

THE STATE OF SOUTH CAROLINA SC Court of Appeals

IN THE COURT OF APPEALS

Case Number – 2024-00912

APPEAL FROM THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

Hon. Heath P. Taylor, Court of Common Pleas

Court of Common Pleas Case No. 2022CP4603359

Appeal from the York County Probate Court Case No. 2021ES4601533

Honorable Carolyn Woodruff

Pamela Hasian.....Appellant,

versus

Kelly Queen, Kamilla Warren, Brandy Gibson.....Respondents.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. **The Court erred in awarding attorney fees to the Daughters and misapplied the attorney fee award factors. The Daughters' counsel failed to receive a sufficiently beneficial outcome justifying their award of attorney fees.**

The actual outcome could have been achieved without protracted litigation and costs. The Court's justification for the award rested in its belief that, but for Hasian's Formal Petition, there would have been no litigation, which is highly subjective and insufficient grounds to substantiate an attorney fee award of this size.

- II. **The Court improperly ruled that the paychecks Hasian wrote to herself from the Decedent's business were assets of the estate and that issuing these funds to herself constituted conversion. The funds represented Hasian's unpaid salary earned before the Decedent died and were not an estate asset.**

STATEMENT OF THE CASE AND FACTS

Pamela Hasian, the Appellant-Petitioner is surviving spouse of the Decedent, Larry J. Hasian, who died on September 13, 2021.¹ The Respondents are the Decedent's daughters, adult children from a previous marriage.² The Honorable Heath P. Taylor heard the appeal to the Court of Common Pleas, Sixteenth Judicial Circuit from York County Probate Court. The trial judge, Judge Carolyn Woodruff, presided on all motion hearings and at the trial.

On October 18, 2021, Hasian filed a Summons and Formal Application for Appointment as Personal Representative and Probate of Will executed by the Decedent in 2021 ("2021 Will"), which devised the entirety of his estate to her and nominated her as the Personal Representative.³

The Daughters were served with Hasian's Summons and Formal Application and responded by seeking to the probate of a copy of another Will executed by the Decedent in 1997 ("1997 Will"), and the appointment of the Alternate Personal Representative named in that instrument.⁴ The 1997 Will bequeathed the entire Decedent's estate to a former spouse, from whom the Decedent was divorced since 2006,⁵ and named his Daughters as alternate devisees. ⁶ It nominated the Decedent's former sister-in-law as Personal Representative.⁷

¹ Trial Day 1 Transcript, page 23, lines 1 - 23

² Id.

³ Hasian Formal Summons & Petition, Form 300 ES.

⁴ Daughters Answer and Third-Party Petition.

⁵ Trial Day 2 Transcript, page 219, lines 15 – 18.

⁶ Daughters Answer and Third-Party Petition.

⁷ Id.

Simultaneous to seeking probate of the 1997 Will, the Daughters filed a third-party complaint alleging Hasian committed the tort of Intentional Interference with Inheritance and Civil Conspiracy in connection with the 2021 Will execution.⁸ They also alleged she committed the tort of Conversion by writing payroll checks from Larry J's Automotive business account to herself for back pay and cashing those checks after the Decedent died.⁹

During discovery, there was a dispute over the production of text messages on Hasian's phone which led to the Daughters' filing a Motion to Compel.¹⁰ Hasian contended she did not have text message data on her phone thus there was nothing to produce.¹¹ The trial court ordered Hasian to surrender her phone for examination by a technology analyst.¹² Hasian provided her phone for analysis late but no messages were found.¹³ The Daughters' then filed a Motion for Contempt which was granted.¹⁴ Hasian complied with this request but no messages were found on her phone because she made a practice of deleting old messages.¹⁵

The Daughters filed a Motion for Partial Summary Judgment regarding the 2021 Will probate, and it was heard on April 6, 2022.¹⁶ The judge granted partial summary judgment dismissing the Petition to Probate the 2021 Will in its April 13,

⁸ Id.

⁹ Id.

¹⁰ The Daughters' Motion to Compel.

¹¹ Hasian's Return to Motion to Compel.

¹² Order Granting Motion to Compel.

¹³ Order Granting Motion for Contempt.

¹⁴ Id.

¹⁵ Trial Day 1 Transcript – page 153, lines 22 – 225, page 154, lines 1 – 17.

¹⁶ The Daughters Motion for Partial Summary Judgment

2022 Order, which further deemed the instrument was invalid due to improper witness attestation.¹⁷

A two-day hearing on the merits of the Daughter's Application for Probate and third-party allegations only was held on June 21 and June 22, 2022. The Daughters' counsel amended his pleading to add a claim for punitive damages. The trial judge took the matter under advisement and asked for post-trial briefs from counsel on whether punitive damages may be awarded in probate proceedings. She also instructed counsel to submit attorney fees by the end of the day, which she stated that she wanted on the record.¹⁸

The trial court's order on the merits was filed on August 10, 2022, denying the Daughters relief on the claims of intentional interference with inheritance and civil conspiracy.¹⁹ The conversion claim was granted, and actual damages of \$7,147.32 were awarded to the estate.²⁰ The 1997 Will was deemed invalid and was not accepted for probate and the estate was ordered to proceed intestate, an impartial Personal Representative was to be appointed, and Hasian and the Daughters would each receive 50% as heirs.²¹ The Daughters' counsel's request for punitive damages was denied. Hasian's attorney fee request was denied, but the Daughters' attorney fees were granted for \$56,516.80.²²

¹⁷ Order Granting Partial Summary Judgment, April 13, 2022.

¹⁸ Trial Day 2 Transcript, page 310, lines 17 – 19, page 322, lines 4 – 7.

¹⁹ Merits Order, pages 4 – 5, Section II, pages 5 – 6, Section III.

²⁰ *Id.*, pages 6 – 7, Section IV, and pages 7 – 8, Section 5..

²¹ *Id.*, Section I, pages 2 – 4. ^For intestate succession devisees, see S.C. Code Ann. § 62-2-102 and S.C. Code Ann. § 62-2-103

²² Merits Order, page 8, Section VI.

Hasian timely filed and served a Motion to Alter or Amend.²³ On October 26, 2022, the judge issued its supplemental order denying Hasian's Motion, which Hasian's counsel received on October 28, 2022.²⁴ On November 7, 2022, Hasian filed and served her Notice of Intent to Appeal on all parties, the Probate Court, and the Court of Common Pleas.²⁵ The parties timely filed their Statements of Issues on Appeal in December 2022.²⁶

Hasian filed her Initial Brief and Designation of Matter for Record on appeal on January 10, 2023.²⁷ The Daughters' Initial Brief and Designation of Matter for Record on Appeal was filed on February 9, 2023.²⁸ Hasian's Reply Brief was filed on February 20, 2023.²⁹ Due to issues with obtaining the Probate Court case file for the Record on Appeal, the Parties entered into a Consent Motion to Expand Time to file the Record on Appeal. The Record on Appeal was filed on in multiple parts on April 10, 2023, and April 11, 2023. Respondents' Motion for Substitution of Counsel was filed on June 30, 2023, and was granted by Order entered on July 3, 2023.³⁰

A hearing on the Appeal was held on August 16, 2023³¹, and an Order affirming the Probate Court ruling was issued on October 4, 2023.³² The Appellant filed a

²³ Motion to Alter or Amend, August 22, 2022.

²⁴ Amended Order, October 26, 2022.

²⁵ Notice of Intent to Appeal.

²⁶ Statement of Issues on Appeal.

²⁷ Petitioner's/Appellant's Brief.

²⁸ Respondent's Initial Brief.

²⁹ Appellant's/Petitioner's Reply Brief.

³⁰ Respondents' Motion for Substitution of Counsel.

³¹ Appeals Hearing Transcript.

³² Order Affirming trial court order.

Motion for Reconsideration on October 12, 2023,³³ and the Court issued an Order Denying the Appellant's Motion on May 2, 2024.³⁴ The Appellant timely filed a Notice of Appeal to the Court of Appeals on June 3, 2024.

STANDARD OF REVIEW

This appeal involves both a question of law and equity, both tried in a bench trial at the trial court level. There are two standards of review.

If an appeal from Probate Court involves an action at law, such as the Conversion award, and was heard in a non-jury trial, the reviewing court should uphold the findings if there is any evidence to support them.³⁵ If an appeal from Probate Court involves an action in equity, such as the attorney fee award, the circuit court may make findings in accordance with its own view of the preponderance of the evidence.³⁶

Attorney fee awards shall be upheld on appeal unless the underlying court abused its discretion.³⁷ An abuse of discretion occurs when the conclusions of the trial court are controlled by an error of law or are based on unsupported factual conclusions.³⁸

³³ Appellant/Petitioner's Motion for Reconsideration.

³⁴ Order Denying Motion to Alter or Amend.

³⁵ *Wellin v. Wellin*, 427 S.C. 15, 22, 828 S.E. 2d 767, 771 (2019)

³⁶ *Id.*

³⁷ *Brawley v. Richland Cnty.*, 2024 S.C. App. Lexis 79, 7 (Ct. App. 2024).

³⁸ *Id.* Quoting *Kiriakides v. Sch. Dist. Of Greenville Cnty.*, 382 S.C. 8, 20, 675 S.E. 2d 439. 445 (2009).

Because the conversion matter is an action at law, the findings of fact will not be disturbed on appeal unless they are without evidence to reasonably support the judge's findings.³⁹ An appellate court may review whether the trial court properly applied the law to the undisputed facts and, in those situations, owes no deference to the trial court's legal conclusions.⁴⁰

³⁹ *Townes Associates Ltd., v. Greenville*, 226 S.C. 81, 221 S.E. 2d 773 (1976)

⁴⁰ *J. K. Const., Inc. v W. Carolina Reg'l Sewer Auth.*, 336 S.C. 162, 166, 519 S.E. 2d 561, 563 (1999)

ARGUMENTS

I

The Court erred in awarding attorney fees to the Daughters and misapplied the attorney fee award factors. The Daughters failed to receive a sufficiently beneficial outcome justifying their award of attorney fees. The actual outcome could have been achieved without protracted litigation and costs. The Court's justification for the award rested in its belief that, but for the Hasian's Formal Petition, there would have been no litigation, which is highly subjective and insufficient grounds to substantiate an attorney fee award of this size.

In making its ruling, the trial court relied on a combination of the statutory provision in the Probate code, its own equitable analysis, and case law guidance.

The Probate Code permits a judge to award attorney fees as justice and equity may require.⁴¹ As of this brief's date, no reported cases illustrate the circumstances in which justice and equity might substantiate an attorney fee award under the Probate Code.

To flesh out the general statutory language the amended trial court made findings deemed supportive of the equitable elements of attorney fee awards. The trial order also cites *Glasscock* but failed to develop findings of fact aligning with the factors.⁴²

The *Glasscock* factors for determining attorney fee awards are:

1. Nature, extent, and difficulty;
2. Time necessarily devoted to the case;

⁴¹ S.C. Code Ann. § 62-1-111

⁴² *Glasscock v. Glasscock*, 304 S.C. 158, 160, 403 S.E. 2d 313, 315 (1991)

3. The professional standing of counsel;
4. The contingency of compensation;
5. Beneficial results obtained; and
6. Customary legal fees for similar services.

The amended Order included additional findings of fact related to each *Glasscock* factor.⁴³ However, the trial court drew erroneous conclusions for two of the factors: time necessarily devoted to the case and beneficial results obtained.

We address the statutory and equitable bases first and then will address the *Glasscock* case law bases.

STATUTORY AND EQUITABLE JUSTIFICATION FOR AWARD

In the Order, the trial court stated that the basis for this award was Hasian's submission of the 2021 Will for Probate, further concluding that she submitted this Will knowing that it was invalid.⁴⁴ This conclusion was not supported by the testimony but seems to be the overarching justification for the attorney fee award. The trial judge overreached in her factual conclusions regarding the propriety of the attorney fee award.

At trial, Hasian testified that, although she knew the date of the 2021 Will was inaccurate, she believed the content to be correct, signed by the Decedent, with signatures of witnesses.⁴⁵ In its Order, the trial court concludes that the Decedent did not sign the 2021 Will because of the handwriting expert testimony, but nowhere in the Order does it state she believes that Hasian knew the Decedent

⁴³ Amended Order, Attorney Fee Award section, pages 2 – 5.

⁴⁴ Merits Order, page 8, paragraphs 41 – 42.

⁴⁵ Trial Transcript, Day 1, page 148, lines 6 – 19. Trial Transcript, Day 2, page 296, lines 11 – 14.

didn't sign the Will.⁴⁶ The Amended Order concludes the court believes Hasian knew the Decedent didn't sign the Will, but does so in a conclusory way and does not identify the specific facts, evidence or testimony supporting the conclusion.⁴⁷

The handwriting expert's analysis itself qualified the conclusions by stating the exemplars were not ideal.⁴⁸ At trial, the handwriting expert concluded she did not believe the Decedent signed the 2021 Will but stated that her analysis was limited by the absence of handwriting exemplars closer in time when the Will was executed, even stating she found it hard to believe there could be only one sample within 2017 – 2021.⁴⁹

She testified that physical issues and medical conditions can affect the consistency of a person's signature in handwriting analysis.⁵⁰ The handwriting expert indicated that while she was informed that the Decedent died from a heart attack or stroke, these were not considered health issues at the time of the signing in 2021.⁵¹ It is understandable that the expert might think the cardiac event was sudden and with no previous illness. However, one of the Daughters testified that the cardiac issues were ongoing, and the Decedent was hospitalized a week before he died for blood clots and further testing on cardiac issues.⁵² Furthermore, Hasian

⁴⁶ Merits Order, page 5, paragraph 23.

⁴⁷ Amended Order, page 3, paragraph 44 (b).

⁴⁸ Respondent's Trial Exhibit.

⁴⁹ Trial Transcript, Day 2, page 195, lines 14 – 20, page 201, lines 7 – 14.

⁵⁰ Trial Transcript, Day 2, page 186, lines 3 – 11.

⁵¹ Id., page 201, lines 15 – 25, page 202, lines 1 – 13.

⁵² Trial Transcript, Day 1, page 55, lines 13 – 20.

testified that she observed other medical issues the Decedent suffered from in 2021 that were not disclosed to the handwriting expert.⁵³

At the hearing on the Motion to Alter or Amend, the trial judge said, “We probably would not have been in court if that Will (the 2021 Will) had not been submitted for probate. I think everything falls from that, all other allegations, all other causes of action fall from that.”⁵⁴ The testimony at trial, however, does not support this conclusion.

The Daughters argued with Hasian about the disposition of the body and cremains in the ICU room just after the Decedent died.⁵⁵ They engaged in escalated adversarial behavior regarding the division of the Decedent’s cremains by appearing at Hasian’s home asking for their share of the cremains several weeks before the Appellant filed the 2021 Will for Probate.⁵⁶

There is no testimony to support an assertion that, but for the 2021 Will submission, the Daughters would have never filed the 1997 Will. Given this Will disinherits Hasian,⁵⁷ it is reasonable to conclude that she would have not consented to the probate of the 1997 Will, thus litigation between these parties was inevitable.

⁵³ Trial Transcript, Day 2, page 293, lines 20 – 25.

⁵⁴ Motion Transcript, page 25, lines 4 – 8.

⁵⁵ Trial Transcript, Day 1, page 61, lines 6 – 19, two of the daughters engaged in this discussion.

⁵⁶ Trial Transcript Day 1, pages 36, lines 1- 25; page 37, lines 1 -25; page 38, lines 1- 25; page 39, lines 1 – 25; page 40, lines 1- 5. One daughter appeared at Hasian’s home demanding a share of the cremains.

⁵⁷ Id., page 42, lines 3 - 4.

Testimony by one daughter confirmed that she and her sisters received a copy of the 1997 Will before the Decedent died, a month before Hasian filed her Will.⁵⁸

TIME NECESSARILY DEVOTED TO THE CASE

In the Merits Order, the trial judge made no specific findings on whether the time the Daughters' counsel spent on the case was necessary, and instead broadly stated the circumstances justify the award for work performed through July 12, 2022.⁵⁹ This was amended in her subsequent Order but does not further elaborate on the specific facts supporting her conclusion.⁶⁰ The largest allocation of time was for the two-day trial, which would have been avoided if the Daughters' attorney engaged in good faith settlement negotiations.

In their Memorandum in Opposition to the Motion to Alter or Amend, the Daughters' counsel, argued that they attempted to avoid this litigation by sending Hasian a "settlement offer" - whereby she would agree for 1997 Will to be admitted into probate (completely disinheriting herself) and withdraw the 2021 Will.⁶¹ A demand for the complete capitulation of an opposing party is not a good-faith settlement offer. The Memorandum notably ignores the fact that the Appellant tried to resolve the case with the Daughters in December 2021 by proposing both parties

⁵⁸ Id., page 41, lines 24 – 25, page 42, 1 – 4.

⁵⁹ Merits Order, page 8, paragraph 42. The last day of the trial was June 22, 2022, so the award included work performed for an additional two weeks and six days after the trial was concluded.

⁶⁰ Amended Order, pages 2 – 5, Attorney Fee Award section.

⁶¹ Daughters' Memorandum in Opposition to Motion to Alter or Amend, page 3 and Exhibit A.

withdraw their Wills, administer and distribute the estate intestate, and nominate a third-party to act as Personal Representative. ⁶²

The Daughter's counsel summarily rejected this proposal and provided no counteroffer or continued negotiations. ⁶³ The Probate Court's final ruling was for the estate to be administered intestate, and a disinterested Personal Representative appointed. ⁶⁴ This outcome was identical to the recovery received if the Daughters had taken Hasian's offer except for the Conversion damages and identification of the third-party Personal Representative.

All parties, including Hasian, incurred unnecessary legal fees between December 2021 through the two-day trial. The Daughters should not be allowed to profit from their decision to refuse negotiations that would have yielded a substantially similar result to what they obtained.

The Amended Order also erroneously states that the judge concluded, "that the Petitioner had knowingly submitted a fraudulent document with reckless disregard for others."⁶⁵ In fact, no Order, makes this ruling.⁶⁶

⁶² Motion Transcript, page 9, lines 20- 25, page 10, lines 1 -25, page 11, lines 1 – 10. Motion Hearing Petitioner's Exhibit A.

⁶³ Motion Hearing, Exhibit A.

⁶⁴ Merits Order, page 8 - 9, paragraphs a – d.

⁶⁵ Amended Order, page 3, Paragraph 44(b).

⁶⁶ Merits Order, page 8, Paragraph 42.

BENEFICIAL OUTCOME

The Daughters plead four causes of action and sought punitive damages in their third-party complaint.⁶⁷ They failed to prevail on three of their four causes of action and were denied punitive damages.⁶⁸

The Amended Order likewise failed to state any beneficial result, aside from the 2021 Will not being admitted to probate.⁶⁹ As of the April Motion for Partial Summary Judgment, the Decedent's estate was going to either be probated under the 1997 Will or under intestate succession. The Daughters' counsel failed to achieve a beneficial outcome of seeing the 1997 Will probated and avoiding intestate succession.

The opportunity to have a trial on a cause of action, which fails to be awarded, is not a beneficial outcome. At a minimum, the attorney fee should be pro-rated and apportioned to omit the part of the fee earned from case inception through the court's Order granting partial summary judgment or should be pro-rated to allocate the award on time worked on the conversion, claim, the sole cause of action on which they prevailed.

The Amended Order further identifies as a beneficial result that the "Petitioner was removed as Personal Representative of the Decedent's estate."⁷⁰ This is factually incorrect. There was never a Personal Representative appointed to administer the Decedent's estate. This was not a beneficial outcome. This outcome

⁶⁷ Third Party Petition.

⁶⁸ Merits Order, page 9.

⁶⁹ Amended Order, page 4, paragraph 44 (f).

⁷⁰ *Id.* at page 5, paragraph 44 (f).

could have been accomplished through the Daughters' participation in good-faith settlement negotiations.

The award of the Daughter's attorney fee, \$56,516.80, is a net award 790% greater than the actual damages of \$7,147.32 for their Conversion claim, the only cause of action on which they prevailed. This award is grossly disproportionate and unsubstantiated by any accepted measure of equitable or case law on attorney fee awards. It must be overturned or amended.

II

The Court improperly ruled that the paychecks Hasian wrote to herself from the Decedent's business were assets of the estate and that issuing these funds to herself constituted conversion. The funds represented unpaid earned salary to Hasian and were not an estate asset.

The trial court ruled that Hasian committed conversion when she cashed paychecks for unpaid, earned wages because she provided no evidence she was authorized to write checks on the Larry J's Automotive business account, and ruled the business assets were estate assets when the Decedent died.⁷¹

Conversion is the unauthorized assumption and exercise of ownership of the property of another to the exclusion of the rightful owner's rights.⁷² The Daughters alleged that Hasian converted funds belonging to the Decedent's business to her

⁷¹ Amended Order, page 2, Conversion section.

⁷² *Gordon v. Busbee*, 397 S.C. 119, 2012 S.C. App. Lexis 163 (2012)

own use by writing and cashing several checks the day before the Decedent died.⁷³ Hasian does not contest the fact that she wrote these checks.⁷⁴

The trial court issued a ruling from the bench precluding testimony on the ownership of the business account.⁷⁵ The trial court also substantially limited the range of topics the company's CPA could testify to via a ruling from the bench after ruling in the first day that the CPA could testify on the second day.⁷⁶ These rulings substantially limited the ability to develop relevant facts about Hasian's customary duties at the Decedent's business and standard practices regarding payroll.

However, the uncontested testimony was that Hasian wrote checks on the business account, including payroll, and the checks at issue had a notation which tied them to specific payroll weeks and the total for each check equaled her weekly salary.⁷⁷ Hasian also testified that she had signature authority on the accounts.⁷⁸

No rebuttal testimony or evidence was entered to contradict Hasian's testimony about the business practice. Only one witness, one of the Daughters, testified she thought it was improper for the checks to have been written, despite having no knowledge- first-hand or otherwise – about the business practices.⁷⁹

⁷³ Daughters' Third-Party Petition.

⁷⁴ Trial Transcript, Day 1, page 176, lines 20 – 25, page 177, lines 1 – 13.

⁷⁵ Trial Transcript, Day 2, page 254, lines 18 – 25, page 255, lines 1 – 25, page 256, lines 1 - 25, page 257, lines 1 – 25, page 258, lines 1 – 4.

⁷⁶ Id., page 260, lines 1 – 25, page 261, lines 1 – 17. Trial Transcript Day 1, page 125, lines 1 – 25, page 126, line 1 – 5.

⁷⁷ Trial Transcript, Day 1, page 46, lines 1 – 18, page 176, lines 20 – 25, page 177, lines 1 -13.

⁷⁸ Trial Transcript, Day 1, page 169, lines 9 – 12.

⁷⁹ Id., page 58, lines 1 – 25.

The unrebutted testimony of the Decedent's CPA was that backdating or holding payroll checks was standard if ill-advised, business practice.⁸⁰ The business consistently operated with low cash flow⁸¹ and it did not always have enough money to meet payroll and vendor obligations, so Hasian would hold her paychecks until funds were available.⁸²

The trial court had sufficient evidence to understand why the Decedent's business owed Hasian back pay and why these specific checks were written. A person cannot convert property she owns, and the backpay was owed to Hasian.

CONCLUSION

The trial Court gave disproportionate weight to the beneficial outcome and time necessary devoted to the case elements of the *Glasscock* factors and abused its discretion in assessing the attorney fees against Hasian. The trial judge's assertion, that there would have been no litigation but for Hasian submitting the 2021 Will for probate, ignores the preexisting conflict among the parties. The Daughters received the 1997 Will before the Decedent died, and there is no evidence to show that they would not have ultimately filed it for probate, which would have triggered litigation. The expense and time incurred were driven largely by the two-day trial, which could have been avoided if the Daughters had engaged in good faith settlement negotiations.

⁸⁰ Trial Transcript, Day 2, page 266, lines 1 -11, page 267, lines 11 – 23.

⁸¹ *Id.*, page 276, lines 17 – 24.

⁸² *Id.*, page 276, lines 1 – 17.

The Conversion award should likewise be reversed. Hasian was authorized to write checks on the business account. Sufficient evidence was entered to tie the checks to payroll weeks. The checks themselves with the notations show the funds paid were tied to work she performed.

Respectfully submitted,
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CERTIFICATE OF COUNSEL

The Initial Brief of Appellant complies with Rule 211(b), SCACR.



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October 11, 2024.