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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Probate Court

The Honorable Amy W. McCulloch
Richland County
Trial Court Case No. 2020GC4000072

Appellate Case Nos. 2022-001226 and 2022-001328

Jane E. Baskin…….…….Respondent,

v.

William B. Walkup…….……...Appellant.

FINAL BRIEF OF RESPONDENT

---

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ATTORNEYS FOR RESPONDENT JANE E. BASKIN

Columbia, South Carolina
July 10, 2023

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STATEMENT OF ISSUES OF APPEAL

1. Did the Probate Court properly exercise its discretion and remove Appellant Walkup as Trustee pursuant to S.C. Code Ann. § 62-7-706(b) after it concluded that Appellant Walkup committed serious breaches of trust, is no longer fit to administer the Trust effectively, removal was not inconsistent with the sole material purpose of the Trust, removal best served the sole beneficiary's interests, and a suitable successor trustee was available?

2. Did the Probate Court properly exercise its discretion by awarding attorney's fees and costs to Respondent Baskin and refusing to award Appellant Walkup his attorney's fees after Appellant Walkup engaged in two years of what was essentially "scorched earth" litigation seeking to remain as the Trustee of the Eldridge Baskin Trust?

3. Did the Probate Court properly exercise its discretion by denying Appellant Walkup's motion for recusal?

4. Did the Probate Court properly exercise its discretion and sanction Appellant Walkup after he violated the "Temporary Settlement Agreement" by filing a lawsuit in the Lexington County Court of Common Pleas in his capacity as Trustee of the Trust and alleging issues identical to those set forth in his pleading in the Probate Court?

STATEMENT OF THE CASE

This case is a dispute between Respondent Jane E. Baskin ("Respondent Baskin"), the sole beneficiary of the Eldridge Baskin Trust ("Trust"), and William B. Walkup ("Appellant Walkup"), the trustee of the Trust. When he passed away in 1990, Eldridge Baskin created the Trust as a testamentary trust in his Last Will & Testament (the "Eldridge Baskin Will") for the sole benefit of Respondent Baskin, his only child. The Eldridge Baskin Will named Appellant Walkup as initial trustee. Respondent Baskin is now 76 years old and has suffered from cerebral palsy for most of her life.

On July 20, 2020, after several fruitless attempts to avoid litigation through negotiation, Respondent Baskin filed this action seeking removal of Appellant Walkup as trustee and an accounting of the Trust. Appellant Walkup denied that he should be removed, asserted certain affirmative defenses, and counterclaimed for his attorneys' fees. Appellant Walkup later alleged that Respondent Baskin was unduly influenced and coerced by Michele Moseley, Respondent Baskin's caregiver and attorney-in-fact, into bringing this lawsuit. Through the litigation, Michelle Nunn was appointed guardian *ad litem* ("GAL Nunn") by the Court. GAL Nunn completed two separate reports related to Respondent Baskin, one in November 2020 and another in June 2022.

Trial began in this case on January 4, 2021, and Respondent Baskin completed her case-in-chief in a day. Appellant Walkup testified in his own behalf the next day. Then, on January 6, 2021, the parties agreed to a "Temporary Settlement Agreement." While the parties agreed to certain temporary changes to the Trust administration, each reserved all rights in the litigation. Appellant Walkup later disputed the effect of the Temporary Settlement Agreement, which the Court addressed in its "Order Regarding Emergency Hearing" on October 29, 2021.

Trial was rescheduled for December 21, 2021, but before trial reconvened, Appellant Walkup filed a motion for Probate Judge Amy W. McCulloch to recuse herself from the case. The Probate Court denied this motion in its "Order Denying Motion for Recusal" entered on April 28, 2022.

In June 2022, Appellant Walkup filed a complaint in the Lexington County Court of Common Pleas related to the administration of the Trust and did so purportedly under his authority as trustee of the Trust. However, filing the complaint as trustee conflicted with his limited authority under and the stay of the litigation provided by the Temporary Settlement Agreement. Respondent Baskin then moved for a contempt order and sanctions in the Richland County Probate Court.

Trial recommenced in August 2022. On August 23, 2022, after four total days of trial, the Probate Court exercised its discretion to remove Appellant Walkup and issued its "Order Removing Trustee," finding among other things that Appellant Walkup should be removed for "serious breach of trust," failure to report and inform the beneficiary adequately, failure to consider Respondent Baskin's best interests and well-being, self-dealing/conflicts of interest, and the Trustee's inability to work with the beneficiary and her caregivers. Above all, the Court concluded that Respondent Baskin met the test for removal set forth in S.C. Code Ann. § 62-7-706(b)(4) because (a) removal was requested by Respondent Baskin, the only qualified beneficiary of the Trust; (b) removal best served the interests of Respondent Baskin; (c) removal was not inconsistent with the material purpose of the Trust; and (d) a suitable successor trustee was available.

Both parties moved for awards of their respective attorneys' fees and costs as part of the litigation. On August 31, 2022, the Probate Court awarded Respondent Baskin her attorneys' fees and costs incurred in this action in its "Order Granting Petition for Attorneys' Fees and Costs" and issued its "Order for Sanctions," finding Appellant Walkup in contempt of court and awarding

sanctions against him for violating the Probate Court's orders by filing the action in Lexington County.

On September 16, 2022, the Probate Court denied Appellant Walkup's motion for attorneys' fees and costs in its "Order Denying Respondent's Petition for Award of Attorneys' Fees."

Appellant Walkup timely filed a notice of appeal of the Probate Court's Orders on September 1, 2022.[1] The order denying Appellant Walkup's motion for attorneys' fees and costs was entered after the initial notice of appeal, and Appellant Walkup filed a second, timely notice of appeal of the order denying his motion for attorneys' fees. Although these appeals were assigned separate cases numbers, the appeals were consolidated with the consent of the parties by order of this Court on October 27, 2022.[2]

STATEMENT OF FACTS[3]

A. The Parties, the Eldridge Baskin Will, and the Trust.

Respondent Baskin is 76 years old and significantly handicapped, having long suffered from progressive, physically debilitating cerebral palsy. *See* R. p. 160 (Findings of Fact Nos. 1 and 2); *see also* R. pp. 2459–61; R. pp. 2462–65. She has required significant care and assistance for some time. R. pp. 160, 163 (Findings of Fact Nos. 1, 45). However, Respondent Baskin possesses a clear mind despite her physical limitations, she is capable of making decisions for herself, and

[1] The parties consented to a direct appeal to the South Carolina Supreme Court. However, the South Carolina Supreme Court ordered this appeal transferred to this Court on September 2, 2022.

[2] Appellant Walkup also petitioned this Court to review certain relief from stay awarded by the Probate Court, which Respondent Baskin opposed. This Court denied the motion and the petition by order on November 23, 2022.

[3] The facts set forth are largely from the findings set forth by the Probate Court in its comprehensive Findings of Fact. Except for some inconsequential exceptions, these facts are not disputed by Appellant Walkup.

there is no competent evidence to the contrary. R. p. 160 (Findings of Fact No. 2); *see generally* R. pp. 2459–61; R. pp. 2462–65.

Respondent Baskin's father, Eldridge Baskin, passed away in 1990. *See* R. p. 161 (Findings of Fact No. 3). The Eldridge Baskin Will, dated September 10, 1990, created the Trust, named Respondent Baskin as the sole beneficiary, and named Appellant Walkup as the sole trustee. *See* R. pp. 1466–70; R. p. 161 (Findings of Fact No. 3). The Eldridge Baskin Will left the Baskin family home, three other pieces of real property, and the household personal property to Respondent Baskin outside of the Trust. *See* R. p. 1466 at § II. The residue of the Eldridge Baskin estate was left in Trust for Respondent Baskin's benefit. R. pp. 1466–67 at § III; R. p. 161 (Findings of Fact No. 4). Specifically, Section III of the Eldridge Baskin Will provides in pertinent part as follows:

III.

> All the rest, residue, and remainder of my property, both real and personal, of which I may die seized and possessed, I give, devise, and bequeath unto my trustee, hereinafter named, in trust, to be held, administered and distributed as hereinafter provided ***for the sole benefit of my daughter, Jane E. Baskin, the sole purpose of the trust created hereunder being to provide for the well being of Jane E. Baskin so long as she shall live. This will and the provisions thereof are to be construed in the light of this purpose and while this shall not have the effect of limiting in any way the power, authority or discretion of the trustee hereunder, it shall at all times be borne in mind by the trustee when considering the matter of any encroachment upon the principal of the trust created hereunder.***
>
> The trustee shall receive, take and hold the properties and assets of the trust created hereunder and shall invest and reinvest the same, and collect and receive the income therefrom, and, after payment therefrom of all proper costs, charges and expenses, ***shall dispose of the net income and principal for the benefit of Jane E. Baskin as follows:***
>
> ***(1) So long as my daughter, Jane E. Baskin, shall live, the trustee shall pay to or apply for the benefit of my said daughter all***

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

R. pp. 1466–67 at § III (emphasis added). The Eldridge Baskin Will named his heirs remaining upon Respondent Baskin's death as residual beneficiaries, all of whom are cousins of Appellant Walkup. *See* R. p. 1467 at § III(3); R. p. 2458 (Family Tree); R. p. 161 (Findings of Fact No. 5).

When Mr. Baskin passed away in 1990, the Trust corpus was valued at approximately $175,000.00, of which $40,000.00 was a rental home. *Id.* (Findings of Fact No. 6). When the Complaint was filed in 2020, the Trust had grown to a value of roughly $575,000.00, according to Appellant Walkup's representations to the Court. *Id.* (Findings of Fact No. 9).

Appellant Walkup is now 82 years old. *Id.* (Findings of Fact No. 7). Other than his role with Respondent Baskin, he has never acted as a trustee for someone with significant physical disabilities like Respondent Baskin. R. p. 162 (Findings of Fact No. 37); R. p. 2520, line 22–p. 2521, line 2. In his thirty years as trustee, he has never investigated Respondent Baskin's needs, never hired a professional to assess her needs, has no experience caring for someone with cerebral palsy, and is not professionally qualified to assess the Respondent Baskin's needs. R. p. 162 (Findings of Fact No. 37); R. p. 2563, line 24–p. 2564, line 25; R. p. 2565, line 19–p. 2566, line 24. As of August 2022, Appellant Walkup had not spoken to Jane Baskin in four-and-one-half years because of their broken relationship. R. p. 162 (Findings of Fact No. 41); R. p. 2546, lines 7–8.

B. The failures of Trust management by Appellant Walkup.

1. Appellant Walkup only rarely, and only after significant attorney intervention, provided information about the Trust to Respondent Baskin.

In the thirty (30) years Appellant Walkup controlled the Trust prior to this action, he provided only two reports to Respondent Baskin about the Trust's assets, income, and growth, and in each instance only after Respondent Baskin hired a lawyer to obtain them. R. p. 161–62 (Findings of Fact Nos. 16–26). The first such request occurred in 2008 when Respondent Baskin's attorney, Rita Cullum, wrote Appellant Walkup, requested a report, and put Appellant Walkup on notice that he must provide reports annually. *Id.* (Findings of Fact Nos. 20–23); R. pp. 1471–72. The accountings provided to Respondent Baskin in 2008 were inadequate. R. p. 161 (Findings of Fact No. 22); R. p. 2522, line 13–p. 2524, line 15.

The second "accounting" provided by Appellant Walkup came ten years later in 2018 when attorney W. Alexander Weatherly, Jr. ("Mr. Weatherly"), became involved on Respondent Baskin's behalf. R. p. 162 (Findings of Fact No. 25). The Probate Court determined the 2018 "accounting" produced by Appellant Walkup was "wholly insufficient." *Id.* (Findings of Fact No. 26). During his Trust administration, Appellant Walkup's company, Walkup & Associates, produced regular accountings of Trust assets for Appellant Walkup as Trustee, but those regular accountings were never sent to Respondent Baskin. R. p. 161 (Findings of Fact No. 19).

A third and last "accounting" provided by Appellant Walkup only came after he was ordered to do so by the Probate Court. R. p. 162 (Findings of Fact No. 26). The "accounting" provided consisted of several of Respondent Baskin's individual tax returns, a created check ledger, and a "balance sheet," and similar uncompiled materials. *Id.*; *see also* R. pp. 1716–1902. Attorney Ken Wingate, a well-respected estate, trust and probate lawyer who testified at trial on

behalf of Respondent Baskin, described this "accounting" as an "information dump." R. p. 933, lines 19–20.

Appellant Walkup recognized the issue with these insufficient accountings and admitted that, for a beneficiary to be reasonably informed about the administration of the Trust and of material facts necessary to protect her interest, a Trustee should provide the beneficiary "financial statements and annual reports." R. p. 162 (Findings of Fact No. 27); R. p. 2606, lines 10–17. However, Appellant Walkup also admitted that he did not provide such information to Respondent Baskin. R. p. 162 (Findings of Fact Nos. 27–28); R. p. 2606, line 18–p. 2607, line 14. In fact, Appellant Walkup admitted he was unfamiliar with the South Carolina Trust Code. R. p. 161 (Findings of Fact No. 17); R. p. 2521, line 11–p. 2522, line 15. Appellant Walkup testified that he did not believe Respondent Baskin was capable of understanding a profit and loss statement, a tax return, or a financial statement unless it was put in simple terms. R. p. 2608, lines 9–20; *see also* R. p. 162 (Findings of Fact Nos. 27–28). He said she could, however, understand such financial documents with the help of a financial professional (which Appellant Walkup surely is), yet in the thirty (30) years since taking over the Trust he never took the time to explain the Trust's income and growth, what income vs. principal had been distributed, or what fees he generated for himself. R. p. 162 (Findings of Fact Nos. 27–28); R. p. 2608, line 21–p. 2609, lines 1–25.

2. Appellant Walkup refused to allow Respondent Baskin enough funds to care for her activities of daily living.

Appellant Walkup refused to provide Respondent Baskin enough funds to buy basic necessities, forcing Respondent Baskin to ask Appellant Walkup each month for enough money to purchase her Depends undergarments and food, for which she was required to provide receipts. R. p. 162 (Findings of Fact No. 42). Because Appellant Walkup refused to provide for Respondent Baskin's adequate care, the Trust had grown substantially through the years.

Meanwhile, Respondent Baskin's only monthly income is $475 from Social Security and $381 from an annuity left to her—not in trust—by her father from his service with the IRS. R. p. 161 (Findings of Fact Nos. 11–14). However, Appellant Walkup took control of Respondent Baskin's annuity, placed the funds each month into the Trust account, and disbursed it when and how he saw fit, rather than arranging for it to go to Respondent Baskin directly. Respondent Baskin also entrusted Appellant Walkup with proceeds from the sale of some of her inherited, non-Trust real property. *Id.* (Findings of Fact No. 15). But Appellant Walkup refused her access to her own money and instead used it for her care, "to allow the trust . . . to grow to meet her future needs." *Id.*

Appellate Walkup refused to provide additional funding to assist with Respondent Baskin's care, despite realizing such care was necessary. R. p. 163 (Findings of Fact No. 45). He testified that he believed over five years ago that Respondent Baskin needed 24/7 care but admitted that he refused to provide her additional care unless she agreed to move into a nursing home. R. p. 163 (Findings of Fact Nos. 45–47); R. p. 2586, line 6–p. 2587, line 15; R. p. 2588, line 19–p. 2589, line 18. Appellant Walkup testified that he did not recall anyone asking him to provide Respondent Baskin more help than the 42 hours the Trust was paying for, but admitted being aware that Michele Moseley, Respondent Baskin's attorney-in-fact, had been providing many hours of care every week without pay. R. p. 163 (Findings of Fact No. 46); R. p. 2590, line 2–R. p. 2592, line 14; R. p. 2594, lines 16–24.

3. Appellant Walkup refused to allow Respondent Baskin to stay in her life-long family home and instead attempted to force her to a nursing home.

As Respondent Baskin's care needs increased, Appellant Walkup preferred that Respondent Baskin enter a nursing home. R. p. 163 (Findings of Fact No. 47). Appellant Walkup admitted that, on or about February 17, 2017, he assaulted Plaintiff by physically requiring her to

stand up and taking her against her will to be evaluated by the Jenny Lynn nursing home facility. R. p. 2549, line 15–R. p. 2552, line 4; *see also* R. p. 163 (Findings of Fact Nos. 50–51). Unable to place Respondent Baskin in a nursing home, Appellant Walkup admitted that he had forced Respondent Baskin to move from her lifelong, family home left to her by her father at his death—outright and not in trust—into an apartment owned by Appellant Walkup where he collected monthly rent from the Trust for himself. R. p. 162 (Findings of Fact No. 37–40). GAL Nunn noted that this apartment was not sufficiently handicap accessible for Respondent Baskin. R. pp. 159–60; R. p. 2459 ("The apartment does not meet her level of need or accommodate her disability."). Moreover, Appellant Walkup paid over $50,000.00 in rent from the Trust for Respondent Baskin to live in the deficient apartment while the cost of upgrades to Respondent Baskin's lifelong home on Summerlea Drive to make it handicap accessible cost $30,000.00. R. p. 162 (Findings of Fact at No. 39).

4. Appellant Walkup provided Respondent Baskin with only limited subsistence funds while paying himself layers of fees for managing the Trust and investments.

While Respondent Baskin lived on her $475 monthly Social Security check plus whatever part of her annuity Appellant Walkup allowed her to have, Appellant Walkup received a trustee fee for managing the Trust and invested the Trust funds in partnerships in which he or his company had an equity interest and from which he also received additional management fees. R. p. 162 (Findings of Fact No. 29); R. p. 2560, line 9–p. 2561, line 10. Approximately 60% (or $310,000.00) of the Trust funds, are invested in an illiquid partnership fund called "Equity 95." R. p. 162 (Findings of Fact No. 31); R. p. 2528, lines 5–13. Appellant Walkup's company is a partner in that partnership fund and also receives a fee for managing the fund. R. p. 162 (Findings of Fact No. 31); R. p. 2527, lines 5–17. Equity 95 Partnership is focused on growth not income, which serves to limit the money for Respondent Baskin, given the Trust language providing for the non-

discretionary distribution of all income to Respondent Baskin. R. p. 162 (Findings of Fact No. 32); *see also* R. p. 2528, line 24–p. 2530, line 21; R. p. 2532, lines 10–24; R. p. 2533, lines 4–9; R. p. 2099 (Equity 95 2018 Audited Financial Statements) at Note 1 ("The Partnership investment objective is to seek capital growth"). As invested, the Trust earned income of about $12,000 to $14,000 per year on $575,000, or about 2% to 2.4% per year, a third of which income Appellant Walkup paid to himself as trustee fees. R. p. 162 (Findings of Fact No. 33); R. p. 2538, lines 14–25. In addition to Appellant Walkup's fee of $4,000.00–$4,800.00 per year for managing the Trust, he takes an additional .9% for managing Equity 95 and an E-Trade account where Trust money is invested. R. p. 162 (Findings of Fact No. 34); R. p. 2517, lines 17–25; R. p. 2531, lines 20–23; R. p. 2560, line 9–p. 2561, line 14. This fact of Appellant Walkup "double-dipping" for fees was never disclosed to Respondent Baskin until it was learned through discovery in this litigation. R. p. 162 (Findings of Fact No. 30).

C. Appellant Walkup's failures lead to contentious litigation.

Respondent Baskin filed this suit in 2020 to obtain funds for life's necessities, to return to her home, and for an accounting and to obtain a new trustee. R. pp. 151–52 ("Breach Alleged"). Appellant Walkup engaged in extensive pre-trial discovery, including depositions of Respondent Baskin's doctor, Ms. Moseley, and Mr. Weatherly, and substantial motions practice.

Trial of the case began on January 4, 2021. R. p. 149. At the end of the second day of trial, the Court strongly encouraged the parties to settle. *Id.* On the third day of trial, the parties reached a written "Temporary Settlement Agreement" signed by both parties and filed January 6, 2021. *Id.*; R. pp. 273–274 (Temporary Settlement Agreement). The Temporary Settlement Agreement allowed for a substantial increase in distributions to Respondent Baskin, for

Respondent Baskin to return to her home, and for her to receive substantially more care. R. p. 149; R. pp. 273–74 (Temporary Settlement Agreement), ¶ 5–6. These provisions for Respondent Baskin exceeded those requested on her behalf by Mr. Weatherly before suit was filed. *Compare* R. pp. 273–274 (Temporary Settlement Agreement) *with* R. pp. 2349–50 (Letter from Mr. Weatherly to Ben Bruner, Esquire dated December 6, 2019). Among other things, the Temporary Settlement Agreement provided:

> 1. **The litigation in this matter is stayed and all issues not decided are held in abeyance** with full reservation of rights in regards to litigation, including the issue of attorney's fees.
>
> 2. **William Walkup will remain as Trustee solely to continue to manage the money for investment purposes** and he will continue to retain tax reporting responsibility for the caregivers.

R. p. 273, ¶¶ 1, 2 (emphasis added); R. p. 149 (describing Temporary Settlement Agreement). Mr. Weatherly was also appointed as "Special Trustee" to administer funds that were to be provided to him by Appellant Walkup under the agreement. R. p. 273, ¶ 3; R. p. 149. The Temporary Settlement Agreement called for the parties to file a status report by July 16, 2021. R. p. 274, ¶10.

On February 12, 2021, Respondent Baskin moved for a temporary award of attorneys' fees and costs. R. p. 12 ("Order Denying Motion for Recusal"). Appellant Walkup did not respond or contest the motion for fees for several months. *Id*. On July 27, 2021, the Probate Court requested a proposed order from Respondent Baskin's counsel because the Probate Court believed the motion was not contested by Appellant Walkup. *Id*. Appellant Walkup then immediately contested the motion for fees and later filed a response in opposition. *Id*. No award of temporary attorneys' fees and costs was ever made.

In July 2021, Respondent Baskin moved to amend the Temporary Settlement Agreement to increase the monthly budget. R. p. 4 (Order Regarding Emergency Hearing).

Eventually, an informal video status conference was held on October 12, 2021. *Id*. At the status conference, Appellant Walkup, through counsel, took the position that the Temporary Settlement Agreement had "expired" and that he was under no further obligations thereunder—under Appellant Walkup's interpretation, Respondent Baskin would have been back to where she began. *Id*. As a result of Appellant Walkup's position, the Probate Court, *sua sponte*, called an emergency hearing to be held in person that same afternoon. *Id*. At the emergency hearing, Appellant Walkup, through counsel, reiterated his position; asserted that Mr. Weatherly, acting as Special Trustee, had "breached" his agreement as Special Trustee; and urged the Probate Court to set the conclusion of the trial at the earliest possible moment. *Id*.

On October 29, 2021, the Court issued its Order Regarding Emergency Hearing, rejecting the allegations made about Mr. Weatherly's performance as Special Trustee, reaffirming the Temporary Settlement Agreement, holding that it was a non-judicial settlement agreement pursuant to S.C. Code § 62-7-111, and that, as such, the Temporary Settlement Agreement was enforceable by the Court. R. p. 4–6. The Probate Court also increased the monthly expenditures for Respondent Baskin and set the remainder of the trial for December 21–22, 2021. *Id*.

On December 2, 2021, just before the trial was set to reconvene, Appellant Walkup filed a "Motion for Recusal," demanding that Probate Court Judge Amy W. McCulloch recuse herself from the case. R. p. 10–145 (Order Denying Motion for Recusal). This Order delayed the start of the reconvened trial. R. p. 16. The motion was heard in February 2022, and the

Probate Court denied Appellant Walkup's Motion for Recusal by Order filed on April 28, 2022. R. p. 10–145 (Order Denying Motion for Recusal).

On June 13, 2022, Appellant Walkup filed a Motion to Amend his Answer and Counterclaim to assert that Michele Moseley had unduly influenced Respondent Baskin to bring this suit and change her will. R. p. 183 (Order Granting Fees to Respondent Baskin). Respondent Baskin consented to the Motion to Amend.

One week later, on June 20, 2022, Appellant Walkup filed a Complaint in the Lexington County Court of Common Pleas[4] making identical allegations to those raised in the proposed Amended Answer but also asserting these claims directly against Mr. Weatherly as Special Trustee and Ms. Moseley and without naming Respondent Baskin—indispensable to any such litigation—as a party. *Id*. Respondent Baskin immediately filed a "Motion for an Order and Rule to Show Cause (Contempt) or to Enforce Settlement, and for Sanctions," asking that Appellant Walkup be required to show cause why he should not be held in willful contempt of the Probate Court's prior Orders (1) for violating the stay of this litigation, and (2) for wrongfully holding himself out as the "Trustee of the Eldridge Baskin Testamentary Trust" empowered to bring suit in the Court of Common Pleas against the Special Trustee appointed by this Court and against the Respondent Baskin's Attorney-in-Fact. R. pp. 173–80 (Order for Sanctions).

On August 5–6, 2022, the trial recommenced, and Respondent Baskin proffered no

[4] The Lexington County matter was styled, "*William B. Walkup, Individually and As Trustee of the Eldridge Baskin Testamentary Trust v. W. Alex Weatherly, Jr. and Michele Moseley*," and assigned civil action No. 2022-CP-32-02073. This suit remains pending.

evidence to contradict the fact that he had failed to provide appropriate accountings through his thirty-year tenure as Trustee. R. pp. 168–69 (Order Removing Trustee). He provided no evidence to contradict the fact that he had used the Trust to control Respondent Baskin's person, moving her into an apartment unit that he owned which, according to Probate Court-appoint GAL Nunn, was wholly inappropriate for Respondent Baskin's disabilities. R. p. 162 (Finding of Facts at No. 37–40). He provided no evidence to refute his own prior testimony that, despite his admission that Respondent Baskin's needed additional care, he had refused to provide it for her. R. p. 163 (Finding of Facts at No. 45). He provided no evidence to refute the fact that he refused to provide Respondent Baskin with enough money to buy food, clothes, and Depends undergarments, unless she begged for it and provided receipts. R. p. 162 (Finding of Facts at No. 40). And he proffered no evidence of the alleged undue influence of Respondent Baskin by Ms. Moseley or anyone else, as he had asserted in his Amended Answer and his Lexington County lawsuit. R. p. 164 (emphasis original).

On August 23, 2022, this Court entered its Order Removing Trustee, which recited in detail the contentious procedural history and made specific findings of fact and conclusions of law reflecting the many deficiencies of the Trust's administration by Appellant Walkup, the substantial majority of which are set forth above and remain unrefuted. *See* R. pp. 149–71 (Order Removing Trustee).

Following the trial and its Order Removing Trustee, the Probate Court also found Appellant Walkup in contempt of its prior order and the Temporary Settlement Agreement by filing the Lexington County lawsuit. *See* R. pp. 173–80 (Order for Sanctions). To this date, Walkup has not dismissed the Lexington County lawsuit, which remains pending.

Following the Order Removing Trustee, Respondent Baskin filed a Second Amended Supplemental Petition for Attorneys' Fees and Costs on August 19, 2022, which was accompanied by an Amended and Supplemental Affidavit in Support of Petition for Attorneys' Fees from Respondent Baskin's attorneys. R. pp. 181–88 (Order Granting Petition for Attorneys' Fees and Costs). The affidavit reflected that, as of its date, Respondent Baskin had incurred total fees and costs of $129,625.80 and that the fees requested did not include any time billed for Mr. Weatherly, who was co-counsel, none of which fees had been paid. R. pp. 184, 188, ¶¶ 18, 23. The Probate Court granted Respondent Baskin's motion for fees on August 31, 2022. *See* R. p. 188.

After the trial ended and before the Order Removing Trustee, Appellant Walkup filed a motion for fees unsupported by affidavit or statement of the amount requested. R. p. 189 (Order Denying Appellant Walkup's Fees). However, the Probate Court denied Appellant Walkup's motion for fees and costs in its Order Denying Respondent's Petition for Award of Attorneys' Fees dated September 16, 2022. *Id.*

STANDARD OF REVIEW

Removal of a trustee is within the trial court's discretion and will not be reversed on appeal absent an abuse of that discretion. *Floyd v. Floyd*, 365 S.C. 56, 93–94, 615 S.E.2d 465, 485 (2005). "Trusts have long and broadly been a field for the jurisdiction of equity," and on an appeal from an action in equity, tried by a judge alone, this Court may find facts in accordance with its own view of the preponderance of the evidence. *Id*. (*quoting Epworth Orphanage v. Long*, 199 SC 385, 389, 19 S.E.2d 481, 482 (1942)); *see also Townes Assocs., Ltd v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976). However, this Court is not required to disregard the findings of the trial judge who saw and heard the witnesses and was in a better position to judge their

credibility. *Floyd*, 365 S.C. at 93–94, 615 S.E.2d at 485 (*citing Ingram v. Kasey's Assocs.*, 340 S.C. 98, 105, 531 S.E.2d 287, 291 (2000)).

An attorney fee award is reviewed for an abuse of discretion, and "an appeal will not prevail if the findings of fact are supported by any competent evidence." *Baron Data Sys., Inc. v. Loter*, 297 S.C. 382, 384, 377 S.E.2d 296, 297 (1989).

"Appellate courts accord great weight to the trial judge's assurance of [her] own impartiality." *Davis v. Parkview Apartments*, 409 S.C. 266, 285, 762 S.E.2d 535, 545 (2014).

"On appeal, a decision regarding contempt should be reversed only if it is without evidentiary support or the trial judge has abused [her] discretion." *Stone v. Reddix-Smalls*, 295 S.C. 514, 516, 369 S.E.2d 840, 840 (1988) (*citing Means v. Means*, 277 S.C. 428, 288 S.E.2d 811 (1982)).

ARGUMENT

A. THE PROBATE COURT PROPERLY EXERCISED ITS DISCRETION TO REMOVE APPELLANT WALKUP AS TRUSTEE.

The Probate Court applied the relevant statutory language to Appellant Walkup's conduct and found the facts and law supported removing Appellant Walkup as trustee. As set forth below, the facts in this case support removal for several bases under S.C. Code Ann. § 62-7-706(b), and this Court should affirm Appellant Walkup's removal as trustee.

In broad terms, a 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." S.C. Code Ann. § 62-7-801. A probate court may remove a trustee upon the request of a beneficiary or by the Court on its own initiative, pursuant to S.C. Code Ann. § 62-7-706(b), if:

1. ***The trustee has committed a serious breach of trust*** (as defined by South Carolina Code Ann. § 62-7-103(24);

* * * *

3. Because of unfitness, unwillingness or ***persistent failure of the trustee to administer trust effectively, the Court determines that removal of the trustee serves the best interest of the beneficiary***; 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 interest of all the beneficiaries and is not inconsistent with the material purpose of the trust, and a suitable co-trustee or successor trustee is available***.

S.C. Code Ann. § 62-7-706(b) (emphasis added).

The South Carolina Trust Code, codified at S.C. Code Ann. § 62-7-101, *et seq*., was enacted in 2005 and amended effective January 1, 2014 ("Trust Code"). The Trust Code applies to all trusts created before, on, or after the Act's effective date. *See* S.C. Code Ann. § 62-7-1106(a)(1) (The reporter's comment notes, "[t]he Trust Code is intended to have the widest possible effect within constitutional limitations. Specifically, the Trust Code applies to all trusts whenever created . . . ."). The Trust Code also applies to all judicial proceedings concerning trusts commenced on or after its effective date. *Id.*, at § 62-7-1106(a)(2). However, the Trust Code did not do away with the common law, specifically providing that "the common law of trusts and principles of equity supplement this article, except to the extent modified by this article or another statute of this state." *Id.*, at § 62-7-106.

1. The Probate Court properly removed Appellant Walkup because he committed a serious breach of trust under S.C. Code Ann. § 62-7-706(b)(1) through his self-dealing and conflicts of interest.

Appellant Walkup committed both single acts of misconduct and series of small breaches that combine to justify his removal. None of these were refuted at trial or in Appellant Walkup's Brief.

S.C. Code Ann. § 62-7-103(24) defines a "serious breach of trust" as "either: a single act that causes significant harm or involves flagrant misconduct or a series of small breaches, none of

which individually justify removal when considered alone but which do so when considered together." S.C. Code Ann. §62-7-802 sets forth the trustee's duty of loyalty, and provides that "a sale, encumbrance, or other transaction involving the investment or management of trust property is ***presumed to be effected by a conflict between personal and fiduciary interests*** if it is entered into by the trustee with . . . (4) a corporation or other person or enterprise in which the trustee has such a substantial interest that it might affect the trustee's best judgment." (emphasis added). A trustee is not absolved of his duty of loyalty because the trust document allows conflicted transactions. *See* S.C. Ann. § 62-7-802(b) (The reporter's comment to recognize that even if a trust agreement allows transactions with conflicts of interest, there would still be limitations against fraud and bad faith by the fiduciary.).

Appellant Walkup forced Respondent Baskin out of her childhood home into a small apartment his company owned and managed. R. pp. 160, 162 (Order Removing Trustee) (Findings of Facts No. 37–40). The apartment was not suitable for the handicapped, according to GAL Nunn. *Id.*; R. p. 2459 (2020 GAL Nunn Report). Appellant Walkup collected rent from the Trust in the amount of $900 per month, money he could have used instead to keep Respondent Baskin in her own home, as she desired. R. pp. 160, 162 (Findings of Facts No. 37–40).

Appellant Walkup also took annual fees for administering the Trust, while investing those Trust assets into various investment vehicles from which he also extracted fees. This investment management strategy was a textbook conflict of interest, which Appellant Walkup failed to disclose to Respondent Baskin. In fact, Respondent Baskin only learned about these fees through discovery after the Probate Court litigation began. The Probate Court concluded that these actions by Appellant Walkup amounted to a "serious breach of trust," as that term is defined by S.C. Code Ann. § 62-7-103(24). It cannot be credibly argued that the Court was wrong—Appellant Walkup

collected undisclosed funds and made decisions for his own benefit rather Respondent Baskin. For these reasons alone, the Appellant Walkup should be removed as Trustee. These breaches of trust are aside from the Appellant Walkup's persistent failure to account or report to Respondent Baskin on the Trust's assets, income, and growth for thirty years. *See infra at* A.2.

Conversely, Appellant Walkup relies upon the prudent investor rule found in S.C. Code Ann. § 62-7-933, also known as the Uniform Prudent Investor Act, to justify his conduct. However, this argument was addressed and rejected by the Probate Court and should be rejected by this Court. *See* R. p. 170. As the Probate Court noted, when the Trust is silent on an issue, one must rely on the entirety of the Trust Code then in existence when determining the alleged breaches. *Id.* The terms of the Trust do not authorize Appellant Walkup to engage in conflicts of interest to invest in his own companies *without disclosure*. While the Trust does not address precisely how funds should be invested for Respondent Baskin's best use, Appellant Walkup "cannot hide behind the prudent investor rule and fail to perform the normal and ordinary duties in good faith, required by the remainder of the Trust Code." *Id*. There is no evidence Appellant Walkup relied on a particular Trust provision, other than his unreasonably broad view of his own discretion, but instead the evidence shows he relied on his own erroneous view of his reporting obligations.

Accordingly, removal of Appellant Walkup is justified on the basis of a "serious breach of trust" alone.

2. The Probate Court properly removed Appellant Walkup because he failed to administer the trust effectively and removal served the best interest of the beneficiary under S.C. Code Ann. § 62-7-706(b)(3).

Appellant Walkup failed to effectively administer the trust because he failed for thirty years to provide sufficient information as required by law. Although the Trust language gives broad authority to Appellant Walkup, the Trust does not eliminate the requirement of adequate and reasonable reporting, especially when requested by the beneficiary.

S.C. Code Ann. § 62-7-810 provides that (a) a trustee shall keep adequate records of the administration of the trust; (b) a trustee shall keep trust property separate from the trustee's own property; and (c) with an exception not applicable here, a trustee shall cause the trust property to be designated so that the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or beneficiary. Notably, S.C. Code Ann. § 62-7-813 did not materially change the responsibilities of trustee of a trust created, such as this one, prior to the effective date of the Trust Code. *Compare* S.C. Code Ann. § 62-7-813 *with* S.C. Code Ann. § 62-7-303 (1986) (superseded by S.C. Code Ann. § 62-7-813). As noted by the Probate Court, Article 7 of the 1986 Probate Code placed a duty on the trustee that "upon reasonable request, a beneficiary is entitled to a statement of the account of the trust **annually** . . . ." *See* S.C. Code Ann. § 62-7-303(c) (1986) (superseded). This same duty to inform carried through all enactments and revisions of the South Carolina Code, in addition to the long-established common-law duty to keep beneficiaries informed. *See generally* RESTATEMENT (SECOND) OF TRUSTS § 173 (1959). While S.C. Code Ann. § 62-7-813 applies to trusts created after the creation of the Trust Code and the requirements are not retroactively effective, a review of South Carolina law at the time of the Trust's creation establishes the clear duty of a trustee to reasonably inform the beneficiaries, a duty which includes providing accountings.

As the Probate Court found, Respondent Baskin asked for financial information in 2008 through her then-attorney, Rita Cullum. R. pp. 1471–72. The Probate Court concluded not only that Appellant Walkup's reporting in 2008 was woefully insufficient, but that he was then on notice from Ms. Cullum that he had a duty to report *annually*:

> Walkup chose to ignore that admonition and did not report again until 2018 after another demand. The report in 2018 was not sufficient. He did not report again until ordered by this Court to do so in October of 2020. Walkup's financial position

> puts him in a place of power over Baskin who has limited resources to spend on attorneys to gain compliance for reporting.

R. p. 21 (Order Removing Trustee). As the Probate Court held, and the tenets of our common law provide,

> the beneficiary must receive information adequate to understand clearly to be able to protect their interests. Required for reporting to be sufficient are a list of assets in the trust, their current value, all income to the trust, all debts and expenses paid from the trust, outstanding liabilities of the trust and what the trustee is paying himself to be trustee.

Id. At no time has Appellant Walkup provided any report or accounting that met this standard articulated by the Probate Court.

Conversely, Appellant Walkup asserts S.C. Code Ann. § 62-7-303(c) (1986) (superseded) did not require reporting unless requested or reporting in any particular manner. Appellant Walkup instead asserts Respondent Baskin never made a "reasonable request" and that he provided the required "relevant information about the assets of the trust and the particulars relating to the administration" and a "statement of the accounts of the trust annually." However, the evidence in the record tells a quite different story. Rita Cullum asserted to Appellant Walkup annual accountings were required in 2008. R. pp. 1471–72. Respondent Baskin's expert, Ken Wingate, Esquire, testified that "an accounting" had never been provided by Appellant Walkup prior to trial, despite requests from Cullum and Mr. Weatherly. R. p. 933, lines 19–20. Certainly, even under S.C. Code Ann. § 62-7-303(c) (1986), Appellant Walkup had a duty to "keep the beneficiaries of the trust reasonably informed of the trust and its administration." Instead, the record shows Respondent Baskin was never "reasonably informed" until this litigation. Appellant Walkup did not report annually despite Cullum's assertion in 2008, and Appellant Walkup never sufficiently provided "relevant information about the assets of the trust and the particulars relating to the administration" and a "statement of the accounts of the trust annually," even after requests from

Cullum and Mr. Weatherly. Accordingly, Appellant Walkup did not meet his obligations to provide sufficient information to Respondent Baskin.

Even if this Court finds S.C. Code Ann. § 62-7-303(c) (1986) applies differently than the Probate Court's interpretation, the record shows Appellant Walkup did not comply with his obligations under his own interpretation of the former statute. He failed to keep Respondent Baskin reasonably informed and/or failed to provide sufficient information when requested. *See* Rule 220(c), SCACR (this Court can affirm on any ground appearing in the record.).

Accordingly, Appellant Walkup's significant failure to provide required information established a failure to effectively administer the Trust and alone justifies Appellant Walkup's removal.

3. The Probate Court properly removed Appellant Walkup under S.C. Code Ann. § 62-7-706(b)(4) because removal was requested by the only beneficiary, removal best served the interest of the only beneficiary was not inconsistent with the material purpose of the Trust, and a suitable co-trustee or successor trustee is available.

Respondent Baskin is the only qualified beneficiary, sought removal, and the Probate Court found in its discretion that Respondent Baskin's best interests were served by Appellant Walkup's removal. Appellant Walkup failed to communicate with the only qualified beneficiary. He failed to provide adequate distributions to meet her most basic needs, controlling her person like a guardian, rather than her money like a trustee. He failed to provide adequate reports or accountings. Without question, the distrust between beneficiary and trustee reached a toxic level. Respondent Baskin's "well-being" was her father's paramount purpose in establishing the Trust, and Appellant Walkup failed miserably to meet the Trust's purpose. Accordingly, the Probate Court properly removed Appellant Walkup because it best served Respondent Baskin, the only beneficiary, and better served *the* material purpose of the Trust—sufficient care for Respondent Baskin's well-being.

Moreover, the Probate Court determined, within its discretion, that removal of Appellant Walkup as Trustee was "not inconsistent with the material purpose of the Trust." As the Eldridge Baskin Will provided, "the sole purpose of the Trust created hereunder [is] *to provide for the well-being of Jane E. Baskin* so long as she shall live." R. pp. 1466–67 at § III (emphasis added); *cf. Sarlin v. Sarlin,* 312 S.C. 27, 29, 430 S.E.2d 530, 532 (Ct. App. 1993) ("The simple words of the provision state that the settlor established the trust for 'the benefit of his wife.' The purpose of the trust can be no plainer."). The Eldridge Baskin Will also provided, "this Will and the provisions thereof are to be construed in the light of this purpose and . . . it shall at all times be borne in mind by the Trustee when considering the matter of an encroachment upon the principle of the Trust created hereunder." R. pp. 1466-67 at § III. The Probate Court found that the Appellant acting as Trustee did not provide for Respondent Baskin's "well-being." Moreover, GAL Nunn investigated Respondent Baskin's circumstances and reached the same conclusion.

Even where a trust provides discretion, "the trustee cannot exercise such discretion upon a mere whim and without accountability, but the trustee is limited by the primary purpose of the grant[] and must act with good faith as to any discretion vested in him." *Sarlin*, 312 S.C. at 30, 430 S.E.2d at 532. In *Sarlin*, a decedent/settlor like Eldridge Baskin created a testamentary trust for his surviving spouse. *Id.* The trust document provided in pertinent part:

> All the rest, residue and remainder of the property which I may own at the time of my death, . . . I direct it be placed in trust for the benefit of my wife, JANET H. SARLIN. I hereby direct that my Trustee, hereinafter named, shall provide from the income of said trust for the care, maintenance, health, and welfare of my wife, JANET A. SARLIN, with the right to invade the principal of said trust for those purposes of [sic] my Trustee deems necessary, without the intervention or consultation of anyone.

Id. at 29, 430 S.E.2d 532. The trustee, however, paid himself fees and refused to disburse trust funds sufficient to maintain the surviving wife's standard of living as directed by the settlor. *Id.*

The Court recognized, "the trustee is limited by the primary purpose of the grant[] and must act with good faith as to any discretion vested in him," and affirmed the trial court's discretionary decision to direct increased distributions and a different investment strategy. *Id.*

Like *Sarlin*, Appellant Walkup refused to carry out the sole purpose of the trust in good faith, and the Probate Court ordered an appropriate remedy—removal. For example, it is not disputed that Appellant Walkup forced Respondent Baskin to move from her family home against her wishes. Instead, he put her in a small apartment not suitable for the handicapped, an apartment that he owned and collected rent for. In her October 19, 2020 report, GAL Nunn found the apartment to be unsafe and wholly unsuitable for a person with Respondent Baskin's disabilities. *See* R. pp. 2459–60.

Moreover, Appellant Walkup would not give Respondent Baskin enough money to buy basic necessities, such as food and adult undergarments. GAL Nunn concurred, finding that Respondent Baskin did not have funds sufficient "to cover necessities like food, incontinence supplies, household products, medication, clothing, veterinary expenses, medical equipment, or entertainment." R. pp. 2460. Appellant Walkup also took money belonging to her and put it in trust, against her wishes, doling it out as he saw fit. Regardless of Appellant Walkup's motivations to ignore the plain language of the Trust, he clearly has not been attentive to Respondent Baskin's "well-being."

Appellant Walkup would have this Court disregard the entirety of the purpose of the Trust as stated in Eldridge Baskin's Will and focus solely on the phrase "so long as she shall live." Yet, the Trust was funded with approximately $135,000 in liquid assets and another $40,000 rental home. At the time of its creation in 1990, Respondent Baskin was 43 years old and already suffering from the slow progression of cerebral palsy. Given the resources available and the sole

purpose of the Trust, proper stewardship required seeking to maximize the extent of the funds for "so long as she shall live" but not to the utter disregard of "the well-being of Jane E. Baskin." As the care needed for Respondent Baskin's well-being has increased, Appellant Walkup has failed to reasonably use the accumulated surplus and failed to carry out the sole material purpose of the Trust. Remarkably, he did not investigate Respondent Baskin's needs or hire a professional to advise him as her needs have increased.

This issue is not simply a matter of "Respondent Baskin's wishes rather than those of the Settlor," as the Appellant argues. Eldridge Baskin wanted his daughter to be cared for as much as possible with the meager Trust funds he left her. As time passed, and Respondent Baskin's condition deteriorated, her needs have increased. Yet Appellant Walkup as Trustee made no adjustments to distributions to Respondent Baskin. Rather, he used Trust distributions to control her. He forced her out of her house, the house she had lived in since her childhood, by refusing to pay the insurance and the upkeep, and refusing to provide her the level of care she needed unless she moved into *his* apartment complex and, eventually, a nursing home. These admitted failures by Appellant Walkup as the Trustee only scratch the surface of the failures identified by the Probate Court. Accordingly, removal of Appellant Walkup is not inconsistent with the material purpose of the Trust, which he has disregarded.

Finally, there is no serious dispute Mr. Weatherly is a suitable successor trustee. Since his appointment, Mr. Weatherly has followed the Probate Court approved budget and properly provided accountings for his time as trustee. He is fully capable—and demonstrated as special trustee—that he will carry out the sole purpose of the Trust.

Conversely, Appellant Walkup asserts that circumstances have not changed to justify his removal and no suitable successor is available because the Eldridge Baskin Will did not name a

successor trustee. However, the statute is clear that a change in circumstances is not required because *either* changed circumstances *or* a request by the sole qualified beneficiary justifies removal here—both are not required. *See* S.C. Code Ann. § 62-7-706 ("there has been a substantial change of circumstances *or* removal is requested by all of the qualified beneficiaries") (emphasis added); *see also K&A Acquisition Grp., LLC v. Island Pointe, LLC*, 383 S.C. 563, 580, 682 S.E.2d 252, 261 (2009) ("the use of the word 'or' in a statute 'is a disjunctive particle that marks an alternative') (*quoting Brewer v. Brewer*, 242 S.C. 9, 14, 129 S.E.2d 736, 738 (1963)). Additionally, the Eldridge Baskin Will does not provide for a successor trustee, and the Court properly appointed Mr. Weatherly with Respondent Baskin's consent. *See generally* S.C. Code Ann. § 62-7-704(c), cmt. ("If the qualified beneficiaries fail to make an appointment, subsection (c)(3) authorizes the court to fill the vacancy. In making the appointment, the court should consider the objectives and probable intention of the settlor, the promotion of the proper administration of the trust, and the interests and wishes of the beneficiaries.").

Accordingly, Appellant Walkup's removal was appropriate on this ground alone, and the Probate Court should be affirmed.

4. The § 62-7-1005(a) limitations period does not shield Appellant Walkup where he failed to provide accountings and disclose his conflicts of interest.

Appellant Walkup argues that a letter from his former counsel, Benjamin Bruner, dated October 6, 2018, but mailed in February 2019 ("February 2019 Letter")[5] provided Baskin's counsel with a three-year "accounting" beginning August 2015, including 2016, 2017, and a partial accounting of 2018. Appellant Walkup argues these reports disclosed all necessary financial information to determine if Respondent Baskin had any claim against Appellant Walkup.

[5] The parties stipulated thus the February 2019 Letter should have been dated with a February 2019 date as it was mailed in or around that time frame. *See* R. p. 161.

However, the Probate Court correctly disagreed, and this Court should reject this argument as well, because Appellant Walkup never provided a report that "adequately disclosed" the potential claim that would trigger the claim for breach of trust. Moreover, Appellant Walkup's breaches continued after 2018.

S.C. Code Ann.§ 62-7-1005(a) provides "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." (emphasis added).

The Summons and Complaint were filed more than one year after February 2019, but the one-year statute of limitations would only apply if the Probate Court found that the reports or accountings were adequate to disclose the existence of a potential breach and only for the potential breach disclosed. None of the documents provided by Appellant Walkup were adequate to reveal the breach. Instead, reportings from May 4, 2017, which included the personal Federal and State Tax Returns for Baskin from 2013 through 2016 were not at all helpful for a beneficiary to evaluate Trust activity. Other documents provided in May 2017 included typed partial summaries showing the prior year's Trust account activity at Wells Fargo for the "Columbia Cash Reserve" account for the Trust and for Baskin for approximately the same time period. As noted by the Probate Court, "what is obviously and painfully missing are the bank account statements, the investment account statements or any other invoices, paid receipts, or supporting documentation, along with a full disclosure of Trust fees and management fees charged and paid since 1990. Not even a summary of such documents was ever provided to Baskin." R. p. 161.

The October 6, 2018 reportings were similarly lacking. Documents titled "Balance Sheet for 2017" and "Analysis of Income and Distributions for 2015, 2016, 2017" were incomplete. No

supporting source documentation was provided. QuickBooks reports for 2015–2017 for the Wells Fargo account and Columbia Cash Reserve accounts were also provided, but the Probate Court held again that "obviously and painfully missing" are the bank account statements, the investment account statements or any other invoices, paid receipts, or supporting documentation. *Id.* The Probate Court accurately captured these failings and concluded that what was provided "is extrapolated information from something. A beneficiary is entitled to the something, especially when that beneficiary is the only beneficiary and that beneficiary has been asking for the last 2 years at least." R. p. 165. The Probate Court also noted that Appellant Walkup improperly failed to disclose all other fees he receives from his investments with and for the Trust money, which information was only disclosed during discovery after the lawsuit was filed. Appellant Walkup failed to ever provide any reportings, in detail, about the income and expenses of the rental property. As recognized by Respondent Baskin's expert witness, attorney Ken Wingate, Appellant Walkup has yet to provide a true accounting. R. p. 155 ("His opinion as to the quality or sufficiency of the accounting is that Appellant Walkup has not provided an accounting").

Conversely, Appellant Walkup asserts the January 2019 Letter triggered the statute of limitations. In the January 2019 Letter, Mr. Bruner gave Mr. Weatherly a 10-day deadline to respond to the Trust reportings or they would be deemed adequate. This letter similarly failed to disclose Appellant Walkup's layering of fees and failed to provide information on the rental house's income and expenses. It failed to show that a large portion of trust assets was invested for "growth" not income. *Cf. Sarlin*, 312 S.C. at 27, 430 S.E.2d at 532 (noting, in that case, that "the Trustee's strategy of investing almost exclusively in growth investment, at the expense of income, constituted a breach of the Trustee's duty to exercise fairness in dealing with all the

beneficiaries."). And it failed to delineate the distribution of income and principal. Respondent Baskin, therefore, could not complain about acts of the Trustee of which she was unaware.

The Probate Court held that the arbitrary deadline in the January 2019 Letter had no legal effect on the statute of limitations. Appellant 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. This duty to report was a recurring, important and annual duty. Baskin was not required to demand her reportings every year to get them. Appellant Walkup should have produced annual accountings without the need for demands or prompting. Yet there were no other reports provided until the Probate Court required him to report in October of 2020, after this litigation began. These violations after 2018 alone justify removal and fall within the statute of limitations.

On May 13, 2019, Mr. Weatherly again wrote to Mr. Bruner requesting more information and explanation. At the same time, Appellant Walkup made demands on Respondent Baskin for more information, notably asking for a budget to comply with additional disbursement requests. This was quickly provided by Mr. Weatherly. As late as December of 2019, Mr. Weatherly wrote to Mr. Bruner in an effort to facilitate a path forward by negotiating an exchange of information and asking for more money for care for Baskin. R. p. 166.

The Probate Court expressed its dismay about the lack of transparency and completeness of Appellant Walkup's reportings. Appellant Walkup testified that he may have some records from the earlier years of this Trust, but he never provided what could be considered a reporting or accounting from 1990 through 2015. What was provided from approximately 2015 through 2020 was inadequate, according to the Probate Court. *Id*. How the money has been invested, how he maintained his records, and how he managed the money, "combine to obscure and create grave difficulty in extracting information with supportive proof without Appellant Walkup and

Associates reporting the entire Equity 95 and Columbia Cash Reserve bank records which include potentially 99 other people or entities monies." *Id*. Accordingly, the Probate Court concluded, as should this Court, that the statute of limitations does not bar this action because Respondent Baskin could not have discerned from what was provided by Appellant Walkup if and what causes of action existed. Even assuming the statute applied, new and different violations occurred after 2018 that alone support removal.

Accordingly, this Court, like the Probate Court, should reject the statute of limitations arguments raised by Appellant Walkup.

B. THE PROBATE COURT PROPERLY DENIED APPELLANT WALKUP'S REQUEST FOR ATTORNEYS' FEES AND AWARDED ATTORNEYS' FEES AND COSTS TO RESPONDENT BASKIN.

The Probate Court properly exercised its discretion by removing Appellant Walkup as trustee of the Eldridge Baskin Trust, and the Probate Court's decision should not be disturbed on appeal, as set forth above. Therefore, the Court's award of fees and costs to Respondent Baskin should likewise be upheld. Even if this Court were to reverse the Probate Court's Order Removing Trustee, Baskin's Petition for fees should be granted and Appellant Walkup's unsupported Petition for Fees and Expenses should be denied.

S.C. Code Ann. § 62-7-1004 allows the award of attorneys' fees and provides:

> 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.

The South Carolina Supreme Court set forth six factors for determining an award of attorneys' fees in *Baron Data Systems, Inc. v. Loter,* 297 S.C. 382, 377 S.E.2d 296 (1989): (1) the nature, extent and difficulty of the legal services rendered; (2) the time and labor necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the fee

customarily charged in the locality for similar legal services; and (6) beneficial results obtained. "Consideration should be given to all six criteria in establishing reasonable attorney's fees; none of these six factors is controlling." *Id.* at 385, 377 S.E.2d at 297.

Prior to the final hearing, Appellant Walkup filed "Defendant's Petition in Support of Attorneys' Fees and Reimbursement of Expenses," on August 19, 2022. His Petition was not supported by affidavit and requested no particular amount of an award. On the same day, Respondent Baskin filed her "Second Amended and Supplemental Petition for Attorneys' Fees and Costs," together with a detailed affidavit of counsel in support of the Petition. The Probate Court granted Respondent Baskin's Petition on August 31, 2022, and on September 16, 2022, issued its order denying Appellant Walkup's Petition. On appeal, Appellant Walkup simply argues that he should prevail on the merits and, therefore, be awarded his fees and costs. He does not challenge the Probate Court's detailed analysis of Respondent Baskin's Petition for Fees and Costs, appropriately considering the factors set forth in *Baron Data Systems*. Yet, S.C. Code Ann. § 62-7-1004 allows for an award of attorneys' fees "as justice and equity may require." Such an award is not dependent upon which party "prevails," as the Appellant argues. Respondent Baskin has achieved her desired result, to be returned to her family home, with distributions sufficient to sustain her care, and more (and new) information about her Trust assets, which Appellant Walkup had previously failed to provide.

Accordingly, equity and justice are best served by awarding Respondent Baskin her fees regardless of the outcome of this appeal and certainly if this Court affirms the Probate Court's decision to remove Appellant Walkup as trustee of the Trust.

C. THE PROBATE COURT PROPERLY DENIED APPELLANT WALKUP'S MOTION FOR RECUSAL.

The Probate Court properly denied Appellant Walkup's motion for recusal because he did not identify any sufficient basis for the Probate Judge to recuse herself.

"Under South Carolina law, if there is no evidence of judicial prejudice, a judge's failure to disqualify [herself] will not be reversed on appeal." *Patel v. Patel*, 359 S.C. 515, 524, 599 S.E.2d 114, 118 (2004). South Carolina's Code of Judicial Conduct states, "[a] judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities." *Simpson v. Simpson*, 377 S.C. 519, 660 S.E.2d 274 (2008) (citing Canon 2 of the Code of Judicial Conduct, Rule 501, SCACR). When disqualification is not required, the Code states, "[a] judge shall hear and decide matters assigned to the judge." Judicial Conduct, Rule 501, SCACR.") "The fact [that] a trial judge ultimately rules against a litigant is not proof of prejudice by the judge, even if it is later held the judge committed errors in his rulings." *Mort. Elec. Sys., Inc. v. White,* 384 S.C. 606, 616, 682, S.E.2d 498, 503 (Ct. App. 2009) (citation omitted).

The party seeking disqualification must do more than merely allege bias on the judge's behalf; the party must present some evidence of judicial prejudice or bias. *Patel*, 359 S.C. at 524, 599 S.E.2d at 118. When an appellant offers no evidence to support his claim of partiality, the trial judge is correct to deny a motion for recusal. *See Christensen v. Mikell*, 324 S.C. 70, 74, 476 S.E.2d 692, 694 (1996) ("Appellant offered no evidence to support his claim of partiality. Accordingly, the trial judge properly denied the Motion to Recuse."). Mere conjecture cannot support a recusal motion. *See 46 Am. Jur. 2d Judges § 208* (1994) ("Allegations of facts that are merely frivolous or fanciful will not support a motion to disqualify on the ground of prejudice, nor will conclusory statements, conjecture, or innuendo be sufficient to support a motion for disqualification."). Finally, "[t]imeliness is essential to any recusal motion," and "a recusal motion

must be made at counsel's first opportunity after discovery of the disqualifying facts." *Davis v. Parkview Apts*., 409 S.C. 266, 289, 762 S.E.2d 535, 547 (2014) (rejecting motion to recuse nearly two years after the disclosure to the parties of the potential conflict).

Appellant Walkup filed a Motion for Recusal on November 16, 2021, which he based on (1) the email request from the Probate Court clerk in July 2021 to prepare an order granting Plaintiff temporary attorneys' fees after the Defendant failed for months to respond to the Plaintiff's Petition for fees, and (2) the events at the October 12, 2021, status conference, and the Emergency Hearing that ensued, both of which addressed the parties' Temporary Settlement Agreement of January 6, 2021. Specifically, Appellant Walkup asserts two bases for recusal:

1. On July 27, 2021, the parties received an email from Judge McCulloch's clerk asking Respondent Baskin's counsel to prepare a proposed order granting his Petition for Attorneys' Fees and Costs (Pendente Lite), dated February 12, 2021.

2. At the Emergency Hearing (the genesis of which was left deliberately unclear in the Defendant's Motion for Recusal), "Judge McCulloch stated that she was going to make an award of Plaintiff's attorneys fees against the Defendant."

1. Respondent Baskin's Request for Temporary Fees.

Appellant Walkup's Motion for Recusal was filed nine months after the Respondent's Petition for Temporary Attorneys' Fees was filed. Appellant Walkup filed no response to Respondent's Petition. Four months later, a Probate Court clerk sent an email to counsel asking for a proposed order granting the Petition. Appellant Walkup offered no explanation for his delayed response, reasonable or otherwise. Accordingly, the Motion for Recusal was untimely. *See, e.g., Davis,* 409 S.C. at 289, 762 S.E.2d at 547 ("a recusal motion must be made at counsel's first opportunity after discovery of the disqualifying facts.").

Even if the motion were timely, the Probate Court never granted the Petition for Temporary Fees. Appellant Walkup objected vehemently to the request for a proposed order, filed a lengthy

brief in opposition, argued that the matter was stayed, and that his evidence had not been presented. *As a result, no order granting attorneys' fees was issued at that time.* Thus, the Court's inaction on the petition had the practical effect of sustaining Appellant Walkup's objection to Respondent Baskin's fee petition. Certainly, Appellant Walkup cannot suggest there is evidence of bias or prejudice when the Probate Court effectively sustained Appellant Walkup's objection to Respondent Baskin's fee petition. The record is clear the Probate Court did not grant the petition at that time following Appellant Walkup's objection, and the Probate Court did not grant the petition for fees by Respondent Baskin until after Appellant Walkup put up his case and the trial was completed.

2. Comments allegedly made in Chambers at the Emergency Hearing.

The informal status conference was held as scheduled by zoom. At that conference, Appellant Walkup, through counsel, asserted that the Temporary Settlement Agreement had "expired" and Appellant Walkup was under no further obligations thereunder. This interpretation would have left Respondent Baskin back at the mercy of Appellant Walkup, the circumstances which precipitated this litigation in the first place. The Probate Court considered the matter an emergency and set a hearing for that afternoon.

At the Emergency Hearing, Appellant Walkup, through counsel, restated his position that the parties' settlement agreement, brokered by the Court, was of no further effect and that the Trustee had absolutely no further obligation thereunder. Appellant Walkup also took the position that Mr. Weatherly had "breached" his agreement as Special Trustee, ironically asserting he had not provided accountings to Appellant Walkup since the Agreement became effective. However, the accountings were shown to Appellant Walkup and his counsel at the hearing and were accepted as satisfactory.

During the hearing, Appellant Walkup addressed the Court, indicating that he was unaware that he could be held personally liable for Respondent Baskin's attorneys' fees. Thereafter, the judge asked counsel to her chambers. During a discussion with all counsel in chambers, according to Appellant Walkup, the judge "stated that she was going to make an award of attorneys' fees again [Appellant Walkup]." However, in her Order Denying Motion for Recusal, the judge accurately recited exactly what occurred in chambers:

> The parties then met in chambers to allow Mr. Sowell to read the code section about jurisdiction and the Temporary Agreement. A conversation was held in chambers between the Court and all attorneys, where this Court addressed all attorneys about the need to attempt settlement negotiations and the issue of attorneys' fees and costs, *expressing this Court's concern that Respondent did not understand that a potential outcome was that he personally could be responsible for the attorneys' fees and costs of Petitioner.* Respondent's attorneys were told that if the trial proceeds and Respondent is not successful, the Court will award attorneys' fees and costs for the Petitioner and *Respondent may be required to pay all or a portion personally. The issue of the award of attorneys' fees and costs to the Petitioner and whether or not the Trust pays or Respondent pays personally is still an issue to be decided.* The emphasis to Mr. Sowell and Ms. Durant in chambers was to require that they make sure that their client understands the potential going forward, as *Respondent seemed confused in the courtroom.* Any misunderstanding of this statement or its meaning or context can be placed directly on the very contentious nature of the Emergency Hearing.

R. p. 15. No award of attorneys' fees was granted as a result of the Emergency Hearing.

In sum, there is no evidence of prejudice or bias against Appellant Walkup. At trial, the Probate Court allowed Appellant Walkup wide latitude to present evidence regarding issues not even presented in the pleadings. Appellant Walkup had an opportunity to say to the Probate Court, on and off the record, virtually anything that came to his mind. He demanded and was given his day in court. Only after the trial ended did the Court grant the fee petition by Respondent Baskin, and "[t]he fact the [judge] ruled against [Appellant Walkup] is insufficient to show actual prejudice." *See, e.g., Mortg. Elec. Sys., Inc. v. White*, 384 S.C. 606, 616, 682 S.E.2d 498, 503 (Ct. App. 2009).

Accordingly, Appellant Walkup failed to identify evidence of bias or prejudice by the Probate Court, and this Court should affirm the Probate Court's denial of Appellant Walkup's Motion for Recusal.

D. THE PROBATE COURT PROPERLY SANCTIONED WALKUP FOR HIS BREACH OF THE TEMPORARY SETTLEMENT AGREEMENT.

Appellant Walkup acted far beyond his authority and in violation of the Probate Court's orders by suing Respondent Baskin's attorney-in-fact, Michele Moseley, and Mr. Weatherly, then acting Special Trustee, in Lexington County. Accordingly, the Probate Court properly sanctioned this unjustified conduct, and this Court should affirm the Order for Sanctions on appeal.

"The power to punish for contempt is inherent in all courts. Its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders and writs of the courts, and consequently to the due administration of justice." *Curlee v. Howle*, 277 S.C. 377, 382, 287 S.E.2d 915, 917 (1982) (*citing McLeod v. Hite*, 272 S.C. 303, 251 S.E.2d 746 (1979). "Civil contempt occurs when a party willfully disobeys a clear and definite court order." *Capione v. Best,* 435 S.C. 451, 868 S.E.2d 378 (Ct. App. 2021). 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. *Id. "*Contempt must be proven by clear and convincing evidence, and the record must demonstrate the specific contemptuous act." *Id.*

The parties entered into the Temporary Settlement Agreement on June 6, 2021, which agreement provided that "**the litigation in this matter is stayed and all issues not decided are held in abeyance"** and that "**William Walkup will remain as Trustee solely to continue to manage the money for investment purposes."** R. p. 273. The Temporary Settlement Agreement

bears Mr. Walkup's signature. R. p. 274. The Temporary Settlement Agreement is like a consent order, even though it is the product of an agreement by the parties, and carries the authority of the court when entered. *See, e.g., Johnson v. Johnson*, 310 S.C. 44, 46, 425 S.E.2d 46, 48 (Ct. App. 1992) ("[A] consent order is an agreement of the parties, *under the sanction of the court*, and is to be interpreted as an agreement.") (emphasis added).

The Probate Court issued its "Order Regarding Emergency Hearing," on October 29, 2021, and its "Order Denying Motion for Recusal," dated April 28, 2022. Both orders affirmed the Temporary Settlement Agreement. In its Order Regarding Emergency Hearing, the Court held:

> SC Code Ann. § 62-7-111 provides that interested persons may enter into binding nonjudicial settlement agreements with respect to directing a trustee to perform or refrain from performing an administrative act, or to grant to a trustee a necessary or desirable administrative power. SC Code Ann. § 62-7-111(b)(2). ***The parties participated in reaching the Temporary Settlement Agreement with the aid of this Court, which approved the Agreement, filed it, and made it a part of the record in this case. See SC Code Ann. § 62-7-111(c). The Temporary Settlement Agreement is precisely the kind of nonjudicial settlement agreement contemplated by § 62-7-111, and, as such, is enforceable by this Court.***

R. p. 5 (emphasis added). In its "Order Denying Motion for Recusal," the Court held, "[t]he Temporary Settlement Agreement filed on January 6, 2021, and amended on October 29, 2021, *shall remain in place until final judgment*." R. p. 19 at ¶ B (emphasis added).

On June 13, 2022, Appellant Walkup filed a Motion to Amended his Answer and Counterclaim.[6] On June 20, 2022, despite the Temporary Settlement Agreement, Appellant Walkup filed a civil lawsuit in Lexington County in his capacity as trustee. Appellant Walkup's complaint in Lexington ("Lexington Complaint") was based upon allegations nearly identical to those asserted in his proposed Amended Answer and Counterclaim before the Probate Court,

[6] Respondent Baskin consented to the Motion to Amend, and the "Supplemental and/or Second Amended Answer and Counterclaim" was filed on August 4, 2022.

asserting that Ms. Moseley, Respondent Baskin's attorney-in-fact, and Mr. Weatherly, the Special Trustee appointed by the Probate Court *with Appellant Walkup's consent*, conspired to exert undue influence on Respondent Baskin and harm him (Appellant Walkup), in *his capacity as trustee*. *Compare* R. p. 578 (Supplemental and/or Second Amended Answer and Counterclaim) at ¶ 32 ("[Appellant Walkup] pleads that Jane Baskin is being unduly influenced by Michele Moseley and others for the specific purpose of injuring the trust and [Appellant Walkup]. Upon information and belief, Jane Baskin brought the current lawsuit because of the undue influence imposed upon her by Michele Moseley and others for the specific purpose of injuring the trust and [Appellant Walkup].") *with* R. pp. 540–41 (Appellant Walkup's Lexington Complaint) at ¶ 9 ("Subsequently, both Weatherly and Moseley began a campaign of undue influence to take advantage of Jane Baskin, who is a vulnerable adult with Cerebral Palsy since birth, and to harass, slander and harm the Plaintiff.") *and* ¶ 12 ("Defendants Weatherly and Moseley have schemed together and conspired to injure Plaintiff . . ."). Moreover, Appellant Walkup averred in the Lexington Complaint that he was the "Duly Appointed Trustee of Eldridge Baskin Testamentary Trust," a statement which was, at best, misleading. *See* R. p. 540 at ¶ 4. Appellant Walkup failed to reveal to the Court of Common Pleas that his powers were limited by the Temporary Settlement Agreement and did not include the authority to bring an action in the name of or on behalf of the Trust. Mr. Weatherly was then the duly appointed Special Trustee of that Trust, and Appellant Walkup was to "remain as Trustee solely to continue to manage the money for investment purposes." R. p. 273, at ¶ 2.

Appellant Walkup asserted in his Lexington Complaint that he was harmed in numerous other ways related to the action before the Probate Court:

Allegation	**Analysis**
Appellant Walkup alleged "the campaign and conspiracy by Weatherly and Moseley gravitated into an action in Probate Court commenced on July 20, 2020, to remove Plaintiff as Trustee and to injure him financially," and he ***"was first injured by Defendants in July 2020 . . . ."*** R. p. 540 at ¶ 10 (emphasis added).	In other words, Appellant Walkup alleges he was injured by Respondent Baskin filing her Petition in the Probate Court case. In addition to not being actionable, that is clearly a matter of determination for the Probate Court.
Appellant Walkup alleged that Mr. Weatherly and Ms. Moseley "commenced a scheme in concert among themselves and with others *to disturb the effective administration of the Trust* and to injure the Plaintiff. Their actions were to benefit themselves financially and otherwise." R. p. 540 at ¶ 7.	Any matter involving "the effective administration of the Trust" by definition falls within the jurisdiction of the Probate Court and are matters which were being litigated there.
Appellant Walkup also alleged that Mr. Weatherly "made" Moseley the Power of Attorney for Jane Baskin and that ***he*** "amended the Jane Baskin Will" to leave Respondent Baskin's house to Ms. Moseley. R. p. 540 at ¶ 8. According to Appellant Walkup, Mr. Weatherly and Ms. Moseley "began a campaign of undue influence to take advantage of Jane Baskin, who is a vulnerable adult . . . ." R. p. 540 at ¶ 9.	Appellant Walkup failed to reveal to the Circuit Court that the Probate Court appointed a guardian *ad litem* to investigate Respondent Baskin's circumstances and that the guardian was specifically asked to look into such allegations. More fundamentally, however, Appellant Walkup had no standing to make these assertions and, indeed, any matter involving Respondent Baskin's Last Will and Testament were not ripe, and certainly do not fall within the jurisdiction of the Circuit Court.
Appellant Walkup further alleges that "Moseley has manipulated funds from the Eldridge Baskin Testamentary Trust for her own benefit and with the aid of Weatherly. She used Trust money to buy her own food and to buy cleaning supplies for Moseley's Cleaning Company," and that she has "falsified timesheets to carry out the scheme to make money and benefit herself." R. p. 541 at ¶ 11.	These allegations, of course, implicate the administration of the Trust by Mr. Weatherly, acting as Special Trustee, and are matters within the Probate Court's exclusive jurisdiction. Indeed, these are allegations already made and rejected by the Probate Court. Appellant Walkup never presented ***any*** evidence of such wrongdoing to the Probate Court.
Without alleging specific facts, Appellant Walkup sought actual and punitive damages for his severe financial and emotional injuries and alleged defamation and damages for their	Aside from their absurdity, these allegations arose out of the same set of facts in dispute in the Probate Court case.

"wrongful interference with a contractually (sic) relationship." R. p. 542 at ¶ 21.	

In sum, Appellant Walkup's civil action was willful and brought for the ulterior purposes of circumventing his obligations under the Temporary Settlement Agreement that he signed, avoiding the Probate Court's jurisdiction, impeding the proper administration of the Trust by the Special Trustee, Mr. Weatherly, and seeking an advantage in the litigation pending before the Probate Court. Appellant Walkup filed this action after the Probate Court had only recently reiterated his obligations and limited authority under the Temporary Settlement Agreement. *Compare* R. p. 19 (Order Denying Motion for Recusal) (entered April 28, 2022) *with* R. pp. 540–43 (Appellant Walkup's Lexington Complaint) (filed June 20, 2022). Accordingly, the Probate Court correctly found Appellant Walkup in willful contempt of the Probate Court's prior orders and/or in violation of the Temporary Settlement Agreement:

> (a) By willfully initiating suit in Lexington County, alleging facts out of the same transaction and occurrences, in violation of the stay agreed to and affirmed by Orders of this Court, in an attempt to avoid the jurisdiction of this Court which are squarely before it – that is, the proper administration of the Trust and Mr. Walkup's status as the Trustee.
>
> (b) By willfully asserting powers and authority he did not have and deliberately misleading the Court of Common Pleas by stating he is the "Trustee of the Eldridge Baskin Testamentary Trust" when, in fact, the Temporary Settlement Agreement confirmed by this Court provided:
>
> > **William Walkup will remain as Trustee <u>solely</u> to continue to manage the money for investment purposes** and he will continue to retain tax reporting responsibility for the caregivers.
>
> (c) By willfully bringing the lawsuit in the Lexington County Court of Common Pleas, without authority to do so, in an attempt to chill and impede the Special Trustee's duties to the Petitioner, Respondent Baskin and to this Court.

(d) By willfully making allegations to the Circuit Court, all of which are matters currently before this Court, in an effort to chill and impede Ms. Moseley's duties and responsibilities as attorney-in-fact for Respondent Baskin.

R. pp. 178–79. The Probate Court further held as follows:

> Mr. Walkup is in contempt of this Court's prior Orders and of this Court's jurisdiction, and is in breach of the Temporary Settlement Agreement. He violated the stay provided for in the Agreement by commencing the action in Lexington County based upon the same facts, transactions, and occurrences currently pending before this Court. And he did so without any authority, in contravention of the Agreement. He seeks to avoid his obligations under the Agreement that bears his signature. He seeks to circumvent this Court's jurisdiction and authority. He seeks to obstruct and pervert the administration of justice.
>
> Whether a willful violation of this Court's Orders, rendering him in civil contempt of court, or a breach of the parties' Temporary Settlement Agreement, the result is the same: Mr. Walkup must be called to account and should be sanctioned.

R. p. 179.

As the Probate Court found, Appellant Walkup willfully violated the stay provided for in the Temporary Settlement Agreement and the Probate Court's orders by commencing the action in Lexington County and raising the same issues before the Probate Court. He did so without any authority, in contravention of the Temporary Settlement Agreement. In so doing, he sought to avoid his obligations under the Temporary Settlement Agreement, circumvent the Probate Court's jurisdiction and authority, and obstruct and pervert the administration of justice. Accordingly, the Probate Court's order imposing sanctions was within the court's discretion and authority, and the Probate Court's order should be affirmed on appeal.

CONCLUSION

For these reasons, the Probate Court properly exercised its discretion and removed Appellant Walkup, properly awarded attorneys' fees to Respondent Baskin and not to Appellant

Walkup, properly denied Appellant Walkup's motion for recusal, and properly awarded sanctions against Appellant Walkup for his improper actions. Accordingly, this Court should affirm each of the Probate Court's rulings.

Respectfully submitted,

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Columbia, South Carolina
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CERTIFICATE OF COUNSEL

I hereby certify that this Final Brief complies with Rule 211(b), SCACR.

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