IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Probate Court

Amy W. McCulloch, Richland County Probate Judge

Trial Court Case No. 2020GC4000072
Appellate Case Nos. 2022-001328 and 2022-001226

Jane E. Baskin .....Respondent,

v.

William B. Walkup .....Appellant.

BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Did the probate court abuse its discretion in removing William Walkup as trustee over the trust created in the Will of Eldridge Baskin ("Settlor" or "Mr. Baskin") "to provide for the well being of Jane E. Baskin so long as she shall live" when it failed to consider the applicable statutes and failed to honor the intent of the Settlor as expressed in the Will?

2. Did the probate court err in finding Walkup in contempt of a "Temporary Settlement Agreement" when he instituted a separate, unrelated legal action pursuant to his duties as Trustee?

3. Did the probate court err in awarding attorney's fees and costs to Baskin as against Walkup?

INTRODUCTION AND SUMMARY OF ARGUMENT

At the time of his death in 1990, Mr. Baskin sought to provide for his only child, Jane Baskin, for the remainder of her lifetime through a trust created by his Will. (R. at 1466-70). Baskin suffered and continues to suffer from cerebral palsy. (R. at 751:21-52:1). As of the time of trial, Baskin was 76 years old, fully disabled, and in need of significant care, (R. at 1459-61), and, thus, Baskin's life expectancy was an additional 12.34 years. *See* S.C. Code Ann. § 19-1-150.

Mr. Baskin trusted William Walkup, a cousin with experience managing money, to be the trustee. By all accounts, Walkup successfully invested the trust's assets. (R. at 161 ¶¶9-10, 1443:21-23). In addition, Baskin's counsel conceded that Mr. Walkup "is genuinely a good person." (R. at 1444:2-4).

The dispute in this matter arises from Baskin's wishes versus Walkup's efforts, within the discretion afforded to him by the Will, to make sure the trust lasts for the remainder of her lifetime. The probate court, sympathetic towards Baskin, failed to consider the Will as a whole and failed to apply the applicable statutory provisions in assessing whether removal was appropriate. This was an abuse of discretion requiring reversal.

STATEMENT OF THE CASE

Baskin filed this action in the Richland County Probate Court on July 20, 2020, seeking removal of Walkup as trustee and an accounting. (R. at 190-200). The complaint did not include a demand for attorney's fees.

Walkup answered on August 26, 2020, asserting as defenses a general denial, failure to state a claim, and the prudent investor rule as codified in S.C. Code Ann. § 62-7-933. (R. at 201-04). Walkup subsequently amended his answer twice and asserted a counterclaim for attorney's fees and costs pursuant to S.C. Code Ann. § 62-7-1004. (R. at 575-79). The operative answer

included as additional defenses the applicable statute of limitations, waiver, estoppel, and the undue influence of third parties. (*Id.*). Baskin denied the allegations of the counterclaim. (R. at 271-72).

After extensive discovery, the parties filed cross motions for summary judgment. (R. at 210-29, 230-70). Baskin argued that Walkup failed to provide accountings as required by S.C. Code Ann. § 62-7-813, that her interests would be served by removal under S.C. Code Ann. § 62-7-706(b)(3), and that there had been "serious breaches of trust" requiring removal pursuant to S.C. Code Ann. § 62-7-706(b)(1). (R. at 210-29). Baskin further sought an award of attorney's fees to be paid by Walkup, individually.

Walkup's summary judgment motion first clarified that given the Settlor's death in 1990, § 62-7-813 does not apply by its express terms ("Subsections (b)(2) and (b)(3) of this section apply only to a trustee who accepts a trusteeship on or after the effective date of this article, to an irrevocable trust created on or after the effective date of this article, and to a revocable trust which becomes irrevocable on or after the effective date of this article."). (R. at 230-70). Walkup then argued there were no grounds for removal under §§ 62-7-706 and -813 given the language of the will, the lack of evidence of harm or misconduct, and the performance of the trust between 1990 and the present. Walkup further argued that this action was time-barred by S.C. Code Ann. § 62-7-802(b)(3) because the events complained of by Baskin should have been apparent in 2018 given correspondence between the parties and their counsel at that time. In addition, Walkup argued that the prudent investor rule of § 62-7-933 provided a complete defense because he acted at all times in reasonable reliance on the language of the Will. He also sought an award of attorney's fees.

The probate court denied both motions by order dated December 19, 2020. (R. at 1-3). As to Baskin's motion, the court found there was conflicting testimony and, thus, that there were

genuine issues of material fact. The court found that § 62-7-813 did not apply, but refused to grant summary judgment in Walkup's favor because Baskin had also claimed general breach under § 62-7-706. With respect to the limitations period, the court found there was a question of fact as to whether Baskin was on notice of a claim in 2018. The court further found there were questions of fact as to the prudent investor rule and whether there had been any acts giving rise to removal under § 62-7-706.

The matter then proceeded to trial on January 4-6, 2021. On the morning of January 6th, and before Walkup could present his full defense, the parties "agreed to a temporary suspension of the litigation in an effort to truly come to a resolution, although temporary in nature, today for the parties to attempt a new progress forward." (R. at 1198:9-13). After expressly reserving the right to finish presenting his case, counsel for Walkup agreed. (R. at 1198:18-99:4). The probate court confirmed that his rights were reserved and counsel for Baskin agreed. (R. at 1199:10-1200:2). The trial was then suspended. (R. at 1200:3-01:7).

The parties entered a Temporary Settlement Agreement, which was filed with the probate court on January 6, 2021. (R. at 122-23). Under the agreement, this case and the issue of attorney's fees were both stayed. (R. at 122 ¶1). Walkup remained trustee "solely to continue to manage the money for investment purposes[.]" (*Id.* at ¶2). Alex Weatherly was appointed special trustee and was to receive $6,425/month for distribution "as needed for the care of Ms. Baskin." (R. at 122-23 ¶¶3-8). Baskin was to be moved into her home on February 1, 2021. (R. at 123 ¶9). Lastly, the parties agreed that this was a "temporary solution" and that they would provide the Court with a status update by July 16, 2021. (*Id.* at ¶10).

Baskin almost immediately sought attorney's fees. (R. at 275-306). In reliance on the stay, Walkup did not respond. Then, Baskin filed a motion seeking to amend the Temporary Settlement

Agreement, asking for increased distributions. (R. at 307-08). Only later, after the probate court requested a proposed order granting the fees on July 27, 2021, did Walkup realize that the probate court and Baskin were both operating as if the Temporary Settlement Agreement was, in fact, a permanent agreement. (R. at 309-28).

On October 12, 2021, the probate court converted a status conference into an emergency hearing. An order followed on October 29, 2021. (R. at 4-6). The court, outraged that Walkup wanted to present the rest of his evidence and did not want the temporary agreement to be permanent, and based on the court's apparent belief that the temporary arrangement was working well for Baskin, found that the Temporary Settlement Agreement "remains in effect and controlling in this case moving forward" absent a court order or further agreement by the parties. The probate court then rewrote the temporary agreement to increase the payments to Baskin. Lastly, the court set the trial to resume on December 21-22, 2021.

Concerned about the probate court's conduct and the appearance of partiality toward Baskin, Walkup moved to recuse on November 19, 2021. (R. at 324-28). The probate court stayed the resumed trial until the motion to recuse could be considered. (R. at 7-8). The probate court denied the motion and set a date for trial to resume by order dated April 28, 2022. (R. at 10-19).

Before the trial resumed, Baskin filed a motion on June 30, 2022 seeking to hold Walkup in contempt or, in the alternative, to enforce "settlement" and for sanctions relating to an action filed by Walkup in Lexington County ("contempt motion"). (R. at 528-65). The trial ultimately resumed on August 5, 2022. At the close of the evidence, Walkup presented a motion for dismissal and judgment and for a directed verdict. (R. at 580-94). The motion included many of the same arguments made at the summary judgment stage, including the inapplicability of S.C. Code Ann. § 62-7-813 given the date the trust became irrevocable, the lack of evidence showing cause for

removal under S.C. Code Ann. § 62-7-706, the applicable statutes of limitations, and the prudent investor rule of S.C. Code Ann. § 62-7-933.

Following the trial, each party submitted petitions for attorney's fees. (R. at 637-38, 651-700). Prior to ruling on the merits, the probate court held an additional hearing on Baskin's contempt motion.

By order dated August 23, 2022, the probate court removed Walkup as trustee. (R. at 149-71). The order includes an "analysis of testimony." This "analysis" includes extensive notes as to Baskin's witnesses and a very abbreviated summary as to Walkup's witnesses. (Compare R. at 152-57 with R. at 157-59). By way of example, the probate court includes only four sentences about the testimony of Anne Webster, Baskin's first cousin, who testified about Baskin's history and her history with respect to her finances and cast doubt on Baskin's credibility as a witness. (R. at 159, 1291:9-1327:2).[1]

As far as the actual findings of fact, the court's findings were more narrow and generally limited to financial and reporting matters. (R. at 160-63). The court then struck each of Walkup's defenses in turn, finding there was not "any evidence" of undue influence, that the disclosures to Baskin's counsel in 2018 did not "disclose the existence of a potential breach," and that the trustee should be removed because the interest defined by the trust was "the care of Baskin" and "Walkup was required to account with transparency, documentation, and clarity for the benefit of Baskin." (R. at 164-71). The court went on to create its own definition of what the required accounting or reporting would be, completely divorced from any case law or applicable requirement of the South

[1] As succinctly stated by Webster, Baskin "had issues with anyone who had control over her money." (R. at 1300:18-19). Webster further rebutted many of the concerns raised by Baskin prior to this action ever being brought. (R. at 1304:6-11, 1515-16).

Carolina Trust Code. (R. at 169). In addition, and in contravention to the language of the Will, the court added its own requirements for disclosure of conflicts of interest. The court further found the prudent investor rule did not apply, notwithstanding the language of the Will.

By orders dated August 31, 2022, the probate court further found Walkup to be in contempt and subject to a $3,500 sanction and awarded Baskin attorney's fee as against Walkup, individually, in the amount of $129,625.80. (R. at 173-88). The contempt ruling imposed sanctions and awarded sanctions based on the probate court's perception that Walkup had violated the terms of the Temporary Settlement Order by filing a lawsuit in Lexington County. The probate court denied Walkup's fee request in full by order dated September 16, 2022. (R. at 189)

By agreement of the parties and consistent with S.C. Code Ann. § 62-1-308(l), appeal was made directly to the appellate courts, rather than the circuit court. Walkup filed two notices of appeal, which have since been consolidated by this Court. The orders on appeal are: (1) the August 23, 2022 order removing Walkup as trustee; (2) the April 28, 2022 order denying Walkup's request for recusal; (3) the order on the Contempt Motion; (4) the August 31, 2022 order granting attorney's fees to Baskin; and (5) the September 16, 2022 order denying Walkup's request for attorney's fees.

FACTS

Eldridge Baskin died on September 21, 1990. (R. at 149). Baskin is his only child. (R. at 749:12-17). She suffers from cerebral palsy and has not worked or been able to drive for many years.[2] (R. at 751:21-52:1, 1441:3-5). To provide for his daughter, Settlor's Will left certain real and personal property to Baskin outright, as follows:

> [M]y house and lot located at [] Summerlea Drive, Columbia, South Carolina, all of my interest in two parcels of land containing 5.79 acres and 6.26 acres in Lee County, South Carolina, all of my interest in that certain tract of land containing 21.62 acres in Lee County, South Carolina, and all my personal and household effects of every kind including, but not limited to, furniture, appliances, furnishings, pictures, silverware, china, glass, books, jewelry, wearing apparel, any and all automobiles, and all policies of fire, burglary, property damage, and other insurance on or in connection with the use of this property.

(R. at 1466-70). The Will also included a trust as follows:

> All the rest, residue, and remainder of my property, both real and personal, of which I may die seised and possessed, I give, devise, and bequeath unto my trustee, hereinafter named, in trust, to be held, administered and distributed as hereinafter provided for the sole benefit of my daughter, Jane E. Baskin, **the sole purpose of the trust created hereunder being to provide for the well being of Jane E. Baskin so long as she shall live**. **This will and the provisions thereof are to be construed in the light of this purpose** and while this shall not have the effect of limiting in any way the power, authority or discretion of the trustee hereunder, **it shall at all times be borne in mind by the trustee when considering the matter of any encroachment upon the principal of the trust created hereunder**.
>
> The trustee shall receive, take and hold the properties and assets of the trust created hereunder and shall invest and reinvest the same, and collect and receive the income therefrom, and, after payment therefrom of all proper costs, charges and expenses, shall dispose of the net income and principal for the benefit of Jane E. Baskin as follows:

[2] Her entire work history consisted of two months at a florist and one day at a dog parlor. (R. at 2504:17-05:7). By Baskin's admission, she had not driven since 1990. (R. at 1441:3-5). By Walkup's account, she stopped driving years later when she could not produce a letter from her doctor certifying that she could drive after a wreck in 2007. (R. at 1065:25-66:10, 1332:15-24 (Baskin's physician testifying that he did not receive any correspondence from Walkup relating to Baskin's ability to drive)).

> (1) **So long as my daughter, Jane E. Baskin, shall live, the trustee shall pay to or apply for the benefit of my said daughter all of the net income of the trust in such manner as my trustee shall deem suitable.**
>
> (2) My trustee may, and shall be authorized and empowered, **in its complete and absolute discretion**, to encroach upon and make disbursements from principal to or for the benefit of Jane E. Baskin, at any time and from time to time, in such amount **as my trustee may deem proper**, for the medical care, comfortable maintenance, and welfare of my said daughter, taking into consideration to the extent my trustee deems advisable, any other income or resources of my said daughter known to my trustee.

(*Id.*) (emphasis added).

The personal representative and trustee was given "absolute discretion" and broad powers with respect to "any property, real or personal, at any time held under any provision of this Will[.]" (*Id.*). These broad powers included the ability to self-deal ("In buying and selling assets, in lending and borrowing money, and in all other transactions, irrespective of the occupancy by the same person of dual positions, to deal with itself in its separate, or any fiduciary, capacity."). (*Id.*). The enumerated powers conclude with the following directive, "[i]n general, to exercise all powers in the management of my estate or the trust estate which any individual could exercise in his or her own right, **upon such terms and conditions as it may deem best**, and to do all acts which it may deem necessary or proper to carry out the purposes of this will." (*Id.*) (emphasis added). Walkup was named as personal representative and trustee, and no successor was named. (*Id.*).

By all accounts, Walkup has been a good investor of trust assets, the principal of which has grown from $135,000 to over $500,000. (R. at 161, 170, 2466-68). In addition, the record is clear

that Walkup went to great efforts to ensure that Settlor's death benefits were paid in the form of an annuity, which continues to provide income for Baskin's benefit.[3] (R. at 1040:16-41:12).

Under the Temporary Settlement Agreement, Baskin received distributions of $6,425/ month. (R. at 122-23). The probate court later increased that amount to $8,105/ month. (R. at 4-6). Based on Walkup's calculations, if Baskin continued to spend funds at that rate, the trust would be exhausted within 34 months (R. at 1459:6-14, 170), leaving Baskin with only $860/month from social security and the annuity (R. at 153). Baskin had more than 12 years or remaining life expectancy at the time of trial. S.C. Code Ann. § 19-1-150. Neither Baskin nor the probate court offered any guidance on what will happen to Baskin after the trust funds run out. (R. at 812:20-22). Only Walkup presented a plan that would prevent the lifetime exhaustion of the trust. (R. at 1264-65). The crux of the dispute stems from Baskin's desire for more funds and greater autonomy versus Walkup's actions taken in hopes that the funds will last until the end of Baskin's life as required by the terms of the Will. (*See* R. at 170).

[3] As testified by Walkup,

> When [Mr. Baskin's] wife died in December of '89, he had an annuity, survivors annuity, that would give his wife, prior to the time, would give his wife benefits when he died. But whenever she died, he changed that to the maximum benefit with no survivor benefit at all. I discovered that after his death, and I called the Government Employees Association in Columbia and they referred me to Washington, and I dealt with them over about a six-month period of time, and I told them that he had just passed away with cancer and because of his illness, he wasn't thinking clear and he should have had his benefit reduced so that there would be a beneficiary annuity. After six months worth of work, they finally agreed to send that annuity, which I think now is something like $600 a month. It was less than that at that point. And they agreed to send it to me as the trustee of the trust. Had I not done that, there would've been no annuity at all.

(R. at 1040:16-41:12).

STANDARD OF REVIEW

"Trusts have long and broadly been a field for the jurisdiction of equity." *Epworth Orphanage v. Long*, 199 S.C. 385, 389, 19 S.E.2d 481, 482 (1942). On appeal from an action in equity, this Court may find facts in accordance with its view of the preponderance of the evidence. *Townes Assocs., Ltd. v. City of Greenville,* 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976); *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 105, 531 S.E.2d 287, 290-01 (2000). Thus, this Court can consider the record as a whole and is not bound by the one-sided "Analysis of Testimony" included in the probate court's order.

ARGUMENT

I. The probate court failed to consider the language of the Will as a whole and the applicable law in finding that Walkup should be removed as trustee.

Eldridge Baskin's confidence in Walkup has been well-justified. As of the trial in this matter, the principal had increased to roughly $575,000, and Walkup had a plan for providing for Baskin from the trust for the rest of her expected lifetime. (R. at 2164-65, 2466-68).

"The removal of a trustee is within the trial court's discretion and will not be reversed absent an abuse of that discretion." *Floyd v. Floyd*, 365 S.C. 56, 93-94, 615 S.E.2d 465, 485 (Ct. App. 2005), *overturned on other grounds due to legislative action.* As set forth below, the probate court committed several errors of law constituting an abuse of discretion.

Under S.C. Code Ann. § 62-7-706(b), a court may remove a trustee if:

(1) the trustee has committed a serious breach of trust;

(2) lack of cooperation among cotrustees substantially impairs the administration of the trust;

(3) because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries; or

(4) there has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

For purposes of section 1, a "serious breach of trust" is "either: a single act that causes significant harm or involves flagrant misconduct, or a series of smaller breaches, none of which individually justify removal when considered alone, but which do so when considered together." S.C. Code Ann. § 62-7-103(24). As an initial matter, the probate court did not make any finding of harm. Nor could it, given the performance of the trust. Therefore, there could not have been a "serious breach of trust."

Section 2 is inapplicable here. With respect to sections 3 and 4, the comments make clear that the "interests of the beneficiaries" are not to be defined by the beneficiaries, but rather "means the beneficial interests as provided in the terms of the trust." S.C. Code Ann. § 62-7-706 at cmt. "Friction between the trustee and beneficiar[y] is ordinarily not a basis for removal." *Id.* Friction is built into the trustee-beneficiary relationship because a trustee holds the money that a beneficiary wants; otherwise, a settlor would simply give the money to the beneficiary outright. Nothing in § 62-7-706 allows for removal of a trustee solely because the beneficiary wants the trustee removed or because the beneficiary wishes the terms of the trust were different.

The probate court's order removes Walkup for the following reasons:

a. serious breach of Trust;
b. because he is no longer fit to administer the Trust effectively;
c. because he is unwilling to do what is best for the Trust and Trust's beneficiary;
d. because of his persistent failure to administer the Trust effectively;
e. removal of Walkup best serves Baskin;
f. there has been a substantial change of circumstances in that the relationship between Walkup and Baskin has deteriorated to a toxic level of litigation;
g. removal has been requested by Baskin, the only qualified beneficiary, and removal of Walkup best serves the interests of Baskin and is not inconsistent with a material purpose of the Trust; and a suitable Successor Trustee is immediately available as

> Weatherly has served as Special Trustee since January of 2021 and Baskin is competent and with the assistance of Weatherly and Moseley can find a replacement Successor Trustee.

(R. at 171). As discussed below, the court erred in finding that there was a "serious breach of trust" and its findings with respect to the "beneficial interests of the beneficiaries" and the "material purpose" of the trust. Accordingly, the decision to remove the trustee must be reversed.

A. The probate court misconstrued the Will by focusing on the phrase "to provide for the well being of Jane E. Baskin" to the exclusion of the remaining portions of the Will, including the intent that she be provided for "so long as she shall live" and the broad discretion and powers given to the personal representative and trustee.

At common law and by statute, the first principle of the construction of wills is that the testator's intention as expressed in the will controls. S.C. Code Ann. § 62-2-601(A) and Rptr's Cmt.; *King v. S.C. Tax Comm'n*, 253 S.C. 646, 649, 173 S.E.2d 92, 93 (1970). As stated in *King*,

> The primary purpose in construing a will is to determine *from the entire instrument* the intent of the testators as expressed in the words used. Such intent, when so found, must be given effect unless it contravenes some well settled rule of law or public policy. *We cannot consider the will piecemeal; but must attribute due weight to all of its language, giving effect to every part, if under a reasonable interpretation, all of the provisions can be harmonized with each other and with the will as a whole*.

Id. (citations omitted) (emphasis added); *see also Page v. Page*, 243 S.C. 312, 315-16, 133 S.E.2d 829, 831 (1963) ("In the administration of a trust, the intent of the testator is of controlling importance. Such intent is to be gathered from the words of the provision, but these words are to be interpreted in the light of the rest of the will in order to determine the intention."); S.C. Code Ann. § 62-7-112 ("The rules of construction that apply in this State to the interpretation of and disposition of property by will also apply as appropriate to the interpretation of the terms of a trust and the disposition of the trust property."). Interpretation of an unambiguous will is a matter of law for the court. *Du Bose v. Kell*, 105 S.C. 89, 89 S.E. 555, 557 (1916).

Here, "the sole purpose of the trust created hereunder being to provide for the well being of Jane E. Baskin so long as she shall live." (R. at 1466-70). The Settlor further stressed that principal payments to Baskin could be made, but only in the discretion of the trustee and as the trustee "may deem proper." (*Id.*) The probate court erred in focusing solely on the "well being" of Baskin as determined by Baskin's wishes rather than by deference to the language of the Will as a whole and the broad powers and discretion given to the trustee. The court elevated the wishes of the beneficiary above those of the Settlor as expressed in the Will. This was error.

The fundamental conflict in this case is not between Baskin and Walkup. Instead, it is a conflict between Baskin and her deceased father and the estate plan he created in his Will. Baskin disagrees with the broad grants of discretion that her father gave to the Trustee, particularly with respect to the distribution of principal. Baskin seeks much larger distributions that are in direct conflict with her father's direction that the trust's purpose is to provide for her welfare for her entire life, and her father's direction that those distributions shall be as deemed proper by his appointed trustee, Walkup.

The selection of the trustee, particularly an individual, is a critical component of an estate plan. As stated in the comment to S.C. Code Ann. § 62-7-706, "the settlor's confidence in the judgment of the particular person whom the settlor selected to act as trustee is entitled to considerable weight." In this case, the Settlor selected a relative, who was known to the testator as a talented money manager and investment adviser. (R. at 2541:2-22).

As is evident from the language of the Will, Mr. Baskin depended on his trustee to follow his instructions, and granted to him the maximum discretion to do so in the hope that the trust would "provide for the well being of Jane E. Baskin so long as she shall live." (R. at 1466-70).

Walkup takes that charge seriously, testifying in his deposition presented at trial by designation as follows:

> I'm not serving as a trustee for any kind of financial reasons, I am serving as a trustee because Eldridge Baskin made me make that pledge, and I know that God expects me to do my best to take care of her to keep her from -- from dying in the middle of the night in a fire, to -- to keep her from being taken advantage of, in any shape or form. And -- and I'm not gonna give up on my obligations to Jane. I love her in spite of the -- the -- the difficult, false information she's -- has stated about me, I still love her and care for her. And always will. It -- it's --that's not gonna ever change. I'm not gonna let false information or imagination of false items stand in the way of doing the job that I'm expected to do.

(R. at 2599:10-25).

Walkup testified about Mr. Baskin's concern that his daughter would not manage money wisely and his charge to Walkup that he would need to manage the funds for the rest of Jane's life. (R. at 2541:2-22). That testimony was echoed by Anne Webster, who testified that Jane's inability to manage money was "[t]he reason the money was not left to her in the first place[.]" (R. at 1302:1-15).

As a general premise, "[t]he powers of a trustee are either mandatory or discretionary." *Page*, 243 S.C. at 315, 133 S.E.2d at 831. Here, the Will gives the trustee discretion as to the disposition of both the income and the principal. With respect to the income, the trustee is required to either pay it to Baskin or apply it for her benefit "in such manner as my trustee shall deem suitable." With respect to the principal, the trustee has complete discretion to make payments for Baskin's benefit as the trustee may deem proper.

In *Page*, the will in dispute provided in part,

> All the rest, residue and remainder of my estate, . . . I give, devise and bequeath the same to my trusted friend, Edwin L. Lucas, as Trustee, the same to be expended for any emergent needs of my son, Kermit R. Page, and my three grandchildren, Victoria Lee Page, Carolyn Louise Page and James Edward Page, **the Trustee to be the judge of the necessity of paying out any of said funds**. This is to provide

> against any misfortune to my said son that would incapacitate him as a provider for himself and his family, or any unforseen happening to any of the said children that would make necessary any expenses that my said son could not reasonably meet.

Id. at 314, 133 S.E.2d at 830-31. A frustrated beneficiary sought to convert this discretionary provision into a mandatory one. In dismissing the beneficiary's petition, the court articulated three important precedents that should have guided the probate court's decision in this case, as follows:

> 1. "In the administration of a trust, the intent of the testator is of controlling importance."
> 2. "If the trustee exercises his discretionary power in good faith, without fraud or collusion, the Court will not interfere or control his discretion." Or otherwise stated, the probate court cannot supplant the trustee's discretion simply because it might have made a different decision.
> 3. "The burden is not upon the trustee to show good reasons for its actions but rather is upon those who question its actions to prove an abuse of discretion."

Id. at 315-17, 133 S.E.2d at 831-32. This Court has articulated these basic rules as follows:

> It is self-evident that the establishment of a trust involves some degree of confidence in the integrity, ability, and genuineness of another individual or entity, the trustee. This truism is given increased credence when the trustee is bestowed a discretionary power, which the trustee may either exercise or refrain from exercising. When determining the extent of a trustee's discretionary power, courts should keep in mind that the allocation of discretionary authority is done out of a desire to obtain the trustee's honest judgment, perhaps even to the exclusion of the judgment of the court. The mere fact that if the discretion had been conferred upon the court, it would have exercised the power differently is not a sufficient reason for interfering with the exercise of the power by the trustee.

Estate of Stevens v. Lutch, 365 S.C. 427, 431, 617 S.E.2d 736, 738 (Ct. App. 2005) (internal quotations and citations omitted).

Here, the probate court failed to consider the language of the Will as a whole, substituted its discretion for that of the Settlor's hand-chosen trustee, and appeared to place the burden on the trustee to justify his actions, rather than on the beneficiary to establish an abuse of the trustee's discretion. Baskin did not allege any abuse of discretion and did not attempt to prove her case by reference to the trustee's powers as set forth in the Will, nor did the probate court find there had

been an abuse of that discretion. Instead, again and again, the probate court looked to the wishes of the beneficiary without any regard for the language of the Will and the discretion of the trustee.

The probate court's conclusions resting on the premise that the sole purpose of the trust was "the care of Baskin" (R. at 167) or "caring for Baskin" (R. at 170) must be reversed in light of the plain language of the Will. Similarly, any finding relating to Baskin's wishes rather than "the beneficial interests as provided in the terms of the trust" must be reversed for failure to correctly apply S.C. Code Ann. § 62-7-706.

In removing the Settlor's chosen trustee, the probate court completely disregarded the portion of the Will directing that "the sole purpose of the trust created hereunder being to provide for the well being of Jane E. Baskin so long as she shall live." (*Id.*). Compounding this error, the court further disregarded the Will's direction that the trustee was to have broad discretion in fulfilling that purpose and substituted its own judgement for that of the trustee.

Perhaps the best illustration of this is in the "Material Purpose" section of the removal order, which provides:

> Eldridge Baskin created the Trust for the sole purpose of caring for Baskin. It is also clear that when the Trust was created Eldridge Baskin trusted Walkup to take this responsibility.
>
> Walkup argues that he had a duty to maintain her care for her life, for her entire life, and therefore, had a duty to be frugal. Walkup has maintained that he, while taking care of her basic needs, grew her Trust from the cash value of $135,000.00 to over $500,000.00. Walkup has taken the position that Baskin will live another twelve (12) plus years and that at the current budget that allows Baskin to live in her home, the money will be exhausted in thirty-four (34) months. Walkup argues that is why he was very determined that she should be moved to a nursing home where her care can be provided and the costs would be lower. Baskin does not challenge that Walkup has been a good investor and has made lots of money for the Trust. She is determined to stay in her home for as long as she can and this should be supported for as long as it can.
>
> **Walkup's removal as Trustee will not undermine the material purpose of the Trust. In fact, the material purpose of caring for Baskin will be better served by someone who can work with Moseley, Baskin's Agent, and Weatherly,**

Baskin's Special Trustee and personal attorney, without delay, challenge and controversy.

(*Id.*). This section of the order is in direct opposition to the Will and its clear directive that the trust should provide for Baskin for the rest of her life, fails to consider the discretion of the trustee, and rests solely on the wishes of the beneficiary. Surely, Settlor's interpretation of "well being of Jane E. Baskin so long as she shall live" would not include Baskin's living destitute, as would be the case if the trust were exhausted during her lifetime.

The probate court did not make any finding of bad faith, fraud of collusion, and as such, there was no basis for second guessing the discretionary actions of the trustee. Instead, the court based its entire ruling on Baskin's wishes rather than those of the Settlor. This error underlies all of the reasons given by the probate court for removing Walkup as trustee and amounts to an abuse of discretion. Therefore, the probate court's removal of Walkup as trustee must be reversed.

B. The probate court failed to apply the applicable law in its analysis of the duties of the trustee, substituting its own ideas about what those duties ought to be.

1. Walkup complied with his duty to inform and report under the applicable statute.

Baskin's counsel acknowledged that reporting was the crux of this matter. (R. at 1411:20-22 (asking a witness, "[w]ell the whole case here is about [Walkup's] failure to report . . . .")). In its order, the probate court fixated on its own notions about the duty to inform and report, and those findings were the basis of its determination that there had been "a serious breach of trust." (R. at 167-71). However, in doing so, the probate court either created its own standards or applied inapplicable code provisions. (*Id.*).

This trust, which became irrevocable upon Settlor's death in 1990, is controlled by the version of the trust code that was in place in at that time, which provided:

> From the time at which a trust becomes irrevocable, the trustee shall keep the beneficiaries of the trust reasonably informed of the trust and its administration and, in addition:
> (a) within thirty days after his acceptance of the trust, the trustee shall inform in writing the current beneficiaries and if possible one or more persons who under § 62-1-403 may represent beneficiaries with future interest of his name and address;
> (b) *upon reasonable request*, the trustee shall provide the beneficiary with a copy of the terms of the trust which describe or affect his interest and with relevant information about the assets of the trust and the particulars relating to the administration;
> (c) *upon reasonable request*, a beneficiary is entitled to a statement of the accounts of the trust annually and on termination of the trust or change of the trustee.

S.C. Code Ann. § 62-7-303 (1990) (emphasis added); *see also* Act No. 539, 1986 S.C. Acts 3821-22. The Comment adopted with the statute further provided,

> Section 62-7-303 governs the duty of a trustee to inform the trust's beneficiaries concerning the administration of the trust. The section (a) mandates timely, written, initial disclosure of the trustee's acceptance of the trust, (b) provides for further disclosure of detailed information relevant to the interests of the beneficiaries *requesting it*, and (c) provides for annual and terminal disclosure of the accounts of the trustee to those beneficiaries *requesting them*. *Importantly, there is no mandatory reporting to the probate court and continuing reporting to the beneficiaries is required only if they request it.*

(Emphasis added). As the comment makes clear, there is no continuing or mandatory reporting to the beneficiaries unless requested. Nor is any particular form or format required. Nor is there any requirement that the trustee be able to instantly generate any requested information. The probate court committed an error of law in ruling otherwise. (*See* R. at 167-71).

The record shows that Walkup visited Baskin shortly after her father's death and explained to her what was in the trust. (R. at 778:19-79:4). In addition, he provided information as requested by Baskin's counsel in 2008 and in 2017-2018. (R. at 779:25-80:3, 1471-74, 786:18-25, 1525-80, 1583-92, 1595-99, 1602-1700, 1703). In doing so, he complied with the applicable statute with respect to reporting, which only charges the trustee with responding to beneficiary requests.

The probate court repeatedly erred in imposing obligations beyond those found in the statute. For example, on page 17 of the removal order:

> Walkup remained under a duty to report and an even higher duty to be transparent because so many concerns had been raised and so many questions had been asked. Lost on Walkup and Mr. Bruner was that this duty to report was a recurring, important and annual duty, not a 'one and done'. Baskin was not required to demand her reportings every year to get them. Therefore, in October of 2019, without the need for demands or prompting, Walkup should have produced another annual accounting. This did not happen. It did not happen again until this court required him to report in October of 2020.

(R. at 165). The truth of the matter is that the language of the statute was lost on the probate court, not on Walkup nor Walkup's former counsel, Benjamin Bruner. As reflected in Bruner's affidavit, which was submitted to the Court in lieu of live testimony (R. at 1209:2-10:1), Bruner and Baskin's counsel, Alex Weatherly, "engaged a correspondence exchange including dozens of emails and letter, in addition to meeting in person, and telephone calls" between April 2017 and March 2020. (R. at 2611-12; *see also* R. at 1527-80, 1583-92, 1595-1700, 1703-09, 2314-14). Bruner further attested that "all of the documents and information that were requested of Mr. Walkup or me by Mr. Weatherly, on behalf of Ms. Baskin, were provided to Mr. Weatherly." (R. at 2611-12).

The probate court quoted and appears to have applied the current version of this statute as well as a 2005 amendment, neither of which is applicable to trusts which became irrevocable prior to its effective date. S.C. Code Ann. § 62-7-813; Act No. 66, 2005 S.C. Acts ____. In addition to the express statutory language, the comments to each of these versions of the statute indicate that they are intended as a change to the law. *Id.* at South Carolina Cmt. (the amendment "expands upon" the obligations imposed under the prior statute); S.C. Code Ann. § 62-7-813 (stating that amendment "completely revise[s]" the duties under this section). Given this language and these comments, there is no reason to believe that the obligations imposed by these statutes predated

their enactment. *See Cannon v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 371 S.C. 581, 584, 641 S.E.2d 429, 430 (2007) ("It is presumed the Legislature, in adopting an amendment to a statute, intended to make some change in the existing law.").

Under the language of the applicable statute, the probate court further erred in finding that the trustee was required to provide anything beyond "a copy of the terms of the trust which describe or affect his interest and with relevant information about the assets of the trust and the particulars relating to the administration" or "a statement of the accounts of the trust annually" and then only "upon reasonable request." The court added its own requirements as follows: (1) "list of assets in the Trust, their current value, all income to the Trust, all debts and expenses paid from the Trust, outstanding liabilities of the Trust, and what the Trustee is paying himself to serve as Trustee"; (2) that the trustee "has a mandatory duty of obtaining and keeping records, reviewing and organizing at least annually in a way that he could provide at the 'push of a button' or the 'pull of a file', if asked"; (3) "Once Walkup invested Baskin Trust money in Equity95 and Columbia Cash Reserve, entities *he* owned or owned a portion of, he created a presumption of a conflict of interest. The presumption can *be* overcome by reporting how the funds are invested and what fee or compensation the Trustee is receiving as the investor. Walkup was required to report this to Baskin, at least annually, <u>without being asked.</u>" (R. at 169-70). All of these findings rest on an error of law and, as such, amount to an abuse of discretion requiring reversal.

2. There was no improper conflict of interest given the language of the Will, which allows the trustee the discretion "to deal with itself."

With respect to any possible conflict of interest, the probate court failed to acknowledge that the Will expressly allows the trustee "to deal with itself." As such, there is nothing suspect about any transaction involving Walkup under S.C. Code Ann. § 62-7-802(b)(1) ("Subject to the rights of persons dealing with or assisting the trustee as provided in Section 62-7-1012, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless: (1) the transaction was authorized by the terms of the trust[.]"). Instead of looking to the Will and to section (b) of the statute, the probate court focused on section (c) and the current version of S.C. Code Ann. § 62-7-813 to find there were certain mandatory reporting requirements. (R. at 169-70). The court then used that failure to report as the basis for presuming some improper conflict of interest. Once again, the court applied its own view of how things ought to be as opposed to considering the Will as a whole and the applicable statutory requirements. This was reversible error.

3. Any claim of breach in this case is barred by the prudent investor rule.

All claims against Walkup are barred under Section 62-7-1006 because he, at all times, acted in reasonable reliance on the terms of the trust, and therefore, cannot be liable to Baskin for any breach of trust. *See* S.C. Code Ann. § 62-7-1006 ("A trustee who acts in reasonable reliance on the terms of the trust as expressed in the trust instrument is not liable to a beneficiary for a breach of trust to the extent the breach resulted from the reliance."); S.C. Code Ann. § 62-7-933 (adopting Uniform Prudent Investor Act). The terms of the trust are clear and give Walkup substantial powers. After reciting on page 22 that the "Trust language give[s] broad authority to

Walkup," the probate court ignored this statute and the provisions of the Will and again based its ruling on its deemed reporting failures. (R. at 170). This was error.

4. The probate court erred in failing to apply the applicable limitations periods.

Walkup responded to requests for information from Baskin's attorneys in 2008 (Rita Cullum) and 2018 (Alex Weatherly), and hearing nothing further, assumed that adequate information had been provided. (*See* R. at 779:25-80:3, 1471-74, 786:18-25, 1525-80, 1583-92, 1595-99, 1602-1700, 1703, 2611-12,1527-80, 1583-92, 1595-1700, 1703-09, 2314-14). To the extent Baskin was not satisfied, she or her agents should have inquired further or brought action within the applicable statute of limitations, which is one year. S.C. Code Ann. § 62-7-1005. Section 1005 provides, in pertinent part, that "a beneficiary may not commence a proceeding against a trustee for breach of trust more than one year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust." S.C. Code Ann. § 62-7-1005(a). Under South Carolina law, the discovery rule is inherent in any statute of limitations. *Poly-Med, Inc. v. Novus Sci. Pte. Ltd.*, 437 S.C. 343, 350, 878 S.E.2d 896, 900 (2022). Therefore, "[t]he limitations period begins to run when a party knows or should know, through the exercise of due diligence, that a cause of action might exist." *Id.* (quoting *Anonymous Taxpayer v. S.C. Dep't of Revenue*, 377 S.C. 425, 439, 661 S.E.2d 73, 80 (2008)).

Here, Baskin was represented by counsel with respect to her requests for information in 2008 and in 2017-2018, and Cullum and Weatherly, as counsel, should have been aware of the trustee's duties and whether the information provided was adequate to satisfy counsel's request for information. For example, on October 6, 2018, Bruner followed up with Weatherly to make

sure there were no further complaints. (R. at 1701-02). Thus, any claim relating to reporting should have been brought no later than October 6, 2019.

The probate court declined to apply this statute of limitations while at the same time using what it deemed to be inadequate reporting with respect to each of the 2008 and 2018 requests as part of the basis for finding that there had been a "serious breach of trust." As argued above, the responses provided by the trustee were in fact adequate and consistent with the statute. However, even if the reportings were insufficient to satisfy the trustee's duty, they were certainly sufficient to put Baskin and her counsel on notice of any potential claim relating to reporting.

The probate court, after acknowledging the Complaint was filed "after the one-year statute of limitations," inexplicably found that since the reportings were insufficient, Baskin and her counsel were not on notice of the existence of a potential breach with respect to reporting and therefore the statute was not triggered. (R. at 165). This was error.

Similarly, any claims against Walkup regarding the investment or management of trust property "entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests" are barred under S.C. Code Ann. § 62-7-802(b)(3) because Baskin did not bring her lawsuit within the time specified in S.C. Code Ann. § 62-7-1005. The probate court's reasoning here again hinged on its erroneous findings relating to reporting. (R. at 171). As a result, the probate court's determination that any claims relating to the investment or management of trust property must be reversed.

C. Walkup has served as charged by Mr. Baskin since 1990, there has been no change of circumstances, and there is no suitable successor trustee given the language of the Will.

In addition to the errors with respect to the purpose of the trust and the trustee's duties as discussed above, the probate court erred in its analysis of S.C. Code Ann. § 62-7-706(b)(3)-(4). As an initial matter, the probate court considered Baskin's wishes rather than the statutorily-required "beneficial interests as provided in the terms of the trust." S.C. Code Ann. § 62-7-706 at Cmt.

This error led the court to find that there was "unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively" as set forth in § 62-7-706(b)(3). (R. at 23). It further found that "removal of Walkup best serves Baskin." (*Id.*). This is not a basis for removal under the statute, particularly in light of the Will's language. Baskin does not get to determine how and when the trust's funds are spent, nor does the probate court. As plainly set forth by the Settlor, the trustee has broad discretion to make those decisions, subject to the directive that the purpose of the trust "shall at all times be borne in mind by the trustee when considering the matter of any encroachment upon the principal of the trust created hereunder."

Moreover, as discussed above, Walkup was the Settlor's choice to be trustee and that decision should be respected. The probate court's sole statement as to change in circumstances is that the relationship has "deteriorated to a toxic level of litigation."[4] That statement, however, is

[4] With respect to the "toxic level of litigation," the evidence indicates that the tension between the terms of the trust and Baskin's own wishes became more severe as Baskin's condition worsened and Baskin befriended Michele Moseley, now her power of attorney and the beneficiary of Baskin's will. Walkup's first notice of this new relationship was when he received a bill from Moseley for caretaking services, a job for which she had no training and for which she had not been hired by Walkup. (R. at 2590:25-92:7). In insisting that the Walkup pay Moseley, Baskin tried to overrule her father's grant of discretion to Walkup over principal encroachments. It was, at this point, that the relationship between Walkup and Baskin began to change, culminating in

unrelated to the administration of the trust and whether the "the beneficial interests as provided in the terms of the trust" have been met. Here, there has been no change in circumstances since 1990 that would justify robbing the Settlor of his choice of trustee. Mr. Baskin's faith in Walkup is underscored by the absence of any named successor trustee. Walkup has been a good steward of the trust's resources and how to make those resources last until the end of Baskin's life. Given the stated purpose of the trust, there is no basis for the removal of Walkup under § 62-7-706(b)(4).

For all of these reasons, the probate court erred in removing Walkup as trustee. To the extent the Court reverses the removal of Walkup as trustee, the probate court's ruling relating to trustee fees for 2021 and 2022 must also be reversed. Again, if there was no breach and removal was not warranted, Walkup is entitled to be paid consistent with the terms of the Will.

II. The probate court erred in failing to recuse itself in this matter.

"Under South Carolina law, if there is no evidence of judicial prejudice, a judge's failure to disqualify himself will not be reversed on appeal." *Patel v. Patel*, 359 S.C. 515, 524, 599 S.E.2d 114, 118 (2004); *Roche v. Young Bros., Inc.*, 332 S.C. 75, 85, 504 S.E.2d 311, 316 (1998). "[A] judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to, instances where he has a personal bias or prejudice against a party. It is not sufficient for a party seeking disqualification to simply allege bias; the party must show some evidence of bias or prejudice." *Id.* at 84-85, 504 S.E.2d at 316*; Mallet v. Mallet,* 323 S.C. 141, 147, 473 S.E.2d 804, 808 (Ct. App. 1996). "A judge's impartiality might reasonably be questioned when his factual findings are not supported by the record." *Roche,* 332 S.C. at 85, 504 S.E.2d at 316.

Baskin's attorney instructing Walkup to have no further personal interaction with Baskin. (R. at 1093:21-24, 1595).

As of the emergency hearing on October 12, 2021, it became apparent that Walkup would not get a fair trial in this matter and that the probate court was angry at the suggestion that the trial should be completed. (*See* R. at 127-45). The probate court's only concern was "what was working for Baskin" and not Walkup's desire for a full and fair hearing. (R. at 4-6, 130-31, 134-35 at 4-5, 8-9). Walkup moved to recuse based on the probate court's indication that fees would be awarded to Baskin, even before the trial was completed. (R. at 324-28).

Rule 501, SCACR requires that a judge perform judicial duties without bias and prejudice and not manifest in the performance of judicial duties bias and prejudice by words and conduct. *Id.* at Canon 3(B) (7). Furthermore, a judge must accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. *Id.*. And a judge, while a proceeding is pending in its Court, must not make public comment that might reasonably be expected to affect its outcome or impair its fairness and/or make non-public comment that will substantially interfere with a fair trial or hearing. These mandates are intended to preclude a judge from showing impropriety, prejudice, and bias. Such conduct creates in reasonable minds the perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired. *Id.* at Canon 2(A) and Commentary.

As of the motion to recuse, the record reflects an appearance of partiality, bias, and prejudice on the part of the probate court. On the two occasions referenced in the motion, the court showed its willingness to rule against Walkup before hearing his evidence. As such, the court was required to disqualify itself from further proceedings in this matter pursuant to Rule 501, SCACR, Canon 3(E).

This is not a case where prejudice and bias are gleaned from results after the fact. Instead, the probate court expressed its partiality, bias, and prejudice *upfront*, without hearing all of the

arguments and evidence. This pattern continued from the time of the motion through all subsequent orders by the probate court as reflected by the probate court's insistence of ignoring the terms of the Will and the applicable law, as well as later finding Walkup in contempt. Quite simply, the probate court had decided the Temporary Settlement Agreement was the best solution for Baskin and was angry that Walkup wanted to have his day in court. For this reason, in the event this Court does not reverse this matter outright, this matter should be remanded for a new trial before an impartial court.

III. The probate court erred in finding Walkup in contempt.

In considering an appeal from a contempt finding, this Court will consider the following:

> Civil contempt occurs when a party willfully disobeys a clear and definite court order. In the context of civil contempt, an act is willful if it is done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or disregard the law. Contempt must be proven by clear and convincing evidence, and the record must demonstrate the specific contemptuous act. We review contempt orders for abuse of discretion, meaning we may only disturb them if they are based on incorrect law or inadequate evidence.

Campione v. Best, 435 S.C. 451, 457-58, 868 S.E.2d 378, 381 (Ct. App. 2021), *reh'g denied* (Jan. 12, 2022), *cert. denied* (Sept. 8, 2022) (internal quotations and citations omitted). In this case, the probate court found Walkup in contempt and sanctioned him $3,500 for taking actions he believed were consistent with the Temporary Settlement Agreement in filing a separate lawsuit in Lexington County against Alex Weatherly and Michelle Moseley. (R. at 173-80).

The Temporary Settlement Agreement retained Walkup as trustee for investment purposes and stayed *this* litigation. (R. at 122-23). It did not prevent him from pursuing litigation involving different parties in a different forum. Thus, there is no indication that Walkup filed the Lexington County suit "with bad purpose either to disobey or disregard the law." The burden was on Baskin to prove contempt with clear and convincing evidence, and she failed to do so.

Instead of applying the basic law relating to contempt, the order on the Contempt Motion further reflects the probate court's ill will toward Walkup. (R. at 173-80). It cannot be lost that the Temporary Settlement Agreement only stayed litigation in this present matter. It did not prevent Walkup, as trustee or individually, from filing a separate lawsuit in another jurisdiction and venue. Moreover, the Temporary Settlement Agreement provided that his role as trustee was "to manage the money for investment purposes." If he believed the funds were being misused by third parties, he had an obligation to stop such conduct, including filing a lawsuit to do so. For all of these reasons, the trial court committed an abuse of discretion in finding that Walkup was in contempt of the Temporary Settlement Agreement and any orders or sanctions relating thereto.

IV. The probate court erred in not awarding attorney's fees to Walkup and in awarding attorney's fees to Baskin as against Walkup in his individual capacity.

In the event this matter is reversed, the award of attorney's fees to Baskin must be reversed, and attorney's fees and costs should be awarded to Walkup as he is the prevailing party and justice and equity requires such an award. *See* S.C. Code Ann. § 62-7-1004 ("In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.").

CONCLUSION

The probate court was blinded by its sympathy for Baskin, and in an effort to accommodate her, it ignored the Will and the applicable law. As such, the orders on appeal must be reversed.

Respectfully submitted,

s/ Sarah P. Spruill

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