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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ALLENDALE COUNTY
Court of Common Pleas

Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2023-000159

J. Morgan Kearse, Personal Representative of the Estate of G.H. Kearse.....Petitioner,

v.

The Kearse Family Education Trust, William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, Joseph Weber Kearse, and John Morgan Kearse, of which all are named individually and as Trustees of the Kearse Family Education Trust U/A/D Nov. 05, 1992.....Respondents.

REPLY TO RESPONDENT ELIZABETH KEARSE GOODING'S RETURN

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I. ARGUMENT IN REPLY

Petitioner provides this Reply to address numerous faulty arguments and falsehoods presented in Respondent Gooding's Return. Petitioner has organized the Reply by subject, as many of Respondent Gooding's arguments are repeated in several parts of her Return.

A. Petitioner Has Acted In Good Faith

Respondent Gooding falsely claims that Petitioner brought his underling Petition for Instructions to the Probate Court in bad faith and, consequently, this Court may sustain the component of the Probate Court's February 27, 2017 order requiring payment of Respondent Gooding and Sharp's legal fees. However, the Probate Court never considered any allegations regarding Petitioner's good faith nor whether "justice and equity" require the reallocation of legal fees pursuant to S.C. Code Ann. § 62-1-111. This alone is fatal to Respondent Gooding's argument. See Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("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.") (citations omitted).

Although Respondent Gooding's argument is ostensibly presented as an additional sustaining ground, Petitioner believes Respondents Gooding and Sharp seek to disparage him in an attempt to convince the courts Petitioner is not worthy of the fair application of the law in this matter, and thereby impose the "not an agreed upon by all parties"[1] alleged settlement against the will of Petitioner and other siblings. Respondent Sharp has gone as far as filing a complaint with the Office of Disciplinary Council against Petitioner, her own brother and a South Carolina attorney that has honorably and honestly served the people of Allendale County and neighboring areas for two decades. Accordingly, Petitioner takes this opportunity to show his good faith lest the Court take Respondent Gooding or Sharp's accusations seriously.

[1] The Probate Court's description. (R. p. 608).

Early in his service as Personal Representative (abbreviated hereinafter as "PR"), Petitioner encountered an interpretational problem with regard to his father G.H. Kearse's will. Item VI of the will purported to give "all my monies" to build a house modeled after Gunston Hall in Lorton, Virginia, unless otherwise needed to pay ad valorum taxes for property of the Kearse Family Education Trust (hereinafter the "Trust"). (R. p. 303). Item VI did not name a recipient, but stated "I direct that my six (6) children build the house." Id. In possible conflict, however, the location of the house specified in Item VI was on property that was held by the Trust as of Decedent's death. (R. p. 304). Accordingly, there was and remains an interpretational dilemma as to whether G.H. Kearse's probate "monies" should be paid to the Trust and whether G.H. Kearse's directive to build the house was merely precatory or could be construed as an amendment to the Trust.

Furthermore, as Respondent Gooding acknowledges on page 3, footnote 2 of her Return, there was a dispute among the siblings as the correct interpretation, with Respondents Gooding and Sharp squarely on the side of dishonoring their deceased father's last wishes. Faced with a dispute about the legal effect of his father's will, Petitioner therefore relied on the advice his legal counsel, a South Carolina Certified Specialist in Estate Planning and Probate Law, to file a Petition For Instructions so that the Probate Court could direct Petitioner as to the proper interpretation of the will. (R. p. 157). See S.C. Code Ann. § 15-53-20 ("Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed.").

Accordingly, Petitioner acted not only in good faith, but out of necessity, by filing the Petition for Instructions and, despite Respondent Gooding's insinuations to the contrary, Petitioner does deserve the dignity of having South Carolina law fairly applied so that he may challenge the "not an agreed upon by all parties" alleged settlement. (R. pp. 608). In contrast, it

is actually Respondents Gooding and Sharp who have acted in bad faith in this matter by (1) seeking to enforce a "not an agreed upon by all parties" alleged settlement (R. p. 608), (2) seeking to avoid judicial review of the alleged settlement by alleging a procedural deficiency for the first time on appeal, and (3) wasting countless hours of judicial resources in those efforts.

B. Petitioner's Standing Not Raised Or Ruled On Below

Respondent Gooding falsely claims Petitioner's alleged lack of standing – the reason the Circuit Court and Court of Appeals have dismissed Petitioner's appeal – was raised and ruled on below. See Wilder Corp. v. Wilke, 330 S.C. at 76, 497 S.E.2d at 733 ("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. Moreover, an objection must be sufficiently specific to inform the trial court of the point being urged by the objector.") (citations omitted); James v. Anne's Inc., 390 S.C. 188, 193, 701 S.E.2d 730, 732–33 (2010) ("This Court has the inherent authority to consider justiciability. However, when a party belatedly attempts to raise the issue of standing, our courts have applied error preservation principles and held that the matter was not preserved for review where the trial court was not given an opportunity to first rule on the issue.") (citations omitted); Wilson v. Dallas, 403 S.C. 411, 422-23, 743 S.E.2d 746, 752-53 (2013) (rejecting argument that disposed PRs and trustees lacked standing to challenge order where standing had not been raised below).

Respondent Gooding does not cite any ruling by the Probate Court regarding Petitioner's standing, as there was none. The word "standing" does not appear in any order or alleged order of the Probate Court, nor was the word uttered at either Probate Court hearing. (R. pp. 8-12, 14, 18-24, 618, and 659). If anything, the Probate Court implicitly found that Petitioner did have standing as it ultimately heard Petitioner's Motion to Alter or Amend on August 17, 2017, well

after it had named the Special Administrator on March 20, 2017 pursuant to its February 27, 2017 order that Petitioner appealed.

Respondent Gooding does attempt to claim Petitioner's standing was raised below, citing pages 285, 410, 490, and 493 of the Record on Appeal. However, her reliance is misplaced and, in fact, pages 490 and 493 – excerpts from the August 17, 2017 Transcript of Hearing – prove that Respondent Gooding and Sharp's legal counsel were no more aware of their clients' future standing argument than was the Petitioner:

> I will say at the outset that I don't understand how the motion is being made by [Petitioner] as the Personal Representative because he is not the personal representative and has not been for some period of time as I will deal with in a minute. His lawyer told us at the last hearing [on February 2, 2017] that he was resigning effective immediately….**Now I'm not sure what effect that has legally**. **I'll let my probate lawyer Mr. Slotchiver address that if it comes up**, but I think it's important to note that this is the only party that is before Your Honor in support of the motion.

(R. p. 490, emphasis added). But Mr. Slotchiver never addressed the standing issue either, merely reiterating that Petitioner "is no longer the Personal Representative." (R. p. 493). However, Petitioner's removal as PR was one of the central components of the February 27, 2017 order that Petitioner was at that time challenging in full. (R. pp. 11-12). In fact, Respondent Sharp's counsel specifically referenced the February 2, 2017 hearing that resulted in the February 27, 2017 order Petitioner challenged in full. As Petitioner's counsel stated at the final hearing, "I do ask the Court to rescind its prior order because it was not a settlement." (R. p. 645). Had the Probate Court taken the correct action, it would have restored Petitioner's status as PR and cured the objections stated by Respondents Gooding and Sharp. In sum, Petitioner had no way of knowing Respondent Gooding or Sharp would later on appeal challenge his standing to appeal, as neither did their own counsel.

For its part, Page 410 of the Record on Appeal references Section I from Respondent Gooding's Memorandum in Opposition to Petitioner's Motion dated July 27, 2017. However,

the Probate Court refused to hear that Motion at Respondent Gooding's own request (R. pp. 19, 409, and 489). Thus, Respondent Gooding's pleading and any arguments therein are irrelevant to this appeal as they were not heard by the Probate Court. Moreover, even in and of itself, Respondent Gooding's Section I also plainly admits that the Probate "Court's Order dated February 27, 2017, made **a final ruling** on the issues raised by Petitioner's present Motion." (R. p. 409, emphasis added). This admission directly supports Petitioner's position that the February 27, 2017 order is **the order** that removed him as PR and provided for a Special Administrator, which order he appealed in full. Further still, Respondent Gooding's Section I did not otherwise attempt to articulate that Petitioner lacks standing, nor did any party make such an argument before the Probate Court as made plain by the transcript excerpts referenced above. (R. pp. 490, 493).

Finally, Page 285 of the Record on Appeal is a page of the Probate Court's order dated September 15, 2017, but that page does not in any way refer to the Probate Court's March 20, 2017 "record of [the] appointment" of "Special Administrator." (R. pp. 14-15 and 285). Rather, Petitioner presumes Respondent Gooding meant to refer to Page 282, which does refer to it even though that document was not once referred to in the hearing. However, it must be noted that the Probate Court's order was drafted by counsel for Respondent Sharp **after** the hearing as later acknowledged at oral argument before the Circuit Court (R. p. 686). Moreover, the order's reference to the March 20, 2017 contains no reference to Petitioner's standing and is therefore similar to the empty statements of counsel for Respondents Gooding and Sharp that Petitioner "is not the personal representative" and "is no longer the Personal Representative" (R. pp. 490 and 493) which issue Petitioner has challenged since his Motion to Alter or Amend (R. pp. 147-159).

Ultimately, Respondent Gooding's own references to pages 285 (or 282), 410, 490, and 493 of the Record on Appeal provide ample support that Petitioner's standing was not raised before the

Probate Court. To preserve their argument regarding Petitioner's standing, Respondents Gooding and Sharp needed to do more than simply state Petitioner "is not the personal representative" and obliquely reference the March 20, 2017 document in a proposed order Respondent Sharp's counsel drafted after the Probate Court hearings and in a Memorandum in Opposition to a motion the Probate Court refused to hear. (R. pp. 19, 409, 489, and 686). At the very least, Respondents Gooding and Sharp needed to actually utter the word "standing" before first doing so at oral argument before the Circuit Court. (R. p. 674).

Finally, Respondent Gooding's Return implies that Petitioner confuses issue preservation and waiver. See Ret. Of Resp't Gooding p. 12, n. 4. However, Petitioner has argued both, noting that Respondent Gooding and Sharp waived the standing argument by not raising it in a timely manner, if they can be considered to have raised it at all. "Unless a party **promptly** challenges the opposing party's status as a real party in interest, such a challenge is waived." Bryson v. Bryson, 378 S.C. 502, 509, 662 S.E.2d 611, 614 (Ct. App. 2008) (emphasis added) (holding waiver occurred when argument that personal representative was not the real party in interest was not presented until the end of trial). Here, Respondent Gooding points to vague statements at the final Probate Court hearing, the order issued after that hearing, and a Memorandum never considered by the Probate Court and dated less than a month before the hearing. (R. pp. 285, 410, 490, and 493). Accordingly, if Petitioner's standing was raised at all, Respondents Gooding and Sharp failed to do so promptly and thereby waived that argument. See Bryson v. Bryson, 378 S.C. at 509, 662 S.E.2d at 614.

C. Petitioner Did Not Irrevocably Resign

The argument against Petitioner's standing is also premised on several other false claims as stated in Respondent Gooding's Return. Chronologically, the first such argument is that Petitioner "irrevocably" resigned as PR by filing a Statement of Resignation at the February 2,

2017 hearing. However, Section 62-3-610(b) of the South Carolina Probate Code (emphasis added) provides otherwise:

> A personal representative may resign his position by filing a written statement of resignation with the court and providing twenty days' written notice to the persons known to be interested in the estate. **If no one applies or petitions for appointment of a successor representative within the time indicated in the notice, the filed statement of resignation is ineffective as a termination of appointment** and in any event is effective only upon the appointment and qualification of a successor representative and delivery of the assets to him….

Petitioner's counsel referred to this statute stating, "[n]ow, as the Code indicates and as Your Honor is aware, a Personal Representative cannot automatically resign …." (R. p. 594). The Probate Court acknowledged as much, stating, "Mr. Wingate, as his attorney, you did read this statute per se without reading it verbally that there are requirements of [Petitioner] to give notice of his resignation and formal process and to obtain the acceptance of Mr. Solomons, and we need to reconvene on a hearing on that matter. I expect that you will so file those documents as necessary." (R. p. 609).

Even Respondents Gooding and Sharp have previously acknowledged the foregoing law, stating in their Joint Respondents' Brief to the Circuit Court filed July 19, 2018, "[f]airness requires acknowledging a personal representative may not 'immediately' resign his position.'" (R. p. 230). Although Respondents Gooding and Sharp have evidently abandoned all notions of fairness in this matter, the law does not support their effort to avoid judicial review of the "not an agreed upon by all parties" alleged settlement. (R. p. 608). Petitioner could not and did not irrevocably resign.

D. Petitioner Appealed His Removal As PR

The second false premise regarding Petitioner's alleged lack of standing is that he did not appeal the portion of the Probate Court's February 2, 2017 order removing him as PR. They

point to a statement in his Motion to Alter or Amend dated March 15, 2017, in which Petitioner indicates his willingness to resign and not contest an order removing him as such **in the future,** and provided that the Probate Court otherwise ruled the Final Term Sheet invalid as a binding settlement. (R. pp. 147-156). Petitioner makes this point clear through his argument that the Final Term Sheet did not constitute a binding settlement, that the terms of the Final Term Sheet were not otherwise before the Probate Court, and his request for the Probate Court "to amend its order, at a minimum, to strike sections 2, 3, and 4 of the Final Term Sheet, if not striking the Final Term Sheet and February 27, 2017 Order in their entirety." (R. p. 156). As Petitioner's counsel stated plainly at the final hearing, "I do ask the Court to rescind its prior order because it was not a settlement." (R. p. 645).

However, the Probate Court ultimately chose to affirm its February 27, 2017 order upholding the Final Term Sheet in full. Consequently, Petitioner maintained his appeal of that order in full, as well as appealing the Probate Court's order dated September 15, 2017 which had the affect of affirming its prior order. Moreover, there was never a subsequent legal opportunity for Petitioner to carry through on his stated willingness to resign and not contest such order of approval, as his termination had been made pursuant to Probate Court order dated February 27, 2017, which order the Probate Court declined to amend and Petitioner appealed.

Finally, Respondents Gooding and Sharp failed to articulate before the Probate Court that Petitioner had waived or abandoned his right to judicial review of his termination as PR, nor did the Probate Court rule on that issue. Rather, it simply denied Petitioner's Motion to Alter or Amend its February 27, 2017 order entering the Final Term Sheet as a binding settlement. See Wilder Corp. v. Wilke, 330 S.C. at 76, 497 S.E.2d at 733 ("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. Moreover, an objection must be sufficiently specific to inform the trial court of the point being urged by the objector.") (citations omitted).

E. The Probate Court Did Not Issue An Order For Successor PR On March 20, 2017

The third false premise regarding Petitioner's alleged lack of standing is that Petitioner failed to appeal an alleged order, dated March 20, 2017, removing Petitioner as PR and replacing him with a **Successor PR**. Petitioner's Petition for Writ of Certiorari (pages 13 through 16) provides numerous reasons why the March 20, 2017 document is not a separate order, which Respondent Gooding's Return summarily ignored. See Ret. Of Resp't Gooding p. 15, n. 5.

Accordingly, Petitioner will not restate those points herein other than to reiterate the inescapable procedural history that the Probate Court's February 27, 2017 order had already both removed Petitioner as PR and provided for the appointment of a "Special administrator", and that Petitioner has timely appealed that order in full. (R. pp. 11-12 and 187). That the Probate Court, pursuant to that order, later named the person to serve as Special Administrator does not create a separate order or ruling which Petitioner must appeal to preserve his already-pending objection to the Probate Court's order providing for a Special Administrator.

To avoid those facts, Respondents Gooding and Sharp claim the Probate Court entered a separate order dated March 20, 2017, in contradiction of its standing order, appointing Harley Ruff as **Successor PR** rather than as Special Administrator. Belying that legal fiction, however, is the fact that the Probate Court's own cover letter to the March 20, 2017 identifies it as a "record of [the] appointment" of Harley Ruff as "Special Administrator" (R. p. 15), the fact that the "record of this appointment" was not file stamped with the Probate Court as a separate order (R. 14), and the fact that the Probate Court subsequently upheld its February 27, 2017 order providing for the appointment of a "Special Administrator" by denying Petitioner's Motion to

Alter or Amend the same (R. p. 24). Even the appointee Harley Ruff indicates he is acting as Special Administrator. (R. p. 814).[2] In sum, it is simply inconceivable that Petitioner should have to appeal the supposed appointment of a Successor PR when both the Probate Court and the Probate Court's appointee indicate there is in fact no Successor PR.

F. Petitioner Did Not Have To Appeal Individually

Another false argument regarding Petitioner's right to appeal is that he had to do so in his individual capacity rather than as PR. Respondents have cited no authority to that effect, as there is none. To the contrary, any party may appeal a final decision of the probate court. See S.C. Code Ann. § 62-1-308(a). In this case, Petitioner was a party to the Probate Court action in his capacity as PR and chose to appeal in that capacity. Moreover, Petitioner is appealing an order that specifically terminated him as PR and affected the estate he was representing. To appeal his termination as PR in an individual capacity makes no sense.

G. Petitioner Did Not Waive Review Of Alleged Settlement

Moving to the substantive issues not addressed by the Circuit Court or Court of Appeals, Respondent Gooding falsely claims that Petitioner failed to preserve the invalidity of the Final Term Sheet as a binding settlement. However, Petitioner raised those issues in his Petition for Rehearing at pages 20 and 21, including by reference to Sections I and II of his Initial Brief of Petitioner and relevant facts from the Statement of the Case. Respondent Gooding cites no authority that Petitioner's reference is inadequate, nor did she or Respondent Sharp make such an argument in their respective Returns to Petitioner's Petition for Rehearing, dated December 20, 2022 and December 30, 2022. See City of Columbia v. Ervin, 330 S.C. 516, 520, 500 S.E.2d

[2] Ironically, Respondent Gooding cites Mr. Ruff's memorandum as evidence he was appointed as Successor PR, but the author of such evidence clearly disagrees. Similarly, Petitioner did not waive his right to contest his termination as PR and appointment of a Special Administrator by turning over estate property to the Special Administrator, as Petitioner's Motion to Alter or Amend the Probate Court's February 27, 2017 order did not stay that order. See Rule 62(b), SCRCP (giving the court discretion whether to suspend an order upon filing of a motion to alter or amend).

483, 485 (1998) (citing Graniteville Manufacturing Co. v. Renew, 113 S.C. 171, 102 S.E. 18 (1920) for the rule that "an issue not raised by exception to an intermediate appellate court cannot be raised for the first time in the Supreme Court"). In fact, Respondent Sharp has recently incorporated Respondent Gooding Return to Petitioner's Petition for Rehearing and her Return to Petitioner's Petition for a Writ of Certiorari. Moreover, the Court of Appeals itself did not find Petitioner's substantive arguments unpreserved, making that the law of the case. See Order dated Jan. 4, 2023.

H. Section 62-3-912 Applies To The Final Term Sheet And Was Not Satisfied

Respondent Gooding falsely claims that the Final Term Sheet does not alter the interest of a successors, who are defined as "persons, other than creditors, who are entitled to property of a decedent under his will." S.C. Code Ann. § 62-1-201(47). Here, the successors to Decedent's will are the Trust which is entitled to Decedent's residuary, Petitioner who is entitled to the use of Decedent's office and contents, and all of Decedent's children who are entitled to Decedent's "monies," either individually under Item VI or as Trustees under Item VIII. (R. pp. 730-735).

For its part, the Final Term Sheet alters Petitioner's interest by placing additional conditions upon his use of Decedent's office, setting his Personal Representative fee, requiring him to pay Respondent Sharp's legal fees, and possibly paying Respondent Gooding's legal fees and individually paying his own legal fees as Personal Representative. (R. p. 619-20). The Final Term Sheet also altered the Trust's interest by requiring it to buy the house of Decedent's surviving spouse and by impacting the amount of cash paid to the Trust from the Estate by providing the Estate's possible payment of legal fees of Respondent Gooding as a third-party, requiring the Estate to pay a Special Administrator, and fixing the Personal Representative's fee owed by the Estate. Id. Furthermore, the February 27, 2017 Order adopting the Final Term Sheet also dismissed the Petition

for Instructions with prejudice, even though such dismissal was not part of the Final Term Sheet, thus altering the amount that the Trust must arguably spend to build a house as directed by Decedent. (R. p. 11). Finally, to the extent Decedent's children receive Decedent's "monies" in their individual capacities under Item VI of the will, the Final Term Sheet alters their interests for the same reasons as the Trust, with the exception of the Trust having to buy the house of Decedent's surviving spouse. (R. p. 732).

Notably, Respondent Gooding does not question Petitioner's identification of the successors, explain why their interests were not altered by the Final Term Sheet, nor allege that the successors ultimately signed the settlement. She therefore appears to concede that the alleged settlement was not approved pursuant to Section 62-3-912.

I. Section 62-3-1102 Applies To The Final Term Sheet And Was Not Satisfied

Similarly, Respondent Gooding falsely claims that the Final Term Sheet does not impact a person holding a beneficial interest and is not binding on a non-party. However, persons with beneficial interests affected by the proposed Final Term Sheet are the same as the "successors" under Section 62-3-912, and Respondent Gooding's argument must therefore fail based on the same analysis as stated above.

Moreover, Respondents Gooding and Sharp themselves invoked the requirements of Section 62-3-1102 by asking the Probate Court to approve the Final Term Sheet. (R. pp. 602 and 604). Having sought such approval, Respondents Gooding and Sharp cannot avoid the requirements of S.C. Code Ann. § 62-3-1102. Here, in addition to not obtaining signatures of parties affected by the Final Term Sheet, no notice of hearing for approval of a settlement was provided to the interested parties, nor did the Probate Court attempt to determine, or set forth its findings, that the Final Term Sheet was a fair and just resolution of a good faith controversy. (R. pp. 8-13; 589-642). See

S.C. Code Ann. § 62-3-1102(3); see also S.C. Code Ann. § 62-1-401 (requiring 20 days' notice, unless the probate court determines a different period for good cause shown, along with filed proof that the notice was so given).

The only requirement of Section 62-3-1102 that Respondent Gooding actually claims to have been met was the notice requirement. However, her claim is demonstrably false, as not a single Notice of Hearing in this matter references a settlement or the Final Term Sheet as required under S.C. Code Ann. § 62-1-401. (R. pp. 287-91).

J. Rule 43(k), SCRCP Does Not Apply To The Final Term Sheet And Was Not Satisfied

Respondent Gooding claims that a letter sent by Petitioner's counsel to the Probate Court a day before the hearing constitutes a "written stipulation signed by counsel and entered in the record" under Rule 43(k), SCRCP. However, what "the record" shows is that Petitioner's counsel repudiation of the Final Term Sheet was unequivocal: "As we stand here this morning, I'm afraid to announce to the Court that two things have changed. Number one, I have not been provided copies of any document from the pro se litigants consenting to the settlement, so whereas I was told that I would be able to present that to you, I do not have that and cannot present it to you." (R. p. 593). And specifically as to [Petitioner], "his position will be that he does not consent to the settlement." (R. p. 595). "His position, however, is what I have said….he does not consent." (R. p. 595).

Moreover, the letter now relied on by Respondent Gooding was never introduced as evidence at the February 2, 2017 hearing. [3] (R. pp. 589-642). Further, the letter did not specifically incorporate the Final Term Sheet or discuss the terms thereof except that Petitioner would resign as Personal Representative, that an "agreed-upon" special administrator would be appointed (which

[3] Respondents' counsel discussed the letter at the hearing, but they were not testifying and, if they had been, such statement would be hearsay. (R. pp. 601-02).

was not technically in accord with the Final Term Sheet), and that pending pleadings would be withdrawn (which was not in the Final Term Sheet at all). (R. p. 793).

Ultimately, even Respondent Gooding notes that this Court's precedent opposes her spurious reasoning. See Farnsworth v. Davis Heating & Air Conditioning, Inc., 367 S.C. 634, 637, 627 S.E.2d 724, 725 (2006) (holding that a settlement offer signed by each party's legal counsel with client authorization could be rescinded prior to trial, following South Carolina's rule that "[u]ntil a party is bound, she is entitled to withdraw her assent."). As the Probate Court noted of the Final Term Sheet "this is not an agreed upon by all parties exclusively agreement any longer." (R. p. 608).

Finally, even Petitioner could somehow be bound under the foregoing law and facts, **not a single other attorney signed the Final Term Sheet**, as required by the provision of Rule 43(k), SCRCP relied on by Respondent Gooding. See S.C. Hum. Affs. Comm'n v. Zeyi Chen, 430 S.C. 509, 519, 846 S.E.2d 861, 866 (2020) (rejecting argument that strict compliance with Rule 43(k) was not required where parties signed a settlement agreement in the presence of counsel). Further, at no time did anyone purport to bind or speak for the unrepresented siblings, or the Trust for which of the siblings were and are Trustees. In fact, counsel for Respondents Gooding and Sharp each expressed their concern that no one was speaking for the other siblings, but never saw to it that someone did so. (R. pp. 632-33). he Probate Court to itself refer to the Final Term Sheet as a "not an agreed upon by all parties exclusively agreement any longer." (R. p. 608).

K. There Are No Additional Sustaining Grounds

Petitioner previously addressed one of Respondent Gooding's other alleged additional sustaining grounds in Section I.A. herein. Respondent Gooding also falsely claims the Court may sustain the Final Term Sheet as a binding settlement because Petitioner's Petition for a Writ

of Certiorari did not reference the fact that there was no meeting of the minds. However, that argument was just one among many why the settlement was not binding, and Petitioner chose to leave it out due to space limitations. No court has ruled that the parties had a meeting of the minds with regard to the Final Term Sheet, nor would that be dispositive of the appeal with other settlement formalities were not met as discussed in Petitioner's Petition to this Court (and to every court below). See S.C. Code Ann. §§ 62-3-912 and -1102.

II. CONCLUSION

The correct result in this matter is as clear as it has been unnecessarily elusive; under South Carolina law, Petitioner has standing to appeal an order removing him as PR, appointing a Special Administrator, and compelling him to obey an alleged settlement that was not agreed to. The Petitioner, a humble fellow laborer for the just and equitable application of the law in this state, asks the South Carolina Supreme Court to treat him in kind, and to reverse the incorrect decisions of the Court of Appeals, Circuit Court, and Probate Court that have unjustly stripped him of his rights of judicial appeal to enter an agreement of his own accord.

Respectfully submitted,

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