



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
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CATHERINE S. HARRISON
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

August 22, 2024

The Honorable Elaine Sabb
PO Box 126
Allendale SC 29810-0126

REMITTITUR

Re: J. Morgan Kears v. The Kears Family Education Trust
Lower Court Case No. 2017CP0300244
Appellate Case No. 2019-000905

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

A handwritten signature in blue ink that reads "Catherine Harrison, deputy".

CLERK

Enclosure

cc: Kenneth B. Wingate, Esquire
Matthew Joseph Myers, Esquire
Daniel A. Speights, Esquire

Stephen Michael Slotchiver, Esquire
Kathleen Chewning Barnes, Esquire
Whitney Boykin Harrison, Esquire
William Gordon Kears
Rachael Kears Best
Joseph Weber Kears
John Morgan Kears

RECEIVED

Aug 13 2024

The Supreme Court of South Carolina *SC Court of Appeals*

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

v.

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

Appellate Case No. 2023-000159

ORDER

Based on the vote of the Court, the petition for a writ of certiorari is denied.

FOR THE COURT

BY *Brenda F. Adealy*
Chief Deputy CLERK

Hill, J., not participating

Columbia, South Carolina
August 13, 2024

cc:

Stephen Michael Slotchiver
Kathleen Chewning Barnes

Kenneth B. Wingate
Matthew Joseph Myers
Daniel A. Speights
Whitney Boykin Harrison
Rachael Kears Best
John Morgan Kears
Joseph Weber Kears
William Gordon Kears
The Honorable Jenny Abbott Kitchings

The South Carolina Court of Appeals

J. Morgan Kears, Personal Representative of the Estate
of G. H. Kears, Appellant,

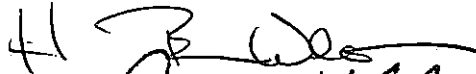
v.

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

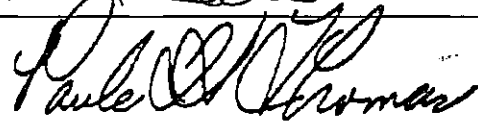
Appellate Case No. 2019-000905

ORDER

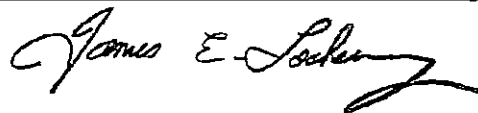
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



J.

Columbia, South Carolina

FILED
Jan 04 2023

cc:

Kenneth B. Wingate, Esquire

Matthew Joseph Myers, Esquire

Daniel A. Speights, Esquire

Stephen Michael Slotchiver, Esquire

Kathleen Chewing Barnes, Esquire

Whitney Boykin Harrison, Esquire

William Gordon Kearse

Rachael Kearse Best

Joseph Weber Kearse

John Morgan Kearse

The Honorable R. Lawton McIntosh

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

J. Morgan Kears, Personal Representative of the Estate
of G. H. Kears, Appellant,

v.

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

Appellate Case No. 2019-000905

Appeal From Allendale County
R. Lawton McIntosh, Circuit Court Judge

Unpublished Opinion No. 2022-UP-415
Submitted September 1, 2022 – Filed November 23, 2022

AFFIRMED

Kenneth B. Wingate and Matthew Joseph Myers, both of
Sweeny Wingate & Barrow, PA, of Columbia for
Appellant.

Daniel A. Speights, of Speights & Solomons, LLC, of
Hampton, and Whitney Boykin Harrison, of McGowan

Hood Felder & Phillips, of Columbia, both for Respondent Julia Kearsé Sharpe. Stephen Michael Slotchiver, of Slotchiver & Slotchiver, LLP, of Mount Pleasant, and Kathleen Chewing Barnes, of Barnes Law Firm, LLC, of Hampton, both for Respondent Elizabeth Kearsé Gooding.

PER CURIAM: In this probate case involving a purported settlement agreement, John Morgan Kearsé (Appellant), Personal Representative of the Estate of G.H. Kearsé (Kearsé), appeals an order of the probate court and an order of the circuit court. He argues (1) the probate court erred in approving a final term sheet as a valid settlement agreement because the parties did not reach a binding settlement; (2) the probate court erred in enforcing the terms of the settlement agreement because the court lacked authority; and (3) the circuit court erred in dismissing the case on procedural grounds. We affirm, finding the probate court and the circuit court correctly held Appellant lacked standing.

Standing refers to "[a] party's right to make a legal claim or seek judicial enforcement of a duty or right." *Black's Law Dictionary* 1413 (7th ed. 1999). Section 62-3-703(c) of the South Carolina Code (2022) governs the standing of a personal representative in a probate case, providing:

Except as to proceedings which do not survive the death of the decedent, a personal representative of a decedent domiciled in this State at his death has the same standing to sue and be sued in the courts of this State and the courts of any other jurisdiction as his decedent had immediately prior to death.

Section 62-3-610(b) (2022) provides "[a] personal representative may resign his position by filing a written statement of resignation with the court and providing twenty days' written notice to the persons known to be interested in the estate." Section 62-3-613 (2022) concerns the successor personal representative and provides "the successor personal representative has the powers and duties in respect to the continued administration which the former personal representative would have had if his appointment had not been terminated."

Appellant told the court he was resigning as the personal representative effective

February 2, 2017, and Harley Ruff was appointed as the successor personal representative on March 20, 2017. Appellant, in his capacity as the personal representative, moved for reconsideration in probate court after the court accepted his resignation; however, Appellant did not argue either in his motion or at the hearing that the probate court erred in accepting his resignation as personal representative. Appellant also did not appeal the March 20, 2017 probate court appointment of Ruff as the successor personal representative. Therefore, when Appellant filed his motion to alter or amend on March 20, 2017, in his capacity as the personal representative, the probate court found he was no longer the personal representative. Appellant, in his capacity as the personal representative, appealed the probate court's orders to the circuit court. On appeal, the circuit court found the order appointing someone other than Appellant as the personal representative was not appealed; thus, Appellant's attempt to appeal as the personal representative was a nullity. Accordingly, the circuit court dismissed the appeal. We find the evidence supports the probate and circuit courts' findings of fact as to Appellant's lack of standing. *Matter of Howard*, 315 S.C. 356, 361, 434 S.E.2d 254, 257 (1993) ("If the proceeding in the probate court is in the nature of an action at law, the circuit court may not disturb the probate court's findings of fact unless a review of the record discloses there is no evidence to support them."). We decline to address Appellant's issues because this issue is dispositive. *See Hagood v. Sommerville*, 362 S.C. 191, 199, 607 S.E.2d 707, 711 (2005) (declining to address an issue when the resolution of a prior issue is dispositive).

AFFIRMED.¹

WILLIAMS, C.J., THOMAS, J., and LOCKEMY, A.J., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.