The South Carolina Court of Appeals

APPEAL FROM YORK COUNTY

Daniel Dewitt Hall, Circuit Court Judge

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SC Court of Appeals

Appellate Case No. 2022-000682

Philip Pringle, as the duly appointed Guardian ad Litem for Alex Pringle, Respondent,

Vs.

Janet Mewshaw, individually and as Trustee, Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE ISSUES

I. Does the unappealed order September 15, 2021 conclusively establish that the Appellant wrongfully took possession of trust assets and converted them to her own use?

II. Did the Probate Court properly identify the assets that were to be part of the trust?

III. Did the Probate Court err in removing Appellant Mewshaw as the Trustee after finding she had failed to provide an accounting and had misappropriated over $141,320.00 in trust funds?

IV. Did the Probate Court give appropriate weight and consideration to the terms of the trust document?

V. Did the Probate Court err in ordering the home located at 507 Ann Shaw , Fort Mill, SC, the decedent's home, after it found that the Appellant Mewshaw had failed to pay fair market value rent for the home consistent with the terms of the trust while living there but instead used the trust funds which were for the benefit of Alex who was living in Colorado, to pay the mortgage and other expense of the home?

VI. Did the Probate Court err in considering and accepting the stipulated forensic accountant's analysis and opinion that more than $141,320.00 of trust moneys were misappropriated upon analyzing the trust moneys?

VII. Did the Probate Court err in ordering the Appellant Mewshaw to pay the attorney fees and costs to Respondent's attorney for having to prosecute this matter?

INTRODUCTION

The case is not about the wishes of a dying mother regarding her son but it is about the breach of trust and misuse of trust funds which were designated for the benefit of Alex Pringle, the minor child. Sabrina Pringle was married to Philip Pringle and subsequently divorced. They had a son, Alex Pringle and shared joint custody of Alex. Sabrina did develop cancer and on March 25, 2017, she passed away after a battle with cancer. Prior to her death, she prepared a will which created a testamentary trust and placed assets in trust for the benefit of her son and she named her mother, Appellant, as the Trustee (R. pp. 288-299). She had previously named Appellant as the beneficiary of the various IRAs and moneys which are the subject of this litigation in 2012 but in 2016, she changed the designation and named the trust for Alex as the beneficiary. (R. pp. 1243-1250). The will placed the home and other property in a trust. The will specifically provided, "The property payable to the Trustee as a result of my death, including any property given to the Trustee under this will, shall be retained in trust or distributed as follows:...." (R. pp. 289-290). In addition, the will left the residuary estate, being all of Sabrina Pringle's real and personal property not otherwise effectively disposed of, to the Trustee. (Will, Article III) (R. p. 288). The will contained various revisions which set forth the obligations of the Trustee and although the Trustee had wide discretion, all the provisions required the Trustee to use the trust for the benefit of Alex (R. pp. 289-299).

Of specific importance, Sabrina Pringle recognized that her home would become part of the trust (R. p. 288). It allowed the Mewshaws to rent the residence for fair market value. It also provided that the other terms and conditions of the rental agreement shall be determined by the Trustee. Finally, the will contained a provision that expressly recognized that Philip Pringle would be the custodian of Alex Pringle. (Will, Article VIII) (R. p. 287).

This lawsuit came about because when Appellant filed an action in Family Court, the existence of the trust became apparent and what was more relevant was the discovery Appellant was liquidating

the trust assets to fight for custody of her grandchild. Appellant had obtained forms from Merrill Lynch so as to bypass the trust with the transfer of the assets of the trust to the Appellant herself (R. pp. 1251-1317). While Sabrina Pringle appointed her mother as Trustee of assets, the case in Probate Court is about the Appellant invading the corpus of the trust to use the moneys for her benefit for living expenses, litigation expenses and personal expenses, refusing to use the money for her grandchild and refusing to provide an accounting.

STATEMENT OF THE CASE

Philip Pringle was appointed as the guardian ad litem for his son Alex Pringle in this lawsuit for the purpose of filing an action against Janet Mewshaw individually and as Trustee. (Order Appointing GAL) (R. p. 6). The lawsuit alleged various assets were part of a trust, sought an accounting of the trust assets, sought for the Trustee to be removed and sought to have an accounting firm named as the successor Trustee. (Complaint) (R. pp. 25-29). The Appellant filed an answer admitting various allegations including the fact that the home, a Merrill Lynch brokerage account with $49,655.25, an Ameritrade brokerage account with $50,315.45, a Merrill Lynch account with $19,670.13, and a Merrill Lynch account with $378,010.52 were all assets of the trust. The Appellant denied various other allegations of the complaint and denied that she should be removed but did admit that an accounting firm should be appointed to perform a forensic accounting. (Answer) (R. pp. 30-32). Charlene Controne was appointed as a forensic accountant to conduct an accounting of the trust assets, income and expenditures of the trust and requiring Janet Mewshaw, the Trustee, to cooperate and provide all records necessary to complete the accounting. (Consent Order) (R. pp. 7-8). The Consent Order provided that the trust would pay the accountant without prejudice to the Appellant to be required to repay the Trustee. (Consent Order July 23, 2018) (R. pp. 7-8). The Respondent filed a motion to amend the pleadings and the Appellant filed a motion to Quash Subpoena. The Respondent further moved to remove the Trustee. (Motion to Amend, Motion to Remove Trustee and Motion to

Quash) (R. pp. 40-44). The Court entered an order on February 18, 2019, requiring the Appellant to post a bond, froze all assets, granted Respondent's Motion to Amend the pleadings and required the Appellant to provide an accounting within 30 days of the date of the order (Order) (R. pp. 9-10). Plaintiff filed an Amended Complaint on March 5, 2019, asserting various causes of action to include removal of the Trustee, reimbursement of all monies to the trust which were to be determined to have been wrongfully taken by the Trustee, requiring Appellant to pay fair market value as rent for use of the home pursuant to the terms of the trust, and judgment against the Appellant. (Amended Complaint) (R. pp. 33-36). The Appellant filed an Amended Answer and served the same on April 2, 2019 (R. pp. 37-38). The case came before the court for a final hearing and the court entered an order on December 6, 2019 finding that Appellant had wrongfully withdrew and/or used substantial sums of money from the Merrill Lynch accounts and Founders Federal Credit Union for her own benefit and required her to repay the trust $141,320.00 for moneys wrongfully spent, repay the trust $17,600.00 for rent she had failed to pay while living in the home based upon the rental rate Appellant set, pay $8,300.00 to BNA CPA's which had performed the forensic accounting and to pay attorney fees of $10,612.70, for a total of $177,832.70 (Order December 6, 2019, page 7) (R. pp. 11-20; p. 18). The Order also appointed BNA Wealth Management Division, by and through Charlene Controne, as the Substitute Trustee and Brent Cannon as a Trust Protector pursuant to South Carolina code (Order of December 6, pages 7 and 8) (R. pp. 18-19). The court required the Appellant to turn over all remaining assets of the trust. The Appellant filed this appeal from the Court's Order.

Subsequent to Appellant filing the appeal, preparing the record for the appeal and the parties briefing the case, Respondent discovered evidence that had been hidden during the trial of the case and filed a Motion to Remand the case to the Trial Judge (Motion to Remand Case to Trial Judge) (R. pp. 1120-1193). The parties argued their positions before the court on January 19, 2021. Respondent argued and requested the court to remand the case to the Probate Court to reopen the record for newly

discovered evidence. The Appellant objected to the Remand. The Court issued an Order on January 27, 2021 granting the Respondent's Motion to Remand the case to the Trial Court (Order filed January 27, 2021) (R. p. 1111-1113). The Appellant's attorney was relieved, and Appellant hired Alex Imgrund to continue to represent her before the Trial Court, Probate Court. The Respondent noticed the deposition of Stephen Lang. Mr. Lang's deposition was eventually obtained on July 23, 2021. Mr. Lang was represented by counsel at this deposition. Appellant and Respondent both had attorneys as well. At the commencement of the deposition, the Respondent's counsel placed on the record that the deponent had produced three binders with Bates stamped pages 1 through more than 6000 and all parties agreed that as opposed to making all of it an exhibit, the parties would refer to documents by bates stamps numbers in the three binders. The parties agreed that the references to the bates stamps number would refer to the pages of the binders as it related to the exhibits, that way the more than 6000 pages would not have to be retained by the court reporter and copied as the parties had the documents (Lang depo, page 5 to 6, R. pp. 1236-1237) (Order filed November 23, 2021, R. pp. 21-24).

After the deposition, the parties returned to the Probate Court for a hearing on September 15, 2021 to argue that the record should be reopened and this evidence included in the record on appeal. Ms. Mewshaw did not object to the form of the deposition or the accuracy of the deposition when it was presented to the Probate Court. The Appellant Mewshaw argued other reasons for the Court to not accept the testimony of Mr. Lang. The Trial Court addressed the parole evidence rule and found that the parole evidence doctrine did not bar the admission of the evidence, deposition testimony. In addition, the Court found that the deposition testimony consists of admissions of Mewshaw which directly contradicted her trial testimony. "Lang's testimony as to Mewshaw's statements and the forms which Merrill Lynch presented to Mewshaw for her to liquidate the account, go to the very issues before the court, the funding of the trust." The Court further found that the Deadman's Statute

did not prohibit the introduction of Lang's testimony. The Trial Court found "Lang's deposition testimony establishes the Respondent [Mewshaw] received forms from Merrill Lynch for the purpose of liquidating the trusts which existed for the benefit of her grandson, the Respondent acknowledges on the forms that there is a trust but she has the authority to liquidate the trust, which is contrary to the terms of the trust and inconsistent with her prior testimony." The Trial Court then ordered that the record of the case is reopened and Lang's deposition testimony as well as the exhibits offered in the deposition were accepted. The findings supplement the December 6, 2019 Order as does the evidence accepted by the Court (Order filed November 23, 2021, R. pp. 21-24). The Appellant did not appeal this Order. Appellant filed and served on or about March 10, 2022 a Motion to Continue with Appeal of Probate Court Order (R. pp. 1194-1203). In the Motion, paragraph eight, Appellant sets forth that the Probate Court allowed into evidence the two exhibits referenced in the Motion to Remand so that they may be added to the Appellate record on appeal. Also, paragraph 10 sets forth that with the additional evidence admitted by the Probate Court (that being Lang's deposition and the exhibits of the deposition) supplemental briefing is warranted and then either an oral argument should be scheduled or a ruling on the briefs, including supplemental briefs should be issued by this Court. The Court granted the Motion to Continue with the Appeal, instructed the parties to submit supplemental briefing based upon newly discovered evidence accepted into the record by the Order of the Probate Court on November 23, 2021 and set the hearing for April 22, 2022. (Order filed April 6, 2022, R. pp. 1114-1116). This Order was not appealed. The Appellant filed a Supplemental Brief on April 21, 2022 the day prior to the hearing. The Court heard arguments on April 22, 2022. (Transcript of Hearing April 22, 2022, R. pp. 1204-1231). The Respondent referenced the deposition of Stephen Lang and the exhibits and the Trial Court's Order from September 15, 2021. (Transcript of hearing, R. pp. 1219-1222). The Court issued a Slip Order affirming the Order of the Probate Court dated December 6, 2019 (R. pp. 1112-1119). Appellant filed the within appeal, appealing only the

Slip Order filed on May 6, 2022 which affirmed the Probate Court Order of December 6, 2019. No other orders have been appealed.

STATEMENT OF FACTS

Sabrina Pringle died on March 25, 2017. She and Philip Pringle had a child, Alex Pringle, who is the primary beneficiary of the will. Sabrina Pringle had a will which created a trust for the benefit of Alex Pringle. (Exhibit 1, R. pp. 288-299). The residuary estate, being all of her personal property not effectively disposed of, was devised to the Trustee to be disposed of in accordance with the provisions of Article II of the will. In Article II, Sabrina Pringle specified that "The property payable to the Trustee as a result of my death, including any property given to the Trustee under this will, shall be retained in trust or distributed as follows:..." The beneficiary of the trust is Alex. (Exhibit 1, R. pp. 288-290). The Testatrix left assets to the trust both through the will and from investment accounts which had designation of beneficiary forms for direction of the recipient of the funds. The investment accounts (IRA's) designated as the beneficiary the "Trustee of the trust under the will of Sabrina Cannon Pringle dated September 30, 2016 and all codicils of such will." (R. pp. 314-316; pp. 1317-1319) (Also R. pp. 1319-1333)

The handwritten memorandum is irrelevant to the matters in this action as the Respondent has not contested the disposition of personal property distributed pursuant to the handwritten memorandum. Pursuant to South Carolina Code Section 62-2-512, a will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will other than money, evidence of indebtedness, documents of title, securities and property used in trade or business. Therefore, although a written statement was left, by statute, it did not and could not dispose of monies or other items other than personal property. Sabrina Pringle executed her will on September 30, 2016. Janet Mewshaw, who is named as the Trustee, was also the Durable Power of Attorney for Sabrina Pringle, the Power of Attorney having been filed in York County and

executed on February 23, 2015 (Will, Exhibit 1 (R. pp. 288-299) and Durable Power of Attorney Exhibit 2 (R. pp. 300-310)). Appellant had a statutory duty of good faith and fair dealing to both her grandson as the Trustee, and to her daughter Sabrina Pringle as her Durable Power of Attorney.

On the same day she executed her will, Sabrina Pringle executed a beneficiary designation form for Merrill Lynch accounts -9649 and -9651 designating the Beneficiary "Trustee of the trust under the will of Sabrina Cannon Pringle dated September 30, 2016 and all codicils of such will." (pages MLPF&S_Pringle 653 to 658; of Exhibit to Michael Blevin Deposition, R. pp. 934-939). This was a change from the designation of beneficiary Sabrina had filled out in 2012 wherein at that time she named her mother individually as the beneficiary (pages MLPF&S_Pringle 659 to 661 of Exhibit to Michael Blevin Deposition dated 9/12/2012 and Lang deposition (R. pp. 940-942; R. pp. 1249-1250). The same designation was included in the designation of beneficiary on the Ameritrade account. Appellant did transfer the Ameritrade funds into a trust account and Merrill Lynch set up the IRA's as trust assets after Sabrina's death (Lang Deposition, R. pp. 1265-1266). Appellant subsequently transferred the moneys from Sabrina Pringle's Merrill Lynch IRA accounts to accounts in her own name (Blevin Deposition (R. pp. 859-862) and MLPF&S_Pringle 982 and 1322 (R. p. 1017) and Lang deposition (R. pp. 1251-1281)). Steven Lang, Senior Financial Advisor, deposition testimony (R. pp. 1084) along with the forms from Merrill Lynch (MLPF&S pp. 6501 to 6504, R. pp. 1346-1349) establish that Appellant knew the assets were trust assets and that she had to complete certain forms in order to personally withdraw and/or transfer those assets to her own name. In addition, Appellant signed documents designating herself as a Trustee of the two accounts (Exhibits attached to Motion to Remand, R. pp. 1120-1193). The newly discovered evidence through Lang's testimony cleared up how the IRA accounts went from account numbers ending in 9649 and 9651 to the accounts ending with 1322 and 1336 which were in Appellant's individual name.

The will specifically states "The property payable to the Trustee as a result of my death, including any property given to the Trustee under this will, shall be retained in trust or distributed as follows:..." The IRA investment accounts list the Trustee of the trust as the designated beneficiary and therefore the Trustee is holding those monies as part of the trust as set forth in the documents. If both Janet Mewshaw and Brent Cannon, the Alternate Trustee, had died, the Successor Trustee would not be receiving the moneys in his or her individual capacity. Also of importance is that Sabrina Pringle did not list any contingent beneficiary when she named the trust because there was no need as the trust would be able to receive the funds.

This is not an action on a will or to construe a will. This is an action by the minor child requesting the Trustee of the trust to account for the corpus of the trust and to repay anything wrongfully spent (Amended Complaint, R. pp. 33-36). It is irrelevant whether the trust assets came through the will or from outside investments, the Trustee had a duty to collect and retain the assets left for the ward, Alex Pringle. The will which created the trust anticipated assets besides those flowing through the will to become part of the trust (Will, Exhibit 1, Article II, R. pp. 288-298).

The investment retirement accounts were to be paid to the Trustee of the trust. They were paid as a result of Sabrina Pringle's death. The will set up the trust but a Trustee has a duty to collect all assets for his ward and manage them for the benefit of the ward. The will also devised Sabrina Pringle's home to the trust but required the Appellant to pay rent (Will, Exhibit 1, Articles 1B and Article IIB(1)((b)) (R. pp. 288-291). The court accepted Appellant's testimony that the reasonable rental value was $1,600 per month (R. p. 188 lines 6-15, Appellant's testimony) The Mewshaws failed to pay $17,600.00 in rent as of the time of trial (Order, December 6, 2019, R. pp. 15-20). The Trial Court found that the Mewshaws owed the money back.

The monies from the Founders joint bank account likewise are monies that are and should be part of the trust. The monies were paid to Sabrina Pringle shortly before her death from Social

Security for Alex Pringle (R. p. 172 line 17 and p. 173 line 24, Appellant's testimony). These monies were for Alex Pringle and were not to be co-mingled with the personal monies of Sabrina or of Janet Mewshaw pursuant to federal regulations. The Trial Court found that the $21,141.00 of the Founder's account was Alex's and therefore should be part of the trust. This determination was based upon the accounting Charlene Controne performed and her reports which were introduced as Exhibits 8, 9 and 10 (R. pp. 318-330), and as explained through her testimony (R. pp. 191 to 216, line 23; R. p. 218 lines 1 to 193, R. p. 232, line 15). Also, Ms. Controne was clear that the amount she used in analyzing the Founders account was the $21,141.00 which was the amount deposited into that account from Social Security on behalf of Alex (Tr. p. 198, line 20 to 199 line 12) (R. p. 237, line 20 to R. p. 238, line 12).

Appellant testified that until late 2018, she believed all the monies were part of the trust. She filed a verified Answer acknowledging that the funds were part of the trust but was not able to provide an accounting (Answer, R. pp. 30-34; R. p. 105, line 11 o p. 107, line 20). Once it became clear to her the amount she would have to pay back to the trust, in February 2019, she decided the moneys were hers and not those of the trust. The evidence demonstrates that she had spent significant sums of money and could not account for the monies either.

The parties consented for Charlene Controne to be an expert and perform an accounting. She was qualified as an expert at the trial of this case. There was no objection to her testimony during her presentation. She provided the court with a summary. She met with Mr. and Mrs. Mewshaw. The testimony was provided as an expert to assist the court in its analysis.

The Appellant presented the testimony of Ms. Robinson who allegedly performed an accounting. The testimony of Ms. Robinson demonstrates that the Appellant did not provide Ms. Robinson information upon which to base an accounting. She created a report and Mr. Adams was to testify as to the actual accounting. During her cross examination, it became clear that she had

inaccurate and incomplete information and as a result she was not able to provide an accurate accounting (R. p. 26, line 22 to p. 273, line 20). The Appellants did not call their own expert Mr. Adams to the stand. Ms. Robinson assumed expenses for lawyers and litigation was related to this probate action and had no idea of the Appellant using the monies to attempt to acquire custody of Alex. Their own accountant did not realize that money was paid from Social Security to Sabrina and Ms. Mewshaw for Alex and was the money withdrawn from the Founders account (R. p. 264, line 14 to p. 265, line 3).

The Trial Court did remove Appellant as the Trustee (Order December 6, 2019, R. pp. 11-20). Appellant was not keeping accurate records (Tr. p. 89, R. p. 139), did not timely and properly pay rent, is and/or was involved in a foreclosure against her personal property in Florida on at least one or more occasions (R. pp. 142-144), had not provided the Trust Beneficiary an accounting of the trust (R. p. 162, line 14 to p. 163, line 10), did not provide an accounting consistent with the court's direction in its order of February 2019, and did not obtain a bond. The Trial Court made specific finding of fact as to the above in its Order (Order filed on December 6, 2019, R. pp. 11-20).

The Court did appoint Brent Cannon, Janet Mewshaw's son as a Special Trust Protector in order to monitor the expenditures of the trust and to facilitate Alex's relationship. The Court's decision is consistent with Brent's testimony that if he were the Trustee, he would hire another firm to manage the trust in any event (R. p. 279, line 3 to p. 280, line 12).

As set forth above, the Trial Court accepted and supplemented the record with Lang's testimony and issued the Order filed on November 23, 2021 and this Order made specific findings of fact that Appellant liquidated the trust funds contrary to the terms of the trust and which was inconsistent with her own trial testimony.

As it relates to Sabrina's estate planning, the will must be read and its entirety and the four corners of the will is what controls. A reading of the will establishes Sabrina established a trust

through the will with the clear directive that the "**Trustee shall hold such property and trust for the benefit of my son in accordance with the provisions of paragraph of this article entitled "Trust for Son."** Although a Trustee, and the Trustee has broad discretion, the clear obligation through the entirety of the trust document is that the Appellant was to use the monies for Alex's benefit and was to hold the money in a trust for Alex (Will) (R. pp. 288-299).

As it relates to the broad powers of the Trustee, the reference to all tangible personal property that was not held by me solely for investment purposes did not exclude the IRA accounts. Regardless, even if it was a reference to investment accounts, the accounts listed the trust has its beneficiary and therefore those monies became part of the trust. As it relates to the family home, the paragraph must be read in its entirety because it allows the Appellant and her husband to live there but pay fair market value for rent. Although the Appellant, as the Trustee, had the ability to set this rent, Appellant did not pay anything for more than 10 months and used the trust monies to pay the mortgage. Even though she had the ability to set the rent, she had the obligation to set a reasonable rent for the benefit of the beneficiary of the trust. In addition, the right to have discretion comes with the obligation to exercise that discretion in a reasonably prudent manner for the benefit of the beneficiary. The Appellant had a fiduciary duty to Alex. The Trial Judge made specific findings as it relates to the Appellant's failure to pay rent as well as her use of the monies for her own benefit (R. pp. 11-20 Order; R. pp. 318-335 Exhibits from trial).

As it relates to the powers of the Trustee, a reading of the various subsections in Article 5 establishes that the Trustee had an obligation to exercise those powers for the benefit of Alex. The Will references the fiduciary duty of the Trustee to Alex. The will clearly establishes that Sabrina intended for the Trustee to administer the trust for the benefit of Alex.

As it relates to the assets at issue, the Founders joint account is part of the trust. The Trial Court found that the portion of the Founders account which reflected Social Security benefits for

Alex's benefit should have been part of the trust. The court did not include the entirety of this account. The reasoning was that the Appellant not only became a fiduciary when she became the Trustee and Personal Representative, she was a fiduciary while Sabrina was alive as she held Sabrina's Power of Attorney. The monies paid by the Social Security administration for Alex's benefit should have been kept in a separate account and an accounting provided showing how they were used for Alex's benefit. As such, the Trial Court found the portion of that account solely related to those Social Security benefits were part of the trust.

The Merrill Lynch IRAs were clearly part of the trust. The Appellant acknowledged the same when she signed documents listing herself as the Trustee of those two accounts and then obtaining forms to bypass and liquidate those accounts. On the Merrill Lynch forms, the Appellant specifically references the fact that she is the Trustee of the funds for the two accounts. The Appellant sets forth that she assigns the trust interest in those IRAs to herself (MLPF&S 6498 to 6504, R. pp. 1344 - 1349). The two accounts, 9649 and 9651 which had $378,010.52 and $19,670.13 respectively, were trust assets and Appellant acknowledged they were trust assets as set forth above. Appellant signed forms transferring those accounts to account number 1322 and 1336. The only reason Merrill Lynch transferred those accounts to the Appellant individually was because the Appellant requested as Trustee that the accounts be transferred to herself individually. The letter from Lane referenced the accounts after the appellate liquidated via trust and established the accounts in her own name. All of this is set forth in the Court's Order from the hearing held on September 15, 2021, and such Order was not appealed so it is the law of the case.

Finally, the family home has been addressed previously. The minor child is living with his father in Colorado. The Appellants had been living in the home without the minor child and not paying rent. Sabrina recognized that Philip would have custody.

Finally, Charlene Controne, by consent, was tasked with the obligation and responsibility to perform a forensic analysis which she performed. Her report to the court clearly set forth her findings. The Court admitted this testimony after she was qualified as an expert. The court made a decision as to what weight to give to her testimony. The Court made its own findings of fact and conclusions of law. There was no objection to expert testimony at trial. The Appellant did not object to the report.

STANDARD OF REVIEW

In determining the standard of review, the Circuit Court applies the same standard of review when it considers an appeal from the Probate Court as an Appellate Court would apply on appeal. If the action is at law, the Court should uphold the findings of the Probate Court if there is any evidence to support them. If the action is equitable, the Circuit Court may make findings in accordance with its own view of the preponderance of the evidence. See **In re Estate of Weeks**, 329 S.C. 251, 260, 495 S.E.2d 454, 459 (Ct. App. 1997). If the proceeding in the Probate Court is in the nature of an action at law, the circuit court may not disturb the Probate Court's findings of fact unless a review of the record discloses there is no evidence to support them. On the other hand, if the probate proceeding is equitable in nature, the Circuit Court, on appeal, may make factual findings according to its own view of the preponderance of the evidence. As such, the issue of whether the action is equitable or at law determines the standard of review. An action to remove any personal representative is equitable in character. A petition to set aside a will is an action at law. **Id.** at 262.

In addition, as it relates to equitable actions, in conducting a de novo review, "We observed that de novo review allows an appellate court to make its own findings of fact; however, this standard does not abrogate two long-standing principles still recognized by our courts during the de novo review process: (1) a Trial Judge is in a superior position to assess witness credibility and (2) an Appellant has the burden of showing the Appellate Court that the preponderance of the evidence is

against the finding of the Trial Judge." **Stoney v. Stoney**, 422 S.C. 593, 595, 813 S.E.2d 486, 487 (2017).

In this case, there were several causes of action, one for the removal of Appellant as the Trustee and the other for the repayment of moneys that belong to the trust. The Trial Court's determination of the assets of the trust and the requirement of the Appellant to repay those moneys is an action at law. The Respondent was asking for and obtained a judgment against the Appellant. As such, if there is any evidence to support the Probate Court's decision, this court must affirm the decision including the amount. The Court's authority to order the removal of the Appellant as the Trustee is equitable and therefore subject to the de novo standard of review. The do novo review is guided with the provisions set forth above. In this case, the overwhelming evidence supports the Trial Court's decision in removing Appellant as the Trustee.

ARGUMENT

I. The Order of the September 15, 2021 hearing, the Order to Remand are the law of the case.

The law is well established that an order which has not been appealed is the law of the case. In this case, the Appellant has not appealed the Order on Remand or the Order from the hearing held on September 15, 2021. The Order for Remand granted the Respondent's Motion to Remand the case for the Trial Court to make additional findings and open the record. This Order has not been appealed. As a result, the Court entered the Order from the hearing on September 15, 2021 which added Mr. Lang's deposition testimony and exhibits to the record on appeal. This Order has not been appealed. Therefore, the findings from the September 15, 2021 Order is the law of the case (An unappealed ruling becomes the law of this case (**Mc-Lee Acquisition Fund, L.P. v. Dobilto Touche**, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997)). Those findings clearly establish that the Appellant breached her fiduciary duties and liquidated trust assets. Those findings establish that the Appellant knew that the IRA accounts were trust assets and bypassed the trust and transferred those monies to herself so

she could obtain the monies (Land deposition, R. pp. 21-24 and R. pp. 1238-1311). The process began when she tried to withdraw those monies herself and Merrill Lynch advised that she had to fill out certain forms. The findings of fact of this order conclusively establishes the wrongful conduct of the Appellant.

In addition, Respondent had objected to this appeal continuing because Appellant did not appeal timely the last order from the Trial Court, the Order from Remand (Motion, R. pp. 1111-1113). The Appellate Court issued an Order allowing the appeal to continue (R. pp. 1114-1116). Of significance is the Appellant's motion which specifically references Mr. Lang's testimony and exhibits. This is of utmost importance because Appellant, in her Brief, asserts that there are no exhibits with Mr. Lang's testimony. The assertion is contrary to the Order of April 6, 2022 as well as Appellant's own Motion (R. pp. 1194-1203).

II. <u>The Probate Court's determination of the assets of the trust was correct.</u>

The assets which the Appellant identifies as the assets at issue are the two Merrill Lynch IRA accounts, Founders Federal joint checking account, home at 507 Ann Shaw Avenue, the Merrill Lynch brokerage account and the Ameritrade brokerage account. In analyzing this case, the Appellant disputes that the Merrill Lynch IRA accounts are trust assets. As set forth above, the Appellant did not appeal the Order from the September 15, 2021 (R. pp. 21-24) hearing wherein the Trial Judge found that the Appellant acknowledged on the forms that there was a trust, that she had the authority to liquidate the trust and that such determination was contrary to the terms of the trust and inconsistent with her testimony at trial. (Order paragraph 8, R.. p. 24). First, the Appellant, in her verified Answer to the Complaint, acknowledged that the Merrill Lynch IRA accounts, brokerage account and the Ameritrade brokerage account were trust assets. Appellant acknowledged this from the filing of the Complaint through February, 2019. The Appellant had already transferred the IRA accounts to her own name while acknowledging that the accounts were trust assets. The Appellant did acknowledge

the Trust in that she did obtain a tax ID number for the Trust and transferred the Ameritrade brokerage account and the Merrill Lynch brokerage account to the Trust. The Appellant also signed documents as Trustee of these assets.

As it relates to the pleading, the Appellant did verify the answer wherein she admitted the Merrill Lynch IRA's are trust assets. In this case, the Appellant has not provided any evidence to allow her or justify her from changing that position in her subsequent answer. The Appellant did not present any evidence to show that there was any mistake or ignorance. Regardless, the IRA accounts were designated to be part of the Trust in the designation of beneficiary forms. As the court has noted:

> "parties are judicially bound by their pleadings unless withdrawn, ***294** altered or stricken by amendment or otherwise." ***Postal v. Mann***, 308 S.C. 385, 387, 418 S.E.2d 322, 323 (Ct. App. 1992). The allegations, statements or admissions contained in a pleading are conclusive as against the pleader and a party cannot subsequently take a position contradictory of, or inconsistent with, his pleadings and the facts which are admitted by the pleadings are taken as true against the pleader for the purpose of the action. *Id.* "Notwithstanding allegations to the contrary in his or her pleadings, a party is not precluded from showing the facts to be as they really are where his or her allegations are due to an honest mistake or ignorance as to the facts." 71 C.J.S. *Pleadings* § 89 (2011).

See **Gary v. Lowcountry Med. Trans., Inc.**, 424 S.C. 18, 817 S.E.2d 291, 293-294 (Ct. App. 2018)

To determine whether the Merrill Lynch IRA accounts were trust assets, the Probate Court must, and did, look at the creation of the trust. South Carolina Code Section 62-7-102 sets forth that the South Carolina Trust Code applies to express trusts. Express trusts include both testamentary and intervolve trusts, regardless of whether the Trustee is required to account to the Probate Court and includes, but is not limited to, all trusts defined in section 62-1-201 (44). The code, at section 62-1-201(44), defines trust as to include any express trust, private or charitable, with additions thereto, wherever and however created.

This court then looks at methods of creating a trust. South Carolina code section 62-7-401 provides a trust described in section 62-7-102 may be created by "(1) transfer of property to another

person **as Trustee** during the settlers lifetime or **by Will** or other disposition taking effect upon the settlers death; (2) written declaration signed by the owner of property that the owner holds identical viable property as Trustee." As such, the evidence is clear that the Merrill Lynch IRA accounts are trust assets as is the house, the Merrill Lynch brokerage account and the Ameritrade brokerage account. Sabrina Pringle created an express trust in her will that is to be in existence for a significant period of time for the benefit of her son. Sabrina Pringle clearly transferred her IRA accounts to the trust which was created in her will and the funding of the trust with the IRA moneys was specifically provided as part of her estate planning. The designation of beneficiary form for the IRA accounts designate the beneficiary as "The Trustee of the trust under the will of Sabrina Cannon Pringle, dated September 30, 2016 and all codicils of such will." The will established the trust. The trust came into existence upon the death of Sabrina Pringle. The Trustee is named in the will. The Trustee's duties are set forth in the will. The Will, Article 2, provides the definition of the corpus of the trust. The trust is to include property payable to the Trustee as a result of Sabrina Pringle's death, including any property given to the Trustee under this will. Therefore express language of the trust contemplates assets from both the estate and non-estate assets funding the trust. The designation of beneficiary directs that the IRA monies are paid to the Trustee as a Trustee. Therefore, the IRA funds were to be part of the corpus of the trust.

Steven Lang's one sentence statement was a reference to the accounts after Appellant signed forms as the Trustee to liquidate the accounts and the new accounts referenced in Lang's letter were set up in Appellant's individual name.

The determination of whether the IRA monies are trust assets is question of law. The record clearly and unambiguously establishes that the IRA monies are trust assets. Therefore, this Court should not reverse the Probate Court's determination. The plain language of the documents identifies these monies as becoming the corpus of the trust.

The Appellant acknowledges the home, the Merrill Lynch brokerage accounts and Ameritrade brokerage accounts are trust assets. The Appellant has spent the moneys from the brokerage accounts and has not provided any legitimate accounting.

III. <u>The Probate Court Properly Removed Janet Mewshaw as the Trustee and Named Charlene Controne of BNA as the Substitute Trustee</u>

In analyzing the Court's role dealing with this trust, even with an express trust, the terms of a trust prevail over any provision in the South Carolina Trust Code except "(1) the requirements for creating a trust; (2) the duties of a Trustee to act in good faith and in accordance with the purposes of the trust....(10) the power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice...." South Carolina Code Section 62-7-105. In addition, South Carolina Code Section 62-7-201 sets forth:

> (a) Subject to the provisions of section 62-1-302(c), the Probate Court has exclusive jurisdiction of proceedings initiated by interested parties concerning the internal affairs of trust. Proceedings which may be maintained under 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 trust. These include, but are not limited to, proceedings to....(4) appoint or remove a Trustee."

As such, this Court has the jurisdiction to remove the Appellant which was a claim in the Complaint. By accepting the trusteeship of the trust, the Appellant submitted herself personally to the jurisdiction of the courts of the state regarding any matter involving the trust. South Carolina Code Section 62-7-202 ("By accepting the Trustee of a trust having its principal place of administration in the 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.")

The next relevant statute to look to as it relates to the removal of the Appellant is South Carolina Code Section 62-7-706. This statute is entitled Removal of Trustee: " (b) The court may remove a Trustee if: (1) a Trustee has committed a serious breach of trust; (2) lack of cooperation among co-Trustee subsequently 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 trusty best serves the interests of the beneficiaries;..."

In addition, the Appellant had a duty to administer the trust as set forth in South Carolina Code Section 62-7-801. "Upon acceptance of a trusteeship, the Trustee shall administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with this article." The Appellant also owed the beneficiary, Alex Pringle, a Duty of Loyalty. South Carolina Code Section 62-7-802 provides: (a) A Trustee shall administer the trust solely in the interest of the beneficiaries. Also, the Trustee is to take reasonable steps to take control of and protect trust property. See South Carolina Code Section 62-7-809 (Control and protection of trust property).

The Appellant had a duty to keep records and identify the trust property pursuant To South Carolina code section 62-7-810. "(a) a Trustee shall keep adequate records of the administration of the trust.(b) a Trustee shall keep trust property separate from the Trustees own property. "In addition, the Appellant had a duty to inform and report to Alex Pringle relating to the trust regardless of the assets in the trust. South Carolina Code Section 62-7-813 imposed upon the Appellant the duty to inform the beneficiary of the existence of the trust and to provide at least annually an accounting as well as a listing of the trust property, liabilities, receipts and disbursements.

The Trial Court found the Appellant had not complied with her duties as a Trustee "The removal of a Trustee is within the Trial Court's discretion and will not be reversed absent an abuse of discretion. **Thim v. Perk**, 79 Ark. App. 20, 83 S.W. 3d 43(e), 433-34 (2002)..." **Floyd v. Floyd** 365 S.C. 56, 93, 615 S.C. 2d 465, 485 (Ct. App. 2005). The Appellant failed to discharge her duties as set forth in the above code sections. Regardless of which assets were in the trust, Appellant never gave an accounting. The Appellant took control of the IRA monies and used them for her own benefit. Appellant acknowledged that it was Sabrina Pringle's intent that the monies be held and used for the

benefit of Alex Pringle. The forensic accounting demonstrated that Appellant wrongfully withdrew over $116,328 from the various accounts for her personal use such as to pay attorneys to seek custody of Alex, to pay private investigators, to pay mortgage payments, etc. Appellant could not provide an accounting of the moneys and did not cooperate with the agreed-upon Court appointed forensic accountant. Appellant did not pay rent for the use of the home for ten months. The Appellant transferred the various amounts of money and used those monies for her personal gain. Appellant knew that her daughter Sabrina Pringle wanted the Trustee to use the assets to take care of Alex. The Trial Court had more than sufficient evidence upon which to make a determination that removal of the Appellant was appropriate (Controne Report, R. pp. 318-335).

As to the Alternate Personal Representative, the court appointed Charlene Controne. Ms. Controne testified as to the rates which the accounting firm would charge for maintaining the trust, filing tax returns and providing a report. In the pleadings, the Appellant did not request to substitute Brent Cannon. The court did appoint Mr. Cannon as the Trust Protector which enabled him to monitor the trust to ensure the funds were spent in a fiscally responsible manner consistent with desires of his sister. The court's appointment of both Charlene Controne and Brent Cannon are consistent with the statute which enables the Court to make such orders as are appropriate to ensure justice as it relates to the administration of the trust. Most importantly, the court's determination is for the benefit of Alex Pringle, the beneficiary of the trust.

IV. The Probate Court Did Not Ignore the Titles or Terms of the Trust or the Accounts as to Merrill Lynch IRAs and the Founders Checking Account

a. The Merrill Lynch Accounts

The Appellant argues that the IRAs belong to her individually. Appellant transferred the money to her name individually and set up the new accounts that way. The Appellant cannot rely upon her own bad conduct to justify her conduct. As set forth above, the Merrill Lynch forms Appellant signed and other documents establish that she acknowledge she's the Trustee. Appellant

also affirmatively stated she was the Trustee and had the ability to liquidate the accounts. There is no evidence of record to establish that the IRA accounts or Appellant's individual monies.

In addition, Sabrina's will does not carve out the investment accounts. The Will refers to tangible personal property. The IRA accounts (investment accounts) became a part of the trust by the designation of beneficiary forms at Merrill Lynch. Appellant closed the IRA accounts which were titled in Sabrina Pringle's name in October 2017 and opened new accounts with the new title in October 2017 (Deposition testimony of Michael Blevins, R. pp. 859-862). The investment accounts were not carved out. They are IRA's which have named beneficiaries. Sabrina, during her lifetime, changed the beneficiary from Janet Mewshaw, who was the beneficiary in 2012, to the Trustee of the Trust in September 2016. There was not a carve-out of assets. Sabrina made the funds become part of the trust when she put together her estate planning. In addition, the Will also sets forth in Article II as follows: "the property payable to the Trustee as a result of my death, including any property given to the Trustee under this wheel, shall be retained and trust were distributed as follows:" The beneficiary designation for the IRAs designate the payee as the Trustee of the trust. As such, the IRAs were payable to the trust as a result of Sabrina's death.

b. Founders Joint Account

The Probate Court included in the amount Appellant must repay, $21,141.00, which was transferred from Sabrina Pringle's bank account. The Probate Judge included the $21,141.00 because these were social security benefits payable for Alex which were co-mingled with Sabrina Pringle's moneys. The trial testimony demonstrated that these monies were paid in 2017 for Alex Pringle and were put in this joint account which Sabrina held with Appellant. Appellant forgets that not only was she appointed as the Trustee of the Trust for Alex Pringle, she was also Sabrina Pringle's duly appointed Power of Attorney. Appellant owed a fiduciary duty to Sabrina. In her role as a POA for her daughter, she should not have transferred the funds from the joint account to her own account.

Appellant owed a duty of good faith and fair dealing to Sabrina. Appellant never provided any accounting for Alex's monies received from Social Security. Appellant did not present a representative payee report on a Social Security form, SSA- 623 or 6230 or 6233 to account for the Social Security finds. No evidence was presented as to an accounting of Alex Pringle's Social Security benefits nor demonstrated that the moneys were spent for the benefit of Alex Pringle. As such, these Social Security benefits are monies which should be part of the trust as they are Alex Pringle's monies from Social Security. The Trial Court did not err and the record supports a decision that these monies belong in the trust. The fact that the account is a joint account with a right of survivorship is not relevant to this analysis.

V. The Probate Court Has Not Ignored Sabrina Pringles Wishes But Has Made a Decision as to 507 Ann Shaw, the Home, that Is In the Best Interest of the Trust and Its Beneficiary.

The Probate Court has not erred in ordering the home to be sold. First, the Trustee had a duty of good faith and loyalty. The Appellant took advantage of an opportunity to live in the residence rent free and was acting in her own interests and not those of the beneficiary. The Trustee owes back rent of $17,600. The rental rate was established from the testimony of the Appellant herself. The reason for selling the home is due to the concern about being able to maintain the home and maintain payments on the home. Appellant testified that her home in Florida had been in foreclosure. Appellant lived in this home without paying rent for almost a year's time. The monies which would be generated from the sale of this home would better benefit the beneficiary. In addition, liquidating this asset enables the monies to be invested and eliminate a significant risk such as the Appellant not being able to make payments and the home going into foreclosure. In doing so, the risk would be removed from the trust. Also, the minor child lives in Colorado and will not be residing in the home. The reasonably prudent decision would be for the home to be sold.

Although the will contains guidelines for the Trustee, the provisions of the trust require fair market value rent and other terms of the rental agreement to be determined by the Trustee. The Trustee cannot just ignore the requirement that the home be rented and say she can live there for free. The broad power to act does not enable a Trustee to fail to act. In this case, not only did Appellant fail to act by not putting in place a written lease agreement, she failed to pay any money for rent for a significant amount of time and believed she had the right to do so.

There is no evidence in the record that the home must remain in the trust. In addition, it is irrelevant to the analysis. Finally, Appellant's contention, which says that an award of back rent should be reversed as it is in contravention of Sabrina's desire, is erroneous. Sabrina intended for the home to be rented, not used rent-free. In this analysis, it is not an issue of whether rent was financially necessary; it is an issue of a duty of loyalty and following the guidelines of the trust which require a rental agreement. The Appellant failed to act and, by her own testimony, owes back rent of $17,600.

VI. The Probate Court Properly Relied upon the Testimony and Report of Charlene Controne, CPA, the Stipulated Forensic Accountant.

The parties, at the commencement of this action, consented to appoint Charlene Controne, CPA to perform a forensic analysis of the assets and expenditures of the trust to ascertain what should be in the trust and what had been spent. Ms. Controne met with Appellant and her husband. Appellant and her husband would not cooperate, would not provide all the receipts, and would not provide the statements for the accounts. Despite these obstacles, Ms. Controne was able to put together a forensic accounting of the assets which Sabrina Pringle owned on at or near the time of her death. Ms. Controne was able to trace those assets and to put together a report, explaining her findings and calculate an amount due back to the trust from the Appellant.

In addition, Appellant also, originally at trial, was going to call Mr. Adams to testify as to an accounting and his assistant Ms. Robinson prepared an accounting. This court should thoroughly review the cross examination of Ms. Robinson. What became apparent at trial was that Appellant

failed to disclose and actually misled her own expert to the extent that she could not put up the expert to testify about her own accounting. Appellant failed to disclose that significant transfers of money which she was justifying as legitimate expenditures from the brokerage accounts were used to pay lawyers and private investigators in a different case dealing with custody of Alex. The Appellant did not tell her accountant that she did not pay rent for the home. Appellant did not disclose that Social Security moneys for Alex Pringle's benefit were moneys in the Founders bank account.

In any event, Appellant did not present any testimony as to an accurate or different accounting. The Appellant was ordered to provide an accounting and she did not do so. The only testimony of record which gives an accounting of the monies Sabrina Pringle intended to become part of the trust was the complete, thorough accounting Ms. Controne provided to the court. Appellant makes accusations about Ms. Controne and her accounting methods. The Trial Judge is the one who accepted the accounting, the designation and the determination of what is and is not a trust asset. Had the court decided or found that one of the items should not have been included in the accounting, the court could have modified the amounts the Appellant owes and what should be part of the trust.

As it relates to cash for bank teller transactions, the Appellant is wrong in asserting that Ms. Controne simply assumed it was a wrongful withdrawal. Ms. Controne gave the benefit of the doubt on many transactions. One problem was that the Appellant did not keep records and did not have records. The minor child lives with his father. The Appellant did not have the right to use the monies for her own benefit. There was no evidence in the record at the trial of this case to attempt to justify Appellant's use of the moneys for a custody case, for private investigators or any of the other expenses, let alone the complete lack of documentation that the money was in fact used that way.

Appellant asserts that $15,000 was withdrawn from the Founders account on March 24, 2017. According to Appellant, Sabrina was incapable of handling any affairs as of March 24, 2017. Appellant withdrew those monies and place them in her own account. These were part of the Social

Security funds that belong to Alex. Appellant had a fiduciary duty to Sabrina and as Trustee, a fiduciary duty to the beneficiary Alex. She breached both with her self-dealing. Appellant asserts in her brief that the funds were possibly used to reimburse Sabrina. The problem is that Appellant was withdrawing funds and transferring them to herself which included the Social Security funds for Alex's benefit. The Appellant did not provide any evidence at trial that there was no self-dealing as it relates to the withdrawals from the joint account. At the time of the deposit and these transfers, Sabrina was not able to handle her affairs.

There is no basis for this court to disregard Controne's testimony or report. In analyzing this case, there is substantial evidence of record to support the Trial Courts decision as it relates to appointing control as the Trustee with Sabrina's brother involved as well.

In summary, Ms. Controne was thorough, and the court could have accepted all, none or a part of her report because it was thoroughly explained and itemized. No other report was provided. Ms. Controne was qualified as an expert. The documentary evidence supports this analysis.

VII. The Court Did Not Err In The Award of Attorney Fees and Costs.

In this action, the court has authority to fashion a remedy for breach of trust.

Pursuant to South Carolina Code Section 62-7-1002:

(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.

In this case, the Trustee was ordered to provide an accounting previously but failed to do so. The Trustee was ordered to provide a bond but failed to do so. The Respondent was forced to engage counsel to protect the trust in discovery and present the self-dealing and breach of trust to the court. The parties agreed the forensic accountant and the accounting firm would be paid from the trust and the monies could be reimbursed to the trust at the end of the case. South Carolina Code Section 62-7-1004 allows for attorney's fees and costs.

As it relates to the amount of attorney's fees, this issue was not raised with the Trial Court and therefore is not preserved. The family court order referenced was not part of the record in this action and the trial judge did not have that order in making its decision. The Appellant's request to take judicial notice of another court order in another action in this appeal is improper. Appellant further mistakes the facts as the attorney fee affidavit sets for the fees and costs which included costs that were still pending at the time of the hearing. The attorney fee affidavit sets for the balance owed after giving credit for the $17,500.00. The Appellant did not object to the attorney fee affidavit. The attorney fees submitted in this action as set forth in the attorney fee affidavit are correct and the fees are related to this probate proceeding. The Appellant never asked for the court to hold a subsequent hearing on the attorney fees. As such, the court should deny the Appellant's position as there is evidence of record to support the decision as to the amount and the award of attorney fees.

CONCLUSION

For the reasons set forth above, Respondent respectfully requests this court to deny Appellant's request. As to the matters which were decided as matters of law, there is evidence in the record to support the same, specifically the identity of trust assets and amount of money which Appellant wrongfully withdrew and owes back to the trust. As to the equitable issue, removal of the Trustee, the court clearly made the proper decision. The evidence of record demonstrates without a

doubt the Appellant breached her fiduciary duties to the beneficiary. By her own testimony, she used assets which she acknowledged were trust assets to pay attorneys, private investigators and living expenses and also failed to pay any rent for use of the trust assets. By all accounts, the Trustee breached her duties. Therefore, this court should uphold the order.

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May 19, 2023

The South Carolina Court of Appeals

APPEAL FROM YORK COUNTY
Daniel Dewitt Hall, Circuit Court Judge

RECEIVED
May 19 2023
SC Court of Appeals

Appellate Case No. 2022-000682

Philip Pringle, as the duly appointed Guardian ad Litem for Alex Pringle, Respondent,

Vs.

Janet Mewshaw, individually and as Trustee, Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 210(g), SCACR.

May 19, 2023

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SC Court of Appeals

PROOF OF SERVICE

I certify that I have served this Final Brief of Respondent on the following attorney at the following mailing address on this 19th day of May, 2023:

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