant to S.C. Code Ann. § 62-7-202 (a) by accepting the trusteeship of a trust having its principal place of administration in this State or by moving the principal place of administration to this State, the Trustee submits personally to the jurisdiction of the courts of this State regarding any matter involving the Trust.

This Court has jurisdiction over Walkup as Trustee and over this Trust.

Breach Alleged

Baskin alleges the following "serious breaches" of Trust by Walkup:

1. Failing to keep her informed of the administration of the Trust or to comply with her requests for information as required by S.C. Code Ann. § 62-7-813;
2. Failing to send an annual written report of the Trust property with information necessary to allow her to protect her interests;
3. Failing to provide a copy of the Trust's Fiduciary Income Tax Return, bank or brokerage statements or an informal list of assets and market value of those assets, the liabilities, the receipts and disbursements, including the source and amount of the Trustee's compensation;
4. In an act of self-dealing, by moving her out of her home against her wishes or best interest, and into an apartment which Walkup owns or co-owns, benefitting him;
5. By thereafter starting eviction proceedings to have her removed from the apartment he put her in;
6. By refusing to insure her home and allowing it to fall into disrepair, causing a non-Trust asset owned by her to waste; and,
7. By paying himself rent for the apartment into which he moved her into and paying for a few other expenses for Baskin, but giving Baskin no other income from the Trust.

Baskin further alleges in addition other failures of effective administration in that Walkup has:

1. Failed and refused to pay for adequate caregivers who are able to provide the care she needs, given her disabilities;

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2. Inserted himself acting as her un-appointed Guardian, controlling her with the money he controls;
3. Failed to provide for her everyday needs such as food and diapers;
4. Required her to justify or prove her needs;
5. Attempted to control her by threatening to take away her dog; and,
6. Both physically and verbally assaulted her and attempted to physically force her, against her will, to leave her apartment for an evaluation to move to assisted living.

Baskin further asks for a full accounting of all Trust property, income and debts, expenses and specifically expenses or fees paid to himself.

Response of Walkup and Defenses

Walkup denies all allegations. Walkup has asserted that Baskin does not have the capacity to make appropriate and independent decisions and is being unduly influenced by Michele Moseley, Baskin's Agent under a Property and Financial Power of Attorney, executed on February 23, 2017 and recorded in the Richland County Register of Deeds Office on the same date in Book 2189 at Page 1681. Ms. Moseley is also the Agent for Baskin under a Health Care Power of Attorney dated the same date. Ms. Moseley is the primary caregiver for Baskin and is the primary beneficiary under the current Will of Baskin.

Walkup has asserted the Complaint fails to state a cause of action for which relief can be granted, asserted the defense of the prudent investor rule pursuant to S.C. Code Ann. § 62-7-933; plead statute of limitations pursuant to S.C. Code Ann. § 62-7-1005; waiver and estoppel, and .

Analysis of Testimony

Jane E. Baskin testified as follows (January of 2021):

She graduated from Eau Claire High School in 1965.

She is an only child, adopted by Eldridge and Nell Baskin.

She has cerebral palsy, diagnosed at nineteen (19).

In 1990, when her father died, she was able to drive, did not have caregivers, and was living independently at Summerlea Drive.

In 1990, Walkup showed her a copy of the Trust and how much was in it.

In 2008, she hired attorney Rita Cullum to obtain the first accounting of her Trust since 1990.

In 2008, Walkup showed her a document with \$4,000.00 on it that Walkup explained was his fee.

In June of 2015, Walkup required her, against her will, to move into an apartment complex owned by him, requiring the Trust to pay him rent, stating that he wanted her to be nearer to him and did not want to pay the home insurance for Summerlea Drive or the high electric bills for Summerlea Drive.

Before moving her, he did not analyze with her, making Summerlea Drive more handicap accessible.

When Walkup required Baskin to leave her residence, she was caring for herself, did not require caregivers but did have a neighbor who helped her. She used a walker as needed.

At that time, Walkup provided her with a "flip phone", which she still had in 2021.

The apartment was not handicap accessible, did not have bars in the bathroom, and did not have a wheelchair accessible shower, which initially required someone to lift her into but in 2021 she was being sponge bathed instead of having a shower or a bath. Wooden bars in the hallway were installed 2-3 years before the trial began.

The apartment was two (2) bedrooms, one (1) bathroom, kitchen and living rooms, smaller than her house on Summerlea Drive.

After moving her, Walkup tried to sell her home on Summerlea Drive. She initially cooperated but then changed her mind and opposed selling.

She wanted to return to her house on Summerlea Drive.

She has a dog named Lamb Chop that lives with her.

In 2017, Walkup tried to move her to Jenni-Lynn nursing home.

In August of 2017, Walkup informed Baskin that he was no longer going to pay Summerlea Drive expenses from the Trust.

In 2017, she chose Michelle Moseley, who she has known through her church since 1983, trusts more than anyone, and considers to be like a daughter, to be her Agent for health care and financial powers of attorney with the legal assistance of Alex Weatherly.

In 2021, Michelle Moseley had been caring for Baskin for about 2 years coming every evening and during the day Sunday, making her dinner, and putting her to bed without payment.

On February 17, 2017, Walkup attempted to take her to Jenni-Lynn nursing home for an evaluation. Baskin told him she did not want to go see the facility and Walkup grabbed her arm to pull her off the couch and into the walker. She yelled to let her go and this upset her dog. At the time of this incident, she had a hurt toe and could not walk well.

On February 27, 2017, Baskin saw her primary physician Dr. Henderson and did not bring up any injury.

On March 19, 2017, Baskin went to Doctor's Care for a contusion on her left arm related to Walkup grabbing her.

In 2017, she asked attorney Weatherly to help her because she did not know what was happening with the Trust money because she had not received anything from Walkup about the Trust since the request of attorney Rita Cullum in 2008.

Ben Bruner, then attorney for Walkup sent some information to include tax returns and a check register and information that Walkup was receiving a fee as Trustee of \$4,500.00 and management fees for the E-Trade account of \$1,075.24 in April and \$1,036.47 in October.

In this period, the Lee County property that she had inherited a direct interest to was sold and some of the money she received went to Walkup as Trustee. She has requested information about this separate investment.

In an attempt to move back to Summerlea Drive, she received a loan from a friend of \$30,000.00 and renovated her bathroom to make it handicap accessible with a wheelchair shower, took out steps to make all the floors level. She did not completely understand the repayment terms.

She hired Michelle Moseley's brother as the general contractor.

Walkup would not pay for the renovations with the Trust money.

In March of 2018, Mr. Weatherly, at her request, sent a letter to Walkup demanding no further contact with Baskin.

Her monthly income from social security in 2021 was \$479.00.

She also received a monthly annuity of \$381.00 that is supposed to come to her directly but Walkup set it up so it would pay to him as Trustee and then he passes it to her.

Her total monthly income independent of the Trust was \$860.00.

In 2021, from her income outside the Trust she paid for her food, cable for the apartment and Summerlea Drive, her water bill for Summerlea Drive, her electric bill for Summerlea Drive, pet costs, clothes, and Ms. Moseley pays for the homeowners insurance for Summerlea Drive.

She does not know what she will do when the Trust funds run out.

In January of 2021, a friend named Pat McIntosh was living in Summerlea Drive and had been for about two (2) weeks and was paying rent to Michelle who then gave it to her. Baskin was planning on leaving the apartment and moving back to Summerlea Drive in January of 2021.

Walkup as Trustee paid himself as apartment complex owner \$930.00 a month in rent.

She brought this lawsuit to regain control over herself, choose her own caregivers, receive a budgeted amount and pay her own bills directly, and to know where the money goes.

Her credit score is 800, she pays her credit card bill and believes she is capable and intelligent.

While living in Walkup's apartment complex, there was no emergency exit plan and until the court ordered it in December of 2020, Baskin did not have an alert bracelet in case of emergency or fire.

Michele Moseley, (hereinafter "Moseley") testified as follows (January 2021)

She is from Columbia, South Carolina. She graduated from Keenan High School in 1986. She has been married 32 years and has two children. She cleans houses for a living and her husband is an electrician.

She has known Baskin from church for over thirty (30) years.

She knows Weatherly from church and from serving on the same church school board.

She began assisting Baskin in 2017 at the request of Baskin's neighbor Pat Watson. She is not a certified or licensed caregiver.

Her initial help involved getting her a lift chair and a raised toilet seat.

She sat with her two (2) hours every night, washed her dishes, walked her dog, helped Baskin with bathroom needs, and helped her to bed.

Before her involvement, Baskin had no evening care and depended on a neighbor, Pat McIntosh, to help her.

In the summer of 2017, Moseley had the locks on Summerlea Drive changed and there was a dispute over a furnace or AC unit at Summerlea Drive.

In March of 2018, Moseley asked Walkup to be paid to fill in for the paid caregiver who was going on vacation and to do housekeeping for Baskin and Walkup declined her request.

In May of 2018, she submitted an invoice to Walkup for filling in for the paid caregiver who took off on Mother's Day and Moseley filled in for her. Walkup did not pay it.

In reaction to a complaint about the furnace or AC unit at Summerlea Drive, Walkup visited Baskin's apartment and offered Baskin money so that she could arrange the installation. Baskin called Moseley to watch the exchange over the camera that was in Baskin's apartment. The camera was installed at Baskin's request. Moseley got upset over the conversation and called and yelled at Walkup about not fixing the AC and putting it on Baskin to resolve. At that time, Moseley had gotten three estimates to fix the AC unit with the lowest being \$9,000.00.

On May 14, 2018, Moseley and Baskin sent a joint letter to Walkup asking that he have no direct contact with Baskin and only speak to her attorney Weatherly.

In July of 2018, Baskin had fallen twice and Moseley decided that she should not be alone so began to come for more hours in the evenings, as her paid care ended at 2:00PM. Baskin had a history and propensity of falling.

On Sundays, she would pick Baskin up for church and then care for her throughout the day.

Moseley submitted other invoices for her time to Walkup for payment and he refused to pay her.

She agreed to be Baskin's Agent for the Power of Attorney and has stepped in to help her pay her bills. She has had no training or discussions with a lawyer about her responsibilities as an Agent. At the time of the trial, she was signing Baskin's name at Baskin's direction on her checks instead of changing the signature authority on the account to be Baskin's Agent.

She is Baskin's friend and wants to care for her. She does not know what will happen if the Trust money is exhausted.

She knows Baskin's cousin Anne Webster but has never met her in person.

She knows Baskin's cousin Wesley Stephenson and he has visited.

She describes Baskin's relationship with Walkup as not good.

She threw away the "For Sale" sign for Summerlea Drive because Baskin did not want her house sold and this angered Walkup further.

Her brother is the contractor for the renovations at Summerlea Drive and her husband is the electrician on the job.

The \$30,000.00 is to renovate the bathroom and make it handicap accessible, turn the sunroom into her bedroom with closets, install the air conditioning, repair termite damage, and treat for mold. The contractor submits his invoice to Weatherly, who holds the loan monies in his Trust Account, Moseley reviews the invoice and shows it to Baskin, and then Moseley authorizes payment.

Baskin pays her credit card balance every month and Moseley believes Baskin can live within a monthly budgeted amount.

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In August of 2020, after Walkup sold the apartment complex, the new company wanted Baskin to sign a lease. Baskin refused to sign.

Walkup will not work with her to assist Baskin.

Wesley F. Stephenson, Jr. (hereinafter "Stephenson") testified as follows (January 2021)

He is Baskin's first cousin and he has known her his whole life.

He sees her about once a year and talks to her occasionally.

He has met Moseley on two (2) occasions at Baskin's apartment.

He was Baskin's Agent for the sale of the land in Lee County.

He knew her father set up a Trust for her but also that he left her land outside of the Trust.

He disbursed the sale proceeds to her directly and not to Walkup but understands Baskin gave it to Walkup to invest.

He considers Baskin a rational person.

He does not know Walkup but has spoken to him on the phone.

He took care of his mother as she aged and knows the importance of good care and has urged Walkup in a letter to provide her more help.

He believes Mosely provides Baskin good care and goes beyond the call of duty and has Baskin's best interests at heart. He understands that she has no certification or licensure.

He was aware of the friction between Walkup and Baskin and that Walkup wanted her to move and Baskin wanted to stay in her home.

He believes Baskin needs a larger voice.

Kenneth B. Wingate (hereinafter "Wingate") testified as follows (January 2021)

He is a lawyer and a CPA. He has been practicing law 35 years. He is designated by the South Carolina Supreme Court as a specialist in estate planning and probate law, and that constitutes about 95 percent of his practice.

He was offered as an expert witness to testify in the area of estate and probate law.

He was received as a witness who had reviewed the records, who has an incredible reputation, experience, and education in all these specialty areas.

To prepare for testimony, he reviewed the pleadings, the discovery requests, the recent October of 2020 accounting information that was transmitted to the court by Walkup's attorneys, the transcripts, the affidavits and joint trial exhibits.

His opinion as to the quality or sufficiency of the accounting is that Walkup has not provided an accounting. Until 2007 or 2008, when attorney Rita Cullum, representing Baskin, requested information, no accounting had ever been given to Baskin. From that point until 2018, when Mr. Weatherly began to represent Baskin and asked for information, there was nothing produced that would be a sufficient and accurate accounting of information. In 2020, Walkup provided an enormous "hodgepodge" of information in an information dump to include bank statements, tax returns, and loose ends, though in no true accounting fashion. An accounting is intended to represent the beginning assets, show the income, show the growth, show the expenses, show the ending balance, and show his fees and how he managed the Trust. When Walkup provided the information and the fashion Walkup provided the information would not qualify as an accounting per the South Carolina Trust Code. The principal duty would be for Walkup to annually report to Baskin information reasonably sufficient to inform her of the assets and income of the Trust, and thereby, showing what assets and collected or reserved income, if any, remain on hand at the end of the accounting period, and done at least annually.

His opinion as to conflicts of interest or self-dealing as it relates to the standards applicable to a fiduciary is that Walkup has violated that by moving Baskin into an apartment building which Walkup or his company Walkup and Associates owns or has an ownership interest in; investing 60 percent of the current assets of the Trust in an investment known as Equity 95, of which Walkup owns the majority interest; and, investing Trust assets in an entity called Columbia Cash Reserve which Walkup owns;

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however, based on the current reportings, it is unclear what percentage he owns. Walkup or his company receives fees, separate from his Trustee fee, from these entities and these fees are not reported on what he has provided. He should report these fees. The South Carolina Trust Code says that if an asset is invested in a business or an entity or a security in which the Trustee has an ownership interest, there's a presumption of conflict of interest that can be overcome with evidence of an accounting for what the various fee structures and ownerships had been, but he hasn't reported. Therefore, the standard of avoiding conflicts of interest and avoiding self-dealing has not been observed in this instance.

His opinion about Walkup's investment strategy and the standard for diversification is that currently 60 percent of the total Trust corpus is invested in that security or company called Equity 95. Walkup testified that one invested in Equity 95 can only withdraw investments from Equity 95 one time per year at the end of the year with an advance request, and then only if paying accounting charges in order to liquidate that interest. Walkup testified that Equity 95's stated written purpose is growth. Columbia Cash Reserve and the apartment complex are all assets that cannot be easily liquidated. The small amount of income that is generated, per the tax returns, averages approximately \$14,000.00 per year on a portfolio with an aggregate value of reportedly at least \$575,000.00. This equates to a 2 percent, or less, rate of income that is generated for Baskin. The assets that Walkup invests in are risky for the needs of Baskin, do not meet the standard of liquidity, and are improper. Walkup is required to invest for the needs of Baskin, which are great. Income should be readily available for the predictable increase in need and emergencies. The combination of lack of liquidity, lack of security of those investments, exposure to risk or change in value given the age and life circumstances of Baskin, do not equate to proper management of this Trust by a prudent fiduciary standard applicable under South Carolina law.

His opinion about the relationship of a Trustee with a beneficiary is that under the South Carolina Trust Code, the standard applicable to a Trustee is to know the beneficiary and her circumstances to thoughtfully have a strategy of meeting those needs financially and to do so in a way that is reasonable and proper and skillful. The communication between Walkup and Baskin has clearly broken down. They have not spoken directly in more than two years. There have been allegations of verbal and physical abuse. This is an enormous impediment to a Trustee being able to fulfill any fiduciary duties. Per Walkup's deposition, he has a disregard and disrespect for Baskin. Walkup testified that audited financial statements do exist but he did not give them to Baskin because in Walkup's opinion she does not have the capacity to understand them. Walkup's forcibly removing her from her home which she owns outside of this Trust, his refusal to release her monthly annuity payment back to her for direct payment, placing her in an apartment of which he is an owner if not a majority owner, and pushing for her to move into a nursing home against her wishes, amounts to such a conflict and inability to communicate as to arise to a breakdown and failure of execution of fiduciary duty.

The Trust was obviously created to only benefit Baskin. The remainder beneficiary language is there as the normal catch all language. A Trustee must administer the Trust solely for the interests of the beneficiary. This Trust can generate more income and this Trust could be invested in safer assets. Her assets should be invested in objective and calculable assets rather than Walkup's family company. The cash flow generated is not appropriate for this circumstances. There is not clarity and transparency as to what the Trust assets are being invested in and what the income is that is being generated and what the expenses are that are being taken out.

Walkup admitted that he was not familiar with a total return Trust and had not made an effort to analyze it from that perspective. The standard of a fiduciary is to give thought to a conscientious and transparent investment strategy aimed at meeting the needs of the beneficiary. Walkup has invested the Trust assets almost entirely in growth and therefore it is skewed. There has not been transparent disclosure.

Walkup has not adequately disclosed how the Equity 95 money is invested. It's presumed under the fiduciary standards that because he's an owner in it and a principal owner in it, that without disclosure, he has a conflict of interest. The way you prove that you have not violated in fiduciary and prudent investor requirements is to show your investment strategy and conformity with careful written revealed

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and adhered to objectives.

A Trust is nothing but a split in title, one person is the legal owner, the other is the beneficial owner. The beneficial owner of the Trust, the beneficiary, is the one whose needs the Trust is supposed to be invested and managed for. Per the South Carolina Trust Code, no Trustee has absolute discretion if that means the power to do anything they want to do. It has to be solely in the best interest of the beneficiary while disclosing conflicts of interest with an intentionally thought out, written out and followed and diversified investment portfolio. It is not appropriate to have 60 percent of any Trust invested in anything, let alone something that is a growth fund, that is not adequately disclosed as to who the owners are or what the expenses are, what the fees are, and in which the Trustee is one of the owners, and therefore by statute, has a conflict of interest.

Walkup is a registered investment analyst who has touted his investment professional credentials as reasons why he has done a good job. His credentials raise him to the level of a professional Trustee, yet he has made no effort in 30 years to allocate income and principal. He testified that he did not know he was supposed to make the distinction between the two and that he is not familiar with the Uniform Principal and Income Act.

Walkup should have maintained annual accountings. The accountings should have been documented and presented to the beneficiary every year for 30 years. For Walkup in 2020 to have felt rushed by this court to quickly put together a reporting on the court's short deadline is not only no excuse but also underscores the very problem.

William B. Walkup (herein "Walkup") testified as follows: (January 2021)

1. Walkup is married and has four (4) children.
2. Walkup has a degree from USC as a mechanical engineer, worked at Trane Heating and Air Conditioning Company for fourteen years, is a registered professional engineer, registered investment advisor
3. Walkup's son in law and son work for Walkup and Associates as financial planners.
4. Walkup and Associates is a money management and investment firm and has over \$100 million in investment funds. He invests in stocks, real estate, and cash management programs. Walkup owns 98 % of Walkup and Associates.
5. Walkup is a partner in every partnership that Walkup and Associates manage money for.
6. He is the Chairman of the Board of Trustees and Chairman of the Finance Committee for Shandon Methodist Church. He invests the church funds with Walkup and Associates and has grown the fund from \$600,000.00 to 6.8 million but he does not charge a management fee for the church.
7. He manages one other Trust fund.
8. His daughter Laura was the manager of his apartment complex where Baskin lived until he sold it in July of 2020 and now she works for Walkup and Associates.
9. In June of 2015, Walkup moved Baskin to his apartment complex, which is about 50-60 yards from Walkup and Associates, to be near him because she had fallen many times. Laura occasionally assisted Baskin at the apartment.
10. When he moved her, that apartment complied with handicap requirements of SCDHEC.
11. Summerlea Drive has a very steep lot and Baskin fell trying to get up the driveway.
12. Summerlea Drive has 2 levels and could have caused a fall.
13. He has known Baskin since she was adopted.
14. Eldridge Baskin asked him to be Trustee and he agreed even though he had never been a Trustee before.
15. Attorney Ben Boyd prepared the Will for Eldridge Baskin. Ben Boyd is a high school friend of Walkup and married to Baskin's first cousin.
16. Equity 95 is an investment partnership of about 15-20 investors that invests in stocks. That partnership has the objective of income and growth. In Equity 95, Walkup is a 5 percent investor. All investors are charged a .9 percent fee

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17. The Trust invested \$33,000.00 in 1995 in Equity 95 and it is now worth about \$315,000.00 to \$320,000.00, making that a compounded rate of return of about 9.5 percent. The Trust does not own specific stocks or have its own stock account. The Trust owns a value in the Equity 95 entity.
18. The Trust has investments in an E-Trade account that has some original stocks purchased by Eldridge Baskin and it is worth \$200,000.00. He can borrow against this account at 1.5 % interest.
19. Columbia Cash Reserves is a cash management program that he started in 1982 as a group of people investing in bank jumbo certificates of deposit at a 15% return. Then he moved the money to high rate tax-free bonds, he loaned money to investors within the partnership, now it is a loan portfolio with loans being given to single-family builders in Richland and Lexington Counties and developers on a 5.2 to 5.5% interest rate that he calls a vehicle of liquidity.
20. He borrows at 1.5% on the E-Trade account and moves it to the Columbia Cash Reserve and loans it at a rate of 5.2 to 5.5 %.
21. He has 2.4 million in loan loss reserve but there has never been a loss.
22. The Trust owns rental property on Ashley Street that he has rented over the years. He sold it in an installment contract to a couple who have gotten behind on the payments and now he must file for foreclosure.
23. The Trust has an active Wells Fargo checking account.
24. From the sale of the Lee County properties, Baskin gave him \$13,000.00 to invest for her and he believed he put it in the Columbia Cash Reserve account for her. This was later contradicted, as Walkup put the money in the Wells Fargo Trust checking account. The money was not invested for her but was spent on her needs in the following year.
25. Walkup charges the Trust about \$4,600.00 as the Trust fee.
26. The Trust has an upcoming tax liability of gains from the sale of stock of \$45,000.00.
27. In addition to income, he spends \$53,000.00 a year from principal on Baskin's care.
28. He wants her to move to a nursing home to have around the clock care but she refuses.
29. After he moved her to his apartment, Summerlea Drive was unoccupied for 5 ½ years. In 2015, he wanted to sell it to generate money for her care. He put a For Sale sign in her yard with his phone number on it, received a contract offer of \$90,000.00, took it to Baskin to sign and she refused.
30. He is worried what happens when the money runs out and feels like it is his duty to preserve her assets for her life.
31. He believes that a nursing would cost \$6,600.00 a month and living at her home with 24/7 care will cost \$14,300.00 a month.
32. Walkup believes that Baskin has lied about him to discredit him and to avoid moving to a nursing home.
33. Walkup believes that Baskin has resented him from the beginning of the Trust and has fabricated many stories to discredit him.
34. Walkup believes that he has paid for everything for Baskin except food and clothing.
35. After Baskin refused to sell Summerlea Drive, Walkup stopped paying the insurance on Summerlea Drive justifying that it was not a Trust asset.

Witnesses for Walkup

Dr. James Henderson (herein referred to as "Dr. Henderson") testified as follows (August 2022)

1. Has treated Baskin for several years.
2. Last saw her in February of 2021.
3. Has never had a conversation with Walkup.
4. Moseley usually brought her to appointments.
5. Has had several urinary tract infections.
6. Urinary tract infections can cause hallucinations.

Sheryl Glymph testified as follows (August 2022)

1. Moseley hired her in 2021 as a caregiver and she worked for about 4 months and was released because of scheduling needs.
2. Did not like Baskin's dog and slipped in the dog's waste.
3. There is a camera where Baskin sleeps.
4. Baskin loves and Trusts Moseley.
5. If you disagreed with Moseley, you would be fired.

Summary of Affidavit of Julian W. Walker, Jr.

1. Mr. Walker is a retired attorney and a retired Trust officer from local banks.
2. Mr. Walker believes Walkup has done a good job and Baskin is interfering with the Trust operation.

Summary of Affidavit and testimony of Anne Webster

1. She is Baskin's first cousin and has known her since childhood.
2. She has not seen Baskin since 2017 but before that, they visited at least annually.
3. She believes Baskin has lied and Walkup has done an excellent job.
4. She believes Baskin is not competent.

Summary of Affidavit of Katherine Parr

1. She was the previous Agent for Baskin under a previous power of attorney.
2. She believes that Baskin needs more assistance and is not good with money.

Summary of Affidavit and testimony of Clarence E. Kanipe, Jr.

1. He is the Pastor at Shandon United Methodist Church and knows Walkup through church and the role he plays for their finances.
2. He believes Walkup is a good financial advisor and investor.
3. He is a generous donator to the church and to Epworth Children's Home.

Summary of Affidavit of Captain Louis Edward Spradlin

1. He has known Walkup since 1991 and works with him on the financial investments for Shandon United Methodist Church and invests with him personally.

Summary of Affidavit of Sinclair Lewis

1. He is a retired minister from Shandon Methodist Church and has known Walkup for more than thirty years.
2. He has done a good job with church investments and he invests with him personally.

Summary of Affidavit and testimony of Albert L. Moses

1. He retired as attorney in 2005 after over forty years of practice with a primary focus in wills, trusts, and estates.
2. He has known Walkup for over seventy years and believes him to be a good person.
3. He does not believe that the SCTC applies to this Trust and he does not believe that Walkup had a duty to account annually to Baskin and only owed a duty to report to Baskin if she requested it. He believes what he has supplied to her is sufficient.
4. He believes that Walkup has a right to control Baskin's risky behavior.
5. He believes that there is normal friction between a Trustee and Beneficiary and that is not a reason to remove a Trustee. He admitted that he knows nothing about the relationship of Walkup and Baskin independent of what Walkup has told him.
6. He admitted that he has not reviewed the accountings or investments of the Trust.

Summary of Affidavit of Benjamin C. Bruner

1. He was and is an attorney for Walkup.
2. He assisted Walkup in 2017 and 2018 in providing all information that was requested by Weatherly.

Summary of reports and testimony of Michelle Nunn (hereinafter "Nunn")-

Guardian ad Litem appointed by this Court

1. She visited Baskin when she lived in Walkup's apartment in October of 2020 and visited her again in June of 2022.
2. In 2020 while living in Walkup's apartment, Nunn noted the following concerns:
 - a. The apartment's doors and hallways were narrow
 - b. There was only one entry/exit.
 - c. The only provisions for Baskin's handicap were rails in the hallway and a portable shower chair.
 - d. The apartment could not accommodate her needs
 - e. Not enough care is provided as she needs 24/7 care.
 - f. Baskin cannot walk independently and could not remove herself from the apartment if there was an emergency
 - g. She is dependent on others for food and transportation
 - h. Baskin is a capable woman and independent thinker with a strong desire to improve her quality of life and wants to be more involved in her finances and living arrangements.
 - i. The relationship between Baskin and Walkup was not good.
 - j. Recommendations were made with the most urgent and easy to solve being a new wheel chair and an alert pendant, which the court ordered.
 - k. Nunn also recommended of an independent professional fiduciary to eliminate the conflict.
3. In 2022, Nunn notes the following:
 - a. Baskin has physically declined since 2020 but remains not influenced by others and strong willed.
 - b. Baskin still does not want to see Walkup.
 - c. Summerlea Drive has been made handicap accessible for her with cameras, a baby monitor and a walkie-talkie for her to communicate.
 - d. Baskin is dependent on others for everything.
 - e. Baskin seems to be happy and relaxed and the accommodations are better than the apartment and she does not want to leave her home.
 - f. Nunn had concerns about the live in care giver hired by Moseley in that she has her own dog and cat, is not a licensed or registered nurse and provides services that include the change of Baskin's catheter and does not pay rent.
 - g. Summerlea Drive needs a ramp for Baskin's exit door to the outside.
 - h. As Baskin no longer wants to see Dr. Henderson, Baskin needs to be connected with a new physician to provide continuous care.
 - i. Nunn had concerns about her meal proportions or meal choices. Moseley explained because she is a diabetic and because Moseley does not want her to gain weight because caregivers have to lift her, her meals are controlled. Nunn believes Baskin should have more choices in her food.
 - j. Because Moseley lacks experience in dealing with complicated health care, a professional care supervisor should be hired to provide the in-home care Baskin needs.
 - k. Baskin should be allowed to participate in her monthly budget.
 - l. Baskin needs to have a true sense of partnership with the person in charge of her finances.

Finding of Facts

1. The Plaintiff is a 76 year old handicapped person, long-suffering with the debilitating illness cerebral palsy.
2. While the Plaintiff suffers from her physical disability and is vulnerable due to her needs and condition, her mind is clear and she is capable of making decisions for herself. She has testified with competency and has remained consistent in her asks and determination for the same outcome. There is no competent evidence to the contrary.

3. Walkup was named as the Trustee of a Trust established by the Plaintiff's father, Eldridge Baskin, by his Will dated September 10, 1990.
4. The Will left a home and other pieces of real property as well as household personal property, to Baskin outright. The rest and residue was left in Trust for her benefit.
5. Eldridge Baskin, Baskin, Walkup and the remainder beneficiaries of the Trust are related as first cousins, second cousins, first cousins once removed or second cousins once removed. Neither Walkup nor any member of his family is a residual beneficiary of the Trust and there is no evidence that he has refused to use more of the Trust money for Baskin's benefit in an effort to save money for the residual beneficiaries.
6. At the time the Trust was funded from the Estate of Eldridge Baskin, Walkup as Personal Representative transferred to Walkup as Trustee \$132,476.68 in stocks and bonds and rental property located at 1307 Ashley Street, Columbia, South Carolina, valued at \$43,000.00.
7. Walkup is currently 82 years old.
8. There is no Successor Trustee contemplated in the Testamentary Trust established by Eldridge Baskin.
9. Walkup claimed and reported that in January of 2021, the Trust had grown to a value of about \$575,000.00.
10. Baskin does not challenge that Walkup has reported to be a good financial investor and has made a lot of money for the Trust.
11. Baskin's income outside the Trust is about \$475.00 in Social Security benefits and a \$381.00 annuity which still pays to Walkup as Trustee.
12. The annuity is not Trust property, but the Trustee receives that money and places it in the Trust checking account. Until 2-3 years prior, Walkup was choosing how this annuity was spent for Baskin. Walkup now disburses it in full to Baskin after receipt.
13. Baskin has asked the Trustee on multiple occasions to have the monthly annuity check sent to her directly rather than passing through the Trust and he has not done so.
14. This court has asked Walkup to comply with the request to redirect the monthly annuity check and he has not done so.
15. In 2016, Baskin gave Walkup \$13,556.36 from the sale of her inherited ownership interest in Lee County property to invest for her. This was intended by Baskin to be a separate investment not one intended by Baskin to be absorbed into the Trust. Instead of investing her personal money, he put these funds in the Wells Fargo Trust checking account and used it for her expenses that the Trust should have paid for.
16. In the thirty (30) years that the Trustee has controlled the Trust he has provided three (3) reportings, and in each instance only after Baskin's attorney requested or demanded them.
17. Walkup admitted that he was unaware that the SCTC required annual accountings for Baskin as he has never read it.
18. Walkup also admitted that he is unfamiliar with the South Carolina Uniform Principal and Income Act.
19. Walkup claims that Walkup and Associates produced accountings of certain Trust assets and "sent" them to Mr. Walkup, as Trustee, but those were never provided to Baskin.
20. In 2008, attorney Rita Cullum, then representing Baskin, wrote a letter to Walkup that asked for financial information and put him on notice that the SCTC required annual accountings to the beneficiary.
21. Even though attorney Rita Cullum put him on notice that he was required to report annually, he denied that he knew he had to report annually. He stated that he has staff that should have handled this.
22. What was ultimately provided to attorney Rita Cullum omitted vital information about the rental property, how income was distributed, what principal had been distributed, his fees for managing the assets, the prohibition that money could not be taken from the Equity 95 account without specific limited notice and the fees associated with withdrawal.

23. In his 2008 list of expenses for attorney Rita Cullum, it must be noted that he paid himself \$4,600.00 while reporting expenses of \$2,438.92 paid for Baskin.
24. Walkup admits that he has never kept contemporaneous accounting records about the Trust income and principal and costs and expenses so when asked for an accounting Walkup or his staff must go back through the records in order to create it.
25. Walkup stated that he did not know an annual accounting to the beneficiary was required by the Trust Code until Alex Weatherly wrote him a letter in 2017 or 2018.
26. Walkup did not report or account annually and only did so again after this court required disclosure in 2020. What was provided in 2018 were Baskin's individual tax returns for certain years, a created check ledger, and a "balance sheet", which were wholly insufficient.
27. While Walkup agreed that, in order for a beneficiary to be reasonably informed about the administration of the Trust and of material facts necessary to protect her interest, a Trustee should provide the beneficiary "financial statements and annual reports", he admitted that he had not provided such to Baskin as he believed she would not understand it unless it was put in simple terms or unless she had professional help, an effort, albeit inadequate, he did not even make.
28. Walkup admitted that he has never explained the Trust to Baskin.
29. Walkup receives a Trustee fee for managing the Trust, and invests the Trust funds in partnerships in which he or his company Walkup and Associates have equity interests from which he also receives management fees. Until this litigation, the management fees were never disclosed to Baskin.
30. Walkup admitted that he never told Baskin that in addition to the fees he pays himself as Trustee, he is also paying himself management fees from the various accounts he manages the Trust money in.
31. Walkup testified that approximately 60% or \$310,000.00 of the Baskin Trust is invested in a fund called "Equity 95". Walkup's company is a partner in the fund and also receives fees for managing the fund.
32. Walkup testified that Equity 95 Partnership is focused on growth not income, which is in the nature of "riding out for the long term", a questionable strategy for a 76 year old beneficiary.
33. Walkup testified that the Baskin Trust earns gross (not net) income of about \$12,000.00 to \$14,000.00 per year on \$575,000.00, or about 2% to 2.4% per year, before expenses.
34. Walkup testified that he takes a fee of \$4,000.00 per year for managing the Trust, and an additional .9% for managing Equity 95 and an E-Trade account where Trust money is invested.
35. The terms of the Trust require Walkup to pay all of the income of the Trust to or for the benefit of Baskin. By investing in assets that are "growth" funds, rather than "income" producing funds, Walkup is able to control the amount of money he is required by the Trust to pay Baskin.
36. When Walkup's growth funds generate money, by agreement of the partnerships, he is required to reinvest the growth back into the fund. Walkup signed this partnership agreement, agreeing to these terms, as Trustee for the Trust.
37. Walkup admitted that he has never been the Trustee for someone with significant physical disabilities like Baskin and has not done any investigation into what her needs were, never hired a professional to assess those needs, has no experience in caring for someone with cerebral palsy, and was not professionally qualified to assess her needs.
38. With the backdrop outlined above, in June of 2015, Walkup moved Baskin from her home on Summerlea Drive to the Atrium Way Apartments, that he owned an interest in, against her wishes.
39. Walkup as Trustee paid Walkup as apartment complex owner/manager, approximately \$900.00 a month in rent for 5 1/2 years for an approximate total of \$59,400.00, which far exceeds the \$30,000.00 expenses used to make Summerlea Drive handicap accessible.
40. The apartment was on the second floor with no appropriate handicap access for Baskin's disabilities.
41. At the request of Baskin, Walkup has not spoken to Baskin since approximately 2018.
42. As of 2020, Walkup has denied enough monetary support to address Baskin's needs like adult diapers and special food. For reimbursement, Walkup required Baskin to submit receipts for the purchase of her Depends undergarments, a requirement that he did not find demeaning.

43. It is clear from Walkup's testimony that he did not understand nor was he personally involved in the writing of Baskin's annuity check or reimbursement checks, and abdicated to someone else in his office to handle.
44. He did not keep a separate rental account record for the Ashley Street property for the thirty years and has not produced a separate rental accounting. After the installment contract on Ashley Street, he has not kept or produced the loan payments. He did not know how far behind the loan payments were.
45. Walkup agreed that Baskin has needed twenty-four (24) hour seven (7) days a week care since approximately 2015, but did not provide that care, saying that Baskin did not want that much care. At the time this lawsuit was instigated, he was paying for forty-two (42) hours per week. During his testimony, he agreed to provide more care than he had provided for her.
46. At the time of this lawsuit, Moseley was providing care without pay because Walkup has refused to pay her.
47. Walkup wanted Baskin to move to a nursing home and she refused.
48. Walkup believes that Baskin has resented him from the beginning of the Trust in 1990 and has intentionally acted to ruin his reputation by lies and false allegations. Walkup has allowed his concerns about his reputation as a professional investment manager or advisor to stand in the way of being an objective fiduciary for Baskin.
49. Walkup has been asked to resign on many occasions and has refused to do so, again letting what he describes as his commitment to the request of Eldridge Baskin stand in the way of what is best for the Trust and Baskin.
50. Walkup took control of Baskin's person by controlling her money and her care. He assumed the role of a Guardian in many aspects.
51. There remain unresolved allegations of a physical assault by Walkup on Baskin surrounding Walkup's decision to move Baskin to a nursing home and her refusal to comply and a separate lawsuit Baskin commenced against Walkup in Richland County Circuit Court between about that allegation.
52. In addition, Walkup as Trustee commenced a separate lawsuit in Lexington County on June 20, 2022, against Weatherly and Moseley individually for interfering with the Trust, unduly influencing Baskin, and defaming Walkup as Trustee, among other causes. Walkup had no authority at the time he filed this lawsuit to act for the Trust due to his restraint and suspension pursuant to the Temporary Settlement Agreement. On October 29, 2021, this was again ruled on and affirmed as the non-judicial settlement agreement pursuant to S.C. Code Ann. § 62-7-111 by way of an Order Regarding Emergency Hearing after Walkup threatened to stop paying Baskin from the Trust pursuant to this Agreement. This statute provides that interested persons may enter into binding non-judicial settlement agreements with respect to directing a trustee to perform or refrain from performing an administrative act, or to grant to a trustee a necessary or desirable administrative power. S.C. Code Ann. § 62-7-111(b)(2). The parties participated in reaching the Temporary Settlement Agreement and it was approved by this court. See S.C. Code Ann. § 62-7-111(c).
53. Walkup has refused to work with Moseley, Baskin's health care and financial power of attorney since 2017 and this is not sustainable or reasonable.
54. **Walkup has performed and committed serious breaches of his fiduciary duties as documented specifically above in these findings of fact and below under certain categories of law differentiated.**

Motion for Emails and Text Messages between Moseley and Weatherly

This matter has been ruled on by separate Order dated August 4, 2022. In an effort to clarify the record, during the initial trial of this matter in January of 2021, this court stated on the record that certain emails and texts would be turned over to Walkup with certain permitted redactions. After the temporary settlement of this matter, this issue was not officially resolved. The Motion was officially ruled on in a prior written Order dated August 4, 2022, which was a reversal of the ruling on the record in January of

2021. This court has reviewed the documents in question and finds that the communications are between Ms. Moseley as the attorney in fact or Agent for Ms. Baskin under her Power of Attorney and the attorney for Ms. Baskin and therefore are privileged and protected. An Agent under a power of attorney is the alter ego of the principal. *Bennett v. Carter*, 421 SC 374, 807 S.E.2d 197 (2017). Ms. Baskin has the privilege and has asserted the privilege and therefore releasing these communications to the Defendant would violate the privilege. **Therefore, the Motion to Compel, as to the texts and emails between Michele Moseley, as Agent or Attorney In Fact for Jane E. Baskin, and W. Alex Weatherly, Jr., personal attorney for Jane E. Baskin, at that time, was denied.**

Undue Influence

Walkup added the defense of undue influence to his Supplemental or Second Amended Answer and Counterclaim filed on August 4, 2022. This was with the consent of Baskin's counsel. Walkup alleges that Baskin is being unduly influenced by Moseley and others. **Walkup has not presented any evidence of undue influence by Moseley or anyone else associated with Baskin's legal team, support system, caregivers.** Baskin has testified at her deposition, the trial in January of 2021 and again called to testify by Walkup in the August 2022 trial. She has testified with certainty, clarity, and her testimony has remained unchanged and logically consistent.

Application of the 2014 South Carolina Trust Code to the 1990 Trust

The 2014 South Carolina Trust Code (SCTC) was enacted in 2013 by Act Number 100, which took effect January 1, 2014. The SCTC applies to all Trusts created before, on, or after the effective date.

Pursuant to S.C. Code Ann. § 62-7-102, the SCTC applies to this Trust.

Pursuant to S.C. Code Ann. § 62-7-105, except as expressly provided in the Trust, the following are mandatory rules:

“(2) the duty of a Trustee to act in good faith and in accordance with the purposes of the Trust;”

“(11) the power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice”.

Pursuant to S.C. Code Ann. § 62-7-201 (a) “Subject to the provisions of Section 62-1-302(d), the probate court has exclusive jurisdiction of proceedings initiated by interested parties concerning the internal affairs of Trusts. These proceedings must be formal as defined by Section 62-1-201(17)... Proceedings that may be maintained pursuant to this section are those concerning the administration and distribution of Trusts, the declaration of rights, and the determination of other matters involving Trustees and beneficiaries of Trusts. These include, but are not limited to, proceedings to: (4) appoint or remove a Trustee.”

This court has the statutory authority to remove Walkup as Trustee.

Statute of Limitations

Walkup argues that S.C. Code Ann. § 62-7-1005 bars this action. Pursuant to (a) “...a beneficiary may not commence a proceeding against a Trustee for breach of Trust more than one year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of Trust.”

Walkup argues that on October 6, 2018, Walkup's former counsel, Benjamin Bruner, provided Baskin's counsel with a three-year accounting beginning August 2015, 2016, 2017, and a partial of 2018. Walkup argues these accountings disclosed all necessary financial information to determine if Baskin had any

claim against Walkup. Walkup argues that these accountings were never challenged and were acceptable to Baskin. Walkup relied on the statement of Mr. Bruner that during his in-person meetings, phone calls, letters, and e-mails with Mr. Weatherly, all of the documents and information that were requested of Walkup by Weatherly, on behalf of Ms. Baskin, were provided to Weatherly.

The Summons and Complaint for Accounting and Removal were filed on July 16, 2020, which Walkup argues was past the one-year time that would have been October 6, 2019. While the Summons and Complaint were clearly filed after the one-year statute of limitations, that limitation would only apply if this court found that the reports or accountings were adequate to disclose the existence of a potential breach. The reportings of Walkup through Mr. Bruner began after a demand letter from Weatherly dated March 29, 2017.

The reportings of May 4, 2017 include the following:

1. The personal Federal and State Tax Returns for Baskin for 2013 through 2016. It should be noted that these were prepared by Walkup's in house CPA at Walkup's direction. These are not at all helpful for a beneficiary to evaluate Trust activity.
2. Typed activity of the Trust Account at Wells Fargo from 4-1-16 through 4-7-17, typed activity of the Columbia Cash Reserve account for the Trust and Baskin for the approximate same time period. Walkup testified that someone in his office prepared this. What is obviously and painfully missing are the bank account statements, the investment account statements or any other invoices, paid receipts, or supporting documentation, along with a full disclosure of Trust fees and management fees charged and paid since 1990. No summary of any of the above was ever provided to Baskin.

The reportings of October 6, 2018 include the following:

1. Documents titled Balance Sheet for 2017 and Analysis of Income and Distributions for 2015, 2016, 2017. Walkup testified that someone in his office prepared these reports. They are incomplete and contain opinion comments. These reports are not helpful and not complete and have no supporting documentation.
3. QuickBooks reports for 2015-2017 for the Wells Fargo account and Columbia Cash Reserve accounts. Walkup testified that someone in his office prepared these reports. Again, obviously and painfully missing are the bank account statements, the investment account statements or any other invoices, paid receipts, or supporting documentation. This is extrapolated information from something. A beneficiary is entitled to the something, especially when that beneficiary is the only beneficiary and that beneficiary has been asking for the last 2 years at least.
2. Federal and State tax returns for 2015-2017 for the Trust. While this is helpful it is not enough.

What is also missing are Walkup's disclosures of all other fees he receives from his investments with and for the Trust money. This was only disclosed during discovery after the lawsuit was filed.

What is also missing are any reportings about the income and expenses, in detail, of the rental property.

In support of the request for dismissal under the statute of limitations argument, Walkup references Mr. Bruner's letter dated October 6, 2018, but by all parties agreement should have been dated as February of 2019 as it was mailed in or around that time frame, where Mr. Bruner gives Weatherly a 10 day deadline to respond to the Trust reportings or they will be deemed adequate. **This is not something that has any legal effect on the statute of limitations. Walkup remained under a duty to report and an even higher duty to be transparent because so many concerns had been raised and so many questions had been asked. Lost on Walkup and Mr. Bruner was that this duty to report was a recurring, important and annual duty, not a "one and done". Baskin was not required to demand her reportings every year to get them. Therefore, in October of 2019, without the need for demands or prompting, Walkup should have produced another annual accounting. This did not happen. It did not happen again until this court required him to report in October of 2020.**

On May 13, 2019, Weatherly again writes Mr. Bruner requesting more information and explanation. It should also be noted that during this time frame, Walkup is making demands on Baskin for information, notably asking for a budget to comply with additional disbursement requests, which was quickly provided by Weatherly as an attachment in this May 2019 letter.

As late as December of 2019, Weatherly writes to Mr. Bruner in an effort to facilitate a path forward by negotiating an exchange of information and asking for more money for care for Baskin.

To date, this court is concerned about the transparency and completeness of Walkup's reportings. Walkup testified that he may have some records from the earlier years of this Trust but Walkup has not provided what could be considered a reporting or accounting from 1990 through 2015. What has been provided from approximately 2015 through 2020 remains inadequate. The way the money has been invested, the way he maintained his records, and the way he managed the money, combine to obscure and create grave difficulty in extracting information with supportive proof without Walkup and Associates reporting the entire Equity 95 and Columbia Cash Reserve bank records which include potentially 99 other people or entities monies.

Therefore, it is clear that the statute of limitations does not barr this action and the reportings have not been adequate.

Removal of Trustee

Pursuant to S.C. Code Ann. § 62-7-706 (b) The court may remove a Trustee if:

- (1) the Trustee has committed a serious breach of Trust;
- (2) lack of cooperation among co-Trustees substantially impairs the administration of the Trust;
- (3) because of unfitness, unwillingness, or persistent failure of the Trustee to administer the Trust effectively, the court determines that removal of the Trustee best serves the interests of the beneficiaries; or
- (4) there has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the court finds that removal of the Trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the Trust, and a suitable co-Trustee or successor Trustee is available.

Pursuant to S.C. Code Ann. § 62-7-103 (24) "Serious breach of Trust" means either: a single act that causes significant harm or involves flagrant misconduct, or a series of smaller breaches, none of which individually justify removal when considered alone, but which do so when considered together.

Pursuant to S.C. Code Ann. § 62-7-103 (12) "Qualified beneficiary" means a living beneficiary who, on the date the beneficiary's qualification is determined:

- (A) is a distributee or permissible distributee of Trust income or principal;
- (B) would be a distributee or permissible distributee of Trust income or principal if the interests of the distributees described in subparagraph (A) terminated on that date, but the termination of those interests would not cause the Trust to terminate; or
- (C) would be a distributee or permissible distributee of Trust income or principal if the Trust terminated on that date.

Pursuant to S.C. Code Ann. § 62-7-103 (21) and (25) "Distributee" means any person who receives property of a Trust from a Trustee, other than as creditor or purchaser. "Permissible distributee" means any person who or which on the date of qualification as a beneficiary is eligible to receive current distributions of property of a Trust from a Trustee, other than as a creditor or purchaser.

Baskin is the qualified beneficiary and is a distributee.

Pursuant to S.C. Code Ann. § 62-7-103 (7) "Interests of the beneficiaries" means the beneficial interests provided in the terms of the Trust. The Reporters's Comment amplifies as follows: The term "interests of the beneficiaries" means the beneficial interests provided in the terms of the Trust, not as defined by the beneficiaries.

The interest defined by the Trust was the care of Baskin.

Pursuant to S.C. Code Ann. § 62-7-1001,

"(a) A violation by a Trustee of a duty the Trustee owes to a beneficiary is a breach of Trust.

(b) To remedy a breach of Trust that has occurred or may occur, the court may:

- (1) compel the Trustee to perform the Trustee's duties;
- (2) enjoin the Trustee from committing a breach of Trust;
- (3) compel the Trustee to redress a breach of Trust by paying money, restoring property, or other means;
- (4) order a Trustee to account;
- (5) appoint a special fiduciary to take possession of the Trust property and administer the Trust;
- (6) suspend the Trustee;
- (7) remove the Trustee as provided in Section 62-7-706;
- (8) reduce or deny compensation to the Trustee;
- (9) subject to Section 62-7-1012, void an act of the Trustee, impose a lien or a constructive Trust on Trust property, or trace Trust property wrongfully disposed of and recover the property or its proceeds; or
- (10) order any other appropriate relief."

Walkup was required to account with transparency, documentation, and clarity for the benefit of Baskin.

Weatherly was and is appointed by this court as Special Fiduciary or Special Trustee.

Walkup was suspended and restrained by his own agreement as of January 6, 2021 pursuant to the Temporary Settlement Order.

As of January 6, 2021, Walkup had no authority over the Trust or as the Trustee other than management of the money for investment purposes and tax reporting responsibility for the caregivers.

Walkup remains suspended from acting as Trustee with the exception of all necessary action to transfer the responsibilities and documents to Weatherly.

Walkup is immediately removed as Trustee.

Walkup is not allowed to charge Trustee fees for 2021 and 2022 and is immediately required to disgorge and repay any fees he has paid himself as Trustee for this time-period.

Duties of the Trustee

The Trust grants Walkup broad discretion. Applicable to every Trustee is the duty to administer the Trust in good faith and loyalty to the beneficiary or beneficiaries. The duty that Walkup owed is the duty to Baskin.

Pursuant to S.C. Code Ann. § 62-7-810, Walkup was responsible for keeping adequate records of his administration. Walkup was required to keep the Trust property separate from his own.

Pursuant to S.C. Code Ann. § 62-7-813 (b)

Unless the terms of a Trust expressly provide otherwise, a Trustee who accepts a Trusteeship or undertakes the administration of an irrevocable Trust created on or after the effective date of this article, or of a revocable Trust which becomes irrevocable whether by the death of the settlor or by the terms of the Trust on or after the effective date of this article, shall:

(1) within ninety days after the Trustee accepts a Trusteeship or undertakes administration of an irrevocable Trust or a revocable Trust that has become irrevocable whether by the death of the settlor or by the terms of the Trust, notify the qualified beneficiaries, as defined in Section 62-7-103(12), of:

(A) the existence of the Trust;

(B) the identity of the settlor or settlors;

(C) the Trustee's name, address and telephone number;

(D) the right to request in writing a copy of the Trust instrument; and

(E) the right to request in writing a copy of any Trustee's report described in (c)(1) below;

(2) throughout the administration of the Trust, keep the distributees and the permissible distributees, as defined in Section 62-7-103(21) and (25), reasonably informed about the administration of the Trust and of the material facts necessary for them to protect their interests, provided that the attorney-client privilege between the Trustee and the Trustee's attorney is not violated;

(4) notify the distributees and permissible distributees in advance of any change in the method or rate of the Trustee's compensation; and

(c) Unless the terms of a Trust expressly provide otherwise, a Trustee who accepts a Trusteeship or undertakes the administration of an irrevocable Trust created on or after the effective date of this article, or of a revocable Trust which becomes irrevocable on or after the effective date of this article, shall:

(1) have a continuing duty to:

(A) keep the distributees and permissible distributees, or other qualified beneficiaries who request information in writing, reasonably informed as to the administration of the Trust; and

(B) send annually, and upon the termination of the Trust, a written report of the Trust property which may be in any format which provides the distributees and permissible distributees, or other qualified beneficiaries who have requested in writing, with information necessary to protect their interests. The report may include a copy of the fiduciary income tax return, or copies of bank or brokerage statements, or an informal list of assets and if feasible, the market values of those assets, the liabilities, the receipts and the disbursements, including the source and amount of the Trustee's compensation;

The law to inform and account is a basic responsibility owed from the Trustee to the qualified beneficiary/distributee.

Walkup argues that the duty to report to Baskin as a qualified beneficiary and distributee, as required in the sections above, did not apply to him. This court has addressed this argument in its Denial of Walkup's Motion For Summary Judgment, but will reiterate the points it made then now. While S.C. Code Ann. § 62-7-813 was enacted after the creation of the Baskin Trust, and the requirements are not retroactively effective, a review of South Carolina Law at the time of the Trust's creation makes clear the duty of a Trustee to keep the beneficiaries reasonably informed, which includes providing accountings. This duty has carried through all enactments and revisions of the South Carolina Code. *See, e.g.* S.C. Code Ann § 62-7-303 (1987), superseded by S.C. Code Ann. § 62-7-813 (2005) (part of the Article 7, Uniform Trust Code enactment). Additionally, there has been and is a general common law duty to keep the beneficiaries informed. *See* Restatement (Second) of Trusts Section 173 (1959). Further, this court is a court of equity pursuant to S.C. Code Ann. § 62-7-106, and it is clear that a beneficiary cannot protect their interest without a requirement that the Trustee provide accountings and other documentation for review by beneficiaries.

Article 7 of the 1986 Probate Code, titled Trust Administration in Section 62-7-303 (c), titled Duty to inform and account to beneficiaries, places the duty on the Trustee "that upon reasonable request, a beneficiary is

entitled to a statement of the account of the Trust annually..." This duty continues in the 2005 amendments to the Trust Code in new § 62-7-813 (a) "A Trustee shall keep the qualified beneficiaries of the Trust reasonably informed about the administration of the Trust and of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, a Trustee shall promptly respond to a beneficiary's request for information related to the administration of the Trust." (c) A Trustee shall send to the distributees or permissible distributees of Trust income or principal, and to other qualified or nonqualified beneficiaries who request it, at least annually and at the termination of the Trust, a report of Trust property, liabilities, receipts, and disbursements, including the source and amount of the Trustee's compensation, a listing of Trust assets and, if feasible, their respective market values."

Walkup argues a distinction between an Accounting and a Report. While the words may have very specific and different meanings to some, the outcome required is the same. **The beneficiary must receive information adequate to understand clearly to be able to protect their interests. Required for reportings to be sufficient are a list of assets in the Trust, their current value, all income to the Trust, all debts and expenses paid from the Trust, outstanding liabilities of the Trust, and what the Trustee is paying himself to serve as Trustee.**

Walkup argues that he had no duty to provide a report unless asked. Even if this argument is correct, Walkup has a mandatory duty of obtaining and keeping records, reviewing and organizing at least annually in a way that he could provide at the "push of a button" or the "pull of a file", if asked. Additionally, Walkup wore two (2) hats in his involvement with the Trust. He was the Trustee and the financial investor/money manager of Trust assets. Walkup as Trustee would have been under a duty to demand monthly statements from Walkup as the financial investor to monitor the investments and the investor. Walkup as Trustee would have been under a duty to demand annual accountings from Walkup as the financial investor to evaluate the investments, the income available for Baskin, the projections, and the previous year comparisons. At any given moment, Walkup as Trustee should have been able to pull a certain month and year of statements and reportings to be able to generate the report for Baskin.

Baskin did ask for annual reportings in 2008. Walkup's reporting in 2008 was woefully insufficient. Walkup was on notice from then attorney for Baskin Rita Cullum that Walkup's duty to report was an annual requirement. Walkup chose to ignore that admonition and did not report again until 2018, after another demand. The report in 2018 was not sufficient. He did not report again until ordered by this court to do so in October of 2020. Walkup's financial position puts him a place of power over Baskin who has limited resources to spend on attorneys to gain compliance for reporting.

Conflict of Interest

Pursuant to S.C. Code Ann. § 62-7-802 (c) a sale, encumbrance, or other transaction involving the investment or management of Trust property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the Trustee with:

- (1) the Trustee's spouse;
 - (2) the Trustee's descendants, siblings, parents, or their spouses;
 - (3) an agent or attorney of the Trustee;
 - (4) a corporation or other person or enterprise in which the Trustee has such a substantial interest that it might affect the Trustee's best judgment; and
 - (5) a corporation or other person or enterprise which has such a substantial interest in the Trustee that it might affect the Trustee's best judgment.
- (f) an investment by a Trustee in securities of an investment company or investment Trust to which the Trustee, or its affiliate, provides services in a capacity other than as Trustee is not presumed to be affected

by a conflict between personal and fiduciary interests if the investment otherwise complies with the prudent investor rule of Part 9. The Trustee may be compensated by the investment company or investment Trust for providing those services out of fees charged to the Trust if the Trustee at least annually notifies the persons entitled under Section 62-7-813 to receive a copy of the Trustee's annual report of the rate and method by which the compensation was determined.

Walkup has failed to inform Baskin of the fees Walkup charges the Trust for managing the investment entities. Walkup's duty as Trustee to report his fees for investments in companies he owns or has an interest in is a higher duty than the normal accounting/reporting duty by version of his several conflicts of interest. Once Walkup invested Baskin Trust money in Equity95 and Columbia Cash Reserve, entities he owned or owned a portion of, he created a presumption of a conflict of interest. The presumption can be overcome by reporting how the funds are invested and what fee or compensation the Trustee is receiving as the investor. Walkup was required to report this to Baskin, at least annually, without being asked. He failed to comply so conflict and the presumption of conflict must be presumed. A conflict Walkup failed to dispel before this litigation began.

Material Purpose

Eldridge Baskin created the Trust for the sole purpose of caring for Baskin. It is also clear that when the Trust was created Eldridge Baskin trusted Walkup to take this responsibility.

Walkup argues that he had a duty to maintain her care for her life, for her entire life, and therefore, had a duty to be frugal. Walkup has maintained that he, while taking care of her basic needs, grew her Trust from the cash value of \$135,000.00 to over \$500,000.00. Walkup has taken the position that Baskin will live another twelve (12) plus years and that at the current budget that allows Baskin to live in her home, the money will be exhausted in thirty-four (34) months. Walkup argues that is why he was very determined that she should be moved to a nursing home where her care can be provided and the costs would be lower. Baskin does not challenge that Walkup has been a good investor and has made lots of money for the Trust. She is determined to stay in her home for as long as she can and this should be supported for as long as it can.

Walkup's removal as Trustee will not undermine the material purpose of the Trust. In fact, the material purpose of caring for Baskin will be better served by someone who can work with Moseley, Baskin's Agent, and Weatherly, Baskin's Special Trustee and personal attorney, without delay, challenge and controversy.

Prudent Investor Rule

Walkup pleads the Prudent Investor Rule found in S.C. Code Ann. § 62-7-933, also known as the Uniform Prudent Investor Act, asserting that Walkup cannot be liable to Baskin if he acted in reasonable reliance on the Trust. Walkup has been evaluated by this court under the prudent investor rule. When the Trust is silent on an issue, one must rely on the entirety of the Trust code then in existence in determining the alleged breaches. The Trust language give broad authority to Walkup.

The Trust does not eliminate the requirement of adequate and reasonable reportings as asked for. The Trust does not authorize Walkup to invest in his own companies without reporting his fees. The Trust does not address how funds should be invested for Baskin's best use. Walkup cannot hide behind the prudent investor rule and fail to do the normal and ordinary duties required by the remainder of the Trust Code.

Statute of Limitations as to claims regarding propriety of investments

Walkup argues that any claims against him regarding the investment or management of Trust property "entered into by the Trustee for the Trustee's own personal account or which is otherwise affected by a conflict between the Trustee's fiduciary and personal interests" is barred under Section 62-7-802(b)(3) because Baskin did not bring her lawsuit within the time allowed by section 62-7-1005 of the South Carolina Code.

As found in the section above entitled Statute of Limitations, the limited reportings noted above do not meet the standards of Trustee reportings. The records provided were incomplete. The records provided did not allow for a full evaluation of Walkup's investments and fees. The reportings were not timely, were not provided without demand and were not transparent.

Estoppel, Waiver or other Equitable Defenses

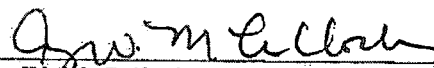
Walkup has plead the general equitable defenses of estoppel and waiver. **These defenses do not apply to this case as a matter of fact or law.**

Conclusions

1. Walkup is removed as Trustee for his
 - a. serious breach of Trust;
 - b. because he is no longer fit to administer the Trust effectively;
 - c. because he is unwilling to do what is best for the Trust and Trusts' beneficiary;
 - d. because of his persistent failure to administer the Trust effectively;
 - e. removal of Walkup best serves Baskin;
 - f. there has been a substantial change of circumstances in that the relationship between Walkup and Baskin has deteriorated to a toxic level of litigation;
 - g. removal has been requested by Baskin, the only qualified beneficiary, and removal of Walkup best serves the interests of Baskin and is not inconsistent with a material purpose of the Trust; and a suitable Successor Trustee is immediately available as Weatherly has served as Special Trustee since January of 2021 and Baskin is competent and with the assistance of Weatherly and Moseley can find a replacement Successor Trustee.
2. Walkup remains under a duty to account and report for any activity as Trustee before, during, or after these proceedings to comply with all statutory requirements of transparent disclosure and documentation.
3. Walkup has created an apparent conflict of interest in his investments and remains under a duty to explain how the funds are invested and what compensation he or his companies receive.
4. Walkup is required to work expeditiously with Weatherly for a seamless transfer of Trustee authority and documentation.
5. Baskin, Weatherly, and Moseley may allow Walkup to continue as the financial investor or may move the Trust assets as appropriate.
6. All other findings of fact and conclusions of legal decisions not immediately found in this Conclusion, are found above.

IT IS SO ORDERED.

August 23, 2022
Columbia, South Carolina



Amy W. McCulloch
Richland County Probate Judge